

General Conditions of Purchase**GCP2011**

Formation and Content of Contract

- 1.1 Commencement of design, manufacture, delivery, start of invoicing or supply of the goods or services implies acceptance of the order by the Seller under these General Conditions of Purchase.
 - 1.2 The contract shall consist of and the order of precedence shall be:
Any special conditions written or referred to on the face of the order.
These General Conditions of Purchase.
The Technical Specification referred to on the face of the order.
Correspondence listed on the face of the order.
 - 1.3 The contract constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, representations or agreements related to the contract, whether written or oral.
2. Inspection and Testing
- 2.1 The Buyer and any third party authorised by the Buyer shall be entitled to inspect or test the goods or services at any reasonable time.
 - 2.2 The Seller shall give at least five working days' advance notice in writing of tests, and the Buyer and any third party authorised by the Buyer shall be entitled to attend the tests. If the Buyer attends for such tests and the Seller is not able to carry out such tests the Seller shall compensate the Buyer for all costs incurred at such attendance (including the costs of the Buyer's own personnel).
 - 2.3 The Seller shall provide the Buyer with such test certificates as the Buyer may reasonably require.
 - 2.4 Inspection and testing in accordance with this clause shall not relieve the Seller of any liability nor imply acceptance of the goods or services.
3. Title and Risk
- 3.1 Title to the goods shall pass to the Buyer on delivery or if earlier upon payment to the Seller of not less than 51% of the contract price of those goods.
 - 3.2 Risk in compliant goods delivered in accordance with the contract shall pass to the Buyer on delivery.
 - 3.3 Goods belonging to or provided by the Buyer which are in the Seller's custody for any purpose shall be clearly marked and recorded by the Seller as belonging to the Buyer and shall be at the Seller's risk.
 - 3.4 The Seller supplies the goods under the contract with good title and free from encumbrances. The Seller acknowledges that the goods may be sold on to an end user by the Buyer. The Seller indemnifies and holds harmless the Buyer against the consequences of any breach of this Clause 3.4.
4. Delivery Date
- 4.1 The delivery date or dates, date of completion of the works or services or in the case of a service being performed at intervals, the period of the contract, shall be that or those specified in the order. The Seller shall furnish such programmes of design, manufacture, delivery and installation as the Buyer may reasonably require. If the contract includes the carrying out of tests on the goods after their receipt by the Buyer, then delivery shall not be deemed complete until such tests have been passed to the reasonable satisfaction of the Buyer.
 - 4.2 The Seller shall notify the Buyer immediately he becomes aware that any delivery or performance is likely to be delayed beyond the specified date or dates. Failure by the Seller so to notify any likely delay shall entitle the Buyer to terminate without liability all or part of the contract and to compensation for any losses resulting from the failure or delay.
 - 4.3 If the Seller fails to deliver on or before the delivery date or dates, there shall be deducted from the price or paid to the Buyer by the Seller 1% of the value of such parts of the contract as cannot in consequence of the said failure be put to the use intended for each week of delay to a maximum of 15% of the said value.
If any part of the contract in respect of which the Buyer has become entitled to the said 15% remains uncompleted, the Buyer may give notice to the Seller requiring completion and the notice shall fix a final date for completion which shall be reasonable in all the circumstances.
If for any reason the Seller fails to complete within such time, the Buyer may by further notice to the Seller elect to require the Seller to complete, or to terminate the contract in whole or in part and recover from the Seller any loss suffered by the Buyer by reason of the said failure.
5. Deficiency in Quantity and Damage Before Delivery
- 5.1 The Buyer shall advise the Seller of any deficiency in quantity or visible external damage within the following time limits:
 - 5.1.1 Deficient quantities or visible external damage shall be advised within 14 days of the date of delivery of a consignment or part consignment.
 - 5.1.2 Non-delivery of the whole consignment shall be advised as soon as is reasonably practicable.
6. Compliance
- 6.1 Goods and/or services shall exactly conform to and fulfil the requirements of the contract and shall be fit for purpose. They shall be made or performed in accordance with good engineering practice and all applicable standards and legislation. Goods shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation. Goods or services which do not comply with any or all of the above shall be considered to be defective no matter how slight any breach, shortfall or excess.
