**MASTER PURCHASE AGREEMENT**

by and between

Fantasy Company

with its registered seat in Sunny Island, Germany

- hereinafter referred to as “Supplier“ -

and

Siemens Aktiengesellschaft

with its registered seat in Berlin and Munich, Germany

- hereinafter referred to as “**Siemens**” -

- Supplier and Siemens hereinafter referred to individually

as “**Party**” or collectively as “**Parties**” -

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# Preamble

**WHEREAS**, Siemens intends to purchase Products and Services from Supplier as designated in this Agreement.

**WHEREAS**, Supplier is willing to provide Products and Services (as defined below) to Siemens and Siemens Affiliates as set forth below.

**NOW**, **THEREFORE**, the Parties agree as follows:

# - Definitions

For the purposes of this Agreement, the capitalized terms below shall have the following meaning:

## “Affiliate” of a Party shall mean a corporation, company or other entity which is now or hereafter, directly or indirectly

1. controlled by such Party, or
2. controlling such Party, or
3. controlled by the same legal entity as such Party,

but such corporation, company or other entity shall be deemed to be an Affiliate only as long as such control exists.

For purposes of this definition “control” of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.

Notwithstanding the foregoing, for Siemens, “Affiliate” shall also include any Carved Out Unit.

## “Agreed Order” shall mean the individual purchase agreement resulting from a Purchase Order placed by Customer and accepted or deemed accepted by Supplier.

## “Agreement” means this master purchase agreement including all annexes and any other document specifically incorporated herein by reference.

## “Authorized Subcontractor” shall have the meaning as defined in Article 2.7.

## “Carved-out Unit” shall mean

* + 1. any company which formerly was an Affiliate of Siemens or operates a business which was formerly operated by Siemens or an Affiliate of Siemens, if Siemens or an Affiliate of Siemens holds a minority interest of at least 10 (ten) percent in such company, and if such company is listed on the internet page <https://new.siemens.com/global/en/company/about/corporate-functions/supply-chain-management/collaborating-with-siemens.html>; and
    2. any Affiliate of a company as specified in (i) above,

## if and as long as Siemens has not informed the Supplier that such company shall not be deemed a Carved-out Unit for the purpose of this Agreement.

## “Confidential Information” shall mean any information disclosed by a party to the other in connection with this Agreement or any Agreed Order, which is – when disclosed in tangible form or via electronic communication, including internet based provision of information – marked as “confidential”, “proprietary” or similarly by the disclosing party or which is – when disclosed orally or visually – identified as confidential prior to disclosure and – within [20 (twenty)] Working Days from disclosure - conveyed to the receiving party in form of a written summary marked “confidential”, “proprietary” or similarly. Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.

## “Customer” shall mean either Siemens, or any Affiliate of Siemens, as the case may be, issuing a Purchase Order.

## “Customized Product” shall mean any product which results from a change, modification or customization of a Product by Supplier specifically performed for Customer.

## “Delivery Date” shall mean the date of (i) delivery of the Product at the Place of Delivery or (ii) performance of the Service, as specified in the Purchase Order or as otherwise agreed between Customer and Supplier in writing.

## “Distributor” shall mean any company authorized by Supplier to sell Products and/or perform Services.

## “Documentation” shall mean Technical Documentation, User Documentation, Technical Instructions and all other information related to Products and Services in a form as requested by Siemens.

## “Effective Date” shall mean the date on which duly authorized representatives of both Parties have signed this Agreement.

## “Epidemic Failure” shall be deemed to exist if 3% (three percent) or more of the Products delivered by Supplier within any consecutive 12 (twelve) months period are non-conforming due to the same or substantially similar cause.

## “Force Majeure Event” shall mean the occurrence of an event or condition that is beyond a Party’s reasonable control and which cannot reasonably be foreseen including natural disasters or catastrophic events such as epidemics, nuclear accidents, fire, flood, typhoons or earthquakes, war, riots, sabotage or revolutions, but not strikes or lockouts of Supplier’s or its subcontractor’s personnel.

## “Intellectual Property Right” shall mean any patent, copyright, trademark, design right, trade secret, or any other intellectual property right.

## “Hardware” shall mean any physical components of the Product and any tangible medium the Software is stored on or contained in.

## “New Version” shall mean any version of software which is not a Patch, Update or Upgrade.

## “Object Code” shall mean code for the Software resulting from translation of Source Code into machine readable format appropriate for execution by hardware.

## “Parts” shall mean the replacement parts and spare parts produced, manufactured and/or distributed by Supplier for the use with any Product.

## Patches” shall mean any software which corrects errors of the Software.

## “Place of Delivery” shall mean (i) in case of delivery of Products the place where the delivery of Products have to take place in accordance with the applicable Incoterms® rule and (ii) in case of provision of Services where the Services have to be performed by Supplier, always as specified in the Purchase Order or as otherwise agreed between the Customer and Supplier.

## “Place of Destination” shall mean the place where Products have to be shipped to in accordance with the applicable Incoterms® or where Services have to be performed by Supplier, as specified in the Purchase Order or as otherwise agreed between the Customer and Supplier.

## “Product” shall mean any item set forth in **Annex 1** as well as any Customized Product, Hardware, Parts, accessories and components pertaining thereto, and any New Product as defined in Article 18.3 and additional products and items relating to these products, regardless of the product name, any Software and Documentation and any other product ordered under this Agreement.

## “Production Equipment” shall mean any models, matrixes, templates, samples, tools, gauges and other means of manufacture of Products as well as the relevant documentation.

## “Purchase Order” shall mean the order issued by Customer to acquire Products and/or Services under this Agreement.

## “Sales Partner” shall mean any distributor, sales partner or other type of sales channel of Siemens and/or its Affiliates.

## “Services” shall mean any services including, but not limited to e.g.: installation, commissioning, maintenance, technical support, consulting, training, as well as New Services as defined in Article 18.3, to be performed by Supplier as set forth in **Annex 1** and/or the Agreed Order.

## “Siemens Customer” shall mean any individual, company or entity which obtains or intends to obtain any Product or Services from Siemens, its Affiliates and/or Sales Partners.

## “Software” shall mean any software program and any firmware, embedded software, driver software or other software made available to Customer or required for the operation of the Product in accordance with the Specification including any Updates, Upgrades, Patches, other modifications and New Versions, regardless of their product name.

## “Source Code” shall mean any software in the form written in higher-level programming languages and convenient for reading and review by a trained individual, such as a printed or written listing of programs, containing specific algorithms, instructions, inline comments, plans, routines and the like, in contrast to the Object Code. Without limitation, Source Code may be translated into Object Code through the process of compiling, assembling or interpreting.

## “Specification” shall mean any data and information related to the design, function, performance and reliability of the Product as set forth in **Annex 1** and any modifications, amendments and new specifications mutually agreed between Siemens or any Customer and Supplier.

## “Supplier Operations” means all assets, processes and systems (including information systems), data (including Customer data), personnel, and sites, used or processed by Supplier from time to time in the performance of this Agreement.

## “Technical Documentation” shall mean all documentation to demonstrate that a product has been designed and manufactured in accordance with the applicable legal requirements. It provides evidence that the product is in conformity with these requirements and enables an expert in the field of technology to understand, analyze and evaluate the conformity.

## "Technical Instructions" shall mean the in-depth-description of the functionalities of the Products reasonably enabling any skilled person in the field of technology to understand, analyze and operate the functions of the Products and to carry out customizing, maintenance and other services related to the Products.

## “Update” shall mean any software which primarily contains Patches and/or minor enhancements or improvements of the Software, but does not contain significant new features.

## “Upgrade” shall mean any software which primarily contains major enhancements of the Software and new features.

## “User Documentation” shall mean the complete user manuals related to the Product reasonably enabling any average user to understand and apply the functions of the Product, including the instructions and information necessary for the installation, use or operation and, where applicable, maintenance, periodic inspection, dismantling and disposal of the product under conditions that ensure safety, electromagnetic compatibility, environmental protection and other applicable issues of public interest.

## “Working Day” shall mean a normal business day in the jurisdiction of the Place of Destination.

# - Scope of Agreement

## Supplier shall supply Siemens and, its Affiliates with Products and Services in accordance with the terms and conditions of this Agreement.

## The following Annexes***[[1]](#footnote-1)*** are attached to and form an integral part of this Agreement:

Annex 1 Products and Services

Annex 2 Prices, Lead Times, Delivery Term

Annex 3 Contact Person

Annex 4 Electronic Data Interchange (EDI)

Annex 5 Data required for the transport of dangerous goods***[[2]](#footnote-2)***

Annex 6 Insurance Confirmation

Annex 7 Code of Conduct

Annex 8 Product Related Environmental Protection and Substance Declaration

## In the event of any conflicts or inconsistencies between the provisions of the following agreements (documents), the agreement (document) with the lower number (number 1 as the lowest) shall prevail, unless a document of a higher number expressly provides otherwise:

1. this Agreement
2. Agreed Order
3. Annexes.

## Implementation of this Agreement

## Any Customer shall be entitled to purchase Products and Services from Supplier, unless notified otherwise by Siemens. Any Purchase Order for Products and/or Services issued by a Customer to Supplier and its fulfillment by Supplier shall be pursuant to section 8.3 subject to the terms and conditions of this Agreement. In respect of Affiliates of Siemens, this Agreement shall be a contract for the benefit of third parties (“echter Vertrag zugunsten Dritter”).

For Purchase Orders placed by any Customer at Supplier’s Affiliates, the Parties agree that the respective Affiliate of Supplier shall be authorized to receive and accept the Purchase Order on behalf of Supplier and to receive all other communication related to such Purchase Order on behalf of Supplier. Supplier may involve its Affiliates in the completion of such Purchase Order. Purchase Orders placed at any Supplier’s Affiliate will constitute an individual contract with Supplier regardless of the name of the entity to which the Purchase Order is addressed.

Supplier will accept Purchase Orders placed by any Customer at Supplier’s Affiliate in accordance with Article 8 (Purchase Orders) of this Agreement.

## All Purchase Orders issued by any Customer shall aggregate to the total volume of purchases for the purpose of calculation of any annual purchasing volume (e.g. for volume discounts).

Supplier shall be responsible for fault of any third party used to perform Supplier’s obligations under this Agreement or any Agreed Order as well as for fault of subcontractors and sub-suppliers to the same extent as for fault on its own part.

Both Parties agree that any Purchase Order placed hereunder by a Customer and any further agreements resulting thereof shall create an independent contractual relationship between Customer and Supplier. Neither Siemens nor any Affiliate of Siemens other than the Customer nor any Sales Partner shall be bound by or be responsible or liable for any obligation and/or duty resulting from such Agreed Order or any further agreement resulting thereof.

## Products purchased from Distributors shall be subject to the conditions and terms of delivery as separately agreed between Customer and such Distributors.

## [If Supplier does not offer direct delivery by Supplier or an Affiliate of Supplier, ]Supplier shall ensure in a legally permissible way that the prices (including any additional charges) and conditions offered by the Distributor shall not be less favorable to Customer than the prices and conditions agreed in this Agreement. If the Distributor nevertheless charges a less favorable price than agreed hereunder, Supplier shall reimburse Customer for such additional cost.

Customer is entitled to exercise all of its respective rights under this Framework Agreement in connection with the purchase of Products from Distributors against Supplier as if Customer had purchased such Products directly from Supplier under this Agreement.

## Prior agreements

## This Agreement shall supersede and cancel any previous agreements between the Parties relating to the subject matter of this Agreement with the exception of

## MPA light dated 20 August 2000

which shall remain unaffected.

## Any outstanding purchase orders or individual agreements under such previous agreements shall be performed and completed in accordance with the provisions of the respective agreements.

Any local agreement between, on the one hand, Supplier or an Affiliate of Supplier and, on the other hand, an Affiliate of Siemens effective prior to this Agreement (hereinafter referred to as “Existing Local Agreement”) shall not be affected by this Agreement, unless and until the parties thereto have agreed otherwise. However, that lower prices agreed under in this Agreement shall apply to any orders placed and not yet invoiced under such existing agreement as of the Effective Date.

