

Base Terms

These Base Terms are agreed between the Siemens entity named on the Order (“Siemens”) and the customer that accepted the Order (“Customer”). These Base Terms together with the applicable Supplemental Terms form the “Agreement”.

Capitalized terms are defined [at the end of the document](#).

Commercial terms

1. Siemens’ Offerings

1.1. Delivery mode

Siemens will deliver the Offerings and invoice as specified in the Order. Siemens may deliver the Offerings in stages or installments (and invoice accordingly).

1.2. Equivalent performance

Siemens may perform the Offerings using a technically equivalent method to that set out in the Order, if this does not detrimentally alter the agreed functionalities.

1.3. Updates for Offerings

Siemens may issue Updates to its Offerings and will use commercially reasonable efforts to notify Customer when Updates are generally available. Information provided on Siemens’ website is sufficient notice.

Siemens may not support non-current versions of the Offerings or update them to future versions.

1.4. Cybersecurity

As a member of the Charter of Trust (<https://www.charteroftrust.com/>), Siemens promotes the corresponding cybersecurity principles.

Siemens does not warrant that the Offerings are secure except as stated in the Offering description set out or referred to in the Order.

2. Payment, interest, and taxes

2.1. Payment terms

Customer will pay the fees plus reasonable and verifiable travel and incidental expenses within 30 days of the invoice date, without deduction or set-off. If Customer disputes an invoice, Customer must still pay any undisputed portion.

2.2. Interest

Siemens is entitled to charge interest on overdue payments at the monthly percentage rate of 1.5% compounded or at the highest rate allowed by law (whichever is lower).

2.3. Taxes

All amounts Siemens invoices are exclusive of taxes and any other charges. Customer will pay or refund Siemens for any applicable taxes, duties, or other charges imposed by any government authority for Customer’s use or receipt of the Offerings.

If Customer is required by law to deduct or withhold tax, Customer will increase the amount it pays to Siemens so that Siemens still receives the net amount originally invoiced. Customer will promptly provide all tax receipts, or a valid exemption certification (if applicable), confirming it has paid or withheld tax.

3. Changes

3.1. Change requests

When Customer sends Siemens a change request, Siemens will send Customer:

- a. a fee estimate;
- b. a schedule impact; and
- c. any other necessary changes to the Order.

3.2. Change effectiveness

A change becomes effective when Customer and Siemens accept it in writing.

3.3. Changes in law and standards

3.3.1. **Right to make adjustments.** Siemens may make reasonable adjustments to the Order for any additional requirements or costs it incurs due to any:

- a. laws, regulations, court judgments or decisions, or guidance issued by public authorities; or
- b. engineering standards or codes of practice; or
- c. Customer's site rules,

in each case issued or changed after the effective date of the Order.

3.3.2. **Type of adjustments.** Such adjustments, may, for example, include changes to:

- a. the time schedules and scope of Offerings as needed; or
- b. Siemens' fees, to reflect any reasonable additional costs.

4. Customer's obligations

4.1. Providing Contributions

Customer will:

- a. be responsible for the performance and interoperability of Contributions;
- b. obtain all required consents and licenses at Customer's cost; and
- c. make sure that Siemens, its Affiliates, and their subcontractors have the right and access to use any Contributions.

4.2. Reasonable adjustments

If Customer does not:

- a. provide its Contributions in accordance with the respective Order; or
- b. fulfill its obligations specified in this Section 4, or in the respective Supplemental Terms,

Siemens will have the right to adjust the Order, including the time schedule and fees, to make up for any delay or reasonable additional costs Siemens incurs.

4.3. Use of the Offerings

Customer is solely responsible for any results and conclusions obtained from using the Offerings.

4.4. Security and safety

Customer is responsible for:

- a. the security of its infrastructure, network, hardware, software, systems, data, and interfaces;

- b. taking appropriate steps to protect and retrieve its data, including by maintaining backup copies; and
- c. the safety of persons onsite.

4.5. No reverse engineering

Customer will not reverse engineer, decompile, or copy Offerings or their parts unless allowed by mandatory law or the Agreement.

4.6. Installing Updates

Customer is responsible to install any Updates received from Siemens. If there is a risk of imminent harm to Customer or third parties, Siemens may install Updates automatically by remote access or other means and without prior notice.

5. Siemens' use rights

Siemens and its Affiliates may:

- a. use for any purpose, in perpetuity, and at its own risk any comment or feedback Customer gives to Siemens on Siemens' Offerings, including suggestions for changes or enhancements, support requests, and error corrections;
- b. use data Siemens collects in connection with the Offerings to provide and improve its products and services; and
- c. identify Customer by name or logo as part of a general customers list on websites and marketing materials.

Additional software terms

6. Code format

Offerings containing software will be delivered in executable form, unless the applicable Supplemental Terms specify delivery of source code. If Third-Party Terms require Siemens to furnish Third-Party Technology in source code form, Siemens will provide it upon:

- a. written request; and
- b. payment of any reasonable expenses.

7. Siemens software terms

Supplemental Terms as specified in the Order may additionally apply for Siemens' software.

8. Third Party Technology

In the event of a conflict with the terms of the Agreement, the Third-Party Terms prevail with respect to Third-Party Technology. Third-Party Terms for open source software shall also prevail in relation to the software or parts thereof insofar as the Third-Party Terms for open source software grant the Customer certain rights of use on the basis of the connection of open source software components with the software.

Confidentiality and compliance

9. Confidentiality

9.1. Protection and use

The receiving party will:

- a. protect Confidential Information by the same means it uses to protect its own (and always by at least reasonable means); and
- b. use Confidential Information only as required for the purposes of the Agreement.

9.2. Limited disclosure

The receiving party will:

- a. only disclose Confidential Information:
 - to its employees and to the employees of its Affiliates, agents, advisors, and contractors who need to know it; or
 - with the disclosing party's consent; and
- b. make sure that all recipients are bound by confidentiality obligations as strict as those in the Agreement.

9.3. Return

If the disclosing party requests it, the receiving party will return or destroy all Confidential Information. Copies required under applicable laws or created as part of a routine information technology backup may be kept but must remain confidential.

While performing under the Order, Siemens' employees may gain general expertise, know-how, ideas, concepts, and techniques that are then retained in their unaided memories. Siemens may use this residual knowledge without conditions or restrictions.

9.4. Required disclosure

If a governmental agency or law requires it, the receiving party may disclose Confidential Information, provided it:

- a. promptly gives written notice to the disclosing party (if the law allows); and
- b. works with the disclosing party to limit the scope of disclosure.

9.5. Exceptions

The above confidentiality obligations will not apply to any information that:

- a. is or becomes generally available to the public (without the receiving party having breached the Agreement);
- b. becomes available to the receiving party from a source other than the disclosing party (if the receiving party has no reason to believe that the information is confidential);
- c. was already in the receiving party's possession without an obligation of confidentiality; or
- d. is independently developed by the receiving party without the use of Confidential Information.

10. Data protection

Customer and Siemens will both comply with applicable laws regarding data protection.

11. Export control compliance

11.1. Export Regulations/ No Re-Export

- a. Customer will comply with all applicable Export Regulations.
- b. Customer will
 - not sell, export or re-export, directly or indirectly, any Offerings to Russia or Belarus or for use in these countries.
 - undertake best efforts to ensure that the purpose of this Section 11.1.b. is not frustrated by any third party further down the commercial chain.

