

**1. Order and Confirmation of Order**

- 1.1 Acceptance of the order shall be deemed to be acceptance of the terms and conditions stipulated herein. The Customer may cancel the order if the Supplier does not confirm acceptance of the order in writing within three (3) days of receipt of the order. On the other hand, if the Supplier commences the works, the Supplier shall be deemed to have accepted the order notwithstanding the Supplier's failure to confirm acceptance.
- 1.2 Any alterations, amendments or additions to the order shall only become a part of the agreement if the Customer accepts such in writing. In particular, the Customer is bound by the General Terms and Conditions of the Supplier only to the extent that these are in accordance with the Customer's own General Terms and Conditions or if the Customer agrees to such in writing. The acceptance of deliveries or services and/or payment do not constitute such agreement.

**2. Rights of Use**

- 2.1 The Supplier hereby grants the Customer the following non-exclusive, transferable, worldwide and perpetual rights:
- 2.1.1 to use the deliveries and services including related documentation, to integrate them into other products and to distribute them worldwide;
- 2.1.2 to use or allow others to use software and its related documentation (hereinafter collectively referred to as "Software") in connection with the installation, launch, testing and operation of the Software;
- 2.1.3 to sublicense the right of use under section 2.1.2 above to related companies, (as defined by the Malaysian Companies Act), other distributors and end customers;
- 2.1.4 to license to related companies and other distributors the right to sublicense the right of use under section 2.1.2 above to end customers;
- 2.1.5 to use the Software for integration into other products and to copy the Software, or to allow related companies or other distributors to use and copy the Software;
- 2.1.6 to distribute, sell, hire out, lease, make ready for download or make publicly available the Software, e.g. in the context of Application Service Providing or in other contexts, and to copy the Software to the extent required, provided always that the number of licenses being used at any one time does not exceed the number of licenses purchased;
- 2.1.7 to sublicense the right of use under section 2.1.6 above to related companies and other distributors.
- 2.2 In addition to the rights granted in section 2.1 above, the Customer, related companies and other distributors are authorized to allow end customers to transfer Software licenses.
- 2.3 All sublicenses granted by the Customer must contain appropriate protection for the intellectual property rights of the Supplier in the Software. All sublicenses must contain any contractual provisions used by the Customer to protect its own intellectual property rights.
- 2.4 The Supplier shall inform the Customer - at the latest at the time the order is confirmed - whether the products and services to be delivered contain "open source software".  
In the context of this provision "open source software" means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and/or to distribute such software. By means of example and without limitation, Open License Terms include the following licenses: the GNU General Public License (GPL), the GNU Lesser GPL (LGPL), the BSD License, the Apache License or the MIT License. Should the products and services delivered by the Supplier contain open source software, the Supplier must deliver to the Customer at the latest at the time the order is confirmed the following:
- The source code of the relevant open source software, insofar as the applicable open source conditions require the disclosure of this source code
  - A schedule of all open source files used, indicating the relevant license and including a copy of the complete text of such license
  - A written declaration that through the intended use of the open source software neither the products of the Supplier nor the products of the Customer will be subject to a "Copyleft Effect". In the context of this provision, "Copyleft Effect" means that the provisions of the open source license require that certain of the Supplier's products, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed.

Should the Supplier not indicate until after receipt of the order that its products and services contain open source software, then the Customer is entitled to cancel the order within 14 days of receipt of this information and provision of all the information contained in the above paragraph.

**3. Term and Liquidated Damages for Breach**

- 3.1 For the purposes of establishing the timeliness of delivery or rectification, the relevant point in time is the date of receipt at the place of receipt designated by the Customer, and for deliveries involving installation, commissioning or rectification services, the relevant point in time shall be the date of acceptance.
- 3.2 Where any delay in delivery or performance or rectification can be anticipated, the Customer shall be notified immediately and its decision sought.
- 3.3 If - in the event of delay - the Supplier cannot prove that it is not responsible for the delay, the Customer shall be reimbursed as liquidated damages in respect of each commenced working day of delay amounting to 0.3 % but not exceeding a total of 10 % of the total value of the contract.  
In the event that the appropriate reservation of rights is not made at the time of acceptance of delivery, services or rectification, this liquidated damage may still be claimed if the reservation of rights is made until the date of final payment.

