



# SIEMENS BUILDING TECHNOLOGIES, INC.

## TERMS AND CONDITIONS

These Terms and Conditions are incorporated by reference and form an integral part of each proposal or agreement between Siemens Building Technologies, Inc. ("SIEMENS") and the party for whom the Work is to be performed ("CLIENT"). The portions of each proposal or agreement relating to "Scope of Work" or "Proposed Solution" (in either case "Scope"), together with these Terms and Conditions, are collectively referred to as the "Agreement".

### Article 1: General

**1.1** (a) The Agreement, when accepted in writing by CLIENT and approved by an authorized representative of SIEMENS, constitutes the entire, complete and exclusive agreement between the parties relating to the services ("Services") and the equipment ("Equipment") to be provided by SIEMENS as described in the Scope (such Services and Equipment collectively referred to as "Work") and shall supersede and cancel all prior agreements and understandings, written or oral, relating to the subject matter of the Agreement. The Agreement and any rights or obligations thereunder may not be assigned by either party without the prior written consent of the other, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work.

(b) The terms and conditions of this Agreement shall not be modified or rescinded except in writing, signed by a corporate officer of SIEMENS. SIEMENS' performance under this Agreement is expressly conditioned on CLIENT's assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted to SIEMENS by CLIENT relating to the Work.

(c) The terms and conditions set forth herein shall supersede, govern and control any conflicting terms of the Proposed Solution or the Proposal.

(d) Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both parties. All obligations arising prior to this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of the Work and the termination of this Agreement.

**1.2** This Agreement shall be governed by and enforced in accordance with the laws of the State of Illinois. All claims or disputes arising under this Agreement shall be litigated in the State, Commonwealth, or Province in which Services are being provided to CLIENT hereunder.

### Article 2: Work by SIEMENS

**2.1** SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by the parties. The Work performed by SIEMENS shall be conducted in a manner consistent with the degree of care and skill ordinarily exercised by reputable firms performing the same or similar Work in the same locale acting under similar circumstances and conditions.

**2.2** SIEMENS shall perform the Work during its normal working hours, Monday through Friday, excluding holidays, unless otherwise agreed herein.

**2.3** SIEMENS is not required to conduct safety or other tests, install new devices or equipment or make modifications to any Equipment beyond the Scope set forth in this Agreement. Any CLIENT request to change the Scope or the nature of the Work must be in the form of a mutually agreed change order, effective only when executed by all parties hereto.

**2.4** All reports and drawings specifically prepared for and deliverable to CLIENT pursuant to this Agreement ("Deliverables") shall become CLIENT's property upon full payment to SIEMENS. SIEMENS may retain file copies of such deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, manuals, other documents and all computer programs, codes and computerized materials prepared by or for SIEMENS are instruments of SIEMENS' work ("Instruments") and shall remain SIEMENS' property. To the extent specified in the Scope, CLIENT, its employees and agents ("Permitted Users") shall have a right to make and retain copies of Instruments except uncompiled code, and to use all Instruments, provided however, the Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Instruments were provided. All Deliverables and Instruments provided to CLIENT are for Permitted Users' use only for the purposes disclosed to SIEMENS, and CLIENT shall not transfer them to others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS' express written consent. Any reuse of Deliverables or Instruments for other projects or locations without the written consent of SIEMENS, or use by any party other than Permitted Users will be at Permitted Users' risk and without liability to SIEMENS; and CLIENT shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.

**2.5** SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractors of CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS' work and/or presence at a site shall not relieve others of their responsibility to CLIENT or to others. SIEMENS shall not be liable for the failure of CLIENT's contractors or others to fulfill their responsibilities, and CLIENT agrees to indemnify, hold harmless and defend SIEMENS against any claims arising out of

such failures

### Article 3: Responsibilities of CLIENT

**3.1** CLIENT, without cost to SIEMENS, shall:

(a) Designate a contact person with authority to make decisions for CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency. If such representative cannot be reached, any request for work received from a person located at CLIENT's premises will be deemed authorized by CLIENT, and SIEMENS will, in its discretion, act accordingly;

(b) Provide or arrange for reasonable access and make all provisions for SIEMENS to enter any site where Work is to be performed;

(c) Permit SIEMENS to control and/or operate all facility controls, systems, apparatus, equipment and machinery necessary to perform the Work;

(d) Furnish SIEMENS with all available information pertinent to the Work;

(e) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work except for those SIEMENS has expressly agreed in writing to obtain;

(f) Notify SIEMENS promptly of any site conditions requiring special care, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such conditions;

(g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;

(h) Provide SIEMENS with Material Safety Data Sheets that conform to OSHA requirements related to all Hazardous Materials located at the site;

(i) Furnish to SIEMENS any contingency plans related to the site; and

(j) Furnish the specified operating environment, including without limitation, suitable, clean, stable, properly conditioned electrical power to all Equipment; telephone lines, capacity and connectivity as required by such Equipment; and heat, light, air conditioning and other utilities in accordance with the specifications for the Equipment.

