

**Contract Conditions for the supply of goods and services to Materials Solutions – A Siemens Business**

**1) Definitions - In these conditions:**

"Purchaser" means Materials Solutions – A Siemens Business and includes the Purchaser's Representative.

"Contract" means the agreement between the Purchaser and the Contractor and comprising these Conditions of Contract, the Purchase Order, and any documents referred to therein.

"Contractor" means the individual, firm or company with whom the Purchaser enters into the Contract (including where necessary any of the Contractor's sub-contractors) as identified in the Purchase Order.

"Contract Delivery" means the date identified in the Contract by which the Contractor shall have completed the Contract to the satisfaction of the Purchaser.

"Goods" means anything (other than Services or Works) supplied or to be supplied to the Purchaser under the Contract.

"Purchase Order" means the document issued by the Purchaser to the Contractor for the supply of Goods and/or the provision of Services.

"Services" means all the service activities that the Contractor is required to carry out under the Contract.

"Contract Start" means the date identified in the Contract when the Contractor shall commence delivery of the Contract.

**2) Duties**

2.1 The Purchaser expects that the Contractor will understand the operating environment in which the Services are to be performed and the standards of performance that are necessary.

2.2 The Contractor warrants and represents that, throughout the term of this Contract, he has full capacity, authority and all necessary approvals to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor. The Contractor will not (and will ensure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Purchaser.

2.3 Conditions for the supply of Goods

(i) The Contractor shall deliver the Goods in accordance with the terms and conditions in the Purchase Order. A delivery note must accompany the Goods and must specify the quotation reference, the type of Goods being delivered, the Purchaser's reference number and the Purchase Order number.

(ii) Unless expressly agreed otherwise the Goods shall be delivered during the Purchaser's normal business day.

(iii) Any Delivery Date or time specified in the Purchase Order shall be of the essence.

(iv) Goods may be returned at the Contractor's expense if they do not correspond with the Contract. The Purchaser shall be entitled to return any goods to the Contractor for a full refund within 30 days of delivery without incurring any costs or charges whatsoever. If the Purchaser cancels the whole or any part of a Purchase Order pursuant to Clause 2.3(iv), it shall only be obliged to pay the Contractor in respect of those items it has expressly accepted.

(v) The cost of packaging will be deemed to be included in the cost of the Goods. If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense.

(vi) The Goods shall remain at the Contractor's risk until delivery is affected in accordance with this Purchase Order. The property in the Goods shall pass on delivery or on payment of the invoiced price whichever is the earlier.

(vii) The Purchaser's signature given on any delivery note or other document presented for signature in connection with delivery of the Goods is evidence only of the number of packages received, and not evidence of actual quantity, quality or condition of the Goods.

2.4 Conditions for the supply of Services

The Contractor shall properly perform the Services specified in the Contract with the standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all relevant statutory requirements and industry good practice.

2.5 Nonconformities

(i) The Contractor shall notify the Purchaser of any nonconforming Goods prior to delivery.

(ii) The Contractor shall obtain the Purchaser's approval for nonconforming Goods disposition prior to delivery.

2.6 Change notification

In relation to the Goods or Services the Contractor shall notify the Purchaser of changes in product and/or process, changes of suppliers and changes of manufacturing location. Where the change may affect the Goods or Services the Contractor shall obtain approval from the Purchaser.

2.7 The Contractor shall flow down to their supply chain (if any) the applicable requirements of this Contract including all Purchaser requirements and conditions.

2.8 Where the revision of a referenced document (including specifications and drawings) is not specified, the Contractor shall determine and use the latest published revision or obtain, from the Purchaser, written confirmation of which revision to use.

2.9 Counterfeit parts

The Contractor shall ensure counterfeit parts are not incorporated into the Goods.

2.10 Personnel Awareness

The Contractor shall ensure that personnel involved in the contract are aware of their contribution to product/service conformity, their contribution to product safety (as applicable) and the importance of ethical behaviour.

**3) Supply of Information and Rights of Inspection**

3.1 The Purchaser may inspect or nominate a regulatory body or an independent third party to inspect:

(a) the Contractor's premises including any tooling or equipment used in connection with the supply of goods or services.

(b) any processes, procedures, policies, systems or plans used by the Contractor in connection with the supply of goods or services.

(c) any materials used, or to be used, by the Contractor in connection with the supply of goods or services.

