

Siemens Conditions of Purchase

Dated: 01 November 2019

1. Definitions

“**Affiliates**” means any entity which is directly or indirectly controlling, controlled by or under common control with Siemens.

“**Conditions**” shall mean these Conditions of Purchase.

“**Contract**” shall mean contract for the purchase of Works covered under a Purchase Order, the Conditions and all documents attached to or incorporated by reference.

“**Goods**” shall mean the goods or other materials to be supplied by the Supplier pursuant to the Purchase Order.

“**Purchase Order**” shall mean the purchase order to which the Conditions are referred to or attached, signed by (an) authorized representative(s) on behalf of Siemens and issued to the Supplier.

“**Services**” shall mean the services to be provided by the Supplier under the Contract.

“**Siemens**” shall mean the Siemens legal entity named in the Purchase Order being a corporation duly registered and existing under the laws of the Republic of the Philippines.

“**Supplier**” shall mean the person(s), natural or juridical, firm or entity to whom the Purchase Order is issued.

“**Warranty Period**” shall mean:

(a) For Works involving installation, commissioning and/or services:

(i) Three (3) years for material deficiencies including those deficiencies set out in Clauses 9.1 (a), (c), (d), (e) and (f); or

(ii) Five (5) years for deficiencies in title, from Final Acceptance of the Works

(b) For Works not involving installation, commissioning and/or services:

(i) Three (3) years for material deficiencies including those deficiencies set out in Clauses 9.1 (a), (c), (d), (e) and (f); or

(ii) Five (5) years for deficiencies in title, from receipt by Siemens of the Goods at the designated place of receipt.

“**Works**” shall mean all of the Supplier’s obligations and responsibilities to be performed under the Contract or Purchase Order including the supply of Goods and/or the performance of services.

2. Order and Confirmation of Order

2.1 Acceptance of the Purchase Order shall be deemed as an acceptance of these Conditions.

2.2 Siemens may cancel the Order if the Supplier has not confirmed acceptance of the Purchase Order in writing within two (2) weeks from the date of the Purchase Order. If the Supplier commences the Works notwithstanding its failure to confirm its acceptance of the Purchase Order in writing, Siemens shall consider the Purchase Order and these Conditions as having been fully accepted by the Supplier as at the date of the Purchase Order.

2.3 Any alterations, amendments or additions to the Purchase Order or these Conditions shall only become part of the Contract if Siemens accepts such alterations, amendments or additions in writing. In particular, Siemens is bound by the terms and conditions of the Supplier or any other terms and conditions from the Supplier only to the extent that these are in accordance with Siemens’ own General Terms and Conditions or if Siemens specifically agrees to such terms and conditions of Supplier or any other terms and conditions in writing. The acceptance of deliveries or services or payments by Siemens does not constitute such agreement.

2.4 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, penalty, interest, liquidated damages, liability, restriction of use, restriction of application and/or restriction of suitability, or any other provision that changes the provisions of these Conditions shall not be applicable.

2.5 Nothing in the Purchase Order and these Conditions shall prejudice any condition or warranty, expressed or implied, or any legal remedy which Siemens may be entitled to in relation to the Works under any law, rules or regulation.

3. Rights of Use

3.1 The Supplier hereby grants Siemens the following non-exclusive, transferable, worldwide and perpetual rights:

3.1.1 to use the Goods and Services, to integrate them into other products and to distribute them worldwide;

3.1.2 to use or allow others to use software and its related documentation (hereinafter collectively referred to as “Software”) in connection with the installation, launch, testing and operation of the Software;

3.1.3 to sublicense the right of use under Clauses 3.1.2 above to subsidiaries (as those terms are defined by Philippine corporate law and jurisprudence) and Affiliates, hereinafter “Subsidiaries” and “Affiliates”) of Siemens and to other distributors and end Customers;

3.1.4 to license Subsidiaries and Affiliates and other distributors, to sublicense the right of use under Clause 3.1.2 above to end Customers;

3.1.5 to use the Software for integration into other products and to copy the Software, or to allow Subsidiaries and Affiliates or other distributors to use and copy the Software;

3.1.6 to distribute, sell, hire out, lease, make ready for download or make publicly available the Software, e.g. in the context of Application Service Providing or in other contexts, and to copy the Software to the extent required, always provided that the number of licenses being used at any one time does not exceed the number of licenses purchased;

3.1.7 to sublicense the right of use under Clause 3.1.6 above to Subsidiaries and Affiliates and other distributors.

