

# Hardware Supplemental Terms (AGB Germany)

These Hardware Supplemental Terms ("Hardware Terms") apply in addition to the Base Terms between the Siemens entity named on the Order and the Customer that accepted the Order.

They apply only to Hardware as defined in the Base Terms.

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

## Commercial terms

### 1. Siemens' Offerings

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#### 1.1. Hardware Offerings

- 1.1.1. **Scope description.** Siemens will deliver the Hardware as described in the Order.
- 1.1.2. **Refurbished parts.** Siemens may supply Hardware that contains parts refurbished to an "as new" condition that meet the Siemens specification and are subject to the same terms as new Hardware.

### 2. Customer's obligations

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#### 2.1. Providing Contributions

Customer will provide Contributions in accordance with the Order.

### 3. Delivery

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#### 3.1. Delivery terms

Unless agreed otherwise in the Order, Hardware will be delivered FCA according to INCOTERMS®2020. Siemens will contract for carriage on usual terms at Customer's risk and expense. If a different shipping term is agreed or required for shipment to a specific site, Customer will pay all additional costs.

Customer may only reject the non-compliant portion of the Order.

#### 3.2. Delivery dates

Any dates in the Order are estimates and non-binding. However, if Customer obtains Siemens' written consent to specific delivery dates expressly subject to liquidated damages ("Binding Dates"), Section 3.3 will apply.

#### 3.3. Delay

- 3.3.1. **Start of delay.** The start of delay for Delivery of Hardware is determined by law. In any case, a reminder from Customer is required.
- 3.3.2. **Liquidated damages.** If Siemens is solely responsible for delaying Binding Dates and Customer suffered a loss, Siemens will pay liquidated damages equal to 0.5% of the price for the delayed portion of the Hardware for every full week of delay.

Aggregate liquidated damages will not exceed 5% of the price for the delayed portion.

3.3.3. **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 period has expired.

3.3.4. **Exclusive remedy.** This Section 3.3 sets out Siemens' entire and exclusive liability for delay and excludes all of Customer's other rights and remedies for delay.

This does not apply to the extent that liability is based on:

- a. intent;
- b. gross negligence; or
- c. negligent personal injury to life, body, or health.

The above provisions do not change the burden of proof to the disadvantage of Customer.

## 4. Risk and title

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### 4.1. Transfer of risk

Risk of loss or damage for all Hardware passes to Customer upon:

- a. Delivery;
- b. attempted Delivery if Customer fails or refuses to take Hardware without cause; or
- c. moving the Hardware into storage in line with Section 5.1.

### 4.2. Retention of title

4.2.1. **Immediate payment obligation.** The items pertaining to the Hardware ("Retained Goods") for which the payment is due immediately or for which a payment period of up to and including 30 days after Delivery, Delivery with installation/assembly, or receipt of invoice has been agreed for, remain the property of Siemens until payment has been made in total.

4.2.2. **Extended payment terms.** In all other cases, the items pertaining to the Hardware ("Retained Goods") remain Siemens' property until all claims arising from the business relationship with Customer have been fulfilled. If the combined value of Siemens' security interests exceeds the value of all secured claims by more than 20%, Siemens will release a corresponding part of the security interest if so requested by Customer; Siemens may choose which security interest it wishes to release.

4.2.3. **Restrictions.** For the duration of the retention of title, Customer may not pledge the Retained Goods or use them as security, and resale is only permitted to resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to its customer dependent upon the customer fulfilling its obligation to effect payment.

4.2.4. **Assignment.** Should Customer resell Retained Goods, it assigns to Siemens, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, Customer will assign to Siemens such portion of the total payment claim as is attributable to the price of the Retained Goods invoiced by Siemens.

4.2.5. **Combination, amalgamation, processing**

- a. Customer may process, amalgamate or combine Retained Goods with other items. Processing is made for Siemens. Customer will store the new item thus created for Siemens, exercising the due care of a diligent business person. The new items are considered as Retained Goods.
- b. Already today, Siemens and Customer agree that if Retained Goods are combined or amalgamated with other items that are not the property of Siemens, Siemens will acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods.
- c. The provisions on the assignment of claims according to Section 4.2.4 above also apply to the new item. The assignment, however, only applies to the amount corresponding to the value invoiced by Siemens for the Retained Goods that have been processed, combined or amalgamated.
- d. Where Customer combines Retained Goods with real estate or movable goods, it will, without any further declaration being necessary to this effect, also assign to Siemens as security its claim to

consideration for the combination, including all collateral rights for the pro-rata amount of the value the combined Retained Goods have on the other combined items at the time of the combination.

- 4.2.6. **Collection authorization.** Until further notice, Customer may collect assigned claims relating to the resale. Siemens may withdraw Customer's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for over indebtedness or pending insolvency of Customer. In addition, Siemens may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that Customer informs its customer of the assignment.
- 4.2.7. **Duty to inform.** Customer must inform Siemens forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Customer will promptly provide Siemens with the information and/or documents necessary to assert the claims it has against its customers.
- 4.2.8. **Breach of obligations by Customer.** Where Customer fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations, Siemens may rescind the Order and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by Siemens; the statutory provisions providing that a remedy period is not needed will be unaffected. Customer will be obliged to return the Retained Goods. The fact that Siemens takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, will not be construed to constitute a rescission of the Order, unless Siemens so expressly declares.