11.2. Required information

Customer will promptly:

- a. inform Siemens about any problems in applying Sections 11.1.b. and 11.4.d. including any relevant activities by third parties that could frustrate the purpose of Section 11.1.b.; and

- b. provide upon request information about (as applicable)
 - users, the intended use, the location of use, and the final destination of the Offerings; and
 - compliance with Section 11.

11.3. Special data handling

Before disclosing to Siemens any information that is defense-related or requires controlled or special data handling, Customer will:

- a. notify Siemens; and
- b. use the disclosure tools and methods Siemens requires.

11.4. Export checks for Offerings

Before Customer performs any transaction with a third party concerning the Offerings delivered by Siemens, Customer will check and certify by appropriate measures (e.g. monitoring) that:

- a. Customer does not violate any Export Regulations with its use, transfer, or distribution of such Offerings, the brokering of contracts, or the provision of other economic resources in connection with Offerings, also considering any prohibitions to get around these (e.g., by undue diversion);
- b. Offerings are not intended for prohibited or unauthorized non-civilian purposes (for example: armaments, nuclear technology or any other defense and military use);
- c. Customer has screened all direct and indirect parties involved in the receipt, use, or distribution of the Offerings against all applicable restricted party lists of the Export Regulations concerning trading with the entities, persons, and organizations listed there; and
- d. the Offerings will not be:
 - exported directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries) to or for use in Russia or Belarus; or
 - resold to any third-party business partner without a prior binding commitment not to – directly or indirectly- export such Offerings to or for use in Russia or Belarus.

11.5. Semiconductor development

Customer will not, without Siemens' prior written consent, use Offerings to develop or produce integrated circuits at any advanced semiconductor fabrication facility located in the Peoples Republic of China and further restricted locations meeting the criteria specified in the U.S. Export Administration Regulations, 15 C.F.R. 744.23.

11.6. Reservation and suspension

11.6.1. **Reservation.** Siemens will not have to fulfill this Agreement, including any Order, if prevented by:

- a. impediments arising out of national or international foreign trade issues;
- b. impediments arising out of customs requirements; or
- c. any Export Regulations.

11.6.2. **Suspension.** Siemens may be obliged under the Export Regulations to limit or suspend access to the Offerings by Customer or Customer's users.

11.7. Breach of Export Regulations

Any violation of this Section 11 is a material breach of the Order entitling Siemens to:

- a. suspend or terminate the Order in accordance with Section 12 and 13; and
- b. in case of a breach of Section 11.1.b. to penalties in the amount of 5% of the fees of the Order.

Suspension and termination

12. Suspension

12.1. Suspension right

Siemens may suspend the performance of its obligations under an Order by giving Customer written notice if:

- a. Customer's payment is more than 15 days late;
- b. Customer does not provide the required Contributions in accordance with the Order after a reasonable grace period; or
- c. Customer materially breaches the Order.

12.2. Payment during suspension

If Siemens suspends performance, Customer will pay:

- a. the fees and costs related to any portion of the Offerings delivered before the effective date of suspension; plus
- b. any reasonable costs and expenses incurred as a result of the suspension.

12.3. Schedule adjustment

If Siemens resumes performance, Siemens will adjust all affected schedules to reasonably accommodate the suspension. After 15 days' suspension for any reason, Siemens may reassign personnel.

13. Termination

13.1. Termination right

Either Customer or Siemens may terminate any Order upon written notice if the other:

- a. becomes bankrupt or insolvent;
- b. goes into liquidation;
- c. has a receiving order against it;
- d. compounds with its creditors;
- e. continues business under a receiver, trustee, or manager for the benefit of its creditors; or
- f. does not remedy a material breach within 30 days of notice.

The right to rescind an Order is excluded.

13.2. Payment if Customer terminates

If an Order is terminated by Customer under Section 13.1, Customer will pay the fees and expenses related to any portion of the Offerings delivered before the effective date of termination.

13.3. Payment if Siemens terminates

If an Order is terminated by Siemens under Section 13.1, Customer will pay:

- a. all agreed fees for the Offering, minus any expenditures avoided by termination; and
- b. all costs Siemens incurred due to such termination.

13.4. Survival

Sections 2, 4.4, 4.5, 4.6, 5, 9, 11, 13.2, 13.3, 14, 15 and 17 will survive termination of the Order.

Claims, liability, and dispute resolution

14. Intellectual Property Infringement

14.1. Claim of Siemens infringement

In case of an Infringement Claim, Siemens will:

- a. defend, at Siemens' cost, the Infringement Claim; and
- b. pay all damages finally awarded against Customer by a court of competent jurisdiction or agreed in settlement with Siemens' consent.

14.2. Remedies

In case of an Infringement Claim, Siemens may, at its option and expense, provide these remedies:

- a. obtain the right for Customer to continue the use of the Offerings;
 - b. modify the Offerings to become non-infringing; or
 - c. replace the infringing part of the Offerings,
- in case of **b.** and **c.** without materially affecting the functionality of the Offering.

14.3. Refund

14.3.1. **Conditions for refunds.** If remedies under Section 14.2 are not available at commercially reasonable expense, Siemens may terminate any Orders including licenses for such Offerings and Customer will receive the refunds for the allegedly infringing portions of the Offerings specified in Section 14.3.2 ("Refunds"), provided that, after receiving Siemens' notification, Customer:

- a. stops using the allegedly infringing portion of the Offerings; and
- b. returns all related portions of the Offerings in Customer's possession.

14.3.2. **Refunds.** Refunds will equal:

- a. for Hardware or perpetual software: the remainder of a 60-month amortization period from their initial delivery;
- b. for subscription services or time-based licenses: the remainder of their term; and
- c. for any other Offering: refund of prepaid fees for the infringing portion of the Offerings.

14.4. No admission

If Customer stops using the allegedly infringing Offerings (or a part of them), Customer will notify the third-party claimant in writing that this is not an admission of infringement.

14.5. Preconditions

Any defense or remedies under this Section 14 are subject to Customer giving Siemens:

- a. prompt written notice of the Infringement Claim;
- b. all requested information (including information about Customer's use of the Offerings) and reasonable assistance related to the Infringement Claim; and
- c. sole authority to defend or settle the Infringement Claim.

14.6. Customer's prior consent

Siemens will not admit liability or incur obligations on Customer's behalf without Customer's prior written consent, which Customer will not unreasonably withhold.

14.7. Exclusions

Siemens will not have any liability or obligations as specified in this Section 14 to the extent that an Infringement Claim arises out of:

- a. not using a replacement, correction, patch, or new version of the Offering provided by Siemens that performs substantially the same functions as the allegedly infringing Offering;

- b. using the Offering in combination with software, equipment, products, or other items not provided by Siemens;
- c. using Offerings provided free of charge;
- d. any adjustment, modification, or configuration of the Offering not made by Siemens;
- e. Customer's instructions, requests, specifications, and Contributions;
- f. using the Offerings for a purpose or in a manner not authorized by Siemens;
- g. deliverables resulting from services; or
- h. information or data not provided by or on behalf of Siemens.

14.8. Claim of Customer's infringement

If any allegation is made against Siemens and/or its Affiliates based on a claim that the Contributions infringe an intellectual property right, then the obligations of Siemens under Sections 14.1, 14.2, 14.5 and 14.6 shall reciprocally apply to Customer in favor of Siemens and its Affiliates.

14.9. Exclusive remedies

This Section 14 sets out Siemens' entire liability and Customer's sole and exclusive rights and remedy for infringement of third-party intellectual property rights.

