

1. Definitions

- 1.1 "Conditions" means these terms and conditions for the purchase of Goods and/or Services which are incorporated into and form part of the Purchase Order.
- 1.2 "Contract" means the contract between the Supplier and the Customer for the supply of the Goods and/or Services to the Customer and such expression shall include the Purchase Order and the Conditions.
- 1.3 "Customer" means the Siemens company which places the order by way of Purchase Order.
- 1.4 "Delivery Date" shall have the meaning ascribed to it in Section 4.1.
- 1.5 "Goods" means the products, goods or items which are the subject of the Contract and which may comprise, include or relate to Software.
- 1.6 "GST" means Goods and Services Tax as provided for by the Malaysian Goods and Services Tax Act 2014 and any amendments thereto and any regulations made thereunder.
- 1.7 "Issued Material" includes but is not limited to samples, drawings, standard sheets, printing-copies, theories, models, profiles, tools, molds or other tooling, material, equipment, goods or articles or any property supplied or issued by the Customer to the Supplier to be used in fulfillment of the Supplier's obligations.
- 1.8 "Party" means the Supplier or the Customer and "Parties" means both of them.
- 1.9 "Purchase Order" means the purchase order (in the Customer's prevailing standard form) or any written authorization requesting the Supplier to furnish Goods and/or the Services to the Customer, signed by an authorised representative of Customer and the documents (if any) incorporated by express reference on the face of the Purchase Order and/or the documents (if any) referred to in Sections 2 and 3, together with these Conditions and the "Code of Conduct for Siemens Suppliers and Third Party Intermediaries" as referred to in Section 13.
- 1.10 "Related Corporation" has the meaning prescribed under Section 7 of the Malaysian Companies Act 2016.
- 1.11 "Services" means work and/or other services provided by the Supplier which is the subject of the Contract and which may comprise, include or relate to Software.
- 1.12 "Software" means the software and firmware items which are comprised, included in or relate to the Goods and/or Services (including all its updates thereof) and the Software's related documentation.
- 1.13 "Supplier" means the person, firm or company referred to on the face of the Purchase Order with whom the Contract is made by the Customer.
- 1.14 Any reference in the Contract to a statutory provision shall include that provision and any regulations made pursuant thereto which may from time to time be modified or re-enacted in accordance with the laws of Malaysia. For the avoidance of doubt, such modifications or re-enactment of statutory provisions shall apply to the Contract prior to completion of the Contract, even if such changes in law only come into force after the execution of the Contract.
- 1.15 The headings in these Conditions are inserted for convenience only and shall be ignored in construing these Conditions. Unless the context otherwise requires, words (including words defined in the Contract) denoting the singular number only shall include the plural and vice versa. The words "written" and "in writing" include any means of visible reproduction.

2. Purchase Order, Confirmation, Acceptance & Variations

- 2.1 The Purchase Order placed by the Customer shall only be considered accepted and a Contract concluded between the Parties if the Supplier has confirmed acceptance of the Purchase Order in writing within five (5) days of receipt of the Purchase Order.
For the avoidance of doubt, these Conditions shall apply to and are expressly incorporated into the Contract and no varying terms and conditions stated by Supplier in its written acceptance of the Purchase Order, including without limitation, those contained in any sale order or quotation or invoice or any other document of Supplier shall become part of the Contract and be binding upon the Customer, unless it is specifically agreed to by an authorised representative of the Customer in writing.
- 2.2 Acceptance of the Purchase Order shall be deemed to be acceptance of the Conditions.
- 2.3 The Purchase Order placed by the Customer may be modified or cancelled by Customer at any time prior to its receipt of written acceptance by Supplier.
- 2.4 Without prejudice to Section 22.1, the Customer may cancel the Purchase Order if the Supplier has not confirmed acceptance of the Purchase Order in writing within five (5) days of receipt of the Purchase Order.
- 2.5 If the Supplier's confirmation varies from the Purchase Order, the Customer shall be bound thereby only if it agrees to such variation in writing. For the avoidance of doubt, neither the acceptance of

delivery of the Goods or Services nor payments made shall constitute approval or agreement of any such variation.

- 2.6 Any alterations, amendments or additions to the Purchase Order shall only be effective if the Customer accepts such alterations, amendments or additions in writing.
- 2.7 In the event the Supplier commences works on the Goods and/or the Services ordered (prior to acceptance of the Purchase Order), the Supplier shall be deemed to have accepted the Purchase Order notwithstanding the Supplier's failure to confirm acceptance of the same.
- 2.8 If, at any time during the course of the Contract, the Customer wishes to vary the Goods and/or the Services ordered, it shall notify the Supplier. Upon receipt of such notification, the Supplier shall within fourteen (14) days provide a written statement of the amount of the following by which such variation would increase or decrease:
(a) the dates, timescales or milestones; and
(b) the charges;
which have been agreed in the Contract, and such other information as the Customer may reasonably require.
- 2.9 The implementation of any variation to the Goods and/or Services shall be subject to the prior written agreement of the Parties. The Supplier shall not undertake any such variations unless specifically instructed to do so by the Customer.
- 2.10 The Supplier shall not, without the prior written consent of the Customer, make any process or design changes affecting the deliveries.