Supplier shall give due notice to Siemens if Supplier or an Affiliate of Supplier intends to enter into an agreement regarding the subject matter of this Agreement with Siemens or an Affiliate of Siemens.

Supplier will reasonably support any efforts of Siemens Affiliates being party to an Existing Local Agreement to replace the Existing Local Agreements by the application of this Agreement.

## Authorized Subcontractors

Siemens or any of its Affiliates may authorize its subcontractors to purchase Products and/or Services from Supplier at any time upon reasonable prior written authorization to Supplier, provided that all purchases are strictly limited to use for Products or Services directly or indirectly delivered or provided to Siemens or Siemens’ Affiliates, but not for subcontractor’s own use and distribution (hereinafter referred to as “Authorized Subcontractor”). Such authorization shall state the name and address of the Authorized Subcontractor and the specific Products and/or Services that Siemens or the respective Affiliate authorizes the Authorized Subcontractor to purchase.

The terms and conditions for the purchase of Products by Authorized Subcontractors shall be agreed between Supplier and each Authorized Subcontractor, except for the prices, which shall not be higher than the prices according to this Agreement.

Siemens or the respective Affiliate of Siemens may provide Supplier with written notice that an Authorized Subcontractor is no longer authorized to place new Purchase Orders for one or more Products and/or Services under this Agreement. As of the date specified in such written notice or if no date is specified, as of the date of receipt of such notice, Supplier shall no longer accept new Purchase Orders for such Products and/or Services from the specified subcontractor. Supplier shall be obligated to fulfill all Purchase Orders placed by the Authorized Subcontractor before the expiration of the authorization.

All Purchase Orders issued by any Authorized Subcontractors shall aggregate to the total volume of purchases for the purpose of calculation of any annual purchasing volume (e.g. for volume discounts).

Both Parties agree that any Purchase Order placed hereunder by an Authorized Subcontractor and any further agreements resulting thereof shall create an independent contractual relationship between Authorized Subcontractor and Supplier. Neither Siemens nor any Affiliate of Siemens shall be bound by or be responsible or liable for any obligation and/or duty resulting from such Purchase Order or any further agreement resulting thereof. In the event that Customer purchases Products under its respective agreement with an Authorized Subcontractor, it may, however, exercise all of its respective rights under this Agreement in connection with the purchase of the Products against Supplier as if Customer purchased such Products directly from Supplier under this Agreement.

To the extent Siemens or any of its Affiliates purchases Products via an Authorized Subcontractor as set out herein, Siemens or its Affiliates shall be entitled to provide information to the extent necessary for manufacturing the Products to such Authorized Subcontractor provided that the latter is bound by a corresponding confidentiality obligation.

# - Principles of Cooperation

## The Parties will cooperate in good faith and in good partnership. In order to secure fast and smooth communication and cooperation between the Parties, both Parties shall appoint contact persons (hereinafter referred to as “Contact Persons”) who shall be listed according to their functions in **Annex 3**.

## Global key-account management

To ensure the smooth implementation of the Agreement Supplier shall install for Siemens a global key-account management, which shall act as promoter of Siemens’ interests within Supplier’s organization and support Siemens’ business strategy.

Such global key account management shall also supervise the relevant Contact Persons in the specific sales segments.

## Product Planning

Product planning meetings will be held on a regular basis upon request of Siemens.

Supplier agrees to share with Siemens in the product planning meetings all relevant information related to the Products and Services such as, but not limited to:

1. Road maps regarding planned or current product development or product functionalities;
2. Availability schedules of planned products or services or modifications of Products and Services required by the market, whereby the Parties intend to achieve a product development giving due regard to market and technological developments, customer requirements, business strategies of Siemens, and the interdependencies of Products or Services with the development of Siemens’ products and services.

Furthermore, the product planning meetings shall provide a forum for Siemens to present ideas for product enhancements required by the market. For this purpose, Siemens may provide Supplier with any information as Siemens deems necessary for the development, manufacturing and/or customizing of the Products or Services. Supplier shall examine this information and indicate Siemens any discovered and assumed deficiencies. Siemens may then provide Supplier with further, corrected or completed information.

All information and data disclosed by Siemens in product planning meetings – irrespective of the medium in which such information or data is embedded – shall be deemed as Confidential Information even if not marked as “confidential”, “proprietary” or similarly.

## Supplier shall actively support the E-Business strategies and processes of Siemens and the respective Customers.

Current activities of Siemens comprise supplier information management on an electronic platform named by Siemens, e-sourcing (e.g. e-auctions), data management, performance monitoring and other process optimization (e.g. e-RfQ).

## Electronic Data Interchange (EDI)

### Supplier shall at the request and choice of Siemens or a Customer implement and use efficient electronic ordering systems based on electronic data interchange (EDI) via a digital supply chain service provider (such as SupplyOn AG). These digital supply chain providers offer different connectivity-methods regarding data interchange to Supplier, such as WEB Interface with up- and download or EDI. Supplier may connect according to its requirements and possibilities. In single cases Siemens or Customer may demand direct EDI connection, like with transport service providers or catalogue suppliers with high transaction volumes.

### Supplier shall comply with the EDI stipulations contained herein and shall receive and transfer those kind of messages as agreed and interchanged between the respective parties (“Messages”) and as required under the respective connectivity-method regarding data interchange, which may deviate from the base model and shall comply with any other requirements in that connection.

### The provisions contained in this Article 3.5 shall apply to all Messages in the context of this Agreement and all Agreed Orders, such as, for example, purchase orders, order confirmations and/or invoices / selfbilling invoices.

### To the extent permitted by law, Messages may also be validly transmitted using EDI (“Electronic Messages”). Electronic Messages shall meet the relevant format requirements, if any, as set forth in the Agreed Orders. To the extent permitted by law, the Parties hereby agree that Electronic Messages and their materializations may be used as evidence in judicial and arbitration proceedings.

### When transmitting Electronic Messages, all applicable laws shall be followed and specific procedures implemented to ensure the authenticity of origin and the integrity of electronically transmitted data. Documents created in the course of issuing invoices in the system of a third party are to be regarded as originals. Electronic Messages must allow for being made readable at any time.

## EDI is based on the use of structured and coded messages, whose key features are their computer readable format and their capability of being automatically and unambiguously processed.

## Details on the EDI method for the processes at Siemens and Customers are described in the “EDI Documentation” by Siemens or Customers. This EDI-Documentation is only relevant if the Supplier is connected directly and bilaterally to the Siemens EDI service; it is not relevant where the Supplier is connected to a platform via digital supply chain service providers. Required conversions are described by Siemens, Customer, by Supplier and/or by the involved digital supply chain service providers.

## Any unclear term or formulation shall be interpreted in compliance with the “European Model EDI Agreement” and the EU Commission Recommendation of 19 October 1994 relating to the legal aspects of electronic data interchange (94/820/EC).

### The Message types indicated as required in **Annex 4** shall from the date determined by the respective parties be transmitted to the other party in the corresponding manner as agreed between them. A transitional arrangement may be agreed. Interchange of further message types using electronic procedures may be agreed upon separately.

### Electronic Messages, interface information, key databases, access data and any other information indicated as confidential, agreed as confidential or which should reasonably be understood to be confidential based on the contents and/or context, shall be deemed Confidential Information.

## Supplier shall provide to Siemens reports about any relevant information regarding the contractual relationship between Siemens and Supplier on a quarterly basis - or at any time upon request of Siemens - in writing and in the data format to be agreed between the Parties

These reports shall include at least detailed records of

1. the worldwide purchase volume of Products or Services under this Agreement including details on the respective Customers and the Products or Services purchased,
2. current or planned projects with regard to Products or Services which have been advised to Supplier by a Customer,
3. any changes in Supplier’s business which are relevant for the cooperation of the Parties, e.g. changes in the economic situation of Supplier’s business, changes in the company organization of Supplier, any change in ownership of Supplier’s business,
4. quality problems of Supplier’s products and services,

Upon request of Siemens, the reports shall also include detailed records of

1. the possibilities/problems in the field of logistics,
2. current or predictable difficulties (in particular, shortages) regarding the production of Products,
3. major changes in roadmaps

# - Grant of Rights

## Supplier hereby grants to Customer a perpetual, worldwide, non-exclusive, royalty-free right (i) to use or have used the Products, (ii) to integrate or have integrated the Products into other products or systems, and (iii) to market (whereby the term “market” shall comprise sale, lease and other forms of disposal) or have marketed the Products, either directly or through Affiliates of Siemens or Sales Partners, stand-alone or together with or integrated into other products or systems.

## In addition to Article 4.1, insofar as Products include or contain Software or Software is made available by Supplier for use in connection with the Products, Supplier hereby grants to Customer the following non-exclusive, transferable, perpetual and worldwide right

1. to use or allow others to use the Software and the related Documentation in connection with the installation, commissioning, testing, demonstration, operation and maintenance of the Products;
2. to copy/have copied and to use/have used the Software and the related Documentation for the purpose of integrating the Products into other products;
3. to sublicense the rights as per (i) and (ii) to Siemens, to Affiliates of Siemens, Sales Partners and/or Siemens Customers;
4. to grant a license to Affiliates of Siemens and Sales Partners to sublicense the right of use to Siemens Customers in accordance with (i) and (ii);

Any deviating license terms in respect of such Software shall not apply, even if such license terms have to be accepted electronically upon downloading the Software.

## In addition to the rights granted in Article 4.2, Siemens, its Affiliates and Sales Partners are entitled to allow Siemens Customers to transfer Software licenses.

## Regarding Customized Products the rights mentioned in this article above are exclusive.

## Customer shall make commercially reasonable efforts to ensure that the sublicenses granted by Customer provide adequate protection for the intellectual property rights of Supplier in the Software by using contractual provisions not less stringent than those which Customer itself uses to protect its own intellectual property rights.

# - Documentation

## Regardless of a Purchase Order, Supplier shall, upon request of any Customer, provide to Customer free of charge at least 2 (two) complete sets of the Documentation for the Products and Services in English and the national language at the Place of Destination. The Documentation shall be provided in electronic media or as specified in the request. Unless otherwise agreed, the storage medium shall be CD-ROM. If local law at the Place of Destination requires a special form (e.g. language) or content of the Documentation, Supplier shall also provide the Documentation to Customer free of charge and in accordance with the requirements of the local law. Supplier shall provide Customer with additional sets upon request.

## All Documentation shall reflect the latest technical state of the Products and Services and shall be updated accordingly in case of modifications. Supplier shall then provide to Customer without delay and free of charge new versions of the Documentation in the same quantity as set forth in Article 5.1 above. In the event of discrepancies, errors or omissions in the Documentation, Supplier shall at its own expense provide new versions of the Documentation to Customer in the quantities requested by Customer no later than 20 (twenty) days after the date of notification or discovery of the discrepancy, error or omission.

## Without limiting the rights granted under Article 4.1, Customer shall be entitled to use, copy, modify, translate, distribute or otherwise make available the Documentation of Supplier at no charge. Customer may sublicense the rights set forth in this Article 5 to Siemens, its Affiliates, Sales Partners and Siemens Customers.

# - Labeling, Trademarks

## Supplier shall grant and hereby grants to Siemens, its Affiliates, its Sales Partners and Siemens Customers a non-exclusive, world-wide, royalty-free, perpetual and irrevocable right and license to use and reproduce all present and future company names, trademarks, trade names, logos, copyright notices and other intellectual property rights notices (hereinafter collectively referred to as “Intellectual Property Rights Notices”) of Supplier or any third party relating to the Products, Services and/or the Documentation for the purposes of this Agreement. Supplier undertakes to make available such Intellectual Property Rights Notices in writing and in electronic format. Supplier shall convey updates each time a new Intellectual Property Rights’ Notice will be used by Supplier or any third party in relation to the Products and/or the Documentation.

## Siemens, its Affiliates and its Sales Partners shall not be obligated to use or reproduce any Intellectual Property Rights Notices of Supplier or any third party. Siemens and its Affiliates may remove, and upon request, Supplier shall remove any Intellectual Property Rights Notices of Supplier and any third party from the Products and/or the Documentation.]