15. Liability

15.1. Exclusive liability

This Section 15 will exclusively govern Siemens' liability for all claims, costs, damages, and indemnities, regardless of the form of action, whether based in contract, statute, tort (including negligence) or otherwise.

15.2. Scope of limitations

The limitations and exclusions below:

- a. apply to:
 - Siemens;
 - Siemens' Affiliates; and
 - Siemens' respective officers, directors, licensors, subcontractors, and representatives; and
- b. will not apply to the extent liability cannot be limited or excluded according to applicable law.

15.3. Limitation of liability

15.3.1. For **Recurring Fee Offerings**, Siemens' aggregate liability for all claims under the Order arising in one Contract Year is limited to the total fees paid under the Order for the Recurring Fee Offering during such Contract Year.

15.3.2. For **Other Offerings**, Siemens' aggregate liability for all claims under the Order is limited to the total fees paid under the Order for the Other Offering.

15.4. Exclusions of liability

15.4.1. **Time limitations.** Any claims by Customer will be excluded after 2 years from the date of the event giving rise to the claim.

15.4.2. **Disclaimer.** Even if foreseeable, Siemens will never be liable for:

- a. any indirect, incidental, consequential, special, exemplary, or punitive damages;
- b. loss of production;
- c. interruption of operations;
- d. loss of use;
- e. loss or corruption of data;
- f. contractual claims of third parties;
- g. loss of revenue, profits, capital and interest, or anticipated savings; or
- h. any Offerings provided free of charge.

16. Force majeure

16.1. No liability

Neither party will be liable for a performance failure or delay (except related to any payment obligations) due to a cause beyond the reasonable control of either party or its suppliers or subcontractors.

16.2. Time adaptation

Impacted schedules in the Order will be reasonably adjusted for a force majeure event.

16.3. Termination right

If a force majeure event continues for more than 180 days, either Customer or Siemens may terminate the Order. Customer will pay Siemens for the Offerings provided up to the date of termination.

17. Applicable law and dispute resolution

17.1. Applicable law, Arbitration

This Agreement and any Order will be governed by the substantive laws set forth in the paragraphs below, as set forth therein, excluding choice-of-law rules.

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any dispute arising out of or in connection with this Agreement will be resolved as follows:

- a. In the **United States and all other domiciles not otherwise mentioned**, the applicable law will be the laws of the state of Delaware, USA; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Delaware, USA unless Customer is a public entity in which case the applicable law will be the state law where it is domiciled and any dispute will be subject to the jurisdiction of the applicable courts where it is domiciled.
- b. In **Canada**, the applicable law will be the laws of Ontario; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Ontario, Canada, without regard to the principles of conflicts of law.
- c. In the **United Kingdom or a country in Europe**, the applicable law will be the laws of England; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be London, England.
- d. In **Australia, New Zealand, a country in Asia/Oceania**, the applicable law will be the laws of Victoria, Australia; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be Melbourne, Victoria, Australia.

All disputes arising out of or in connection with this Agreement or any Order will be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC").

17.2. Language

The language of the proceeding will be English.

17.3. Court proceedings

To the extent permissible under applicable law and to the extent it would not result in the invalidity or inapplicability of this Section 17, the parties agree that Siemens, at its sole discretion, may bring an action in the courts of the jurisdiction(s) where the Offering is being used or Customer has its place of business, (i) to enforce its intellectual property rights, or (ii) for the payment of fees related to any Offering.

General clauses

18. Notices

Notices will be in writing and sent to the address specified in the applicable Order.

19. No restrictions

Subject to confidentiality, nothing in the Agreement or the Order restricts Siemens from providing services to third parties similar or identical to the services provided to Customer.

20. Affiliates and subcontractors

Siemens may use Affiliates and subcontractors to fulfill its obligations under the Order. Siemens remains responsible for its obligations and those of its Affiliates and subcontractors.

21. Independent relationship

Nothing in the Agreement or the Order creates a partnership or an employment relationship between Siemens and Customer or any of their respective personnel.

22. Order of precedence

In the event of a conflict between the Order, these Base Terms and the Supplemental Terms, the following order of precedence applies:

- a. Order (excluding any Customer general terms and conditions, even if the document states differently);
- b. applicable Supplemental Terms; and
- c. these Base Terms.

23. Entire Agreement

The Order is the entire agreement with respect to its subject matter and supersedes and extinguishes any previous or contemporaneous agreements, assurances, warranties, or representations.

Each party agrees that it shall have no remedies in respect of any statement or representation (whether made innocently or negligently, but excluding any made fraudulently) that is not set out in the Agreement.

If a translation of the Agreement conflicts with the original, the English language version will control.

The terms of any purchase order or other document from Customer are excluded and such terms will not apply to any Order and will not supplement or modify the Agreement irrespective of any language to the contrary in such document.

24. No assignment

Neither party may assign or otherwise transfer (by operation of law or otherwise) its respective rights or obligations under the Agreement or any Order without the written consent of the other. However, Siemens may assign to an Affiliate or an acquirer of all or substantially all the business covered by the Agreement or any Order.

25. No waiver

Failure to enforce a provision of the Agreement or any Order will not be considered a waiver.

26. Amendments

This Agreement and any amendments to it can only be effective if made in writing and signed by both parties (either manually or by an electronic system specified by Siemens).

27. Validity

If any provision of the Agreement or any Order is invalid, illegal, or unenforceable, the remaining provisions will not be affected. Such provision will be deemed to be restated in accordance with applicable law to reflect the parties' original intent.

Definitions

Affiliate	Any legal entity that, directly or indirectly: • is controlled by a party; • controls a party; or • is controlled by a legal entity that directly or indirectly controls a party.
Confidential Information	Information that: • is disclosed by one party, its Affiliates, or their subcontractors to the other party or their Affiliates; • is marked or declared as confidential (or that any reasonable person can recognize as confidential in its nature); and • includes the terms of the Agreement and any Order, Offerings, Siemens-owned Intellectual Property, and any information Customer derives from benchmarking any Offering.
Contract Year	The 12 month period starting with the effective date of an Order or its anniversary.
Contributions	Everything Customer (or someone through Customer) must provide or perform in connection with an Order so that Siemens can perform the Offerings, including all assistance, documents, information, data, and approvals.
Documentation	Instructions for use, learning materials, technical and functional documentation, and API (Application Programming Interface) information made available with the applicable Offering which may be updated by Siemens from time to time.
Export Regulations	All applicable sanctions, embargoes, and (re-)export control regulations and in any event those of the European Union, the United States of America and any locally applicable jurisdiction.
Hardware	Offerings that are tangible products, equipment, components, parts, and materials which may include firmware.
Intellectual Property	Rights in data, software, ideas, know-how, or any other proprietary material or information.
Infringement Claim	Where a third party makes a specific claim, allegation or complaint against Customer that the Offerings directly infringe any: • patent or trademark issued or registered by the United States, China, Japan, or the European Patent Office or the European Union Intellectual Property Office; • copyright; or • trade secret.
Offerings	The services, products, or documents provided to Customer as exclusively set out in an Order.
Order	An order form, a statement of work, or any other document that sets forth the Offerings and fees, incorporates the terms of the Agreement, and is agreed upon by both parties by manual or electronic signatures or by an electronic system specified by Siemens.
Other Offerings	Offerings without a recurring fee.
Recurring Fee Offerings	Offerings with recurring fees, for example service contracts and subscriptions.
Supplemental Terms	Additional terms and conditions that apply to a particular Offering as attached here or referenced in an Order. It may be titled EULA or have a similar term.

