

## Terms of Use of the FLENDER SUPPLIER PORTAL for Suppliers

Version: 1

Status: January 2020

### 1 Scope

- 1.1 Flender GmbH (hereinafter "FLENDER") operates the internet based FLENDER SUPPLIER PORTAL (hereinafter "the Portal"). With the Portal, FLENDER provides a platform on which suppliers and ordering entities administer supplier and contract information and electronic procurement as well as quality processes. These Terms of Use regulate the use of the Portal by suppliers.
- 1.2 The validity of these Terms of Use in their current version shall be accepted at the latest upon commencement of use of this Portal. In case of conflicts between separate written agreements between the supplier and FLENDER and these Terms of Use, the separate agreements shall prevail.
- 1.3 In the following, "Supplier" shall also mean the persons who acting on behalf of the Supplier in the Portal.
- 1.4 FLENDER reserves the right to modify the services offered via the Portal or to discontinue the offering of the services at any time.

### 2 Registration and Password

- 2.1 Access to and use of the Portal is restricted to invited and registered Supplier.
- 2.2 A prerequisite for using the FLENDER Portal is the previous successful registration of the supplier on the strategic purchasing platform of Siemens AG "SCM Strategy And Realization" also referred to as "SCM STAR".
- 2.3 The access to the Portal is protected by the Supplier's e-mail address and a password issued by the Supplier. For this purpose, the Supplier will receive an e-mail before the first registration with the request to verify his e-mail address and another e-mail with the request to assign a password for access to the FLENDER Portal.
- 2.4 The Supplier shall ensure that the log-in data are not accessible to third parties and shall be liable for all transaction and other activities carried out using the log-in data, unless Supplier can prove that the log-in data did not become known to third parties through any fault of its own. After each session, the user shall log off from the password-protected area. Should the Supplier become aware that third parties have gained access to or are misusing the log-in data, it is obliged to inform FLENDER without delay.
- 2.5 FLENDER may suspend at any time the Supplier's access to the Portal without prior notice and without giving any reason, in particular if FLENDER has reasons to believe that the Supplier has provided incorrect data in the registration or the log-in data may be misused by third-parties or the Supplier has violated applicable law when accessing or using the Portal or if the Supplier has been added to a sanctioned party list. A reactivation may require a separate request by Supplier to FLENDER or a re-registration.
- 2.6 The Supplier shall ensure that it is capable of receiving e-mails under the e-mail address specified during registration and furthermore shall ensure that a proper mobile number is maintained for user authentication.
- 2.7 The Supplier can demand the deletion of his registration in writing at any time, provided that the deletion does not conflict with the processing of ongoing contractual relationships or any legal storage obligations.

### 3 Rights of Use in relation to content, information and documentation, Intellectual Property

- 3.1 Use of the content, information and documentation made available on the Portal is subject to these Terms of Use.
- 3.2 FLENDER grants the Supplier a non-exclusive and non-transferable right to use the content, information and documentation provided on the Portal to the extent agreed, or in the event of no such agreement, to the extent of the purpose intended by FLENDER when making the same available.
- 3.3 FLENDER does not grant to the Supplier any license in the Portal or the software used for its operation or any parts thereof, except to use the Portal in accordance with these Terms of Use.
- 3.4 Unless such is permitted by mandatory applicable laws, the Supplier shall neither modify the software nor translate or modify related documentation, nor shall it reverse-engineer or decompile the software or separate any part thereof.
- 3.5 Content, information and documentation must not at any time be distributed by the Supplier to third parties, nor may it be made available to third parties in any other way.
- 3.6 Notwithstanding the other provisions of this Section 3 of these Terms of Use, information, brand names and other content of the Portal must not be modified, copied, reproduced, sold, rented out, used, supplemented or otherwise exploited in any way without the prior written consent of FLENDER.

3.7 Except for the rights of use and other rights expressly granted herein, no other rights are granted to the Supplier, especially in (including but not limited to) the company's name or industrial property rights, such as patents, brands or utility models, nor shall any duty to grant such rights be implied.