## Siemens, its Affiliates and their Sales Partners may use any Intellectual Property Rights Notices of Siemens and/or of any Affiliate of Siemens on, in combination with or in relation to the Products and/or the Documentation. Upon request, Supplier shall add and integrate the Intellectual Property Rights Notices of Siemens and/or of any Affiliate of Siemens to and in the Products and/or the Documentation]

## Siemens and its Affiliates shall not be obligated to inquire the correctness of Supplier’s rights to use and to authorize the use or the removal of any Intellectual Property Rights Notices contained in or used in relation to the Products and/or the Documentation. Supplier shall indemnify, defend, and hold harmless Siemens, its Affiliates, its Sales Partners and Siemens Customers from any claims, demands, costs and expenses based upon any claim that the use *or the removal* of any Intellectual Property Rights’ Notices of Supplier and of any third party infringes any third party right.

## Except as authorized by this Agreement, neither Party shall use or make reference to any of the other Party’s Intellectual Property Rights Notices without the prior written consent of such other Party. In particular, Supplier shall not make reference to Siemens or any of its Affiliates on its stationery, business cards, sales promotional, other business material or any other media (e.g. websites, advertising mails) without the prior written approval of Siemens.

# - Customizing

## Upon Customer’s request, Supplier agrees to perform customizing work in order to create Customized Products, which shall be carried out in accordance with the milestone schedule set forth in the relevant Agreed Order. Supplier and Customer may also agree on acceptance procedures for each milestone in the Agreed Order.

The prices for Customized Products are set forth in Article 12 (Prices, Terms of Payment).

## Customer shall provide to Supplier any information available to Customer which Customer deems necessary for Supplier to perform the customizing work, as set forth in the milestone schedule. Such information shall be provided by Customer “as is” without any warranty or liability. However, Supplier acknowledges that the successful performance of the customizing work is the responsibility of Supplier alone. For the avoidance of doubt, unless otherwise agreed, Customer shall not grant any licenses in its Intellectual Property Rights to Supplier in connection with the customizing work.

## Supplier shall keep Customer informed on any major progress achieved during the customizing work and shall immediately inform Customer in writing if the customizing work might not be performed according to the milestone schedule. During the performance of the customizing work, Supplier and Customer shall hold regular meetings. At these meetings, the relevant experts of Supplier and Customer shall review the status of the customizing work.

## Customer may request changes to the customizing work and the Customized Products according to its needs and changing market conditions, and Supplier shall accept any such changes.

## Should Supplier believe that changes requested by Customer according to Article 7.4 above or other circumstances for which Customer is responsible will involve additional work regarding the performance of the customizing work, Supplier shall inform Customer immediately thereof in writing, at the latest within 5 (five) Working Days after receipt of the change request as per Article 7.4 above or after having gained knowledge of the other circumstances. The Parties shall then agree on an appro­priate adjustment of the milestone schedule and/or the remuneration. Should Supplier fail to inform Customer within such periods in writing, Supplier may not request any extension of the milestone schedule or additional remuneration as a result of these changes.

## After receipt of the Customized Products, Customer will without delay start the acceptance testing of such Customized Products in order to verify their conformity with the relevant Specifications. Should the Customized Products (in whole or in part) fail to pass such acceptance test successfully, Customer will notify Supplier hereof in writing and Supplier will promptly rectify such failures and supply to Customer corrected Customized Products for another test by Customer.

## Should such corrected Customized Products (in whole or in part) fail again to pass the acceptance test successfully, Customer shall have the right to terminate the relevant Agreed Order without incurring any liability and to claim for all resulting losses and expenses (including without limitation the cost of completing or performing the customizing work or having the customizing work completed or performed by another contractor).

## After successful performance of the acceptance test, Customer shall issue a written acceptance certificate to Supplier.

Upon issuance of the acceptance certificate by Customer, the Customized Products shall be included in **Annex 1** to this Agreement.

By accepting a Customized Product, Customer does not waive any of its warranty claims.

## Supplier shall not be allowed to sell and / or deliver a Customized Product to any third party other than a Customer or Authorized Subcontractor.

# - Purchase Orders

## The scope of Supplier’s supply obligation shall depend on Agreed Orders pursuant to this Article 8 (Purchase Orders).

## There is no obligation to place Purchase Orders and no minimum purchase commitment of Siemens and Affiliates of Siemens. Estimates or forecasts furnished by Siemens or Affiliates of Siemens to Supplier shall not constitute a Purchase Order or a commitment to purchase.

## Purchase Orders are only binding when issued in writing or, upon the Parties’ written mutual agreement, sent by electronic data interchange (EDI) or other media (e.g. SAP transfer) as defined in **Annex 8.2** (hereinafter referred to as “Electronic Media”).

## All Purchase Orders issued by Siemens shall be governed by and carried out according to the terms and conditions of this Agreement, unless Siemens requires the application of another agreement concluded between Supplier and Siemens.

## Purchase Orders issued by a Siemens Affiliate shall only be governed by and carried out according to the terms and the conditions of this Agreement if (i) reference is made to this Agreement in the respective Purchase Order or (ii) if the respective Siemens Affiliate has issued a letter according to which all Purchase Orders of such Siemens Affiliate shall be governed by and carried out according to the terms and conditions of this Agreement, even if no reference to this Agreement is made therein.

## If a Purchase Order issued by a Siemens Affiliate neither refers to this Agreement nor to any other agreement, Supplier shall promptly notify such Siemens Affiliate of this Agreement and ask whether this Agreement shall apply for the respective Purchase Order. The respective Siemens Affiliate shall then be entitled at any time before receipt of Products or performance of Services to confirm that this Agreement applies for the relevant Purchase Order.

## Supplier shall confirm the receipt of any Purchase Order by fax within 3 (three) Working Days and shall accept any Purchase Order within 10 (ten) Working Days after Issuance. The Purchase Order shall be deemed to have been received if the transmission of the Purchase Order by EDI, other Electronic Media or fax is documented through positive transmission report.

## Supplier may only reject a Purchase Order within 10 (ten) Working Days after Issuance***]*** if and to the extent it is not in conformance with the terms and conditions of this Agreement. Any rejection shall specify in detail the non-conformance of the Purchase Order. Supplier and Customer shall promptly discuss the further procedure.

## If a Purchase Order is neither accepted nor rejected within 10 (ten) Working Days after Issuance it shall be deemed accepted by Supplier.

## Acceptance or rejection of a Purchase Order may be declared in the form of the Purchase Order and shall in any case be, in addition, sent by fax addressed to the business unit and contact person of Customer specified in the Purchase Order.

## Any amendments or additions to Purchase Orders in the acceptance of a Purchase Order by Supplier shall only be effective if expressly confirmed in writing or by EDI message ‘Order Change’ by Customer. Although Customer and Supplier may use their standard purchase order forms and/or other forms, any general terms and conditions contained in such standard forms shall not be applicable.

## If a logistics agreement or consignment stock agreement applies, the so called call offs or withdrawals will be deemed Purchase Orders and will be handled based on and within the limits of the ordering procedure agreed upon in this Article 8 and the respective logistics agreement or consignment stock agreement.

# - Cancellation, Rescheduling

## Upon giving Supplier at least 5 (five) Working Days prior notice before the Delivery Date, Customer may at no cost to Customer:

1. change the configuration of the Products and/or change the Services specified in a Purchase Order; and/or
2. postpone the Delivery Date; and/or
3. cancel Purchase Orders and terminate Agreed Orders, in whole or in part.

# - Availability of Products

## This Agreement does not obligate Siemens or any of its Affiliates to buy the quantities specified in **Annex 1** or otherwise.

# - Delivery of Products, Delay

## Products shall be delivered and Services shall be performed at the Place of Delivery within regular business hours at the Delivery Date. The Delivery Date shall not exceed the Lead Times as defined in Article 11.1.1 and specified in **Annex 2**. If not explicitly specified in **Annex 2**, the Lead Times shall be as follows:

* Standard Products 5 weeks
* Customized Products 10 weeks
* Parts 3 weeks
* Services 1 week
* Emergency orders according to Article 11.1.2 24 hours

### “Lead Time” shall mean the maximum time period between issuance of the Purchase Order and the receipt of the ordered Products and Services at the agreed Place of Delivery.

### Products shall be delivered and Services shall be performed strictly according to the Agreed Order. Any Delivery Date is binding. Deliveries or performances prior to the Delivery Date or partial deliveries or performances require the prior written consent of Customer. If such prior written consent was not obtained, Customer may at Supplier’s risk and expense and without prejudice to other rights and remedies of Customer, reject the performance of Services and reject and send back such Products for subsequent delivery or performance at the Delivery Date or store such delivery until Delivery Date at Supplier’ costs.

## Unless otherwise specified in **Annex 2**, delivery shall be effected according to:

## FCA named Place of Delivery (Incoterms*®* 2020).***]***

## If not otherwise agreed in **Annex 2**, risk of loss or damage shall pass to the Customer according to the respective Incoterms*®* rule applicable pursuant to Article 11.2.

## Title to any Products shall pass to Customer upon delivery according to the applicable Incoterms® rule.

## Supplier shall place identification numbers on all Products for inventory record keeping purposes.

### Supplier shall keep records of its deliveries/shipments and the related identification numbers. The identification numbering system shall enable Customer to identify the Hardware and the functional and correction level of the respective Hardware.

### Each delivery of Products shall be accompanied by appropriate shipping papers, which shall also include the correct gross weight of the delivered Products and, in case of full container loads, the verified gross mass of the loaded container. All shipping documents, invoices and the packaging must include the Purchase Order number and the identification numbers of the shipped Products [as well as Customer’s Product and Part numbers and any additional information according to **Annex 2** or agreed between Supplier and Customer.

### In the Purchase Order or by written notice, Customer may specify to Supplier specific shipping or packaging instructions, specific carriers or means of transportation or routing or require the use of a routing order tool. Supplier shall comply with such directions. If Customer does not specify a specific carrier, means of transportation or routing or the use of a routing order tool, or notifies Customer that Customer will contract carriage, Supplier shall arrange appropriate transportation. Supplier shall be liable for all additional cost and damages resulting from Supplier’s non-compliance with directions given by Customer according to this Article 11.3.2.

### Dangerous Goods:

## Products, which are subject to applicable dangerous goods regulations of the different transport modes, shall be transported by Supplier in compliance with these regulations.

## As far as any position included in the scope of delivery, is to be classified as or contains dangerous good, Supplier shall at the latest with acceptance of the Purchase Order provide written notice and all required data including the necessary documentation in accordance with the form attached hereto as **Annex 5** to Customer.

## Supplier shall handle the transport in compliance with the dangerous goods regulations in all parts of the transport chain Supplier is involved or responsible.

## On Customer’s request Supplier will provide Customer with evidence on the dangerous goods data provided and the proper transport of the dangerous goods, as e.g. reports on the classification or on the fulfillment of required test criteria, training certificates of the persons involved.

## Supplier shall be liable for damages caused by incorrect data or declarations provided by him or caused by non-compliant handling of the dangerous goods by Supplier.

## As far as Customer and Supplier agreethat Supplier orders the transport of deliveries containing dangerous goods for account of Customer, Supplier is responsible to transfer the necessary legally required dangerous goods data to the freight forwarder nominated by Supplier when placing the transport order. Supplier is in these cases also originally responsible for packing, marking, labeling etc. in compliance with the regulation relevant to the mode(s) of transport used.

### Supplier shall pack and describe the Products on the transportation documents in accordance with the requirements of the carrier.

### Should circumstances arise that may result in a delayed delivery of Products or a delayed performance of Services by Supplier, Supplier shall promptly notify Customer of such circumstances.

