

General Conditions for Application Service Providing (ASP) of Siemens AG, Automation and Drives

Siemens AG, Automation and Drives (hereinafter called "Siemens") provides Application Service Providing Services in the area of industrial automation. Siemens provides the contract partner (hereinafter called "the Customer") with services exclusively subject to the following provisions. General terms and conditions of the Customer shall apply only insofar as such conform with the present conditions or if expressly accepted by Siemens in writing. The nature and extent of the services to be provided (hereinafter called "ePS Network Services") are based on the order confirmation /ASP certificate. Insofar as Siemens procures the services of third parties in individual cases for the Customer, in such case a contractual arrangement shall exist exclusively between the Customer and the third parties subject to the business conditions agreed between those parties.

1 Extent of Performance

- 1.1 Siemens shall provide to the Customer the agreed applicable ePS Network Services. Siemens shall make the ePS Network Services available for use via the Internet. The connection of the Customer and the maintenance of the network connection as well as the obtaining and availability of the necessary hardware of the Customer is not the subject matter of this Contract. Insofar as the obtaining and availability of any necessary software for the Customer is the subject matter of this Contract the making available of such software to Customers with a seat or registered office in Germany the General License Conditions for Software Products for Automation and Drives for Customers with a Seat or registered Office in Germany shall apply and for Customers with a seat or registered office outside of Germany the General License Conditions for Software Products for Automation and Drives for Customers with a Seat or registered Office outside of Germany shall apply. The Customer shall itself be responsible for obtaining a network connection conforming to its own requirements.
- 1.2 Siemens grants the Customer in return for payment a non-exclusive, non-transferable right (which may not be sublicensed) for the specified number of users for the agreed period to use the necessary software for the agreed ePS Network Services on the technical information systems of Siemens. The software is not transferred to the Customer. Insofar as Siemens makes available any new versions, releases or updates of the software during the period of this Contract the conditions of this Contract related to software shall apply accordingly. Unless otherwise agreed in writing Siemens is not under any duty to make available new versions, releases or updates.
- 1.3 The Customer may download or copy software or data other than its own only if such is necessary in order to use the agreed services. The Customer shall not retranslate the necessary software for the agreed ePS Network Services nor separate parts thereof from the software nor shall the Customer recover in part or in whole the source codes in relation thereto provided that no mandatory requirements of law shall be affected thereby.
- 1.4 Siemens shall make available user documentation on its system which provide detailed information and conditions of the use of ePS Network Services. Siemens grants the Customer the non-exclusive, non-transferable right to download such user documentation and in relation to the use of ePS Network Services to copy such in an unchanged form provided that any existing industrial property marks are not deleted. Such right shall not be sublicensed. The Customer may adapt or distribute the user documentation subject to the prior written permission of Siemens.
- 1.5 Siemens shall make available to the Customer the agreed memory capacity and shall protect any transferred data. Insofar as such is possible in terms of reasonable commercial and technical efforts Siemens shall ensure by the use of firewalls and virus scanners that any unauthorised access to the data of the Customer is prevented and shall also ensure that the transfer of any damaging codes (e.g. viruses, Trojan horses, and similar devices) is prevented. The Customer is however aware that complete protection is not possible. Siemens may delete any data contaminated by dangerous codes if the risk cannot be avoided in any other reliable manner which is technically and commercially reasonable. Siemens shall inform the Customer accordingly insofar as such is possible and reasonable for Siemens in the circumstances.
- 1.6 Subject to prior consultations Siemens may offer training in return for payment.
- 1.7 Siemens shall make available to the Customer the necessary entry code and password (collectively called "Entry Data"). The Customer shall make known this Entry Data available only to authorised employees and shall otherwise keep the information secret. Further, the Customer shall require its employees to conform with the same duty of secrecy and shall inform Siemens without delay of any suspicion that the Entry Data has become or could have become available in whole or in part to any unauthorised person. Siemens reserves the right to verify conformity with this provision by checking any log data. The Customer shall be liable for any damage resulting from the making available of Entry Data unless Siemens is responsible therefor.

- 1.8 Any free ePS Network Services provided may be discontinued by Siemens at any time. Siemens shall inform the Customer of the termination of such ePS Network Services, e.g. by way of e-mail or information on the Webportal.