3. Price & Payment

- 3.1 All prices shall be as stated in the Contract. Unless otherwise stated, the prices are fixed and include delivery and all other charges, which include, but is not limited to, the costs of transport, insurance and packing. All prices shall also be inclusive of all taxes (including but not limited to value added tax or similar tax, business tax, withholding tax, duties, levy) imposed by any taxing authority outside of Malaysia. The prices shall not be adjusted save as provided for in these Conditions.
- 3.2 If any amount payable under these Conditions is subject to GST, the Supplier is entitled to charge GST at the prevailing rate and the Supplier shall issue and deliver to the Customer, a Tax Invoice that complies with the requirements prescribed under the GST legislation of Malaysia.
- 3.3 The Customer shall have no other or further liability to the Supplier with respect to any tax, duty, levy or like imposition for which the Supplier may be liable as a result of the supply of the Goods and/or Services.
- 3.4 Should the prices 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.
- 3.5 Upon complete delivery of the Goods and/or Services in accordance with Section 4 herein and due acceptance by Customer in writing, the Supplier shall send to the Customer a detailed Invoice (if GST is applicable, as per Section 3.2 hereinabove) stating the reference number for the Purchase Order of the Goods and/or Services, the number of each individual item, if applicable. Insofar as any relevant details are omitted, invoices shall not be payable. Copies of invoices shall be marked as duplicates.
- 3.6 Unless otherwise stated in the Purchase Order or agreed in writing by the Customer, payment term shall be ninety (90) days and shall commence upon:-
(a) the delivery of Goods or completion of Services in accordance to the Contract; and
(b) Customer's receipt of a correctly issued invoice, as per Section 3.5 hereinabove.

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 delivery of Goods or performance of Services. The Customer shall be entitled to set off or withhold any payments to a reasonable extent for reasons of deficiency. The period for

