

## GENERAL CONDITIONS OF SUPPLY FOR GOODS AND SERVICES OF SIEMENS NV

(hereinafter referred to as “Conditions”)

Dated: October 1<sup>st</sup>, 2016

### 1. Scope of application

These Conditions apply to any contract under which Siemens NV undertakes to supply goods and/or services to customers. These Conditions shall in all cases have precedence over any general conditions of the customer, unless Siemens NV at the moment of acceptance of the order has explicitly and in writing, in part or in whole, accepted the conditions of the customer. Exceptions can only be made to these Terms if both parties have agreed to this in writing.

### 2. Constitution of contracts

A valid contract cannot be deemed to exist unless:

1. a written offer from Siemens NV has been accepted without reservations by the customer
2. Siemens NV accepts without reservation an order placed with it by a customer.

Offers made by Siemens NV are valid for one month, beginning with the date of signature, unless otherwise specifically stipulated. Siemens NV can only be bound by written offers, acceptances or agreements jointly signed by two persons empowered to bind it towards third parties.

### 3. Prices

- a. Prices are quoted in euros and are exclusive of VAT. All other duties, levies or taxes, which are currently applicable to the contract, or will be in future, will be payable by the customer. The transport and packing costs are for the customer's account.
- b. If a contract signed with a customer involves goods and/or services to be imported by Siemens NV from a country outside the Euro zone, the price shall be determined on the basis of the selling rate against the euro for the currency of the country of origin as determined on the Brussels stock exchange on the date of the offer made by Siemens NV or the date of the conclusion of the contract, depending upon the case. If the rate in effect on the date of payment differs from that on which the price was based, Siemens NV has the right to increase or decrease the price by means of simple written notification.

### 4. Terms of payment

- a. Goods and/or services supplied by Siemens NV shall be paid for within thirty calendar days after the invoice date. Payments shall be effected in the same currency as the invoice.
- b. If the customer is authorized by special conditions to settle the price in installments and if one of the due dates is not met, the customer shall lose that right to pay in installments and payment in full shall immediately and automatically become due.
- c. If a due date is missed, all sums due from the customer shall *ipso jure* and without notice be subject to interest at a rate of one percent (1%) per month.
- d. Moreover, any unpaid sums shall be *ipso jure* increased by 15% (fifteen percent) with a minimum of EUR 50.00 (fifty euros), as compensation for damages and the relevant collection charges, without any prior notice of default being required.

### 5. Delivery

- a. With the exception of express and written agreement, any deadlines for delivery are to be regarded as indicative. Notwithstanding the provisions of art. 5 e), in no case shall failure to meet a deadline form the basis of any contractual liability upon Siemens NV nor will it create any entitlement to compensation of any nature whatsoever.
- b. Unless the special conditions explicitly state otherwise, all goods are deliverable EXWorks to the location as specified in the special conditions in accordance with the latest version of the INCOTERMS issued by the International Chamber of Commerce. Transport is for the risk and account of the customer.
- c. Any event of force majeure or event beyond the control of Siemens NV (including without limitation strikes, lock outs, declared or undeclared wars, riots, natural disasters, epidemics, sabotage, acts of terrorism, third party attacks (for example hacker attacks), transport delays caused by exceptional weather conditions and actions or omissions of

public authorities involved in the granting of licenses, clearances, approvals or permits) results in the suspension of the delivery deadline for the entire period during which that event rendered delivery within the agreed deadline impossible. If the event of force majeure lasts longer than 3 (three) months, Siemens NV is entitled to terminate the contract.

- d. If delivery is delayed as the result of an event which occurs due to an act or omission of the customer, regardless of its cause, the customer shall automatically be liable to Siemens NV for interest as a result of the delay as provided in art. 4 c). In addition, a storage indemnity equal to 0.5% per month begun, calculated on the value of the goods concerned shall be payable.
- e. If a binding deadline for delivery is expressly agreed to in writing and Siemens NV is solely and directly responsible for a late delivery and the customer can prove that it suffered a loss from such delay, the customer shall be entitled to liquidated damages of 0.5% of the value of the goods not delivered per week of delay. The total aggregate amount of liquidated damages will, however, in no event exceed 5% of the value of the delayed goods. Customer's claims for damages due to delayed supplies as well as claims for damages in lieu of performance exceeding these limits are excluded in all cases of delayed supplies, even upon expiry of a time set to Siemens NV to effect the supplies. Liquidated damages pursuant to this art. 5 e) shall be the exclusive remedy of the customer for late delivery.
- f. Partial deliveries are allowed.
- g. Siemens NV should be notified by registered letter of any visible defects within 48 hours after delivery in accordance with art. 5 b). Default of such notification shall have as consequence an exemption of the liability of Siemens NV.

