

Terms and Conditions for Sale of Products (Including Software Licenses)

1. **Applicable Terms.** These terms govern the sale of products, equipment, components, parts, and materials provided by Siemens ("Products"). Products include licenses for software products owned or licensable by Siemens ("Software"), however Software does not include cloud services and applications. Those seeking Siemens provided cloud services and applications must procure any of these pursuant to separate written agreement. Whether these terms are included in an offer or an acceptance by Siemens Industry, Inc., Smart Infrastructure ("Siemens"), such offer or acceptance is conditioned on Buyer's assent to these terms. Any additional, different or conflicting terms contained in Buyer's request for proposal, specifications, purchase order or any other written or oral communication from Buyer shall not be binding in any way on Siemens. Siemens failure to object to any such additional, different or conflicting terms shall not operate as a waiver of these terms.
2. To the extent that Software is provided for use in an equipment Product deliverable to a Buyer or in a computer owned by Buyer, Buyer agrees to take delivery of any such Software subject to (i) any applicable Siemens or third party end-user license agreement (EULA) accompanying such Software, or (ii), if no EULA accompanies such Software, the EULA posted at www.usa.siemens.com/btcpseula (Siemens' EULA web site) for such Software used in or with the Equipment identified by product model or part number on the Siemens EULA web site. Such Software shall be warranted in accordance with its applicable EULA unless an exception is explicitly identified in this Agreement. Buyer may state an objection to any terms of an applicable EULA prior to issuance of a purchase order for such Software; however, for such objection to stand it shall be subject to Siemens written acceptance of the same.
3. **Pricing & Payment.** The prices are: (a.) as stated in Siemens' proposal or if none are stated, (b.) Siemens' standard price in effect at the time of release for shipment. In the event of a price increase or decrease, the price of Products on order shall be adjusted to reflect such increase or decrease. This does not apply to a shipment held by request of Buyers. Products already shipped are not subject to price increase or decrease. Prices herein are List Prices. Net pricing is determined by annual volume. Contact your local Siemens sales representative for your pricing. Cash discounts are not applicable to notes or trade acceptances, to prepaid transportation charges when added to Siemens' invoices or to discountable items if there are undisputed past due items on the account. Cash discounts shall only be allowed on that portion of the invoice paid within the normal discount period. Discounts, if any, are only applicable for payments made by cash, check, ACH or wire. Published prices do not include any additional services such as design layout, system drawings, installation drawings, jobsite labor, shop labor, air freight, or special delivery charges. All labor and expenses for such services shall be charged at the rates prevailing at the time and place of performance.
 - a) Payment – Unless otherwise stated, all payments are net 30 days from invoice date payable in US Dollars.
 - b) Credit Approval – All orders are subject to credit approval by Siemens. The amount of credit or terms of payment may be changed or credit withdrawn by Siemens at any time for any reason without advanced notice. Siemens may, in its discretion, withhold