- payment shall commence after the complete rectification of any deficiency.
- 3.7 Payment by Customer does not constitute an acknowledgement that the corresponding delivery of Goods or performances of Services were provided in accordance with the Contract, nor that the Customer has accepted the Goods or Services supplied as complete.
- 3.8 The Customer shall be entitled to set off any payment against any other sums owed to the Customer by the Supplier.
- 4. Delivery and Delay**
- 4.1 The Goods and/or Services shall be delivered on the dates (the "Delivery Date") and at the rates and locations specified in the Contract. Delivery may be direct to the Customer's end user if so specified on the Purchase Order. The Customer may delay or alter such dates, rates and destinations upon giving the Supplier reasonable notice in writing of such alterations.
- 4.2 Any shipment terms quoted in relation to the delivery of the Goods shall be in accordance to Incoterms® 2010 or its latest version as from time to time modified, supplemented or revised.
- 4.3 For the purposes of establishing the timeliness of delivery or rectification, the relevant point in time:-
- (a) for Goods:
- shall be the date of receipt at the place of receipt designated by the Customer under the Contract;
- (b) for Services (including those involving installation, commissioning or rectification services):
- shall be the date of acceptance of the completion of the Services.
- 4.4 Time is of the essence in respect of the Contract Delivery Date. Failure to meet the Delivery Date specified in the Contract shall constitute a breach of the Contract. Where any delay in delivery of Goods or performance of Services or rectification can be anticipated, the Customer shall be notified immediately and its decision sought.
- 4.5 If only a portion of the Goods or a part of the Services can be delivered on the Delivery Date, the Supplier shall deliver the available Goods or Services unless otherwise directed by the Customer. Partial deliveries shall be deemed late deliveries and be considered completed only when all the Goods or Services are duly delivered.
- 4.6 If the Supplier fails to deliver the Goods or Services in accordance with the Contract, or fails to deliver by the Delivery Date, then the Supplier shall pay to the Customer liquidated damages calculated at the rate of 0.3% of the price of the respective Purchase Order for each day of delay starting from the date of default until the date the Goods or Services are completely delivered or performed by the Supplier, as the case may be. The Customer may, but shall not be bound to, deduct such liquidated damages, whether in whole or in part, from any moneys due from the Customer to the Supplier under any Purchase Order.
- 4.7 Notwithstanding the above, if the Supplier fails to deliver in accordance with the Contract, or if the Supplier notifies the Customer of a prospective failure to deliver by the Delivery Date, the Customer reserves the right to cancel the Contract or any part thereof without charge or liability and reserves all rights in damages and otherwise arising including but not limited to the right to purchase substitute Goods and/or Services elsewhere and to hold the Supplier liable for any loss, expense or additional cost incurred thereby.
- 5. Title and Risk, Dispatch and Place of Performance**
- 5.1 Without prejudice to any right of rejection to which the Customer may be entitled under Sections 4, 5 and 6, risk in and title to the Goods and/or Services shall pass to the Customer:-
- upon receipt by the Customer at the destination specified in the Purchase Order (for delivery of Goods); or
 - upon written acceptance by the Customer (for deliveries involving installation, commissioning and for Services);
- as the case may be.
- 5.2 The Supplier warrants that it has good title to the Goods the Supplier is selling to the Customer. The Supplier acknowledges that the Goods may be on-sold to an end user by the Customer and warrants that the Customer will be able to supply the end user with good title.
- 5.3 Sections 5.1 and 5.2 hereinabove are without prejudice to Section 7 in respect of any Software.
- 5.4 Any Issued Material will be supplied or used at the Supplier's risk whilst in its possession.
- 5.5 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.
- 5.6 The Supplier shall ensure that all Goods are marked in accordance with the provisions of the Contract and the instructions of the Customer. Goods shall be packed so as to reach places of delivery undamaged and in good condition. The Supplier shall provide in respect of each consignment of Goods, a packaging note detailing the Purchase Order number, description, code number (if any) and the quantity of Goods consigned. The information on the packaging note must correspond with the Purchase Order.
- 5.7 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.
- 5.8 In the case whereby the Customer and the Supplier agree that the Supplier orders the transport of deliveries containing dangerous goods for account of the Customer, the Supplier is responsible to transfer the necessary legally required dangerous goods data to the freight forwarder nominated by the Customer when placing the transport order. The Supplier is in these cases also responsible for packing, marking, labelling etc. in compliance with the regulation relevant to the mode(s) of transport used.
- 5.9 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.
- 5.10 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 5.
- 6. Inspection & Rejection**
- 6.1 The Supplier represents and warrants that it has inspected and tested the Goods for compliance with the Contract prior to delivery and shall, if requested, supply the Customer with certificates of origin and/or testing. Such certificates must state the Purchase Order number together with any item numbers.
- 6.2 If the Goods and/or Services do not comply with the Contract, the Customer shall within a reasonable time give notice of rejection to the Supplier.
- Without prejudice to any of its other rights, the Customer may at its discretion require the Supplier to comply with the Contract by expeditiously replacing or repairing as appropriate any rejected Goods and rectifying or remedying any rejected Services. The rejected Goods shall be returned to the Supplier at its own risk and expense. All Services found to be defective, non-conforming or failing to meet any of the Supplier's representations and warranties shall be completely re-performed at the Supplier's cost and expense. In urgent cases or if the Supplier is in default with its obligation to repair defects, the Customer shall be entitled at the Supplier's cost and expense to take the necessary steps to repair such defects itself or to entrust a third party to do so. The Customer will inform the Supplier before such steps are taken. If prior notification is not possible, steps necessary to avert damage may in urgent cases be taken without any notification and in these cases, the Customer shall notify the Supplier as soon as possible afterwards. The Supplier's representations and warranty obligations remain unaffected, except where defects are attributable to the steps taken by the Customer or a third party.
- 6.3 Unless otherwise specified or approved by the Customer, the Supplier shall remove the Customer's name and any of the Customer's trademarks, trade names, insignia, part numbers, symbols or decorative designs from all Goods rejected or returned by the Customer or not sold or delivered to the Customer.
- 6.4 Any reference to "Supplier" in this section includes any subcontractor of the Supplier permitted under Section 10. Where the Supplier repairs or replaces Goods or provides remedial Services under these sections, these Conditions shall apply to the repaired or replaced Goods or the remedial or remedied Services.
- 6.5 The Customer reserves the right (but shall not be obliged) to inspect or test the Goods or the Services at any stage before delivery and the Supplier shall give rights of access to premises and such facilities as the Customer may reasonably require for such inspection.
- 6.6 Notwithstanding whether any acceptance, testing and inspection is done by the Customer or end user, no such act or omission by the Customer or end user shall discharge the duty and obligation of the Supplier to carry out its obligation in accordance with the Contract.

