

SIEMENS

GENERAL CONDITIONS FOR THE PARTICIPATION IN SIEMENS ESOURCING EVENTS

1. Scope, Amendments

1.1. These General Conditions shall govern esourcing activities (“**Events**”) that Siemens Industry, Inc. or its Affiliate (each such company “**SIEMENS**”) conducts via a specific electronic tool (“**Siemens eSourcing Tool**”) operated by a third party (“**Operator**”) in order to electronically receive offers from potential contract partners. For the purposes of these General Conditions, with respect to a party hereto, “**Affiliate**” means any other entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party, provided, however, that such an entity shall be deemed an “**Affiliate**” only as long as such control exists.

1.2. These General Conditions, together with each Event Specifics, shall constitute the entire agreement of the parties (the “**Agreement**”) with respect to the subject matter hereof and shall supersede all previous communications, representations, agreements or understandings, whether oral or written, with respect to the subject matter hereof.

1.3. SIEMENS may amend or supplement these General Conditions at any time by giving notice before the start of an Event. Participation in an Event after having received such notice shall constitute consent to such amendment or supplement.

2. Invitation

2.1. Prior to any Event SIEMENS will, in its sole discretion, invite selected companies to take part in such Event by providing them with information about the Event (“**Event Specifics**”). These will include the procedure for the Event, the specifications of the goods and/or services that SIEMENS intends to procure (“**Event Goods/Services**”) as well as these General Conditions.

2.2. A selected company shall only be allowed to take part in an Event if, prior to the Event, it has

- a) accepted these General Conditions,
- b) accepted the Event Specifics, and
- c) registered on the Siemens eSourcing Tool with a personal email (user ID) and password.

2.3. A selected company which has satisfied the conditions in section 2.2 above shall in these terms be known as a “**Participant**”.

2.4. As soon as a user ID and the corresponding password are used, any offers or other declarations made using the user ID will be deemed to have been made by and with the full authority of the Participant except if the Participant is able to prove that a third party gained unauthorized knowledge of the user ID and password and that the Participant was not responsible for the relevant activity.

2.5. SIEMENS reserves the right to block or withdraw the access authorization of Participants without prior notice and without giving any reason, e.g. if a Participant has been added to a sanctioned party list.

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3. Duties of the Participants

- 3.1. In the course of using the Siemens eSourcing Tool a Participant shall not:
- a) provide incorrect or incomplete information;
 - b) misuse or abuse the Siemens eSourcing Tool (e.g. by providing an offer under a false name);
 - c) provide any information which is illegal, obscene, threatening, defamatory, invasive of privacy or otherwise injurious or objectionable to third parties;
 - d) infringe intellectual property or any other proprietary rights or breach any duty or obligation of confidentiality;
 - e) upload any viruses, malware, or malicious code, including without limitation, Trojan horses, worms or other programs which could damage software or hardware;
 - f) distribute advertising, political campaigning, commercial solicitations or any form of spam or unsolicited commercial electronic messages;
 - g) solicit or request the participation in any lottery, snowball system, chain letter, pyramid game or similar action.
- 3.2. Participant shall defend, indemnify and hold harmless SIEMENS and the Operator and their officers, directors, employees, Affiliates and representatives from any and all claims, losses, damages, liabilities, judgments, settlements, fees, costs and expenses (including reasonable attorney's fees and legal expenses)(collectively, "**Claims**") arising out of Participant's violation of the obligations set forth in Section 3.1 of these General Conditions.
- 3.3. Participants shall protect their computers and systems against any viruses, Trojan horses, worms or other programs which could damage software or hardware.
- 3.4. If a Participant becomes aware of any problem or interference with the communication system and/or the Siemens eSourcing Tool or has a reasonable belief that any such problem or interference exists or is likely, it shall immediately inform SIEMENS. If necessary, other means of communication outside the Siemens eSourcing Tool (e.g. telephone, email) shall be used.
- 3.5. Notwithstanding the duty to inform as set out above, Participants shall take all reasonable measures to minimize the damage, identify the issue and avoid the consequences resulting from such problem or interference.
- 3.6. Participants shall be responsible for a) providing complete and true data necessary for the registration (e.g., correct e-mail address), and b) regularly checking and keeping such data up to date.
- 3.7. Participants shall ensure that their passwords are carefully stored and treated in such a way so as not to be lost and so as to be secure from access by persons who are not authorized to make offers on behalf of the Participant through the Siemens eSourcing Tool.
- 3.8. Participants shall make themselves aware of the procedure and the Event Specifics.

