SIEMENS

General Conditions for Supplies of Siemens, Automation and Drives for Customers with a Seat or registered Office outside of Germany

Status 01. January 2002

1 General Conditions

1.1 The scope, quality and all terms and conditions of the supplies or services (hereinafter called "Supplies") shall be exclusively defined by the written declarations of both parties and by the written provisions of these conditions (hereinafter called "Contract"). General terms and conditions of the Purchaser shall apply only where expressly accepted in writing by Siemens Aktiengesellschaft (hereinafter called "Supplier"). The Contract shall be deemed to have been concluded upon receipt of Supplier's written acknowledgment stating its acceptance of the order.

1.2 For cost estimates, drawings and other documents (hereinafter called "Documents"), the Supplier 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 the Supplier and they shall, upon request, be immediately returned to the Supplier if he is not awarded the Contract. Sentences 1 and 2 shall apply vice versa to Purchaser's Documents; however, these may be made available by the Supplier to his sub-contractors and sub-suppliers.

1.3 If the Supplies also comprise any software products including any relating documentation, then, as for these software products and documentation, the relevant ‘General License Conditions for Software Products for Automation and Drives for Customers with a Seat or registered Office outside of Germany’ shall apply exclusively. The Purchaser may receive these General License Conditions for Software Products upon request.

1.4 The Supplier shall be entitled to provide partial Supplies.

1.5 The obligation to deliver the Supplies shall be subject to the condition that the required export licenses are issued and that no other restrictions exist, arising from German, European, United States of America or any other export control regulations, which are to be observed.

2 Prices and Terms of Payment

2.1 Prices shall be ex works (Incoterms 2000) excluding packing and any and all taxes, duties or imposts payable under applicable law. Purchaser agrees to pay or reimburse Supplier for any such taxes, duties or imposts which Supplier or his subcontractors or sub-suppliers are required to pay.

2.2 If the Supplier has undertaken the assembly or erection, the Purchaser shall bear all required incidental costs in addition to the agreed Contract price unless otherwise agreed.

2.3 Payments shall be made free to the bank account or payment office notified by the Supplier.

2.4 The Purchaser may set off only those claims that are undisputed or have been finally determined in a legally binding manner.

2.5 Unless provided otherwise in writing between the parties, the invoices shall be due for payment immediately and shall be settled no later than on the 30th day counting from the date of invoice, without any cash discount or other deduction allowed. If the Purchaser is in default with respect to the agreed terms of payment, he shall be liable, without reminder, to pay default interest, from the 31st day counting from the date of the invoice, at a rate exceeding by 8 % the current base rate of interest issued by the European Central Bank.

3 Retention of Title

3.1 Title to the Supplies shall remain with Supplier until each and every claim against the Purchaser to which the Supplier is entitled under this business relationship has been duly satisfied. Upon entering into the Contract, the Purchaser authorizes the Supplier to enter or notify reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at Purchaser's costs.

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

3.3 In case of seizure of the Supplies or similar acts or interventions by third parties which may result in the Supplier loosing title to the Supplies, the Purchaser shall inform the Supplier immediately thereof in writing.

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

4 Time for Delivery and Delay

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

4.2 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. Force majeure events shall include but are not be limited to mobilization, war, civil insurrection, terrorism, acts of government, non granting of required export permissions, epidemics, strike, lock-out, raw material shortages, lack of transportation, interruption of electricity and forces of nature.

4.3 If the Supplier is responsible for a delay in delivery, the Purchaser who can prove that he suffered a loss from such delay may claim liquidated damages of 0.5 % for every completed week of delay but in no event shall the aggregate of such compensation exceed a total of 5 % of the price of those Supplies which, because of the delay, could not be put to the intended use.

4.4 Claims of the Purchaser for compensation which exceed the limits specified in Clause 4.3 shall be excluded in all cases of delayed delivery. This shall also apply after expiry of a period granted to the Supplier for delivery of the Supplies. Purchaser shall only be entitled to terminate the Contract for delay provided an adequate extension of time granted to the Supplier has not resulted in delivery, the limit specified in Clause 4.3 has been reached and the Supplier has not voluntarily paid liquidated damages pursuant to Clause 4.3 in excess of the aggregate limit specified in Clause 4.3 above within ten (10) business days after receipt of a notice of termination issued by Purchaser.

4.5 Any further rights and remedies of the Purchaser than those as per this Section 4 based on a delay, in particular Purchaser's right to claim damages, shall be excluded.

