

Software Licensing Conditions

(10/2022)

1. Definitions, Subject Matter

1.1. Definitions

"**Agreement**" means these General Conditions plus Specific Conditions that apply in respect of the relevant Offering. If the Order makes reference to the Universal Customer Agreement, the Universal Customer Agreement is also part of this Agreement. In the event of a conflict between the elements of the Agreement, (i) the Specific Conditions prevail over these General Conditions, (ii) these General Conditions prevail over the Universal Customer Agreement.

"**API**" means an application programming interface.

"**CoL**" means the Certificate of License, which contains information about the type of rights of use acquired for the Software. If there is a CoL for the Software, the CoL is appended to the Software or the delivery note.

"**Customer**" means the party that has accepted this Agreement and concluded the Order with Siemens.

"**Cyber threat**" means any circumstance or event with the potential to adversely impact the Customer's plants, systems, machines and networks via unauthorized access, destruction, disclosure and/or modification of information, denial of service attacks or comparable scenarios.

"**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. The Documentation is usually written in English.

"**Dongle**" means a special item of software or hardware (e.g., a USB dongle) to protect the licenses. The Dongle and the Software protected by the Dongle must be connected as described in the Documentation, otherwise use of the Software will be greatly restricted or impossible.

"**Earlier Version**" is an earlier release of the Software; normally such is recognizable from the change in the version number.

"**Entitlements**" means, with respect to any Offering, the license and use types, limits, volume, or other measurement or conditions of permitted use for such Offering as set forth in the applicable Order or the Special Conditions and any CoL, including but not limited to any limits or restrictions on the number and categories of Users authorized to use such Offering, permitted geographic areas, available storage space, computing power, or other attributes and metrics.

"**General Conditions**" means these "Software Licensing Conditions".

"**Hardware**" means hardware equipment, devices, accessories, and parts delivered by Siemens under this Agreement, including firmware incorporated therein.

"**Instance**" means either an instance in a physical operating system environment or an instance in a virtual operating system environment.

"**Offering**" means an individual supply or service made available by Siemens and identified in an Order, which consists of Software, Hardware, or Professional Services, or a combination of any of the foregoing, and any associated CoLs and maintenance and support services and Documentation.

"**Order**" means an order form (Order Form), statement of work (SOW), Licensed Software Designation Agreement (LSDA), or similar ordering document that (i) incorporates the terms of this Agreement and sets forth the Offering(s) ordered by Customer and any associated fees, (ii) has been agreed by Customer by manual or electronic signatures or through an electronic system specified by Siemens, and (iii) is accepted by Siemens.

"**Professional Services**" means training, consulting, engineering, or other professional services provided by or on be-

half of Siemens under this Agreement pursuant to an Order, excluding Cloud Services.

"**Service Pack**" is a release of the Software in which defects and/or Vulnerabilities are eliminated, but which generally does not involve any change in functionality. The term "Service Pack" also includes single bug fixes and/or vulnerability patches that do not amount to a full new software release.

"**Siemens**" or "**SISW**" means the Siemens entities named in the Order.

"**Siemens IP**" means all patents, copyrights, trade secrets, 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.

"**Software**" means software licensed by Siemens under this Agreement and made available for download or otherwise delivered to Customer for installation, including Service Packs, other, more recent releases, updates, modifications, design data, and all copies thereof, associated software-based APIs, scripts, toolkits, libraries, reference or sample code, and similar materials.

"**Specific Conditions**" means separate conditions that apply in respect of a specific Offering.

"**Subscription Term**" means the time period specified in the Order for which term-based Offerings are made available to Customer. Any renewal constitutes a new Subscription Term.

"**Vulnerability**" means a security loophole in an item of software that can be exploited to facilitate unauthorized access to the software or unauthorized use or modification of the software or computer environment.

1.2. Subject Matter

The provision of the Offerings shall be subject to this Agreement.

General terms and conditions of the Customer shall apply only where such are expressly accepted in writing by Siemens.

Siemens shall provide the Customer the Offering specified in the Order and it shall grant the Customer rights to Software based on the License Type (see section 2) and the applicable Software Type (see section 3). The License Type and Software Type are detailed in the Order.

If Software is supplied electronically or, if copying rights are granted for it, the rights and duties set out in this Agreement shall apply to the copies created by the Customer with the approval of Siemens.