### If and when Supplier fails to meet any agreed Delivery Date, except for reasons of Force Majeure, Supplier shall pay to Customer the amount of EUR 500 (five hundred Euros) for each set of Documentation delayed and 1% (one percent) of the sum of the purchase price of the Agreed Order and of the purchase prices of the Products and/or Services which cannot be used because of the delay per calendar day of delay, up to a maximum amount per event of 30% (thirty percent) of such price. The payment of any of these amounts or parts thereof shall not discharge Supplier of its obligations to supply the Products and/or Services or of any other liabilities or obligations under this Agreement and/or any Agreed Order and/or by law. Customer shall not be required to reserve its rights under this Article 11.3.6, in particular, when the Products or Services are received or accepted.

### Supplier shall use best efforts to minimize the negative effects of any delay, including but not limited to, the use of the fastest possible method of delivery of the Products and performance of the Services at Supplier’s expense.

### In the event the delay exceeds [15 (fifteen)] calendar days, Customer may, in addition to the aforestated rights, terminate the affected Agreed Order wholly or in part without incurring any charges or liability. Upon termination of the Agreed Order Customer shall be entitled to purchase the relevant Products and Services or other products and services substantially comparable to the relevant Products and Services from third parties at Supplier’s costs. Supplier shall indemnify and hold harmless Customer against any other damages resulting from such termination.

## Any acceptance of Products and Services by Customer shall not be deemed as a waiver of any right Customer may have under this Agreement.

# - Prices, Terms of Payment

## The prices for Products and Services are set forth in **Annex 2**.

## The prices are quoted exclusive of value added tax, if applicable. The prices are calculated in accordance with the relevant Incoterms® rule set forth in Article 11.2 (Delivery of Products, Delay).

## The prices shall be valid for all Purchase Orders placed within the validity period set forth in **Annex 2**, or, if no validity period is stated therein, for a period of twelve months from the Effective Date of this Agreement.

## Prior to the expiration of such period the Parties shall agree on price changes, whereby due consideration shall be given to changes in market conditions, currency fluctuations and/or costs. As long as the Parties have not agreed upon revised prices, the then current prices shall further apply.

## Customer shall pay for Products and Services within

1. 90 twenty days net or
2. 14 (fourteen) days and deduction of 3% (three percent) discount or
3. 30 (thirty) days and deduction of 2% (two percent) discount

after delivery of Products and/or performance of Services is completed and after receipt of a correct and auditable invoice by Customer. Each invoice shall comply with the applicable fiscal requirements (e.g. VAT registration number or a note that a reverse charge system is applicable).

Where available, Supplier may in its sole discretion participate in the Supply Chain Finance@Siemens program (www.Siemens.com/supply-chain-finance) to finance the above payment term.

Each invoice of Supplier shall at least contain the following information:

1. Purchase Order number (if any),
2. invoice Date,
3. quantity, type and description of Products and/or Services and the respective Product Numbers,
4. the respective prices in the currency as specified in **Annex 2,**
5. full name and full address of the supplier and the buyer,
6. tax number or VAT identification number (if any) of the supplier and the buyer,
7. delivery Date (or number of delivery note) resp. Date of service performance
8. applicable VAT rate and VAT amount or- in the case of VAT exemption- the reason for (in case the VAT-reverse-charge-mechanism is applicable, the words “reverse-charge”)

Further details for invoices Customer may require for its internal accounting needs may be specified to Supplier in due time by Customer.

All invoices shall be explicitly addressed to the location and department stated in the Purchase Order.

## Payment shall not be deemed as an acceptance of the Products or Services by Customer.

## Any and all taxes, charges and/or other duties (hereinafter referred to as “Taxes”) imposed on any payments to be made by Siemens or any Customer to Supplier under or in connection with this Agreement shall be borne and paid by Supplier.

## If required by the laws of the country of Customer, Customer may deduct Taxes imposed in such country on payments to be made by Customer to Supplier from the payments and pay such Taxes on behalf of Supplier. Customer shall upon Supplier’s request submit to Supplier official tax receipts issued by the appropriate tax authorities evidencing the payment by Customer of Taxes in the relevant country on behalf of Supplier.

## To the extent the country of residence of Customer and the country of residence of Supplier entitles Supplier to claim a reduction of or an exemption from Taxes imposed on and to be paid by Supplier according to the laws of such country, Customer shall use reasonable efforts to support Supplier in obtaining a tax reduction/exemption certificate from the appropriate tax authorities if so required by tax laws of the respective countries of residence to validate the aforementioned claim for tax reduction/exemption. As long as Customer has not received copy of such tax reduction/exemption certificate, Customer shall be entitled to deduct the full amount of Taxes from the payments to be made to Supplier and to pay such Taxes on behalf of Supplier according to Article 12.6.

## If Customer fails to pay due amounts upon written reminder of Supplier, Customer shall pay interest on the due and reminded amounts at an interest rate of one percent above the applicable 3 (three) month EURIBOR per year as sole and exclusive remedy for delay of payment.

## If prices effectively offered by Supplier or any of its Affiliates for Products or Services to Siemens or any of its Affiliates under this Agreement or any other agreement (hereinafter referred to as “Offered Prices”) deviate (whether positively or negatively) from the prices set forth in **Annex 2**, Supplier shall reimburse Siemens or the respective Affiliate of Siemens which paid the higher prices any resulting price difference retroactively for all purchase orders placed after the date such Offered Prices were first offered to Siemens or the respective Affiliate of Siemens. The corresponding amounts shall be credited against future purchase orders, or, if there are no such future purchase orders, Siemens or the respective Affiliate of Siemens may claim for prompt reimbursement of such amounts. If the Offered Prices are lower than the prices set forth in **Annex 2**, the Offered Prices shall apply on a going-forward basis for all future Purchase Orders instead of the prices set forth in **Annex 2**.

## The prices as set forth in **Annex 2** for Products and Services shall be lower than or equal to the prices offered to any other customer of Supplier for the Products and Services. Article 12.9 shall apply accordingly.

Supplier shall, upon request of Siemens, at least annually, confirm by written statement of its executive management that the prices offered in **Annex 2** represent the lowest prices offered to Supplier’s customers.

## Supplier’s compliance with Articles 12.9 and 12.10 as well as the issuance of proper invoices by Supplier shall be subject to the audit right provided in Article 13.4.

# - Quality Management; Incoming Inspection and Test

## Supplier shall maintain a certified management system in accordance with DIN EN ISO 9001 or a comparable standard. Supplier shall also maintain a certified management system in accordance with DIN EN ISO 14001 and ISO 45001 or comparable standards.

### Supplier shall make available to Siemens a copy of the respective current certificate for at least those production plants where Products supplied to Customers are produced on an unsolicited basis by way of the electronic data platform named by Siemens and shall notify Siemens in writing without undue delay of any changes, interruptions or withdrawal of the certification.

### Additional business specific quality and/or environmental requirements of the Customers may be laid down in separate agreements between Supplier and Customers.

## Supplier shall notify Customers in writing of a central contact person responsible for coordinating the quality management and preventative quality assurance measures as well as for environmental management at Supplier. Any change in the contact person shall be promptly notified in writing.

## If Supplier uses a subcontractor for the production or quality assurance of the Products, for the provision of any production or testing media, software, services, materials, components or other goods and services (hereinafter collectively referred to as: “Subcontractor Goods and Services”), Supplier shall ensure that the manufacturing of Subcontractor Goods and Services are in compliance with Supplier’s quality and environmental management requirements. This shall be ensured either by way of contractual obligation or assurance testing conducted by Supplier.

## Supplier shall keep records as to the carrying out of the quality and environmental management and quality assurance measures with regard to the Products, e.g. records concerning feasibility studies measurements and test results. Such records shall be retained in an orderly and readable form for at least 10 (ten) years. Upon request, Supplier shall allow Customers access to such records to the necessary extent subject to a reasonable period of notice being given and Supplier shall make available copies of the records.

## Upon request, a Customer, a Siemens Customer or a third party authorized by a Customer shall be entitled at any time during regular business hours to audit the quality management system and the quality assurance activities of Supplier at Supplier’s premises.

## Any request according to Article 13.5 request shall reasonably indicate the objective, type and scope as well as time and place of the audit. During the audit, Supplier shall make available qualified employees as support. Supplier shall grant access to documentation and manufacturing processes and allow the auditing person(s) to participate in any quality testing of Supplier. Supplier may refuse access to company secrets.

### All expenses accruing in connection with the audit shall be borne by Supplier, except for the travel expenses incurred by the auditing person(s). Customer may share the audit report as well as any other records resulting from the audit with Siemens and its Affiliates.

### Supplier shall ensure that the auditing rights set out in this Article 13 also apply in respect of Supplier’s subcontractors.

## Supplier shall continuously conduct appropriate quality assurance tests and out-going inspection tests prior to any delivery of Products to Customer to ensure the safety and quality of the Products. Customer shall immediately 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. Should Customer discover any deficiency in the course of these inspections or at any later stage, Customer shall inform Supplier of such deficiency. Complaints may be raised within one month of receipt of the Product at the Place of Destination, and insofar as deficiencies are not discovered until commissioning, processing or first use, within one month of detection. In this regard Customer shall have no other duties to Supplier other than the duties of inspection and notification above.

## At the request of a Customer, Supplier shall produce a report on defects in the format required by Customer (e.g. analogue to the 8D method) with details of the defects, the cause as well as any corrective or preventative measures.

## Should Supplier detect, either in its own manufacturing process or from post-market surveillance data, deterioration in the product quality, Supplier shall immediately notify potentially impacted Customers identifying the possibly affected Products and providing information about the remediation measures that have been taken. The same shall apply, if Supplier detects potential failure risks of the Products.

## Supplier shall by way of labeling the Products or, in case such is impossible or unreasonable, by way of other suitable means ensure that in case of any defect being detected in a Product, Supplier can determine without undue delay which other Products could be affected.

# - Warranty

## Supplier represents and warrants from the receipt of the ordered Products and Services at the Place of Destination and thereafter for the periods set forth in Article 14.2:

1. to have title to the Products and/or Services;
2. that the Products are free and clear of any security interest, lien or encumbrances;
3. that the Products are newly manufactured and contain only new parts;
4. that the Software does not contain any lock, timer, copy-protection and/or activation feature;
5. that the Products are free from defects in design, material and workmanship, and without development defects or manufacturing defects, comply with all relevant technical approvals, meet the applicable Specifications and function in accordance with the Documentation and conform with the latest state of the art as well as with applicable legal and administrative requirements and applicable industry standards and safety regulations;
6. that it will carry out the Services within the times agreed and with all reasonable care and skill in accordance with all applicable laws and all provisions, in particular the service levels, of this Agreement and its Annexes;
7. that it will devote the best efforts of suitably qualified and trained employees capable of carrying out the Services at highest professional standards and shall provide all necessary facilities therefore;

(viii) that it has examined the Software for viruses and security gaps and has removed any viruses and security gaps prior to the delivery of the Software.

## Unless otherwise agreed the warranty period for all warranties under this Article 15 (Warranty) shall last 48 (forty-eight) months from the receipt of the ordered Products and Services at the Place of Destination or 36 (thirty-six) months from the date of delivery by Customer or Sales Partner to the Siemens Customer, whichever occurs earlier.

## If Customer notifies Supplier that a Product or Service fails to meet any of the warranties specified in this Agreement (hereinafter referred to as “non-conformance” or “non-conforming”), Supplier shall, at the option of Customer and to the exclusion of any claims for reimbursement of any costs and expenses (specifically any freight costs) by Supplier,

## (i) replace any non-conforming Product at the location where the Product is used by a new, non-refurbished Product of the same type or repeat any non-conforming Service within 24 (twenty-four) hours following the notification of the non-conformance, or

## (ii) promptly, however, at the latest within 5 (five) Working Days following the notification of the non-conformance, repair any non-conforming Product at the location where the Product is used,

and, in the event that Supplier fails to rectify the non-conformance within the time periods set forth in Article 14.3 (i) or (ii) or refuses to rectify the non-conformance, Customer may either

## (a) claim a reduction of the purchase price of the Products, Services and/or any related Services proportionate to the reduced value of the delivered Products, Services and/or related Services, in which case Supplier shall immediately refund any corresponding payments made by Customer; or

## (b) withdraw from the respective Agreed Order and from any Agreed Order for Services related to the respective Agreed Order in whole or in part and Supplier shall fully refund to Customer any payments made under such Agreed Orders; Customer shall return the non-conforming Products to Supplier at Supplier’s expense and risk upon receipt of the full refund of payments by Customer and Customer shall be free to purchase the relevant Products and Services or other products and services substantially comparable to the relevant Products and Services from third parties, in which case Supplier shall reimburse to Customer the resulting additional cost; or

## (c) correct the non-conforming Product or Services by itself or have corrected it by a third party and charge Supplier with the costs of such correction.