3.2 In addition to the rights granted in Clause 3.1 above, Siemens, Subsidiaries and Affiliates and other distributors are authorized to allow end Customers to transfer Software licenses.

3.3 All sublicenses granted by Siemens must contain appropriate protection for the intellectual property rights of the Supplier in the Software. All sublicenses must contain any contractual provisions used by Siemens to protect its own intellectual property rights.

3.4 The Supplier shall inform Siemens - at the latest at the time the order is confirmed - whether the products and services to be delivered contain “open source components.”

In the context of this provision “Open Source Components” means any software, hardware or other information that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and/or to distribute (e.g., GNU General Public License (GPL), the GNU Lesser GPL (LGPL), the BSD License, the Apache License or the MIT License).

Should the products and services delivered by the Supplier contain Open Source Components, the Supplier shall comply with all applicable open source license terms and shall grant all those rights to Siemens and provide all information which Siemens needs in order to comply itself with the applicable license terms. In particular, the Supplier must deliver to Siemens at the latest at the time the order is confirmed the following:

- A schedule of all open source components used, indicating the relevant license, its version and including a copy of the complete text of such license and including a reference to copyright and/or authorship. Such schedule must have an understandable structure and contain a table of contents.
- The complete source code of the relevant open source software, including scripts and information regarding its generating environment insofar as the applicable open source conditions require this.

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3.5 The Supplier shall by the time of order confirmation at the latest inform Siemens in writing whether any open source licenses used by the Supplier might be subject to a "Copyleft Effect" which could affect the products of Siemens. In the context of this provision, "Copyleft Effect" means that the provisions of the open source license require that certain of the Supplier's products, as well as any products derived from these, may only be redistributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed. In case any open source licenses used by the Supplier are subject to a "Copyleft Effect" as defined above, then Siemens is entitled to cancel the order within fourteen (14) days from the receipt of this information.

4. Delivery or Performance; Term and Penalty for Breach

4.1 The Works shall be performed according to the requirements of the Purchase Order. The dates and times stated in the Purchase Order for delivery or completion (including extensions granted in writing) are of the essence. Notwithstanding any failure or delay of Siemens to indicate the dates and times of any extension granted, the dates and times for delivery or completion shall not be deemed to have been set at large.

4.2 For the purposes of establishing the timeliness of delivery or rectification, the relevant point in time is the date of receipt at the place of receipt designated by Siemens for deliveries NOT involving installation, commissioning or rectification services. For deliveries involving installation, commissioning or rectification services, the relevant point in time shall be the date of acceptance.

4.3 Where any delay in delivery or performance of the Works or rectification is anticipated by the Supplier, Siemens shall be notified immediately of such anticipated delay. The Supplier shall advise Siemens of steps which can be implemented to avoid or mitigate the consequences of the delay. However, Siemens is not bound to accept or obliged to follow any such advice of the Supplier.

4.4 If any agreed deadline is not met for reasons attributable to the Supplier (which include reasons attributable to the Supplier's sub-suppliers or subcontractors and their respective sub-suppliers and subcontractors, or to Supplier's business partners and their respective sub-suppliers and subcontractors) the Supplier hereby agrees to pay as liquidated damages for each working day of delay an amount equivalent to 0.3% of the Contract Price, up to a maximum of 10% of the total value of the Contract Price. This penalty may be claimed beyond the date of final payment without need of any reservation of rights by or demand from Siemens. Additional or other statutory rights are not affected hereby.