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4. Procedure

4.1 The Event shall take place according to these General Conditions and the Event Specifics. In case of contradiction between these two set of rules the Event Specifics shall prevail.

4.2 The Participants in the Event will not be informed about the identity of other Participants. SIEMENS will not disclose the identity of any Participant to any other Participant.

4.3 The commencement of an Event by SIEMENS for the procurement of certain goods or services shall not constitute a binding offer, but rather shall be treated as an invitation to Participants to submit binding offers.

4.4 During an Event, a Participant may only provide offers based on these General Conditions and the Event Specifics. Offers amending or deviating in any way from these General Conditions and the Event Specifics are not permitted. If a Participant suggests any alterations, amendments or additions to the Event Specifics or these General Conditions, e.g. by suggesting its own general terms and conditions, those alterations, amendments or additions are hereby deemed rejected by SIEMENS and shall not be valid.

4.5 Offers submitted in a currency other than that authorized for the Event will not be considered.

4.6 All offers shall be submitted exclusive of the applicable sales tax.

4.7 The offers of the Participants provided before and during an Event are binding. Except as otherwise provided by law, a Participant may not change or withdraw any offer received by SIEMENS. The period of commitment for an offer shall be set forth in the Event Specifics. In the absence of any defined period of commitment, a Participant shall be bound by its last offer for 30 calendar days.

4.8 In case a Participant recognizes a typing error in its offer, the Participant shall immediately inform the responsible SIEMENS buyer. If the Participant fails to notify SIEMENS immediately, its offer shall be binding as submitted.

4.9 If SIEMENS believes that there has been a mistake in an offer made, SIEMENS reserves the right, without any liability, to delete such offer in order not to interrupt the Event. If an offer is deleted by SIEMENS for this reason, the Participant will be informed by SIEMENS as soon as reasonably possible.

4.10 The Participants shall bear all of their costs incurred in connection with the Event and the preparation of offers.

4.11 Unless otherwise provided for in the Event Specifics, SIEMENS may in its sole discretion and without any liability cancel, reschedule, extend, end or re-open a running Event or repeat a closed Event.

5. Term

This effective date of this Agreement shall be the date when the Participant accepts an invitation to an Event in accordance with Section 2.2 of this Agreement. Unless extended by written agreement of the parties, this Agreement shall terminate when the Participant's offer expires by its terms.

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6. Liability

6.1 Due to the nature of the Internet, the time and quality of the data transmission depends on factors outside of SIEMENS' control. SIEMENS does not guarantee the permanent availability of the Siemens eSourcing Tool. With the current available technology it is not possible to develop and run error-free software and hardware and to exclude all the uncertainties related to the Internet. Moreover, interference may occur as a result of overload of networks, hardware or software problems, and/or other technical problems affecting SIEMENS and/or third parties. As a result, SIEMENS may not be able to receive offers at all times during the Event.

6.2 PARTICIPANTS AGREE THAT THE ESOURCING TOOL IS PROVIDED ON "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.3 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SIEMENS OR THE OPERATOR BE LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, LOSS OF INFORMATION AND DATA, CLAIMS ARISING FROM OTHER PARTY'S THIRD-PARTY CONTRACTS OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OF FOR ANY OTHE LOSS OR COST OF SIMILAR TYPE.

6.4 In addition to the foregoing, SIEMENS and the Operator shall have no liability, regardless of the legal basis, for Claims for direct damages of any kind arising out of or related to participation in the Event, including without limitation:

- a) damages due to any viruses and or malicious code, including without limitation time bomb, ransomware, software lock, Trojan horses, worms, trap doors or other programs which could damage software or cause damage, destruction or shutdown of systems or parts of the systems,
- b) damages due to the use, or unavailability for use, of the Siemens eSourcing Tool, or
- c) damages arising out of the incorrect transmission of data, the manipulation of data by a third party, including through unauthorized access to the networks and systems of SIEMENS, or the non-transmission of data.

7. Non-disclosure, Data Protection

7.1 When SIEMENS and a Participant disclose information to each other, the party receiving information marked as "confidential," or marked in a similar manner, or information that a reasonable person in similar circumstances and based on the nature of the information would consider confidential (collectively "**Confidential Information**") shall use such information only for the purpose for which it has been provided, shall prevent third parties from gaining access to it, and shall treat it with the same degree of care as its own confidential information (but at least with reasonable care). This

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confidentiality obligation shall end 5 years after the disclosure of the Confidential Information.