If, thereafter, Supplier can demonstrate that the Product or Service despite the notification by Customer had met the above warranties, Customer and Supplier shall enter into a discussion on a possible reimbursement of reasonable costs resulting from the rectification of the non-conformance.

## Supplier may not refuse to take any measure required above by disputing the non-conformance. To the extent, that the non-conformance is related to Software, Article 14.3 (ii) above shall apply as follows:

Supplier shall correct all non-conformances at no cost to Customer without undue delay, at least within the correction levels set forth in Article 21 (Services), by delivering and installing at the location where the Product and/or Service is used – at Customer’s option - either Patches, Updates or Upgrades which will correct the deficiencies or complete new correct versions of the affected Software in the numbers of copies requested by Customer, up to the total quantities of Products already ordered under this Agreement at the time of correction. If such Patches, Updates or Upgrades or any New Versions require upgrading of Hardware in order to operate in accordance with the agreed Specification, such upgraded Hardware shall be provided by Supplier free of additional charge. Until the non-conforming Software is corrected, Supplier shall make every effort to provide and install temporary workarounds without adversely affecting the proper functioning and interoperability of the Software.

## Supplier shall reimburse Customer any costs and expenses resulting from the transportation, de-installation, re-installation and commissioning in connection with the performance of Supplier’s warranty obligations.

In addition, for each case of non-conformance, Customer may claim as a lump sum reimbursement for the costs and expenses connected with administration and handling of the non-conformance an amount of EUR 500. Such amount may be reduced to the extent that Supplier can demonstrate that the actual costs and expenses of Customer connected with the administration and handling of the non-conformance are lower.

## The provisions of this Article 14 (Warranty) shall also apply to all Products and/or Services supplied for the purpose of performing Supplier’s warranty obligations.

## Supplier represents and warrants that the Documentation provided to Customer hereunder is and for the duration of this Agreement and any Agreed Order will be up-to-date and complete, technically correct and can be used for the purposes set forth in this Agreement and that Supplier is entitled to grant the rights relating to the Documentation in accordance with the terms of this Agreement. If Documentation supplied by Supplier hereunder fails to conform to this warranty, Supplier shall provide new and warranty compliant versions of the Documentation to Customer and Siemens Customers without undue delay.

## To the extent that the limitation period for claims of Siemens Customers against Customer is suspended due to negotiations on non-conformances of Products and/or Services, the warranty period for claims of Customer against Supplier shall be automatically extended to the same extent. Furthermore, the statute of limitation for any claims is suspended by notification of a non-conformance until the non-conformance is corrected, its correction finally failed or the Parties finally failed to agree on the existence of a non-conformance. Supplier shall correct all non-conformances notified to Supplier within the period set forth in Article 14.2 above even after its expiration.

## Notwithstanding any further rights or remedies Customer may have in the case of non-conformance the following shall apply in case of an Epidemic Failure:

### If Supplier discovers or is notified of an Epidemic Failure, Supplier shall promptly inform Siemens and all Customers of the existence of the Epidemic Failure, the nature thereof and the impact of the Epidemic Failure. If Siemens or any of its Affiliates discovers an Epidemic Failure, it shall notify Supplier upon discovery of the Epidemic Failure and provide Supplier with the necessary data in order for Supplier to investigate the Epidemic Failure. Supplier shall at no cost to Customer promptly analyze the cause of the Epidemic Failure and submit a proposal satisfactory to Customer how to address and avoid similar Epidemic Failures in future. Upon Customer’s approval, Supplier shall implement its proposal without undue delay and at no cost to Customer.

### Notwithstanding Article 14.9.1 above, Customer shall upon notification of an Epidemic Failure to Supplier be entitled at no charge

(i) to replace or have replaced, repair or have repaired all units of the relevant Products which have been delivered by Supplier within ***5*** years prior to the notification of the Epidemic Failure to Supplier including those units which may have functioned without any problem until that time, at Supplier's expense, and

(ii) to claim all reasonable costs and expenses for labor, personnel, specifically service technicians and material incurred in connection with the correction of an Epidemic Failure as per Article 14.9.2 (i) above, including costs for de-installation, re-installation and transportation, and

(iii) to demand compensation for any damage incurred in connection with an Epidemic Failure.

## Supplier shall indemnify and hold harmless Siemens, its Affiliates, any Sales Partners and Siemens Customers against any and all costs, expenses, losses, damages and liabilities arising from Supplier’s non-compliance with, or breach of, any representation or warranty or obligation under this Article 14 (Warranty).

## Supplier represents and warrants that the Products do not contain any Open Source Software (as defined below) other than specified in **Annex 1**

As used herein, the term “Open Source Software” means any Software that is licensed royalty-free (i.e., fees for exercising the licensed rights are prohibited, whereas fees for reimbursement of costs incurred by licensor are generally permitted) under any license terms or other contract terms (hereinafter referred to as “Open License Terms”) which require, as a condition of modification and/or distribution of such software and/or any other software incorporated into, derived from or distributed with such software (hereinafter referred to as “Derivative Software”), either of the following:

1. that the source code of such Software and/or any Derivative Software be made available to third parties;
2. that permission for creating derivative works of such Software and/or any Derivative Software be granted to third parties.

By means of example and without limitation, Open License Terms include the following licenses or distribution models: the GNU General Public License (GPL), the GNU Lesser or Library GPL (LGPL).

Supplier represents and warrants that:

* + 1. latest upon delivery of the Products to Customer, all of the license obligations applicable to the listed Open Source Software have been completely fulfilled by Supplier;
    2. latest upon delivery of the Products to Customer, Supplier will provide Customer with all applicable license texts and all necessary source code and build scripts for each version of the Open Source Software provided to Customer, in order to enable Siemens, its Affiliates, Sales Partners, Authorized Subcontractors and Siemens Customers to create an executable version of such Open Source Software.

Notwithstanding any limitation of liability provision(s) contained in this Agreement, if Supplier is in breach of this Article 14.11, Supplier shall indemnify, defend and hold harmless Siemens, its Affiliates, any Sales Partners, Authorized Subcontractors and Siemens Customers, from any damage, loss, costs and expenses suffered by Siemens, its Affiliates, any Sales Partners, Authorized Subcontractors or Siemens Customers as a result of any such breach.

## Any further or other rights or remedies Customer may have shall not be affected.

# - Third Party Intellectual Property Rights

## Supplier represents and warrants that

### the Products do not infringe upon any Intellectual Property Right of any third party, and

### as of the Effective Date there are - to the best of Supplier’s knowledge - no claims, disputes, suits, arbitral or other proceedings pending or anticipated which may affect either the rights and licenses granted hereunder or the warranties and representations made hereunder by Supplier.

## Supplier shall defend, indemnify and hold harmless Siemens, its Affiliates, any Sales Partners, Authorized Subcontractors and Siemens Customers from and against any claim, dispute, proceeding, action, fine, penalty, suit, loss, expense, damages including punitive damages, and cost (including reasonable attorney fees) arising out of or relating to any infringement or alleged infringement of any Intellectual Property Right of any third party by the Products and/or use or marketing thereof.

## Customer shall

### notify Supplier of any claim which Customer believes falls within the scope of Article 15.2 of this Agreement; and

### upon Supplier’s written confirmation to defend provide Supplier with the sole authority - as far as legally possible - to defend and settle such claim, provided that and as long as (a) Customer shall be entitled to participate in the defense of such claim and to employ separate counsel to assist in the handling of such claim, (b) Supplier at all times takes into account the business interests of Siemens, its Affiliates, Authorized Subcontractors and Siemens Customers, in defending and settling such claim, and (c) Supplier shall obtain the prior written approval of Customer, which approval shall not be unreasonably withheld, before entering into any settlement of such claim or ceasing to defend against such claim; and

### co-operate to a reasonable extent in the defense and settlement as requested by Supplier at Supplier’s expense, and

### subject to Article 16.3.2 above, not acknowledge or accept any such claim from any third party without the prior written consent of Supplier.

## If and when an infringement of an Intellectual Property Right of any third party is claimed relating to the Products or any portion thereof, or if such claim is to be expected, Supplier shall at its own expense and at Customer’s option either

### procure for Customer an unconditional, irrevocable, perpetual license to use the Products allegedly infringing the Intellectual Property Right of the third party and to exercise its other rights granted with regard to the Products under this Agreement; or

### modify or replace the allegedly infringing Products or – if Software is concerned - deliver an update, upgrade or a corrected version of the Software so as to meet the existing Specification and avoid the claim of infringement and any injunction or court order. Any such replacement or modification shall be approved in writing by Customer in advance which approval shall not be unreasonably withheld.

## If Supplier has failed to provide the remedy as per Article 15.4.1 or 15.4.2 within a reasonable period of time, Customer may at its discretion for each affected Product choose

### to return the affected Products to Supplier at Supplier’s expense and receive a full refund of the purchase price in which case Customer shall be free to purchase the relevant Products and Services or other products and services substantially comparable to the relevant Products and Services from third parties, or

### to keep the affected Products but receive a partial refund of the purchase price determined in Customer’s reasonable discretion reflecting the reduced value of the Product.

## Irrespective as to which remedy is chosen by Customer, Supplier shall not be relieved of its obligation under this Agreement and shall in particular be obligated to deliver any Product ordered by Customer in accordance with this Agreement unless Supplier has proven to Customer that Supplier’s compliance with Articles 15.4.1 and 15.4.2 results in severe economical harm for Supplier which would put its corporate existence at risk. In this case, Supplier’s obligations to indemnify shall remain unaffected.

## The indemnification obligations set forth in Articles 15.1 to 15.5 shall not apply to the extent the infringement is caused by

### modifications to the Products made by Customer without being entitled thereto, or

### the misuse of the Products by Customer against the instructions explicitly agreed in writing,

## Any claim under this Article 15 (Third Party Intellectual Property Rights) shall not become time-barred earlier than the corresponding third party claims giving reason to such claim.

# - Product Liability

## Supplier shall promptly inform Siemens and any Customers in writing about any risks and third party complaints relating to injury, death or any other safety hazard presumably related to any Product or Service.

## Supplier shall indemnify and hold harmless Siemens, its Affiliates, Authorized Subcontractors, Sales Partners and Siemens Customers from and against any claim, dispute, proceeding, action, fine, penalty, suit, loss, expense, damage including punitive damages, and costs (including reasonable attorney fees) arising out of or relating to Product Liability (as defined below) or any costs and expenses resulting from measures reasonably required or implemented by Siemens, its Affiliates, Authorized Subcontractors, Sales Partners, and Siemens Customers in order to avoid Product Liability (e.g. recall actions).

For the purpose of this Article 16, “Product Liability” shall mean any liability or responsibility arising out of or being based upon any statute or other regulation or the decision or recommendation of any competent authority under any applicable jurisdiction related to the defectiveness, safety hazard or other adverse condition of a Product or Service.

## Supplier shall, for the lifetime of the Products, maintain a product liability insurance providing unlimited coverage for any Product Liability exposure of Siemens, its Affiliates, any Authorized Subcontractors, any Sales Partners and Siemens Customers. Upon Siemens’ request, Supplier shall provide Siemens with a copy of the insurance certificate.

## If Siemens, its Affiliates or Sales Partners incur any liability, warranty obligation or other responsibility based in whole or in part upon any public announcements of Supplier, specifically press releases, marketing and advertising material, or the labeling of the Products, Supplier shall indemnify Siemens, its Affiliates, any Sales Partners and Siemens Customers for any expenses and costs resulting therefrom, unless the content of such public announcements was approved by Siemens in writing beforehand.