4.5 The Supplier shall allow person(s) duly authorized by Siemens to enter the premises where the Goods/Works or parts thereof is manufactured or assembled or any work in connection therewith is being carried out and shall provide shall schedules, reports or other information as Siemens may require to monitor the progress of the Works and satisfy Siemens that all practicable measures have been taken and are being taken to meet the due date and/or time of delivery.

4.6 Unless otherwise agreed, the costs of delivery and packaging shall be borne by the Supplier. For pricing ex works or ex warehouse of the Supplier, transport shall in each case be at the lowest possible cost, insofar as Siemens has not requested a particular method of delivery. Any supplementary costs arising from non-conformity with the transport requirements shall be borne by the Supplier. Where the price is quoted free to the recipient, Siemens may also determine the method of transportation. Any supplementary costs arising from the need to meet the delivery deadline by way of expedited delivery shall be borne by the Supplier.

4.7 Each delivery shall include a packing note or delivery note with details of the contents as well as the complete order number. Notice of dispatch shall be provided immediately with the same information.

4.8 If the transport is performed by a carrier commissioned by Siemens, the Supplier will inform the carrier of the necessary data concerning dangerous goods in accordance with legal requirements.

4.9 If Siemens informs the Supplier that following the initial transport another transport with a different mode of transport is scheduled, the Supplier will also follow the relevant legal requirements concerning dangerous goods with regard to such on-going transport.

4.10 The Supplier shall be liable for any expenses and/or damages incurred by Siemens due to any breach of the obligations under these Conditions.

5. Title and Risks; Dispatch and Place of Performance

5.1 For deliveries not involving installation or commissioning, title and risk shall pass to Siemens upon receipt by Siemens of the Goods at the designated place of receipt.

5.2 For deliveries involving installation, commissioning or services, the title and risk shall pass to Siemens upon acceptance

5.3 Clauses 5.1 and 5.2 are without prejudice to any right of rejection arising hereunder.

6. Inspection upon receipt

6.1 Siemens 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. However, Siemens' acceptance / acknowledgement on any delivery note / other documentation presented for signature shall not be evidence that the Goods are delivered in good condition, are of the correct quality or are otherwise meeting contractual requirements.

6.2 Should Siemens discover any deficiency in the course of these inspections, it shall inform the Supplier of such deficiency. Should Siemens discover a deficiency at any later stage, it shall also notify the Supplier.

6.3 Complaints may be raised within one (1) month of delivery of a product or performance, and insofar as deficiencies are not discovered until commissioning, processing or first use, within one (1) month of detection.

6.4 In this regard Siemens shall have no other duties to the Supplier other than the duties of inspection and notification above.

7. Invoices

The order number as well as the number of each individual item shall be detailed in invoices. Insofar as any such details are omitted, invoices shall not be payable. Copies of invoices shall be marked as duplicates.

8. Payment

8.1 Prices, payment terms and currency shall be as specified in the Purchase Order.

8.2 Unless agreed otherwise, payment shall be effected within ninety (90) days from the date the payment conditions stated in the Purchase Order are achieved and the appropriate invoice from the Supplier together with such supporting documents as may be required or deemed appropriate by Siemens are received by Siemens. If payment is made within fourteen (14) days, Siemens is entitled to a 3% discount, if payment is made within thirty (30) days Siemens is entitled to a 2% discount.

8.3 The period for payment shall commence as soon as any delivery or service is completed and a correctly issued invoice is received pursuant to Clause 8.2. Insofar as the Supplier is required to provide material testing, test records or quality control documents or any other documentation as such shall be part of the requirements of the completeness of the delivery or performance.

8.4 Siemens may deduct or withhold a reasonable sum from any payments due if any deficiency or defect is not corrected within a stipulated period.

8.5 Payment shall be deemed overdue only if Siemens fails to pay in response to a payment demand note received after payment becomes due.

8.6 Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with the Contract.

