Base Terms

> 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.

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. Equivalent performance

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

1.3. Updates for Offerings

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

Siemens may not support non-current versions of the Offerings or update them to future versions.

1.4. 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.

2. Payment, interest, and taxes

2.1. Payment terms

Customer will pay the fees plus reasonable and verifiable travel and incidental expenses within 30 days of the invoice date, without deduction or set-off. If Customer disputes an invoice, Customer must still pay any undisputed portion.

2.2. Interest

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

2.3. Taxes

All amounts Siemens invoices are exclusive of taxes and any other charges. Customer will pay or refund Siemens for any applicable taxes, duties, or other charges imposed by any government authority for Customer's use or receipt of the Offerings.

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 net amount originally invoiced. Customer will promptly provide all tax receipts, or a valid exemption certification (if applicable), confirming it has paid or withheld tax.

3.   Changes

3.1.   Change requests

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

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

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

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.

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' fees, to reflect any reasonable additional costs.

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

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,

Siemens will have the right to adjust the Order, including the time schedule and fees, to make up for any delay or reasonable additional costs Siemens incurs.

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

4.6. Installing Updates

Customer is responsible to install any Updates received from Siemens. 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.

5. Siemens' use rights

Siemens and its Affiliates may:

 a. use for any purpose, in perpetuity, and at its own 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 and improve its products and services; and

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

Additional software terms

6. Code format

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

In the event of a conflict with the terms of the Agreement, the Third-Party Terms prevail with respect to Third-Party Technology. Third-Party Terms for open source software shall also prevail in relation to the software or parts thereof insofar as the Third-Party Terms for open source software grant the Customer certain rights of use on the basis of the connection of open source software components with the 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 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

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.

While performing under the Order, Siemens' employees may gain general expertise, know-how, ideas, concepts, and techniques that are then retained in their unaided memories. Siemens 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. Export control compliance

11.1. Export Regulations/ No Re-Export

a. Customer will comply with all applicable Export Regulations.

b. Customer will

- not sell, export or re-export, directly or indirectly, any Offerings to Russia or Belarus or for use in these countries.

- undertake best efforts to ensure that the purpose of this Section 11.1.b. is not frustrated by any third party further down the commercial chain.

11.2. Required information

Customer will promptly:

a. inform Siemens about any problems in applying Sections 11.1.b. and 11.4.d. including any relevant activities by third parties that could frustrate the purpose of Section 11.1.b.; and

    b.   provide upon request information about (as applicable)

- users, the intended use, the location of use, and the final destination of the Offerings; and
- compliance with Section 11.

11.3. Special data handling

Before disclosing to Siemens any information that is defense-related or requires controlled or special data handling, Customer will:

a.   notify Siemens; and

b.   use the disclosure tools and methods Siemens requires.

11.4. Export checks for Offerings

Before Customer performs any transaction with a third party concerning the Offerings delivered by Siemens, Customer will check and certify by appropriate measures (e.g. monitoring) that:

a.   Customer does not violate any Export Regulations with its use, transfer, or distribution of such Offerings, the brokering of contracts, or the provision of other economic resources in connection with Offerings, also considering any prohibitions to get around these (e.g., by undue diversion);

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

c.   Customer has screened all direct and indirect parties involved in the receipt, use, or distribution of the Offerings against all applicable restricted party lists of the Export Regulations concerning trading with the entities, persons, and organizations listed there; and

d.   the Offerings will not be:

- exported directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries) to or for use in Russia or Belarus; or
- resold to any third-party business partner without a prior binding commitment not to – directly or indirectly- export such Offerings to or for use in Russia or Belarus.

11.5. Semiconductor development

Customer will not, without Siemens' prior written consent, use Offerings to develop or produce integrated circuits at any advanced semiconductor fabrication facility located in the Peoples Republic of China and further restricted locations meeting the criteria specified in the U.S. Export Administration Regulations, 15 C.F.R. 744.23.

11.6. Reservation and suspension

11.6.1.   **Reservation.** Siemens will not have to fulfill this Agreement, including 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 Export Regulations.

11.6.2.   **Suspension.** Siemens may be obliged under the Export Regulations to limit or suspend access to the Offerings by Customer or Customer's users.

11.7. Breach of Export Regulations

Any violation of this Section 11 is a material breach of the Order entitling Siemens to:

a.   suspend or terminate the Order in accordance with Section 12 and 13; and

b.   in case of a breach of Section 11.1.b. to penalties in the amount of 5% of the fees 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 materially breaches the Order.

12.2. Payment during suspension

If Siemens suspends performance, Customer will pay:

a. the fees and costs related to any portion of the Offerings delivered before the effective date of suspension; plus

b. any reasonable costs and expenses incurred as a result of the suspension.

