TERMS AND CONDITIONS OF PURCHASE FOR CONSTRUCTION WORKS OF SIEMENS ENERGY AUSTRIA GMBH

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1 Scope

1.1 These Terms and Conditions of Purchase for Construction Works apply to all purchase orders for supplies and services ("Services") of SIEMENS Energy Austria GmbH and the companies affiliated to it ("SIEMENS") which, at least partly, cover Construction Works.

2 Award of Contract

2.1 These Terms and Conditions of Purchase for Construction Works shall become part of the contract as soon as a purchase order is accepted.

3 Offer Stage

3.1 The drawings which are enclosed to the specifications, or which may be inspected at the construction supervisor's office shall serve as information for the tender. If the Contractor ("CN") is of the opinion that amendments or additions to the specifications are necessary, it shall without undue delay inform SIEMENS thereof in writing. The CN shall neither modify nor amend the specifications.

3.2 If the CN makes more favourable proposals in building, technical or economic terms regarding the implementation of individual items of the specifications, it shall include them as alternatives in the tender.

3.3 The CN may enquire about the location of the building site, the local conditions, the possibilities to access or leave the building site etc. The CN may not claim later that he was not aware of the local conditions (in particular about the routes for delivery and collection). The CN is thus informed about the local conditions (in particular, the subsoil, vehicle access and storage facilities) and the scope of Services. The CN has inspected the description of Services and examined the terms and conditions and documents handed over to it and found them to be correct and consistent.

3.4 The tender shall include an equipment list stating the connected wattage.

3.5 The CN shall include a list of its subcontractors in the tender. Subject to substantiation, SIEMENS shall be entitled to require the exchange of individual subcontractors.

3.6 The CN shall be bound by its tender for a period of 90 days after the date of submission.

4 Prices and Scope of Works

4.1 The agreed prices are fixed and shall be valid for the agreed performance period.

4.2 If the main seat of the CN and the place of installation are within the EU, the place of installation shall be the contractual place of performance for all Services. All goods shall be shipped free to the place of installation/erection, packed, insured for transport and duty paid in accordance with DDP (place of installation) according to Incoterms® 2020. CN bears the costs and risk of transport until the arrival and unloading of the goods. If the main seat of the CN and/or the place of installation is outside the EU, DPU (place of installation) Incoterms® 2020 shall apply. The price includes assembly, costs of labour, non-wage labour costs, cleaning of the construction site, disposal of wastes, accommodation, and supply of all necessary documentation, such as, but not limited to, working drawings, journals, documentation of direct labour, shipping notes, time reports, inspection sheets, bill of quantities, final acceptance (by the authority), all K-Sheets (“K-Blätter”) in accordance with ÖNORM, bill of materials, order forms, other protocols. This documentation shall be according to SIEMENS’ requirements. Costs for delivery and packaging, as well as the costs for the transport insurance, which must include the unload process, are to be borne by the CN. The ownership of the documentation shall transfer to SIEMENS upon delivery. CN grants SIEMENS an exclusive and transferable exploitation right for all categories of use pursuant to the Austrian Copyrights Act (*Urheberrechtsgesetz*) in respect of all documentation necessary for execution of Services and resulting from such Services that is unlimited in time and place and excludes the CN itself from using such documentation without right of additional remuneration.

4.3 Unit prices shall remain valid if Construction Works performed in full or in part at a unit price deviates from the Services originally intended in terms of scale unless such Services are due to instructions by SIEMENS.

4.4 If overtime is ordered to comply with deadlines or for other urgent reasons, such Service shall be deemed included in the price. Ancillary Services shall be deemed covered by the agreed price. Ancillary services mean Services explicitly agreed to be performed in addition to the agreed main Services or additional services to be performed pursuant to fair or commercial practice. Unless separately stated in the specifications, ancillary services to be performed by the CN shall include, but not be limited to, all static or other calculations, general plans, detailed plans, site foreman's plans, and settlement schedules required for authorities, for the site management, and for the settlement of accounts. Such services shall be covered by the contract price. Any fees arising in connection with such calculations and drawings shall be borne by the CN. Construction drawings shall be submitted to SIEMENS for approval in three copies prior to the start of the Services. Such approval shall not release the CN from its liability. The standards of Austrian Standards International – “Standardisierung und Innovation” (previously *Austrian Standards Institute*) shall apply to calculations and drawings.