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9. Warranty

9.1 The Supplier warrants to Siemens that:

- (a) the components, equipment and materials incorporated into the Works shall be new, of merchantable quality and fit for its intended purpose;
- (b) title to the Works shall be free from any liens created by the Supplier or its sub-suppliers;
- (c) the Works shall be free from defects or deficiencies in design, materials or workmanship;
- (d) the Works shall conform to or perform according to the specifications, drawings and other descriptions contained in the Contract;
- (e) the Works will comply in all respects with all relevant requirements of any statute, order rules or regulations, or other instrument having the force of law, which may be in force where the Works are performed, as the case may be; and
- (f) the Services shall be provided with due skill and care to a standard reasonably expected of a person performing the business of the Supplier.

9.2 The Supplier shall:

- (a) be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied by it and carefully check all information provided by Siemens; and
- (b) indemnify Siemens against all loss, costs, damages or expenses arising out of breach of the warranties stated in Clause 9.1.

9.3 If deficiencies are identified before or during the transfer of risk or during the Warranty Period, the Supplier must at its own expense and at the discretion of Siemens either repair the deficiency or provide re-performance of services or replacement of deliveries ("rectification"). This provision also applies to deliveries subject to inspection by sample tests. The discretion of Siemens shall be exercised fairly and reasonably.

9.4 The Warranty Period shall commence at the point of transfer of risk in accordance with Clauses 5.1 and 5.2. If delivery is required to be effected to locations where Siemens is operating outside its premises, the Warranty Period shall commence with the acceptance by the end customer, in no case later than one (1) year after transfer of risk as may be mutually agreed upon by Siemens and the Supplier.

9.5 The Warranty Period shall be extended by a period equal to the period during which the Works or part thereof cannot be used by reason of that defect or damage.

9.6 Should the Supplier fail to rectify (i.e. repair or replace) any defect or deficiency within a reasonable time period set by Siemens, Siemens shall be entitled to:

- (a) terminate the contract in whole or in part without being subject to any liability for damages; or
- (b) demand a reduction in the Purchase Price; or
- (c) undertake itself any rectification or substitute performance at the Supplier's risk and cost or arrange for the same to be done, and Supplier shall pay all costs arising from or related to the rectification or substitute performance within fourteen (14) days from the date of notice requesting payment, failing which, Siemens may deduct from the Purchase Price all such costs in accordance with Clause 8.4; and
- (d) claim damages in lieu of, or in addition to performance as set out in 9.6 (c) above, at the sole discretion of Siemens.

9.7 If the Supplier demonstrates inability or lack of effort to rectify or re-perform, Siemens may, without prejudice to its right to demand rectification or re-performance, immediately claim damages even before the expiration of the period within which Supplier should have rectified or re-performed or even if Siemens does not undertake repair, or re-performance or replacement within said period or thereafter.

9.8 Any rectification may take place without a further deadline at the expense of the Supplier if delivery is after the original deadline.

9.9 Siemens' rights under Clause 9.8 may be exercised in Siemens' sole discretion if Siemens has a strong particular interest in immediate rectification in order to avoid any liability of its own for delay or for other reasons of urgency and it is not reasonable for Siemens to request the Supplier to rectify the deficiency within a reasonable time period.

9.10 The above-mentioned rights shall expire one (1) year from the date of notification of the deficiency but in no instance before the expiry of the warranty periods set out in this Clause.

9.11 If the Supplier provides subsequent performance or repairs, the Warranty Period shall begin to run once again.

9.12 Supplier shall bear the costs and risk related to the return of deficient products. The above remedies shall be without prejudice to any other rights and remedies which Siemens may have under the provisions of applicable laws, including but not limited to the Civil Code of the Philippines and the Rules of Court.

9.13 Supplier is obliged to examine components such as, e.g., raw material, provided by Siemens or provided by Supplier's suppliers, manufacturers or other third parties at the time of receipt of such components as to whether these components show any obvious or hidden defects. In case any defects are discovered in the course of such inspections, the Supplier shall immediately inform its suppliers, its manufacturers or such other third parties or – in case the components are provided by Siemens – inform Siemens.

