

# Hardware Supplemental Terms for SITRANS MAG FM 8000 IIoT Wireless Communication Module

These Hardware Supplemental Terms (“Hardware Terms”) amend the Universal Customer Agreement (“UCA”) between Customer and SIEMENS solely with regard to Offerings and Products which have been referenced on the Product Sheet SITRANS MAG 8000 IIoT Wireless Communication Module and IIoT Web Application. These Hardware Terms, together with the Product Sheet and the UCA as well as all documents referenced in the aforementioned documents form the agreement between the parties (“**Agreement**”). With respect to the Offerings and without prejudice to Art. 13.10 of the UCA, the Agreement shall prevail over any other terms and conditions, for example but not limited to SIEMENS standard terms and conditions that have to be accepted in SIEMENS online ordering systems or that are referenced to in orders or other documents, unless an explicit reference to this Agreement is made in these standard terms and conditions and provides for the contrary.

## 1. ORDER OF PRECEDENCE AND DEFINITIONS

**1.1. Order of Precedence.** In the event of a conflict of the conditions referenced to in this Agreement and other documents, the following order shall apply:

- (i) Product Sheet;
- (ii) Hardware Terms;
- (iii) UCA;
- (iv) further standards terms of SIEMENS that will be accepted by Customer as part of an automatic process e.g. in ordering systems.

**1.2 Definitions.** Capitalized terms used herein have the meaning as defined elsewhere in the Agreement. The following additional definitions apply to these Hardware Terms:

“**Authorized Agents**” means individuals who are working on Customer’s premises and require access to Hardware in support of Customer’s internal business as Customer’s consultants, agents, or contractors.

“**Authorized Hardware Users**” means Customer’s employees and Authorized Agents.

“**Delivery**” will have the meaning defined in Section 2 of these Hardware Terms.

“**Firmware**” means system software (as opposed to application software) included and incorporated into Hardware which provides low-level control of, or a standardized operating environment for, the Hardware in which it is incorporated.

“**SIEMENS Hardware**” is standard Hardware marketed or branded under the name “SIEMENS”.

“**SIM**” a subscriber identity module, which is a smart card that gives a cellular mobile device its network identity and security credentials and that is included in the Hardware provided by Siemens.

“**System**” means a combination of Hardware and Software where one cannot operate without the other.

“**Territory**” means the country in which Customer initially acquires the Hardware, whether through purchase or Lease, as indicated by Customer’s address specified in the Order, unless expressly designated otherwise in the Order.

2. **DELIVERY.** Unless agreed otherwise in the applicable order, Hardware will be made available to Customer FCA at SIEMENS’ designated warehouse or factory for the relevant product (Incoterms 2020).

Making the Hardware available to Customer in accordance with the Incoterms specified in this Section will constitute “**Delivery**” hereunder, regardless of SIEMENS’ further involvement in any transport arrangements for any Hardware after such Delivery.

Notwithstanding any ‘Incoterms’ specified in this Section, unless expressly agreed otherwise with Customer in writing, SIEMENS will (i) choose and appoint the carrier, freight forwarder or shipping service provider for delivery of the Hardware to Customer’s designated place of final delivery, (ii) make the necessary arrangements for transportation with the selected carrier or shipping service provider in accordance with the specified Incoterms and (iii) charge the costs for shipment or carriage to Customer as specified in the Order.

3. **RISK AND TRANSFER OF TITLE.** Risk of loss and damage passes to Customer upon Delivery. Title to purchased Hardware transfers to Customer after payment in full has been received by SIEMENS. If applicable law does not allow or recognize retention of title by SIEMENS after delivery, title to purchased Hardware and risk of loss will pass to Customer upon Delivery, but SIEMENS retains a security interest in the Hardware to secure payment of the purchase price of such Hardware. In such case, Customer agrees to sign any documents that SIEMENS reasonably determines to be necessary or convenient for use in filing or perfecting such security interest.