12.3. Schedule adjustment

If Siemens resumes performance, Siemens 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. becomes bankrupt or insolvent;

b. goes into liquidation;

c. has a receiving order against it;

d. compounds with its creditors;

e. continues business under a receiver, trustee, or manager for the benefit of its creditors; or

f. 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 fees and expenses 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. all agreed fees for the Offering, minus any expenditures avoided by termination; and

b. all costs Siemens incurred due to such termination.

13.4. Survival

Sections 2, 4.4, 4.5, 4.6, 5, 9, 11, 13.2, 13.3, 14, 15 and 17 will survive termination of the Order.

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 Offerings;

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

c. replace the infringing part of the Offerings,

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

14.3. Refund

14.3.1. **Conditions for refunds.** If remedies under Section 14.2 are not available at commercially reasonable expense, Siemens may terminate any Orders including licenses for such Offerings and Customer will receive the refunds for the allegedly infringing portions of the Offerings specified in Section 14.3.2 ("Refunds"), provided that, after receiving Siemens' notification, Customer:

a. stops using the allegedly infringing portion of the Offerings; and

b. returns all related portions of the Offerings in Customer's 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 fees for the infringing portion of the Offerings.

14.4. No admission

If Customer stops using the allegedly infringing Offerings (or a part of them), Customer 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 Offerings) 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 Customer will not unreasonably withhold.

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 Offerings 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 Offerings 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 and/or its Affiliates based on a claim that the Contributions infringe an intellectual property right, then the obligations of Siemens under Sections 14.1, 14.2, 14.5 and 14.6 shall 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 will exclusively govern 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.

15.2. Scope of limitations

The limitations and exclusions below:

a. apply to:

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

b. will not apply to the extent liability cannot be limited or excluded according to applicable law.

15.3. Limitation of liability

15.3.1. **For Recurring Fee Offerings, Siemens' aggregate liability for all claims under the Order arising in one Contract Year is limited to the total fees paid under the Order for the Recurring Fee Offering during such Contract Year.**

15.3.2. **For Other Offerings, Siemens' aggregate liability for all claims under the Order is limited to the total fees 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.**

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 or its suppliers or subcontractors.

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, Arbitration

This Agreement and any Order will be governed by the substantive laws set forth in the paragraphs below, as set forth therein, excluding choice-of-law rules.

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any dispute arising out of or in connection with this Agreement will be resolved as follows:

a. In the **United States and all other domiciles not otherwise mentioned**, the applicable law will be the laws of the state of Delaware, USA; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Delaware, USA unless Customer is a public entity in which case the applicable law will be the state law where it is domiciled and any dispute will be subject to the jurisdiction of the applicable courts where it is domiciled.

b. In **Canada**, the applicable law will be the laws of Ontario; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Ontario, Canada, without regard to the principles of conflicts of law.

c. In the **United Kingdom or a country in Europe**, the applicable law will be the laws of England; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be London, England.

d. In **Australia, New Zealand, a country in Asia/Oceania**, t he applicable law will be the laws of Victoria, Australia; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be Melbourne, Victoria, Australia.

All disputes arising out of or in connection with this Agreement or any Order will be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC").

17.2. Language

The language of the proceeding will be English.

17.3. Court proceedings

To the extent permissible under applicable law and to the extent it would not result in the invalidity or inapplicability of this Section 17, the parties agree that Siemens, at its sole discretion, may bring an action in the courts of the jurisdiction(s) where the Offering is being used or Customer has its place of business, (i) to enforce its intellectual property rights, or (ii) for the payment of fees related to any Offering.

General clauses

18. Notices

Notices will be in writing and sent to the address specified in the applicable Order.

19. No restrictions

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

20. 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.

21. Independent relationship

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

22. 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.

23. 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 shall have 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 Agreement.

If a translation of the Agreement conflicts with the original, the English language version will control.

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 Agreement irrespective of any language to the contrary in such document.

24. No assignment

Neither party may assign or otherwise transfer (by operation of law or otherwise) its respective rights or obligations under the Agreement or any 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 Agreement or any Order.

25. No waiver

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

26. Amendments

This Agreement and any amendments to it can only be effective if made in writing and signed by both parties (either manually or by an electronic system specified by Siemens).

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 accordance 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; • is marked or declared as confidential (or that any reasonable person can recognize as confidential in its nature); and • 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 through 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.
Export 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.
Intellectual Property	Rights in data, software, ideas, know-how, or any other proprietary material or information.
Infringement Claim	Where a third party makes a specific claim, allegation or complaint against Customer that the Offerings directly infringe any: • patent or trademark issued or registered by the United States, China, Japan, or the European Patent Office or the European Union Intellectual Property Office; • copyright; or • trade secret.
Offerings	The services, products, or documents provided to Customer as exclusively set out in an Order.
Order	An order form, a statement of work, or any other document that sets forth the Offerings and fees, incorporates the terms of 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 fee.
Recurring Fee Offerings	Offerings with recurring fees, for example service contracts and subscriptions.
Supplemental Terms	Additional terms and conditions that apply to a particular Offering as attached here or referenced in an Order. It may be titled EULA or have a similar term.

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.