

Hardware Supplemental Terms

Siemens Digital Industries Software



These Hardware Supplemental Terms (“Hardware Terms”) amend the Universal Customer Agreement (“UCA”) or End User License Agreement (“EULA”) between Customer and the applicable Siemens entity (“Siemens” or “SISW”) solely with regard to Offerings and Products assigned the alphanumeric code “HW” on the Order. These Hardware Terms, together with the UCA or EULA, as applicable, and other applicable Supplemental Terms, form the agreement between the parties (“Agreement”).

1. **DEFINITIONS.** Capitalized terms have the meaning as defined elsewhere in the Agreement. The following additional definitions apply to these Hardware Terms:

“**Authorized Agents**” means individuals who are working on Customer’s premises and require access to Hardware in support of Customer’s internal business as Customer’s consultants, agents, or contractors.

“**Authorized Hardware Users**” means Customer’s employees and Authorized Agents.

“**Delivery**” will have the meaning defined in Section 2 of these Hardware Terms.

“**Firmware**” means system software (as opposed to application software) included and incorporated into Hardware which provides low-level control of, or a standardized operating environment for, the Hardware in which it is incorporated.

“**Lease**” or “**Rental**” means a grant by Siemens of non-transferable, temporary and limited rights to use specific Hardware products within the Territory, including Trial and Loan licenses for Hardware as defined in the Trial and Loan Supplemental Terms.

“**Siemens Hardware**” is standard Hardware marketed or branded under the name “Siemens”.

“**System**” means a combination of Hardware and Software where one cannot operate without the other.

“**Territory**” means the country in which Customer initially acquires the Hardware, whether through purchase or Lease, as indicated by Customer’s address specified in the Order, unless expressly designated otherwise in the Order.

2. **DELIVERY.** Unless agreed otherwise in the applicable Order, Siemens will make the Hardware available to Customer FCA at Siemens’ designated warehouse or factory for the relevant product (Incoterms 2020).

Making the Hardware available to Customer in accordance with the Incoterms specified in this Section will constitute “**Delivery**” hereunder, regardless of Siemens’ further involvement in any transport arrangements for any Hardware after such Delivery.

Notwithstanding any ‘Incoterms’ specified in this Section, unless expressly agreed otherwise with Customer in writing, Siemens will (i) choose and appoint the carrier, freight forwarder or shipping service provider for delivery of the Hardware to Customer’s designated place of final delivery, (ii) make the necessary arrangements for transportation with the selected carrier or shipping service provider in accordance with the specified Incoterms, and (iii) charge the costs for shipment or carriage to Customer as specified in the Order.

3. **RISK AND TRANSFER OF TITLE.** Risk of loss and damage passes to Customer upon Delivery. Title to purchased Hardware transfers to Customer after payment in full has been received by Siemens. If applicable law does not allow or recognize retention of title by Siemens after delivery, title to purchased Hardware and risk of loss will pass to Customer upon Delivery, but Siemens retains a security interest in the Hardware to secure payment of the purchase price of such Hardware. In such case, Customer agrees to sign any documents that Siemens reasonably determines to be necessary or convenient for use in filing or perfecting such security interest.

4. **WARRANTY.**

- 4.1. **Hardware Warranty Period.** For purchased Siemens Hardware, Siemens provides a limited product warranty for a period commencing on the date of Delivery and ending 12 months after the first day of the month following the date of Delivery (“Warranty Period”). The Warranty Period is not extended by the time required to correct or repair defects and malfunctions under warranty.

- 4.2. **Scope.** During the Warranty Period, Siemens warrants that the Siemens Hardware (i) is free from defects in workmanship and materials under normal use; and (ii) materially conforms to the specifications described in the Documentation. As Customer’s exclusive remedy in case of a breach of warranty Siemens will at its sole discretion repair or replace the Siemens Hardware at no additional charge to Customer. If Siemens, in its sole discretion, determines it cannot repair the Siemens Hardware or replace it with another unit of Siemens Hardware that would perform in accordance with Siemens obligations hereunder, Siemens will refund the fees received for the defective Siemens Hardware based on a straight-line amortization over 60 months from initial Delivery, and accept the return of the Hardware. If such refunded Siemens Hardware was furnished as part of a System, Siemens will also accept the return of the Software elements of the System and refund the fees for those Software licenses under the same conditions.