#### 4. **GENERAL.**

- 4.1 **SIM Updates.** SIEMENS reserves the right to remotely update any SIM. SIEMENS shall use reasonable endeavors to notify the Customer in advance of any such update, but the Customer agrees and acknowledges that SIEMENS may undertake such updates without notice where it deems reasonably necessary. The Customer hereby consents to any such update being undertaken where applicable law in any jurisdiction requires the Customer’s consent to such updates.
- 4.2 **Availability of Connectivity.** Network availability as part of the Hardware is provided by a third party network operator over which SIEMENS has no control. Such connectivity services may be temporarily unavailable, interrupted, curtailed, or otherwise limited because of transmission limitations caused by various factors, including atmospheric, environmental, or topographical conditions; concentrated usage or capacity constraints; modifications, updates, relocations, repairs, maintenance, or other similar activities necessary for the proper maintenance or improved operation of the telecommunications networks, software or equipment. SIEMENS assumes no liability for any degradation, reduction, interruption, termination or suspension of connectivity services.

#### 5. **WARRANTY.**

- 5.1 **Hardware Warranty Period.** For purchased SIEMENS Hardware, SIEMENS provides a limited product warranty for a period commencing on the date of Delivery and ending twelve (12) months after the first day of the month following the date of Delivery (“Warranty Period”).
- 5.2 **Scope.** During the Warranty Period, SIEMENS warrants that the SIEMENS Hardware (i) is free from defects in workmanship and materials under normal use; and (ii) materially conforms to the specifications described in the Documentation. As Customer’s exclusive remedy in case of a breach of warranty SIEMENS will at its sole discretion repair or replace the SIEMENS Hardware at no additional charge to Customer. If SIEMENS, in its sole discretion, determines it cannot repair the SIEMENS Hardware or replace it with another unit of SIEMENS Hardware that would perform in accordance with SIEMENS obligations hereunder, SIEMENS will refund the fees received for the defective SIEMENS Hardware based on a straight-line amortization over 60 months from initial Delivery, and accept the return of the Hardware. If such refunded SIEMENS Hardware was furnished as part of a System, SIEMENS will also accept the return of the Software elements of the System and refund the fees for those Software licenses under the same conditions.
- 5.3 **Third Party Hardware Warranty.** Hardware that is not SIEMENS Hardware is delivered “AS IS” and is covered by the warranty offered by the manufacturer or third-party vendor, if any. To the extent permitted by the manufacturer or third-party vendor, SIEMENS assigns to Customer any applicable warranty rights to such Hardware, and SIEMENS will use commercially reasonable efforts to provide information and assistance to enable Customer to make warranty claims against the manufacturer or third-party vendor for the Hardware. To the extent mandatory applicable law requires that SIEMENS must provide warranty for the Hardware it has provided to Customer, the warranty provided by SIEMENS is limited to the minimum warranties required by the applicable law and for the minimum term required by the applicable law.
- 5.4 **No Correction Extension.** The Warranty Period is not extended by the time required to correct or repair defects and malfunctions under warranty.
- 5.5 **Warranty Exclusions.** The warranty will not cover defects or malfunctions resulting from: (i) improper use or installation, misuse, improper site preparation, site or environmental conditions that do not conform to SIEMENS’s site specifications or to standards of care generally applicable to the type of Hardware, (ii) software, interfaces or hardware supplied by Customer or a third party, (iii) non-compliance with SIEMENS’s specifications and instructions regarding the operation, care or storage of the Hardware, (iv) normal wear and tear which does not affect the functionality of the system (such as, but not limited to, cosmetic damage, scratches and dents), (v) neglect, accident, improper or inadequate

maintenance or calibration, (vi) modifications, enhancements, repairs or unauthorized alterations made by anyone other than SIEMENS or its authorized representatives, and (vii) exposure to water, fire or other hazards.

