

**General Conditions for the Supply of Products and Services  
Siemens d.d., PIN (OIB) 12673471493, Heinzlova 70a, 10000 Zagreb, Croatia**

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**I. General Provisions**

1. These General Conditions for the Supply for Products and Services (hereinafter: General Conditions) shall be applied to all legal transactions concluded between the legal entity Siemens d.d. from Zagreb, Heinzlova 70a (hereinafter: SIEMENS) and the other contracting Party (hereinafter: the ORDERER), in relation to the supply of products and rendering of services (hereinafter: the Supplies) by SIEMENS.

These General Conditions are exclusively applied to relations between SIEMENS and the ORDERER, unless certain alterations and / or non-application of certain provisions of these General Conditions are separately agreed and determined in writing. In case when such provisions of the agreement and / or other arrangements are contrary to the provisions of these General Conditions, the provisions of such agreements and / or other arrangements stipulated in a written form shall be applicable.

The agreement between SIEMENS and the ORDERER shall be considered concluded also in

case when SIEMENS, upon receipt of the order, sends a written confirmation of such order or supplies the product and/or renders the service to the ORDERER.

The agreement concluded between SIEMENS and the ORDERER, or the written confirmation of the Order shall determine the scope of the Supplies.

Offers sent by SIEMENS are not binding, unless determined otherwise in the relevant SIEMENS offer i.e. in the agreement concluded between SIEMENS and the ORDERER.

Data stated in catalogues, prospects and similar publications, as well as other written or oral statements, are of informative nature and are binding only if so explicitly stated in the confirmation of the order by SIEMENS, i.e. in the agreement between SIEMENS and the ORDERER, as the technical documentation of a specific product.

SIEMENS shall be authorized to perform partial Supplies with respect to the entire order if such partial delivery is possible and executable.

The ORDERER is authorized to request partial Supplies only with a prior written approval of SIEMENS, which approval shall not be unreasonably withheld.

The ORDERER is not authorized, without prior written approval of SIEMENS, to transfer its rights and obligations from the agreement concluded between SIEMENS and the ORDERER to a third party. In case of transfer of ORDERER's rights and obligations from the agreement concluded between SIEMENS and the ORDERER to a third party without the prior written approval of SIEMENS, such transfer will not cause any legal effect. In case of transfer by the ORDERER's rights and obligations from the agreement concluded between SIEMENS and the ORDERER to a third party with the prior written approval of SIEMENS, the ORDERER and the third party, to which the rights and obligations from the respective agreement were transferred, shall jointly be responsible to SIEMENS for the fulfillment of transferred rights and obligations.

SIEMENS may, in its sole discretion, assign the Contract or any part thereof or any of its contractual rights or obligations to any affiliate company of SIEMENS. Such assignment shall be in effect after SIEMENS informs the ORDERER about the assignment by a written notification. The ORDERER hereby gives its approval of such assignments of the

Contract or any contractual rights or obligations in advance.

2. The ORDERER's General Conditions of Business and procurement shall be applicable only if explicitly confirmed by SIEMENS in writing.

The ORDERER is obliged to timely inform SIEMENS on all changes, including, but not limited to bankruptcy, liquidation proceedings, corporate changes, etc., no matter whether these changes could affect the fulfillment of agreed obligations.

3. Unless otherwise explicitly stated in the agreement, the ORDERER does not obtain ownership rights and / or copyrights on drawings, evaluation of expenses and on other offer and project documentation (hereinafter: the Documentation) which is, as a part of the offer and / or as the integral part of the Agreement, delivered to the ORDERER by SIEMENS. Delivered Documentation cannot be copied without the prior approval of SIEMENS. SIEMENS retains all of the industrial ownership rights and copyrights which refer to the Documentation, except otherwise expressly agreed.

Third parties may have access to the Documentation only with the prior approval of SIEMENS, and if such approval is not granted, i.e. if the ORDERER realizes the Order in some other place, the Documentation must be returned, upon request of SIEMENS, without any delay.

In any case, the documentation of the ORDERER can be made available to all affiliated companies of SIEMENS and to third parties to whom SIEMENS transferred the fulfillment of agreed obligation.

## II. Prices and payment conditions

1. Unless otherwise expressly stated in the agreement, the prices are considered to be FCO factory i.e. warehouse, which does not include wrapping and packaging, loading and transportation expenses.

Value added tax is not included in the price, which tax shall be calculated by SIEMENS pursuant to currently valid Value Added Tax Act and other respective laws and regulations.

2. If SIEMENS, as a part of its contractual obligations, assumed the obligation of installation and fitting of the subject of Supplies, and unless stated differently in the agreement, the ORDERER is hereby obliged, together with the agreed fee, to bear all necessary additional expenses, including, but not limited to, travel expenses, transport expenses of necessary tools, personal luggage and field bonuses for workers.

