

General Terms and Conditions for Project (Supplies & Services) Business of Siemens Ltd India

1. GENERAL

1.1. The scope, quality and all terms and conditions for the supply of any parts, equipment, documentation or any erection or commissioning works or services (hereinafter called "Works") shall be exclusively defined by the written declarations of both parties and by the written provisions of these General Conditions (hereinafter called "Contract"). General terms and conditions of Purchaser shall apply only where expressly accepted in writing by Siemens Limited (hereinafter called "Contractor"). The Contract shall be deemed to have been concluded upon receipt of Contractor's written acknowledgment stating its acceptance of the order.

1.2. The items to be considered as Works shall be clearly brought-out in the price schedule. The prices indicated by Contractor will be calculated based on the same. In case of quantity variation Contractor's basic prices/unit rates/delivery will be mutually agreed. Quantity supplied as per approved drawing and invoiced, if it becomes surplus at site and is not installed shall be Purchaser's property and will not be taken back by Contractor.

1.3. For cost estimates, drawings and other documents (hereinafter called "Documents"), Contractor reserves all rights, title and interest in all intellectual property rights including but not limited to copyright in the Documents. Such documents may not be made available to third parties without the prior consent of Contractor and they shall, upon request, be immediately returned to Contractor if it is not awarded the Contract. Sentences 1 and 2 shall apply vice versa to Purchaser's Documents; however, these may be made available by Contractor to its sub-contractors and sub-suppliers.

1.4. Only basic drawings such as block diagrams, SLDs, GA etc., which would propose the scheme / arrangement in principle shall be submitted for evaluation of bid. Detailed drawings shall be submitted at a later stage only on award of contract for acceptance by Purchaser.

1.5. In case of delays in furnishing or change in specifications/drawings by Purchaser beyond the stipulated or agreed time schedule, the prices as well as delivery periods shall be subject to changes and shall be mutually discussed and agreed between Contractor and Purchaser.

1.6. Approval received upon submission of drawings will be considered as Purchaser's final approval of drawings for the equipment which will then be strictly manufactured/supplied accordingly. However, the corrected drawings if any will not be resubmitted to Purchaser for approval again. No further changes shall be accepted by Contractor without repercussions on the stated delivery and prices.

1.7. If the Works also comprise any software products including any relating documentation, then as for these software products and documentation, Purchaser shall have only the non-exclusive right to use software in machine-readable object code form in connection with the Works and as specified in the operation documentation, if any, without the source code. Such embedded software shall be "as is" basis. Purchaser may transfer its rights in the software only in connection with the sale or other transfer of the Works to a third party. Purchaser is only allowed to make two back-up copies of such software with use thereof solely limited to rights set forth above.

Application software supplied as a part of any contract shall only be seen as a license to use (under the terms of the license agreement) and shall in no case imply a transfer of copyright whether or not the software includes customization involving payment thereof by Purchaser.

1.8. Contractor shall be entitled to provide partial Works, unless the acceptance of the partial Works cannot be reasonably expected from Purchaser taking into consideration the interests of both Contractor and Purchaser.

1.9. Purchaser shall, at the latest when placing the order, draw the attention of Contractor to the standards and regulations *applicable* to the Works at the place of business of Purchaser and/or the place of delivery.

1.10. Unless otherwise provided in the Contract, the Works comply with Contractors' standards and procedures at the time of the conclusion of the Contract. If, after the conclusion of the Contract, regulations or laws or technical standards or Contractor's standards change, Purchaser shall place a change order if the change is mandatory by law and Contractor shall be entitled to an adequate extension of time and adjustment of the Contract Price. In all other cases Purchaser and Contractor may mutually agree on a change order.

1.11. Contractor's scope of the Works and price are based on the presumption that the pre-conditions for execution are fulfilled by Purchaser in a timely manner. The pre-conditions to be fulfilled by Purchaser include but are not limited to: (i) approval of design and drawings to the extent technically feasible at the time of Contract; (ii) the condition that Purchaser ensures that any third party (other contractors or agencies) employed by Purchaser (for eg.,

contractors for civil, mechanical work, etc.) do their job in a timely manner. Project time schedule as per tender conditions is subject to milestone interdependency with other third party or parties. In the event of any delay or deviations by a third party or parties which impede Contractor's performance, Contractor shall be entitled to reimbursement of additional cost which might be so incurred due to such delay and also the necessary adjustment in the time schedule and of adjustment of other pertinent conditions in the Contract.

2. PRICES AND TERMS OF PAYMENT

2.1. Prices shall be "ex works" (Incoterms 2010) basis and exclusive of packing charges and all taxes, duties etc. applicable to the Works or related thereto.

2.2. The payment terms for the Works shall be as per the Contract. Timely payment shall be the essence of the Contract.

2.3. If Contractor has undertaken to assemble or install/erect the Works, Purchaser shall bear all required incidental costs, including, but not limited to travel expenses and daily allowances in addition to the agreed price, unless otherwise agreed in writing.

2.4. Payments shall be made to the bank account notified by Contractor without any deduction, including, but not limited to deductions of withholding tax unless Purchaser is required to make a payment subject to such deduction. In this case the sum payable by Purchaser in respect of which such deduction is required to be made, shall be increased to the extent necessary to ensure that, after the making of the deduction, Contractor receives and retains (free from any liability for such deduction) a net sum equal to the amount it would have received had no such deduction been made. Purchaser shall hand over tax receipts of withholding tax paid to Contractor within four weeks after payment of an invoice, which was subject to withholding tax.

2.5. Purchaser shall have no right of set off or lien on any amounts payable under the Contract.

2.6. Contractor shall be entitled to increase the Contract Price in the event of change in circumstances, subsequent to the offer/bid, including but not limited to changes in FOREX rates, commodity indices, wage rates, technical standards or manufacturing methods, laws or regulations, etc., affecting the conditions or performance of the Contract.