2 Duty of Customer to Cooperate

- 2.1 The Customer is responsible itself for the input and maintenance of the necessary data and information for the use of the ePS Network Services. The Customer shall not use any data which may in any way limit the ePS Network Services, the software use, the data or the technical information systems of Siemens or third parties in terms of function and particularly in terms of availability and integrity. In this regard the Customer shall in particular check any data and information before putting it into the system and shall use appropriate current virus protection programmes in accordance with the state of technology. In so far as the Customer provides data or information to Siemens related to any customer of the Customer or any other third party, the Customer undertakes to obtain from its own customer or third party prior permission to provide such data or information to Siemens. Upon first demand the Customer shall indemnify Siemens in relation to any claims and costs related to the use of such data or information claimed by any customer of the Customer or any third party against Siemens.
- 2.2 The Customer shall nominate to Siemens a trained contact partner to provide the necessary information for the performance of this Contract and who can make decisions or arrange for such to be made.
- 2.3 Above and beyond the above named concrete duties of the Customer to cooperate, the Customer shall also assist and provide the necessary conditions, particularly if Siemens requests such and the required measures do not exceed a reasonable level. Included in such duties are in particular the duty to make possible free access to the controls and systems of the Customer and the correct connection of the controls and systems of the Customer to the Internet (including network, firewall configuration).

3 Limitations on Use of the Services

- 3.1 Any information on the Websites of Siemens, in particular, texts, pictures, sound documents and data are generally protected in favour of Siemens or other third parties in terms of national laws or international conventions, in particular in relation to copyrights. The use of such, in particular any copying, distribution, performance, transmission of other form of transfer as well as processing or alteration is allowed only with the prior express written agreement of Siemens or the third party concerned. The information may, however, be used by the customers in terms of the ePS Network Services and may be altered in terms of the requirements of Siemens to suit the needs of the Customer.
- 3.2 The Customer is obliged to have regard to all applicable laws and other legal provisions as well as the supplementary rules set out by Siemens or other third parties in using ePS Network Services. In particular it is not allowed to make available data or information or to transfer such in cases where such data or information is illegal or against public policy or morality or in cases where such information violates industrial property rights or the copyright of any third party (hereinafter called "Unlawful Data"). Siemens may block access to Unlawful Data of the Customer insofar as such is illegal or insofar as there is an objective and reasonable suspicion that it is illegal. This shall apply in particular in case any court or authority has ordered the informational data to be blocked or in case any third party credibly demonstrates that the information or data is illegal. Insofar as any limited block of the legal contents is not possible or reasonable Siemens may block the use of all ePS Network Services to the respective Customer.
- 3.3 In case of a serious or continuing breach by the Customer of its duties as well as in cases of repeated breaches Siemens may at its own discretion temporarily stop the use of ePS Network Services by the Customer in whole or in part or terminate the contractual relationship for important reasons and without any period of notice. Any expenses incurred by Siemens in relation to the above measures may be invoiced by Siemens to the Customer in terms of the applicable valid price of Siemens. If the Customer is responsible for a breach of legal or contractual provisions the Customer shall compensate Siemens for any damage resulting therefrom and furthermore the Customer shall fully indemnify Siemens against any claims by third parties.

4 Availability of ePS Network Services

- 4.1 ePS Network Services are generally available from 01.01 to 31.12. of each year and are available from the first to the last calendar month of each month during the period from 00.00 to 24.00 (hereinafter called "Access Times"). The average monthly availability is to be taken from the order confirmation or the ASP certificate. During the remaining periods (hereinafter called "Interval Times") there is no right of use of ePS Network Services although such may be available subject to limitations and the possibility of sudden interruptions. Due to the possibility of limitations and interruptions the Customer shall use ePS Network Services at its own risk during the Interval Times and in particular the Customer shall only process such data for which loss or unintentional change would not result in negative consequences because such could be recovered with a minimum of inconvenience. Siemens shall inform the Customer by e-mail or by information on the Webportal as to the times of any Interval Times. The Customer shall inform Siemens without delay immediately if the Customer becomes aware that ePS Network Services are not available. This shall not apply if ePS Network Services are not available due to maintenance or repair work previously notified by Siemens (4.2).