If charges, taxes and other fees are charged in relation to the Supplies, they shall be borne by the ORDERER. If the Supplies were agreed together with the transport insurance, then the relevant insurance shall be charged separately, whereby such Supplies do not include unloading and transfer.

In case of the ORDERER's order of products and / or services which is not in accordance with the entire offer supplied by SIEMENS, SIEMENS withholds the right to adequately adjust the price.

Prices stated in the offer are based on the expenses in the moment of the first offer of products and / or services. If such expenses increased until the moment of Supplies, SIEMENS withholds the right to adequately adjust the prices in accordance with such change.

3. Prices of products and / or services stated in SIEMENS' offer or in the agreement between SIEMENS and the ORDERER may be also determined in EURO, whereby in such case the prices are payable in the counter value in Croatian Kuna pursuant to the sales exchange rate of the commercial bank determined by SIEMENS valid on the day of the payment.

4. Payment should be made to the account of SIEMENS at the commercial bank determined by SIEMENS, pursuant to agreed terms of payment upon 30 (thirty) days from the issuance of invoice, and in the full amount of the invoice. In case of delay of the ORDERER with the payment or with other fulfillment of obligations from this or other mutual business transactions, SIEMENS has the right, without affecting any of its other rights, to postpone the fulfillment of its obligations out of this or other mutual business relationships until the settlement of respective payment and / or other obligations, and to use the right to adequately postpone the Supplies, and to charge to the ORDERER additionally calculated legal interest pursuant to the valid laws and regulations.

Payment shall be considered made on the day when the due amount arrives to the account of SIEMENS.

At partial calculations and / or installment payments for the Supplies, the respective partial calculations and / or installment payments shall become due upon 30 (thirty) days from the issuance of each invoice.

SIEMENS' invoices, issued on the basis of subsequent deliveries, which exceed the originally agreed Supplies, shall become due upon 30 (thirty) days from the issuance of each invoice regardless on the conditions of payment agreed for the main Supplies.

5. The ORDERER is not authorized, due to rights from guarantees or other counterclaims, to withhold (not execute) and / or set-off payments of SIEMENS' invoices.

SIEMENS is authorized on the basis of its claims, to withhold (not execute) and / or set-off payments of the ORDERERS' invoices arising out of this or other mutual business relationships.

In any case, SIEMENS has the right to calculate expenses incurred prior to court proceedings, especially expenses of the sending notices of delay and attorney services.

Unless otherwise expressly determined in the agreement, granted discounts on the price and / or bonuses are conditioned by timely settlement of the full amount and by fulfillment of other contracted obligations of the ORDERER.

6. For the purpose of securing the payment of agreed price, the ORDERER is obliged to deliver to SIEMENS the payment instruments pursuant to the referenced priorities:

1. bank guarantee (upon first call, irrevocable, unconditional, issued by first class bank institution, accepted by SIEMENS); or if this is not possible and if SIEMENS accepts,
2. blank debenture (signed and certified by the notary public for the ORDERER); or
3. blank bill of exchange (without protest).

7. In case of total advance payment of the Supplies by the ORDERER, the application of paragraph 6 of this Article is excluded.

### III. Retention of title

1. SIEMENS shall have the retention of title on all supplied products until the full settlement of the purchase price, including possible interest and / or expenses by the ORDERER as well as fulfillment of all of its rights and obligations which the ORDERER has towards SIEMENS on the basis of the respective business relationship.

2. On the Supplies on which retention of title by SIEMENS is applied, transfer of risk for accidental destruction and damage shall be borne by the ORDERER from the moment the respective Supplies have been delivered to him. During the duration of period of retention of title by SIEMENS, the ORDERER cannot allow seizure or transfer of ownership, establish pledge over the supplied products or encumber such products in any other

way. The possibility of further sale and / or distribution of supplied products is allowed only to merchants and / or trading companies, within their regular activities, and only under the condition that the merchant and / or trading company receives the payment from its buyer or, at the time of sale, declares the right of retention of title, under which the ownership shall be transferred to the buyer in the moment of payment of the full sale-purchase price.

3. The ORDERER is obliged, without any delay, to inform SIEMENS on seizures, enforcements or other legal actions or interventions of third parties, while the ORDERER is obliged to inform such third parties on the right of retention of title by SIEMENS over delivered products.

4. If the ORDERER breaches any of the material contract obligations, especially if it delays with the fulfillment of its payment obligations, SIEMENS shall be authorized, upon serving the notice on delay, to retrieve the delivered products, while the ORDERER shall be obliged to deliver them on the location indicated by SIEMENS, regardless of application of Article 2 paragraph 4 of these General Conditions. The return of the supplied goods i.e. realization of retention of title by SIEMENS shall not be considered termination of the agreement between SIEMENS and the ORDERER, unless explicitly stated so by SIEMENS in writing.