**4. Transfer of Risk, Dispatch and Place of Performance, Transfer of Title**

- 4.1 For deliveries involving installation, commissioning or services, the transfer of risk occurs on acceptance and for deliveries not involving installation or commissioning, the transfer of risk shall be upon receipt by the Customer at the designated place of receipt.
- 4.2 Unless otherwise agreed in writing, the costs of delivery and packaging shall be borne by the Supplier. For pricing ex works or ex warehouse of the Supplier, transport shall in each case be at the lowest possible cost, insofar as the Customer has not requested a particular method of delivery. Any supplementary costs arising from non-conformity with the transport requirements shall be borne by the Supplier. Where the transport is quoted free to the recipient, the Customer may also determine the method of transportation. Any supplementary costs arising from the need to meet the delivery deadline by way of expedited delivery shall be borne by the Supplier.
- 4.3 Each delivery shall include a packing note or delivery note with details of the contents as well as the complete order number. Notice of dispatch shall be provided immediately with the same information.
- 4.4 If the transport is performed by a carrier commissioned by the Customer, the Supplier shall inform the carrier of the necessary data concerning dangerous goods and any other information in accordance with the applicable legal requirements.
- 4.5 If the Customer informs the Supplier that following the initial transport another transport with a different mode of transport is scheduled, the Supplier shall also comply with the relevant legal requirements concerning dangerous goods and required information with regard to such on-going transport.
- 4.6 The Supplier shall be liable for any expenses and/or damages incurred by the Customer due to any breach of the Supplier's obligations under this section 4.
- 4.7 Transfer of title shall be upon delivery (for product supply) or acceptance (for deliveries involving installation, commissioning or services) by the Customer, as the case may be.

**5. Invoices**

The order number as well as the number of each individual item shall be detailed in a tax invoice including a line item for any good and services tax ("GST") if applicable. Insofar as any such details are omitted, invoices shall not be payable. Copies of invoices shall be marked as duplicates.

**6. Payment**

- 6.1 Unless otherwise agreed, payments shall be due and payable no later than 90 days net in accordance with Section 6.2. If payment is made within 14 days, Customer is entitled to a 1.5 % discount, if payment is made within 30 days, Customer is entitled to a 1 % discount.
- 6.2 The period for payment shall commence as soon as any delivery or service is completed and a correctly issued invoice is received. Insofar as the Supplier is required to provide material testing, test records or quality control documents or any other documentation, the aforesaid shall be a part of the requirements of the completeness of the delivery or performance. A discount shall also be allowed if the Customer sets off or withholds any payments to a reasonable extent on account of any deficiency. The period for payment shall commence after the complete rectification of any deficiency.
- 6.3 Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with the contract not that the Customer has accepted and delivery or services as complete.