1.3. Scope of Delivery

Siemens shall deliver the Software as well as the respective CoL, where applicable, to the Customer, according to the description of the Offering, either on a data medium or by way of a download. Software shall be made available in the object code unless otherwise agreed.

Siemens shall enclose the Documentation related to the Offering, at its discretion, either in digital form with the Offering itself or, in digital form available for download free of charge or otherwise render it available for viewing. Insofar as it is evident from the description of the Offering that access to the Documentation is subject to a separate charge, the Documentation shall be purchased separately; in such case the Customer shall not have any right to generate copies but shall purchase the required number of Documentation copies.

Siemens shall deliver a license key to the Customer if the Software requires a license key for technical activation purposes.

If the Software requires a dongle for technical activation, this must be ordered separately if it is not explicitly included in the Software scope of delivery.

If the Parties agree that the Customer is to acquire only the Software but not the rights of use for the Software for the time

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being, the dongle, the license key and the CoL shall not be included in the scope of delivery.

1.4. Third-Party Software Components Contained

The Software may contain software, technology and other materials from third-party providers, including open-source software licensed by third parties ("Third-Party Technology") under separate terms ("Third-Party Provider Terms"). Siemens shall indicate the Third-Party Technology and Third-Party Provider Terms in the Documentation, in source code supplied (if any), in the additional supplementary terms and/or in the "Readme_OSS" or similar files insofar as Siemens is required to do so. If the Third-Party Provider Terms require that Siemens provide Third-Party Technologies in the form of source code, Siemens shall do so on request and on reimbursement of its reasonable expenses for so doing.

The Third-Party Technology may contain open-source software components ("OSS Components") and/or components that are not open-source software ("Commercial Software"). Siemens describes in the "Readme_OSS" or similar files whether Third-Party Technology is OSS Components or Commercial Software.

The Customer is entitled to use OSS Components in accordance with the respective applicable open-source software license conditions ("OSS Conditions"), which OSS Conditions shall prevail over the Order in respect of the OSS Components. These OSS Conditions shall have priority also in relation to the Software or parts thereof insofar as the OSS Conditions grant the Customer certain rights of use on the basis of the connection of OSS Components with the Software.

If the Software contains Commercial Software that is subject to Third-Party Provider Terms ("Commercial Terms"), these Commercial Terms shall apply to the liability of the third-party provider in relation to the Customer.

These Commercial Terms shall govern the licensing relationship between the third-party provider and the Customer entirely in respect of the Commercial Software insofar as the Commercial Terms specified are expressly identified in the Order as applying with exclusive effect.

If Commercial Terms are specified for the Commercial Software contained in the Software in a separate license sheet for the Software or in the "Pass-Through Information" section of the Readme_OSS file with the addition "Separate Third-Party Licensor Terms", the Commercial Terms shall additionally apply between Siemens and the Customer. The Commercial Terms shall have priority over the Order in the event of contradictions.

In terms of the liability of Siemens to the Customer, the Order shall apply in each case.

1.5. Scope and Quality of the Offering, Systems Environment

The scope and quality of the Offering shall be based exclusively on the description of the Offering.

The Customer shall install and configure the Software itself, observing the requirements in the associated Documentation as it does so.

1.6. Industrial Security

The Customer is solely responsible for the conception, implementation and maintenance of a holistic, state-of-the-art security concept to protect its plants, systems, machines and networks on which the Software is used, against Cyberthreats.

Such concept should inter alia include:

- (i) installation of Service Packs or other new releases of the Software as soon as they are available;
- (ii) complying with security advisories and implementing other related measures, published or otherwise made available for the Customer by Siemens or other software manufacturer;
- (iii) regular Vulnerability scanning, and testing as well as minimizing the risk of a malware infection through mal-

ware scanners or other appropriate means according to the state of the art, considering the configuration of the plant and in the Customer's own responsibility.

Use of Software versions that are no longer supported, and failure to install the latest Service Packs may increase Customer's exposure to Cyberthreats.

2. License Type

Siemens shall grant the Customer the correspondingly defined rights of use in accordance with the agreed License Type. The agreed License Type and Entitlements be indicated in the Order.

Siemens and its licensors shall retain ownership of the Offerings and the Siemens IP and of all rights thereto not expressly granted in this Agreement.