### IV. Deadlines for Supplies and delay

1. SIEMENS' deadline for the Supplies of products and / or rendering of services shall commence at the latest on the following dates:

- a) on the date of confirmation of the offer; and
- b) on the date of fulfillment of all technical, commercial and other pre-conditions which are the obligation of the ORDERER; and
- c) on the date when SIEMENS, prior to Supplies of goods, receives advance payment or the security instrument; or
- d) on other date explicitly agreed in the relevant agreement.

2. Unless otherwise expressly stated in the agreement, SIEMENS timely receipt of entire documentation and obtaining of required approvals and / or consents, including obtaining of possible approvals and / or consents of third parties, as well as respect of agreed conditions of payment and of other obligations by the ORDERER is a pre-condition for the timely fulfillment of the deadlines of delivery by SIEMENS. If such conditions are not timely fulfilled, SIEMENS' deadlines for the fulfillment of contracted

obligations shall be postponed until the moment of fulfillment of contracted obligations by the ORDERER.

In case of delay of Supplies, caused only by SIEMENS, the agreed Supplies deadlines shall be postponed in accordance with the agreement between the ORDERER and SIEMENS. SIEMENS is not responsible for the delay in fulfillment of its obligations which occurred due to ordinary negligence but SIEMENS is liable for the delay occurred due to his gross negligence of willful misconduct.

**3.** If the breach of obligation for timely Supplies by SIEMENS is the consequence of vis majeure such as mobilization, war, rebellion, natural disasters, strike, blockade, fire, non-obtaining of required licences (positioning licence, installation licence, export, import), interventions of the legislator, actions by the ORDERER or any third party or other events, which could not be foreseen or influenced by SIEMENS, the Supplies deadlines shall be postponed for the period of time of such events i.e. until the removal of consequences caused by such events. SIEMENS is obliged to inform the ORDERER about these circumstances without delay by a written notice.

The above referenced circumstances justify the postponement of Supplies deadlines also when occurred with SIEMENS' suppliers, sub-contractors and / or sub-deliverers.

Notwithstanding everything mentioned in paragraphs 1, 2 and 3 of this Article, if the postponement of deadlines for the fulfillment of obligations occurs at the side of the ORDERER for any reason, the deadline for the fulfillment of SIEMENS' obligations shall be postponed for the same period of time.

**4.** If the parties agree on the contractual penalties with respect to the delivery of ordered products i.e. rendering of services by SIEMENS, the same shall be paid pursuant to the following provision of these General Conditions.

In case of delay with the fulfillment of the contracted obligations by SIEMENS, which occurred solely due to SIEMENS' willful misconduct or gross negligence, and upon expiry of additional deadline for the delivery which cannot be shorter than 30 (thirty) days, the ORDERER is authorized, for each full week (7 (seven) days) of delay, to the contractual penalty of up to 0,5 % (in words: zero point five percent) from the value of that part of the total delivery which, due to late delivery of the major part, cannot be used.

The contractual penalty which SIEMENS is obliged to pay pursuant to this paragraph cannot exceed total of 5 % (five percent) of the value of the part of the total delivery which, due to late delivery of the major part,

cannot be used.

**5.** Unless otherwise expressly stated in the agreement, all other requests of the ORDERER regarding the delay of SIEMENS with the Supplies, which exceed the limits stated in paragraph 4 of this Article, including but not limited to damage compensation of any damage or expenses, shall be excluded in all cases of the delayed Supplies.

Unless otherwise expressly stated in the agreement, by payment of the agreed contractual penalty by SIEMENS, the ORDERER shall be deprived from the right to unilaterally terminate the agreement and the right to request the compensation of damages connected with the delay incurred from the respective agreement. The ORDERER will lose its right to claim contractual penalty for delay of SIEMENS, in case the ORDERER has accepted the fulfillment of the obligations from SIEMENS and did not without delay expressly notified SIEMENS in writing that it retains the right for the contractual penalty for delay.

**6.** If the ORDERER is in delay of more than 7 (seven) days with the acceptance of fulfillment from the day of SIEMENS' declaration on the readiness for the fulfillment, the ORDERER shall bear, for each starting week, a fee for the warehouse storage pursuant to actual expenses of such storage.

**7.** The ORDERER shall be obliged, upon the Supplies of products, and during the duration of the retention of title by SIEMENS i.e. until full settlement of the sale-purchase price, to obtain insurance of the delivered products from the usual risks and to deliver the concluded insurance policies for SIEMENS' review within shortest possible time.

