

Conditions of Purchase Siemens Enterprise Communications GmbH & Co. KG

Dated: May 01, 2009

1. Order and Confirmation of Order

- 1.1 Siemens Enterprise Communications GmbH & Co. KG (SEN) may cancel the order if the Supplier has not confirmed acceptance of the order (confirmation) in writing within two weeks of receipt.
- 1.2 If the terms of the confirmation vary from the terms of the order, SEN is only bound thereby if it agrees to such variation in writing. In particular SEN is bound by the General Terms and Conditions of the Supplier only to the extent that these are in accordance with SEN's own General Terms and Conditions or if SEN agrees to such in writing. The acceptance of deliveries or services as well as payments do not constitute such agreement.
- 1.3 Any amendments or additions to the order shall only be effective if SEN confirms such in writing.

2. Rights of Use

- 2.1 The Supplier hereby grants SEN the following non-exclusive, transferable, worldwide and perpetual rights:
 - 2.1.1 to use the deliveries and services, to integrate them into other products and to distribute them worldwide;
 - 2.1.2 to use or allow others to use software and its related documentation (hereinafter collectively referred to as "Software") in connection with the installation, launch, testing and operation of the Software;
 - 2.1.3 to sublicense the right of use under section 2.1.2 above to affiliates (as defined by §15 of the German Companies Act, "AktG") to other distributors and end customers;
 - 2.1.4 to license affiliates (as defined by §15 AktG) and other distributors, to sublicense the right of use under section 2.1.2 above to end customers;
 - 2.1.5 to use the Software for integration into other products and to copy the Software, or to allow affiliates (as defined by §15AktG) or other distributors to use and copy the Software;
 - 2.1.6 to distribute, sell, hire out, lease, make ready for download or make publicly available the Software, e.g. in the context of Application Service Providing or in other contexts, and to copy the Software to the extent required, always provided that the number of licenses being used at any one time does not exceed the number of licenses purchased;
 - 2.1.7 to sublicense the right of use under section 2.1.6 above to affiliates (as defined by §15 AktG) and other distributors.
- 2.2 In addition to the rights granted in section 2.1 above, SEN, affiliates (as defined by §15AktG) and other distributors are authorized to allow end customers to transfer Software licenses.
- 2.3 All sublicenses granted by SEN must contain appropriate protection for the intellectual property rights of the Supplier in the Software. All sublicenses must contain any contractual provisions used by SEN to protect its own intellectual property rights.
- 2.4 The Supplier is obliged to inform SEN - at the latest at the time the order is confirmed - whether the products and services to be delivered contain "open source software"

In the context of this provision "Open source software" is software that is licensed royalty-free and which may be adapted by a user and/or licensee or third party and/or which must be disclosed in source code form.

Should the products and services delivered by the Supplier contain open source software, the Supplier must deliver to SEN at the latest at the time the order is confirmed the following:

- The source code of the relevant open source software, insofar as the applicable open source conditions require the disclosure of this source code
- A schedule of all open source files used, indicating the relevant license and including a copy of the complete text of such license
- A written declaration that through the intended use of the open source software neither the products of the Supplier nor the products of SEN will be subject to a "Copyleft Effect". In the context of this provision, "Copyleft Effect" means that the provisions of the open source license require that certain of the Supplier's products, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed.

Should the Supplier not indicate until after receipt of the order that its products and services contain open source software, then SEN is entitled to cancel the order within 14 days of receipt of this information and provision of all the information contained in the above paragraph.

3. Term and Penalty for Breach

- 3.1 For the purposes of establishing the timeliness of delivery or re-performance, the relevant point in time is the date of receipt at the place of receipt designated by SEN, and for deliveries involving installation, commissioning or services, the relevant point in time shall be the date of acceptance.
- 3.2 Where any delay in delivery or performance can be anticipated, SEN shall be notified immediately and its decision sought.
- 3.3 If - in the event of delay - the Supplier cannot prove that he is not responsible for the delay, SEN may charge a penalty in respect of each commenced working day of delay amounting to 0.3% but not exceeding a total of 5% of the total value of the contract.
In the event that the appropriate reservation of rights is not made at the time of acceptance of delivery, services or re-performance, this penalty may be claimed up until the date of final payment.