## 5. Storage

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### 5.1. Moving Hardware to storage

Upon Customer's request, or if Customer fails or refuses Delivery without cause, Siemens may move the Hardware to storage. On receipt of an invoice, Customer will pay for:

- a. shipping; and
- b. storage expenses, including preparation for and placement into storage, handling, freight, inspection, preservation, maintenance, taxes, and insurance.

### 5.2. Removing Hardware from storage

Customer will arrange, at its expense, to remove the Hardware from storage:

- a. when conditions allow; and
- b. after paying to Siemens all amounts due under this Section 5.

## Warranties

### 6. Hardware warranty

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Siemens warrants that the Hardware is free from defects at the time of Delivery.

The freedom from defects is determined by law. The basis is the Siemens specification described or referred to in the Order as well as the quality expressly agreed upon ("Beschaffensvereinbarung") by Siemens and Customer. Siemens' specification, product information, etc. are merely product descriptions and not guarantees. Further characteristics beyond the expressly agreed quality (negative quality) or a specific intended use are not owed. Customer is responsible for determining whether the Hardware is suitable for its intended purpose and for using it appropriately.

### 7. Hardware warranty period

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#### 7.1. Original warranty period

- 7.1.1. **Warranty period.** The warranty period for Hardware with regard to claims for repair or replacement, the right to rescind the Order or to reduce the price is 12 months following Delivery.
- 7.1.2. **Exception.** This warranty period does not apply:

- a. where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 BGB (buildings and things used for a building);
- b. in case of intent;
- c. in case of fraudulent concealment of a defect; or
- d. non-compliance with guaranteed characteristic (“Beschaffenheitsgarantie”).

## 7.2. Warranty period for replacements and repairs

The warranty period for replaced or repaired parts of the Hardware is 6 months from the date of replacement or repair if the original warranty period expires earlier.

In any event, the warranty period ends no later than 18 months from the beginning of the original warranty period.

## 8. Defects and claims

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### 8.1. Inspection and notification

Upon Delivery, Customer will inspect the Hardware and notify Siemens in writing of any defects promptly, and always within the applicable warranty period.

### 8.2. Remedies

Siemens will remedy all defects (at its option) by repairing (onsite or remotely) or replacing the defective Hardware or its non-conforming portion within a reasonable time. If Siemens fails to remedy a defect, Customer may, provided the statutory provisions are met, rescind the Order or reduce the price.

### 8.3. Duty of cooperation and reimbursement

In case of a warranty claim, Customer will:

- a. provide Siemens access to operation and maintenance data at its expense;
- b. at its expense and at Siemens' option:
  - remove and ship the Hardware or its non-conforming portion to Siemens; or
  - grant Siemens reasonable access to the Hardware and perform any disassembly and re-assembly necessary to allow Siemens to carry out its warranty obligations;
- c. at Siemens' request, transfer title to the replaced defective parts to Siemens; and
- d. pay Siemens for any diagnostic and remedial work if it is established that no defect existed.

## 9. Warranty exclusions

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### 9.1. Time limit

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

### 9.2. Excluded defects

Siemens excludes any warranty for defects that do not significantly impair the functionality or use of the Hardware and for defects resulting from:

- a. normal wear and tear;
- b. faulty or negligent handling, or unusually excessive use;
- c. non-compliance with instructions in the Order, manuals, and similar documents available to Customer;
- d. non-reproducible software errors;
- e. any cause outside of Siemens' control;
- f. modifications, repair, installation, or commissioning made by anyone other than Siemens or its authorized representatives; or
- g. not using an Update provided by Siemens.

Siemens is not liable to the extent that the defect is attributable to Customer's obligations and Contributions.

### 9.3. No warranties

Siemens does not warrant that the Hardware is compatible or interoperable, or functions in accordance with Customer's operating environment or IT requirements (unless expressly required in the Order).

### 9.4. Rights of recourse

Customer's claims for reimbursement of expenses according to Sec. 445a BGB (entrepreneur's right of recourse) are excluded, provided the last contract in the supply chain is not a sale of consumer goods.

## 10. Exclusive remedy

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Sections 6 - 9 state Siemens' entire liability and Customer's exclusive rights and remedy for warranty claims. The exclusion of the right to claim Damages does not apply if liability is based on intent, gross negligence, fraudulent concealment of a defect, non-compliance with guaranteed characteristics, death, personal injury, or damage to health.

The above provisions do not change the burden of proof to the disadvantage of Customer.

Siemens makes no other warranty, express, implied, or statutory, about the Hardware, including any warranties of merchantability or fitness for a particular purpose.

## Intellectual property rights

### 11. Ownership of Intellectual Property

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Each party remains owner of its Intellectual Property.

### 12. License to use Firmware

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Siemens grants Customer a non-exclusive and non-transferable license to use the Firmware only for its operation. The license may be transferred only with the Hardware in which the Firmware is incorporated.

The software license and maintenance services terms set out in the Agreement (if any) will not apply to Firmware.

## Definitions

<b>Delivery</b>	Making the Hardware available to Customer in accordance with the INCOTERMS®2020 stated herein.
<b>Firmware</b>	System software incorporated into the Hardware.

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