7. Rights of Use

- 7.1 The Supplier hereby grants the Customer the following non-exclusive, transferable, worldwide and perpetual rights:
- 7.1.1 to use the Goods and Services including related documentation, to integrate them into other products and to distribute them worldwide;
 - 7.1.2 to use or allow others to use Software in connection with the installation, launch, testing and operation of the Software;
 - 7.1.3 to sublicense the right of use under Section 7.1.2 above to its Related Corporation, other distributors and end customers;
 - 7.1.4 to license to its Related Corporations and other distributors the right to sublicense the right of use under Section 7.1.2 above to end customers;
 - 7.1.5 to use the Software for integration into other products and to copy the Software, or to allow its Related Corporations or other distributors to use and copy the Software;
 - 7.1.6 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;
 - 7.1.7 to sublicense the right of use under Section 7.1.6 above to its Related Corporations and other distributors.
- 7.2 In addition to the rights granted in Section 7.1 above, the Customer, its Related Corporations and other distributors are authorized to allow end customers to transfer Software licenses.
- 7.3 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.
- 7.4 The Supplier shall inform the Customer - at the latest at the time the Purchase Order is confirmed - whether the Goods and Services to be delivered contain "Open Source Component".
In the context of this provision "Open Source Component" means any software, hardware or other information 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. 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 Goods and Services delivered by the Supplier contain Open Source Component, the Supplier shall comply with all applicable open source license terms and shall grant all those rights to the Customer and provide all information which the Customer needs in order to comply with the applicable license terms. In particular, the Supplier must deliver to the Customer at the latest at the time the Purchase Order is confirmed the following:
- The complete source code of the relevant Open Source Component, including scripts and information regarding its generating environment insofar as the applicable open source conditions require this;
 - A schedule of all open source components used, indicating the relevant license, its version and including a copy of the complete text of such license and including a reference to copyright and/or authorship. Such schedule shall be of an understandable structure and contain a table of contents;
 - A written declaration that through the intended use of the Open Source Component neither the Goods of the Supplier nor the Goods 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 Goods, as well as any Goods 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. In the event that any open source licenses used by the Supplier are subject to a "Copyleft Effect" as defined above, then the Customer shall be entitled to cancel the Purchase Order within two (2) weeks of receipt of such information.
- Should the Supplier not indicate until after receipt of the Purchase Order that its Goods and Services contain Open Source Component, then the Customer is entitled to cancel the Purchase Order within 14 days of receipt of this information and provision of all the information contained in the above paragraph.
- 7.5 If the Goods and/or Services include Software, the Supplier acknowledges that the Customer may be on-selling the same to its customers or end users and represents and warrants that it has good title to license the Software.
- 7.6 The Supplier permits the Customer to market and resell the Software and any accompanying hardware either alone or as part of a package.

- 7.7 The Supplier shall provide the Customer with such technical advice, assistance, data and documentation, including source code where necessary, to enable the Customer to maintain the Software if it so wishes.

8. Warranty & Representation

- 8.1 Without prejudice to the Customer's rights under the Contract and at law, the Supplier represents and warrants the Goods and/or Services against defects for the following period:-
- (a) for Goods:
 - the longer of either (i) the Supplier's normal warranty period; or (ii) a period of three (3) years (or as otherwise stated in the Contract);
 - (b) for Services:
 - the longer of either (i) the Supplier's normal warranty period; or (ii) a period of one (1) year (or as otherwise stated in the Contract).
- 8.2 (a) Subject to Section 8.2(b), the warranty period begins to run from the date of the transfer of risk (see Section 5.1).
(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.
(c) In the case of defective Goods, this period shall be calculated from the date of receipt by the Customer of the delivery of the defective Goods repaired or replaced under Sections 6 and 8 herein.
- 8.3 The warranty period for deficiencies in title is five years, insofar as no statutory provisions provide longer periods.
- 8.4 If deficiencies are identified before or during the transfer of risk or during the warranty period provided for in Section 8.1 or 8.3, 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 Goods (=rectification). This provision also applies to deliveries subject to inspection by sample tests. The discretion of the Customer shall be exercised fairly and reasonably.
- 8.5 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:
- (a) cancel the Contract in whole or in part without being subject to any liability for damages; or
 - (b) demand a reduction in price; or
 - (c) undertake itself any repair at the expense and risks of the Supplier or re-performance of Services or replacement of Goods or arrange for such to be done; and
 - (d) claim damages in lieu of performance.
- 8.6 Any rectification may take place without a further deadline at the expense of the Supplier if delivery is effected after the original deadline.
- 8.7 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.
- 8.8 Additional or other statutory rights are not affected hereby.
- 8.9 If the Supplier provides subsequent performance or repairs, the warranty periods set out in Sections 8.1 and 8.3 shall begin to run once again.
- 8.10 Notwithstanding the transfer of risk regarding delivery, the Supplier shall bear all the costs (including but not limited to return costs, costs of transport) and risk related to the rectification.
- 8.11 The Supplier represents and warrants that it has all necessary permits and licenses to allow it to sell the Goods and/or Services to the Customer, and that it has complied with all relevant laws, rules and regulations affecting its obligations and the performance of the Contract.
- 8.12 The Supplier represents and warrants that all Goods are new and do not contain any used or reconditioned parts or materials unless otherwise specified or approved by the Customer.
- 8.13 Breach of any of the representations and warranties in this Section 8 shall, without prejudice to any other rights of the Customer, entitle the Customer to terminate the Contract and claim damages, loss, costs and expenses from the Supplier (including, without limitation, legal costs on an indemnity basis).
- 8.14 Sections 8 and 19 shall include and apply to any replacement, repaired, substituted or remedial Goods and/or Services provided by the Supplier.