4. Transfer of Risk, Dispatch and Place of Performance

- 4.1 For deliveries involving installation, commissioning or services, the transfer of risk occurs on acceptance and for deliveries not involving installation or commissioning, the transfer of risk shall be upon receipt by SEN at the designated place of receipt.
- 4.2 Unless otherwise agreed, the costs of delivery and packaging shall be borne by the Supplier. For pricing ex works or ex warehouse of the Supplier, transport shall in each case be at the lowest possible cost, insofar as SEN has not requested a particular method of delivery. Any supplementary costs arising from non-conformity with the transport requirements shall be borne by the Supplier. Where the price is quoted free to the recipient, SEN may also determine the method of transportation. Any supplementary costs arising from the need to meet the delivery deadline by way of expedited delivery shall be borne by the Supplier.
- 4.3 Each delivery shall include a packing note or delivery note with details of the contents as well as the complete order number. Notice of dispatch shall be provided immediately with the same information.

5. Invoices

The order number as well as the number of each individual item shall be detailed in invoices. Insofar as any such details are omitted, invoices shall not be payable. Copies of invoices shall be marked as duplicates.

6. Payment

- 6.1 Payments shall be made by SEN, in each case on the first or third Wednesday of a calendar month (day of payment). Unless otherwise agreed, payments shall become due on the respective day of payment immediately following expiration of the credit periods, as follows:
 - on the day of payment following expiration of a 14-day credit period, less a 3 % discount or
 - on the day of payment following expiration of a 30-day credit period, less a 2 % discount or
 - on the day of payment following expiration of a 90-day credit period, net.
- 6.2 The period for payment shall commence as soon as any delivery or service is completed and a correctly issued invoice is received. Insofar as the Supplier is required to provide material testing, test records or quality control documents or any other documentation, such shall be a part of the requirements of the completeness of the delivery or performance. A discount shall also be allowed if SEN sets off or withholds any payments to a reasonable extent on account of any deficiency. The period for payment shall commence after the complete rectification of any deficiency.
- 6.3 If the Supplier is a "business person" (as defined in § 14 of the German Civil Code, "BGB"), the payment shall be deemed overdue only if SEN fails to pay in response to a payment demand note received after payment becomes due.
- 6.4 Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with the Contract.

7. Inspection upon receipt

- 7.1 SEN shall immediately upon receipt examine whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable transportation damage or other deficiencies.
- 7.2 Should SEN discover any deficiency in the course of these inspections, it shall inform the Supplier of such deficiency. Should SEN discover a deficiency at any later stage, it shall also notify the Supplier.
- 7.3 Complaints may be raised within one month of delivery of a product or performance, and insofar as deficiencies are not discovered until

commissioning, processing or first use, within one month of detection.

7.4 In this regard SEN shall have no other duties to the Supplier other than the duties of inspection and notification above.

8. Warranty

8.1 If deficiencies are identified before or during the transfer of risk or during the warranty period provided for in section 8.9 or 8.10, the Supplier must at its own expense and at the discretion of SEN either rectify the deficiency or provide substitute or performance. This provision also applies to deliveries subject to inspection by sample tests. The discretion of SEN shall be exercised fairly and reasonably.

8.2 Should the Supplier fail to rectify any deficiency within a reasonable time period set by SEN, SEN is entitled to:

- cancel the contract in whole or in part without being subject to any liability for damages; or
- demand a reduction in price; or
- undertake itself any rectification at the expense of the Supplier or substitute performance or arrange for such to be done; and
- claim damages in lieu of performance.

The provisions of §281 Section 2 und §323 Section 2 of the German Civil Code ("BGB") remain unaffected hereby.

8.3 Any rectification may take place without a further deadline at the expense of the Supplier if delivery is after the original deadline.

8.4 The same shall apply if SEN has a strong particular interest in immediate rectification in order to avoid any liability of its own for delay or for other reasons of urgency and it is not reasonable for SEN to request the Supplier to rectify the deficiency within a reasonable time period.

8.5 The above-mentioned rights shall expire one year from the date of notification of the deficiency but in no instance before the expiry of the warranty period set out in this section.

8.6 Additional or other statutory rights are not affected hereby.

8.7 If the Supplier provides subsequent performance or repairs, the warranty periods set out in section 8.9 and 8.10 shall begin to run once again.

8.8 The Supplier shall bear the costs and risk related to the return of deficient products.

8.9 The warranty period for material deficiencies is three years, insofar as no statutory provisions provide longer periods.

8.10 The warranty period for deficiencies in title is five years, insofar as no statutory provisions provide longer periods.

8.11 The warranty period begins to run with the transfer of risk (see section 4.1). Upon delivery to locations where SEN is operating outside its premises, the warranty period begins with the acceptance by the end customer, in no case later than one year after transfer of risk.