## Any claim under this Article 16 (Product Liability) shall not become time-barred earlier than the corresponding third party claims giving rise to such claim.

# - Insurance

## Supplier shall secure and maintain, for the lifetime of the Products, a liability insurance, which also covers risks resulting from the non-performance of this Agreement and any Agreed Order.

The insurance shall at least cover the following amounts per event:

EUR 10 Mio for personal injury,

EUR 10 Mio for damage to property,

EUR 7 Mio for financial losses, and

EUR 3 Mio for professional indemnity.

A confirmation of the insurance company shall be attached to this Agreement as **Annex 6**.

If Customer bears the risk of transport in accordance with the agreed Incoterms® rule, Customer will procure transport insurance. In this case, Supplier shall notify the freight carrier in writing that Customer does not require separate transport insurance from the freight carrier.

# - Modification of Products and/or Services, New Products and Services, Discontinuation, Spare Parts

## Supplier shall give Customers advance written notice of changes to manufacturing processes, materials or parts incorporated in Supplier’s products, of the relocation of production plants and of modifications made to the methods or facilities for the testing of the Products or to other quality assurance measures (all: “Product Change Notifications”). Supplier shall issue the advance written notice at least 12 (twelve) months prior to the planned implementation of the change allowing Customers to check whether the contemplated changes, relocations or modifications may have a detrimental effect on the Products. However, if not set down otherwise in additional quality assurance agreements between Supplier and Customers, Supplier shall not be under any obligation to give an advance notice if, after due consideration, Supplier reasonably concludes that such detrimental effects are excluded. Supplier shall provide Product Change Notifications for at least 5 (five) years following the last delivery of the respective product to a Customer.

## Any changes or modifications to Products and Services, including the changes set forth in Article 18.1, regardless of their impact on their conformity to the requirements stated in Article 13 (Quality Management; Incoming Inspection and Test) or their form, fitness, function, safety, reliability, performance and/or maintainability, shall be subject to Siemens’ prior written approval.

[If approved, Supplier shall reimburse all costs and expenses incurred by or imposed on Siemens and its Affiliates in connection with any homologation, compatibility testing and certification of modified Products or Services required by Siemens, its Affiliates and/or any Siemens Customer.]

[In any case, Siemens and its Affiliates may place orders for unmodified Products and Services for a period of at least [3 (three)] months from the first marketing of modified Products or modified Services by Supplier.]

## If during the term of this Agreement, Supplier intends to introduce a product or service replacing Products or Services, designed or fit to supersede the Products or Services, or new products and services (hereinafter referred to as “New Products”, “New Services”), Supplier shall inform Siemens thereof as soon as possible, but in any event not later than 3 (three) months prior to the first marketing of the New Products or New Services by Supplier.

Customers may continue to order the original Products and/or Services for the duration of this Agreement, unless Supplier has discontinued the supply of Products or Services in accordance with Article 18.4 below.

Where the New Products or New Services are intended to replace Products or Services, Supplier shall reimburse all costs and expenses incurred by or imposed on Siemens and its Affiliates in connection with any homologation, compatibility testing and certification of New Products or New Services required by Siemens, its Affiliates and/or any Siemens Customer.

## During the term of this Agreement, Supplier shall, for at least 10 (ten) years following the latest delivery of a Product to a Customer or the latest performance of a Service to a Customer, not cease to manufacture and supply such Product or to provide such Service to the market. If, after the expiry of the aforesaid term, Supplier determines to discontinue the supply of a Product or a Service under this Agreement, Supplier will provide Siemens with at least 18 (eighteen) months prior written notice to the effective discontinuation date. Siemens or any Siemens Affiliate may continue to place Purchase Orders for such Product and/or such Service at the prices set forth in Article 12 (Prices, Terms of Payment) until the effective discontinuation date. All such Purchase Orders shall be completed and fulfilled by Supplier.

Supplier shall bear all additional costs and expenses incurred or imposed on any Customer due to the storage of discontinued Products for Siemens Customers after the effective discontinuation date for a period of 6 (six) months.

After general availability of the New Product or New Service, Supplier may discontinue the supply of any Product or the performance of any Service upon at least 18 (eighteen) months’ prior notice to Siemens to the effective discontinuation date, provided that the New Product or New Service has at least the same form, fitness, function, safety, reliability, performance and maintainability of the discontinued Product or Service.

Siemens or any Siemens Affiliate may continue to place Purchase Orders for such Product and/or such Service at the prices set forth in Article 12 (Prices, Terms of Payment) until the effective discontinuation date. All such Purchase Orders shall be completed and fulfilled by Supplier.

Supplier shall bear all additional costs and expenses incurred or imposed on any Customer due to the storage of discontinued Products for Siemens Customers after the effective discontinuation date for a period of 12 (twelve) months.

Prior to the first delivery of Products, Supplier shall make available to Customer a detailed list of Parts for Products containing especially the spare part numbers. This list shall be revised and updated by Supplier in regular time intervals, at least every 3 (three) months.

Supplier will supply Siemens and its Affiliates with Parts for all Products for a period of [0 (ten) years after the latest delivery of a Product at fair and reasonable prices, however, the total price for all Parts for a Product may not exceed the price for such Product as per Article 12 (Prices, Terms of Payment).

If during the term of this Agreement, Supplier modifies Products or introduces New Products to the market, Supplier will supply Siemens and its Affiliates with Parts for the relevant unmodified and/or original Products for a period of [10 (ten)] years after the latest delivery of any such unmodified and/or original Product.

This obligation under Article **Fehler! Verweisquelle konnte nicht gefunden werden.** shall survive the termination of this Agreement.

## For modified or New Products, Supplier shall at its own expense, and upon Siemens’ or any Siemens’ Affiliate’s request, submit free of charge a reasonable amount of samples of the relevant modified or New Products for testing purposes for a reasonable period of time to be agreed upon by Supplier and Siemens or any Siemens Affiliate. After such tests Siemens or the Affiliate of Siemens may, in its sole discretion, buy or return such samples to Supplier.

## Prices for modified and New Products and New Services which are intended to replace original Products or Services shall be offered at maximum at the prices for the unmodified and original Products and Services as set forth in **Annex 2**.

# - Emergency Manufacturing Rights, Escrow

## The involvement of or the change to another production location is subject to the prior written consent of Customer.

## In the event Supplier is no longer able to supply Customer with products for a period longer than four weeks or it is foreseeable that Supplier will no longer be able to supply Customer with products for a period longer than four weeks (“Inability”), Supplier herewith grants Customer or a third party appointed by Customer the right, free of charge, to produce and distribute the relevant products for the duration of the Inability plus additional eight weeks. This includes the right to use Supplier’s production equipment necessary for manufacturing and testing of the products, as well as the relevant technical information, documentation and specific know-how including software and a license for any industrial property rights required.

## In order to secure these emergency manufacturing rights, Supplier shall immediately upon request provide Customer with a copy of relevant technical information, documentation, specific know-how and software (the latter in the form of source and object code) used for manufacturing/testing in a sealed envelope. Additionally, Customer shall receive a list of the documents, know-how and software handed over in the envelope. Supplier shall keep those documents, the software and the list up to date. Customer may use the documents, know-how and software exclusively for the execution of emergency manufacturing rights and may only break the seal of the envelope for this purpose.

## Supplier shall be entitled to verify Customer’s compliance with the provisions of this section at any time.            Should the Inability last longer than twelve months, the Parties shall conclude a separate license agreement under usual market conditions. The emergency manufacturing rights shall also apply to spare parts.

Upon request of Customer, Supplier shall deposit in favor of Customer [and any Siemens Customer] the Software in Source Code and Object Code and the pertaining on-line comments, release notes and Documentation with an independent escrow agent selected by Customer pursuant to the terms of the template of an escrow agreement attached as **Annex 20.3.** Such pertaining documentation of the Source Code must enable a reasonably qualified software engineer to understand the structure and content of the Source Code within a reasonably short period of time.

Supplier grants to Customer the non-exclusive license to use, compile, copy, and modify and to have used, compiled, copied and modified by Siemens, any Affiliates of Siemens and/or third parties the Software in Source Code and the Documentation for the purposes of installation, testing, operation, maintenance, defect correction, enhancements and further development. Such license may be sublicensed or transferred by Customer to any Siemens Customer.

The cost for such escrow shall be borne by Supplier.

For the duration of this Agreement, the cost for such escrow shall be borne by Supplier, thereafter by Customer.

# - Business Continuity Planning

## Supplier shall, within 30 (thirty) Working Days from Effective Date provide detailed information about the current production plant(s) of the Products and alternative production plant(s) – an alternative plant being either a plant of Supplier, of an Affiliate or of a subcontractor of Supplier – where all relevant steps of the production of the Products can be fully upheld (hereinafter referred to as “Plant List”). The Plant List shall contain the location and the owner of the plants and other information as reasonably requested by Siemens. Supplier shall maintain and keep up-to-date the Plant List and shall, upon request, provide Siemens with current versions and with supplementary information as reasonably requested by Siemens.

## In the event that the production in the plant as originally foreseen for whatever reason, including Force Majeure Events, is interrupted or substantially reduced, Supplier shall transfer the production of the affected Products to the alternative production plant(s) as foreseen in the Plant List.

## If Supplier fails to timely execute the transfer of production as set out in Article 20.2, Siemens may request Supplier to support Siemens in transferring the production of the affected Products to a third party designated by Siemens for as long as such interruption or reduction of Supplier’s production capability exists. This shall be without prejudice to any other rights or remedies Siemens may have under this Agreement.

## Supplier shall ensure that at any time during the term of this Agreement Supplier sources all raw materials and components being relevant for the production of the Products from at least two different sources.

# - Services

## Notwithstanding Supplier’s obligations pursuant to Article 14 (Warranty), Supplier shall provide Services as set forth in this Article 21 (Services) and **Annex 22.1**.

## Supplier shall provide the Services in a professional and workmanlike manner using all reasonable skill and care and shall comply with the applicable advanced industry practices. Any service function and responsibilities not specifically described in this Agreement, which are reasonably required for the proper performance and provision of the Services described herein, shall be deemed to be implied by and included within the scope of the Services. Customer is entitled to reasonable reductions of the fees relating to the Services if and when the performance of the Services does not fully meet these requirements and practices, either by deducting such amounts from the fees and other payments attributable to the Services which will become due in the future, or, at Customer’s discretion, by receiving the immediate refund of such amounts. With regard to non-conforming Services, Article 14 (Warranty) shall apply accordingly.

## The Services shall include the following services the details of which are set forth in **Annex 22.1**:

# - Training for Installation and Support

## Upon Customer’s request, Supplier shall train experts of Siemens, its Affiliates and their Sales Partners in the installation, testing, commissioning, operation, repairs and maintenance of Products. Such training will be given for each Product. Supplier’s trainers shall provide such trainees with adequate training materials, such materials being part of the Documentation. The details of such training, e.g. date, duration, number of trainees, etc. will be agreed upon on a case by case basis reasonably in advance. In any event the training shall commence not later than 3 weeks after Customer’s request.

## All reasonable travel and lodging expenses incurred by Supplier in connection with the training under Article 22.1 above shall be borne by Supplier.

Training for 1 trainer/days shall be included in the prices set forth in Article 12 (Prices, Terms of Payment). For training exceeding 1 trainer/days, Customer shall pay to Supplier a compensation of 10,000 EUR per trainer/day.

## Supplier shall provide to Customer [one] set of reproducible training materials free of charge, including such materials as usually utilized by Supplier when instructing its customers (e.g. video clips). Such training materials shall be in English and if available also in [German]. Siemens and its Affiliates shall be entitled to copy, modify and translate such training materials and to attach to any copy its own copyright notices. Siemens and its Affiliates and Sales Partners may utilize any copy of Supplier’s training materials for performing own training courses for their Siemens Customers.