- 4.3. **Third Party Hardware Warranty.** Hardware that is not Siemens Hardware is delivered “AS IS” and is covered by the warranty offered by the manufacturer or third-party vendor, if any. To the extent permitted by the manufacturer or third-party vendor, Siemens assigns to Customer any applicable warranty rights to such Hardware, and Siemens will use commercially reasonable efforts to provide information and assistance to enable Customer to make warranty claims against the manufacturer or third-party vendor for the Hardware. To the extent mandatory

applicable law requires that Siemens must provide warranty for the Hardware it has provided to Customer, the warranty provided by Siemens is limited to the minimum warranties required by the applicable law and for the minimum term required by the applicable law.

- 4.4. **Warranty Exclusions.** The warranty will not cover defects or malfunctions resulting from: (i) improper use or installation, misuse, improper site preparation, or site or environmental conditions that do not conform to Siemens' site specifications or to standards of care generally applicable to the type of Hardware, (ii) software, interfaces or hardware supplied by Customer or a third party, (iii) non-compliance with Siemens's specifications and instructions regarding the operation, care, or storage of the Hardware, (iv) normal wear and tear which does not affect the functionality of the system (such as, but not limited to, cosmetic damage, scratches, and dents), (v) neglect, accident, or improper or inadequate maintenance or calibration, (vi) modifications, enhancements, repairs, or unauthorized alterations made by anyone other than Siemens or its authorized representatives, and (vii) exposure to water, fire, or other hazards.
- 4.5. **Refurbished Parts.** Siemens does not warrant that all Hardware or any part thereof furnished hereunder is new. Hardware may contain parts refurbished to an "as new" condition that meet all Siemens quality specifications and are eligible for warranty and services.

5. INTELLECTUAL PROPERTY RIGHTS AND TRADE SECRETS.

- 5.1. **Firmware License.** Under these Hardware Terms, Siemens grants Customer a non-exclusive, non-transferable (except if transferred with the Hardware the Firmware is incorporated in) license to use the Firmware incorporated in the Hardware for the operation of the Hardware. The Firmware may only be used in connection with the Hardware in which it is incorporated. Any other use of the Firmware will be a material breach of the Agreement. Customer is prohibited from (a) decompiling, changing or modifying the Firmware, or deriving other programs from the Firmware, and from (b) modifying or deleting property rights, copyrights, or marks on the Firmware. The Software license and Software Maintenance Services terms set forth in the Agreement will not apply to Firmware.
- 5.2. **Third Party Technology.** Hardware may contain third-party software, technology, and other materials, including open source software, licensed by third parties ("Third-Party Technology") under separate terms ("Third-Party Terms"). Third-Party Terms are specified in the Documentation, Supplemental Terms, "read me" files, header files, notice files or similar files. In the event of a conflict with the terms of this Agreement, the Third Party Terms control with respect to Third-party Technology. If Third-Party Terms require Siemens to furnish Third-Party Technology in source code form, Siemens will provide it upon written request and payment of any shipping charges.
- 5.3. **Trade Secrets.** Siemens Hardware products are trade secrets of Siemens. Customer (i) will not, except as otherwise permitted by applicable law, reverse engineer, disassemble, or otherwise attempt to discover the technology used in the Hardware, or allow access to or use of Hardware by anyone except Authorized Users whose job performance requires access, (ii) will take appropriate action to protect the confidentiality of Hardware, and (iii) will not remove or obscure any notice or legend affixed to Hardware.
- 5.4. **No Further Rights.** The Firmware license in these Hardware Terms will not apply to any software other than Firmware installed on the Hardware or delivered in conjunction with or related to the Hardware furnished hereunder. No copyrights, patents, trademarks, trade secrets, or other intellectual property rights or rights to use Siemens' confidential or proprietary information are granted to Customer under these Hardware Terms, unless explicitly stated otherwise herein or otherwise agreed in writing.
- 5.5. **Survival.** The provisions of this Section 5 survive termination or expiration of the Agreement.
6. **REPAIRS.** If a defect or malfunction of Siemens Hardware occurs after the Warranty Period has expired or if such defect is for any reason not covered by the applicable warranty specified under Section 4 of these Hardware Terms or by a Maintenance Service or Support Service package purchased for the Siemens Hardware, Customer may request Siemens to attempt to repair such defect or malfunction. However, repair services are not offered for all Siemens Hardware and, even if they are offered, Siemens does not represent or warrant that all such defects can or will be repaired or that Siemens will agree to perform such repair. For such repairs and repair attempts, Customer agrees to pay for Siemens' services at Siemens' then-current rates plus any reasonable out-of-pocket expenses.