Third-Party Technology	Any third-party software, technology, and other materials, including open source software components, licensed by third parties under separate terms.
Third-Party Terms	License conditions that may apply for Third-Party Technology and are specified in the Documentation, Supplemental Terms, Third-Party Technology source code (if any), and/or in “read me,” header-, notices-, or similar files.
Update(s)	Updates, security patches, or bug fixes.

General Software and Cloud Supplemental Terms

These General Software and Cloud Supplemental Terms (“General Software and Cloud Terms”) amend the Base Terms between the Siemens entity named on the Order and the Customer that accepted the Order.

They apply only to:

- Software or Cloud Services (or a combination of both); and
- any associated maintenance and support services and Documentation.

Capitalized terms are defined [at the end of the document](#) or in the Base Terms.

Commercial terms

1. Delivery

1.1. Delivery of Software and Cloud Services

Unless otherwise set forth in the Order, delivery of:

- a. Cloud Services occurs when Siemens makes Cloud Services available to Customer for access and use,
- b. Software occurs:
 - when Siemens makes Software available to Customer via electronic download from a website specified by Siemens, or
 - ships the tangible media containing the Software, and
- c. an Offering that is comprised of a combination of Cloud Services and Software occurs when the Software and Cloud Services are made available by Siemens.

1.2. Delivery terms for tangible media

Software on media will be delivered subject to EXW (INCOTERMS®2020) if delivery takes place entirely within the United States, or China.

In all other cases, Software will be delivered subject to DAP (INCOTERMS®2020).

1.3. Remote installation

Customer consents to the installation of Software on systems used by Customer, which may be provided through Cloud Services.

2. Payment

2.1. Direct purchases from Siemens

Siemens will invoice Customer in advance for Offerings, unless agreed differently in the Order.

Without limiting any other remedies available to Siemens, Customer will pay applicable fees for any excess use of an Offering at its then-current price and within 30 days of the invoice date.

Except as expressly set forth in the Agreement, all payment obligations are non-cancelable, and all fees are non-refundable.

2.2. Purchases through a Siemens-authorized partner

If Customer has procured an Offering through a Siemens-authorized partner, different invoicing and payment terms may apply as agreed between Customer and the partner.

Siemens may share with the partner information about Customer's use and consumption of Offerings for account management and billing purposes.

Use of Offerings

3. Users

3.1. Authorized users

The number and categories of users authorized to access an Offering are defined in the Entitlements. Users who submit declarations, notifications, or orders to Siemens are acting on Customer's behalf.

3.2. Affiliates as users

If a Customer's Affiliate is entitled to access or use an Offering, Siemens may enforce its rights directly against that Affiliate.

4. Customer's responsibilities

Customer will:

- a. be responsible for the use of Offerings;
- b. be responsible for the security of Customer's systems and the software they include and will take commercially reasonable steps to exclude malware, viruses, spyware, and trojans;
- c. obtain, at its own expense, any required rights, consents, and permits from vendors of software and services that Customer intends to use with an Offering;
- d. make sure that any user who accesses or uses an Offering on Customer's behalf, at Customer's invitation, or by invitation of a Customer's user complies with Customer's obligations;
- e. be responsible for any person using or accessing the account of a user under the Agreement; and
- f. immediately notify Siemens and terminate the relevant user's or user account's access to Offerings if Customer becomes aware of any:
 - violation of the Agreement by a user; or
 - unauthorized access to any user account.

5. Use rights

5.1. Cloud Services use rights

For Cloud Services within an Offering, Siemens grants Customer a non-exclusive, non-transferable, limited right to access and use such Cloud Services:

- a. for Customer's internal business purposes;
- b. during the applicable Subscription Term; and
- c. only in line with the Entitlements and the Agreement.

5.2. Software and Documentation use rights

For Software and Documentation within an Offering, Siemens grants Customer a non-exclusive, non-transferable, non-sublicensable, limited license to use Documentation and install and use Software:

- a. for Customer's internal business purposes;
- b. during the applicable Subscription Term or other period specified in the Order; and

- c. only in line with the Entitlements and the Agreement.

5.3. Source code use rights

Software contained in an Offering is generally provided in object code form only. To the extent that any Software is provided in source code form, Customer may only use it to modify or enhance the applicable Offering that the Software is a part of. All modifications or enhancements will be owned by Siemens and subject to the license set out in Section 5.2.

6. Use restrictions

6.1. General

Except as authorized in the Agreement, Customer will not, and will not allow any person or entity to:

- a. resell, transfer, sublicense, publish, loan, lease, or use any Offering to benefit a third party without Siemens' prior written consent;
- b. modify, repair, or create derivative works of any Offering;
- c. reverse engineer, disassemble, decompile, or attempt to discover the source code of any Offering;
- d. use any Offering in a way that could subject it to any Third-Party Terms for open source software not already applicable to such Offering;
- e. use any Offering to develop or enhance a product that is competitive with such Offering; or
- f. remove any proprietary notices or legends in or affixed to any Offering.

6.2. Copies of Software and Documentation

Customer may copy Software or Documentation only:

- a. as required to use the Offering as authorized under the Agreement; and
- b. if Customer ensures that any copy includes all proprietary notices in or affixed to the Software or Documentation as received from Siemens.

6.3. Application Programming Interfaces (APIs)

Customer will only use APIs identified as "published" in the Documentation, and as described in it to support the authorized use of Offerings.

6.4. Restrictions applicability

The restrictions set out in this Section 6 do not apply to the extent they conflict with mandatory law.

7. No-Charge Offerings and Previews

Siemens provides No-Charge Offerings and Previews "as is" and without warranty, indemnity, support, or other commitments.

Siemens may change, limit, suspend, or terminate any Previews at any time. Previews are not ready for production use, and Customer uses any Previews at its risk and discretion.

Customer will use No-Charge Offerings identified in an Order as "demo," "test," "evaluation," "beta," or similar only for internal test and evaluation purposes.

8. Reservation of rights

All Software, Cloud Services, and non-public Documentation are trade secrets of Siemens and of Siemens' licensors.

Siemens or its licensors retain title to and ownership of Software, Cloud Services, Documentation, and Siemens IP. Siemens reserve all rights in Offerings and Siemens IP not expressly granted in the Agreement.

Siemens reserves the right to embed a reporting mechanism in Software to detect unauthorized use of Software licenses.

Additional terms for Cloud Services

9. Service level agreements

During the Subscription Term, Siemens will comply with the applicable service level agreements for Cloud Services as set out in any Supplemental Terms.

10. Out of scope

Cloud Services specifically exclude:

- a. access to the internet or any other network;
- b. suitable connectivity or any other resources necessary for accessing or using Cloud Services; and
- c. the transmission of Content to and from the exit of the wide area network of the data centers used by Siemens to provide Cloud Services.

11. Changes to Cloud Services

11.1. Permitted changes

Cloud Services may be modified, discontinued, or substituted by Siemens from time to time.

During a Subscription Term, Siemens will not discontinue Cloud Services or materially degrade their core features or functionalities without making available substitute Cloud Services, except to address:

- a. new legal requirements;
- b. changes imposed by Siemens' vendors or subcontractors (e.g., the termination of Siemens' relationship with a provider of software or services required to provide such Cloud Services); or
- c. security risks that cannot be resolved in a commercially reasonable manner.

11.2. Material degradation of Cloud Services

If any material degradation or discontinuation of Cloud Services happens in accordance with Section 11.1:

- a. Siemens will notify Customer as soon as practicable; and
- b. Customer may terminate the Order for the applicable Offering by written notice within 30 days of receiving notice of degradation or discontinuation.