**3.2** CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.

**3.3** CLIENT acknowledges that it is now and shall at all times remain in control of the project site. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to CLIENT's activities or operations, CLIENT's other contractors, the work of any other person or entity, or CLIENT's site conditions. SIEMENS is not responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of CLIENT or others at CLIENT's site. So as not to discourage SIEMENS from voluntarily addressing health or safety issues at CLIENT's site, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, SIEMENS shall not be liable or responsible on account thereof.

**3.4** CLIENT is solely responsible for any removal, replacement or refinishing of the building structure or finishes that may be required to gain access to the Work.

**3.5** CLIENT shall properly dispose of all ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, refrigerant and any other Hazardous Materials that at any time are present at CLIENT's premises, in accordance with all applicable federal, state, and local laws, regulations, and ordinances.

### Article 4: Changes; Delays; Excused Performance

**4.1** As the Work is performed, conditions may change or circumstances outside SIEMENS' reasonable control (including changes of law) may develop which would require SIEMENS to expend additional costs, effort or time to complete the Work, in which case SIEMENS will notify CLIENT and an equitable adjustment will be made to SIEMENS' compensation and time for performance. In the event conditions or circumstances require the Work to be suspended or terminated, SIEMENS shall be compensated for Work performed and for costs reasonable incurred in connection with the suspension or termination.

**4.2** SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation shall be equitably adjusted for additional costs SIEMENS incurs due to such delay.

### Article 5: Compensation

**5.1** Unless otherwise agreed in writing, SIEMENS shall be compensated for the Work at its prevailing rates and reimbursed for costs and expenses (plus reasonable profit and overhead) incurred in its performance of the Work.

**5.2** SIEMENS may invoice CLIENT on a monthly or other progress billing basis.

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Invoices are due and payable upon receipt or as otherwise set forth in the Agreement. If any payment is not received when due, SIEMENS may deem CLIENT to be in breach hereof and may enforce any remedies available to it hereunder or at law, including without limitation, acceleration of payments and suspension or termination of the Work at any time and without notice and shall be entitled to compensation for the Work previously performed and for costs reasonably incurred in connection with the suspension or termination. Any amount not paid within sixty (60) days of the date due shall accrue interest from the date due, until paid, at the rate of ten percent (10%) per annum. CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement. In the event of a dispute by CLIENT regarding any portion or all of an invoiced amount, 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 interest on the disputed, unpaid portion shall accrue as aforesaid, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to SIEMENS.

**5.3** Except to the extent expressly agreed in writing, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work, and CLIENT shall pay such amounts or reimburse SIEMENS for any amounts it pays. If CLIENT claims a tax 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.

### **Article 6: Warranty, Insurance and Allocation of Risk**

**6.1** (a) Until one year from either the date the Equipment is installed or the date of first beneficial use, whichever first occurs, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.

(b) Labor for all Services under this Agreement is warranted to be free from defects for one year after the earlier of the date the Services are substantially completed or the date of first beneficial use.

(c) Equipment will not fail to function because of errors in processing, providing or receiving date or time data involving dates between January 1, 1999 and March 31, 2001, provided other products and software, including the computer workstation, with which the system interacts properly exchange date and time data with the system.

**6.2** (a) The limited warranties set forth in Section 6.1 will be void as to, and shall not apply to, any Work (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) subjected to unreasonable or improper use or storage, used beyond rated conditions, operated other than per SIEMENS' or the manufacturer's instructions, or otherwise subjected to improper maintenance, negligence or accident; (iii) damaged because of any use of the Work after CLIENT has, or should have, knowledge of any defect in the Work; or (iv) Equipment not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS' nameplate. However, SIEMENS assigns to CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment and will assist CLIENT in enforcement of such assigned warranties.