# - Confidentiality, Restricted Use and Data Protection

## Neither Party shall use the other Party’s Confidential Information for any purpose other than for the implementation and performance of this Agreement and Agreed Orders (hereinafter referred to as “Purpose”).

### Confidential Information shall not be distributed or disclosed in any way or form by the receiving Party to any third party except to its own employees, consultants, advisers or bankers (hereinafter referred to as “Advisers”) and to the employees and Advisers of its Affiliates and to Sales Partners, only if reasonably required for the Purpose and provided each of them is bound by confidentiality obligations in respect of the Confidential Information substantially similar to those contained in this Article 23 (Confidentiality, Restricted Use and Data Protection) either by their employment agreement or otherwise in writing prior to such disclosure.

### Both Siemens and Supplier shall keep Confidential Information confidential with the same degree of care with which they treat and protect their own equally important confidential information to avoid disclosure to any unauthorized third party, but at least with reasonable care.

### Copies of Confidential Information shall only be made if reasonably required for the Purpose and shall be marked as “confidential”, “proprietary” or similarly.

## The confidentiality obligations contained in Article 23.1 shall not apply to any information which:

### was in the possession of the receiving Party without an obligation to confidentiality prior to receipt from the disclosing Party;

### is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by the receiving Party or the breach of the corresponding obligations by any of its employees or Advisers or the employees [or Advisers] of its Affiliates.

### is lawfully obtained by the receiving Party from a third party without an obligation to confidentiality, provided such third party is not, to the receiving Party’s knowledge, in breach of any obligation to confidentiality relating to such information;

### is developed by the receiving Party or its Affiliates independently of any Confidential Information or under the exceptions as set out in this Article 23.2;

### is required to be disclosed by any ruling of a competent governmental or regulatory authority or court or by mandatory law, provided that written notice of such ruling is given without undue delay to the disclosing Party so as to give the disclosing Party an opportunity to intervene and provided further that the receiving Party uses reasonable efforts that the Confidential Information will be treated confidentially. Confidential Information which is disclosed in such way must be marked “Confidential”; or

### is approved for release by written agreement of the disclosing Party.

### The Party seeking the benefit of any exception under this Article 23.2 shall bear the burden of proving its existence.

### Each Party shall have the right to refuse acceptance of any information under this Agreement prior to any disclosure; information disclosed despite such a refusal is not covered by the confidentiality obligations under this Agreement. Nothing herein shall obligate either Party to disclose any particular information.

## Any press release or other information concerning the conclusion and the content of this Agreement or any Agreed Order shall only be published or made available to third parties by Supplier with the prior written consent of Siemens.

## Confidential Information shall remain the property of the disclosing Party. Unless otherwise agreed in this Agreement, Intellectual Property Rights are neither granted nor conveyed by this Agreement, nor does this Agreement constitute any obligation of the disclosing Party to grant or convey such rights to the receiving Party. The receiving Party shall not be entitled to file for patents or other statutory protection in any country based on or using any Confidential Information received hereunder, and any such patent or statutory protection must be transferred to the disclosing Party upon its request and without charge. The disclosure of Confidential Information does not constitute any right of prior use for the receiving Party.

## Each Party shall be liable for acts or omissions by any Party’s employees and Advisers or the employees and Advisers of its Affiliates resulting in unauthorized distribution, use and/or disclosure of Confidential Information as if such acts or omissions had been its own acts or omissions.

Upon any termination or expiration of this Agreement the receiving Party shall cease using any Confidential Information of the disclosing Party. Within 90 (ninety) days after termination of this Agreement the disclosing Party may request in writing from the receiving Party that the receiving Party at its discretion either return or destroy all Confidential Information received from the disclosing Party and stored electronically and/or on record-bearing media as well as any copies thereof. The receiving Party shall advise its Affiliates accordingly and shall confirm in writing such destruction or return of the Confidential Information as well as any copies thereof to the disclosing Party within 30 (thirty) Working Days after receipt of the disclosing Party’s request.

The provisions of Article 23.5.1 shall not apply to routinely made back-up copies of electronically exchanged Confidential Information and to Confidential Information or copies thereof which must be stored by the receiving Party ,its Affiliates or their Advisers according to provisions of mandatory law or internationally accepted accounting rules, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation for the duration of storage according to the terms and conditions set forth herein.

## The rights and obligations under these Articles 23.1 to 23.5 shall survive the termination of this Agreement for a period of 5 (five) years.

## Supplier is aware that during the term of this Agreement and/or any Agreed Order Supplier may have access to data that contain information about personal or factual circumstances and conditions of specified or determinable individuals and/or of legal entities (hereinafter referred to as “Personal Data”). Therefore Supplier shall comply in all respects, and take at its own cost and expense all measures that are necessary for compliance with the applicable law and regulations on the protection of Personal Data (hereinafter referred to as “Data Protection Legislation”).

Supplier confirms to have implemented and shall maintain all necessary and other appropriate technical and organizational measures according to the requirements of the Data Protection Legislation.

# - Force Majeure

## Neither Siemens, any Customer nor Supplier shall be held responsible for the non-performance of any obligation under this Agreement or any Agreed Order to the extent that such non-performance results from a Force Majeure Event and provided that the Party affected by a Force Majeure Event (hereinafter referred to as “Affected Party”) has promptly notified the other Party in writing of the occurrence of such Force Majeure Event. The Affected Party shall use every endeavor to minimize the impact and duration of such Force Majeure Event at its costs. As soon as the Force Majeure Event ends, the Affected Party shall promptly notify the other party thereof in writing and promptly resume the fulfillment of its obligations under this Agreement or any Agreed Order.

## If one or more Force Majeure Event(s) continue(s) for a cumulative period of more than 30 (thirty) Working Days Siemens may terminate this Agreement and Customers may cancel any Purchase Order or terminate any Agreed Order not yet completely performed without incurring any liability or charges. Such termination shall be governed by Article 25 (Term and Termination) and Article 26 (Provisions after Termination).

# - Term and Termination

## This Agreement shall become effective on the Effective Date. This Agreement shall be effective for an initial period of 5 years and shall automatically be extended by consecutive 12 (twelve) months’ periods unless terminated by either Party by 6 (six) months prior written notice to the other Party with effect from the end of the initial contract term or the respective end of the extension period.

## Either Party may terminate this Agreement, without liability to the other Party (for the purpose of this clause “Defaulting Party”) and save of any other rights and claims such Party may have, by giving written notice to the Defaulting Party with effect from the date specified in the termination notice if the Defaulting Party

1. voluntarily files a petition in bankruptcy or has such a petition involuntarily filed against it (which petition is not discharged within 30 (thirty) days after filing) or is subject to an insolvency proceeding or a proceeding giving protection against creditors, or if an order is issued appointing a receiver or trustee or a levy or attachment is made against a substantial portion of its assets which order shall not be vacated or set aside within 30 (thirty) days from date of issuance;
2. fails to perform any of its material contractual obligations, provided that where such breach is capable of remedy, the Defaulting Party fails to remedy such breach within 30 (thirty) days of being notified of such breach by the other Party.

## If Supplier merges with another company, or at least 50% (fifty percent) of Supplier’s outstanding shares are acquired by a third party which is a competitor of Siemens in the field of business where the Products and Services are marketed (hereinafter referred to as “Competitor”), or if substantial rights to the Products or Services are transferred to any Competitor, or if Supplier otherwise comes under the direct or indirect influence or control of any Competitor, Supplier shall promptly notify Siemens thereof in writing and Siemens may, within 2 (two) months after having received such notification, terminate this Agreement with immediate effect or with effect from the end of a period specified by Siemens in its termination notice, however not later than six months after giving notice of the termination, without incurring any liability or charges.

## If Siemens is entitled to terminate this Agreement pursuant to the provisions under Articles 25.2 and 25.3 above each Customer may, in addition to any rights to cancel or terminate provided for in this Agreement, terminate any Agreed Order which is not yet completely performed, in whole or in part, with immediate effect without incurring any liability or charges. Any such termination of an Agreed Order shall not affect any rights or remedies Customer’s may have.

## In addition to Article 25.4 above, Customer or Supplier shall be entitled to terminate the Agreed Order without liability to the other Party (for the purpose of this clause “Defaulting Party”) and save of any other rights and claims such Party may have, by giving written notice to the Defaulting Party with effect from the date specified in the termination notice if the Defaulting Party fails to perform any of its material contractual obligations under any Agreed Order or any agreement related thereto, provided that where such breach is capable of remedy, the Defaulting Party fails to remedy such breach within 30 (thirty) days of being notified of such breach by the other Party.

# - Provisions after Termination

## Unless otherwise provided for in this Agreement, any termination or expiration of this Agreement shall not affect Supplier’s obligation to accept Purchase Orders which have been issued prior to such termination or expiration and to perform any outstanding Agreed Orders.

## Any termination or expiration of this Agreement and/or any Agreed Order shall neither impair any rights of Siemens Customers granted to them in accordance with the provisions of this Agreement nor prevent Siemens Customers from delivering any Products and performing any Services in the future. Any sales rights and other rights and licenses granted by Supplier to Siemens or any Customer under this Agreement shall be extended for the time period required to complete the activities of Siemens or any Customer contemplated in this Article 26 (Provisions after Termination).

## Without limiting any rights each Party or any Customer may have under the applicable law, any and all obligations of the Parties or any Customer, that have an effect beyond any expiration or termination date of this Agreement, including but not limited to the provisions with regard to Confidential Information, liability, warranty, indemnifications, arbitration, governing law, payment due and owed, discontinuation and spare parts shall always survive the expiration or termination of this Agreement.

## Subject to Article 18.4 (Discontinuation), for a period of 10 (ten) years after the termination or expiration of this Agreement, Supplier shall provide, on Siemens’ request, maintenance and support services on fair, reasonable and non-discriminatory terms.

# - Dispute Resolution

## Negotiations

## If a dispute arises in connection with this Agreement, a related agreement or any Purchase Order, the responsible representatives of the parties to the dispute shall attempt, in fair dealing and good faith, to settle such dispute. Upon request of a party a senior management representative of each party shall participate in the negotiations. Each party shall be entitled to terminate these negotiations by written notification to the other party(-ies) at any time.

## Nothing in this and the following sections shall limit the right of the Parties to seek relief intended to preserve the status quo or interim measures in any court of competent jurisdiction or arbitral tribunal.

## Alternative Dispute Resolution

## The parties shall attempt to agree on a procedure for alternative dispute resolution (hereinafter referred to as “ADR”) and the applicable procedural rules (including time limits) within 14 (fourteen) days after a termination notice under Article 27.1 has been received by the other side. If the parties fail to agree on such procedure, each party shall be entitled to refer the dispute to arbitration pursuant to Article 27.3.

## Arbitration

### All disputes arising out of or in connection with this Agreement, a related agreement or any Purchase Order which are not resolved pursuant to Article 27.1 or an ADR procedure pursuant to Article 27.2, including any question regarding the termination or any subsequent amendment of the Agreement or the Purchase Order, shall be finally settled in accordance with the Rules of Arbitration (hereinafter referred to as “Rules”) of the International Chamber of Commerce (hereinafter referred to as “ICC”).

### If the value of the total matter in dispute, including the value of any counterclaims, is less than EUR 1 (one) million, the tribunal shall consist of one arbitrator and if the value of the total matter in dispute is EUR 1 (one) million or more the tribunal shall consist of three arbitrators.

### If the tribunal consists of three arbitrators, each party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator within 30 (thirty) calendar days after their appointment. Should the two arbitrators fail to reach agreement on the third arbitrator within the thirty-day period, the ICC shall select and appoint the third arbitrator.

### The seat of arbitration shall be Munich. – in any case, do not agree on a seat of arbitration in the country of the Supplier. The language to be used in the ADR procedure and the arbitration proceeding shall be English.

### Any order for the production or disclosure of documents shall be limited to the documents upon which each party specifically relies in its submission(s).

### Consolidation of arbitrations pending under the Rules into a single arbitration shall only be possible if all parties have agreed to consolidation.