2.7. Completion of Works shall be measured jointly on a monthly basis or lesser intervals if mutually agreed. Purchaser shall approve the completion measurement sheets or other documents within 7 (seven) days of submission, enabling timely submission of invoices by Contractor. The final completion and handing over document shall be approved by Purchaser within 15 (fifteen) days from the date of commissioning, failing which, Purchaser shall release Contractor's outstanding payment immediately.

2.8. Unless otherwise agreed in writing, the invoices shall be due for payment and shall be settled immediately, without any cash discount or other deduction. If Purchaser is in default with respect to the agreed terms of payment, it shall be liable, without reminder, to pay default interest, from the due date of payment at a rate exceeding by [4] % per annum of the current base lending rate of interest per annum issued by the State Bank of India.

2.9. If advance payment or the contractually agreed securities towards payment are not provided in accordance with the terms of the Contract by Purchaser, Contractor shall, at its option, be entitled to adhere to or terminate the Contract and shall in both cases be entitled to claim damages.

2.10. Contractor shall have the right to sell or assign the receivables to any affiliate, financial institution or third party without any reference to the Purchaser. Purchaser agrees to do all such acts required to enable such sale or assignment.

3. TAXES AND DUTIES

3.1. Unless stated otherwise, the prices are exclusive of all applicable taxes and duties such as but not limited to Excise Duty, Sales Tax (i.e. VAT/Central Sales Tax and/or Works Contract Tax and/or any related taxes called by any other name such as Turnover Tax, Additional Tax, Surcharge, etc.) Service Tax, the recovery whereof from Purchasers' is not prohibited under the provisions of the relevant law, which if levied will be charged extra. Purchaser agrees to pay or reimburse Supplier for any taxes, duties, cess or imposts, as applicable at time of delivery or as may be legislated subsequently to this Contract coming into existence and applicable at time of delivery, which Supplier or his sub-contractors or sub-suppliers are or may be required to pay to the concerned Tax authorities. Octroi / Entry Tax / Cess / Local Area Development tax (LAD) or Local Body Tax (LBT) (if applicable for entry of goods into local area) and any other taxes and duties such as Countervailing duty, Special Additional Duty commonly known as CVD and SAD (if applicable) and any other taxes and duties (including customs duty), shall be paid extra by Purchaser at actuals at the rates prevailing at the time of delivery. Exchange rate variation, if any, shall be to Purchaser's account.

3.2. For Contractor's own manufactured items, the Sales Tax is computed as per the prevailing full or concessional or nil sales tax rates, as may be applicable, depending upon the agreement of the Purchaser to furnish the relevant and appropriate concessional / exemption

General Terms and Conditions for Project (Supplies & Services) Business of Siemens Ltd India

declaration form, prescribed by the concerned sales tax authorities, to be furnished by Purchaser.

3.3 For the inter-State bought-out items, Supplier has considered the relevant transaction to be effected as a second stage inter-State sale in transit subject to Purchaser's furnishing the mandatory and appropriate Central Sales Tax form prescribed by the concerned sales tax authority. For such transactions, the said second stage inter-State sale in transit will be effected by transfer of documents of title to the goods while the said goods are in transit from one State to another, as envisaged u/s 6(2) of the CST Act, 1956.

3.4 For sales which are second stage inter-State sales (covered by exemption u/s 6(2) of Central Sales Tax Act, 1956) no Central Sales Tax will be charged subject to Purchaser's furnishing a valid Central Sales Tax declaration in Form C. In absence of such a declaration, CST at full rates applicable to the sale of the relevant goods will be charged extra. For all such second stage sales, for which the requisite Forms C are furnished by Purchaser, the prices shall be enhanced by the like percentage at which Central Sales Tax is levied at the time of delivery or sales of such goods supported by C Forms. It should however be noted in this connection that this amount of price enhancement (even though the percentage of enhancement shall always be identical with the current central sales tax rate for sale on C Forms) is towards reimbursement of the amount of central sales tax as charged by the sub-vendor to contractor and does not represent collection of Central Sales Tax or any amount by way of tax

3.5. If lump sum is quoted against Excise Duty and Central Sales Tax/ VAT, the amount shown is indicative only. The Excise Duty and Central Sales Tax/ VAT shall be reimbursed at the rates as applicable on the date of deliveries at actual as per dispatch documents and invoice.

3.6. In case of change in the rates of any taxes, duties, levies or if new taxes, duties or levies are initiated by the Central/State Government / local bodies, then the same will be to the account of Purchaser and shall be reimbursed by Purchaser. Change in judicial interpretation and /or any clarification or amendment made by the relevant authorities shall be construed to be a change in the rate of taxes, duties, levies and / or imposition of new tax, duty or levy.

3.7. If and to the extent required by applicable law, taking into account applicable double taxation agreement, Purchaser shall, (i) deduct withholding tax from the payments to Contractor and pay it to the tax authorities in Contractor's name and on Contractor's behalf and (ii) send promptly, without any requirement of notice and at Purchaser's own expenses, the official tax receipt to Contractor, evidencing payment of such taxes.

3.8. If the Works envisaged requires a different tax incidence than what is set out in clause 3.1 to 3.7, the same shall be mutually agreed between Contractor and Purchaser.

4. TRANSPORT & INSURANCE

4.1. Unless otherwise agreed, transportation and insurance shall be under Purchaser's Scope. In case transportation is under Contractor's scope, Contractor would engage its approved transporter.

4.2. Transit/ Marine Insurance shall be within Purchaser's scope. Contractor would intimate the particulars of the equipment being dispatched for Purchaser's information before 48 (forty-eight) hours of dispatch.

4.3. The transit insurance against all risks connected with the supplies from the point where the risk passes under Clause 8 to Purchaser shall be effected by Purchaser.

4.4. Unless otherwise agreed, Purchaser shall maintain or cause the end user and/or operator to maintain in force all erection and all forms of damage/liability insurance, satisfactory to Contractor. Such insurance shall either name Contractor as an additional named insured or provide that Contractor shall be protected as its interests may appear.