(b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect, or with respect only to the warranty set forth in Subsection 4.1(c) prior to April 1, 2001, unless discovered directly by SIEMENS. Such limited warranty only extends to CLIENT and not to any subsequent owner of the Equipment. CLIENT's sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option, (i) repair or replacement of defective components of covered Equipment, or (ii) reperformance of the defective portion of the Services, or (iii) to the extent previously paid, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.

(c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment actually found to be defective. SIEMENS' warranty liability shall not exceed the purchase price of such item. Repaired or replaced Equipment will be warranted hereunder only for the remaining portion of the original warranty period.

**6.3** THE EXPRESS LIMITED 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, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. SIEMENS MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT ANY EQUIPMENT PROVIDED HEREUNDER WILL PREVENT ANY LOSS, OR WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INSTALLED OR INTENDED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING SIGNED BY A DULY AUTHORIZED CORPORATE OFFICER OF SIEMENS.

**6.4** SIEMENS shall maintain the following insurance while performing the Work:

Workers' Compensation	Statutory
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Employers' Liability	\$1,000,000 each accident
Commercial General Liability	\$1,000,000 per occurrence and \$5,000,000 in the aggregate
Automobile Liability	\$1,000,000 per occurrence/aggregate

**6.5** Risk of loss of materials and Equipment furnished by SIEMENS shall pass to CLIENT upon delivery to CLIENT's premises, and CLIENT shall be responsible for protecting and insuring them against theft and damage. However, until SIEMENS is paid in full, SIEMENS shall retain title for security purposes only and the right to repossess the materials and Equipment.

**6.6** SIEMENS will indemnify CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property, but not loss of use of the property resulting from such damage or from damage to any work performed hereunder. Such indemnification shall be solely to the extent caused by or arising directly from SIEMENS' or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with its performance of Services hereunder. SIEMENS' obligations under this indemnity provision shall not extend to claims, losses, expenses and damages arising out of or in any way attributable to the negligence of CLIENT or its agents, consultants or employees other than SIEMENS. SIEMENS' liability to CLIENT or any third party under this Section 6.6 or otherwise under the Agreement is expressly limited to, and SIEMENS shall not be liable other than for the direct losses, claims, expenses and damages arising as aforesaid. Neither party shall in any event be responsible under this Agreement for incidental, consequential, punitive, exemplary or special damages, including without limitation lost profits and/or lost business opportunities, whether arising in warranty, late or non-delivery of any Work, tort, contract or strict liability, and regardless of whether SIEMENS has been advised of the possibility of such damages. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. The parties acknowledge that the price which SIEMENS has agreed to perform its Work and obligations under this Agreement is calculated based upon the foregoing limitations of liability, and that SIEMENS has expressly relied on, and would not have entered into this Agreement but for such limitations of liability.

### **Article 7: Hazardous Materials Provisions**

**7.1** The Work does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Oil or Hazardous Materials. Except as disclosed pursuant to Section 7.3, CLIENT represents that there is no asbestos or any other hazardous or toxic materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("Hazardous Materials"), present at CLIENT's locations where Services are performed. SIEMENS will notify CLIENT immediately if it discovers or suspects the presence of any Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on CLIENT's representations as set forth in this Section 7.1. The presence of Hazardous Materials constitutes a change in the Proposed Solution equivalent to a change order whose terms must be agreed to by SIEMENS before its obligations hereunder will continue.

**7.2** CLIENT shall be solely responsible for testing, abating, encapsulating, removing, remediating or neutralizing such Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to Section 7.1 above, SIEMENS will continue to have the right to stop providing Services until the job site is free from Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete its Services, and compensation for delays caused by Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. CLIENT shall sign any required waste manifests in conformance with all government regulations, listing CLIENT as the generator of the waste.

**7.3** CLIENT warrants that, prior to the execution of the Agreement, it has notified SIEMENS in writing of any and all Hazardous Materials present, potentially present or likely to become present at CLIENT's locations and has provided a copy of any jobsite safety policies, including but not limited to lock-out and tag procedures, laboratory procedures, chemical hygiene plan, material safety data sheets or other items covered or required to be disclosed or maintained by federal, state, or local laws, regulations or ordinances.

**7.4** For separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, CLIENT shall indemnify, defend and hold SIEMENS harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any Oil or Hazardous Materials or from CLIENT's breach of, or failure to perform its obligations under, Sections 7.1, 7.2 or 7.3.