2.1 License Types

2.1.1 "**Single License**" means the Customer is granted a non-exclusive right to install the Software on one (1) Instance and to utilize the Software thus installed in the manner specified in the description of the Offering and, where applicable, in the CoL (see "Type of Use").

2.1.2 "**Multiple License**" means the Customer is granted a non-exclusive right to install the number of Instances of the Software specified in the Order and to use them simultaneously in the manner specified in the description of the Offering and, where applicable, in the CoL.

2.1.3 "**Floating License**" means the Customer is granted a non-exclusive right to use the Software simultaneously on such number of the Customer's objects (e.g., users or devices) specified in the Order and, where applicable, the CoL in the manner specified in the description of the Offering and, where applicable, in the CoL. The Customer is permitted to install the Software on up to ten (10) times as many Instances as it has acquired licenses for objects. Example: In case the Customer acquires a Floating License for three (3) objects, it is entitled to install the Software on thirty (30) of the Customer's Instances but may never have more than three (3) objects using it at the same time.

2.1.4 "**Concurrent License**" means the Customer is granted a non-exclusive right to use the Software simultaneously on such number of the Customer's objects (e.g., users or devices) specified in the Order and, where applicable, the CoL in the manner specified in the description of the Offering and, where applicable, in the CoL.

2.1.5 If the License Type is not specified in the Order, the Software shall be subject to the rights, in accordance with section 2.1.1 (Single License).

2.2 Term

Siemens shall grant the rights for all License Types in accordance with section 2.1 to the Customer perpetually unless it is made clear in the Order that the Software has been licensed only for a Subscription Term as described in section 2.2.

2.2.1 "**Rental**" denotes the imposition of a time limit on a Single, Multiple, Floating or Concurrent License with a Subscription Term of up to one (1) year in accordance with the details in the description of the Offering.

2.2.2 "**Subscription**" denotes the imposition of a time limit on a Single, Multiple, Floating or Concurrent License. The length of the Subscription Term shall be specified in the description of the Offering.

2.2.3 A "**Demo License**" or "**Trial License**" denotes a Single, Multiple, Floating or Concurrent License granted for a limited term and only for the purpose of validating the Software in accordance with the description of the Offering.

2.2.4 Length of the Subscription Term. The period of use shall be specified in the description of the Offering and, where applicable, the CoL (see "Type of Use").

- (i) If the period of use for the Software is specified in hours, the utilization of the Subscription Term shall be

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calculated on the basis of the time elapsed between the Software being started and the Software being closed.

- (ii) If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage.
- (iii) If the usage period is date-based, the license shall end on this date irrespective of actual usage.

2.2.5 Automatic renewal of limited-term licenses. If the Parties so agree, the Subscription Term shall be renewed automatically, the new Subscription Term in each case being the same as the Subscription Term originally agreed, unless one Party objects at least 60 days before the expiry of the automatic renewal. The conditions of this Agreement current at that time shall then apply for the following Subscription Term in place of this Agreement. The charges shall remain unchanged unless (i) Siemens notifies the Customer of different charges to apply in the future at least 90 days before the end of the current Subscription Term or (ii) the charges for renewed Subscription Terms are already specified in the Order.

Notifications. Siemens may send the Customer notifications under this Agreement by, where available, (i) creating a notification on the administrative user account maintained by the Customer with Siemens to manage subscriptions for Offerings ("Subscription Console") or (ii) by sending an e-mail or other text message to the address or contact number specified for business-related contacts by the Customer in the Order. The Customer shall be responsible for visiting the Subscription Console regularly and ensuring that Siemens is always notified of current Customer representative contact details. If Siemens is unable to reach the Customer with notifications for reasons attributable to the Customer, the notifications concerned shall be deemed to have been received by the Customer within three days of being sent.

2.2.6 For multiple-year Subscription Terms, Siemens may require new license keys to be issued during the term.

2.2.7 Termination/expiry of the Subscription Term

The Customer may terminate the Order at any time and with immediate effect by notifying Siemens accordingly in writing unless an alternative notice period is agreed in the Order.

Siemens may terminate this Agreement or licenses granted under it with immediate effect, by notifying the Customer accordingly in writing,

- (i) for good reasons or
- (ii) if the Customer otherwise fails to comply with its obligations and does not rectify this failure within thirty (30) days of being notified accordingly.