## **V. Transfer of risks**

**1.** Unless otherwise expressly stated in the agreement, the risk – in case of Supplies without the transport fee for the objects of Supplies – shall be transferred to the ORDERER as follows:

a) in case of Supplies without installation or fitting – when the object of Supplies was given over to the transport or when the Supplies were offered to the ORDERER in the usual and / or agreed manner and under contracted and / or usual conditions. SIEMENS shall not be obliged to insure the object of transportation from usual risks in transport and the referenced insurance must be contracted separately.

b) in case of Supplies with installation or fitting – on the day of takeover in its own facility or after the test running which will be agreed upon in the relevant protocol.

**2.** In each of the points stipulated in paragraph 1.

(one) above, the transfer of risk for accidental destruction and damage will be taken over by the ORDERER in the moment the ORDERER will be in delay with the fulfillment of any of its obligations.

3. Moreover, if the transportation, supply, commencement, implementation of installment or fitting, takeover in its own facility or test running are in delay due to liability of the ORDERER or if the ORDERER is in delay with the takeover due to some other reasons, the risk shall be transferred to the ORDERER in the moment when the ORDERER rejects to receive the fulfillment or prevent it by its own behavior.

## **VI. Installation and fitting**

For installation and fitting – unless explicitly agreed otherwise in the agreement, the following provisions shall apply:

1. The ORDERER shall be obliged, at its own expense, to take over and timely secure:

a) all land, construction and other supporting works, which are contractually agreed and which are not part of SIEMENS' business activities, including necessary expert and assisting work labor, construction materials and tools, etc.;

b) all necessary objects and materials which are required for the installation and putting into operations, such as scaffolding poles, cranes and other machines, fuels and lubricants, etc.;

c) energy and water at the place of use, including all other required connection points, including but not limited to heating and light, etc.;

d) at the installation place, for the purpose of storage of machines, appliances, materials, tools, etc. – large enough, adequate, dry rooms, which may be locked, and for personnel which shall perform the installation – adequate working space and rooms for rest, including sanitation space and / or appliances, adequate under circumstances; the ORDERER shall, for the purpose of protection of SIEMENS' personnel who perform the installation and SIEMENS' assets, including but not limited to equipment for work and the Supplies which are subject of delivery and are located at the premises of the ORDERER or on the location on which the ORDERER has control or the ORDERERS' suppliers or subcontractors, take all measures for protection and insurance which the ORDERER would take for the protection of its own property and workers, as well as appropriate measures prescribed by legal provisions applicable at the installation location;

e) Protective clothes and appliances, required due to specific conditions on the installation location, as well as take adequate measures of protection on work at the installation location.

2. Before the start of the installation works, the ORDERER shall put at SIEMENS' disposal all required data on the position of underground power lines, gas and water lines and similar facilities and/or installations, as well as all required static information.

3. Unless otherwise explicitly agreed in the agreement, prior to the beginning of installation and fitting, the ORDERER is obliged to ensure that all appliances and objects required for the commencement of work must be located at the place of installation and fitting. All preparatory work must be performed to in a way that the installation and fitting could be start and be performed without any interruptions. Approach roads and the location of installation and fitting must be leveled, arranged, cleared and without any obstacles.

4. If in the process of installation, fitting or putting into operation should come to postponement of agreed deadlines due to circumstances for which SIEMENS is not responsible, the ORDERER shall be obliged to settle all expenses incurred by SIEMENS for such postponed time, including, but not limited to travel expenses and other possible damages of SIEMENS caused by such postponement.

5. The ORDERER shall, at least once in 7(seven) days, except if mandatory regulations prescribe otherwise, confirm to SIEMENS the duration of working hours of workers who perform the installation and, without any delay, the ORDERER will in the written form in the protocol determine the completion of works for installation and fitting, or the moment of putting the system into operation.

6. If upon completion of work SIEMENS demands the takeover of the Supplies, the ORDERER shall be obliged to take over the Supplies within 7 (seven) days thereof the protocol will be drawn up. If the takeover of the signing of the protocol would not take place with such time without any justified reason i.e. if the ORDERER has already started with the use of object of the Supplies, it shall be considered that the takeover was completed, whereby the guarantee period and other obligations of the ORDERER and SIEMENS in relation to the take over of object of Supplies shall commence as if the take over has been completed.

## **VII. Takeover**

1. If the ORDERER, prior to the time of Supplies, does not deliver to SIEMENS the instructions of the delivery of Supplies, SIEMENS shall be authorized to

deliver the Supplies at the seat of the ORDERER by transportation manner chosen by SIEMENS. In case of such Supplies, SIEMENS shall not be obliged to secure the storage for the object of Supplies.