9. Duty to Verify Title/Duty to Inform

- 9.1 The Supplier is obliged to examine components such as, e.g., raw material, provided by the Customer or provided by Supplier's suppliers, manufacturers or other third parties at the time of receipt of such components as to whether these components show any defects. In case any defects are discovered in the course of such inspections, the Supplier shall immediately inform its suppliers or – in the case the components are provided by the Customer, inform the Customer.
- 9.2 It is essential that the Goods and/or Services 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/Assignment

The Supplier shall not, either in whole or in part, subcontract or assign any rights, duties or obligations under the Contract, or any claims for any debt owed by the Customer to the Supplier under the Contract unless the Customer gives its prior written consent, such consent to be signed by its authorized representatives, to such assignment or subcontract. If the Customer gives its written consent, the Supplier is not relieved of any of its obligations under the Contract. The Customer may attach conditions to the giving of its consent. Any attempted delegation, assignment or subcontracting without the written consent of the Customer shall be void. Further, the Customer shall be entitled to cancel the Contract in whole or in part and claim damages.

11. Tools, Patterns, Samples, Confidentiality etc.

- 11.1 All Issued Material shall be and remain the property of the Customer (even if charged for) 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. On completion of its obligations under the Contract or as otherwise directed by the Customer, the Supplier shall return the Issued Material to the Customer in good order and condition.
- 11.2 Any Issued Material 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.
- 11.3 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.
- 11.4 The Supplier shall treat as confidential the knowledge and findings, the documents (including the Contract), terms of reference, business processes and any other information and/or materials that the Supplier receives from the Customer. Issued Material is also confidential. Use of any such information and Issued Material is permitted solely for the purpose of carrying out the Contract. The Supplier shall not, without the prior written consent of the Customer, copy or disclose such confidential information to anyone other than those employees or agents of the Supplier on a need-to-know basis and only if these parties are bound to the Customer by substantially similar confidentiality provisions.
- 11.5 The Supplier shall not without the Customer's written consent advertise or otherwise make known that the Supplier supplies or has supplied Goods or Services to the Customer.
- 11.6 The confidentiality obligations in this Section 11 shall survive the termination or expiration of the Contract.
- 11.7 The Supplier shall indemnify and compensate the Customer and all its assigns, subcontractors and customers from and against any claims, liabilities, actions, demands, damages, loss and costs and expenses (including without limitation, legal costs on an indemnity basis) suffered as a result of a breach of this Section 11 and other Conditions herein.

12. 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.

13. Code of Conduct for Siemens Suppliers, Security in the Supply Chain

- 13.1 The Supplier shall comply with the principles and requirements of the "Code of Conduct for Siemens Suppliers and Third Party Intermediaries", (hereinafter the "Code of Conduct", a copy of which to be extended to the Supplier upon request thereof) and shall execute the Declaration of Compliance ("Declaration") and return the duly executed Declaration to the Customer as may be prescribed by the Customer. 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 the Code of Conduct among its suppliers.
- 13.2 The Supplier shall further provide the necessary organizational instructions and take measures, particularly with regard to the following types of 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, CTPAT). The Supplier shall protect the Goods and Services provided to the Customer or provided to third parties designated by the Customer against unauthorised access and manipulation. The Supplier shall only deploy reliable personnel for those Goods and Services and shall obligate any sub-sellers to take equivalent security measures.
- 13.3 The Supplier shall inform the Customer immediately of any non-compliance with the above Sections 13.1 and 13.2. Should either allegations of the Supplier's non-compliance with the above Sections 13.1 and 13.2 or other claims which threaten to endanger the Customer's reputation become public, e.g. by way of media coverage, the Supplier shall provide a written statement, immediately upon the Customer's request, concerning the Supplier's non-compliance or the allegations made.
- 13.4 In addition to other rights and remedies the Customer may have, in the event of the Supplier's material or repeated failure to comply with the above Sections 13.1 and 13.2, after providing the Supplier reasonable notice and a reasonable opportunity to remedy, the Customer may terminate the Contract and/or any Purchase Order issued hereunder without any liability whatsoever. Material failures include, but are not limited to, incidents of failure to ensure security in the supply chain, child labour, corruption and bribery, and failure to comply with the Code of Conduct's environmental protection requirements.
- 14. Compliance with Applicable Anti-Corruption, Antitrust, Anti-Money Laundering and Other Criminal Laws**
- 14.1 The Supplier represents and warrants that it will comply with all applicable anti-corruption, antitrust, anti-money laundering or other criminal laws, rules or regulations in respect of the activities contemplated by the Contract.
- 14.2 The Supplier hereby represents and warrants that it and all of its directors, officers, and employees who will perform services under the Contract are familiar with the rules, restrictions and principles herein and agrees to take appropriate steps to ensure compliance therewith by any such persons in respect of the activities contemplated by the Contract.
- 14.3 If, during the term of the Contract, the Supplier becomes aware that the representation and warranty set forth in this Section 14 are no longer true and correct, the Supplier must notify the Customer in writing within 10 business days, and, whether or not so notified within that time period, if the Customer determines that the changed circumstances provide good cause to terminate the Contract in accordance with Section 22 hereinbelow, the Contract may be terminated at the Customer's sole discretion.
- 14.4 In the event that the Customer has reasonable grounds to believe (on the basis of credible information, including, but not limited to, third-party statements that the Customer believes to be reliable or well-sourced press reports) that there has been a material breach of the representations and warranties contained in this Section 14 hereof, the Customer, or a third party acting on the Customer's behalf, shall have the right to audit the books and records of the Supplier pertaining to the Supplier's performance of services under the Contract. The Supplier agrees to fully cooperate in the event of any such audit.

