

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 SISW solely with regard to Offerings and Products which have been 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 used herein 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 SISW 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, Hardware will be made available to Customer FCA at SISW’s 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 SISW’s 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, SISW 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 SISW. If applicable law does not allow or recognize retention of title by SISW after delivery, title to purchased Hardware and risk of loss will pass to Customer upon Delivery, but SISW 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 SISW reasonably determines to be necessary or convenient for use in filing or perfecting such security interest.

4. **MAINTENANCE SERVICES FOR HARDWARE.** Maintenance and technical support services for Hardware (“Maintenance Services”) are governed by the terms found at <https://www.siemens.com/sw-terms/mes> and are incorporated herein by reference.

5. **WARRANTY.**

- 5.1 **Hardware Warranty Period.** For purchased Siemens Hardware, SISW provides a limited product warranty for a period commencing on the date of Delivery and ending twelve (12) months after the first day of the month following the date of Delivery (“Warranty Period”).

- 5.2 **Scope.** During the Warranty Period, SISW 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 SISW will at its sole discretion repair or replace the Siemens Hardware at no additional charge to Customer. If SISW, 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 SISW obligations hereunder, SISW 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, SISW will also accept the return of the Software elements of the System and refund the fees for those Software licenses under the same conditions.

- 5.3 **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, SISW assigns to Customer any applicable warranty rights to such Hardware, and SISW 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 SISW must provide warranty for the Hardware it has provided to Customer, the warranty provided by SISW is limited to the minimum warranties required by the applicable law and for the minimum term required by the applicable law.
- 5.4 **No Correction Extension.** The Warranty Period is not extended by the time required to correct or repair defects and malfunctions under warranty.
- 5.5 **Warranty Exclusions.** The warranty will not cover defects or malfunctions resulting from: (i) improper use or installation, misuse, improper site preparation, site or environmental conditions that do not conform to SISW’s 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 SISW’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, improper or inadequate maintenance or calibration, (vi) modifications, enhancements, repairs or unauthorized alterations made by anyone other than SISW or its authorized representatives, and (vii) exposure to water, fire or other hazards.
- 5.6 **Refurbished Parts.** SISW 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 SISW quality specifications and are eligible for warranty and services.

6. INTELLECTUAL PROPERTY RIGHTS AND TRADE SECRETS.

- 6.1 **Firmware License.** Under these Hardware Terms, SISW 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.
- 6.2 **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 SISW to furnish Third-Party Technology in source code form, SISW will provide it upon written request and payment of any shipping charges.
- 6.3 **Trade Secrets.** Siemens Hardware products are considered to be trade secrets of SISW. Customer (a) will not reverse engineer or disassemble the Hardware, or allow access to or use of Hardware by anyone except Authorized Users whose job performance requires access; (b) will take appropriate action to protect the confidentiality of Hardware; and (c) will not remove or obscure any notice or legend affixed to Hardware.
- 6.4 **No Other 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 confidential or proprietary information of SISW are granted to Customer under these Hardware Terms, unless explicitly stated otherwise herein or otherwise agreed in writing.
- 6.5 **Survival.** The provisions of this Section 6 survive termination or expiration of the Agreement.

7. **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 5 of these Hardware Terms or by a Warranty Extension or Support Service Pack ordered for the Siemens Hardware, Customer may request SISW to attempt to repair such defect or malfunction. However, repair services are not offered for all Siemens Hardware and, even if they are offered, SISW does not represent or warrant that all such defects can or will be repaired or that SISW will agree to perform such repair. For such repairs and repair attempts, Customer agrees to pay for SISW’s services at SISW’s then-current rates plus any reasonable out-of-pocket expenses.

8. **HARDWARE LEASE TERMS.** The terms and conditions of this Section 8 (“**Hardware Lease Terms and Conditions**”) apply to any Lease of Hardware.

- 8.1 **Lease.** All Hardware Lease orders are subject to availability of the Hardware at the time of order and SISW reserves the right, at its sole discretion, to reject any Order for Hardware Lease.

Customer is granted a non-transferable, temporary, limited right to use the leased Hardware in the Territory. Any leased Hardware is limited to use by Authorized Hardware Users.