5. RETENTION OF OWNERSHIP

5.1. Ownership to the Works shall remain with Contractor until each and every claim against Purchaser to which Contractor is entitled under this Contract has been duly satisfied.

5.2. For the duration of the retention of ownership, Purchaser shall be prohibited from giving the Works in pledge or as security, and resale shall be permissible only in the ordinary course of business and subject to the condition that Purchaser either receives payment from its customer or retains ownership so that the property is transferred to Purchaser's customer only after fulfilment of his obligation to pay.

5.3. In case of seizure of the Works or similar acts or interventions by third parties which may result in Contractor losing ownership to the Works, Purchaser shall inform Contractor immediately thereof in writing.

5.4. In cases of fundamental non-performance of contractual obligations by Purchaser, especially a delay in payment, Contractor shall be entitled to take back the Works. The taking back, the assertion of the retention of ownership or the seizure of the Works by Contractor shall not mean termination of the Contract and restitution, unless expressly stated by Contractor.

6. TIME FOR DELIVERY AND DELAY

6.1. Delivery period shall be reckoned from the date of receipt of Purchaser's technically and commercially clear order and advance payments whichever is later. The delivery period may stand revised in case of changes in order specifications. The delivery would be made in complete unit or standard transport sections.

6.2. The delivery of material shall be as per the site conditions which will be mutually agreed by both parties (part delivery allowed).

6.3. The delivery indicated above shall be in good faith, subject to the conditions of this Contract.

6.4. Performance of the Work and fulfilment within the stipulated time for delivery is subject to the timely receipt by Contractor of all documents, necessary licenses, permits and releases, especially of plans to be provided by Purchaser, as well as fulfilment of the agreed terms of payment and other obligations by Purchaser. To the extent said conditions are not fulfilled on time, the time for delivery shall be extended accordingly unless Contractor is solely responsible for the delay.

6.5. If non-performance of the time for delivery is due to Force Majeure including impediments, accidents or disturbances, which could not be avoided despite application of due care the time for delivery shall be extended accordingly.

6.6. If Contractor is solely responsible for a delay in delivery, Purchaser, who can prove that it suffered a loss from such delay, may claim reduction in contract price for delayed deliveries at the rate 0.25 % for every completed week of delay but in no event shall the aggregate of such compensation exceed a total of 5 (five)% of the contract price of that part of supplies that is delayed or INR 10,000,000/- (INR Ten Million only), whichever is the lesser.

6.7. Claims of Purchaser for compensation which exceed the limits specified in Clause 6.6 shall be excluded in all cases of delayed delivery. This shall also apply after expiry of extension period granted to Contractor for delivery of the Works. Purchaser may be entitled to terminate the Contract for delay provided an adequate extension of time granted to Contractor has not resulted in delivery and the aggregate limit specified in Clause 6.6 is exhausted.

6.8. Any further rights and remedies of Purchaser than those as per this Clause 6 based on a delay, in particular Purchaser's right to claim damages shall be excluded.

6.9. If dispatch or delivery is delayed at Purchaser's request or due to reason attributable to Purchaser by more than one month after notice was given of the readiness for dispatch by Contractor, Purchaser may be charged storage costs for each month thereafter up to the amount of 0.5 % of the Contract price of the Works but in no event shall the aggregate storage charges exceed a total of 5 (five)% of the total Contract price. Thereafter, the Contract shall be deemed to be terminated at the option of Contractor. Contractor shall be free to dispose of the supply and recover damages from Purchaser.

7. INSPECTION AND TESTING

7.1. For witnessing the tests, Contractor shall give Purchaser 7 (seven) days advance notice. Purchaser shall confirm the date within two days of receipt of Contractor's inspection call.

7.2. The cost of deputation of Purchaser's representative i.e. lodging, boarding, allowance etc., shall be borne by Purchaser. Contractor shall arrange for necessary set up in the shop floor for witnessing the tests by Purchaser's inspector/s at Contractor's cost.

7.3. Only routine tests as per relevant standards shall be demonstrated for inspection, unless otherwise agreed. Discrepancies and/or non-compliance observed, if any, shall be clarified and/or resolved mutually, as the case may be.

7.4. Purchaser's representative shall inspect the Works and shall immediately notify Contractor in writing of any defect. If Purchaser's representative does not notify Contractor in writing, the Works are deemed to have been accepted with respect to such defects.

7.5. In case Purchaser's representative does not come to witness the test on the day mutually agreed or even after inspection and resolving of discrepancies and/or non-compliance observed, if any, does not issue a Dispatch clearance certificate, it would be construed that Purchaser has accepted and approved the tests, and standard routine test report shall be furnished to Purchaser for their information and records, wherever applicable.

7.6. Dispatch clearance certificate shall be given by Purchaser within 5 (Five) days of inspection.

8. TRANSFER OF RISK

8.1 The transfer of risk is deemed to have taken place as soon as individual equipment is delivered Ex-works (Incoterms 2010) or any other Incoterms if otherwise agreed between the Parties. In the event the

General Terms and Conditions for Project (Supplies & Services) Business of Siemens Ltd India

Works delivered by Contractor are erected and commissioned by Purchaser or Purchaser's subcontractors, and irrespective of whether such erection is supervised by Contractor or whether Contractor advises on the assembly or installation of the Works, and/or whether the commissioning or performance tests are carried out by Contractor or with the assistance of Contractor, the risk of accidental loss and damage to the Works shall transfer in accordance with the applicable law, in any case at the latest upon delivery of the Works or any portion thereof pursuant to Clause 10 or its acceptance pursuant to Clause 11.

8.2 If the dispatch, the beginning or completion of erection and commissioning, the taking over of Purchaser's own service or the trial run is delayed for reasons within Purchaser's responsibility, or if Purchaser has failed for other reasons to accept delivery, the risk of loss shall pass to Purchaser on the date when it would have passed but for such failure of Purchaser.