5.6 **Refurbished Parts.** SIEMENS does not warrant that all Hardware or any part thereof furnished hereunder is new. Hardware may contain parts refurbished to an “as new” condition that meet all SIEMENS quality specifications and are eligible for warranty and services.

## 6. INTELLECTUAL PROPERTY RIGHTS AND TRADE SECRETS.

6.1 **Firmware License.** Under these Hardware Terms, SIEMENS grants Customer a non-exclusive, non-transferable (except if transferred with the Hardware the Firmware is incorporated in) license to use the Firmware incorporated in the Hardware for the operation of the Hardware. The Firmware may only be used in connection with the Hardware in which it is incorporated. Any other use of the Firmware will be a material breach of the Agreement. Customer is prohibited from (a) decompiling, changing or modifying the Firmware or deriving other programs from the Firmware, and from (b) modifying or deleting property rights, copyrights or marks on the Firmware. The Software license and Software Maintenance Services terms set forth in the Agreement will not apply to Firmware.

6.2 **Third Party Technology.** Hardware may contain third-party software, technology, and other materials, including open source software, licensed by third parties (“Third-Party Technology”) under separate terms (“Third-Party Terms”). Third-Party Terms are specified in the Documentation, Supplemental Terms, “read me” files, header files, notice files or similar files. In the event of a conflict with the terms of this Agreement, the Third Party Terms control with respect to Third-party Technology. If Third-Party Terms require SIEMENS to furnish Third-Party Technology in source code form, SIEMENS will provide it upon written request and payment of any shipping charges.

6.3 **Trade Secrets.** SIEMENS Hardware products are considered to be trade secrets of SIEMENS. Customer (a) will not reverse engineer or disassemble the Hardware, or allow access to or use of Hardware by anyone except Authorized Users whose job performance requires access; (b) will take appropriate action to protect the confidentiality of Hardware; and (c) will not remove or obscure any notice or legend affixed to Hardware.

6.4 **No Other Rights.** The Firmware license in these Hardware Terms will not apply to any software other than Firmware installed on the Hardware or delivered in conjunction with or related to the Hardware furnished hereunder. No copyrights, patents, trademarks, trade secrets, or other intellectual property rights or rights to use confidential or proprietary information of SIEMENS are granted to Customer under these Hardware Terms, unless explicitly stated otherwise herein or otherwise agreed in writing.

6.5 **Survival.** The provisions of this Section 6 survive termination or expiration of the Agreement.

7. **REPAIRS.** If a defect or malfunction of SIEMENS Hardware occurs after the Warranty Period has expired or if such defect is for any reason not covered by the applicable warranty specified under Section 5 of these Hardware Terms or by a Warranty Extension or Support Service Pack ordered for the SIEMENS Hardware, Customer may request SIEMENS to attempt to repair such defect or malfunction. However, repair services are not offered for all SIEMENS Hardware and, even if they are offered, SIEMENS does not represent or warrant that all such defects can or will be repaired or that SIEMENS will agree to perform such repair. For such repairs and repair attempts, Customer agrees to pay for SIEMENS’s services at SIEMENS’s then-current rates plus any reasonable out-of-pocket expenses.

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

8.1 SIEMENS will not be liable for: (i) any loss or damage partially or entirely caused by the failure to observe any and all instructions related to the Hardware or Service Pack provided by SIEMENS; (ii) any loss or damage caused by Hardware which has been modified or maintained by other parties than SIEMENS; or (iii) any loss or damage caused by data generated by the Hardware or the use thereof.

8.2 Customer will indemnify and hold SIEMENS harmless from any and all claims, losses (financial or otherwise), damages, liabilities, costs, increased taxes or expenses (including without limitation, court costs and reasonable attorneys’ fees), which may be incurred, or which may be claimed by any person arising out of or related to the manner in which the Hardware-related services were performed if such manner results from instructions of Customer or its authorized representative.

The provisions of this Section 8 will survive the expiration or termination of the Agreement.

## 9. SUPPORT AND SERVICE

Support and Service are as described in the Product Sheet.