- further manufacture or shipment; require immediate cash payments for past and future shipments; or require other security satisfactory to Siemens before further manufacture or shipment is made; and may, if shipment has been made, recover the Products from the carrier, pending receipt of such assurances.
- c) Installment Shipment – If these terms require or authorize delivery of Products in separate shipments to be separately accepted by Buyer, Buyer may only refuse such portion of such shipment that fails to comply with the requirements of these terms. Buyer may not refuse to receive any lot or portion of hereunder for failure of any other lot or portion of a lot to be delivered or to comply with the terms hereof. Payment shall be made for the Products without regard to whether Buyer has made or may make an inspection of the Products. Products held for Buyer are at Buyer's sole risk and expense.
 - d) Taxes, Shipping, Packing, Handling – Except to the extent expressly stated in these terms, Siemens' prices do not include any freight, storage, insurance, taxes, excises, fees, duties, tariffs charged on the importation of goods into the United States or other government charges related to the Product, and Buyer shall pay such amounts or reimburse Siemens for any amounts Siemens pays. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Siemens with a valid exemption certificate or permit and indemnify, defend and hold Siemens harmless from any taxes, costs and penalties arising out of same. Siemens' prices include the costs of its standard domestic packing only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, consult Siemens' sales offices. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of these terms, shall be for the Buyer's account. Each order is subject to a minimum billing charge of US\$50 and orders less than \$400 are subject to a US\$25 handling fee.
 - e) Finance Charge – Buyer agrees to pay FINANCE CHARGES on the unpaid balance of all overdue invoices, less any applicable payments and credits, from the date each invoice is due and payable at an ANNUAL PERCENTAGE RATE of EIGHTEEN PERCENT (18%), or the highest applicable and lawful rate on such unpaid balance, whichever is lower.
 - f) Disputed Invoice – In the event Buyer disputes any portion or all of an invoice, it shall notify Siemens in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and FINANCE CHARGE on any unpaid portion shall accrue, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to Siemens.
 - g) Collection – Upon Buyer's default of these terms, Siemens may, in addition to any other rights or remedies at contract or law, subject to any cure right of Buyer, declare the entire balance of Buyer's account immediately due and payable or foreclose any security interest in Products delivered. If any unpaid balance is referred for collection, Buyer agrees to pay Siemens, to the extent permitted by law, reasonable attorney

fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, plus any court costs or expenses incurred by Siemens, and any FINANCE CHARGES accrued on any unpaid balance owed by Buyer.

4. **Delivery; Title; Risk of Loss.** Except as provided in this section, Product shall be delivered F.O.B. Siemens point of shipment with title to the Product and risk of loss or damage for the Product passing to Buyer at that point. Buyer shall be responsible for all transportation, insurance and related expenses including any associated taxes, duties or documentation. Siemens may make partial shipments. Shipping dates are approximate only and Siemens shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customers if Siemens fails to meet the specified deliver schedule. A 5% handling charge shall be added to the price for all Product furnished from a local branch.
5. **Deferment and Cancellation.** Buyer shall have no deferment rights and Buyer shall be liable for cancellation charges, which shall include without limitation a) payment of the full product price for any finished Product or works in progress; b) payment for raw materials ordered pursuant to a firm purchase order; and c) such other direct costs incurred by Siemens as a result of such cancellation.
6. **Force Majeure / Delays.** If Siemens suffers delay in performance due to any cause beyond its reasonable control, including without limitation acts of God, strikes, pandemic, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, failure of normal sources of supply, or acts of government, the time performance shall be extended a period equal to the period of the delay and its consequences. Siemens will give to Buyer notice within a reasonable time after Siemens becomes aware of any such delay.
7. **Buyer's Requirements.** Timely performance by Siemens is contingent upon Buyer's supplying to Siemens all required technical information and data, including drawing approvals, and all required commercial documentation.
8. **Limited Warranty.**

8.1 The five-year Limited Warranty. Products manufactured by Siemens that carry a five-year warranty are valves, valve actuators, damper actuators, sensors, thermostats and meters, except for the Series 2200/3200 sensor units with display and pneumatic thermostats which carry a two-year warranty.

8.2 The three-year Limited Warranty. Products that are manufactured by Siemens that carry a three-year warranty are: Climatix RTU Solution (hardware components only), Climatix Variable Frequency Drives, and BT300 standalone Variable Frequency Drives (the last two Products families are denoted herein as "VFDs"). BT300 VFDs with bypass carry only an eighteen-month warranty.

8.3 The two-year Limited Warranty. Products manufactured by Siemens that carry a two-year warranty are: Fire Safety Systems, HVAC building automation controllers, Room Pressurization and Fume Hood Controls Portfolio, Pneumatic Controls, and Gamma Lighting Controls.

8.4 The warranty periods for the Siemens manufactured BT300 VFD product family products are individuated by Product. This portfolio consists of the following BT300 VFD product family products: (1) Drives only – three-year warranty, and (2) Drives with bypass (starts with BTE, BTC, VBA) – 18 months warranty and Siemens accepts no returns for this Product.