10. Intellectual Property Rights: Third Party Rights

10.1 It is essential that the Goods are delivered free of any third-party rights forming part of, encumbered unto, attached to or otherwise limiting or preventing the free and unlimited conveyance or disposal of the Goods by Siemens. The Supplier is under a duty to verify title and inform Siemens of any possible conflicting industrial and intellectual property rights over the Goods. Any breach of such duty shall constitute a material violation of these Conditions.

10.2 The Supplier warrants that neither the sale nor the use of the Works or the Goods will infringe any Philippine or foreign patent, trademark, registered design, copyright or other intellectual property rights whether or not similar to any of the foregoing.

10.3 Supplier shall indemnify Siemens from all actions, costs (including legal fees), claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged intellectual property infringement, and at the Supplier's own expense, defend (or at Siemens' option) assist in the defense of any proceedings which may be brought in that connection.

10.4. Duty to Verify Title / Duty to Inform

It is essential that the products are delivered free of any third-party rights. Thus, the Supplier is under a duty to verify title and inform Siemens of any possible conflicting industrial and intellectual property rights. Any breach of such duty is subject to the normal statutory limitation period.

11. Assignment and Subcontracting

11.1 Supplier may only subcontract to third parties who are acceptable to Siemens and only with the prior written consent of Siemens.

11.2 Supplier may not assign or transfer the Contract or any part thereof or any of the Supplier's obligations or benefits or claims to any other person without Siemens' written consent. Any attempt by Supplier to do so shall be deemed by Siemens as Supplier's breach of Contract.

11.3 Any breach of the above obligations by the Supplier subcontract shall entitle Siemens to terminate the Contract in whole or in part and claim damages from Supplier.

12. Provided Material

12.1 Material provided by Siemens remains the property of Siemens and is to be stored, labeled as property of Siemens and administered separately. Their use is limited to the orders of Siemens only. The Supplier shall supply replacements in the event of reduction in value

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or loss, for which Supplier is responsible, even if such damage or loss is caused or occasioned by simple negligence. This rule shall also apply to the transfer of allocated material.

breach has not been remedied by the Supplier within a reasonable grace period set by Siemens.

12.2 Any processing, alteration or transformation of Siemens provided material shall only be had and take place at the instruction of, and for Siemens. Siemens shall, however, immediately become owner of the new or transformed product regardless of whether or not the new or transformed product has been made at the instruction of Siemens. Should this be impossible for legal reasons, Siemens and Supplier hereby agree that Siemens shall be the owner of the new product at all times during the processing or transformation. The Supplier shall keep the new product safe for Siemens at no extra cost and in so doing exercise the duty of care of a merchant.

13. Confidentiality etc.

13.1 Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and materials provided by Siemens, as well as any materials derived therefrom, shall not be made available to any third party nor used for any other purpose than those contractually agreed except upon prior written consent of Siemens. Such materials shall be protected against unauthorized access or use. Subject to any further rights Siemens may demand that such materials be returned if the Supplier breaches these duties.

13.2. The Supplier shall treat as confidential the knowledge and findings, documents, terms of reference, business processes or other information that it receives from or about Siemens in the context of performing the deliveries and services, as well as the conclusion of the Contract and any results, with regard to third parties – and shall keep the same confidential beyond the term of the Contract – for as long as and insofar as such information has not become publicly known by legal means or Siemens has not consented in writing to its transfer in the individual case. The Supplier shall use this information exclusively for the purpose of performing the deliveries and services. The Supplier shall not make available to any third party any information obtained from Siemens if such information is not already general knowledge or has not been lawfully obtained by the Supplier. Insofar as Siemens agrees to any subcontracting to a third party, such third party shall agree to such terms in writing.

13.3 Mention as Reference Customer

Only upon Siemens' prior written approval, the Supplier shall be allowed to mention Siemens as a reference customer and/or make reference to products or services which Supplier has developed during the performance of an order for Siemens.