### Upon request of a party, the arbitral tribunal shall order any claiming or counterclaiming party to provide security for the legal and other costs of any other party related to that claim or counterclaim, by way of bank guarantee or in any other manner and upon such terms as the arbitral tribunal considers appropriate.

# - Choice of Law

This Agreement and related other agreements or Purchase Orders shall be governed by, and all disputes in connection with this Agreement and related other agreements or Purchase Orders shall be resolved in accordance with the substantive law of Germany, without regard to that jurisdiction’s conflicts of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall be excluded.

# - Export Control and Foreign Trade Data Regulations

## For all Products to be delivered and Services to be provided according to this Agreement Supplier shall comply with all applicable export control, customs and foreign trade regulations (hereinafter referred to as “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.

## Supplier shall advise Customer in writing as early as possible but not later than 10 days prior to the Delivery Date of any information and data required by Customer to comply with all Foreign Trade Regulations for the Products and Services applicable in the countries of export and import as well as re-export in case of resale. In any case Supplier shall provide Customer for each Product and Service with

## the “Export Control Classification Number” according to the U.S. Commerce Control List (ECCN) if the Product is subject to the U.S. Export Administration Regulations; and

## all applicable export list numbers; 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 Customer: Supplier’s declaration for preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers)

## (hereinafter referred to as “Export Control and Foreign Trade Data”).

## In case of any alterations to origin and/or characteristics of the Products 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 2 weeks prior to the Delivery Date. Supplier shall be liable for any expenses and/or damage incurred by Customer due to the lack of or inaccuracy of said Export Control and Foreign Trade Data.

# - Standards and Certifications; Requirements for the Marketing of Products; Authorized Economic Operator (AEO)

## Supplier shall ensure and hereby represents and warrants that during the term of this Agreement and/or any Agreed Order, Products and Services comply with the applicable laws, standards and regulations in the countries where Products and Services are marketed or used.

## Supplier shall obtain and maintain all conformity certifications, type approvals and other authorizations required by law or otherwise to use, import, export and market the Products and Services in the countries where the Products and Services are intended to be marketed or used.On request of Customer, Supplier shall provide Customer with copies of such certifications, approvals and authorizations.

## Supplier shall strongly support the efforts of Siemens regarding security in the supply chain, which includes the attainment and preservation of the status as an Authorized Economic Operator (AEO) in terms of WCO SAFE Framework of Standards. Upon request of Siemens, Supplier shall without undue delay sign and return to Siemens a written declaration on security in the supply chain provided by Siemens, which will be consistent with - depending on the registered office of Supplier - the requirements of the European Commission according to the then current AEO Guidelines or the requirements of a comparable initiative for security in the supply chain according to WCO SAFE Framework of Standards (e.g. C-TPAT), unless Supplier itself owns the status of AEO or a comparable status based on WCO SAFE Framework of Standards and is able to demonstrate such by providing a respective certificate.

## Siemens and its representatives or a third party appointed by Siemens and reasonably acceptable to Supplier shall be entitled (but not obliged) to conduct – also at Supplier’s premises – inspections in order to verify Supplier’s compliance with the declaration as per Article 30.4. Any inspection may only be conducted upon prior written notice of Siemens, during regular business hours, in accordance with the applicable data protection law and shall neither unreasonably interfere with Supplier’s business activities nor violate any of Supplier’s confidentiality agreements with third parties. Supplier shall reasonably cooperate in any inspections conducted. Each party shall bear its expenses in connection with such inspection.

## In addition to other rights and remedies Siemens may have in the event of (i) Supplier’s failure to fulfill its obligations under Article 30.4 or (ii) Supplier’s denial of the Siemens’ right of inspection as provided for in Article 30.5, after providing Supplier reasonable notice and a reasonable opportunity to remedy, Siemens may terminate this Agreement and/or any Purchase Order issued hereunder or any Agreed Order without any liability whatsoever.

# - Corporate Responsibility in the Supply Chain

## Supplier shall comply with the principles and requirements of the “Code of Conduct for Siemens Suppliers and Third Party Intermediaries” attached hereto as **Annex 7** (hereinafter referred to as “Code of Conduct”).

## If requested by Siemens, Supplier shall not more than once a year either – at its option – provide Siemens with (i) a written self-assessment in the form provided by Siemens, or (ii) a written report approved by Siemens describing the actions taken or to be taken by Supplier to assure compliance with the Code of Conduct.

## Siemens and its authorized agents and representatives and/or a third party appointed by Siemens and reasonably acceptable to Supplier, shall be entitled (but not obliged) to conduct – also at Supplier’s premises – inspections in order to verify Supplier’s compliance with the Code of Conduct.

Any inspection may only be conducted upon prior written notice of Siemens, during regular business hours, in accordance with the applicable data protection law and shall neither unreasonably interfere with Supplier’s business activities nor violate any of suppliers’ confidentiality agreements with third parties. Supplier shall reasonably cooperate in any inspections conducted. Each Party shall bear its expenses in connection with such inspection.

## In addition to other rights and remedies Siemens and any Customer may have in the event of (i) Supplier’s material or repeated failure to comply with the Code of Conduct or (ii) Supplier’s denial of Siemens’ right of inspection as provided for in Article 31.3, after providing Supplier reasonable notice and a reasonable opportunity to remedy, Siemens may terminate this agreement and/or Customer may terminate any Agreed Order and cancel any Purchase Order without any liability whatsoever.

Material failures include, but are not limited to, incidents of child labor, corruption and bribery, and failure to comply with the Code of Conduct’s environmental protection requirements. The notice and opportunity to remedy provision shall not apply to violations of requirements and principles regarding of the child labor as set out in the Code of Conduct or willful failures to comply with the Code of Conduct’s environmental protection requirements.

# – Cybersecurity

## Supplier shall take appropriate organizational and technical measures to ensure the confidentiality, authenticity, integrity and availability of Supplier Operations as well as Products and Services. These measures shall be consistent with good industry practice and shall include an appropriate information security management system consistent with standards such as ISO/IEC 27001 or IEC 62443 (to the extent applicable).

## Should products or services contain Software or chipsets:

## Supplier shall implement appropriate standards, processes and methods to prevent, identify, evaluate and repair any vulnerabilities, malicious code, and security incidents in Products and Services which shall be consistent with good industry practice and standards such as ISO/IEC 27001 or IEC 62443 (to the extent applicable);

## Supplier shall continue to support and provide services to repair, update, upgrade and maintain Products and Services including the provision of Patches to Customer remedying vulnerabilities for the reasonable lifetime of the products and services;

## Supplier shall provide to Customer a bill of materials identifying all third-party software components contained in the products. Third-party software shall be up-to-date at the time of delivery to Customer;

## Supplier shall grant to Customer the right, but Customer shall not be obliged, to test or have tested products for malicious code and vulnerabilities at any time, and shall adequately support Customer;

## Supplier shall provide Customer a contact for all information security related issues (available during business hours).

## Supplier shall promptly report to Customer all relevant information security incidents occurred or suspected and vulnerabilities discovered in any Supplier Operations, Services and Products, if and to the extent Customer is or is likely to be materially affected.

## Supplier shall take appropriate measures to achieve that its subcontractors and suppliers shall, within a reasonable time, be bound by obligations similar to the provisions of this Article 32.

## Upon Customer’s request, Supplier shall provide written evidence of its compliance with this Article including generally accepted audit reports (e.g., SSAE-18 SOC 2 Type II).

# - Environmental Protection

## Supplier shall minimize environmental pollution to the extent that is technically possible and economically feasible and shall promote the use of quality-assured recycled materials in the production process. This shall not affect the provisions of Article 13.1.

## Furthermore Supplier shall comply with the stipulations set out in **Annex 8**.

# - Assignment

## Any Customer may transfer any Agreed Order and its rights and obligations thereunder, in whole or in part, to Siemens, any of its Affiliates and - in connection with any type of merger, consolidation, divestiture, dissolution and/or any other type of business combination or business reorganization, including the establishment of joint venture companies and specific purpose companies – to any third party.

## Neither Party may transfer this Agreement, or any of its rights or obligations under this Agreement, whether by law or otherwise, to any other person or entity, without the other Party’s prior written consent.

Siemens may at its sole discretion upon notification to Supplier split this Agreement and partly, i.e. as far as a specific business unit of Siemens is concerned, transfer it to one of its Affiliates (hereinafter referred to as “Split Contract”). In case of such split and transfer, this Agreement shall remain unaffected as far as other

# - Miscellaneous

## With the exception of termination notices or amendments to this Agreement, any notice under this Agreement may be provided via e-mail, even if this Agreement requires such notice to be “written”, “in writing” or “in written form”. Termination notices or amendments to this Agreement (including any waiver of the written form requirement), as well as the Agreement itself, must be executed either in writing or by electronic signature, using a software tool for electronic signatures. Th requirement of written form of this Article 35.1 can only be waived in writing specifically stating the intent to amend this Agreement or the relevant Agreed Order.

## The Parties shall each appoint a contact person, to whom information and notices required under this Agreement and other communication shall be addressed. Unless a written notification of change is received by the other Party, the contact persons are:

For Supplier: […]

[…]

[…]

For Siemens: […]

[…]

[…].

## The language of this Agreement and its documents, information and data relating or pursuant thereto, for negotiations, discussions and correspondence between the Parties shall be English, unless otherwise agreed by the Parties in individual cases or otherwise expressly stated in relevant provisions of this Agreement.

## Siemens or any Customer shall be entitled to offset any claims and/or receivables Siemens or any of its Affiliates have against Supplier under this Agreement, any Agreed Order, any other agreement or according to law against any claim of Supplier under this Agreement, any Agreed Order, any other agreement or according to law.

## Siemens shall not be obligated to fulfill this Agreement and Customer shall not be obligated to fulfill an Agreed Order 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

## If provisions of this Agreement are, or should become entirely or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions. The foregoing shall also apply if this Agreement contains any regulatory gap. Instead of the invalid or unfeasible provision, or in order to close the gap, a ruling shall be used, which, in so far as it is legally permissible, as closely as possible reflects the intentions of the Parties concluding this Agreement or, considering the meaning and purpose of this Agreement, the potential intensions of the Parties had they considered the point at the time of concluding this Agreement.

## This Agreement shall constitute the entire agreement between the Parties and shall supersede all previous communications, representations, agreements and/or understandings, whether oral or written, with respect to the subject matter hereof.

Any provisions in other documents (such as but not limited to specifications, data sheets, technical documentation, advertising materials, order confirmation and/or shipping documents) regarding legal terms, liability, restriction of use, restriction of application and/or restriction of suitability, or any other regime that changes the provisions of this Agreement shall not be applicable.

The standard terms and conditions of Supplier shall not apply to this Agreement or to any Agreed Order or other agreement concluded under this Agreement.

## A waiver of any default by either party of any of the terms and conditions of this Agreement or any Agreed Order shall not be deemed to be a continuing waiver or a waiver of any other provisions of this Agreement, but shall apply solely to the instances to which such waiver is granted.

## The Parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers on the dates and at the places mentioned below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Fantasy Company** | | **Siemens Aktiengesellschaft** | |
| Place, Date:      Name:    (Print)  Title:    (Print) | Name:    (Print)  Title:    (Print) | Place, Date:      Name:    (Print)  Title:    (Print) | Name:    (Print)    Title:    (Print) |

1. *For a reference to be indicated on the Annex please see the “Template Annex” at the end of this Agreement. The number of the optional annex in blue, e.g. Annex 2.4 indicates the article, where the reference can be found.* [↑](#footnote-ref-1)
2. *A template for this annex is contained in the document “Dangerous Goods Clause and Annex - Procurement Contracts” which can be found here:* [[*https://lkb.siemens.com/content/00000005/SitePages/Search%20Results.aspx?k=LKBLanguageGroupId=6881*](https://lkb.siemens.com/content/00000005/SitePages/Search%20Results.aspx?k=LKBLanguageGroupId=6881)](https://lkb.siemens.com/content/00000005/SitePages/Search%20Results.aspx?k=LKBLanguageGroupId=6881) [↑](#footnote-ref-2)