- h. All chapters of the K.B. 16/03/2006 regarding the protection of workers against the risks of exposure to asbestos are fully applicable. Siemens NV's scope of work (including scope of work of its subcontractors) does not comprise the following:
  - works on materials or products that contain or may contain asbestos;
  - work in environments containing asbestos fibers in ambient air;
  - removal and disposal of Asbestos Containing Materials (“ACM”) or Presumed Asbestos Containing Material (“PACM”);
  - use of special protective and preventive measures against any asbestos, ACM and PACM.

Prior to commencement of work at any site under these Conditions, the customer will notify Siemens NV by means of a written document delivered by an independent, accredited institution whether or not the site has ACM or PACM present and/or ambient air samples for asbestos concentration (including any access routes and other areas shared by the personnel of Siemens NV and/or any of its subcontractors) reveal the presence of asbestos fibers, in any concentration Siemens NV may notify the customer of any substantiated doubt and request the customer, at customer's costs, to measure the asbestos concentration in the ambient air or to assess asbestos contamination of the material in question using bulk sample technique. The measurements must be conducted by an independent, accredited institution and mutually agreed upon by the parties. Siemens NV must also be entitled to measure or to ask an independent, accredited institution to measure the asbestos concentration in ambient air. In case the measurements reveal the presence of asbestos in the ambient air or if the assessment identifies ACM, the customer must reimburse Siemens NV any costs demonstrably incurred for such assessments and measurements. The customer, at its expense, shall be obliged to arrange for, through a qualified institution or company, removal and disposal of ACM existing at site (including any additional working area) and removal of which is required for the performance of Siemens NV's work. This shall as well apply to any ACM which existence was not known to the Parties at the time Siemens NV commences work at site, however which becomes obvious during the course of work performance. In case ACM is detected at site (including any additional working area) Siemens NV is entitled to suspend work in affected areas without incurring any penalties, liquidated damages, liabilities or indemnities on its behalf. In case of suspension, Siemens NV shall be entitled to a variation comprising an equitable adjustment in schedule, price, reimbursement of any costs incurred and other affected contractual provisions. The customer shall at all times be liable towards Siemens NV for any and all damages caused by ACM.

### 6. Warranty

- a. The warranty period for any defect is twelve months starting from the date of delivery.
- b. After the end of the warranty period, Siemens NV shall not be obliged to take any action in response to any claim of any kind based on the warranty. If the claim under the warranty is made within the period allowed, Siemens NV may at its discretion either repair items delivered acknowledged as defective or replace them, wholly or in part. The warranty period for repaired or replaced equipment expires at the same time as the period applicable to the original warranty on the original delivery, but shall not be less than a period of 6 (six months) and not more than a period of 18 (eighteen) months from the delivery date.
- c. Siemens NV shall not be liable for a defect a) if the customer or a third party carries out modifications or repairs to the goods and/or services delivered without prior authorization from Siemens NV, b) if the customer has not immediately taken all appropriate steps to mitigate a damage caused by a defect, c) if the customer prevents Siemens NV from remedying a defect, d) if the customer used the goods or services for any other purpose than the purpose for which it was designed, e) if the customer failed to install and incorporate any enhancements provided by Siemens NV which corrects such defect.
- d. For all sales of goods, the warranty for hidden defects in the sense of Articles 1641-1649 of the Civil code is limited to any hidden defect that:
  - (i) renders the goods impossible to use for its intended purpose; and
  - (ii) has been notified by registered mail within five (5) working days after its date of discovery or the date on which it should have been discovered.

The regulations of paragraphs a and b above also apply to hidden defects as defined above.

#### **7. Limitation of liability**

- a. Siemens NV rejects all liability for any damage as a result of a lack of supervision or maintenance, shocks, damp, corrosion, contamination, heating or as a result of the goods being used for purposes other than what they are intended for.
- b. Siemens NV shall in no case be liable for loss of profit or revenue, loss of production, interruption of operations or loss of use, cost of capital, loss of interest, loss of information and data, damages based on contracts between the customer and third parties, indirect damages and consequential damages, irrespective of the cause of action or the legal grounds upon which the claim is based.
- c. Siemens NV's aggregate liability in connection with the scope of application of these Conditions for both contractual and extra-contractual damages is in all cases limited to the amount of EUR 250.000 (Euro two hundred fifty thousand) or the sales price, whichever is lower.

#### **8. Transfer of ownership**

Siemens NV retains ownership of the sold goods until the customer has fulfilled all its obligations, including the paying of interest, compensation for damages and costs if applicable. Until that time the customer shall not offer goods as surety or sell them on..