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

14.1 The Supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the Supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, the Supplier will take responsibility for the health and safety of its employees, the Supplier will act in accordance with the applicable environmental laws. The Supplier will take adequate measures to avoid deployment of so-called conflict minerals and to create transparency over the origin of raw materials and will use best efforts to promote this Code of Conduct among its suppliers.

14.2. The Supplier shall provide the necessary organizational instructions and take measures, particularly with regard to the following security: premises security, packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g., AEO, C-TPAT). The Supplier shall protect the goods and services provided to Siemens or provided to third parties designated by Siemens against unauthorized access and manipulation. The Supplier shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.

14.3 In addition to other rights and remedies Siemens may have, Siemens may terminate the contract and/or any purchase order issued there under in case of breach of these obligations by the Supplier. However, provided that Supplier's breach of contract is capable of remedy, Siemens' right to terminate is subject to the proviso that such

15. Hazardous Goods

The Supplier will mark all hazardous goods with international danger symbols and display the name of the material in English. Transport and other documents may include declaration of the hazard and name of the material in English. The Supplier shall observe the requirements of Philippine legislation or the legislation of the jurisdiction in which the Goods are manufactured, delivered or where the Works are carried out, whichever set of legislation provides higher set of standards, and any relevant international agreements related to the packing, labeling and carriage of hazardous goods.

16. Product Conformity, Product Related Environmental Protection, Duties to Declare, Dangerous Goods, Occupational Health and Safety

16.1 Should the Supplier deliver products, to which product related statutory and legal requirements apply in view of their further marketing in the European Economic Area or the Philippines, as applicable, or to which corresponding requirements apply regarding other countries notified by Siemens to the Supplier, then the Supplier must ensure compliance of the products with these requirements at the time of the transfer or risk. Furthermore, the Supplier must ensure that all documents and information which are necessary to provide proof of conformity of products with the respective requirements can be furnished immediately to Siemens upon request.

16.2 Should the Supplier deliver legally permissible products, substances of which are set out in the so-called "List of Declarable Substances" (www.bomcheck.net/suppliers/restricted-and-declarable-substances-list) applicable at the time of the order or which are, however, subject to statutorily-imposed substance restrictions and/ or information requirements (e.g. REACH, RoHS), Supplier shall declare such substances in the web database BOMcheck (www.BOMcheck.net) or in a reasonable format provided by Siemens no later than the date of first delivery of products. The foregoing shall only apply with respect to laws which are applicable at the registered seat of Supplier or Siemens or at the designated place of delivery requested by Siemens.

16.3 Should the delivery contain goods which – according to international regulations – are classified as dangerous goods, the Supplier will inform Siemens hereof in a form agreed upon between Supplier and Siemens, but in no case later than the date of order confirmation.

16.4 The Supplier is obliged to comply with all legal requirements regarding the health and safety of the personnel employed by Supplier. It must ensure that the health and safety of its personnel as well as indirect sub-contractors employed to perform the deliveries and services is protected.

17. Cybersecurity Clause

17.1 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).

17.2 "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.

17.3 Should products or services contain software, firmware, or chipsets:

- (i) 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);
- (ii) Supplier shall continue to support and provide services to repair, update, upgrade and maintain products and services including the

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provision of patches to Customer remedying vulnerabilities for the reasonable lifetime of the products and services;

- (iii) 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;
- (iv) 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;
- (v) Supplier shall provide Customer a contact for all information security related issues (available during business hours).

17.4 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.

17.5 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 section.

17.6 Upon Customer's request, Supplier shall provide written evidence of its compliance with this section including generally accepted audit reports (e.g., SSAE-16 SOC 2 Type II).

18. Export Control and Foreign Trade Data Regulations

Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). Supplier shall advise Siemens in writing within two weeks of receipt of the order - and in case of any changes without undue delay - of any information and data required by Siemens to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation:

- All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
- the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
- the country of origin (non-preferential origin); and - upon request of the Siemens- Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).

19. Indemnities and Liabilities

19.1 The Supplier shall indemnify Siemens against all loss, claims, expenses and liabilities which Siemens may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property by reason of acts or omissions of the Supplier.