- 4.2 Siemens may cause interruptions during Access Times as a result of foreseeable maintenance or repair work. In such case Siemens shall notify the Customer by e-mail or by way of a notice at the Webportal and shall limit the regular Interval Times at the next possibility to the same extent.
- 4.3 After prior consultations Siemens may offer customer support in return for payment.
- 4.4 In the event that the software programme does not achieve the required level of accessibility to ePS Network Services for reasons for which Siemens or its agents is responsible, without any situation in terms of 4.2 existing, the Customer may reduce the level of the monthly share of the annual payment (1/12) in proportion to the monthly percentage reduction below the minimum access period. If the ePS Network Services are not available on at least four occasions in any calendar month for at least two hours on each occasion the Customer may terminate the Contract for extraordinary reasons. The right to terminate for extraordinary reasons shall be extinguished if the Customer does not exercise in writing or by fax the right to terminate within one week from the date of the conditions for termination occurring.
- 4.5 In cases of repeated gross negligence or malicious and false notifications from the Customer, Siemens may invoice the Customer for the costs resulting from the processing of such notifications but at least EURO 25 for each such notification. The parties may claim a higher or lower level of compensation.
- 4.6 Siemens may block the access to the respective User of the Customer if false Access Data is provided on three consecutive occasions. If the User of Customer is responsible for the block Siemens may invoice the Customer for the costs resulting from the clearing of the block but at least EURO 25. The parties may claim a higher or lower level of compensation.

5 Prices

- 5.1 The prices for the use of ePS Network Services are contained in the applicable valid price list of Siemens unless otherwise agreed in the offer or order confirmation.
- 5.2 Any one-off prices for ePS Network Services shall be due upon the making available of use. Ongoing prices are due at the commencement of the Contract for the respective minimum contractual term and then in advance at the commencement of the respective extension of the contractual term. Other prices shall be due upon the making available of services and the receipt of the invoice.
- 5.3 In addition to the costs and the prices the applicable turnover tax at the time of performance of services shall be invoiced in addition.
- 5.4 Payment shall be made in accordance with the agreed mode of payment.
- 5.5 Siemens may increase the agreed prices or those prices stated in the price list of Siemens once per calendar year with effective for the future. Siemens shall notify the Customer of any planned price increase two months in advance. In the event that the Customer is not in agreement with the increase the Customer may terminate the Contract as a whole with a period of one month to the end of the calendar month. In the event that the Customer exercises this right of termination the existing prices shall be invoiced until the termination is effective. There shall be no increase of prices for any services provided within the first four months of the Contract.
- 5.6 The Customer shall not set-off or exercise any right of retention in relation to Siemens unless such is based on a final, legally-binding judgement or an undisputed claim of the Customer.

6 Claims for Defects

- 6.1 Siemens shall be liable in accordance with the following provisions for ePS Network Services insofar as any limitations are not based on limitations on availability in accordance with 4 above. The consequences of defective availability are dealt exclusively in 4 without affecting the mandatory provisions of law. As a result of the nature of network connections Siemens cannot accept any liability for the availability of its technical information systems in cases where the respective connections are not made available or maintained by Siemens. Any warranty as to quality as well as the providing of a guarantee requires the express written confirmation of Siemens. Statements and descriptions in documentation and on Web pages of Siemens as well as commercial representations are not guarantees or warranties as to quality.
- 6.2 Siemens warrants the competent providing of ePS Network Services with due care. In the event that any ePS Network Services provided are defective for reasons for which Siemens is responsible Siemens shall provide such ePS Network Services in accordance with the Contract within a reasonable deadline to the extent that the Customer has notified Siemens without delay and in writing of the defects and provided a detailed description of such. Defects in the necessary software for ePS Network Services shall be limited to reproducible variations from the specifications set out in the Contract and the user documentation.
In cases of the use of software of third parties which Siemens has licensed for use by the Customer within the frame of ePS Network Services rectification shall consist of obtaining and introducing any new releases, updates or defect corrections available to Siemens provided that the measures involved are reasonable in relation to the performance of the Contract. If the ePS Network Services cannot be provided in terms of this Contract even after the setting of a reasonable deadline the Customer may terminate this Contract without notice with regard to the related defective performance. The Customer may only terminate the complete contract if the further adherence as a whole would be unreasonable.