#### **9. Termination**

Any failure by a customer to perform any of its obligations, including as a result of liquidation, bankruptcy, suspension of payment, application for receivership, or when the customer meets the conditions for bankruptcy, including failure to pay any amount on its due date, entitles Siemens NV to terminate all contracts with customer with immediate effect by sending a registered letter addressed to the customer, without Siemens NV owing any compensation for damages. Termination renders it obligatory for the customer to return all equipment which has been delivered to it prior to termination. As set forth in this article, Siemens NV shall be entitled to claim damages of not less than 20% (twenty percent) of the value of the order that will be paid by the customer upon first request of Siemens NV, notwithstanding Siemens NV's right to claim for actual damages.

#### **10. Additional securities**

If it appears that there is any doubt of any nature whatsoever relating to the customer's creditworthiness, Siemens NV is entitled to demand that the customer offers corporate or personal guarantees, even if the contract originally signed made no such provision. The customer must

furnish such guarantees within a reasonable period of time. If the customer does not provide the guarantees requested within that period of time, Siemens NV may exercise the option of declaring the contract automatically terminated with immediate effect as mentioned in article 9 above.

#### **11. Intellectual property rights**

- a. All intellectual property rights relating to the equipment and services supplied remain with Siemens NV and cannot be transferred to third parties without the prior written consent of Siemens NV. Siemens NV grants the customer the non-exclusive, non-transferable personal right to the use of drawings and other technical and commercial documents delivered to it under the contract.
- b. Any software delivered to the customer under the contract is not sold but licensed and shall be made available in object code on a data storage medium previously agreed upon. Source codes of any kind shall be supplied only if an express agreement to this effect has been concluded. The customer shall not modify or reverse engineer any software. Any Siemens NV software is licensed according to individual licensing conditions or according to the applicable end user license agreement ('EULA') which will be provided together with the software. Such license is non-exclusive, non-transferable, and non-sublicensable. Any standard software available on the market, which may be supplied by Siemens NV, shall be integrated into the goods or as the case may be, handed over to the customer or ultimate recipient together with relating documentation as it has been delivered by the third party supplier. As for said standard software the relevant licensing conditions of the third party suppliers concerned shall apply exclusively. In case the software contains Open Source Software ('OSS'), this will be communicated to the customer. The customer is entitled to use the OSS according to the license conditions applicable to the OSS.
- c. Drawings and other technical and commercial documents delivered to the customer under the contract may only be used for the agreed purposes and may only be copied or passed on to third parties with the specific written consent of Siemens NV.
- d. Siemens NV shall in the event of an intellectual property infringement either replace the goods and services that are subject to the infringement by goods and services that are not infringing or recover the goods and services and reimburse the price to the customer. This article shall constitute the entire and full liability of Siemens NV in the event of an infringement of intellectual property rights.

#### **12. Non-disclosure**

All information exchanged between the parties with respect to these Conditions and the contract shall be treated strictly confidential, not disclosed to third parties in any manner whatsoever and will be used exclusively for the purpose of the contract. This obligation remains applicable for a period of 10 (ten) years after the contract has expired or has been terminated for whatever reason. This section shall not apply to information which is (i) publicly known, (ii) already known to the recipient; (iii) disclosed to a third party without restriction; (iv) independently developed; or (v) disclosed pursuant to legal requirement or order. Subject to the foregoing, Siemens NV may disclose customer's confidential information to its subcontractors and affiliates. For the purposes of these Conditions, "affiliate" means any legal entity which is directly or indirectly controlled by Siemens AG.

#### **13. Transferability**

The customer is not permitted to transfer its rights and obligations, partly or in full, under these Conditions to third parties without prior written permission from Siemens NV. Similarly, permission is required from Siemens NV in the event of a merger, splitting, contribution or selling of a line of the business or as a whole, or any other similar action as well as in the event of a change in management. Siemens NV reserves the right to transfer its obligations under these Conditions in full or in part to an affiliate and to subcontract any of its obligations without the necessity to obtain the customer's consent.

#### **14. Export Control Regulations**

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

- b. If required to conduct export control checks, the customer, upon request by Siemens NV, shall promptly provide Siemens NV with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Siemens NV, as well as any export control restrictions existing.
- c. The customer shall indemnify and hold harmless Siemens NV from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the customer, and the customer shall compensate Siemens NV for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the customer. This provision does not imply a change in burden of proof.

**15. Reservation clause**

Siemens NV shall not be obligated to fulfill the contract if such fulfillment is prevented by any impediments arising out of national and international foreign trade or customs requirements or any embargoes or other sanctions.

**16. Applicable law**

Belgian law applies to these Conditions and the contract excluding the UN Convention on Contracts for the International Sale of Goods (Vienna 11 April 1980) and excluding any reference to any of its conflict of law rules as contained in international private law. The safety regulations applicable to supplied goods are those in effect in Belgium at the time of the offer by Siemens NV to the customer or on the date the customer's order was accepted by Siemens NV.

**17. Competent courts**

Any dispute concerning the entering into force, the validity, interpretation, execution, suspension, termination and enforcement of these Conditions and the contract shall be exclusively resolved by the Courts of Brussels.