19.2 The Supplier shall indemnify Siemens against all loss, expenses and liabilities caused to Siemens whether directly or indirectly, or as a result of the action, claim or demand of any third party, by reason of any breach by the Supplier of these Conditions or by other statutory provision relevant to the Purchase Order.

19.3 Whenever any sum of money is recoverable from or payable by Supplier to Siemens in connection with the performance of the Works by the Supplier of the Purchase Order, Siemens may deduct the sum then due or which at any time thereafter may become due to the Supplier under any other order or transaction placed or entered into between the Supplier and Siemens.

19.4 Other than Siemens' obligation to pay the Purchase Price, Siemens' liability under the Contract shall be for negligent conduct only and exclude liability for special or punitive damages, financial/economic loss, loss of profit, loss of production, loss of information, indirect or consequential damages. In no event shall Siemens' liability whether under contract, tort (including negligence) strict liability or other legal theory exceed the Purchase Price.

20. Insurance

The Supplier shall, at its expense, effect and maintain valid insurance policies covering loss of or damage to the Works and such other insurance as may be required under applicable legislation on terms acceptable to Siemens. The Supplier shall provide satisfactory evidence of such insurance policies upon request by Siemens.

21. Variation

21.1 Siemens may, at any time, vary the design, material or specification of the Works. If any such variation causes a change in the cost or time required of the delivery of the Goods or the performance of Services, an equitable adjustment shall be made to account for the change in delivery schedule and/or price.

21.2 The Supplier, upon Siemens' prior written approval, may change or vary the Works provided that the Supplier shall in writing inform Siemens of the merit and demerit of a variation. The decision to proceed with variation shall be at Siemens' sole discretion.

21.3 Any variation shall be confirmed by Siemens in writing.

22. Force Majeure; Suspension, Termination, or Cancellation of Contract

22.1 If either Supplier or Siemens is delayed or prevented from performing its obligations under this Contract, by unforeseeable circumstances beyond the reasonable control of either party ("force Majeure"), including but not limited to: any form of government intervention, war, civil war/civil unrest, natural disasters, fire, explosion, non-issuance, revocation or suspension of export/import licenses, strikes and lock-outs relevant to this Contract, changes of law after the execution of this Contract, such performance shall be suspended. If the Works or any part thereof which was suspended due to force majeure cannot be completed within a reasonable time (in no case be less than thirty (30) days from the commencement of the suspension), this Contract may be terminated by either party. In such case, Siemens will pay to the Supplier such sum as may be fair and reasonable under the circumstances in respect of the Works performed by the Supplier prior to termination, and in respect of which Siemens has received the benefit. This Condition can only have effect if this is called into operation by the party wishing to rely on it by giving prior written notice to the other party.

22.2 Subject to Clause 21.1, Siemens reserves the right to suspend the Works or terminate the whole or any part of the Contract or any consignment on account thereof, if the same is not completed in accordance with the specifications stated in the Purchase Order and these Conditions, in particular (but without prejudice to the generality of the foregoing) with Clauses 4 and 9 and their respective sub-clauses, compliance with which by the Supplier is of the essence.

22.3 Should the Works be suspended under Clauses 21.1 or 21.2, Siemens and Supplier shall each be respectively liable for their own costs and expenses of any kind during such suspension. Supplier shall not be entitled to claim for any such costs and expenses arising from or in relation to the suspension whether incurred before, during or after the suspension, including costs and expenses to resume with the Works.

22.4 Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are applied for or commenced in relation to the assets of the Supplier, Siemens may terminate the contract and/or any purchase orders issued there under.

22.5 In the event that Siemens terminates the Contract as to all or any of the Works, Siemens shall be entitled to purchase or procure for a third party a like quantity of the Works of similar description and quality, or continue to utilize existing facilities, deliveries or services already performed by the Supplier in exchange for reasonable payment, or any other reasonable alternative thereto. The Supplier shall be liable to reimburse to Siemens on demand all expenditure incurred by Siemens in connection with the termination, including any increase in the Purchase Price.