4.5 The CN guarantees the completeness of its Services by performing all Services necessary for the correct, appropriate, and defect-free performance of its tasks without being entitled to additional remuneration or to an extension of the performance period, even if this has not been explicitly agreed upon in the contract.

4.6 If the CN has objections against instructions and/or parts provided (fabrics, materials, items) or against work performed by other contractors, it shall immediately inform SIEMENS in writing about its concerns giving reasons for its objections. In other respects, ÖNORM B 2110 (as issued on 15th Mar. 2013), point 6.2.4. "Duties to Inspect and Warn", applies accordingly.

4.7 If the Services to be performed are connected to already existing components or facilities, the CN shall perform or verify the required measurements.

4.8 Services of whatever nature performed by the CN without contract under whatever circumstances, except in case of imminent danger, will not be remunerated. Such services shall be removed upon the Customer's request and at the CN's cost within the time limits specified by the Customer. The CN shall compensate SIEMENS for any damage incurred in this connection.

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4.9 Any Service performed due to bad weather conditions (e.g., rain, frost, snowfall) shall not entail additional costs.

4.10 The scope of Services to be performed by the CN shall also include the following points:

- the CN bears the overall responsibility for its trade.
- for the scope of Services to be performed by the CN, staff including staff for planning, coordination, construction, and supervisory tasks must be available in sufficient number for the required jobs at and at the required dates without additional costs to SIEMENS.
- the CN guarantees and ensures that its construction manager does not work on another project during implementation of the contract without the written consent of SIEMENS.
- the CN is appointed as the project manager (*Projektleiter*) for the purpose of the Construction Work Coordination Act (*Bauarbeitenkoordinationsgesetz - BauKG*) and all building owner's duties laid down in the BauKG, in particular according to § 3, § 4 (1), § 6, § 7 and § 8 BauKG, are herewith assigned to and expressly accepted by it. The CN must in particular appoint a planning and a construction site coordinator and, in accordance with Section 8 BauKG, ensure that a so-called "document for subsequent work on the building" is drawn up.

5 Implementation of Contract

5.1 When placing an order, the contractor must determine the exact material quantities on request and inform SIEMENS, which may reserve the right to provide the material. In this case, the contract will be adjusted accordingly.

5.2 The CN shall perform its Services under its own responsibility, in accordance with the contract and the accepted technical rules as well as the applicable legal and administrative provisions.

5.3 The CN shall prepare work drawings, the site installation plan, the list of equipment, the construction schedule and other construction documents and shall submit them to SIEMENS for inspection well ahead of the beginning of construction so that SIEMENS can review them within a period of at least 12 bank working days. Any costs incurred by the CN in this connection are covered by the agreed remuneration.

5.4 The required official permits for the use of roads, pavements and property not belonging to the owner of the building site, shall be obtained by the CN at the CN's cost and any conditions imposed in this connection shall be fulfilled by the CN at no cost to SIEMENS.

5.5 Construction site electricity and construction water connections shall be supplied by the CN in connection with mobilisation of the site, unless otherwise provided in the specifications. Electricity and water charges shall be paid by the CN. The taps installed by the CN shall be maintained until completion of all Services and the right to use them shall be granted to all other firms working on the site. The CN shall ensure that no unauthorised use of electricity is possible. Upon completion of the project, the electricity and water connections for the building site shall be removed and the original condition restored upon the request of SIEMENS.

5.6 The CN shall keep daily construction records and submit them for information to SIEMENS during normal business hours. Such information shall not constitute acceptance of any part of its contents by SIEMENS.

5.7 During performance of the contractually agreed Services under the contract, the CN shall perform Services on hourly rates in addition to its scope of Services upon request of the construction supervisor of SIEMENS.

5.8 Services on hourly rates and overtime may only be performed subject to the prior approval of the construction supervisor of SIEMENS. Such Services will only be remunerated based on time sheets to be approved by the construction supervisor of SIEMENS, in which the workers employed must be listed with their names and occupational details. These time sheets must be presented not later than the next day.

5.9 For Services performed on hourly rates during contract execution, no pro rata foremen's or other supervisory hours may be invoiced. However, the CN shall not be released from its supervisory duties.