8.3 If the Works relate to modernization and upgrades, risk of loss shall remain with Purchaser at all times.

9. PURCHASER'S OBLIGATIONS

Unless otherwise agreed in writing, assembly, installation, commissioning and testing of the Works or any portion thereof outside Contractor's own workshop or factory shall be subject to the following provisions:

9.1. Purchaser shall provide at his own expense and in a timely manner, necessary access to site, all earth-moving and construction work and other ancillary services not specific to Contractor's trade as well as the necessary skilled and unskilled labor, materials and tools, the equipment and materials necessary for assembly, installation and commissioning such as scaffolding, lifting equipment etc., electrical and other energy including but not limited to fuels and lubricants as may be required and water at the point of use, connections, heating and lighting, necessary infrastructure including but not limited to suitable, dry and lockable rooms of sufficient size at the site for storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the assembly personnel including appropriate sanitary facilities.

Furthermore, Purchaser shall take all measures it would take for the protection of its own property to safeguard the property of Contractor and of Contractor's personnel, protective clothing and protective devices which are needed because of particular conditions on the site, all accident prevention measures necessary to protect both Contractor as well as Contractor's personnel, all health and safety measures required to protect Contractor's and its subcontractors', if any, personnel on the site.

a) Comprehensive assistance with regard to obtaining import, export and customs clearance for personal belongings and good of Contractor's and its subcontractors personnel and of the equipment, tools and goods required for the Works;

b) Comprehensive assistance to Contractor's and its subcontractor's personnel for obtaining visas, work and residence permits to the extent required for the carrying out of the Works as well as with regard to any permits required for leaving the country

9.2. Before the start of the Works, Purchaser shall make available at its own cost and expense all necessary information concerning the location, including but not limited to concealed electric, power, gas and water lines or of similar installations; as well as inform about all required data concerning static and sub-surface conditions of the site, environmental regulations, waste, contamination and presence of asbestos, and provide all necessary materials and equipment to start work at the site and carry out all preparations to such a point that the assembly, installation, commissioning or testing can be started as agreed and carried out without interruption. Access roads and the site shall be paved and clear and prepared for assembly, installation, commissioning or testing of the Works.

9.3. In case there is any variation in the site condition or work front availability or the parameters mentioned in Clause 9.2 by Purchaser, then any liabilities arising out of the same and any additional costs incurred by Contractor for completion the Works will be payable by Purchaser. In the event of any suspected presence of asbestos or any other declared, banned or restricted items, Contractor shall inform the lower limit values and Purchaser shall be responsible to comply with such limit values. Contractor reserves the right for any suspension / termination in cases of any violating conditions or the parameters and shall not be liable for the same.

9.4. If the Works or part thereof is delayed by circumstances for which Contractor is not responsible, Contractor shall be entitled to an equitable adjustment in schedule, price and other pertinent conditions of the Contract.

9.5. Purchaser acknowledges that the performance of the Works at the site, if any, may involve the generation of hazardous waste as such term is defined in the applicable law (hereinafter referred to

as "Hazardous Waste"). In the event that the Works needs to be performed on site or close to the site Purchaser shall at its expense furnish Contractor with containers, which meet all relevant legal and/or regulatory requirements for Hazardous Waste use and shall designate a waste storage facility at the site where such containers are to be placed by Contractor. Purchaser shall handle, store and dispose of Hazardous Waste in accordance with applicable law(s).

9.6. The Purchaser shall ensure that all occupational safety and health requirements as per the latest versions of The Factories Act or Building and Other Construction Workers(Regulation of Employment & Conditions of Service) Act/Rules and other Statutory regulations, as applicable, are strictly complied with at all times. At no point of time, the health and safety of the personnel, deployed by Contractor in the Purchaser's premises, shall be subjected to any hazards/risks due to acts by the Purchaser or any third party. In the event of any hazards/risks to personnel deployed by Contractor, the same shall be informed to the Purchaser by Contractor and all activities shall be suspended till the time the hazards/risks are removed by the Purchaser with no contractual liabilities on Contractor. The purchaser shall have a mechanism to collect the e-waste generated from end-of-life of the products and dispose it through the dismantler or recycler authorized from the State Pollution Control Board.

9.7. Purchaser agrees to defend against and shall indemnify Contractor and its subcontractors and hold harmless from and against any claims, losses or damages any employee of Contractor or its subcontractors or any other third party may demand from Contractor or his subcontractor and arising out of the realization of any Purchaser Health or Safety Risks or the disposal of any waste Purchaser is responsible for.

9.8. Purchaser shall take full responsibility for the health and safety of Contractor's as well as subcontractors' employees and personnel hired by Contractor from third parties for carrying out the Works at Purchaser's site. "Site" in this clause 9 shall include the immediate surroundings adjoining or bordering or adjacent to Purchaser's site.

9.9. Purchaser acknowledges and agrees that Purchaser is responsible for compliance with all applicable laws and regulations pertaining to health and safety. Purchaser shall indemnify, defend and hold harmless Contractor from Purchaser's failure to comply with the applicable health and safety laws and Purchaser shall be responsible for any incident resulting in death or personal injury or disablement of Contractor's employees resulting from any act or omission of Purchaser, including non-adherence of applicable health and safety laws.

9.10. Purchaser shall certify to Contractor at weekly intervals the hours worked by Contractor's assembly personnel and shall promptly confirm in writing the completion of the Works.

9.11. If, after completion, Contractor requests acceptance of the Works, it shall be carried out by Purchaser within two weeks of Contractor's request, failing which the Works shall be deemed to be accepted. Acceptance is also deemed to have taken place if the Works are put to use by Purchaser.

10. TAKING DELIVERY

10.1. Notwithstanding Clauses 11 and 13, Purchaser shall be entitled to refuse acceptance of Works only if the Works are substantially defective, and Purchaser notifies Contractor thereof within 3 (three) days of delivery of such Works.