2. The ORDERER shall be obliged to take over the object of Supplies even when it has minor deficiencies or minor damages which do not disturb the normal use and / or use which satisfies the security demands.

### **VIII. Liability for defects and guarantee**

1. In case of abiding by the agreed payment terms and timely notification to SIEMENS on any detected defect on behalf of the ORDERER, SIEMENS shall be obliged to remove any such defect which existed in the moment of take over of the object of delivery i.e. of transfer of risk to the ORDERER and which affects the normal functioning, and which is based on the error in construction, material and / or production of supplied products and / or rendered services. SIEMENS will not be held liable for any defects if the ORDERER was familiar with those defects or those defects could not have been unfamiliar, at the time of the conclusion of the contract.

For defects, which also include the lack of agreed characteristics, SIEMENS shall be liable as follows: SIEMENS shall remove any defect on the object of Supplies if the ORDERER, without any delay and in any case not later than 3 (three) days from the transfer of risk to the ORDERER, reports the defect by a written letter, whereby the ORDERER has to prove the existence of the reported defect. In case of breach of this provision by the ORDERER, SIEMENS shall not be obliged to remove such defect.

In case of the defect which could not be found by ordinary inspection in the process of take over i.e. of transfer of risk to the ORDERER, the ORDERER shall be obliged to inform SIEMENS on such defect by a written letter within 30 (thirty) days from the transfer of risk. If the ORDERER passes the referenced deadline, the ORDERER shall lose the right to refer to such defect and the obligation of SIEMENS to remove such defect will cease.

In case of timely notice of the defect and determination of the defect, SIEMENS shall, at its own choice and at its own expense, repair, make another Supplies or render, all those parts or services whose agreed usage, under circumstances occurred prior to the transfer of risk to the ORDERER, is significantly decreased.

The ORDERER must, without any delay, make all documentation i.e. data in its possession available to SIEMENS, all for the purpose of prompt determining

of the condition of goods and removal of defects.

For the removal of defects the ORDERER shall make available to SIEMENS the adequate period of time and adequate conditions. If this should be denied and / or not made available by the ORDERER, SIEMENS shall be released from any obligation to remove the defects. If adequate period of time granted to SIEMENS should expire and SIEMENS has not removed the defect, the ORDERER may use its right to return the unsatisfactory Supplies, with the return of the paid compensation for the part of object of Supplies which has the defect, or may ask for the adequate decrease of the sale-purchase price.

2. The guarantee period for the object of the Supplies is 12 (twelve) months, unless specific guarantee periods have been agreed for certain objects of Supplies. The guarantee period shall begin in the moment of transfer of risk to the ORDERER pursuant to these General Conditions.

The guarantee does not apply to wear and tear or damages which occur on the objects of Supplies upon transfer of risk to the ORDERER, including, but not limited to incorrect, careless and / or superficial use, overload, unauthorized servicing, use of inadequate fuel, due to inadequate construction works, chemical influences, atmospherical discharges, inadequate construction ground or on the basis of special outer influences which were not specified in the agreement, or the software malfunctions which cannot be reproduced, as well as installation which is not performed by SIEMENS. The above mentioned limitation is identically being applied to those malfunctions and / or damages resulting from the materials delivered by the ORDERER.

The ORDERER's right of guarantee shall not be applied to the damages caused by third persons or by the ORDERER itself.

If the ORDERER or third persons should make any non-expert modifications or put the object into operation, then there shall be no SIEMENS guarantee obligation for damages and / or malfunctions which were made by such modifications and works.

The guarantee period for additional repairs, substitute Supplies or rendering of substitute services is 6 (six) months, whereby the referenced deadline shall last at least until the expiry of original guarantee period for the object of Supplies.

The guarantee period shall be postponed for those parts which, due to interruption of the use of the object of Supplies, cannot be put in work pursuant to their purpose - during the period of time identical to that of use interruption, caused by repairs, substitute

Supplies or rendering of substitute service.

The guarantee period for the objects of Supplies, including subsequent repairs and substitute deliveries, shall in any case end at the latest within 18 (eighteen) months from the transfer of risk to the ORDERER.

The guarantee rights do not arise from the data stated in catalogues, prospects, advertisements, or from any written or oral statement which is not stated in the agreement.

SIEMENS shall not assume any guarantee in case of sale of used goods.

If SIEMENS proves that, in case of reported damage and / or malfunction on the object of Supplies, it is not the case covered by the guarantee, the ORDERER shall reimburse SIEMENS of all repair and / or replacement expenses, pursuant to hourly rates, including all incurred travel expenses.

Any other rights of the ORDERER towards SIEMENS on the basis of guarantee are excluded, including sub-deliverers and / or sub-contractors of SIEMENS responsible for the execution of the agreement, unless stated differently in the guarantee list for certain technical products.