4.6 If dispatch or delivery is delayed at Purchaser's request by more than one month after notice was given of the readiness for dispatch by the Supplier, the Purchaser may be charged storage costs for each month thereafter up to the amount of 0.5 % of the Contract price of the Supplies but in no event shall the aggregate storage charges exceed a total of 10 % of the total Contract price.

4.7 In the event the Purchaser suspends the provision of the Supplies the Purchaser shall reimburse the Supplier all additional cost and expense incurred due to such suspension.

5 Transfer of Risk

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

6 Assembly and Installation

Unless otherwise agreed in writing, assembly and installation shall be subject to the following provisions:

6.1 The Purchaser shall provide at his own expense and in a timely manner:

a) all earth-moving and construction work and other ancillary services not specific to the Supplier's trade as well as the necessary skilled and unskilled labor, materials and tools,

b) the equipment and materials necessary for assembly, installation and commissioning such as scaffolding, lifting equipment etc., fuels and lubricants,

c) energy and water at the point of use, including connections, heating and lighting,

d) suitable, dry and lockable rooms of sufficient size at the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the assembly personnel including appropriate sanitary facilities. Furthermore, the Purchaser shall take all measures he would take for the protection of his own property to safeguard the property of the Supplier and of the assembly personnel,

e) protective clothing and protective devices which are needed because of particular conditions on the site.

6.2 Before the start of assembly or installation, the Purchaser shall make available at his own cost and expense all necessary information concerning the location of concealed electric power, gas and water lines or of similar installations as well as all required data concerning static and sub-surface conditions of the site.

6.3 Before the beginning of assembly or installation, the Purchaser shall provide all necessary materials and equipment to start work at the site and carry out all preparations to such a point that the assembly or installation can be started as agreed and carried out without interruption. Access roads and the site shall be paved and clear.

6.4 If the assembly, installation or commissioning is delayed by circumstances for which the Supplier is not responsible, the Purchaser shall bear the costs of waiting periods and of any additional traveling of the Supplier or the assembly personnel that may be necessary.

6.5 The Purchaser shall certify to the Supplier at weekly intervals the hours worked by the Supplier's assembly personnel and shall promptly confirm in writing the completion of assembly, erection or commissioning.

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

7 Acceptance

The Purchaser shall not refuse acceptance of the Supplies for minor defects.

8 Defects Liability

The Supplier shall be liable to the Purchaser for defects including the non-compliance with express warranties or the failure of the Supplies to meet guarantees as follows:

8.1 The Supplier shall, upon written request of the Purchaser, at his option, repair any defect or replace any Supplies 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.

8.2 The defects liability period shall be 12 months from the date the transfer of risk to the Purchaser occurred or respectively completion of the respective Supply, in the event a Supply is assembled or erected by the Supplier under the Contract.

8.3 The Purchaser shall immediately inspect the Supplies and shall immediately notify the Supplier in writing of any defects. If the Purchaser does not notify the Supplier in writing, the Supplies are deemed to have been accepted with respect to such defects.

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

8.5 The Supplier shall be given adequate time and opportunity to remedy the defect. For this purpose, the Purchaser shall grant the Supplier working access to the non-conforming Supplies including disassembly and reassembly without cost to the Supplier.

8.6 If an adequate extension granted to the Supplier expires without the defect being remedied, the Purchaser shall have the right to a reduction of the Contract price or, if the portion of the Supplies which is not defective is of no use for the Purchaser, to terminate the Contract and obtain restitution.

8.7 The Supplier shall not be liable for defects which only insignificantly impair the use of the respective Supply, unsubstantial deviations of the Supplies from the specification of the Supplies, 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 the Supplier, inappropriate foundation or particular external influences not explicitly assumed to impact on the Supplies under the Contract.

8.8 The Supplier shall not be liable if the Purchaser or a third party carries out modifications or repairs improperly.

8.9 Any further rights and remedies of the Purchaser than those as per this Section 8 based on a defect, in particular any right to terminate the Contract and obtain restitution or to claim damages, shall be excluded.

9 Industrial Property Rights and Copyright

Unless otherwise agreed upon in writing between the parties, the Supplier shall provide the Supplies solely where the Purchaser has its seat or registered office free from third parties' industrial property rights and copyrights (hereinafter called "Intellectual Property Rights").