10.2. Upon taking delivery or receipt, Purchaser shall check the Works and shall notify the last carrier with a copy to Contractor of any damage caused to the Works by the transport or objections regarding forwarding or transport with sufficient documentary evidence.

11. ACCEPTANCE

11.1. Notwithstanding Clause 10.1, Purchaser shall accept the Works including engineering, factory test, erection, assembly, commissioning and testing separately upon their respective completion.

11.2. In the event the Works comprises the delivery of hardware, its complete assembly and erection as well as the commissioning of the Works outside Contractor's own workshop or factory the Works or said portion thereof shall not be deemed to be completed until accepted by the Purchaser.

11.3. Notwithstanding Clauses 11.1 and 11.2, acceptance of Works comprising services including but not limited to scheduled outage services or maintenance services, irrespective of whether or not such services comprise the installation or provision of hardware or software, shall be deemed to be given after performance of the respective services.

11.4. If, after completion, Contractor requests acceptance of the Works or a part of thereof, Purchaser shall provide written acceptance within two weeks of request. However, the Works shall be deemed to be accepted if Purchaser refuses acceptance, but does not give written reasons therefore within 2 (two) weeks or does not respond within 2 (two) weeks of request. Purchaser's reasons shall at least detail the Works, Purchaser regards as unfinished or substantially defective. The Works or any part of it is also deemed to be accepted if put to use by Purchaser.

General Terms and Conditions for Project (Supplies & Services) Business of Siemens Ltd India

11.5. Purchaser shall not be entitled to refuse acceptance in case of a) defects which only insignificantly impair the use of the respective Works, b) minor deviations of the Works from the specification of the Works, c) defective installation or erection not carried out by Contractor, or d) inappropriate foundation or particular external influences not explicitly assumed to have an impact on the Works (e) part identification numbers of the Works or parts thereof differs from those of the parts originally installed or ordered due to technical developments.

11.6. As long as a defect of the Works is capable to be remedied and Contractor has not definitely refused to undertake the required remedial efforts, Purchaser shall not be entitled to refuse acceptance of the Works.

11.7. If Works or any portion thereof is ready for delivery or performance and cannot be delivered or performed due to reasons beyond Contractor's control, acceptance shall be deemed to have taken place upon Contractor's notification to Purchaser of readiness for delivery or performance.

11.8. In the event performance tests, functional tests, and/or trial runs are to be carried out by Contractor after the Works has been accepted pursuant to Clauses 10 and/or 11.3, 11.4 and 11.6, any acceptance already granted to the Works shall not be affected by any failure to pass said tests.

11.9. All costs and expenses for activities of Purchaser or any third party with regard to inspections, tests, approvals, acceptance procedures and the like shall be borne by Purchaser.

11.10. It is hereby confirmed and agreed to between the parties that no consent or acceptance shall be unreasonably delayed or withheld by Purchaser. If Purchaser, despite timely advance notice from Contractor, does not a) carry out inspection b) participate in acceptance tests c) issue dispatch clearance or convey consent or acceptance or approval within 14 (fourteen) days of receipt of the notice, or other stipulated and agreed time, the same shall be deemed to have occurred. In that case transfer of risk of loss & damage, commencement of warranty/defect liability period and payment obligations of Purchaser shall commence. This provision shall mutatis mutandis apply to clauses, including but not limited to, pertaining to acceptance of equipments, payment obligations, issuing of certificates (inspection, test, dispatch clearances, etc.) and warranty obligations.

12. CHANGE ORDER

12.1. If Purchaser desires any variations in any part of the Works, notice and nature/form of variations in writing shall be given to Contractor by Purchaser, before taking over so as to enable Contractor to make necessary arrangements and/or procedures, and to enable Parties to reach the mutual written consent as to time schedule and extra costs, and in case the supplies have been shipped or the equipment is already manufactured or in the course of manufacture, or any matter done or drawings or patterns made that require to be altered, a reasonable sum to be mutually agreed in this respect and shall be paid by Purchaser.

12.2. Purchaser shall notify Contractor of the nature and form of the requested variation relating to the Works or part thereof. After having received a variation notice, Contractor shall submit to Purchaser within reasonable time:

(a) work description, if any, to be performed and time schedule for its execution

(b) Contractor's proposal for any necessary modifications to time-schedule or to parties obligations under the Contract, and

(c) Contractor's proposals for adjustment to the Contract Price.

12.3. If Purchaser wishes that the requested variation shall be carried out, Parties shall agree upon a variation order clearly identifying the work to be performed, the price adjustment and the extension of time and as the case maybe, the adjustment of other obligations of Contractor under the Contract. Contractor shall proceed with the necessary changes only upon a confirmed and valid change order.

12.4. All extra costs due to variations shall be paid by Purchaser and such amount as agreed upon.

13. DEFECTS LIABILITY/WARRANTY

13.1. Contractor shall be liable to Purchaser only for defects in design, materials and workmanship including any non-compliance with express warranties or the failure of the Works to meet guarantees, if any, as follows:

(a) Upon written request of Purchaser, Contractor shall, at his option, repair any defect or replace any Works or re-perform any services which turn out to be defective within the defects liability period for any defect, which is due to circumstances that existed before the transfer of risk occurred.

(b) Unless otherwise specifically stated in writing by contractor, the defects liability period shall be 12 (twelve) months from date of

commissioning of the Works or part thereof or 18 (eighteen) months from delivery whichever is earlier.

c) Purchaser shall immediately inspect the Works and shall immediately notify Contractor in writing of any defects. If Purchaser does not notify Contractor in writing, the Works are deemed to have been accepted with respect to such defects.

13.2. Purchaser may withhold payments on account of defects only if the legitimacy of the asserted defects liability claim is established by Purchaser beyond reasonable doubt.