- 6.3 Insofar as any third party makes any justified claims against the Customer on the basis of a violation of industrial property rights or copyright caused by the ASP-Services provided by Siemens and used by the Customer in terms of this Contract, and provided that the use of ePS Network Services is prevented or limited thereby, Siemens shall at its choice and at its own cost either obtain a right of use from the third party or it shall so adapt or redevelop its services that such no longer violate the industrial property right or copyright, or it shall reimburse the Customer for the moneys paid for the ePS Network Services. The above shall only apply if the Customer informs Siemens without delay in writing of any claims by third parties due to industrial property right or copyright violations and provided that the Customer does not admit any allegations of violation and proceeds in relation to any dispute, including any out-of-court settlement only on the basis of the agreement of Siemens. If the Customer itself is responsible for the industrial property or copyright violation any claims against Siemens under 6.3 are excluded. The same shall apply if the industrial property or copyright violation results from special requirements of the Customer or on the basis of an application of ePS Network Services which was unforeseeable for Siemens.
- 6.4 Any further rights to claim as a result of defect in ePS Network Services are excluded. Paragraph 7 shall not be affected hereby.

7 Liability

- 7.1 Siemens shall be liable without limitation for any personal injury for which it is responsible and shall be liable in cases of damage to property for which it is responsible up to an amount of EURO 25,000 for repairs in each case. In the event of multiple cases the total liability shall not exceed EURO 100,000 per calendar year. In the event of damage to data medium the duty to compensate shall not include the restoration of any lost data or information. Siemens shall not be responsible for the defect-free operation of network infrastructures and network connections.
- 7.2 In the event that Siemens is late in the providing of its services without any event described in 4 occurring and if the Customer is able to satisfactorily demonstrate that it has suffered damage as a result, liquidated damages may be claimed. The amount of liquidated damages shall be 0.5% of the price of the respective delayed performance or service for each complete week of delay but up to a maximum amount of 5% of such price. Siemens shall not be responsible for any delays particularly in relation to acts of God, e.g. mobilisation, war, insurrection or other similar events or in relation to any other events for which Siemens is not responsible such as e.g. strike or lockout.
- 7.3 Any further rights of the Customer in relation to defects and damage other than those contained in this Contract for whatever reason whatsoever are excluded particularly in relation to any claims due to interruption of production, loss of profit, loss of data or information or incidental damage due to breach of any duty arising from a debtor relationship, any tortious acts as well as any defects existing at the time of the conclusion of the Contract for the performance of ePS Network Services in relation to the relevant software. This shall not apply insofar as such is required by law, e.g. in terms of product liability or in the event of wilful acts, gross negligence, due to injury to life, orderly injury or injury to health, resulting from the acceptance of a guarantee as to quality, due to injury of any substantial contractual duty or malicious concealments of any defects. Any claims for damages for injury to substantial contractual duties is limited to typical foreseeable damage provided such is not wilful or based on gross negligence or due to an injury to life, personal injury or injury to health.
- 7.4 7.1 - 7.3 shall apply accordingly to any agents of Siemens.
- 7.5 A change in the burden of proof to the disadvantage of the Customer shall not result from the above provisions in 7.1 to 7.4.
- 7.6 The necessary software for the providing of ePS Network Services may be licensed software, i.e. not developed by Siemens itself but by third parties (hereinafter called "Licensor") and based on a licence. The liability and warranties of the Licensor in relation to the Customer for the software are excluded. The liability of Siemens in relation to the Customer shall be on the basis of these General Conditions.

8 Term

- 8.1 This Contract shall be concluded for the applicable minimum term agreed. It shall be extended for a further twelve (12) months if it is not terminated in writing within a period of three months to the end of each twelve month period. Termination is however only admissible at the earliest at the end of the minimum contract term.
- 8.2 Notwithstanding 8.1 either party may terminate this Contract in writing without a period of notice in cases of important reasons. An important reason exists in particular in any of the cases named in this Contract if the Customer does not pay although further deadlines for payment have been set, if a party in any other way breaches a substantial duty or if as a result of acts of God or pending insolvency the continuation of the contractual relationship can no longer be reasonably expected of the terminating party.