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- 6.4 Should the consideration be subject to withholding taxes, Customer shall be entitled to deduct the amount of withholding tax required by the law of Malaysia from the payments to the Supplier and pay it to the tax authorities in the name and on behalf of the Supplier. If there is double tax treaty concluded between Malaysia and the Supplier's country which provides for exemption or reduction of the withholding tax amount, Customer shall deduct the maximum amount of withholding tax according to the applicable double tax treaty from the payments to the Supplier, provided that prior to the payments to the Supplier, the Supplier shall provide the Customer with the certificate of residence evidencing its tax resident status in the Country of the Supplier.
- 6.5 If an amount payable under this Conditions of Purchase is subject to GST, the Supplier shall issue and deliver to the Customer, a Tax Invoice that complies with the requirements prescribed under the GST legislation of Malaysia. For purposes of this section, GST means Goods and Services Tax as provided for by the Goods and Services Tax Act 2014 of Malaysia and any amendments thereto and any regulations made thereunder.
- 7. Inspection upon receipt**
- 7.1 The Customer may upon receipt examine whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable transportation damage or other deficiencies.
- 7.2 Should the Customer discover any deficiency in the course of these inspections or at any later stage, it shall inform the Supplier of such deficiency.
- 7.3 Complaints may be raised within one month of delivery of a product or performance, and insofar as deficiencies are not discovered until commissioning, processing or first use, within one month of detection.
- 7.4 Notwithstanding whether any inspection is done by the Customer or not no such act or omission by the Customer shall discharge the duty and obligation of the Supplier to carry out its obligation in accordance with the contract.
- 8. Warranty**
- 8.1 If deficiencies are identified before or during the transfer of risk or during the warranty period provided for in section 8.9 or 8.10, the Supplier must at its own expense and at the discretion of the Customer either repair the deficiency or provide reperformance of services or replacement of deliveries (= rectification). This provision also applies to deliveries subject to inspection by sample tests. The discretion of the Customer shall be exercised fairly and reasonably.
- 8.2 Should the Supplier fail to rectify (i. e. repair or replacement) any deficiency within a reasonable time period set by the Customer, the Customer is entitled to:
- cancel the contract in whole or in part without being subject to any liability for damages; or
  - demand a reduction in price; or
  - undertake itself any repair at the expense and risks of the Supplier or reperformance of services or replacement of deliveries or arrange for such to be done; and
  - claim damages in lieu of performance.
- 8.3 Any rectification may take place without a further deadline at the expense of the Supplier if delivery is effected after the original deadline.
- 8.4 The same shall apply if the Customer has a strong particular interest in immediate rectification in order to avoid any liability of its own for delay or for other reasons of urgency and it is not unreasonable for the Customer to request the Supplier to rectify the deficiency within a reasonable time period.
- 8.5 The above-mentioned rights shall expire one year from the date of notification of the deficiency but in no instance before the expiry of the warranty periods set out in this section.
- 8.6 Additional or other statutory rights are not affected hereby.
- 8.7 If the Supplier provides subsequent performance or repairs, the warranty periods set out in section 8.9 and 8.10 shall begin to run once again.
- 8.8 Notwithstanding the transfer of risk, the Supplier shall bear all the costs (including but not limited to return costs, costs of transport) and risk related to the rectification.
- 8.9 Unless otherwise agreed in writing, the warranty period for deficiencies of material is three years and the warranty period for workmanship is six months.
- 8.10 The warranty period for deficiencies in title is five years, insofar as no statutory provisions provide longer periods.
- 8.11 (a) Subject to Section 8.11(b), the warranty period begins to run from the date of the transfer of risk (see section 4.1).  