The licenses affected shall expire automatically on termination of this Agreement or expiry of the Subscription Term. The Customer shall

- (i) completely remove from all of its systems all Software for which the licenses are expiring,
- (ii) ensure that no copies or residual information from Siemens remains installed on the Customer's computers and
- (iii) return to Siemens all copies of the Software and Documentation if requested to do so by Siemens within 90 days of the rights of use ending.

Siemens shall be entitled to send a member of staff to the Customer to be present during removal of the Software or to verify thereafter that the Software has been removed properly. Section 5.10 shall apply mutatis mutandis.

No reimbursements or credit notes shall be issued as a result of termination under section 2.2.7.

2.3 Compliance with Licensing Provisions

Siemens reserves the right to integrate into the Software a reporting mechanism to detect unauthorized use of licenses. The mechanism shall not transfer any technical or commercial

data processed by the Customer using the Software.

3. Software Type

The Customer may acquire from Siemens both Engineering Software and other types of Software.

3.1 Engineering Software

The following shall apply if it is made clear in the description of the Offering that the Customer has acquired "Engineering Software":

If, during the intended use of the Engineering Software the Customer uses the Engineering Software or parts thereof to generate its own programs or data, the Customer shall have the right, without having to pay any license fee, to copy and to use these parts of the Engineering Software as a part of its own programs or data, or to supply such to third parties for use. If the Customer makes available to any third party the programs or data developed as described above, it shall protect the Engineering Software contained therein in accordance with the provisions under section 5.

3.2 All Other Software Types

For any other software type, the Customer shall acquire a license with respect to the Software in accordance with the relevant intended type of use before installing or otherwise duplicating Software or parts thereof.

3.3 Extended Rights to the Software

If any extended rights have been granted in respect of the Software or parts thereof, such shall be detailed in the Readme file of the Software.

4. Earlier Versions

4.1 Expiry of the Right of Use on Upgrading

If it is apparent from the description of the Offering, e.g., through the additional identification of "Service Pack" in the product name of the Software, that the Software is to serve as an upgrade for an Earlier Version, on such upgrading the rights of use granted to an Earlier Version shall cease. The rights of use in accordance with section 4.3 shall not be affected hereby.

4.2 Option

If the Customer is already legitimately using a license corresponding to the Earlier Version, the Customer may, at its discretion, exercise the rights of use granted to the Software either in relation to the Software itself or – insofar as such is technically foreseen and acting at its own responsibility – to the Earlier Version.

4.3 Parallel Use

Insofar as Earlier Versions are listed in the Readme file of the Software under the section "Parallel Use", the Customer shall have the right to exercise the rights of use granted to the Software as an alternative on the Earlier Versions listed therein. If in the description of the Offering or in the CoL the named "Type of Use" is: "Installation" or "User", the Customer may use the Earlier Versions listed in the Readme file in addition to the licensed Software and parallel to the Software on the number of Instances for which it is allowed to install or use the acquired Software. Any transfer of Earlier Versions to a third party is permissible only together with the transfer of Software in accordance with section 5.6.

5. Further Rights and Duties of the Customer

5.1 No Sub-licensing and Making Available

The Customer shall have no right to rent out or sub-license Software, or to publicly make it available or accessible by way of cable or wireless, or to make it available to third parties for any charge or free of charge, e.g., in the course of application service providing or as "Software as a Service".

5.2 Duplication

The Customer may only copy Software if this is necessary to support its legitimate use. Every copy shall include all the advisory notices and inscriptions that are integrated into the

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Software and applied to its medium or its packaging in the condition as received from Siemens. The legal right of the Customer regarding the generation of a back-up copy shall remain unaffected.

5.3 Use of APIs, Modification, Reverse Engineering

The Customer shall only use APIs that are marked in the Documentation as published and only in the manner described therein to support the legitimate use of the Software. The Customer shall not change the Software, nor decompile it, nor translate the Software, or extract program elements insofar as such is not permitted by the applicable statutory provisions. Insofar as the Customer acts under any of these provisions of law as such is necessary in order to establish the interoperability to an independently obtained computer program, the Customer shall, before undertaking such measures, request the necessary interface information or other information from Siemens in writing and allow Siemens a reasonable time and opportunity to make such information available so that the legitimate interests of Siemens can be protected. In addition, the Customer is not entitled to remove any alphanumeric identification, brands or copyright labels from the Software or the data medium and shall, insofar as the Customer is entitled to generate copies of the Software, copy the same without alteration. The Customer shall not modify the Software or combine it. The Customer shall not make the Software subject to any open-source software license that is incompatible with this Agreement or that is otherwise not applicable to this Software.