If the Order is terminated or the Cloud Services discontinued without available substitute Cloud Services, Siemens will refund any prepaid fees for the applicable Offering on a pro-rata basis for the remainder of the Subscription Term.

12. Use of messaging services

Customer may use Cloud Services to send emails or other messages to users and third parties and is solely responsible for such messages and their content.

Messages may be blocked, delayed, or prevented from being delivered by destination servers and other reasons outside of Siemens' control. Siemens does not warrant that messages will reach their intended destination in a given timeframe.

13. Third-Party Content

Any contractual relationship regarding Third-Party Content:

- a. is only between Customer and the relevant third-party vendor; and
- b. may be governed by separate terms made available by Siemens with or as part of Third-Party Content.

Siemens will have no responsibility for Third-Party Content or Customer's use of it.

14. Acceptable Use Policy and indemnity

Customer will comply, and ensure that all users of any Offering comply, with the AUP.

Customer will indemnify Siemens, its Affiliates, and their subcontractors against any claims, damages, fines, and costs (including attorney's fees and expenses) relating to any:

- a. violation of the AUP by Customer or any user;
- b. violation of laws, regulations, or rights of others by Customer's or any user's use of an Offering; or
- c. Customer Content.

15. Ownership and use of Customer Content

15.1. Responsibility for Customer Content

Customer will:

- a. be responsible for:
 - the Customer Content, including the management, transfer, use, accuracy, and quality of Customer Content and the means by which Customer acquires such Customer Content;
 - taking appropriate steps to protect, delete, and retrieve Customer Content, including by keeping backup copies;
- b. confirm the geographic area in which Customer Content will be stored, which may be outside the country where Customer is located; and
- c. ensure that Customer Content can be processed and used in line with the Agreement without violating any rights of others or any laws or regulations.

15.2. Limited use for service provision

Siemens will not acquire any title to or ownership of Customer Content. Siemens and its subcontractors will use Customer Content only:

- a. to provide Offerings;
- b. as the Agreement otherwise allows; or
- c. as otherwise agreed by the parties.

15.3. Protection of Customer Content

Cloud Services will be provided using processes and safeguards designed to protect the integrity and confidentiality of Customer Content.

Some Cloud Services may provide features that allow Customer to share Customer Content with third parties or make Customer Content public. Customer will use such features at its sole discretion and risk.

Data

16. Security and data privacy

Each party will comply with applicable data privacy laws governing the protection of personal data.

Where Siemens acts as Customer's processor of personal data provided by Customer, the Data Privacy Terms available at <https://www.siemens.com/dpt> (including the technical and organizational measures described in them) apply to the use of the relevant Offering and are part of the Agreement.

17. Systems Information

17.1. Use of Systems Information

Siemens, its Affiliates, and their subcontractors may use Systems Information to support, maintain, monitor, operate, and improve their products and services or enforce their rights, provided that any Systems Information derived from Customer Content is aggregated with other information so that the original Customer Content is not identifiable.

17.2. Confidentiality

Systems Information is Siemens Confidential Information. Siemens may disclose Systems Information to a Siemens-authorized partner only to the extent reasonably required for such partner to fulfil its support obligations to Customer.

Renewals, suspension, and termination

18. Subscription renewals

18.1. Renewal

If indicated in the Order or agreed by the parties in an electronic system made available by Siemens, the Subscription Term for the applicable paid Offering will automatically renew for successive Subscription Terms.

To avoid renewal, a party must notify the other at least 45 days before the end of that Subscription Term.

18.2. Renewed term

Any renewed Subscription Term will be the same length as the preceding term or 12 months (whichever is longer).

18.3. Fees upon renewal

The fees during any renewed Subscription Term will be the same as those in effect at the end of the preceding Subscription Term, unless:

- a. Siemens notifies Customer of a fee change approximately 60 days before the end of the then-current Subscription Term; or
- b. fees for the renewed Subscription Term are specified in the Order.

18.4. Applicable agreement

For the renewed Subscription Term, the then-current Agreement will apply as made available:

- a. under links referenced in the Agreement or the Order; or
- b. to Customer by other means.

19. Suspension and limitation

19.1. Suspension and limitation rights

Siemens may immediately suspend or limit Customer's or any user's access to and use of Offerings, in whole or in part, if:

- a. Siemens reasonably determines that using the Offering:
 - poses a security risk to the Offering, Siemens, or any third party; or
 - subjects Siemens or any third party to liability; or
- b. Siemens has the right to immediate termination under Section 20.

19.2. Effect

Suspension or limitation will:

- a. not limit any other rights available to Siemens under the Agreement;
- b. not relieve Customer of its obligation to pay fees; and
- c. be promptly lifted when the reason for such suspension or limitation no longer exists.

20. Termination

20.1. Mutual termination rights

Neither party will terminate an Order for convenience during the applicable Subscription Term.

Either party may only terminate with immediate effect an Order for an Offering during its applicable Subscription Term if:

- a. the other party breaches the Agreement; and
- b. the breach remains uncured for a period of 30 days from receiving notice.

Such termination will only be effective with respect to the affected Offering.

20.2. Siemens' termination rights

Siemens may terminate with immediate effect any or all Orders or the Agreement upon notice to Customer:

- a. if Customer does not comply with applicable law or the request of government authorities; or
- b. if Customer:
 - installs or uses Software without authorization; or
 - breaches in any way Sections 2.1, 3, 4, 5, 6, 7, 8, 14, 25, and 26 of the General Software and Cloud Terms or Sections 9, 11, or 24 of the Base Terms.

20.3. Effects of termination or expiration

20.3.1. Customer's rights to access, use, or receive applicable Offerings automatically terminate when:

- a. the relevant Subscription Term expires;
- b. any Order for one or more of the affected Offerings is terminated; or
- c. the Agreement is terminated for any reason.

20.3.2. Upon termination or expiration, Customer will immediately:

- a. stop using the affected Offerings;
- b. remove and destroy all Software and other Siemens Confidential Information relating to such Offerings in its possession or control; and
- c. certify such removal and destruction in writing to Siemens.

20.3.3. Customer Content will remain available for download for a period of 30 days, provided Customer complies with the Agreement and pays all applicable fees. Customer Content may then be deleted.

20.4. Fees and refunds

If the Agreement or any Order is terminated by Siemens under Section 20.1 or 20.2, Customer will still have to pay the total fees agreed, which will be due and payable immediately upon termination.

If any Order is terminated by Customer under Section 20.1, Siemens will refund a reasonable portion of any prepaid fees on a pro-rata basis for the remainder of the Subscription Term for the affected Offerings.

20.5. Survival

Sections 2, 4.b, 6, 8, 14, 17, 20.3, 23, 25, and 26 of the General Software and Cloud Terms survive termination of the Agreement.

Warranties

21. Software warranties

21.1. Software warranty

Siemens warrants that Software will perform:

- a. substantially in accordance with the features and functionalities described in the Documentation; and
- b. for 90 days from the date the Offering is made available to Customer.

21.2. Remedy

To the extent permissible by law, Siemens' entire liability and Customer's sole and exclusive remedy for a breach of this Software warranty will be for Siemens to, at Siemens' option:

- a. correct errors or provide workarounds;
- b. replace defective Software; or
- c. require Customer to return the defective Software, terminate the Order for the non-conforming Offering, and refund fees paid for the Offering.