9 Secrecy, Subcontracts, Assignment, Data Protection

- 9.1 The parties shall treat as confidential all material, information and data which they may receive for the performance of this Contract and shall use such only for the performance of this Contract insofar as such material, information and data is not

part of the public domain. These duties shall remain in force even after the termination of this Contract. Insofar as the Customer allows a third party to access or use its data and information in connection with the providing of ePS Network Services, Siemens is entitled to transmit such data and information to the said third party accordingly.

- 9.2 Siemens may grant subcontracts to third parties for the providing of part or whole of the service range in relation to ePS Network Services and may change such agents or contractors at any time.
- 9.3 Siemens may assign any claim against the Customer at any time to a third party. Further Siemens may assign its rights and duties arising out of this Contract to a third party. Such assignment shall not be effective if the Customer objects to such in writing within a period of four weeks from the date of the receipt of notification of such assignment. Siemens shall remind the Customer of this provision in any notice of assignment.
- 9.4 If the Customer collects, processes or uses personal data itself or through Siemens the Customer shall ensure that it is entitled to do so under the applicable law and in particular any laws related to data protection and shall indemnify Siemens against any claims by third parties in the event of a breach thereof. Insofar as personal data are collected, processed or used by Siemens, Siemens shall conform with the Provisions of the Federal Law for the Protection of Data (BDSG) and other applicable data protection provisions (e.g. the Tele Service Data Protection Law). The Customer agrees with the collection, processing and use of data made available to Siemens in terms of this Contract (including personal data) and warrants that before transferring such personal data to Siemens the appropriate prior consent of the related persons has been obtained. In relation to the nature and the extent of the data made available by the Customer Siemens shall be subject to instructions of the Customer in relation to the respective collection, processing and use. Such instructions shall be provided in writing in good time. The employees of Siemens dealing with the collection, processing and use of personal data shall keep such secret in terms of § 5 BDSG and § 11 BDSG.

10 Export Licence, Supplementary Agreements and Jurisdiction

- 10.1 The export of data or information may – depending for example on its nature or application – be subject to official permit. In relation to the export of software and technology etc the Customer is fully aware of the special provisions of the Export Regulations of the European Union (EG-VO Nr. 3381/94 Art 3 and Art 4) as well as the External Trade Regulations (AWV §5, §§5b-e, §7 and §45) and particularly in relation to the export or access by data transfer the Customer is fully aware of AWV §4b as well as US export requirements (EAR Export Administration Act) and undertakes to comply with all applicable laws and regulations etc

In particular the Customer shall verify and ensure,

- that data or information is not intended for an arms-related application or any nuclear or technical military armament application,
 - that no goods originating from the US, or US software or hardware is delivered to any enterprise or person named in the US Denied Persons List (DPL).
 - that no products originating in the US are delivered without permission to any enterprise or person named in the US Warning List, US Entity List or the US Specially Designated Nationals List.
 - that no enterprise or person named in the Lists of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the Terrorists List of the EU shall receive delivery,
 - that no military consignee shall receive delivery
 - that the early warning notices of the responsible German authorities shall be observed.
- 10.2 Any notice by Siemens to the Customer shall be legally served and sent to the address, e-mail address or fax number of the Customer last made known by the Customer. Any changes to the details of the Customer shall be notified to Siemens without delay.
- 10.3 Any amendments to the Contract and any supplementary agreements as well as any termination require the written form in order to be valid. The electronic form is excluded insofar as such is not expressly agreed to in this Contract. If Siemens is not able to transfer in a written form any document to the Customer because of a breach against 10.2, Sentence 2 Siemens may transmit such by way of fax or e-mail.
- 10.4 Insofar as the Contract is based on an ASP certificate such shall have priority.
- 10.5 German law shall apply. The place of jurisdiction shall be Nuremberg if the Customer is a merchant in terms of the Commercial Code (Handelsgesetzbuch).