SIEMENS

Base Terms Ukraine

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.

Agreement structure



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. Updates for Offerings

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

Siemens may choose not to support or to update non-current versions of the Offerings, except to the extent required by law.

1.3. 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.

Siemens provides further information, including security advisories, at https://www.siemens.com/cert.

2. Payment, interest, and Taxes

2.1. Payment terms

Customer will pay the price stated in the Order (plus reasonable and verifiable travel and incidental expenses and Tax, if applicable) within 30 days of the invoice date, without deduction or set-off. If Customer disputes an invoice, it must pay any undisputed portion.

2.2. Interest

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

2.3. Taxes

All prices and expenses stated in the Order are exclusive of any Tax. Customer will pay or refund Siemens for any applicable Tax imposed by any government authority on the supply or Customer's use or receipt of the Offerings.

If Customer is exempt from value-added or sales tax, or similar taxes, it must provide a valid, timely, and executed exemption certificate, direct pay permit, or other such government-approved documentation.

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 amount originally invoiced. Customer will promptly provide all tax receipts confirming it has paid Tax or has withheld Tax.

3. Changes

3.1. Change requests

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

a. a price 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 adjustments.** Siemens is entitled to make reasonable adjustments to the Order for any additional requirements or costs it incurs due to any:

a. laws, regulations, court judgments, decisions or guidance issued by public authorities;

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. Siemens will inform Customer accordingly.

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' price, to reflect any reasonable additional costs.

3.4. Equivalent performance

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

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

Siemens is entitled to make reasonable adjustments to the Order, including the time schedule and price, to make up for any delay or reasonable additional costs it incurs 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.

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 the Offerings or their parts unless allowed by mandatory law or the Order.

5. Siemens' use rights

Siemens, its Affiliates, and their subcontractors may:

a. use for any purpose, in perpetuity, and at its 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, develop and improve its products and services and also market them to Customer; and

c. identify Customer by name or logo as part of a general customers list on websites and marketing materials unless Customer objects in writing.

Additional software terms

6. Code format

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

8.1. Conflict with Order

In the event of a conflict with the terms of the Order, the Third-Party Terms prevail with respect to Third-Party Technology.

8.2. Connection of open-source software with Siemens software

To the extent Third-Party Terms for open-source software grant Customer use rights based on the connection of the open-source software with Siemens software contained in the Offering, these Third-Party Terms for open-source software prevail with respect to such Siemens 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 Order or as otherwise permitted in 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 and handling

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.

During performance of the Order, Siemens may gain general expertise, know-how, ideas, concepts, and techniques that are retained in the unaided memory of its employees and 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. Foreign trade

11.1. Foreign trade compliance

Customer will comply with all Foreign Trade Regulations regarding all Offerings subject to this Agreement.

11.2. Export checks for Offerings

Before Customer performs any transaction with a third party concerning the Offerings, it will ensure that:

a. Customer's use, transfer, or distribution of Offerings will not violate or circumvent any Foreign Trade Regulations;

b. Offerings are not intended for prohibited or unauthorized non-civilian purposes (for example: armaments, nuclear technology, or any other defense and military use); and

c. Customer checked all parties involved in the transaction against restricted party lists issued under Foreign Trade Regulations.

11.3. No (Re-)Export to Russia or Belarus

Customer will

a. not sell, export or re-export, directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries) any Offerings to or for use in Russia or Belarus;

b. undertake its best efforts to ensure that the purpose of this (re)-export prohibition is not frustrated by any third party; and

c. maintain an adequate monitoring mechanism to detect conduct by any third party that would frustrate the purpose of this (re)-export prohibition.

11.4. Semiconductor development

Customer will not, without Siemens' prior written consent, use Offerings to design, develop, or produce any integrated circuit that is or will be fabricated at any facility involved in the production of "advanced-node integrated circuits" and located in the People's Republic of China (including Hong Kong and Macau) or any other destination restricted under the U.S. Export Administration Regulations, 15 C.F.R. §§ 744.23 and 772.1.

11.5. Required information

Customer will promptly

a. inform Siemens about any problem in applying Section 11.3; and

b. provide, upon Siemens' request, information about

- users, the intended use, the location of use;
- the final destination of the Offerings; and
- its own as well as its users' compliance with this Section 11.

If the information is defense-related or requires special data handling, Customer will notify Siemens in advance and use the disclosure tools and methods Siemens specifies.

11.6. Reservation and suspension

11.6.1. **Reservation.** Siemens will not have to fulfill 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 Foreign Trade Regulations.

11.6.2. **Suspension.** Siemens may limit or suspend access to the Offerings by Customer or Customer's users if required by Foreign Trade Regulations.

11.7. Breach of Foreign Trade Regulations

Any violation of this Section 11 is a material breach 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 otherwise materially breaches the Order.

12.2. Payment during suspension

If Siemens suspends performance, Customer will pay:

a. the price stated in the Order (plus reasonable and verifiable travel and incidental expenses and Tax, if applicable) related to any portion of the Offerings delivered before the effective date of suspension; and

b. any reasonable costs and expenses incurred because of the suspension.