3. This Article does not affect the application of Article XI (Other responsibilities).

## IX. Electronic Commerce

1. Electronic Commerce shall mean the conduct of business in the electronic format by using information and communication technology and/or electronic signature in legal transaction as defined by the legislature regulating electronic commerce and electronic signature. Electronic Commerce shall be equivalent to the classic (written) one provided that:

- a) Permanent preservation of the electronic messages and their later use is ensured;
- b) Information is retained as to enable the identification of the origin and the destination of an electronic message as well as the place and time when it was sent or received;
- c) Information is retained in the format in which it was generated, sent or received, or in a format that accurately represents the information generated, sent or received, respectively;
- d) Technology and procedures used appropriately prevent any change or deletion of the data, or reliably ensure the inalterability of the message, respectively.

2. An electronic message shall be deemed as sent when it enters the information system out of the control of the sender or the person who sent the electronic message upon his order on his behalf. The

electronic message shall not be deemed as unsent if there is no confirmation of reception unless a prior express written agreement stipulates that a confirmation of reception is required for a valid delivery.

3. The electronic message shall be deemed as received when it enters the recipient's information system.

## X. Intellectual property rights and copyright

1. If a third person, due to breach of intellectual property rights or copyright (hereinafter: Protected rights) which are in connection with the object of Supplies delivered by SIEMENS and used pursuant to the agreement and/or the order, places justified demands towards the ORDERER on the basis of breach of protected rights of such third persons, SIEMENS shall then be liable to the ORDERER as follows:

a) SIEMENS shall, at its own choice and at its own expense, acquire either the right to use such product or shall amend the product in such manner to avoid any breach of rights of third persons or shall replace the product. If this is not possible under acceptable conditions, SIEMENS shall then take back the product and adequately decrease the total price, i.e. shall return the amount of the sale-purchase price if the referenced circumstance prevents the possibility of fulfillment of the purpose of the agreement.

b) The above mentioned obligations of SIEMENS shall exist exclusively if the ORDERER, without any delay, informed SIEMENS on any potential liability, claim, commenced proceedings and / or other requests of third parties, if the ORDERER has not acknowledged the alleged breach of protected rights, and if SIEMENS has all rights to object and hold negotiations to reach a settlement. If the ORDERER ceases to use the product in order to reduce the damage or for other important reasons, the ORDERER shall be obliged to notify the third person that the termination of use has no connection with the acknowledgement of the protected right breach.

2. All requests of the ORDERER shall be excluded if the ORDERER is liable for the breach of protected rights of third persons i.e. if the ORDERER did not fulfill its obligations stated in Article IX paragraph 1 point b).

3. Unless otherwise explicitly stated in the agreement, all requests of the ORDERER are excluded if the breach of protected rights is caused by special, previously supplied data and information delivered by the ORDERER, by which implementation

SIEMENS could not know nor had a reason to believe that the supplied products could cause breach of the protected rights of third parties i.e. if the ORDERER independently altered the product or used it together with the products not supplied by SIEMENS.

4. Unless otherwise explicitly stated in the agreement, all other rights of the ORDERER towards SIEMENS on the basis of breach of the industrial registered right or copyright of third parties are excluded.

5. The ORDERER has non-exclusive right to use the software supplied by SIEMENS, with agreed characteristics, in its unaltered form and on agreed appliances. The ORDERER has the right, without any specific authorization of SIEMENS, to make one security copy of delivered software, which has to contain all pertaining copyrights of SIEMENS and / or owner of the supplied software.

Unless otherwise explicitly stated in the agreement, the ORDERER shall not copy, translate, modify, adapt, decompile, dismantle or alter the software of SIEMENS without the prior written approval of SIEMENS.

If the ORDERER should, as an exemption from the above mentioned, with or without the approval of SIEMENS, copy, translate, modify, adapt, decompile, dismantle or alter the software of SIEMENS, SIEMENS shall then possess all rights to each copy, translation, modification, adaptation or performance of software, including any improvement or advancement thereof. At SIEMENS' request the ORDERER shall undertake any necessary actions in order to transfer the rights arising out of copy, translation, modification, adaptation or performance of the delivered software to SIEMENS and / or to the owner of supplied software.

The ORDERER has no right to use the original code of software supplied by SIEMENS, unless otherwise explicitly stated in the agreement.

This Article shall not affect the application of Article XI (Other liabilities), or the right of the ORDERER to terminate the agreement in accordance with the Article X. of these General conditions.