13.3. Contractor shall be given adequate time and opportunity to remedy the defect including grant of working access to Contractor to the Works, including disassembly and reassembly, without cost to Contractor.

13.4. Contractor shall not be liable for defects which only insignificantly impair the use of the respective Supply, unsubstantial deviations of the Works from the specification of the Works, natural wear and tear or damage, arising after the transfer of risk, from faulty or negligent handling, excessive strain, use of unsuitable appurtenances, defective installation or erection not carried out by Contractor, inappropriate foundation or particular external influences not explicitly assumed to impact on the Works under the Contract. Contractor shall not be either liable or responsible for the defects in the Works due to design in so far as it proves that reasonable diligence, skill and care has been taken to ensure that the design complies as required for the Works. Further Contractor shall not be liable for remedy the defect if Purchaser fails to prove that it complied with all the instructions or recommendations contained in the Operations and Maintenance Manual or other documentation of the original equipment manufacturer and Contractor including but limited to the use of the Works, in places/areas not defined as suitable in the said manuals or documentation.

13.5. Contractor shall not be liable if Purchaser or a third party carries out modifications or repairs.

13.6. Any liability for latent defects shall be hereby expressly excluded. Contractor grants to Purchaser warranty for the repaired/replaced parts for a maximum period of 6 (six) months from the date of such repair and/or replacement, as the case may be. However, such additional warranty period shall not, under any circumstances, exceed the original warranty period as per Clause 13.1(b) by more than six (6) months.

13.7. Any further rights and remedies of Purchaser as those as per this Clause 13 based on a defect, in particular any right to terminate the Contract and obtain restitution or to claim damages shall be excluded.

13.8. Contractor shall not be liable for installation, commissioning or remedying any defect in parts or equipments or services provided by Purchaser or third parties, unless Contractor has explicitly undertaken the repair of such specific defect in the Contract.

14. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT

14.1. Unless otherwise agreed upon in writing between the parties, Contractor shall solely in the country where Purchaser has its seat or registered office provide the Works free from any third party property rights or copyright, including but not limited to patents and trade secrets (hereinafter called "Intellectual Property Rights") in the country where the job-site is located.

14.2. In the event, a third party, because of an infringement of Intellectual Property Rights by the Works asserts legitimate claims against Purchaser, Contractor shall be liable to Purchaser as follows:

(a) Contractor shall, at its own option and expense, either obtain a right to use the Works, modify the Works so as not to infringe the Intellectual Property Rights, or replace the relevant supply/equipment or part thereof. If this is not reasonably possible for Contractor, Purchaser shall be entitled to terminate the Contract whereupon Contractor shall take back the relevant supply and refund the price received for such supply.

(b) Contractor's aforesaid obligations shall exist only if Purchaser has immediately notified Contractor in writing of the claims asserted by the third party, Purchaser has not acknowledged an infringement and all countermeasures and settlement negotiations are reserved to Contractor. If Contractor stops using the Works to reduce the damage or for other important reasons, it shall be to make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of Intellectual Property Rights.

(c) Claims of Purchaser shall be excluded if it is responsible for an infringement of Intellectual Property Rights.

(d) Claims of Purchaser shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of Purchaser, by a use of the Works not foreseeable by Contractor or by the Works being altered by Purchaser or being used together with products not provided by Contractor.

14.3. Further rights and remedies of Purchaser other than those as per this Clause 14 based on an infringement of third parties' Intellectual Property Rights; in particular Purchaser's right to claim damages including consequential or indirect damages as stated in clause 17.2 shall be excluded.

14.4. Purchaser may use the plans and drawings provided by Contractor only for the intended purpose. Purchaser shall not be entitled to use these plans and drawings for other purposes, especially not for the reproduction of the Works or parts of the Works including spare parts.

15. FORCE MAJEURE

15.1. If performance of any obligation under the Contract (other than an obligation of Purchaser to make payment) is prevented, restricted or delayed by events including but not limited to any act of God, natural disaster or catastrophic events such as epidemics, nuclear accidents, fire, flood, typhoons or earthquakes, act or omission of government, impediments arising out of national or international foreign trade and customs requirements, embargos, war, hostilities, riot, acts of terrorism, industrial disputes (including strike, lockout, go-slow and work to rule actions) at either party's premises or elsewhere, failure or delay in source of supply of materials or equipment, explosion, accident or breakdown of essential machinery or equipment or caused by the delay of a sub-supplier (such delay not being the fault of Contractor) or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected, then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay or its effects. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

15.2. If performance is delayed for more than 180 (one hundred and eighty) days by any cause referred to in the above sub-clause and the parties have not agreed upon a revised basis for continuing the contract at the end of the delay, then Contractor may after that period terminate the Contract by not less than 30 (thirty) days' notice in writing to the other party, in which event the provisions of the Termination Clause 20.7 shall apply.

16. IMPOSSIBILITY OF PERFORMANCE / ADAPTATION OF CONTRACT

16.1. If it is impossible for Contractor to carry out the Works for reasons for which it is responsible, Purchaser shall be entitled to claim damages. Purchaser's claim for damages shall be limited to 10 (ten) % of the value of that part of the Works which, owing to the impossibility, cannot be put to the intended use. Purchaser shall have no additional rights in particular, neither right to rescind from nor to terminate the Contract nor to reduce the remuneration nor to claim damages.

16.2. In case of changes of the applicable law or other relevant laws or changes of the engineering standards having a substantial impact on the content of the Works or its performance or considerably affect Contractor's business or in case of the events mentioned under the Clause 15.1 or for any unforeseeable event, the Contract shall be equitably adapted in order to account for the changed circumstances, including but not limited to an increase of the total price agreed for the provision of the Works under this Contract as at the date of this Contract and an adequate extension of time for project execution. Where this is not economically feasible, Contractor shall have the right to terminate the Contract. Notwithstanding any other provision in this Contract, Contractor shall be entitled to terminate the Contract when a Force Majeure event has continued for more than 180 (one hundred and eighty) days. Any such termination shall be without liability to Contractor.