12.3. Schedule adjustment

If Siemens resumes performance, it 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. experiences an Insolvency Event; or

b. 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 price stated in the Order (plus reasonable and verifiable travel and incidental expenses and Tax, if applicable) 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. the price stated in the Order (plus reasonable and verifiable travel and incidental expenses and Tax, if applicable) for the Offerings, minus any expenditures avoided by termination; and

b. all reasonable costs and expenses Siemens incurred due to such termination.

13.4. Survival

The following Sections of the Base Terms will survive termination of the Order: 1.3 (Cybersecurity), 2 (Payment, interest and Taxes), 4.4 (Security and safety), 4.5 (No reverse engineering), 5 (Siemens' use rights), 9 (Confidentiality), 11 (Foreign trade), 13.2 (Payment if Customer terminates), 13.3 (Payment if Siemens terminates), 14 (Intellectual property infringement), 15 (Liability), and 17 (Applicable law and dispute resolution).

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 Offering;

b. modify the Offering to become non-infringing; or

c. replace the infringing part of the Offering,

in case of **b.** and **c.** without materially affecting the functionality of the Offering.

14.3. Refunds

14.3.1. **Conditions for refunds.** If remedies under Section 14.2 are not available at commercially reasonable expense:

a. Siemens may terminate any Orders, including licenses, for such Offering; and

b. Customer will receive the refunds for the allegedly infringing portions of the Offering specified in Section 14.3.2 (Refunds), provided that, after receiving Siemens' notification, it:

- stops using the allegedly infringing portion of the Offering; and
- returns all related portions of the Offering in its 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 price for the infringing portion of the Offering.

14.4. No admission

If Customer stops using the allegedly infringing Offering (or any part thereof), it 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 Offering) 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 it will not unreasonably withhold or delay.

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 an Offering 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 Offering 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 or its Affiliates based on a claim that the Contributions infringe an intellectual property right, Siemens' obligations under Sections 14.1, 14.2, 14.5, and 14.6 will 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 governs 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 and applies in addition to any other limitation or exclusion of Siemens' liability set out in the Agreement and the Order.

15.2. Scope of limitations

The limitations and exclusions in the Agreement and the Order:

a. apply to:

- Siemens;
- Siemens' Affiliates; and
- Siemens' respective officers, directors, licensors, subcontractors, employees, and representatives; and

b. will not apply to the extent liability cannot be limited or excluded according to applicable law, for example in case of personal injury and death.

15.3. Limitation of liability

15.3.1. **For Recurring Price Offerings, Siemens' aggregate liability for all claims under or in connection with the Order in respect of events arising in one Contract Year is limited to the total price paid under the Order for the Recurring Price Offering during such Contract Year.**

15.3.2. **For Other Offerings, Siemens' aggregate liability for all claims under or in connection with the Order is limited to the total price 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 unless a different period is required by law.**

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, its suppliers, or its subcontractors. The affected party will inform the other party as soon as reasonably practicable.

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

The Agreement and any Order will be governed by the substantive law of Ukraine.

17.2. Dispute Resolution

In the event of a dispute, the Parties will use reasonable efforts to resolve it through negotiations. If a dispute cannot be resolved through negotiations, either Party will be entitled to refer it to the competent court of Ukraine.

General clauses

18. Written form and notices

"In writing" includes e-mail, unless otherwise stated. Termination notices must be sent by letter to the address specified in the applicable Order.

19. Amendments

The Order and any amendments to it can only be effective if signed by both parties (either manually or by an electronic system specified by Siemens).

20. No restrictions

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

21. 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.

22. Independent relationship

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

23. 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.

24. 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 has 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 Order.

In case of any inconsistency in the Order or the Agreement with other language versions, the Ukrainian language version will prevail.

The parties agree that only the Agreement applies to the Order. 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 Order irrespective of any language to the contrary in such document.

25. No assignment

Neither party may assign or otherwise transfer (by operation of law or otherwise) its respective rights or obligations under the 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 Order. Unless specified in the Order, no third party may enforce any term of the Order.

26. No waiver

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

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 line 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; and • is marked or declared as confidential (or that any reasonable person can recognize as confidential in its nature). It also 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 on behalf of 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.
Foreign Trade 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.
Infringement Claim	Specific claim, allegation, or complaint a third party makes against Customer that an Offering directly infringes any: • patent or trademark issued or registered by the United States, China, Japan, or the European Patent Office, or a member of the European Patent Organization, or the European Union Intellectual Property Office; • copyright; or • trade secret.
Insolvency Event	When a party: • becomes bankrupt or insolvent; • goes into liquidation; • has a receiving order against it; • compounds with its creditors; or • continues business under a receiver, trustee, or manager for the benefit of its creditors.
Intellectual Property	Software, data, inventions, know-how, and any other proprietary information or materials and all intellectual property rights and similar rights in and to the foregoing.
Offerings	The Hardware, services, solutions, AI Services, software, or documents provided to Customer as exclusively set out in an Order.
Order	A contract consisting of an order form, a statement of work, or any other document that sets forth the Offerings and price, incorporates 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 price.
Recurring Price Offerings	Offerings with recurring prices, for example service contracts and subscriptions.
Supplemental Terms	Additional terms and conditions that apply to a particular Offering as attached or referenced in an Order. It may be titled EULA or have a similar term.
Tax	Any taxes, duties, tariffs and any other charges.

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.