 - 6.2 If for any reason the Seller is uncertain as to whether the goods or services to be supplied by it will comply with the contract, it must promptly and before despatch inform the Buyer in writing with full details of the possible non-compliance. Written acceptance or rejection of the Seller's application will then be provided by the Buyer as soon as possible.
 - 6.3 If, in respect of any part of the goods and/or services, the Buyer shall at any time, within 36 months of delivery or 24 months of putting into commercial use (whichever occurs first), decide that any work done or equipment supplied or materials used by the Seller (including equipment work or materials supplied under this Clause) is or are defective in design or otherwise and, as soon as reasonably practicable, notify the Seller of the decision, specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred, then the Buyer at its sole option may without prejudice to its other rights and remedies:
 - (i) require that the Seller shall with all speed and, at his own expense, at the location specified by the Buyer, make good the defects so specified;
 - (ii) take, at the cost and liability of the Seller, such steps as may in all the circumstances be required to make good such defects or replace the goods;
 - (iii) providing they have not been put into commercial use, reject the goods and require the Seller to collect them promptly at its own cost and repair or replace them within such time as may be stipulated by the Buyer;
 - (iv) grant a concession to accept the defects subject to such reservation and/or deduction from the Price which in the opinion of the Buyer reflects the costs incurred or likely to be incurred by the Buyer as a direct result of the circumstances giving rise to the concession or the granting thereof and the benefits (including any reduction in liabilities) accruing or likely to accrue to the Seller by the granting of such a concession;and, in addition to any of the above stated rights and remedies, the Buyer may require the Seller to repay, or may set off against the Seller, all costs incurred by the Buyer in the Buyer's sourcing, field service, project management, quality and engineering departments, which would not have been incurred but for such defect.
Repairs and replacements shall themselves be subject to the foregoing obligations from the date of delivery, re-installation or passing of tests (if any) whichever is appropriate after repair or replacement.

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- 6.4 If the Seller fails to remedy any defect as above provided, the Seller shall return any money paid by the Buyer in respect of the defective items or item which cannot be used by reason of such defect and pay the Buyer any costs and expenses suffered by the Buyer due to the Seller's failure, and the Buyer shall be entitled to terminate the contract or part thereof without prejudice to its other rights and remedies.
7. Variations
- 7.1 The Seller shall accept and perform any reasonable variation in scope, specification, quantity or delivery requested by the Buyer. The price shall be adjusted to reflect the variation having regard to the rates and prices used in the contract or, where these are not relevant, to what is fair and reasonable.
- 7.2 Neither party shall be bound by any variation to the contract unless and until it is confirmed by an official order amendment issued by the Buyer.
8. Price and Payment
- 8.1 The prices stated on the order are fixed and firm for the duration of the contract.
- 8.2 Unless otherwise stated in the order, the contract price shall be inclusive of the costs of delivery C.I.P. (as defined in Incoterms® 2010) to the delivery address stated on the face of the order.
- 8.3 Unless otherwise agreed in writing, payment shall be made by the Buyer against services performed in accordance with the contract or delivery of compliant goods together with all documentation required under the contract within 120 days following submission of an acceptable invoice. If payment of any sum payable is delayed the Seller shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be paid at the rate of three per cent per annum above the London Interbank Overseas Rate (LIBOR) in force from time to time during the period of delay.
9. Free-issue Materials and Tooling
- 9.1 Where tooling (including patterns, dies, moulds, jigs and fixtures and the like) is manufactured or acquired by the Seller specially for the purpose of the contract, title to it shall pass to the Buyer upon its creation or acquisition. The Seller shall deliver up such tooling to the Buyer on demand.
- 9.2 Where the Buyer for the purpose of the contract issues materials (including equipment, components, tooling, patterns, dies, moulds, jigs and fixtures and the like) free of charge to the Seller, such materials shall be clearly marked as and remain the property of the Buyer. Seller shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Seller shall use such materials solely in connection with the contract. Any surplus materials shall be disposed of at the Buyer's discretion. Damage to or waste of such materials arising from bad workmanship or negligence of the Seller shall be made good at the Seller's expense. Without prejudice to any other rights of the Buyer, the Seller shall deliver up such materials, whether further processed by the Seller or not, to the Buyer on demand.