5.10 After completion of the contract Services, the remuneration of foremen and other supervisory bodies working on hourly rates shall be agreed in advance of such Services with SIEMENS.

5.11 At the end of each month, the CN shall hand over to SIEMENS a list of subcontractors scheduled to work on the construction site the following month as well as their work schedules.

6 Insurance

6.1 The CN shall maintain liability insurance for bodily injuries and property damages (incl. derived financial losses) for the term of the contract and prove its validity to the Customer immediately after securing the contract and at any time later, upon the Customer's request. The sums insured under these policies shall be at least € 1,500,000.00 / three times maximised, that means least € 1,500,000.00 per claim respectively € 4,500,000.00 per insurance period.

6.2 SIEMENS may take out builder's risk insurance. In such case, the pro rata premium will be deducted from the CN's final invoice.

6.3 If SIEMENS does not take out builder's risk insurance, the CN shall take out a builder's risk insurance policy and prove its validity.

7 Payment / Collateral

7.1 Final Invoice:
In the case of projects for which payment in instalments has been agreed, the final invoice will be paid within an inspection period of 90 days after receipt of all relevant settlement documents, quantity surveys, time sheets for scheduled hours etc.

7.2 Security Deposit:
90 % of the inspected and accepted invoice amount will be paid in the case of invoices for payments on account and partial invoices. The remaining 10 % will be withheld as security deposit which cannot be redeemed by cashless collateral. Unless used by SIEMENS, the security deposit shall be settled with the final invoice and released. The security deposit does not attract interest and serves as security for all claims SIEMENS may have against the CN

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7.3 Retained Payment:
SIEMENS is entitled to retain payment in an amount of 5 % (five percent) of the total contract value from the final invoice amount for the period of warranty. This retained payment is intended to secure any claims for damages or other claims of SIEMENS against the CN arising from or in connection with this contract. The retained payment may be substituted by an abstract, irrevocable bank guarantee issued at no cost to SIEMENS by an Austrian large bank accepted by SIEMENS with a maturity date falling six months after expiry of the warranty period and payable upon first demand. The currency in which the bank guarantee is issued shall be the same as that in which the contract value is denominated. If the value of a contract changes, the guaranteed values shall be adjusted accordingly. All costs and fees shall be covered by the guaranteed value.

7.4 SIEMENS is only in default of payment if it fails to pay any amounts due, despite a request for payment from the CN.

7.5 The CN may assign claims only with the prior written consent of SIEMENS. The CN may not retain Services due under the contract. This shall not apply if the counterclaims on which the right of retention is based have been left undisputed or if they have been legally established.

7.6 Unless otherwise agreed, payments are to be made within 60 days net or within 30 days less a discount of 3 % at SIEMENS' choice. SIEMENS is entitled to withhold payment until identified defects are remedied. For the duration of the warranty period, SIEMENS may withhold up to 10 % of the contract value as an interest-free guarantee deposit. Payment shall not be considered as an acceptance that the goods or services were delivered in accordance with the contract, nor as a waiver of any rights on the part of SIEMENS. The Seller bears bank charges incurred by the receiving bank. If, for any reason, an agreed security is not (or no longer) available, the Seller is obliged to provide SIEMENS with an equivalent one.

8 Handing-over / Taking-over

8.1 Partial Services shall be handed over at the interim dates (milestones) determined by SIEMENS, while formal transfer (acceptance) shall take place on the final date. The CN shall submit all documents and prove that the partial Services were performed in accordance with all contractually agreed or normally expected characteristics and pursuant to the applicable technical and scientific rules and that they are free of defects. The CN shall notify SIEMENS of completion 14 days before the agreed interim date and allow SIEMENS to perform inspections. Any identified defects shall be remedied immediately upon request of SIEMENS and any costs resulting therefrom shall be borne by the CN. Upon completion of the last partial Services, the CN shall notify SIEMENS of the formal handing-over of the entire project 14 days before the contractually agreed final date.

8.2 In this connection, the CN shall hand over all required documents, all correspondence, etc. and prove that the entire project has been carried out pursuant to the applicable technical rules and that it is free of defects. If defects become apparent during the taking-over procedure, the entire project will not be accepted by SIEMENS. In all cases, the CN shall file another application for acceptance of the project as soon as all objections raised by SIEMENS have been satisfied. If objections are not satisfied within the specified time-limit or in the agreed way, SIEMENS may, without prior notice, entrust a third party with the removal of defects at the cost and risk of the CN.