#### **XI. Impossibility of performance, adaptation of the agreement and termination**

1. The condition to terminate an agreement concluded between SIEMENS and the ORDERER, unless otherwise explicitly stated in the agreement, is impossibility to supply the subject matter of the contract, the delay in supply by SIEMENS pursuant to Article IV. of this General Conditions and non-

fulfillment of contractual obligations of the ORDERER, upon expiry of the adequate additional period for fulfillment. The termination notice is served by registered mail to the business address of the contractual parties.

2. If the agreed delivery becomes impossible due to reasons for which SIEMENS is exclusively liable according to paragraph 1 of this Article. In case the ORDERER has fulfilled all or part of its contractual obligations connected with the payment the ORDERER has the right to claim the return of the money paid, excluding interests or other expenses and fees. In this case the ORDERER retains the right to terminate the agreement upon unsuccessful expiry of the additional time period for completion.

If the agreed Supplies become impossible due to the reason for which neither party can be held liable, mutual contractual obligations cease and contractual parties are obliged to return one another all that they have accepted on the basis of fulfillment of contractual obligations.

3. If unforeseen events in the sense of Article IV. Paragraph 3 materially changes the economic relevance or the content of Supplies, or if they materially affect the SIEMENS' business, the agreement shall be adequately adjusted to the new situation pursuant to the principle of conscientiousness and fairness. SIEMENS has the right to terminate the agreement if the changed circumstances justify the termination from economic standpoint, with the notice period of 30 (thirty) days, but only if SIEMENS attempted to reach an agreement with the ORDERER as to the change of terms of the agreement. If SIEMENS would like to terminate the agreement, SIEMENS has to notify the ORDERER thereof immediately upon becoming aware of the scope of the above mentioned event.

4. Notwithstanding any other rights, SIEMENS has the right to immediately terminate the agreement without any notice period, as follows:

a) if the Supplies, or the commencement or the continuation of rendering of services is not possible due to reasons for which the ORDERER is liable, or if the ORDERER delays with the performance of its obligations upon expiry of adequate additional period for fulfillment; or

b) if there are doubts about financial capacities of the ORDERER i.e. if the ORDERER, at SIEMENS' request, does not make the advance payment within agreed period or if the ORDERER does not provide requested security prior to the Supplies; or

c) if the bankruptcy over the ORDERER's assets initiated or if the request to commence the



bankruptcy proceedings is rejected due to lack of sufficient assets; or

d) if the postponement of time of Supplies, due to circumstances referenced in Article IV paragraph 3, exceeds more than one half of the originally agreed period of delivery, but not less than 6 (six) months.

SIEMENS may even terminate a partially executed agreement, for the remaining part of the Supplies, due to reasons referenced in paragraph 4 of this Article.

In case of termination of agreement by SIEMENS pursuant to paragraph 4 of this Article, the ORDERER shall pay for the supplied products and / or rendered services until the moment of termination, and such payment shall not affect any eventual claims for damages by SIEMENS.

## **XII. Other liabilities**

1. SIEMENS is liable to the ORDERER for direct (ordinary) damage within legal regulations, but only in case of proven intent or gross negligence by SIEMENS. The liability of SIEMENS towards the ORDERER for negligence, indirect and/or consequential damage, lost benefits, damages on assets as well as for loss of anticipated savings, interruption of production, lost profit, financial loss, loss of information and data and loss of interest and damages incurred by claims of third parties, towards the ORDERER is limited to a maximum of 10% (ten percent) of the contract value. This provision will not be applied in those cases in which liability cannot be excluded or limited by law, such as damage caused by willful misconduct, gross negligence, death or physical injury.

2. The aforementioned provisions, if applicable, are valid also in favor of sub-deliverers/sub-contractors of SIEMENS, who have to execute the agreement, as well as for suppliers.

3. If the ORDERER does not act according to possible conditions for installation, putting the objects into operation and use (e.g. in instruction manual), any SIEMENS' liability towards the ORDERER for damages or other expenses is excluded.

## **XIII. Confidentiality**

1. The ORDERER shall hold confidential any information to which the ORDERER has access during the business cooperation with SIEMENS and shall not, without prior written approval of SIEMENS, disclose information related to or in connection with

the business cooperation between SIEMENS and the ORDERER to unauthorized persons or any third party, and shall particularly not disclose such information to any direct or indirect market competitors of SIEMENS.

2. The term «information to which the ORDERER has access during the business cooperation with SIEMENS», includes, but is not limited to designs, plans, specimen, equipment, reports of studies, drawings, schedules, specifications, technical data, data base, any form of software, documents and all other correspondence between SIEMENS and the ORDERER related to the mutual business cooperation.

3. SIEMENS and the ORDERER shall not be liable for disclosure or use of confidential information which:

a) already are or shall become known to the public, except by breach confidentiality obligations; or

b) have to be disclosed pursuant to the law on the basis of request of the authorized body.