9. Duty to Verify Title/Duty to Inform

It is essential that the products are delivered free of any third party rights. Thus the Supplier is under a duty to verify title and inform SEN of any possible conflicting industrial and intellectual property rights. Any breach of such duty is subject to the normal statutory limitation period.

10. Subcontracting to Third Parties

Subcontracting to third parties shall not take place without the prior written consent of SEN and entitles SEN to cancel the contract in whole or in part and claim damages.

11. Provided Material

11.1 Material provided by SEN remains the property of SEN and is to be stored, labeled and administered separately. Their use is limited to the orders of SEN only. The Supplier shall supply replacements in the event of reduction of value or loss, for which Supplier is responsible, even in the event of simple negligence. This also applies to the transfer of allocated material.

11.2 Any processing or transformation of the material shall take place for SEN. SEN shall immediately become owner of the new or transformed product. Should this be impossible for legal reasons, SEN and Supplier hereby agree that SEN shall be the owner of the new product at all times during the processing or transformation. The Supplier shall keep the new product safe for SEN at no extra cost and in so doing exercise the duty of care of a merchant.

12. Tools, Patterns, Samples, Confidentiality etc.

12.1 Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and materials provided by SEN, as well as any materials derived there from, shall not be made available to any third party nor used for any other purpose than those contractually agreed except with the prior written consent of SEN. Such materials shall be protected against unauthorized access or use. Subject to any further rights SEN may demand that such materials be returned if the Supplier breaches these duties.

12.2 The Supplier shall not make available to any third party any information obtained from SEN if such information is not already general knowledge or has not been lawfully obtained by the Supplier. Insofar as SEN agrees to any subcontracting to a third party, such third party shall agree to such terms in writing.

13. Assignment of Claims

Any assignment of any claim is only allowed with the prior written approval of SEN.

14. Inability to Pay / Insolvency of the Supplier

Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the Supplier, SEN may terminate the Contract and/or any purchase orders issued thereunder. In the event of termination SEN may continue to utilize existing facilities, deliveries or services already performed by the Supplier in exchange for reasonable payment.

15. Code of Conduct for Suppliers

The Supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the Supplier 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 Supplier will take responsibility for the health and safety of its employees, the Supplier will act in accordance with the applicable environmental laws and will use best efforts to promote this Code of Conduct among its suppliers.

In addition to other rights and remedies the Customer may have, the Customer may terminate the contract and/or any purchase order issued thereunder in case of breach of these obligations by the Supplier. However, provided that Supplier's breach of contract is capable of remedy, Customer's right to terminate is subject to the proviso that such breach has not been remedied by the Supplier within a reasonable grace period set by Customer.

16. Export Control and Foreign Trade Data Regulations

16.1 For all Services to be provided the Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations") and shall obtain all necessary export licenses, unless SEN or any party other than the Supplier is required to apply for the export licenses pursuant to the applicable Foreign Trade Regulations.

16.2 The Supplier shall advise SEN in writing as early as possible but not later than three days prior to the Delivery Date of any information and data required by SEN to comply with all Foreign Trade Regulations for the Services applicable in the countries of export and import as well as re-export in case of resale. In any case the Contractor shall provide SEN for each Service

- the "Export Control Classification Number" according to the U.S. Commerce Control List (ECCN) if the Product is subject to the U.S. Export Administration Regulations; and
- all applicable export list numbers; 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 SEN:
- Supplier's declaration for preferential origin (in case of suppliers situated within the European Community) or preferential certificates (in case of non-European Community suppliers); and any data required with regard to the pre-arrival/pre-departure declaration.

16.3 In case of any alterations to origin and/or characteristics of the Products and Services and/or to the applicable Foreign Trade Regulations the Supplier shall update the Export Control and Foreign Trade Data in writing without delay. The Supplier shall be liable for any expenses and/or damage incurred by Siemens Enterprise Communications due to the lack of or inaccuracy of said Export Control and Foreign Trade Data

17. Supplementary Provisions, Reservation Clause

17.1 Insofar as the provisions of these Conditions of Purchase do not regulate certain matters, relevant statutory provisions shall apply.

17.2 Siemens Enterprise Communications' obligation to fulfill this agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos [or other sanctions], unless SEN was or should have been aware of these obstacles when the contract was concluded.

18. Place of Jurisdiction and Applicable Law

18.1 If the Supplier is a merchant, the relevant court of jurisdiction shall be the place of ordering.

18.2 German substantive law shall apply, excluding the provisions of the United Nations Law on the Sale of Goods of 11.4.1980.