#### **4 Duties of the Supplier**

4.1 While using the Portal, the Supplier shall not:

- provide incorrect information;
- harm other persons, in particular minors, or infringe their personal rights;
- provide any information which is offensive to public morality or illegal;
- infringe intellectual property or any other proprietary rights or breach any duty or obligation of confidentiality, upload any content containing a virus, malware or any software code which could damage the software or the computer systems of FLENDER, FLENDER's subsidiaries, the operator of the Portal or other users;
- submit hyperlinks or content to which the Supplier is not entitled, in particular in cases where such hyperlinks or content infringe confidentiality obligations or are illegal; or
- distribute advertising or unsolicited e-mails (so-called "spam") or hoax warnings, or solicit or request participation in any lottery, pyramid selling, chain letter or similar promotion.

4.2 The Supplier shall at its own expense set up a properly functioning computer configuration and internet access with a suitable browser which shall enable him to use the services offered on the Portal.

4.3 The Supplier hereby grants FLENDER a permanent, non-exclusive, royalty-free, world-wide license to use, reproduce, edit, perform and display in full or in part content submitted by Supplier to the Portal or otherwise provided by the Supplier to FLENDER in connection with the use of the Portal. FLENDER has the right to sublicense or assign the aforementioned rights to third-party providers and subsidiaries of FLENDER. The Supplier guarantees that it is authorized to grant to FLENDER the rights listed in this subsection.

4.4 The Supplier shall ensure the correctness and completeness of the data submitted to the portal and shall update such data on a regular basis. FLENDER does not assume any responsibility for the content provided by the Supplier. FLENDER is not obliged to check the content provided by the Supplier to FLENDER for accuracy. The Supplier shall indemnify and hold harmless FLENDER against all third-party claims against FLENDER in connection with the content.

4.5 FLENDER may suspend access to the Portal at any time if the Supplier breaches the obligations imposed by these Terms of Use and may delete all material and content relating to the breach. Expenses incurred by FLENDER in so doing may be charged to the Supplier.

#### **5 Hyperlinks and Third-Party Content**

5.1 The Portal may contain hyperlinks to the web pages of third parties. FLENDER accepts no liability for the contents of such web pages and third party content and does not make representations to the effect that such web pages or their content are its own, as FLENDER does not control the information which is uploaded to the Portal or available on hyperlinked web pages and is therefore not responsible for the content and information provided there.

5.2 Supplier's use of such information and web pages is at Suppliers own risk.

#### **6 Availability, Liability**

6.1 FLENDER does not guarantee the permanent availability of the Portal.

6.2 Insofar as any information, software or documentation is made available at no cost, any liability for defects as to quality or title of the information, software and documentation especially in relation to the correctness or absence of defects or the absence of claims or third party rights or in relation to completeness and/or fitness for purpose are excluded except for cases involving willful misconduct or fraud.

6.3 Any further liability of FLENDER is excluded unless required by law, e.g. under the Act on Product Liability or in cases of willful misconduct, gross negligence, personal injury or death, failure to meet guaranteed characteristics, fraudulent concealment of a defect or in case of breach of fundamental contractual obligations. Damages in case of breach of fundamental contractual obligations are limited to the contract-typical, foreseeable damage if there is no willful misconduct or gross negligence.

6.4 FLENDER shall not be responsible for the Supplier's internet access (see subsection 4.2). FLENDER therefore excludes, insofar as is permitted by law, any liability for disruption to the performance of services under the terms of this agreement, where such disruption is caused by a lack of internet availability or by reduced internet availability.

6.5 Although FLENDER makes every endeavor to keep the Portal free from viruses, FLENDER cannot make any guarantee that it is virus-free. The Supplier shall, for its own protection, take the necessary steps to ensure appropriate security measures and shall utilize a virus scanner before downloading any information, software or documentation.

#### **7 Non-disclosure**

7.1 When FLENDER, an undertaking affiliated with FLENDER, Supplier or another user of the Portal disclose information to each other information marked as "confidential" or marked in a similar manner or obviously confidential by its nature (such information is considered as "Confidential Information"), the receiving party shall use such information only for the purpose for which it has been provided, and shall prevent third parties from gaining access to it, and treat it the same way as its own business secrets (but at least with reasonable care). This confidentiality obligation shall end 5 years after the disclosure of the Confidential Information.