7.2 SIEMENS may disclose Confidential Information to its Affiliates, the Operator.

7.3 The above confidentiality obligation does not apply to information:

- a) Which is publicly known;
- b) Which can be shown to have been independently developed by the receiving party;
- c) Which can be shown to have been previously known to the receiving party without obligation of confidentiality;
- d) Which has been acquired by the receiving party from a third party without breach of confidence by such third party;
- e) Which the receiving party is required to disclose by law, provided that, if allowed by law, the receiving party will promptly advise the disclosing party of the requirement to make such disclosure in order to allow the disclosing party an opportunity to obtain a protective order.

7.4 SIEMENS may transmit the data necessary for the Event (e.g. the best offer) in a form made anonymous to the other Participants.

7.5 In relation to any personal data being saved or processed, SIEMENS shall meet the requirements of applicable data protection legislation. SIEMENS shall pay special attention to the instructions of the Participants and adopt the technical and organizational measures necessary to secure the data against misuse. At the same time, the Participant gives its consent to process and transmit the data necessary to conduct the Events and shall ensure, as far as personal data is concerned (e.g. about its employees), that any concerned person gives consent to the processing and transmitting of personal data for the purposes of participating in the Event.

8 No License

SIEMENS does not grant to the Participant any license to use any SIEMENS intellectual property, including the Siemens eSourcing Tool or any parts of the tool, except to use the tool in order to participate in the Event in accordance with these General Conditions.

9 Compliance with Law.

In exercising its rights and performing its obligations under this Agreement, each party shall comply with all applicable laws, statutes, ordinances and regulations, including, without limitation antitrust and unfair competition laws. A Participant shall not communicate, collude, conspire, coordinate, or in any manner make contact with other Participants in order to manipulate or coordinate the pricing or other terms of their offers.

10 Applicable Law, Dispute Resolution

10.1 The validity, interpretation and performance of this Agreement shall be construed and governed by the laws of the State of Illinois without regard to conflicts of law principles.

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10.2 Except as provided herein, no civil action with respect to any dispute, claim, or controversy (collectively, “**Dispute**”) arising out of or relating to this Agreement may be commenced until the matter has been submitted for mandatory mediation. Such mediation shall be initiated by a written Notice of Mediation from a party containing a short, plain statement of the basis for the party’s claim and the relief sought. The parties will cooperate with one another in selecting a mediator, who shall, unless otherwise agreed, be a lawyer or retired judge with at least 15 years’ experience in the legal profession. Should the parties fail to so agree within 14 days of the issuance of the Notice of Mediation, the mediator shall be appointed by the American Arbitration Association, JAMS/Endispute, or another nationally recognized entity engaged in private dispute resolution.

10.3 The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation for the limited purpose of preserving the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 60 days after the date of filing the written request for mediation, whichever occurs last.

10.4 In the event that the parties are unable to resolve their Dispute through mediation, then any and all actions arising out of or in connection with this Agreement shall be submitted for resolution to the United States District Court for the Northern District of Illinois or the Circuit Court of Lake County, Illinois. Each party submits to personal jurisdiction of such courts and waives all objections to venue, including any objections on the grounds of forum non-convenience.

10.5 EXCEPT AS OTHERWISE PROVIDED BY LAW, THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND IRREVOCABLY AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THE AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.

11. General

11.1 Assignment. Neither party may assign any rights or obligations hereunder without prior written consent of the other party, except that SIEMENS may assign its rights and obligations hereunder to an Affiliate or an Affiliate’s successor organization.

11.2 Publicity. No party hereto shall refer to, or use, or permit any person to refer to or use, any other party’s name, trademarks, service marks or logos in any advertising, promotional materials, press releases or other publicity without obtaining the prior written consent of the other party.

11.3 Waiver. Failure of a party to enforce its rights under this Agreement shall not constitute a waiver of such rights or any other rights hereunder or under the applicable law. The rights and remedies of the parties herein shall not be exclusive and are in addition to any other rights and remedies provided applicable law or in equity.

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11.4 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties' original intent.

11.5 Survival. Termination or expiration of this Agreement shall not prejudice any rights or remedies of either party which may have accrued under this Agreement up to the date of termination or expiration. Any provision of this Agreement which contemplates performance or observance subsequent to termination or expiration of this Agreement will survive such termination or expiration and will continue in full force and effect.