(b) Upon delivery to locations where the Customer is operating outside its premises, the warranty period begins with the acceptance by the end customer, in no case later than one year after transfer of risk.
- 9. Duty to Verify Title/Duty to Inform**  
It is essential that the products are delivered free of any third party rights, liens, encumbrances or infringements. Thus the Supplier is under a duty to verify title and inform the Customer of any possible conflicting industrial and intellectual property rights. Any breach of such duty is subject to the normal statutory limitation period.
- 10. Subcontracting to Third Parties**  
Subcontracting to third parties shall not take place without the prior written consent of the Customer. Any subcontracting without the written consent of the Customer shall entitle the Customer to cancel the contract in whole or in part and claim damages.
- 11. Provided Material**
- 11.1 Material provided by the Customer remains the property of the Customer and is to be stored, labeled as property of the Customer and administered separately at no cost to the Customer. Their use is limited to the orders of the Customer only. The Supplier shall supply replacements in the event of reduction of value or loss, for which Supplier is responsible, even in the event of negligence. This also applies to the transfer of allocated material.
- 11.2 Any processing or transformation of the material shall take place for the Customer. The Customer shall immediately become owner of the new or transformed product. Should this be impossible for legal reasons, the Customer and Supplier hereby agree that the Customer shall be the owner of the new product at all times during the processing or transformation. The Supplier shall keep the new product safe for the Customer at no extra cost and in so doing exercise the duty of care of a merchant.
- 12. Tools, Patterns, Samples, Confidentiality etc.**
- 12.1 Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and materials provided by the Customer, as well as any materials derived there from, shall not be made available to any third party nor used for any other purpose than those contractually agreed except with the prior written consent of the Customer. Such materials shall be protected by the Supplier against unauthorized access or use. Subject to any further rights the Customer may demand that such materials be returned if the Supplier breaches these duties.
- 12.2 The Supplier shall not make available to any third party any information obtained from the Customer if such information is not already general knowledge or has not been lawfully obtained by the Supplier. Insofar as the Customer agrees to any subcontracting to a third party, such third party shall agree to such terms in writing.
- 12.3 The Supplier hereby agrees and consents that his personal data provided to the Customer, or obtained by the Customer, shall be processed by the Customer in accordance with the Customer's personal data notice as set out in <http://www.siemens.asia/my/en/Disclaimer/protection-policy>. If any personal data provided to the Customer does not belong to the Supplier but to its officer, representative or employee, the Supplier hereby warrant that such officer, representative or employee agrees and consents for his personal data to be processed by the Customer in accordance with the Customer's personal data notice as set out in <http://www.siemens.asia/my/en/Disclaimer/protection-policy>.
- 13. Assignment of Claims**  
Any assignment of any claim is only allowed with the prior written approval of the Customer.
- 14. Inability to Pay/Insolvency of the Supplier**  
Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are applied for or commenced in relation to the assets of the Supplier, the Customer may terminate the contract and/or any purchase orders issued thereunder in part or in whole. In the event of termination the Customer may continue to utilize existing facilities, deliveries or services already performed by the Supplier in exchange for reasonable payment.
- 15. Code of Conduct for Siemens Suppliers, Security in the Supply Chain**
- 15.1 The Supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the Supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, the Supplier will take responsibility for the health and safety of its employees, the Supplier will act in accordance with the applicable environmental laws and will use best efforts to promote this Code of Conduct among its suppliers.