No title to or ownership of leased Hardware is transferred to Customer. Title to the leased Hardware will remain with SISW or third parties from whom SISW 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 SISW and Customer in the Order. Unless explicitly specified otherwise in the Order, the Lease term begins on the day of delivery of the leased Hardware to Customer. The Lease term is renewable by mutual agreement of the parties for an additional limited term or terms following expiration of the initial Lease term, to be agreed upon in a separate Order for this renewal. Upon expiration of the initial term or any renewal term, if applicable, or upon termination pursuant to these Hardware Terms or the Agreement or any specific Lease in accordance with Section 8.9 of these Hardware Terms, the right to use the Hardware will terminate and Customer must cease any further use of the leased Hardware thereafter and immediately return the leased Hardware to the originating SISW 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 leased Hardware at Customer's premises, Customer will examine the leased Hardware and declare that it has received all Hardware in secure and good working condition. Failure to object in writing to the condition of the leased Hardware within three (3) business days after receipt will be deemed conclusive that all of the leased Hardware was in working condition when delivered.

- 8.4 **Customer Responsibilities and Prohibited Actions.**

- a) **Proper Use.** Customer will use the leased 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 leased 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 warrants that its Authorized Hardware Users intending to use the leased Hardware have read the Documentation for that Hardware before using it and are familiar and experienced in the normal and safe operation of similar equipment as the leased Hardware.
 - b) **Prohibited Use of Rented Hardware.** It is expressly forbidden for Customer to cause or permit access or use of the Hardware by anyone other than an Authorized Hardware User.
 - c) **Transfer of Hardware.** Except as specifically provided in these Hardware Terms, Customer may not distribute, sublease, loan, rent, sell or otherwise transfer possession (whether by exchange, gift, operation of law or otherwise) of all or any portion of the leased Hardware to any other person without the prior written consent of SISW.
 - d) **Reverse Engineering or Modifying the Hardware.** Except as otherwise permitted by applicable law, Customer will not reverse engineer, disassemble, or otherwise attempt to discover the technology used in the Hardware. Customer may not otherwise modify, alter, adapt, embed or merge the Hardware.
 - e) **Location and Territory.** Customer may not use the Hardware outside of the Territory. Upon request from SISW, Customer will inform SISW of the exact location of the rented Hardware.
 - f) **Property Markings.** The rented Hardware may be tagged or marked to indicate that it is the property of SISW and Customer may not remove any such tags, plaques or marks.
 - g) **Encumbrance.** Customer may not pledge or encumber the leased Hardware in any way.
 - h) **Audit Right.** SISW 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 rented 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, all leased Hardware must be returned in the same condition as it arrived at Customer's premises, except for normal wear and tear, but always 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 inoperative, damaged or with missing components will be repaired to original working order by SISW at Customer's expense. Any Hardware which (i) is returned damaged or inoperative and cannot be repaired or (ii) cannot be returned to SISW 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 leased Hardware will be covered by a Warranty Extension Service Pack so the provisions of Section 5 apply to the Hardware for the entire duration of the Lease term.
- 8.7 **Shipping and Freight Charges and Risk.** Unless agreed otherwise in the relevant Order, each party will bear the costs and risks related to shipping the relevant leased Hardware to the other party's specified delivery address, DAP (Incoterms 2020).

8.8 **Liability and Indemnity.** Except for damage resulting from construction errors or improper functioning of the leased Hardware in breach of the express warranties made by SISW in Section 8.6 of these Hardware Terms, Customer is liable for all damage arising from use, misuse or negligence of the leased Hardware, including any accidents to persons or property. Customer will hold SISW harmless from any and all claims, actions, demands, suits, damages, losses, increased taxes, liabilities and expenses, including court costs and reasonable attorney's fees, arising out of, connected with, or resulting from the misuse of or negligence with regard to the leased 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 defaults in the performance of any of its duties or obligations under these Hardware Terms or the Agreement and fails to proceed within 5 business days after written notice thereof to commence curing the default and thereafter to proceed with reasonable diligence to substantially cure the default, the other party may, by giving written notice thereof, 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, SISW's personnel, agents and representatives may at any time, at Customer's risk, cost and expense, enter Customer's premises where the leased Hardware is stored or used in order to recover the leased Hardware.

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

9.1 SISW 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 SISW; (ii) any loss or damage caused by Hardware which has been modified or maintained by other parties than SISW; or (iii) any loss or damage caused by data generated by the Hardware or the use thereof.

9.2 Customer will indemnify and hold SISW 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.