10. Intellectual Property Rights and Confidentiality
- 10.1 All information and know-how including drawings, specifications and other data provided by the Buyer in connection with the contract shall remain at all times the Buyer's property and may be used only by the Seller (and not any third party) for the sole purpose of performing the contract. The Seller shall keep the information and know-how confidential and shall not disclose or sub-licence such information and know-how to any third party including, without limitation, affiliates of the Buyer or the Seller. The Seller shall return any such information and know-how to the Buyer upon request. Information relating to the Buyer's business which comes to the notice of or into the possession of the Seller as a result of the performance of the contract shall be kept confidential by the Seller.
- 10.2 The Seller shall indemnify the Buyer (except in respect of designs provided by the Buyer) against all claims arising from infringement of intellectual property rights in relation to the goods, processes or services which are the subject of the contract. In addition, the Seller shall obtain for the Buyer the right to possess and use the respective goods and processes free of charge or replace them free of charge with goods or processes not infringing third party rights.
- 10.3 The Seller shall neither quote nor supply parts made with the Buyer's tools or materials, or to the Buyer's patterns, drawings, specifications or designs, to any third party, including without limitation affiliates of the Buyer, without the Buyer's prior written consent.
- 10.4 Any inventions, patents, copyrights, design rights and other intellectual property rights arising from the execution of the order shall become the property of the Buyer and the Seller shall not disclose the same to any third party. The Seller shall do all things and execute such documents as may be necessary to assign such property to the Buyer.
11. Force Majeure
- 11.1 If performance of the contract is delayed by any act of God, act or omission of government, war or similar event (excluding strikes or other industrial disputes) beyond either party's reasonable control ("Force Majeure"), then the time for performance shall be amended accordingly subject to the delayed party promptly informing the other of the event and taking all reasonable steps to reduce the delay. The Buyer is entitled to a refund of any advance monies paid to the Seller in the event of termination by the Buyer due to force majeure.
12. Termination
- 12.1 The Buyer may terminate the contract or part thereof without prejudice to any other of its rights under the contract or at law and without liability to the Seller if:
- 12.1.1 an event of Force Majeure does or is likely to delay performance more than 30 days, or
- 12.1.2 the Seller is in breach of any of its obligations and does not remedy or commence to remedy the breach as soon as reasonably possible (and within seven days of a notice to remedy or commence to remedy from the Buyer), or
- 12.1.3 entitled to do so under the provisions of Clause 4.2 or Clause 6.4, or
- 12.1.4 the Seller becomes bankrupt or insolvent or (being a Company) makes an arrangement with its creditors or has a receiver or administrator appointed or commences to be wound up, or
- 12.1.5 permitted to do so under Clause 15.3.
- 12.2 On termination for default under Clauses 12.1.2 and 12.1.3, the Seller shall compensate the Buyer for the cost of completing the goods or services contracted to be supplied by the Seller.
- 12.3 The Buyer may terminate the contract for convenience. In such event, and provided that the Seller is in compliance with its obligations under the contract, the Buyer shall compensate the Seller for costs reasonably and properly incurred until then in performing the contract which would otherwise represent an irrecoverable loss to the Seller, subject to the Seller taking all reasonable steps to minimise its losses and subject to reasonable proof being provided. Compensation shall not in any event exceed the contract price.
- 12.4 Termination of the contract in whole or in part, however occasioned, shall not affect or prejudice provisions of the contract which by their nature are intended to continue, including Clauses 10, 12.2, 12.3, 13, 17 or 20.
13. Liability for Accidents and Damage
- 13.1 The Seller shall at all times during and after performance of the contract indemnify the Buyer against:

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- 13.1.1 all loss or damage to property and all claims and expenses in connection therewith caused by the acts or omissions of the Seller, its sub-contractors, employees and agents; and
- 13.1.2 liability for death and personal injury and all claims and expenses in connection therewith caused by the Seller, its sub-contractors, employees and agents.
- 13.2 Neither party shall have any liability whatsoever to the other for the other's loss of profit, loss of production, loss of business, loss of use or loss of revenues arising by way of indemnity or from any breach of contract, negligence, breach of statutory duty or otherwise.
- 13.3 The Seller shall take out and keep in force suitable public and products liability insurance against its liabilities under this clause and shall demonstrate the same to the Buyer at all reasonable times.
14. Health, Safety and the Environment
- 14.1 The Seller shall provide to the Buyer in writing all data, instructions and warnings as are required to comply with applicable legislation relating to health, safety and the environment and shall indemnify the Buyer against any and all liabilities, claims and expenses which may arise as a result of the Seller's failure to do so.