22.6 In addition to any rights provided by law to withdraw or cancel a contract, Siemens may cancel the Contract in whole or in part in case (a) the Supplier is in delay with its delivery or service and such delay – despite a corresponding reminder by Siemens – persists for more than two (2) weeks after receipt of such reminder or in case (b) the

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adherence to the Contract by Siemens cannot reasonably be expected from Siemens because of a reason attributable to the Supplier and taking into consideration the circumstances of the case and both parties' interests. This might, in particular, apply in case of an actual or possible deterioration of Supplier's financial situation; thus, threatening the due fulfillment of Supplier's obligations under the Contract.

23. Reservation Clause

Siemens's obligation to fulfill the agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions, unless Siemens was or should have been aware of these obstacles when the agreement was concluded.

24. Supplementary Provisions

24.1 Insofar as the provisions of these Conditions of Purchase do not regulate certain matters, relevant statutory provisions shall apply.

24.2 The Supplier shall be liable for any expenses and/or damages incurred by the Customer due to any breach of these Conditions, in particular of Clauses 3, 4, 5, 9, 10.4, 14, 15, 16, and 17, unless the Supplier is not responsible for such breach.

25. Dispute Settlement and Applicable Law

25.1 These Conditions of Purchase shall be governed and construed in accordance with Philippine law excluding the provisions of the United Nations Law on the Sale of Goods of 11 April 1980.

25.2 If any dispute arises in connection with this Contract, the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such dispute. Each Party can request from the other that on both sides a senior representative becomes involved in the negotiations. Each Party is at any time entitled to terminate the settlement negotiations and to have recourse to an Alternative Dispute Resolution (ADR) proceeding set forth in the following Clause through written notification to the other Party.

25.3 If the Parties are not able to reach an amicable settlement pursuant to the preceding Clause, they shall try to agree on an appropriate ADR proceeding (for example mediation, conciliation, expert determination, dispute board, adjudication). If they do not reach agreement on the appropriate ADR proceeding within 14 days after failure of the

settlement negotiations or if the dispute is not settled through an ADR proceeding within a period of two months after initiation of the ADR proceeding each Party may initiate an arbitration proceeding pursuant to the following paragraph.

25.4 Disputes involving non-payment or delayed and/or incomplete payment of the contractual penalties and/or liquidated damages where the total amount being collected does not exceed PhP100,000,000 shall be finally settled in the Regional Trial Courts of Makati City to the exclusion of all other seats and venue.

25.5 All disputes arising out of or in connection with the Conditions, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the Philippine Dispute Resolution Center, Inc. ("PDRCI"). If the value of the total matter in dispute, including the value of any counterclaims, is less than PhP200,000,000, the tribunal shall consist of one (1) arbitrator and if the value of the total matter in dispute is PhP200,000,000 or more the tribunal shall consist of three (3) arbitrators. If the tribunal consists of three arbitrators, each party shall nominate one arbitrator for confirmation by the PDRCI. Both arbitrators shall agree on the third arbitrator, within 30 days after their appointment. Should the two arbitrators fail to reach agreement on the third arbitrator within the thirty-day period, the PDRCI shall select and appoint the third arbitrator. The seat of arbitration shall be the Makati City. The procedural law of this seat applicable to international arbitration proceedings shall apply where the Rules are silent. The language to be used in the arbitration proceedings shall be English.

26. General

26.1 If any of these Conditions is or becomes under any written law or held by a court of other similar competent authority to be illegal, invalid or unenforceable, then such Condition(s) shall be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the operation of the remaining clauses.

26.2 Without prejudice to Clauses 2.3 and 2.4, the priority of the documents constituting the Contract shall be as follows:

- (a) any additional or special terms expressed in writing to override or modify the Purchase Order or the Conditions;
- (b) the Purchase Order;
- (c) the Conditions;
- (d) any document, plan or specification whether attached to or incorporated by reference to the Purchase Order or the Conditions.