5.4 Responsibility for Users

The Customer shall be liable for breaches of contract committed by users of the Offerings it has acquired.

5.5 Presentation of the CoL

The Customer shall present the CoL received for the Software to Siemens at any time if requested to do so by Siemens. If the Software is a Service Pack or other new release of the Software, the Customer shall retain the CoL for the Earlier Version and present it together with the CoL for the Software at any time if requested to do so by Siemens.

5.6 Transfer

5.6.1 Right of transfer

The Customer is entitled to transfer any licenses it has acquired with an unlimited period of use to a third party. If the Customer does transfer such licenses to third parties, it shall cease to use the Software and shall remove the installed copies of the Software from its equipment and its Instances and erase any copies located on other data media or, at the request of Siemens, shall provide the same to Siemens insofar as the Customer is not required to retain the same for a longer period in accordance with applicable law. The use of any such retained copies is prohibited.

5.6.2 Transfer of license key, dongle, contract documents and content

If the Customer has received a license key for the Software, this key shall be supplied to the third party together with the Software. The same shall apply in respect of any dongle that was included in the scope of services for the Software. Furthermore, the Customer shall submit to the third party the order confirmation and the CoL together with this Agreement and shall conclude with the third party an agreement whose content corresponds to section 2, 3 and 5 of this Agreement.

5.6.3 Presentation and transfer of the CoL, confirmation, transfer of duties

The Customer shall also transfer to the third party the CoL of the Earlier Version if it transfers an upgraded version of the Software as described in section 5.6. Upon Siemens' request, the Customer shall confirm in writing that the Customer completed the measures set out in section 5.6 or shall describe to Siemens as necessary and as applicable any reasons for a longer retention. In addition, the Customer shall make any third party expressly subject to the duties to observe the rights

granted in accordance with sections 2 and 3 and the duties in accordance with section 5.

5.7 Validation

If the Customer receives a data medium which, in addition to the Software, contains further programs which are released for use, it shall have the right to use these released software products exclusively for validation purposes, for a limited period of time and free of charge. Such period of use shall be limited to 14 days, commencing with the first start-up of the relevant software program unless a different period is specified, e.g., in the Readme file of the relevant software product.

Such software products supplied exclusively for validation purposes shall be governed by this Agreement. The Customer shall not be authorized to pass on these software products separately, i.e. without the Software, to a third party.

5.8 License Rights Applicable to the U.S. Government

Offerings are commercial products that were developed exclusively at private expense. If Offerings are acquired directly or indirectly for use by the U.S. Government, then the Parties agree that such are considered '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. Offerings may only be used under the terms of this Agreement as required by 48 C.F.R. §12.212 and 48 C.F.R. §227.7202. The U.S. Government will only have the rights set forth in this Agreement, which supersedes any conflicting terms or conditions in any government order document, except for provisions which are contrary to applicable mandatory federal laws. Siemens shall not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.

5.9 Feedback

The Customer shall consent to Siemens making unconditional and unlimited use of any ideas in relation to the Offerings, including suggestions regarding changes or enhancements (collectively "Feedback"), generated by the Customer in the course of using and evaluating the Offerings. Siemens shall use such Feedback only in an anonymized format.

5.10 Audit

The Customer shall keep records that show the Software, the location of the various copies of the Software and the location and identity of workstations and servers on which the Software is installed. Siemens may have an independent third party (e.g., an auditor or independent expert) verify, during normal business hours and subject to a reasonable notice period of at least two weeks, that the Software supplied is actually being used in compliance with this Agreement. Siemens shall ensure that the audit is performed only by a third party that is obliged to maintain confidentiality even with respect to Siemens, that is not bound to follow the instructions of Siemens, that may only share information with Siemens if and insofar as breaches of licensing conditions are identified and insofar as sharing this information is necessary for the enforcement of claims arising out of breaches of licensing conditions. The Customer shall provide the third party with the information it needs to check for breaches of licensing conditions, with the necessary access to facilities, workstations and servers and with the opportunity to inspect relevant documents and materials and shall help the third party, to an economically reasonable extent, to verify compliance with this Agreement by the Customer. The third party shall comply with reasonable safety and security regulations while on the Customer's premises.