- 14.2 If any of the goods to be supplied under the contract contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transport, storage or use and for the protection of the environment, the Seller shall prior to their delivery furnish to the Buyer written details of the nature of those substances and the precautions to be taken. The Seller shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked on the goods or securely attached to them and on any containers into which they are packed.
- 14.3 Without prejudice to clause 14.2, if transport of goods is to be performed by a carrier commissioned by the Buyer, the Seller shall submit information and data concerning dangerous goods to the carrier in accordance with applicable legal requirements. Such data and information shall be relevant to all modes of transport to be used if the Buyer informs the Seller, or if the Seller is aware, that multimodal transport is to be used. The Seller is liable for any expenses, loss or damages incurred by the Buyer due to any breach by the Seller of its obligations under this clause 14.3.
- 14.4 The Buyer, Seller and any third parties involved in the site, as appropriate, shall at all times co-ordinate their activities to ensure that work is carried out safely. After confirmation of order and before any mobilisation of personnel, they shall agree instructions (including method statements and risk assessments to establish a safe system of work. Each party shall promptly notify the others of any health or safety hazards and incidents at the site. The Seller shall at all times whilst attending or working on any site familiarise itself and fully comply with all relevant health, safety and environmental laws, rules, regulations and procedures, the Buyer's health and safety policies, and any other requirements which may reasonably be notified by the Buyer to the Seller.
- 14.5 If the goods or services contain items which are subject to statutorily-imposed substance restrictions and/or information requirements which apply at the place of the Seller, the place of the Buyer or the place of delivery (including, but not limited to, REACH and RoHS) the Seller shall declare such substances in the web database BOMcheck (www.BOMcheck.net) or in a format reasonably required by the Buyer no later than the first date for delivery. The Seller shall declare, in the aforementioned manner, all substances which are set out in the "Siemens List of Declarable Substances" (accessible via BOMcheck or http://www.siemens.com/sustainability/pool/umweltmanagement/declarationliste_e.pdf) applicable at the time of delivery.
- 14.6 If the goods or services contain items which are classified as dangerous goods according to international regulations, the Seller shall have informed the Buyer prior to formation of this contract.
15. Export Control and Foreign Trade Data Regulations
- 15.1 The Seller shall comply with all applicable export control, customs and foreign trade regulations (collectively "Foreign Trade Regulations"). The Seller shall advise the Buyer in writing within two weeks of receipt of the order, and in the case of any changes without undue delay, of any information and data required by the Buyer to comply with all Foreign Trade Regulations in the case of export and import as well as re-export of the goods or services, 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 Buyer, the Seller's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).
- 15.2 Without diminishing any other right or remedy which the Buyer may have under the contract or at law, failure by the Seller to comply with clause 15.1 entitles the Buyer to do one or more of the following:
- (a) terminate the contract under clause 12.1.2;
 - (b) withhold any sums due to the Seller until such time as the Seller has complied and the Buyer has verified such compliance.
- The Seller shall be liable for any expenses and/or damage incurred by the Buyer due to any breach of the obligations in clause 15.1, unless the Seller is not responsible for such breach.
- 15.3 Notwithstanding clause 11.1, the Buyer shall not be obligated to perform this contract to the extent that such performance is prevented, hindered, restricted or delayed by any impediments arising out of any national or international foreign trade or customs requirements or any embargoes or other sanctions, in each case whether or not foreseeable by the Buyer. If the Buyer's performance is prevented, hindered, restricted or delayed for more than four months by any cause referred to in this clause 15.3, then either party may, and while the cause of the non-performance still exists, terminate the contract (in which event clause 12.1.5 shall apply).
16. Assignment
- 16.1 The contract shall not be assigned or sub-contracted by the Seller as a whole. The Seller shall not assign or sub-contract any part of the work without the Buyer's prior written approval, which shall not be unreasonably withheld, but the restriction contained in this clause shall not apply to sub-contracts for materials, minor details, or any part for which the sub-contractor is named in the contract. The Seller shall be responsible for all work done and goods supplied by all sub-contractors.
- 16.2 The Buyer may assign this contract to any company which is a member of the SIEMENS Group.