(d) the Goods themselves, regardless of what stage they are at in the manufacturing, assembly or supply process.

(e) any financial information of the Contractor, including any annual report, interim accounts or monthly management accounts.

(f) any other records associated with the goods or services.

3.2 The Contractor will, on request, promptly provide the Purchaser with any point of origin certifications in relation to any goods or services.

**4) Environmental Requirements**

In providing the Goods or Services the Contractor shall comply with the Purchaser's environmental policy, which is to comply with legislation and other external requirements and to continue to reduce the environmental impacts of the Purchaser's business.

**5) Health, safety and security**

The Contractor shall ensure that all of the Contractor's personnel who have access to or are employed on the Purchaser's premises comply with the Purchaser's health, safety and security procedures and instructions and complete any additional security clearance procedures required by the Purchaser before working at the Purchaser's premises.

**6) Invoices and Payment**

The Contractor shall submit an invoice within 28 days of supplying the Goods or Services to the satisfaction of the Purchaser. Invoices shall include the Purchase Order number. The Purchaser shall pay the Contractor within 60 days of receipt of an invoice except where an invoice is disputed.

**7) Corrupt Gifts and Payments of Commission**

(i) The Contractor shall not receive or agree to receive from any person, or offer or agree to give to, or procure on behalf of any person in the employment of the Purchaser, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in connection with the Contract.

(ii) If the Contractor or any of his employees, servants, agents or sub-contractors, or any person acting on his or their behalf, commits any offence under the Bribery Act 2010, with or without the knowledge of the Contractor, in relation to this Contract, the Purchaser shall be entitled:

(a) to terminate the Contract with immediate effect by written notice to the Contractor and recover from the Contractor the amount of any loss to the Purchaser resulting from the termination;

(b) to recover from the Contractor the amount or value of any such gift, consideration or commission; and

(c) to recover from the Contractor any other loss sustained as a result of any breach of this Condition, whether or not the Contract has been terminated.

(iii) When exercising its rights or remedies under this Condition the Purchaser shall:-

(a) act proportionately in the light of the gravity and circumstances of the particular breach; and

(b) give all due consideration, where appropriate, to the use of remedies other than termination of the Contract.

**8) Discrimination**

The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

**9) Sub-contracting and assignment**

The Contractor shall not sub-contract or transfer, assign, novate, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Purchaser. Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub-contractor within a period not exceeding 30 days from receipt of a valid invoice as defined by the contract requirements.

**10) Intellectual Property Rights**

(i) Subject to any prior rights of the Purchaser or the rights of third parties arising otherwise than under the Contract, such intellectual property rights as are derived from or arise as a result of the performance of the Contract by the Contractor shall vest in the Contractor.

(ii) The Contractor hereby grants a perpetual, irrevocable, worldwide, royalty-free licence to the Purchaser (and any person authorised by either of them) to use, supply, reproduce, publish, modify, adapt, enhance or otherwise deal for non-commercial purposes with any materials in which such intellectual property rights exist.

**11) Termination**

If the Contractor fails to fulfil its obligations under the Contract, the Purchaser may terminate the Contract immediately by written notice and, in accordance with condition 14 may recover from the Contractor any reasonable costs necessarily and properly incurred by the Purchaser as a consequence of termination.

**12) Break**

(i) Without prejudice to condition 13, the Purchaser shall at any time have the right to terminate the Contract or reduce the quantity of Goods or Services to be provided by the Contractor in each case by giving the Contractor 28 days notice. During the period of notice the Purchaser may direct the Contractor to deliver all or any of the goods or services under the Contract. Where the Purchaser relies on either of these rights, the Contractor may claim reasonable costs that are necessarily and properly incurred by him as a result of the

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termination or reduction, excluding loss of profit, loss of goodwill and consequential losses, but the claim for such costs shall not exceed the total cost of the Contract.

(ii) Termination or reduction under this provision shall not affect the rights of the parties to the Contract that may have accrued up to the date of termination.

**13) Liability**

13.1 If the Contractor causes loss or damage while performing the Contract, he shall without delay and at the Contractor's own expense, reinstate, replace or make good such loss or damage to the satisfaction of the Purchaser, or if the Purchaser agrees, compensate the Purchaser, for any such loss or damage. The Contractor shall not be liable for any loss or damage which is caused by the neglect or default of the Purchaser. "Loss or damage" includes but is not limited to: loss or damage to property; personal injury; sickness or death; and loss of profits or loss of use suffered as a result of any loss or damage.