- 14.5 The Supplier agrees that the Customer may, at any time and for any reason, disclose the existence and terms of the Contract, including the Supplier's identity and compensation under the Contract, to any person the Customer determines has a legitimate need for that information, including but not limited to any government or government agency.
- 15. Environmental Protection, Duties to Declare, Dangerous Goods, Occupational Health and Safety**
- 15.1 Should the Supplier deliver Goods, products, substances of which are set out in the "List of Declarable Substances" (www.bomcheck.net/suppliers/restricted-and-declarable-substances-list) applicable at the time of the Contract 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) no later than the date of first delivery of Goods. 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.
- 15.2 Should the delivery contain goods which are classified as dangerous goods according to international regulations, the Supplier shall inform the Customer hereof in a form agreed upon between Supplier and Customer, but in no case later than the date of Purchase Order confirmation. The requirements concerning dangerous goods in Sections 5.8 and 5.9 remain unaffected.
- 15.3 The Supplier is obliged to comply with all legal requirements regarding the health and safety of the personnel employed by the Supplier. The Supplier shall ensure that the health and safety of its personnel as well as indirect subcontractors employed to provide the Goods and Services are protected.
- 16. Indemnities and Liabilities**
- 16.1 The Supplier shall fully indemnify the Customer and all its assigns, subcontractors and customers from and against any claims, liabilities, actions, demands, damages, loss, costs and expenses (including, without limitation, legal costs on an indemnity basis):-
(i) sustained by the Customer and its assigns, subcontractors and customers or for which the Customer and its assigns, subcontractors and customers may be liable as a result of the Supplier's breach of or failure to perform its obligations under the Contract or other statutory provisions relevant to the Contract; and
(ii) resulting from death, injury, loss or damage to persons or property caused or contributed by the negligence, act, default or omission of the Supplier, its employees, sub-sellers (if permitted in writing) or agents.
- 16.2 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 Contract, the Customer may deduct the sum then due or which at any time thereafter may become due to the Supplier under any other Purchase Order or transaction placed or entered into between the Customer and the Supplier.
- 16.3 The Supplier shall fully indemnify and hold harmless the Customer and all its assigns, subcontractors and customers from and against all claims, liabilities, actions, demands, damages, costs and expenses (including, without limitation, legal costs on an indemnity basis) of any kind or nature arising from, in connection with or related in any way to any breach or alleged breach of any of the representations and warranties made by the Supplier under the Contract.
- 16.4 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.
- 16.5 The Supplier accepts liability for all other claims, liabilities, actions, demands, loss, damage, costs and expenses (including, without limitation, legal costs on an indemnity basis) incurred by the Customer and its assigns, subcontractors and customers and which is attributable to negligence, act, default or omission on the part of the Supplier, its employees, subcontractors (if permitted under Section 10) or agents or resulting from or in connection with the furnishing of the Goods or Services by the Supplier or otherwise arises or results from a breach of the Contract.
- 16.6 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. 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.
- 18. Export Control and Foreign Trade Data Regulations**
- 18.1 For all Goods and Services to be provided according to the Contract, Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations") and shall obtain all necessary export licenses, unless Customer or any party other than Supplier is required to apply for the export licenses pursuant to the applicable Foreign Trade Regulations.
- 18.2 Supplier shall advise Customer in writing as early as possible, but not later than two weeks prior to the Delivery Date - and in case of any changes without undue delay - of any information and data required by Customer to comply with all Foreign Trade Regulations for the Goods and Services applicable in the countries of export and import as well as re-export. In any case, Supplier shall provide Customer for each Good and Service:
- 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); ("Export Control and Foreign Trade Data").
In case of any alterations to origin and/or characteristics of the Goods and Services and/or to the applicable Foreign Trade Regulations, Supplier shall update the Export Control and Foreign Trade Data as early as possible but not later than two weeks prior to delivery.
- 18.3 The Supplier shall be liable for any expenses and/or damages incurred by Customer due to any breach of the obligations according to Sections 18.1 and 18.2, unless Supplier is not responsible for such breach.
- 19. Quality & Compliance, Statutory Obligations**
- 19.1 The Supplier represents and warrants that all Goods and Services supplied shall, where applicable:-
(a) conform with the quantity, quality, specifications, description and any other particulars contained in the Contract;
(b) conform with any sample, design criteria, drawing, description and specification furnished by the Customer and other requirements described or referenced in the Purchase Order;
(c) be of satisfactory quality, merchantable and fit for any intended use expressly or impliedly made known to the Supplier and free from all defects, liens, encumbrances and other claims against title; and
(d) comply with the performance specifications in the Contract.
- 19.2 All Services supplied shall comply fully with the terms of the Contract and shall be executed in a proper and skilful manner by properly qualified and experienced personnel and conform to the best industry standards.
- 19.3 This Section 19 shall include and apply to any replacement, repaired, substituted or remedied Goods or substituted or remedial Services provided by the Supplier.
- 19.4 While on the Customer's or its customer's premises, the Supplier shall abide by any written or verbal instructions in relation to safety and security issued by the Customer or its customer.
- 19.5 The Supplier shall comply with all relevant statutes, rules and regulations and bye-laws affecting its obligations and the performance of the Contract.
- 20. Reservation Clause**
The Customer shall not be obligated to fulfill the Contract 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. Force Majeure