16.3. If Contractor wants to make use of this right of termination, it shall notify Purchaser in writing immediately after becoming aware of the significance of this event. This notification requirement shall apply even where at first an extension of the time for delivery has been agreed between the Parties.

17. LIMITATION OF LIABILITY

17.1. Except for the express warranties stated in the Contract, Contractor disclaims any other warranties, implied or otherwise, including but not limited to implied warranties of satisfactory quality and fitness for a particular purpose or otherwise.

17.2. Contractor, to the maximum extent permitted by applicable law, shall not be in any event or under any circumstances, be liable for any defects, damages, losses or expenses whatsoever, including liability arising from infringement of intellectual property without limitation or for special, incidental, consequential, direct or indirect damages or for personal injury, loss of profit or revenue, business interruptions including interruptions of operations or loss of use, cost of capital, loss of interest, loss of production, loss of information and data, damages based on contractual claim of third parties or the Purchaser's third party contracts, or any other pecuniary loss, arising out of the use of or inability to use the Works or any part thereof.

17.3. Contractor's liability for loss of or damage to Purchaser's property shall be limited to the extent of Contractor's negligence and only then to the lesser of:

- (a) 50 (fifty)% of the payment received;
- (b) Purchaser's property all risk insurance deductible or
- (c) INR 5,000,000 /- (INR Five Million only) per occurrence with an aggregate limit of 2 (two) occurrences per calendar year. For the avoidance of doubt, the same shall apply to damage or loss

caused to the Works by defects or remedial work carried out by Contractor after delivery to or acceptance of the Works by Purchaser, as the case may be.

17.4. The total aggregate cumulative liability of Contractor for any or all claims including but not limited to Liquidated damages and indemnification or any account, whatsoever whether under the contract or tort or otherwise, shall not exceed 50 (fifty)% of payment of contract price received or 100,000,000/- (INR Hundred Million only), whichever is lower.

17.5. If a third party becomes the owner of or acquires any other right in the Works or part thereof, or if Contractor performs the Works on third party's parts, or if Works is to be performed at or delivered to any location owned or operated by a third party, Purchaser shall obtain written assurances from such third party providing that Contractor's total liability towards these third parties and Purchaser resulting from the Works shall not in aggregate exceed the limits of liability as agreed in this Contract. In any event, Purchaser hereby holds Contractor harmless and indemnifies Contractor from any claims in excess of said limitations of liability.

17.6. For the purposes of this Limitation of Liability clause, Contractor contracts also on behalf of its employees, directors, subcontractors, agents, advisors, etc., who shall have no greater liability in relation to the contract than the Contractor.

17.7. Any and all liability of Contractor under this Contract shall cease with the expiry of the Defects Liability period specified in Clause 13.

18. TRANSFER / ASSIGNMENT

18.1. The rights and obligations of each Party under this Contract may be assigned, novated, subcontracted, or otherwise transferred directly or indirectly to the third party only with the prior written consent of concerned party. Such consent shall not be unreasonably withheld by the party. Notwithstanding the aforesaid, Contractor may assign, transfer, subcontracted all or part of this Contract to any of its affiliated company or to any company, which is a member of Siemens AG Group. Purchaser may transfer its right and/or delegate its duties under this contract only with the prior written approval of Contractor.

18.2. Prior to the assignment, novation, or transfer to a third party of any rights and obligations, Purchaser shall obtain written assurances from its contracting party or, as the case may be, the transferee with respect to the limitation of and protection against liability in favour of Contractor, at least equivalent to the limitation afforded to Contractor in Clause 17. Purchaser shall indemnify and hold harmless Contractor against any liabilities incurred by Contractor in excess of those that would have been incurred had Purchaser fulfilled its obligation arising out of this clause.

19. CONFIDENTIALITY

19.1. Any information made available to Purchaser by Contractor in connection with this Contract shall be treated as confidential. Purchaser shall use the information only for the purposes specified in this Contract. This confidentiality obligation shall not apply to information which Purchaser can demonstrate, (a) is already in the public domain or becomes available to the public through no breach by Purchaser of this confidentiality undertaking or (b) was in Purchaser's possession prior to receipt from Contractor without a confidentiality undertaking or (c) has thereafter been legally obtained without confidentiality obligation from others or (d) is independently developed by Purchaser who had no access to the information received hereunder.

19.2. Purchaser agrees to appropriately instruct its employees having access to Information of Purchaser's confidentiality obligations and to duly restrict access of such information to employees who have a need to know it in their scope of employment. Purchaser agrees to carefully protect Contractor's Information, and to do this at least with the same degree of care used in protecting its similar information.

19.3. In the event Contractor has consented to the disclosure of Information to a third party by Purchaser, Purchaser shall procure that such third party undertakes to be bound by the confidentiality obligations imposed on Purchaser by this Contract and shall indemnify and hold harmless Contractor from any damage incurred through the breach of said confidentiality obligation by the third party.

19.4. The obligations set forth in this Clause 19 shall survive any termination or expiration of the Contract.

19.5. For collection, use and processing of personally identifiable or personal sensitive data or information of Purchaser, Contractor shall comply with applicable laws and regulations on data privacy protection and Contractor's Data Protection Privacy Policy, which is available on Contractor's web site (www.siemens.com). Purchaser by agreeing to the terms and conditions in this Contract gives its consent to the collection, use, processing and transfer of such personally identifiable data or personal sensitive data or information.

20. TERMINATION / SUSPENSION

20.1. A Party shall be entitled to terminate this Contract by written notice, (i) if any proceeding is instituted against the other party seeking to adjudicate such party as bankrupt or insolvent, or if the other party makes a general assignment for the benefit of its creditors, or if a

General Terms and Conditions for Project (Supplies & Services) Business of Siemens Ltd India

receiver is appointed on account of the insolvency of the other party, and, in the case of any such proceeding instituted against the other party (but not by the other party itself), if such proceeding is not dismissed within 45 (forty-five) days of such filing, or (ii) if the other party is insolvent or itself files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts.