8.3 The parties shall jointly draw up and sign the Acceptance Certificate and any apparent defects shall be stated therein. In the case of negligible defects, i.e., defects constituting a minor deviation from the contractually agreed performance and not impairing the intended use of the facilities, a period of 1 (one) week shall be granted to rectify the defect. In this case, the Service supplied shall be deemed accepted as soon as written proof of the timely rectification of defects has been provided.

8.4 If it becomes apparent before the taking-over of the project, that Services performed are defective, or if other conditions laid down in the contract, in particular deadlines, are not complied with by the CN for any reason whatsoever, SIEMENS may terminate the contract with immediate effect, in whole or in part, by giving written notice and award a contract for the respective Services not yet performed to third parties. Any additional costs arising in this connection shall be borne by the CN, without prejudice to claims for payment of a penalty (as e.g., pursuant to point 4.2 of the General Terms and Conditions of Purchase of SIEMENS Energy Austria GmbH). In the case of termination of the contract, SIEMENS may use the facilities, scaffolds, equipment, machines etc. for continuing the Services for reasonable compensation. The opening of proceedings over the CN's assets shall entitle SIEMENS to terminate the contract with immediate effect and to claim damages for non-performance.

8.5 As soon as the project has been taken over, the Services performed by the CN shall be deemed accepted, the risk shall transfer and the warranty period start.

8.6 The commissioning of individual parts of the facility or of the entire facility before the aforementioned date shall not constitute acceptance for the purposes of point 8.4.

9 Warranty and Damages

9.1 The CN warrants that it will comply with all legal, administrative, or other provisions when performing the contract. It shall be liable for any consequences resulting from a violation thereof. The CN furthermore warrants that its Services have the contractually agreed features, that they comply with the accepted technical rules and that they are free of defects which would make them worthless or reduce their value or affect their suitability for the customary or agreed use.

9.2 The warranty period is five years and starts on the date of acceptance; in the case of hidden defects the warranty period starts upon discovery. All defects established upon acceptance and all defects arising during the warranty period must be repaired by the CN immediately upon request at the CN's own expense. If the CN is not prepared to perform such repairs, SIEMENS shall be entitled without further notice to have the defect repaired by third parties at the cost and risk of the CN. The reasonableness of the period is to be appraised in the light of the impact of the defect on other specialist Services and shall therefore be determined by SIEMENS in the individual case.

9.3 The CN and its staff as well as other agents (sub-contractors) shall be liable, within the scope of the applicable legal provisions and without prejudice to any penalties payable, for all damages caused to SIEMENS or third parties. The CN shall indemnify and hold SIEMENS harmless against any third-party claims.

9.4 The CN shall be liable for compliance with all provisions concerning its employees, sub-contractors and suppliers and their employers (such as the Employment of Foreign Nationals Act (*Ausländerbeschäftigungsgesetz)*). The CN warrants that all employees working for it have the required permits and approvals and that they can be immediately presented in the case of site inspections. The CN shall fully indemnify and hold SIEMENS harmless against any claims arising from the violation of these provisions.

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10 Parts of the Contract

10.1 The following documents and provisions shall govern the contractual relationship between the CN and SIEMENS in accordance with the hierarchy established hereinafter:

a) the purchase order form.
b) the specifications with the related drawings.
c) these "Terms and Conditions for Construction Works of the SIEMENS Energy Austria GmbH".
d) the "General Terms and Conditions of Purchase of the SIEMENS Energy Austria GmbH", as amended.
e) the "technical requirements for Construction Works" established by Austrian Standards International - Standardisierung und Innovation (previously *Austrian Standards Institute*) and the engineering standards committees as applicable.
f) the CN's tender.

11 Safety, Health, and Environmental Protection

11.1 The CN shall ensure that the safety, health, and environmental regulations applicable at the respective premises or at the respective construction site of SIEMENS are complied with by the CN and its agents. The CN shall release SIEMENS from all claims arising from non-compliance with these regulations. Storage of construction materials shall be at the risk of the CN. The installation of site huts and the selection of their location require the approval of SIEMENS. The construction site and/or the installation site shall always be maintained in proper condition and cleaned up after completion of Services. The CN shall be responsible for adequately fencing and securing the construction site.