21.3. Exclusions

The warranty for Software excludes:

- a. **No-Charge Offerings;**
- b. **Software provided upon re-mix;**
- c. **Software designated as retired or not generally supported on the Order date;**
- d. **Software made available under the maintenance services terms set out in any applicable Supplemental Terms;**
- e. **Non-reproducible errors; and**
- f. **Issues, problems, or defects due to not using Software in line with the terms of the Agreement.**

22. Cloud Services warranties

22.1. Cloud Services warranty

Siemens warrants that Cloud Services will perform substantially in accordance with the features and functionalities described in the Documentation.

22.2. Remedy

To the extent permissible by law, Siemens' entire liability and Customer's sole and exclusive remedy for a breach of this Cloud Services warranty will be for Siemens to, at Siemens option:

- a. use commercially reasonable efforts to restore the non-conforming Cloud Services so that they comply with this warranty; or
- b. if restoration isn't commercially reasonable, terminate the Order for the non-conforming Offering and refund any prepaid fees for the Offering on a pro-rata basis for the remainder of the relevant Subscription Term.

22.3. Exclusions

The warranty for Cloud Services excludes:

- a. **No-Charge Offerings and Previews;**
- b. **Non-reproducible errors; and**
- c. **Issues, problems, or defects arising from Customer Content, Third-Party Content, or due to not using Cloud Services in line with the terms of the Agreement.**

23. Disclaimers

- a. **Siemens makes only the limited warranties stated in the Agreement and disclaims all others, including the implied warranties of merchantability and fitness for a particular purpose.**
- b. **Representations about Offerings, features, or functionality in any communication with Customer are technical information, not a warranty or guarantee.**
- c. **Siemens does not warrant or guarantee that:**
 - **Customer will achieve its intended results;**

- Offerings are suitable for Customer's intended use;
 - Offerings comply with all laws and regulations applicable to customers' specific use;
 - Siemens will correct reported errors or resolve support requests to meet Customer's needs;
 - Offerings or any Third-Party Content will be uninterrupted, error free, fail-safe, fault-tolerant, or free of harmful components; or
 - any Content, including Customer Content and Third-Party Content, will be secure or not lost or damaged.
- d. **Siemens does not control Customer's processes or the creation, validation, sale, or use of Customer's (or any client of Customer's) products or services.**
- e. **Siemens will not be liable for any claim or demand made against Customer by any third party, except for Siemens' obligations to indemnify Customer against Infringement Claims.**

Other

24. Notices

24.1. Methods of notice

Siemens may notify Customer by:

- a. posting a notification on Cloud Services or on the Subscription Console;
- b. sending an email or other text message to the address or contact number provided by Customer or then-associated with the Subscription Console; or
- c. sending an email to relevant users.

Notices about claims or disputes will always be sent to the party's address as specified in the applicable Order.

24.2. Notice delivery date

A notice will be deemed provided to Customer three days after its date, if Customer does not:

- a. regularly visit the Subscription Console; or
- b. receive a notice because of technical issues related to equipment or services under Customer's or Customer subcontractors' control.

24.3. Addresses

A party may change its address by giving written notice to the other party.

Customer will visit Cloud Services and the Subscription Console regularly and provide Siemens with current email addresses of Customer representatives.

25. Information obligation and audit

25.1. Information obligation

Customer will provide information or other materials that Siemens reasonably requests to verify Customer's compliance with the Agreement.

25.2. Siemens' audit rights

Upon reasonable advance notice, Siemens may conduct an audit of Customer's compliance with the Agreement. To minimize Customer disruption:

- a. Siemens may conduct remote audits using scanning tools operated by Customer to collect audit information; and
- b. while on Customer's premises, Siemens and its agents will comply with reasonable security procedures communicated to Siemens.

At Siemens' discretion, Customer will permit Siemens or its authorized agents to access facilities, workstations, and servers and take all commercially reasonable actions to assist Siemens in the audit.

26. Export control compliance

In addition to Section 11 of the Base Terms, Customer will not:

- a. download, install, access, or use the Software or Cloud Services from or in any location prohibited by or subject to comprehensive sanctions according to the Export Regulations;
- b. grant access to, transfer, (re-)export (including any "deemed (re-)exports"), or make available the Software or Cloud Services to any entity or person identified on a restricted party list of the Export Regulations or owned or controlled by a listed party;
- c. use the Software or Cloud Services for any purpose prohibited by the Export Regulations (e.g., use in connection with armaments, nuclear technology, or weapons);
- d. upload to the Cloud Services platform any Customer Content unless it is non-controlled (e.g., in the EU: AL = N; in the U.S.: ECCN = N or EAR99); or
- e. facilitate any of these activities by any user.

Customer will provide all users with all information necessary to ensure compliance with the Export Regulations.

27. License rights applicable to the U.S. Government

- a. Offerings are commercial products that were developed exclusively at private expense.
- b. Offerings acquired directly or indirectly for use by the U.S. Government are "Commercial Items" and "Commercial Computer Software" or "Computer Software Documentation" as defined in 48 C.F.R. §2.101 and 48 C.F.R. §252.227-7014(a)(1) and (a)(5), as applicable.
- c. Offerings may only be used under the terms of the Agreement as required by 48 C.F.R. §12.212 and 48 C.F.R. §227.7202.
- d. The U.S. Government will only have the rights set out in the Agreement, which takes precedence over any conflicting terms or conditions in any government order document, except for provisions that clash with applicable mandatory federal laws.
- e. Siemens will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.

Definitions

AUP	Siemens' Acceptable Use Policy available at https://www.siemens.com/sw-terms/aup .
Cloud Services	Online services and associated cloud-based APIs made available by Siemens under these General Software and Cloud Terms, whether offered alone or in combination with Software. They include: • software-as-a-service; • platform-as-a-service; • cloud hosting services; and • online training services. Cloud Services exclude Software, Customer Content, and Third-Party Content.
Content	Data, text, audio, video, images, models, or software.
Customer Content	Content entered by Customer or any user into Cloud Services and any output generated by Customer or any user through use of such Cloud Services based on such Content. It excludes • Third-Party Content; and • Content owned or controlled by Siemens or its Affiliates or their respective licensors and made available by Siemens or its Affiliates through or within Cloud Services.
Entitlements	The license and use types, limits, volume or other measurement, or conditions of permitted use for an Offering as set out in the applicable Order, Supplemental Terms, or Documentation, including:

	• any limits or restrictions on the number and categories of users authorized to use the Offering; • permitted geographic areas; • available storage space; • computing power; or • other attributes and metrics.
No-Charge Offerings	Offerings provided at no charge.
Previews	Features or services offered at no extra charge as part of Cloud Services before their general release that are labeled or communicated to Customer as "preview," "pre-release," "early access," or "non-general release."
Siemens IP	All patents, copyrights, trade secrets, and other intellectual property rights in, related to, or used to provide or deliver any Offering or technical solution underlying any Offering and any improvement, modification, or derivative work of any of the foregoing.
Software	Software licensed by Siemens under these General Software and Cloud Terms and made available for download or delivered to Customer for installation. It includes Updates, modifications, design data, and all their copies, associated software-based APIs, scripts, toolkits, libraries, reference or sample code, and similar materials.
Subscription Console	Administrative user account that Customer maintains with Siemens to manage subscriptions to Offerings.
Subscription Term	The period specified in the Order for which a term-based Offering is made available to Customer. Any renewal constitutes a new Subscription Term.
Systems Information	Information, statistics, and metrics • about use, operation, support, and maintenance of Offerings; or • collected and derived from Customer Content.
Third-Party Content	Content, applications, and services owned or controlled by a third party and made available to Customer by the third party through or in connection with Cloud Services.