20.2. In the event any of the following occurs Contractor may at its option suspend the provision of its obligations under this Contract: (i) Purchaser fails to make payment of any amount within 30 (thirty) days after it has become due and payable, or (ii) Purchaser fails to perform its obligations necessary for Contractor to deliver or complete the Works, or (iii) delivery of the Works is prevented by export restrictions for more than 3 (three) months; or (iv) Purchaser is insolvent or any proceeding as referred to in Clause 20.1 is instituted against Purchaser.

20.3. In the event Contractor suspends the provision of its obligations Purchaser shall pay Contractor all additional cost incurred due to such suspension. Contractor shall be entitled to take back the Works and Purchaser shall be obliged to return the Works. The taking back, the assertion of the retention of ownership or of a security interest or the taking possession through legal right or process of the Works by Contractor shall not mean termination of the Contract and restitution, unless expressly stated by Contractor. Contractor shall have the right to terminate the Contract if Works is suspended for more than 90 (ninety) days due to Purchaser's breach of Contract or Purchaser has otherwise materially breached the Contract. For the removal of all doubt, non-payment beyond the period provided for in Contractor's invoice shall constitute a material breach.

20.4. Notwithstanding any other provisions of this Contract, Contractor may terminate a part or the whole Contract with 30 (thirty) days written notice to Purchaser in case of Purchaser's material breach under Clause 20.2 (i), (ii) or (iii).

20.5. Notwithstanding anything in this clause 20, in the event of suspension of the Contract for more than 3 (three) months, Contractor shall always be entitled to adjustment of schedule, price, and payment terms, which shall also take into account any time and effort required for the ramp-up of activities after the end of the suspension.

20.6. In the event Purchaser wishes to have a right to suspend for convenience and this suspension for convenience lasts for more than 6 (six) months, Contractor shall have the right to terminate with the same compensation as for Purchasers' termination for convenience.

20.7. In the event Purchaser wishes to have a right to terminate for convenience or the Contract is terminated as per Clause 16.2 or 20.4 hereinabove, then Contractor shall be entitled to get paid for the entire original scope of Works, less any costs and expenses not incurred, and any damages incurred due to the termination. The provision in the previous sentence shall apply to suspension as well.

20.8. If Purchaser terminates for Contractor's default, it shall do so only for material default and after a lapse of reasonable cure period to remedy that defect. Purchaser shall be obligated to pay for the Works already completed or delivered by Contractor.

21. DISPUTE SETTLEMENT / APPLICABLE LAW**21.1. Negotiations**

If a dispute arises in connection with this Contract, the responsible representatives of the Parties to such Contract 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 at any time within a period of 30 (thirty) days from the date such dispute is first notified by either Party to the other.

21.2. Arbitration

All disputes arising in connection with this Contract which are not resolved pursuant to the above clause, including any question regarding the termination or any subsequent amendment of this Contract, shall be finally settled in accordance with the Arbitration and Conciliation Act, 1996 and any modifications thereto and re-enactments thereof from time to time, by one arbitrator. The Parties shall mutually appoint the arbitrator. In case of a disagreement between the Parties in this regard, Parties shall approach the appropriate court for an appointment of an arbitrator.

21.3. The seat of the arbitration shall be Mumbai. The language to be used in the arbitration proceedings shall be English. Each Party submits to the jurisdiction of courts of Mumbai for the purposes only of compelling compliance with the above arbitration provisions and for enforcement of any arbitration award made in accordance with the above provisions. This Contract shall be governed by and construed in accordance with the laws of India.

22. PERMITS AND APPROVALS

22.1. All licenses/certificates from Government Authorities/Electricity Board/PWD/other relevant authorities, authorizing the Works to be executed/ certified, shall be procured by Purchaser.

22.2. Contractor will obtain permits / approvals which are required to be obtained in its own name for completion of the Works. Purchaser will furnish its Sales Tax (VAT) Road Permits/Way Bills in the prescribed Form as may be applicable in the State under the relevant VAT law, or shall obtain such Road Permits/Way Bills from its Consignee and furnish the same for enabling smooth entry of goods into the State where delivery is to be affected. Unless expressly stated in this Contract all other permits / approvals are to be obtained by Purchaser.

23. TRAINING

The price quoted does not include training of Purchaser's personnel. However, if required, a Onetime basic training of System Operation shall be imparted at the time of handing over. Purchaser shall identify key personnel for such activity and inform Contractor at least 10 days in advance.

24. INDEPENDENCE OF CONTRACTS

Each contract awarded by Purchaser on Contractor shall be treated independently of any/all other contracts which Purchaser has placed/ may place on Contractor. In other words, there shall be no inter connection either technically or commercially including retention/deduction/set off of payments of any nature related to other contracts between Purchaser and Contractor and this contract.

25. EXPORT CONTROL

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

25.2. If required to conduct export control checks, Purchaser, upon request by Contractor, shall promptly provide Contractor with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Contractor, as well as any export control restrictions existing.

25.3. Purchaser shall indemnify and hold harmless Contractor from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Purchaser, and Purchaser shall compensate Contractor for all losses and expenses resulting thereof, unless such non-compliance was not caused by fault of the Purchaser. This provision does not imply a change in burden of proof.

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

26. MISCELLANEOUS

25.1. Mistakes, unintended gaps and contradictions in the Contract are to be treated and construed in accordance with the spirit of this Contract on the basis of mutual trust and of the mutual interests of both parties.

25.2. In the event of legal invalidity of individual stipulations, the other parts of this Contract shall remain valid. The aforesaid shall not apply where compliance with the terms of this Contract would constitute unacceptable hardship for either party.

25.3. The validity of the offer shall not be extended unless otherwise agreed, in writing, by the Contractor.