7. MAINTENANCE SERVICES.

- 7.1. **General Maintenance.** Maintenance, enhancement, and technical support services for Hardware ("Maintenance Services") are governed by the General Maintenance Services Terms found at <https://www.siemens.com/sw-terms/mes> and incorporated by this reference. The General Maintenance Services Terms are amended by the Hardware Specific Maintenance Terms below.
- 7.2. **Specific Maintenance Terms.**
 - 7.2.1. **Maintenance Types.** The following Maintenance Services related to Siemens Hardware are available for separate purchase by Customer (each a "Maintenance Type"), unless the Order expressly states that the respective Maintenance Type is already included. Not all Maintenance Types are available for each Siemens Hardware product. Some Maintenance Types may be offered only in combination with Maintenance Services for Software which form a "System" together with the Siemens Hardware.
 - (a) **Installation.** This Maintenance Type includes the installation of the System by Siemens one time during the Installation Service Type term. Prior to the parties scheduling the installation, Customer will notify Siemens it has received the System. Installation will occur during normal working hours at the location specified in the Order or as otherwise agreed by the parties. Siemens will not be obligated to install the System if (i) the System has been modified without Siemens' written consent; or (ii) the System has been subject to unusual physical or environmental stress, misuse, or other damage.

- (b) Calibration (or "CAL"). This Maintenance Type includes the calibration of the Siemens Hardware by Siemens one time during the Calibration Service Type term for the Siemens Hardware to maintain its data acquisition or measurement capabilities within the tolerances provided in the Documentation in effect at the time of delivery. For some Hardware, Siemens may offer a special type of calibration for which Siemens will certify under Siemens' ISO 17025 accreditation that calibration has been performed in accordance with ISO 17025 standards. This special type of calibration under ISO 17025 standards will either be (a) specified as "ISOCAL" on the Order, or (b) available for purchase separately under product code "SCX-ISO17025" on the Order.
- (c) Hardware Maintenance (or "MAINT"). This Maintenance Type includes repair and replacement of defective Siemens Hardware as described in Section 4.2 of these Hardware Terms for the period of time described in the Order. This Maintenance Type includes Calibration if Calibration is made generally available for purchase for that specific Siemens Hardware.
- (d) Support Service Type (or "SUP"). This Maintenance Type includes Hardware Maintenance and technical support provided to Customer by telephone or e-mail for (i) the use of the Siemens Hardware and (ii) the correction or troubleshooting of any errors, defects, or malfunctions of the Siemens Hardware.

7.2.2. Special Conditions for Hardware Maintenance Services.

- (a) Upgrades. Upgrades of Hardware, components, or modules are not included in any Service Packs and are always charged separately. A module or component is considered upgraded when, after the (re)delivery of the relevant Siemens Hardware to Customer, it has a new product identification number that corresponds to a different entry on the Siemens pricelist. Upgrades are performed only under a separate Order.
- (b) Location of Performance. Except for Maintenance Services relating to Siemens Hardware of the MicReD and Veloce family, the purchased Maintenance Services are by default performed at the regional office designated by Siemens. Each party will bear the costs for shipping the Siemens Hardware to the other party's address for the performance of the Maintenance Services. If the parties agree to an on-site visit, Customer will pay any travel expenses for the visit.
- (c) Relocation. Customer will notify Siemens prior to relocating any Siemens Hardware with an active Maintenance Type that requires on-site visits by Siemens personnel. If the new location is outside Siemens' normal on-site service area, Siemens will have the right to cancel any applicable Maintenance Services.
- (d) Access. Siemens may request remote log-in access to Siemens Hardware for the purpose of running diagnostics to detect failures. Customer will not unreasonably withhold its consent. Siemens may establish and test the remote system log-in access during installation or when performing Maintenance Services.
- (e) Return and Replacement. Hardware (including Hardware parts) that is defective or has been replaced through Maintenance Services are the property of Siemens. If Customer does not return replaced Hardware or parts within 30 days from receipt of the replacement, Siemens will invoice Customer and Customer will pay the current list price for the Hardware or part not returned. For some products or service options, Customer will replace the malfunctioning part with the appropriate part included in the standard maintenance kit provided by Siemens with the replacement Hardware, and Customer will return the defective part to Siemens for replacement.