If the ORDERER breaches the confidentiality obligation from this Article, the ORDERER shall be liable for any damage, without any limitations, which occurred to SIEMENS as a consequence of breach of the confidentiality.

4. The ORDERER is obliged, in connection with the confidentiality obligation, to bind its representatives, employees, associates and assistants to the confidentiality obligation, through employment contract, internal regulations or in some similar legally acceptable manner.

5. The confidentiality obligation shall remain in force during 5 (five) years from termination of business cooperation between SIEMENS and the ORDERER.

## **XIV. Court jurisdiction and applicable law**

1. Disputes and misunderstandings between the parties shall be settled amicably.

In case the parties shall not be able to settle a dispute amicably, all disputes arising out of agreement concluded between SIEMENS and the ORDERER shall be finally settled by the competent court in Zagreb.

2. The substantive law of the Republic of Croatia is applicable to contractual relations regulated by these General Conditions of the Supply for Products and Services, agreements and / or other additional arrangements concluded in writing between SIEMENS and the ORDERER, with the exclusion of

commercial customs and practices (trade usages), conflict of law rules of the private international law as well as provisions of the Vienna Convention on Contracts for the International Sale of Goods of 1980.

#### **XV. Compliance with Export Control Regulations**

1. If ORDERER transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by SIEMENS or works and services (including all kinds of technical support) performed by SIEMENS to a third party, the ORDERER shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of goods, works and services, the ORDERER shall comply with the (re-)export control regulations of the Republic of Croatia, of the European Union and of the United States of America.

2. Prior to any transfer of goods, works and services provided by SIEMENS to a third party the ORDERER shall in particular check and guarantee by appropriate measures that

There will be no infringement of an embargo imposed by the Republic of Croatia, European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;

Such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;

The regulations of all applicable Sanctioned Party Lists of the Republic of Croatia, European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

3. If required to enable authorities or SIEMENS to conduct export control checks, the ORDERER, upon request by SIEMENS, shall promptly provide SIEMENS with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by SIEMENS, as well as any export control restrictions existing.

4. The ORDERER shall indemnify and hold harmless SIEMENS from and against claim, proceeding,

action, fine, loss, cost and damages arising out or relating to any noncompliance with export control regulations by the ORDERER, and the ORDERER shall compensate SIEMENS for all damages and expenses resulting thereof.

#### **XVI. Anti-Corruption Clause**

1. If the negotiations or the Contract itself can be linked to any form of corruptive conduct pursuant to the Croatian anti-corruption legislation that has or could have influenced the conduct of the parties to the Contract, the agreement shall be deemed null and void.

2. In case corruptive conduct can be linked to the execution or supervision of the respective Contract, the innocent party may withdraw from the Contract before its expiration with an immediate effect and without any further obligations, including liability for damages.

#### **XVII. Waste Electrical and Electronic Equipment**

1. Any costs incurred through the collection, recycling or removal of recycling waste of electrical and electronic equipment (hereinafter referred to as "EE equipment") not categorized as household equipment shall be borne by the Customer. In case that the Customer is not the end user of the EE equipment, he shall ensure that this obligation is passed on to the end user.

2. The Customer shall upon request by the Supplier submit all information and documentation required by the Supplier in order to comply with the regulations on EE equipment.

3. The Customer shall indemnify the Supplier of all costs and damages incurred due to non-adherence to the provision of this Article.

#### **XVIII. Final provisions**

1. If any of the provisions of these General Conditions of the Supply for Products and Services, agreements and / or other additional arrangements concluded in writing between SIEMENS and the ORDERER become unlawful, invalid or unenforceable in any way pursuant to the applicable law, this shall not affect the legality, validity or enforceability of other provisions of these General Conditions of the Supply for Products and Services, agreements and / or other additional arrangements concluded in writing between the parties. SIEMENS and the ORDERER shall replace any such unlawful, invalid or unenforceable provision with the provision which content shall be adjusted to the valid legal regulations.

**2.** Siemens shall not be obligated to fulfill this agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

**3.** SIEMENS and the ORDERER hereby confirm that none of the parties is any way solicited and / or enticed, on the basis of any statement, condition, warranty, promise of award or personal benefit, force or obligation, to enter into agreement on the Supplies of products and / or services, which are not expressly determined by the agreement which regulates all rights and obligations of SIEMENS and the ORDERER.

**4.** Oral agreements between SIEMENS and the ORDERER shall not be valid, unless confirmed in writing by authorized representatives of both SIEMENS and the ORDERER.

**5.** Subsequent changes and amendments of the agreement shall be valid only if confirmed by authorized representatives of both SIEMENS and accepted by the ORDERER in writing.