Services Supplemental Terms

These Services Supplemental Terms (“Services Terms”) amend the Base Terms between the Siemens entity named on the Order and the Customer that accepted the Order. They apply only to services as described in the Order (“Services”).

Capitalized terms are defined in the Base Terms.

Commercial terms

1. Siemens Offerings

1.1. Services offerings

- 1.1.1. **Scope description.** Siemens will perform the Services as detailed in the services description set out in or referred to in the Order. Services may include items defined in the Order and delivered to Customer in the course of performing Services.
- 1.1.2. **Supervision.** To the extent the Services include supervision, Siemens’ only obligation is to provide correct instructions. Siemens will not be liable for the performance of third parties or Customer’s personnel.

1.2. Location

- 1.2.1. **Onsite.** If Services are provided at Customer’s site, Siemens will:
 - a. provide them during normal local business hours (excluding holidays); and
 - b. comply with Customer’s reasonable site rules provided in writing before performance starts.
- 1.2.2. **Off-site.** If onsite performance is not necessary, Services may be performed:
 - a. at a location of Siemens’ choice; or
 - b. by remote access.

1.3. Personnel

Siemens may direct and allocate personnel for the Services at its discretion and is responsible for all compensation and other employment benefits of Siemens employees.

1.4. Data processing

Where Siemens acts as Customer’s processor of personal data provided by Customer, the following terms apply:

- a. the Data Privacy Terms available at <https://www.siemens.com/dpt>; and
- b. any additional information related to the processing of personal data (including authorized subprocessors) which may be contained in the Order.

2. Customer’s obligations

2.1. Providing Contributions

Customer will supply Contributions as set out in the Order. This includes:

- a. supporting Siemens by providing:

- the environment and opportunity to start work on time, without interruption, and with adequate and legally compliant health and safety measures in place for onsite work;
 - qualified personnel;
 - a secure internet connection and authorized access to Customer or third-party systems (as required);
 - reasonable support to ensure that all obligations required by local authorities for the commissioning, acceptance, and use of the Services are met;
 - timely acceptance (where required), input and feedback;
 - lockable rooms for storage and adequate working and recreation rooms for Siemens or their subcontractors, including appropriate sanitary facilities;
 - all necessary information about the location of concealed electric, gas, water, and fiberoptic lines or similar installations, and the static and sub-surface conditions of the site.
- b. obtaining any permits and approvals from relevant authorities, except if only Siemens can obtain these;
- c. ensuring cooperation by any third parties retained by Customer; and
- d. for time and material Orders confirming with Siemens the hours worked on a time basis. Siemens time sheets are deemed accepted within 10 days of submission unless Customer identifies a material reason in writing to reject them.

2.2. Scheduling and management

Siemens is not responsible for Customer's scheduling, planning, project management, or any resulting delay or cost.

2.3. Hazardous materials and environmental conditions

If Services are provided at Customer's site, Customer will handle, store, dispose, and remediate the effects of any hazardous waste, hazardous materials on-site (including asbestos), geological or geothermal conditions, archaeological findings, or other conditions that require special treatment or have a negative effect on the Services or the environment.

Customer will refund Siemens for all services and costs caused by the discovery or handling of any such materials or conditions. If a health or safety risk arises during the provision of the Services, Siemens may suspend the Services until such risks are eliminated.

2.4. Remote support

2.4.1. **Remote support.** Siemens is entitled to provide the Services remotely.

2.4.2. **Remote access.** In case of remote access by Siemens, Customer shall at its own expense:

- a. provide an access-controlled internet connection (e.g. wired or wireless broadband connections via DSL, UMTS or LTE) that meets the technical requirements of a secure remote connection;
- b. grant Siemens necessary access to the objects of the Services;
- c. activate and accept each remote access of Siemens (if contractually agreed); and
- d. have a qualified person authorized by Customer who is familiar with Customer's objects of the Services and production system at Customer's site.

2.4.3. **Use of a Siemens remote access functionality.** If agreed in the Order, Siemens shall provide a remote access functionality. Customer shall satisfy itself that the security standards are compatible with Customer's operating environment, security requirements and internal policies.

2.4.4. **Use of Customer Remote Access Functionality.** If Customer provides a remote access functionality ("Customer Remote Access Functionality"), Customer shall ensure the confidentiality and integrity of the remote connection and availability of this functionality. Siemens excludes any liability for the use of this Customer Remote Access Functionality. Siemens can reject the use of the Customer Remote Access Functionality if this functionality does not comply with common security standards.

3. Delivery and performance

3.1. Delivery terms for tangible deliverables

Unless agreed otherwise in the Order, tangible deliverables will be delivered FCA according to INCOTERMS®2020. Tangible deliverables are deemed delivered if Customer delays or fails to accept delivery without cause.

3.2. Acceptance

Acceptance of the Services is not required unless agreed otherwise in an Order.

If the Order requires acceptance:

- a. Siemens will issue a notice of completion if the Services or an agreed portion are ready for acceptance;
- b. Customer will accept unless the Services are performed in breach of Section 5. In this case, Customer will describe the breach in a written notice of rejection and Siemens will remedy it within a reasonable time (or as agreed by the parties) and resubmit for acceptance; and
- c. if Customer does not give notice, the Services or delivered agreed portion are deemed accepted on the earlier of:
 - 10 business days from completion notice; or
 - the date the delivered portion is put into productive use.

3.3. Delivery and performance dates

Any dates in the Order are estimates and non-binding, unless Customer obtains Siemens' written consent to specific delivery or performance dates expressly subject to liquidated damages ("Binding Dates"), in which case, Section 3.4 will apply.

3.4. Delay

- 3.4.1. **Liquidated damages.** If Siemens is solely responsible for delaying Binding Dates and Customer suffered a loss, Siemens will, after a grace period of 1 week, pay liquidated damages equal to 0.5% of the fees for the delayed portion of the Services for every full week of delay.

Aggregate liquidated damages will not exceed 5% of such fees.

- 3.4.2. **Termination for delay.** Customer may only terminate the Order for delay if:

- a. the maximum liquidated damages are payable; and
- b. a reasonable additional delivery or performance period has expired.

- 3.4.3. **Exclusive remedy.** This Section 3.4 sets out Siemens' entire and exclusive liability for delay and excludes all of Customer's other rights and remedies for delay.

4. Transfer of risk for tangible deliverables

Risk of loss or damage for tangible deliverables (or a portion of them) passes to Customer upon:

- a. delivery; or
- b. attempted delivery if Customer fails or refuses to take delivery without cause.

Warranties

5. Services warranty

The Services will be performed in a professional manner with the level of care reasonably expected under similar circumstances. Siemens does not owe a specific result to Customer unless agreed otherwise in the Order.

6. Services warranty period

6.1. Original warranty period

The warranty period for Services is 90 days following completion of the Services or acceptance (if agreed).

6.2. Warranty period for re-performed Services

The warranty period for re-performed Services is 30 days from reperformance if the original warranty period expires earlier. In any event, the warranty period shall end no later than 120 days from the beginning of the original warranty period.

7. Defects and claims

7.1. Notification

Customer will notify Siemens in writing of any breach of this Services warranty promptly upon discovery and always within the applicable warranty period.

7.2. Remedies

Siemens will remedy all breaches by reperforming the Services (onsite or remote) within a reasonable time.