13.2 Nothing in this Contract will impose any liability on the Purchaser in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Purchaser to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, its staff or agents

**14) Recovery of Sums from Contractor**

Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Purchaser, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Purchaser.

**15) Insurance**

The Contractor shall effect and maintain an adequate level of relevant insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

**16) Audit**

The Contractor shall keep full and accurate records of the Contract, all expenditure reimbursed and payments made by the Purchaser for 6 years after the end of the Contract. Where necessary, the Contractor shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be requested by the Purchaser in connection with the Contract.

**17) Notices**

A notice may be served: by delivery to the Contractor; by sending it by email or facsimile to him; or by ordinary first class post to the Contractor's last known place of business or registered office. A notice shall be deemed served at the time of delivery, after four hours for an email or facsimile, or on the second working day after posting.

**18) Law and Jurisdiction**

This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

**19) Dispute Resolution**

In the event of dispute, the parties shall negotiate in good faith to reach a solution. If they do not reach a solution within one month the Purchaser may refer the dispute to mediation. During the dispute the Contractor shall at the Purchaser's discretion continue to perform the Contract with all due diligence.

**20) Variations to the Contract**

No variation to the Contract will be effective until it has been recorded in writing and signed by the Purchaser and the Contractor.

**21) Duration**

The Contract will begin on the 'Contract start' date and will be completed by the 'Contract delivery' date.

**22) Contractor's Personnel**

The Purchaser has the right to reject any person or persons proposed by the Contractor to work under the Contract. If the Purchaser gives the Contractor notice of rejection of any person or persons, the Contractor will submit other suitably qualified person or persons for consideration by the Purchaser. The decision of the Purchaser as to the acceptability of individuals proposed by the Contractor shall be final and conclusive. The Contractor will bear the cost of any notice, instruction or decision of the Purchaser under this Clause. .

**23) Purchaser Property**

(i) All Purchaser Property will remain the property of the Purchaser and will be used solely in the performance of the Contract and for no purpose without the prior written approval of the Purchaser.

(ii) The Contractor will be liable for any loss of or damage to any Purchaser Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Purchaser.

(iii) The Contractor will maintain all items of Purchaser Property in good and serviceable condition, fair wear and tear excepted and in accordance with the manufacturers recommendations.

**24) Waiver**

The failure of either the Contractor or the Purchaser to insist upon strict performance of any provision of the Contract, or the failure of either the Contractor or the Purchaser to exercise any right or remedy to which it is entitled under the Contract, will not constitute a waiver and will not diminish the obligations established by the Contract. No waiver of any provision of the contract will be effective unless it is expressly stated to be a waiver and communicated to the other party in accordance with Clause 17 (Notices).

**25) Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of the Contract will continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

**26) Entire Agreement**

These terms and conditions and the Purchase Order shall (unless expressly agreed otherwise in writing by the Parties) comprise the entire terms and conditions of the contract in relation to the Purchase Order and the Contractor's terms and conditions of contracting are expressly

excluded. The Purchase Order and these terms and conditions shall take priority over any other arrangements, communications (whether verbal or written), or any other documents (including, but not limited to, other purchase orders, or other terms and conditions) unless the Purchase Order is subject to an over-riding contract pertaining to the Goods and/or Services either issued by or referred to by the Purchaser.

**27) Records Retention**

The Contractor shall retain records associated with the Goods or Services permanently or until the Purchaser has instructed the supplier to dispose of the records.

**28) Export Control and Foreign Trade Data Regulations**

28.1 The Contractor shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). The Contractor shall advise the Purchaser 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 the Purchaser 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 Purchaser - the Contractor's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European contractors).

28.2 The Contractor shall be liable for any expenses and/or damage incurred by the Purchaser due to any breach of the obligations according to 28.1, unless the Contractor is not responsible for such breach"

**29) Reservation**

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

Revision	Changes	Date
1.1	Original published version	31 July 2014
1.2	Added: 2.5 Nonconformities 2.6 Change notification 2.7 Requirements flow down 2.8 Document revisions 3.1(f) Access to records 27 Records Retention	17 Feb 2015
1.3	Added: 28. Export Control... and 29. Reservation. 2.9 Counterfeit parts 2.10 Personnel awareness	22 Mar 2017
1.4	Added: Company name changed from Materials Solutions to Materials Solutions – A Siemens Business	10 Apr 2019