7.2.3. Other terms.

- (a) Conditions. If Customer orders Maintenance Types after expiration of the Warranty Period or the prior Maintenance Type term, Siemens reserves the right in its sole discretion to (i) perform a system check and provide a quote for repair before Customer can purchase Calibration, Hardware Maintenance, or Support Maintenance Types or (ii) charge a fee equal to the number of Maintenance Service Types that would have been necessary to cover the term from the expiration date of the initial Warranty Period or the last Maintenance Type of the same type, whichever is later.
- (b) Exclusions. Maintenance Services do not cover defects or malfunctions in Siemens Hardware resulting from any actions, situations, or events which are excluded from warranty or cause the warranty to be voided, as provided in the then-current applicable terms and conditions for the Hardware.
- (c) Warranty. Siemens' sole representation and warranty for Hardware Maintenance Services is that the services will be performed in a professional and workmanlike manner.
- (d) Subcontractors. Siemens may subcontract some or all of its obligations to provide Hardware Maintenance Services to a third party, who will have the same rights and obligations as Siemens hereunder.
- (e) Term and Termination of Maintenance Services. A Maintenance Type's term starts on the effective date specified in the Order and continues for a period of one year, or such longer period of time as agreed by the parties in the Order. Purchased Maintenance Services can only be terminated under the termination provisions in the Agreement. Termination will not affect the rights of the parties which have accrued prior to termination.

8. **HARDWARE LEASE TERMS.** The terms and conditions of this Section 8 apply to any Lease.

8.1. **Lease.** All Leases are subject to availability of the Hardware at the time of the Order. No title to or ownership of Hardware is transferred to Customer. Title to the Hardware will remain with Siemens or third parties from whom Siemens has obtained the right to rent out the Hardware.

8.2. **Lease term and fees.** The right to use the Hardware is limited to a period of time mutually agreed by Siemens and Customer in the Order. Unless explicitly specified otherwise in the Order, the Lease term begins on the day of delivery of the Hardware to Customer. The parties may

agree in a separate Order to renew the Lease term for an additional limited term or terms following expiration of the initial Lease term. Upon expiration of the initial or renewal term, if applicable, or upon termination pursuant to these Hardware Terms or the Agreement or any specific Lease, Customer's right to use the Hardware will terminate and Customer must cease any further use and immediately return the Hardware to the originating Siemens facility. Lease fees are payable in advance, are non-refundable, and will be invoiced as specified by the parties in the Order.

8.3. **Condition of Hardware.** Upon arrival of the Hardware at Customer's premises, Customer will examine the Hardware to confirm it is secure and in good working condition. Failure to object in writing to the condition of the Hardware within 3 business days after receipt will be deemed conclusive that all Hardware was in working condition when delivered.

8.4. **Customer Responsibilities.**

- a) **Proper Use.** Customer will use the Hardware in a normal and customary way, for the purpose for which it is intended, in accordance with the Documentation for that Hardware. Customer will at all times (i) treat the Hardware with a reasonable level of care, (ii) ensure that it is kept clean, and (iii) take all reasonable precautions to protect it from dust and other contaminants, subject to reasonable wear and tear. Customer will ensure its users have read the Documentation for the Hardware before using it and are trained in the normal and safe operation of similar equipment as the Hardware.
 - b) **Transfer and Encumbrance of Hardware.** Except as specifically provided in these Hardware Terms, Customer may not pledge or encumber, distribute, sublease, loan, rent, sell or otherwise transfer possession (whether by exchange, gift, operation of law or otherwise) all or any portion of the Hardware to any other person without the prior written consent of Siemens.
 - c) **Modifying the Hardware.** Customer will not modify, alter, adapt, embed, or merge the Hardware.
 - d) **Location and Territory.** Customer may not use the Hardware outside of the Territory. Customer will inform Siemens of the exact location of Hardware upon Siemens' request.
 - e) **Property Markings.** The Hardware may be tagged or marked to indicate that it is the property of Siemens and Customer may not remove any such tags, plaques or marks.
 - f) **Audit Right.** Siemens may, during regular business hours and upon reasonable advance notice, enter Customer's premises where the leased Hardware is stored or used to locate and inspect the state and condition of the Hardware and conduct an audit to determine Customer's compliance with these Hardware Terms.
- 8.5. **Return of Hardware.** Upon expiration or termination of the Lease, Customer will return all Hardware in the same condition as it was upon arrival at Customer's premises and in working condition. Except for normal wear and tear, Customer agrees to pay for any damage to or loss of the Hardware, regardless of cause. Hardware returned from Customer that is inoperable, damaged, or with missing components will be repaired to original working order by Siemens at Customer's expense. Any Hardware which (i) is returned damaged or inoperable and cannot be repaired, or (ii) cannot be returned to Siemens for whatever reason, will be invoiced to Customer at its then-current commercial list price.
- 8.6. **Limited Warranty and Disclaimers.** Unless expressly stated otherwise in the Order, the Hardware will be covered by Maintenance Services so the provisions of Section 7 apply to the Hardware for the entire term of the Lease.
- 8.7. **Shipping and Freight Charges and Risk.** Unless agreed otherwise in the Order, each party will bear the costs and risks related to shipping the Hardware to the other party's specified delivery address, DAP (Incoterms 2020).
- 8.8. **Liability and Indemnity.** Customer is liable for all damage to the Hardware not covered by the express warranties made in these Hardware Terms. Customer will indemnify Siemens against any third party claims, damages, fines, and cost (including increased taxes, attorney's fees, and expenses) relating in any way to the use of or negligence with regard to the Hardware. The provisions of this Section will survive the expiration or termination of the Agreement for any reason.
- 8.9. **Termination and Recovery.** If either party materially breaches these Hardware Terms or the Agreement and fails within 5 business days after written notice of the breach to commence curing the default and continue with reasonable diligence to substantially cure the default, the other party may, by giving written notice, terminate any Lease with immediate effect and without prejudice to any right for indemnification or other remedies which such party may have.