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- 15.2 The Supplier shall provide the necessary organizational instructions and take measures, particularly with regard to the following security: premises security, packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e. g. AEO, C-TPAT). The Supplier shall protect the goods and services provided to the Customer or provided to third parties designated by the Customer against unauthorized access and manipulation. The Supplier shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.
- 15.3 In addition to other rights and remedies the Customer may have, the Customer may terminate the contract and/or any purchase order issued thereunder in case of breach of the obligations under section 15 by the Supplier. However, provided that Supplier's breach of contract is capable of remedy, Customer's right to terminate is subject to the proviso that such breach has not been remedied by the Supplier within a reasonable grace period set by Customer.
- 16. Environmental Protection, Duties to Declare, Dangerous Goods**
- 16.1 Should the Supplier deliver products, substances of which are set out in the "List of Declarable Substances" ([www.bomcheck.net/suppliers/restricted-and-declarable-substances-list](http://www.bomcheck.net/suppliers/restricted-and-declarable-substances-list)) applicable at the time of the order or which are subject to statutorily imposed substance restrictions and/or information requirements (e. g. REACH, RoHS), Supplier shall declare such substances in the web database BOMcheck ([www.BOMcheck.net](http://www.BOMcheck.net)) no later than the date of first delivery of products. With respect to statutorily imposed substance restrictions the foregoing shall only apply to laws which are applicable at the registered seat of Supplier or Customer or at the designated place of delivery requested by Customer.
- 16.2 Should the delivery contain goods which – according to international regulations – are classified as dangerous goods, the Supplier will inform the Customer hereof in a form agreed upon between Supplier and Customer, but in no case later than the date of order confirmation.
- 17. Indemnities and Liabilities**
- 17.1 The Supplier shall indemnify the Customer against all loss, claims, expenses and liabilities which the Customer may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property by reason of acts or omissions of the Supplier.
- 17.2 The Supplier shall indemnify the Customer against all loss, expenses and liabilities caused to Siemens whether directly, or as a result of the action, claim or demand of any third party, by reason of any breach by the Supplier of these Conditions or by other statutory provision relevant to the order.
- 17.3 Whenever any sum of money is recoverable from or payable by the Supplier to the Customer in connection with the performance of the works by the Supplier or any breach by the Supplier of the order, the Customer may deduct the sum then due or which at any time thereafter may become due to the Supplier under any other order or transaction placed or entered into between the Customer and the Supplier.
- 17.4 Other than the Customer' obligation to pay the purchase price, the Customer' liability under the contract shall be for proven negligent conduct only and exclude liability for special or punitive damages, financial/economic loss, loss of profit, loss of production, loss of use, loss of information, indirect or consequential damages. In no event shall the Customer' liability whether under contract, tort (including negligence), strict liability, indemnity or other legal theory exceed the 10% of the purchase price.
- 17.5 The Supplier undertakes to indemnify the Customer against all costs, losses and/or expenses incurred in the event that the Royal Malaysian Customs Department disallows and/or rejects the input tax credit claimed by the Customer due to an invalid tax invoice issued by the Supplier.
- 18. Insurance**
- The Supplier shall, at its expense, effect and maintain valid insurance policies covering loss of or damage to the works and such other insurance as may be required under applicable legislation on terms acceptable to the Customer. The Supplier shall provide satisfactory evidence of such insurance policies upon request by the Customer.
- 19. Export Control and Foreign Trade Data Regulations**
- 19.1 Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). Supplier shall advise Customer in writing within two weeks of receipt of the order - and in case of any changes without undue delay - of any information and data required by Customer to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation:
- All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
  - the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
  - the country of origin (non-preferential origin); and - upon request of the Customer- Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).
- 19.2 The Supplier shall be liable for any expenses and/or damages incurred by Customer due to any breach of the obligations according to 17.1, unless Supplier is not responsible for such breach.
- 20. Reservation Clause**
- The Customer shall not be obligated to fulfill the 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.
- 21. Supplementary Provisions**
- Insofar as the provisions of these Conditions of Purchase do not regulate certain matters, relevant statutory provisions shall apply including any provision concerning the Medical Devices Act and any other act or regulation in place concerning the medical devices and services industry in Malaysia
- 22. Applicable Law**
- Malaysian substantive law shall apply, excluding the provisions of the United Nations Law on the Sale of Goods of 11.04.1980.
- 23. Dispute Settlement**
- 23.1 If any dispute arises in connection with the order, the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such dispute. Each Party can request from the other Party that on both sides a senior representative becomes involved in the negotiations. Each Party is at any time entitled to terminate the settlement negotiations and to have recourse to an Alternative Dispute Resolution ("ADR") proceeding set forth in Section 23.2 below through written notification to the other Party.
- 23.2 If the Parties are not able to reach an amicable settlement pursuant to Section 23.1, they shall try to agree on an appropriate ADR proceeding (for example mediation, conciliation, expert determination, dispute board, adjudication). If they do not reach agreement on the appropriate ADR proceeding within fourteen (14) days after failure of the settlement negotiations or if the dispute is not settled through an ADR proceeding within a period of two (2) months after initiation of the ADR proceeding, each Party may initiate a dispute resolution proceeding in accordance with Section 23.3 below.
- 23.3 Subject to Sections 23.1 and 23.2, any dispute arising out of or in relation to the order, including the validity, invalidity, breach or termination thereof, shall be settled as follows:
- (a) For disputes where the total quantum (including all counterclaims) is less than RM30million, such disputes shall be determined in legal proceedings in the Courts of Malaysia;
  - (b) For all other disputes which do not fall under Section 23.3(a), such dispute shall be referred to arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules") and determined by three (3) arbitrators appointed in accordance with the said Rules, in force on the date when the Notice of Arbitration is submitted in accordance with these Rules.
- The seat and place of the arbitration shall be Malaysia. The arbitral proceedings shall be conducted in English.

**[THE END]**