7.3. Duty of cooperation and reimbursement

If reperformance is necessary, Customer will:

- a. at no charge to Siemens:
 - provide access to the defective portions of the Services;
 - perform any necessary disassembly and reassembly;
 - provide access to operation and maintenance data; and
- b. pay Siemens for any diagnostic and remedial work if it is established that no breach of the warranty existed.

7.4. Failure to remedy

If Siemens is unable to remedy the breach using commercially reasonable efforts:

- a. Customer may terminate the Order in line with the Base Terms; and
- b. Siemens will refund the fees paid for the non-conforming portion of the Services.

8. Warranty exclusions

8.1. Time limit

Any warranty claim is excluded after the applicable warranty period expires.

8.2. Exclusions

Siemens excludes any warranty or liability for:

- a. faulty or negligent handling, or unusually excessive use;
- b. noncompliance with instructions in the Order, manuals, and similar documents available to Customer;
- c. non-reproducible software errors;
- d. any cause outside of Siemens' control; or
- e. modifications or repairs made by anyone other than Siemens or their authorized representatives.
- f. use of or implementation of suggestions, recommendations, reports or other documents including their outcome.

9. Exclusive remedy

Sections 5–9 state Siemens' entire liability and Customer's exclusive rights and remedy for warranty claims. Siemens makes no other warranty, express, implied, or statutory, about the Services, including any warranties of merchantability or fitness for a particular purpose.

Intellectual property rights

10. Retained Intellectual Property

Each party will retain all rights in:

- a. the Intellectual Property they developed or acquired outside of the respective Order; and
- b. the improvements, modifications, or derivatives that they make to it under an Order.

11. Siemens Intellectual Property

Any Intellectual Property developed under an Order as part of the Offering is owned by Siemens and licensed to Customer as specified in Section 12.

12. Siemens license to Customer

Siemens grants Customer a non-exclusive, worldwide, perpetual, and non-transferable right to use Siemens' Intellectual Property as part of the Offering:

- a. in unmodified form; and
- b. for Customer's internal business purpose.

Additional license rights and restrictions may be stated in the respective Order.

ARTIFICIAL INTELLIGENCE TERMS OF USE



These Terms of Use (“**Terms**”) amend the Universal Customer Agreement (“**UCA**”) or End User License Agreement (“**EULA**”) between Siemens and Customer solely with regard to AI Services (as defined below). These Terms, together with the UCA or EULA, as applicable, and all applicable Supplemental Terms, form the agreement between the parties (“**Agreement**”). In the event of a conflict, these Terms supersede other Supplemental Terms, which supersede the UCA or EULA as applicable. Capitalized terms used herein have the meaning as defined in the Agreement.

1. DEFINITIONS

“**AI**” means artificial intelligence technologies including statistical learning, algorithms, models, neural networks, machine learning, deep learning, and related methodologies or tools capable of generating Content based on user input.

“**AI Services**” means services made available by Siemens that Siemens identifies as incorporating, utilizing, leveraging, or being powered by AI.

“**Documentation**” means the instructions for use, learning materials, technical and functional documentation, and API information made available by Siemens with the applicable Offering, in print, online, or embedded as part of a help function, which may be updated by Siemens from time to time.

“**Content**” means data, text, audio, video, images, models, or software.

“**Customer Content**” means Content entered by Customer or any user into the Offering, and any output generated by Customer or any user through use of such Offering based on such Content, excluding any Documentation, Siemens IP, Third Party Content, or other Content owned or controlled by Siemens or its affiliates or their respective licensors and made available by Siemens or its affiliates through or within the Offering.

“**Offering**” means an individual offering that Siemens makes available and identifies in the Agreement. An Offering consists of Cloud Services, Software, Hardware, AI Services, Professional Services, or any combination thereof, along with any associated maintenance and support services and Documentation.

“**Professional Services**” means training, consulting, engineering, or other professional services provided by or on behalf of Siemens under this Agreement pursuant to an Order, excluding Cloud Services.

“**Siemens IP**” means all patents, copyrights, trade secrets, AI, algorithms, models, and other intellectual property rights in, related to, or used in the provision or delivery of, any Offering or technical solution underlying any Offering, and any improvement, modification, or derivative work of any of the foregoing.

2. USE OF AI SERVICES

2.1 **Use Rights.** Siemens grants Customer a nonexclusive, nontransferable, limited right to access and use the AI Services within an Offering for Customer’s internal business purposes only.

2.2 **Use Restrictions.** Customer must not:

- i. use the AI Services beyond the scope of access granted;
- ii. permit any users to develop, train, or improve any other AI for the purpose of offering a commercially available product or service that competes directly with the AI Services;
- iii. use web scraping, web harvesting, web data extraction, or any other method to extract data from the AI Services;
- iv. use Documentation provided by Siemens to train any AI;
- v. use the AI Services to create Content in a manner that Customer knows or should know infringes, misappropriates, or otherwise violates any intellectual property rights or other rights of any person, or that violates any applicable law, regulation, or rule.

2.3 **High-Risk Applications.** The AI Services are not intended for use in High-Risk Applications as defined in Article 6 of the EU Artificial Intelligence Act. Customer must promptly notify Siemens if it intends to use the AI Services in a High-Risk Application.

2.4 Ownership

- i. These Terms do not confer any ownership rights in Siemens IP to Customer.
- ii. Content generated by the AI Services may not be eligible for intellectual property protection under applicable law.
- iii. Siemens does not claim ownership of Content generated by the AI Services. As between the parties, Customer owns all Customer Content generated by the AI Services.

2.5 **Similar Output.** AI Services may produce similar or identical generated Content for different customers.

2.6 **Professional Services; Deliverables.** Siemens may utilize AI in the performance of Professional Services and development of any Deliverables.

- 2.7 **Infringement Exclusion.** No Siemens indemnification under the Agreement covers claims of infringement related to the generated Content.
- 2.8 **Systems Information.** Siemens and its affiliates and their subcontractors may collect and derive information, statistics, and metrics regarding usage, operation, support, and maintenance of Offerings or from Customer Content (collectively, "**Systems Information**"), and may use Systems Information to market products and services to Customer, support, maintain, monitor, operate, develop, and improve its products and services or enforce its rights, provided that any Systems Information derived from Customer Content may only be used to improve products and services when aggregated with other information so that the original Customer Content is not identifiable.
3. **GENERAL**
- 3.1 **TRANSPARENCY.** CUSTOMER IS SOLELY RESPONSIBLE FOR CHECKING THE ACCURACY AND COMPLETENESS OF AI SERVICES OUTPUT BEFORE USING, SHARING, OR RELYING ON IT. CUSTOMER IS FULLY RESPONSIBLE FOR THIRD-PARTY INFRINGEMENT CLAIMS ARISING FROM THE AI SERVICES OUTPUT.
- 3.2 **NO WARRANTY.** TO THE EXTENT PERMITTED BY LAW, SIEMENS OFFERS NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, ON THE ACCURACY, RELIABILITY, SUITABILITY, OR AVAILABILITY OF ITS AI SERVICES, CONTENT, OR OUTPUT GENERATED BY THE AI SERVICES. ALL WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND CONTINUOUS OR ERROR-FREE OPERATION, ARE DISCLAIMED.
- 3.3 **LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, SIEMENS SHALL HAVE NO LIABILITY FOR INACCURACIES, BIASES, OR INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS CONTAINED IN THE OUTPUT.
4. **MODIFICATION.** Siemens may modify these Terms at any time.