8.5 Limitation on Warranty and Warranty Disclaimer. Siemens warrants hardware products free from defects in material and workmanship under normal use for the period commencing on the date of purchase, subject to the caveats set forth in paragraph 1. The written proof of purchase is required for such warranty period to apply. In the event a written proof of purchase cannot be supplied to Siemens, the limited warranty period shall commence on the Product's date of manufacture. The date of manufacture is determined from the Product's date code marking.

8.6 Other Products. Any hardware, equipment, software, firmware, or products not manufactured by Siemens or not bearing its nameplate ("Other Products") are provided on an "as is" basis. However, the Other Products may include warranties by other manufacturers, suppliers, or publishers, which Siemens shall assign or pass through to the Customer, without recourse to Siemens, to the extent allowable by the other manufacturers, suppliers, or publishers.

8.7 Warranty Remedy. During the warranty period, and at Siemens' sole option, Siemens will repair, replace defective parts of the Product, or issue a credit for the original purchase price of the Product. Repaired or replaced Product will be warranted hereunder for the greater of the remaining portion of the original Product warranty period or six (6) months commencing on the date Siemens ships the repaired or replaced Product. All returned Products replaced under the Limited Warranty will become the property of Siemens. Any claim under the Limited Warranty must be made in writing to Siemens within thirty (30) days after discovery of the claimed defect, unless discovered directly by Siemens. Any claim under this Limited Warranty must include a description of the problem encountered and any pertinent information that will assist Siemens in the replication or resolution of the problem.

8.8 Miscellaneous. This Limited Warranty is transferable during its term to the initial end user of the Product. Any transfer shall not extend or alter the terms of this Limited Warranty. This Limited Warranty extends only to Products purchased from Siemens or its authorized reseller and does not extend to any Product that has been damaged or rendered defective as a result of (a) modification, repair, alteration, improper installation, or handling by any person other than Siemens or its authorized representative; (b) unreasonable or improper use or storage, use beyond rated conditions, operation other than per Siemens' or the manufacturer's instructions, or being otherwise subjected to improper maintenance, negligence or accidents including acts of nature such as lightning (c) any use of the Product after Customer has, or should have, knowledge of any defect in the Product. **THE EXPRESS WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED,**

INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SIEMENS EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED IN THIS LIMITED WARRANTY. ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED TO THE TERMS OF THIS LIMITED WARRANTY. Siemens' warranty liability shall not exceed the original purchase price of the defective Product. Siemens is not liable for any damages caused by the Product or Other Products or the failure of the Product or Other Products to perform, including any lost profits, lost savings, incidental or consequential damages. Siemens is not responsible for charges resulting from the removal and/or replacement of Product or Other Product. Siemens is not liable for any claims made by third parties or by the Customer for a third party. This limitation applies whether damages are sought, or a claim is made, under this Limited Warranty or as tort claim, product liability claim, contract claim, or any other claim. This limitation cannot be waived by any person. This limitation of liability will be effective even if Siemens or its authorized representative has been advised by the Customer of the possibility of such damages.

9. **LIMITATION OF LIABILITY.** NEITHER SIEMENS, NOR ITS SUPPLIERS, SHALL BE LIABLE, WHETHER IN CONTRACT, WARRANTY, FAILURE OF A REMEDY TO ACHIEVE ITS INTENDED OR ESSENTIAL PURPOSES, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE, SAVINGS OR PROFIT, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL, DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS. SIEMENS' MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE THE ACTUAL PURCHASE PRICE RECEIVED BY SIEMENS FOR THE PRODUCT AT ISSUE OR ONE MILLION DOLLARS, WHICHEVER IS LESS. BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH BUYER MAY HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SIEMENS HAS BEEN ADVISED BY THE BUYER OF THE POSSIBILITY OF SUCH DAMAGES.
10. **PATENT AND COPYRIGHT INFRINGEMENT** Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if Siemens is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and its own expense, either: (a)

procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes non-infringing. Siemens will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer shall protect Siemens in the same manner and to the same extent that Siemens hereinabove agreed to protect Buyer. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.