9.1 In the event a third party, because of an infringement of Intellectual Property Rights by the Supplies asserts legitimate claims against the Purchaser, the Supplier shall be liable to the Purchaser as follows:

a) The Supplier shall at his own option and expense either obtain a right to use the Supplies, modify the Supplies so as not to infringe the Intellectual Property Rights or replace the relevant Supply. If this is not reasonably possible for the Supplier, the Purchaser shall be entitled to terminate the Contract whereupon the Supplier shall take back the relevant Supply and refund the Contract price for such Supply.

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

9.2 Claims of the Purchaser shall be excluded if he is responsible for an infringement of Intellectual Property Rights.

9.3 Claims of the Purchaser shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of the Purchaser, by a use of the Supplies not foreseeable by the Supplier or by the Supplies being altered by

the Purchaser or being used together with products not provided by the Supplier.

9.4 Further rights and remedies of the Purchaser than those as per this Section 9 based on an infringement of third parties´ Intellectual Property Rights, in particular the Purchaser's right to claim damages, shall be excluded.

9.5 The Purchaser may use the plans and drawings provided by the Supplier only for the intended purpose. The Purchaser shall not be entitled to use these plans and drawings for other purposes, especially not for the reproduction of the Supplies or parts of the Supplies.

10 Impossibility of Performance / Adaptation of Contract

10.1 If it is impossible for the Supplier to carry out the Supplies for reasons for which he is responsible, the Purchaser shall be entitled to claim damages. The Purchaser's claim for damages shall be limited to 10 % of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. The 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.

10.2 If unforeseeable events in the context of Clause 4.2 substantially change the economic implication or content of the Contract or have a substantial impact on Supplier's business, the Contract shall be adapted appropriately and in good faith. Where this is not economically reasonable, the Supplier shall have the right to terminate the Contract. Notwithstanding any other provision in this Contract, the Supplier shall be entitled to terminate the Contract when a force majeure event has continued for more than 180 days. If the Supplier wants to make use of this right of termination, he shall notify the Purchaser in writing immediately after becoming aware of the force majeure event. This notification requirement shall apply even where at first an extension of the time for delivery had been agreed between the Parties.

11 Further Liability

11.1 Any and all further rights and remedies of the Purchaser against the Supplier for whatsoever legal reason, shall be excluded. In particular, the Purchaser shall not be entitled to challenge the Contract for material error, including any challenge of the Contract for any error related to defects of the Supplies. The Purchaser shall also not be entitled to claim damages; this shall refer in particular to claims for loss of production, loss of use, loss of orders or profit and other direct, indirect or consequential damage.

11.2 The aforesaid shall not apply if liability is mandatory, e.g. in accordance with the Product Liability Act, in cases of intent, gross negligence by directors and officers of the Supplier or in the case of willful hiding of a defect. Clause 11.2 shall also be applicable to Sections 4, 8, 9 and 10.

11.3 These limitations of liability shall also apply for the benefit of the Supplier's subcontractors, suppliers, agents, directors, officers and employees.

12 Transfer

Supplier may transfer the rights and duties arising from the Contract to a third party. This transfer does not become effective if the Purchaser objects to said transfer within four (4) weeks of receipt of such notification. This shall be pointed out by Supplier in the notification.

13 Confidentiality

Any information made available to the Purchaser by the Supplier in connection with this Contract shall be treated as confidential. The 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 Supplier without a confidentiality undertaking or

c) has thereafter been legally obtained without confidentiality obligation from others or

d) is independently developed by the Purchaser who had no access to the information received hereunder.

The obligations set forth in this Section 13 shall survive any termination of the Contract.

14 Dispute Settlement / Applicable Law

14.1 All disputes arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (Paris) by three arbitrators appointed in accordance with the said Rules. Each party shall nominate one arbitrator for confirmation by the competent authority under the Rules (Appointing Authority). Both arbitrators shall agree on the third arbitrator within 30 days. Should the two arbitrators fail, within the above time-limit, to reach agreement on the third arbitrator, he shall be appointed by the Appointing Authority. If there are two or more defendants, any nomination of an arbitrator by or on behalf of such defendants must be by joint agreement between them. If such defendants fail, within the time-limit fixed by the Appointing Authority, to agree on such joint nomination, the proceedings against each of them must be separated.

The language to be used in arbitration proceedings shall be English. The seat of arbitration shall be Zurich, Switzerland. The procedural law of this place shall apply where the Rules are silent.

14.2 This Contract shall be subject to Swiss law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

15 Miscellaneous

15.1 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.

15.2 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.