- 21.1 A Party will not be liable to the other for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including acts of God, acts of terrorism, acts of war or threat thereof, fire, flood, explosion, power failure resulting from fires, explosions and other acts of God, infectious diseases, epidemics or government action. If any such delay is caused by the delay of a subcontractor of the Supplier (if permitted under Section 10), and is beyond the control and without the fault or negligence of both the Supplier and such permitted subcontractor, the Supplier shall incur no liability for such delay unless the deliveries to be furnished by such permitted subcontractor were obtainable from other sources in sufficient time to meet the required delivery hereunder. The Supplier shall notify the Customer immediately upon learning of any event which may result in any delay.
- 21.2 If such delay or failure continues for at least one (1) month, the Parties shall be entitled to forthwith terminate the Contract by notice in writing. In such event, no Party shall have any claim against the other in respect of such force majeure.

22. Termination

- 22.1 The Customer shall be entitled to cancel the Purchase Order in respect of all or part of the Goods and/or Services by giving notice to the Supplier at any time prior to delivery, in which event the Customer shall pay a fair and reasonable sum for and accept delivery of all finished Goods manufactured by the Supplier and Services properly rendered at the date of cancellation.
- 22.2 The Customer shall be entitled to terminate the Contract forthwith without liability to the Supplier by giving notice to the Supplier at any time if:-
- (i) the Customer determines in good faith that the Supplier is in breach of the Contract and, in the case of a breach capable of remedy, fails to remedy the breach within 14 days of being notified of the breach in writing; or
 - (ii) the Supplier makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (whether compulsory or voluntary, otherwise than for the purpose of amalgamation or reconstruction) or have an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such proposal, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager or be placed under a judicial management order; or
 - (iii) an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Supplier; or
 - (iv) the Supplier ceases, or threatens to cease, to carry on business; or
 - (v) there is a change in control of the Supplier which in the reasonable opinion of the Customer adversely affects the position, rights or interests of the Customer. For the purposes of this sub-clause, "control" means the ability to direct the affairs of another whether by virtue of contract, ownership of shares, or otherwise howsoever; or
 - (vi) in the reasonable opinion of the Customer, there occurs a material change in the financial position of the Supplier which is likely to affect the Supplier's ability to perform its obligations under the Contract; or
 - (vii) the Customer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
 - (viii) if the events referred to in Section 21 continues for at least 1 month; or
 - (ix) if the Customer determines in good faith that the Supplier has breached any of its representations and warranties in Section 14.
- 22.3 Termination of the Contract shall not discharge either Party from any existing obligation accrued due on or prior to the date of termination.
- 22.4 For the avoidance of doubt, any termination or cancellation of the Contract shall not affect the continuance in force of Software licences granted to the Customer or its customers.
- 22.5 In the event that the Customer terminates the Contract in whole or in part as provided in Section 22.2 above, the Customer may procure, upon such terms and in such manner as the Customer deems appropriate, replacement Goods and/or Services and the Supplier shall reimburse the Customer upon demand for all additional loss, cost and expense incurred by the Customer in purchasing such substitute Goods and/or Services.
- 22.6 The rights and remedies granted to the Customer pursuant to the Contract are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