12 Consideration of SIEMENS Products

12.1 The CN shall perform its Services without specific regard to products of SIEMENS. By way of exception, the CN shall use, as far as possible, the products of SIEMENS and of its affiliates when working on buildings used by SIEMENS.

13 Use of Tools, Moulds, Samples, and Confidentiality

13.1 Any tools, moulds, samples, models, profiles, drawings, standard specification sheets, printing templates, and calibres provided by the Customer, as well as any objects derived therefrom may not be passed on to third parties nor used for other than the agreed purposes without the written approval of the Customer. They shall be safeguarded against unauthorised access or use. Without prejudice to further rights, the Customer may request their handing over if the CN violates these obligations.

14 Occupational Health and Safety

14.1 The Seller is obliged to comply with all legal requirements regarding the health and safety of its employees. It must ensure that the health and safety of its personnel as well as the personnel from his direct or indirect subcontractors employed to perform the Services and all other persons who are entitled to stay in the work area, is protected.

If the services are to be performed on premises of SIEMENS or on construction sites on behalf of SIEMENS, additional safeguard instructions as described in the document SE-A111e “EHS instruction sheet for employees of external companies" (*SGU-Merkblatt für Angehörige von Fremdfirmen (en)*) (https://www.siemens-energy.com/global/en/company/about/supply-chain-management/supplier-information.html) apply.

14.2 Before the commencement of the Works, CN shall provide Siemens with a written risk assessment that a) analyses all potential hazards for the health and safety of the personnel arising out of the Works and b) determines measures to eliminate such hazards.

14.3 CN shall ensure that all personnel take part in site-specific safety training and receive the appropriate personal protection equipment before starting work on the site. CN shall ensure that the personnel make use of the personal protection equipment in the appropriate manner and that such equipment is always maintained in good working order.

14.4 Siemens reserves the right, at its sole discretion, to bar any personnel from the site and/or to suspend the execution of the Works for security, health, and safety reasons, at any time without any liability whatsoever.

14.5 CN shall appoint a competent person as its representative for environmental, health and safety (“CN EHS Representative”) and shall ensure that the CN EHS representative takes part in safety discussions arranged by SIEMENS from time to time.

14.6 CN shall regularly monitor compliance with statutory and contractual health and safety provisions by performing safety tours on the site. In due time before a safety tour, CN shall invite SIEMENS to participate in the tour. If the CN discovers non-compliance with health and safety provisions, it shall restore compliance without undue delay and advise SIEMENS of findings and of the status of the corrective actions.

14.7 Upon SIEMENS’ request, CN shall promptly grant SIEMENS access to all documents related to health and safety connected with the works.

14.8 The following events must be reported to the corresponding safety department, on site management or the SIEMENS’ person in charge immediately:

i. Fatality
ii. Lost Time Case (LTC)
iii. Accident without Loss of Working Hours
iv. Near Miss with High Risk

The accidents and near misses listed here must be reported to SIEMENS and the incident has to be investigated by the CN. The CN is requested to:

i. Report the incident to SIEMENS.
ii. Execute a root cause analysis of the incident immediately and unasked.
iii. Take adequate measures to ensure the prevention of comparable incidents in the future.
iv. Determine a time period for the implementation of these measures.
v. Provide SIEMENS with a written, sufficiently detailed report stating the root cause of the incident, the determined measures, and the time period of their implementation.

Dangerous areas that have caused an accident or could have caused a near miss, must immediately be

i. Secured,

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ii. Documented, and

iii. The safety hazard has to be removed.

14.9 In the event SIEMENS produces a safety and health document for the site ("EHS Plan") SIEMENS will provide CN with a copy of the EHS Plan. The CN shall confirm receipt thereof in writing and comply with the regulations contained therein. The same shall apply to updates of the EHS Plan which SIEMENS may produce as it deems necessary. CN shall ensure that its direct and indirect subcontractors contracted to perform the Works commit themselves to the EHS Plan and its updates.

14.10 In addition to any other rights SIEMENS may have, in the event of CN's material or repeated failure to comply with the statutory or contractual health and safety provisions, including the provisions of this Article and the provisions of the EHS Plan, SIEMENS may terminate this Agreement without any liability whatsoever, after providing CN with a reasonable period of time within which to remedy the failure.

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