- 7.2 FLENDER may disclose Confidential Information to other companies of the Siemens Group.
- 7.3 The above confidentiality obligation does not apply to information:
- Which is publicly known;
  - Which can be shown to have been independently developed by the receiving party;
  - Which has been acquired from a third party without breach of confidentiality obligation by such third party;
  - Which the receiving party is required to reveal by statutory regulations or governmental or court orders for the purpose of complying with such regulations or orders.

## **8 Compliance with Export Control Regulations**

- 8.1 If the Supplier transfers information, software and documentation provided by FLENDER or any of its affiliates to a third party, the Supplier shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of information, software or documentation the Supplier shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.
- 8.2 Prior to any such transfer to a third party the Supplier shall in particular check and guarantee by appropriate measures that
- there will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer or by provision of other economic resources in connection with information, software and documentation, also considering the limitations of domestic business and prohibitions of by-passing those embargos;
  - such information, software and documentation are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;
  - the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.
- 8.3 If required to enable authorities or FLENDER or its affiliated companies to conduct export control checks, the Supplier, upon request by FLENDER, shall promptly provide FLENDER with all information pertaining to the particular end-user, the particular destination and the particular intended use of information, software and documentation provided by FLENDER, as well as any export control restrictions existing.
- 8.4 The Supplier shall indemnify and hold harmless FLENDER and its subsidiaries from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Supplier, and the Supplier shall compensate FLENDER and its subsidiaries for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Supplier. This provision does not imply a change in burden of proof.
- 8.5 FLENDER's obligation to fulfill an 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.

## **9 Data Privacy**

FLENDER shall comply with applicable laws on data privacy. For information on the collection, processing and use of personal data collected via the Portal please refer to Flender's Data Privacy Policy accessible on <https://www.flender.com/en/PrivacyPolicy>.

## **10 Changes to these Terms of Use**

- 10.1 FLENDER shall be entitled at any time to amend or update these Terms of Use with reasonable prior notice. Amendments or updates shall be notified to the Supplier in writing, by e-mail or in another appropriate form.
- 10.2 Should the Supplier not agree with the amendments or updates, it shall object in writing within four (4) weeks of receipt of notice. Should the Supplier not object to the amendments or updates within this time-period, the amendments or updates shall be incorporated and shall come into effect as set out in the notice. FLENDER shall refer to this right in its notice to the Supplier
- 10.3 If amendments or updates to these Terms of Use are required by law, the provision requiring prior notification of the Supplier and the Supplier's right to object shall not apply.

## **11 Amendments and Supplements, Place of Jurisdiction, Applicable Law**

- 11.1 Any amendment or supplementary agreement requires the written form.
- 11.2 The place of jurisdiction shall be Bocholt if the Supplier is a merchant in terms of the German Commercial Code (Handelsgesetzbuch).
- 11.3 The Portal is intended to comply with the law applicable in Germany. FLENDER makes no representation that information, software and/or documentation related to the Portal are appropriate or available for viewing or downloading at locations outside of Germany. If Suppliers accesses the Portal from outside of Germany, Supplier is exclusively responsible for compliance with all applicable local laws. Access to the Portal from countries where such content is unlawful is prohibited. In this case and where Supplier seeks to do business with FLENDER, the Supplier should contact the FLENDER representative for the particular country for country specific business.

11.4 These Terms of Use shall be governed by - and all disputes relating to or in connection with these Terms of Use or their subject matter shall be resolved in accordance with - the laws of Germany, to the exclusion of its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) of 11 April 1980 is excluded.

## **12 Miscellaneous**

12.1 FLENDER reserves the right to subcontract the services it performs under this Terms of Use to third parties.

12.2 FLENDER is entitled to assign this contract and all rights and obligations thereunder in whole or part to companies affiliated with FLENDER within the meaning of §§15 et seq. of the German Stock Corporation Act (Aktiengesetz), in particular the Siemens Group.

12.3 Should any provisions of this agreement be or become ineffective or unenforceable in whole or in part, the validity of the remaining provisions shall remain unaffected. The ineffective or unenforceable provision shall be replaced by a corresponding provision which best reflects the intended economic purpose of the ineffective or unenforceable provision.