23. Compliance with Personal Data Protection Laws

- 23.1 The Supplier undertakes that:
- (a) it will take all appropriate and commercially reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification, disposal or similar risks of any personal data which it receives and collects from Customer;
 - (b) it will comply with the Personal Data Protection Act 2010 (Malaysia) ("PDPA") and any applicable privacy and data protection laws which it is subject to;
 - (c) it will not sell, share or otherwise use or disclose any personal data collected from Customer without the prior written consent of Customer; and
 - (d) the personal data collected from Customer is available only to its employees who have a legitimate business need to access the personal data, who are bound by confidentiality obligations and who are aware of the Supplier's privacy and data protection obligations under the PDPA.
- 23.2 The Supplier hereby agrees and consents that its' 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> (subject to update by the Customer from time to time). 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> (subject to update by the Customer from time to time).
- 23.3 In the event the Supplier breaches any of the foregoing provisions, the Supplier shall indemnify, defend and hold harmless Customer from and against any and all liabilities, fines, penalties, costs, damages, expenses, legal costs arising out of or in relation to any unauthorized use or disclosure of personal data collected from Customer and/or the Supplier's breach of the PDPA and any applicable privacy and data protection laws which it is subject to.
- 24. Intellectual Property Rights**
- 24.1 The Supplier represents and warrants that the Goods and the Software (if applicable) or the Services do not violate or infringe any patents, copyright, trademarks, trade secrets, service marks, registered designs, design rights or other intangible property rights of third parties ("intellectual property rights").
- 24.2 The Supplier shall fully indemnify the Customer and its assigns, subcontractors and customers from and against any claims, liabilities, actions, demands, damages, loss, costs and expenses (including, without limitation, legal costs on an indemnity basis) in respect of any alleged or actual infringement by any of the Goods or Services of any intellectual property right including but not limited to patents, copyright, trademarks, service marks, registered designs, design rights or other third party rights and the Supplier shall at its own cost and expense defend or settle all such claims or actions or proceedings brought or threatened to be brought against the Customer.
- 24.3 Without prejudice to any of the foregoing, if any of the Goods and/or the Software or Services is held or claimed to be infringing third party intellectual property rights, the Supplier shall at its own cost and expense use its best efforts to procure the right for the Customer to continue using or receiving the infringing Goods and/or Software or Services. If the Supplier is unable to do so, then the Supplier undertakes at its own cost and expense to:
- (i) replace or modify the infringing Goods and/or Software, or remedy the Services expeditiously so that it is no longer infringing; or
 - (ii) if the Supplier is unable to replace or modify the infringing Goods and/or Software or remedy the Services, then the Supplier shall refund in full all payments made by the Customer in respect of the infringing Goods and/or Software or the Services. Further, the Supplier shall also reimburse the Customer in relation to all additional loss, costs and expenses incurred by the Customer in purchasing any substitute Goods and/or Software or Services.
- 24.4 The Customer shall own all intellectual property rights arising from modifications and customizations of the Goods, Software, and/or Services made by Supplier for the Customer, or by the

- Customer itself. The Customer reserves all its rights in drawings and in goods produced according to its instructions as well as in any processes developed by it.
- 24.5 All intellectual property rights in the works carried out under the Contract are hereby assigned and shall vest in the Customer absolutely. This includes any copyright or design rights which will vest in and become the property of the Customer as and when such rights come into existence.
- 25. Supplementary Provisions**
- 25.1 Insofar as the provisions of these Conditions do not regulate certain matters, relevant statutory provisions shall apply.
- 25.2 The Supplier shall be liable for all expenses and/or damages incurred by the Customer due to any breach of the Conditions; unless it is proven that the Supplier is not responsible for such breach.
- 26. Applicable Law**
- The Contract shall be governed by and construed in accordance with the laws of Malaysia. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11th of April, 1980 shall be excluded.
- 27. Dispute Settlement**
- 27.1 If any dispute arises in connection with the Contract, 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 27.2 below through written notification to the other Party.
- 27.2 If the Parties are not able to reach an amicable settlement pursuant to Section 27.1, 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 27.3 below.
- 27.3 Subject to Sections 27.1 and 27.2, any dispute arising out of or in relation to the Contract, 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 27.3(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.
- 28. Miscellaneous**
- 28.1 If the Goods and/or Services supplied under the Contract require the Customer to have any permit or licence from any governmental or other regulatory authority, the Contract shall be deemed conditional upon such permit or licence being granted at the required time.
- 28.2 Without prejudice to Section 8.11, the Supplier represents and warrants that it shall comply with all applicable laws, rules, regulations and requirements and shall obtain at its own costs and expense, all necessary permits and licences. Upon request, the Supplier shall furnish to the Customer information or documentation of the Supplier's compliance as well as any other information or documentation required to enable the Customer to comply with any laws, rules, regulations and requirements applicable to its receipt and use of any Goods or Services.
- The Supplier shall also keep and maintain at the work site a register including evidence of valid work permits held by all its personnel, employees and other labours, including those of sub-suppliers, engaged in work at the work site and shall make available the register including evidence of valid work permits at all times for inspection by the Customer, its agents the end customer or the authorized representatives of government agencies.
- 28.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, such provision shall be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby but shall remain in full force and effect.
- 28.4 The Customer does not waive any right under this Contract by failing to insist on compliance with any of the terms of this Contract or by failing to exercise any right hereunder. Any waivers granted hereunder are effective only if recorded in writing and signed by an authorised representative of the Customer. No waiver by the Customer of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 28.5 The Contract is the entire agreement between the Parties and shall supersede any previous communications, representations or agreements, whether verbal or written, with respect to the subject matter hereof and may not be changed unless agreed in writing and signed by properly authorised representatives of both Parties.
- 28.6 All notices must be in writing, signed by the authorised representatives of both parties and sent to the address or fax number set out in the Contract. They may be delivered by hand, or by prepaid registered post or by facsimile and shall be deemed to have been served:-
- (i) if by hand, at time of delivery;
- (ii) if by prepaid registered post, 3 working days after posting; or
- (iii) if by facsimile, on the date printed on the facsimile transmission report produced by the sender's machine.
- 28.7 Only upon Customer's prior written approval may Supplier be allowed to mention the Customer as a reference customer and/or make reference to the Goods or Services which the Supplier has developed during the performance of an order for the Customer.

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