Except as may be prohibited by applicable bankruptcy and insolvency law, in the event of a party's insolvency or inability to pay debts as they become due, voluntary or involuntary bankruptcy proceedings by or against that party, or appointment of a receiver or assignee for the benefit of creditors, the other party may terminate any Lease by written notice.

If Customer is in default of any Hardware return obligations under these Hardware Terms, Siemens' personnel, agents and representatives may at any time, at Customer's risk, cost and expense, enter Customer's premises where the Hardware is stored or used in order to recover the Hardware.

9. **LIMITATION OF LIABILITY AND INDEMNIFICATION.** In addition to the limitation of liability provisions contained in the Agreement, the following applies to Hardware and any related services:

9.1. Siemens will not be liable for (i) any loss or damage partially or entirely caused by the failure to observe any and all instructions related to the Hardware or Service Pack provided by Siemens, (ii) any loss or damage caused by Hardware which has been modified or maintained by parties other than Siemens, or (iii) any loss or damage caused by data generated by the Hardware or the use thereof.

- 9.2. Customer will indemnify and hold Siemens harmless from any and all claims, losses (financial or otherwise), damages, liabilities, costs, increased taxes or expenses (including without limitation, court costs and reasonable attorneys' fees), which may be incurred or which may be claimed by any person arising out of or related to the manner in which the Hardware-related services were performed if such manner results from instructions of Customer or its authorized representative.

The provisions of this Section 9 will survive the expiration or termination of the Agreement.

10. **SPECIAL TERMS FOR EDA HARDWARE.** Notwithstanding anything to the contrary in the Agreement, the following terms apply to any Hardware identified as "EDA Hardware" or "EDA HW" in the Order:
- 10.1. **EDA Hardware Access Restrictions.** Access to EDA Hardware is limited to Authorized Hardware Users, excluding any individual or entity that is in the business of developing, marketing, or providing electronic design automation solutions including but not limited to applications software, intellectual property and embedded products, emulation hardware, verification hardware, or associated consulting or support services.
- 10.2. **Taxes.** Customer will make all payments free and clear of, and without reduction for, any withholding or other taxes. Any such taxes imposed on payments hereunder will be Customer's sole responsibility.
- 10.3. **Additional Limitations on Liability.** ALL LIMITATIONS OF LIABILITY SET FORTH IN THE AGREEMENT SHALL APPLY TO SIEMENS' INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY OBLIGATIONS FOR EDA HARDWARE UNDER THE AGREEMENT; HOWEVER, NOTHING IN THIS SECTION SHALL PREVENT Siemens FROM CONTINUING THE DEFENSE OF ANY ACTION AT ITS SOLE DISCRETION AND EXPENSE. ALL WARRANTY DISCLAIMERS SET FORTH IN THE AGREEMENT SHALL ALSO APPLY WITH RESPECT TO SIEMENS' LICENSORS. SIEMENS' LICENSORS WILL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER UNDER THE AGREEMENT.
- 10.4. **Warranty Period.** The warranty period for EDA Hardware is 90 days starting on the 15th day after delivery or upon installation, whichever first occurs. For the avoidance of doubt, except as provided herein, the remainder of the warranty provisions of these Hardware Terms apply to EDA Hardware.