11. **Compliance with Laws.** Buyer agrees to comply with all applicable laws and regulations relating to the purchase, resale, exportation, transfer, assignment, disposal or use of the Products.
12. **Changes in Work.** Siemens shall not implement any changes in the scope of work unless Buyer and Siemens agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Siemens to an equitable adjustment in the prices and any time of performance.
13. **Non-waiver of Default.** Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, Siemens may decline to make further shipments. If Siemens elects to continue to make shipments, Siemens' actions shall not constitute a waiver of any default by Buyer or in any way affect Siemens' legal remedies for any such default. Any waiver of Siemens to require strict compliance shall not be deemed a waiver of Siemens' right to insist upon strict compliance thereafter.
14. **Final Written Agreement; Modification of Terms.** These terms, together with any quotation, purchase order or acknowledgement issued or signed by Siemens, comprise the complete and exclusive agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Siemens. These terms may only be modified by a written instrument signed by authorized representatives of both parties.
15. **Assignment.** Neither party may assign the Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other; provided however that Siemens may assign its rights and obligations under these terms to its affiliates and Siemens may grant a security interest in the Agreement and/or assign proceeds of the Agreement without Buyer's consent.
16. **Applicable Law and Jurisdiction.** These terms are governed and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of

Goods is excluded. BUYER WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THESE TERMS.

17. **Severability.** If any provision of these terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
18. **Export Compliance.** Buyer acknowledges that Siemens is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal, and usage of the Products provided under this Agreement, including any export license requirements. Buyer agrees that such Products shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It is a condition of the continuing performance by Siemens of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SIEMENS HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NONCOMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.
19. **Returns.** All returns require written authorization that can be obtained by contacting the Siemens Customer Support. All returned goods that are unused must be in the original package, be the current revision of product, be in sellable condition as a new product, and be returned within 90 days from date of sales. A proper Return Material Authorization ("RMA") number must be acquired for all returned goods. Only goods returned with a completed RMA form and a copy of the original purchase order will be considered for credit. Unless stated otherwise in writing, all returned goods, except those due to shipping errors by Siemens, are subject to a 15% restocking charge. Returned goods must be sent freight pre-paid.

All part numbers beginning with BT300 will be eligible for a credit under unused returns. Such returns will not be allowed for part numbers beginning with BTE or BTC, which are customized VFDs. To be eligible for credit as an unused return the following criteria must be met: (1) the Product must be in its original packaging; (2) the Product must be the current version of the Product; (3) the Product must be in saleable condition as new Product and never been installed; and (4) the request for the return must be received by Siemens no later than 50 days from date of original shipment by Siemens. Returns not meeting the stated criteria will not be accepted and will be returned to the sender at the sender's expense. Unless otherwise agreed by Siemens in writing, VFD unused returns are subject to a 25% restocking charge and must be returned via freight pre-paid.
20. **Product Specific Terms for Desigo CC and Cerberus DMS Software**

The product specific terms and conditions set for in this section are specific to Siemens' Desigo CC and Cerberus DMS Software and not to any other software offered by Siemens. These terms are additional to the terms in this Agreement and the EULA for Desigo CC and Cerberus DMS Software. To the extent that these product specific terms are in conflict with the terms of this Agreement or the EULA for Desigo CC and Cerberus DMS Software, these terms will take precedence with respect to Desigo CC and Cerberus DMS Software.

- a) Only Desigo CC and Cerberus DMS Software that has not been activated (i.e., when a user has or had someone else enter that software into the Siemens licensing system) by a corresponding license key can be returned.
- b) Return requests must be sent within 6 months of purchase.
- c) A credit to refund must be provided for the cost of the returned licenses.
- d) There is a deduction of \$350 restocking charge from the credit for each order returned.
- e) Credits for valid returns to Siemens will be made within a reasonable amount of time from its receipt.