17. Disputes with Third Parties
- 17.1 If any third party makes any claim against the Buyer arising from the performance of the contract by the Seller, or in respect of goods or services supplied under it, the Seller shall at its own expense on request by the Buyer join the Buyer in defending the claim. The decision of any court or arbitration tribunal deciding upon the claim shall, so far as is relevant, be admitted as conclusive in any consequent claim made by the Buyer against the Seller under the contract.
18. Taxes
- 18.1 The Buyer shall be entitled to deduct from payments to be made to the Seller under the contract any taxes, national insurance contributions and similar charges if the Seller fails to provide the Buyer with proper certification of exemption from such deductions.

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19. Code of Conduct for Siemens Suppliers
- 19.1 The Seller shall comply with the principles and requirements of the "Code of Conduct for Siemens Suppliers" attached hereto (hereinafter the "Code of Conduct"). The Seller is obliged to comply with the laws of the applicable legal system(s). In particular, the Seller 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 Seller will take responsibility for the health and safety of its employees, the Seller will act in accordance with the applicable environmental laws and will use best efforts to promote the Code of Conduct among its suppliers.
- 19.2 The Seller shall provide necessary instructions and take suitable measures in relation, but not limited, to security of premises, packing, transport, business partners, personnel and information in order to guarantee security in the supply chain pursuant to the requirements of any internationally recognized initiatives based on the WCO SAFE Framework of Standards (such as AEO and C-TPAT). The Seller shall protect the goods and services against unauthorized access and manipulation. The Seller shall only deploy reliable personnel in relation to the goods and services and shall procure that its suppliers take security measures no less stringent than those set out in this clause 19.2.
- 19.3 In addition to other rights and remedies the Buyer may have, the Buyer may terminate the contract and/or any purchase order issued thereunder in case of breach of these obligations by the Seller. However, provided that Seller's breach of contract is capable of remedy, the Buyer's right to terminate is subject to the proviso that such breach has not been remedied by the Seller within a reasonable grace period set by the Buyer.
20. Law
- 20.1 This contract shall be construed as an English contract governed by the laws of England and Wales except for its conflict of laws provisions. Disputes under or in connection with it shall be subject to the non-exclusive jurisdiction of the English courts. The United Nations Convention on Contracts for the International Sale of Goods signed in Vienna in 1980 shall not apply to this contract.
- 20.2 If any dispute arises out of this contract, the parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this contract until they have attempted to settle it by mediation and that mediation has terminated.
- 20.3 If this contract is a construction contract for the purposes of Section 108 of the Housing Grants, Construction and Regeneration Act 1996 the SIEMENS Adjudication procedure current at the date of the reference shall apply to any dispute referred to adjudication.
21. Obsolescence
- 21.1 If Seller decides to discontinue the supply of a Deliverable, Seller shall provide Buyer with at least lead time (for the relevant Deliverable) plus twelve (12) months' prior written notice to the date on which such Deliverable will be delivered for the last time. In this case, or in the event that for other reasons the Seller cannot or will not meet its contractual obligations, the Seller agrees, if requested by Buyer, to grant Buyer a right of reproduction for all discontinued Deliverables under this Agreement. If Buyer exercises its right of reproduction, the Seller shall make available to Buyer all necessary intellectual property rights for the reproduction (including, but not limited to, patents, utility models and registered designs, trademarks and copyrights), together with documents that are in the Seller's possession (including, but not limited to, design and production drawings, circuit diagrams, other technical documentation), as well as the production, manufacturing tooling and testing equipment available for this purpose, in return for fair compensation. If necessary, in this case the Seller shall also cooperate in transferring production, and shall make available sufficient numbers of qualified personnel. In the event of different opinions with respect to the amount of the fair compensation, the Seller shall grant Buyer the right of reproduction in return for payment of the amount that is not in dispute between the Parties. The fair compensation shall be determined thereafter in accordance with the dispute resolution Section of this Agreement.
- 21.2 Seller shall bear additional costs incurred by Buyer due to the storage of discontinued Deliverables.
- 21.3 In the event that it becomes necessary, for example for reasons of sales strategy or competition policy, for the Seller, Buyer, or third parties to produce Deliverables, or have them produced in third countries, the Seller shall support Buyer in this regard. The Parties will reach an agreement that preserves both sides' interests, in particular with regard to any necessary technology transfer.