

General Conditions for Software Products for Infrastructure & Industry Business (German Law)

Version dated, January 15, 2024

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 "General Conditions for Software Products for Infrastructure & Industry Business".

"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 behalf 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 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, 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, in the additional supplementary terms, Third-Party Technology source code and/or, "read me"-, header-, notice-, or similar files. In the event of a conflict with the terms of this 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.

If the 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 reasonable expenses.

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 Cybersecurity

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 malware 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 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 to 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 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.

6. **Defects Liability**

6.1 Defect

6.1.1 The Offerings shall be deemed to be free of defects if they are compliant with the substantive requirements, the objective requirements and the installation requirements in accordance with § 434 German Civil Code (BGB) at the time of the transfer of risks. If the Parties have concluded an agreement on the scope and/or quality of the Offering, the question of whether the Offering complies with the objective requirements shall be assessed solely on the basis of this agreement. The previous sentence does not apply if the last contract in the supply chain is a purchase of consumer goods.

6.1.2 There shall be no claims for defects in case of insignificant deviations from the agreed quality, in case of only minor

impairment of usability, in cases of natural wear or tear or damage arising after the passing of risk from faulty and negligent handling, excessive strain, unsuitable equipment, an unsuitable system environment or claims based on particular external influences not assumed under this Agreement.

6.1.3 Claims arising from defects shall only be recognized if these can be reproduced on the reference hardware/ target hardware specified in the description of the Offering. If the Customer or any third party undertakes any incorrect changes or maintenance work or extends the Offerings via interfaces, in relation to such changes or extensions and any resulting consequences there shall also be no right to claim for defects.

6.1.4 Details as to quality or possible use of the Offerings shall not constitute a guarantee in terms of § 443, § 444 German Civil Code (BGB), even if such are described as guarantees, unless such details are stated with an express reference to the legal provisions for guarantees and such is done in writing.

6.1.5 In the event that the Customer does not exercise its rights with respect to the Software but decides to exercise such rights with respect to an Earlier Version as per section 4, Siemens shall only be liable for defects that occur in the Software. Potential claims of the Customer in relation to the Earlier Version shall not be affected.

6.2 Notifications of Defect

Notifications of defect by the Customer in relation to Siemens shall be provided without undue delay in writing.

6.3 Remediation of Defects

6.3.1 Any Offering which proves to be defective shall, at Siemens' discretion, either be corrected or provided again free of charge to the extent to which it is defective.

6.3.2 Siemens shall be given opportunity to remedy any defect within a reasonable period of time.

6.3.3 Diagnosis and rectification of any defect shall take place, at the choice of Siemens, either at the premises of Siemens or the place of installation of the Offering, or, where possible, by means of remote access.

6.3.4 With respect to Class A Software, Siemens is in the possession of the Software source codes and is authorized to modify the same. In such cases Siemens shall correct such defect at its own discretion by providing a Service Pack or other more recent release in which the defect has been remedied.

With respect to Class B Software, Siemens is not in the possession of the Software source code or not authorized to modify the same. In the event that Siemens is in the possession of a Service Pack or a relevant more recent release of the Software, or if Siemens can procure a Service Pack or a more recent release with reasonable efforts, Siemens shall correct the defect by providing the Service Pack or the more recent release.

If the class of the Software is not indicated in the Offering, the Software shall be categorized as Class B.

6.3.5 The Customer shall provide Siemens with the documentation and information which is necessary for the rectification of a defect. If Siemens rectifies any defect at the place of installation of the Offering or by remote access, the Customer shall ensure that Siemens has available to it the necessary hardware and software as well as the necessary operation conditions with suitable personnel to allow the work to be carried out promptly and without interruption.

6.3.6 The Offerings can be made available via a web link.

6.3.7 Insofar as any Service Pack or more recent release provided served to rectify defects in an Offering and in relation to such the Customer has a right to reproduce such, the Customer is entitled to generate the permissible number of copies of the Service Pack provided or the new release.

6.4 Applies to Perpetual Licenses:

6.4.1 If the Customer has acquired rights of use for the Offerings that are not time-limited, in accordance with section 2.1, Siemens shall be required to remedy defects as described in section 6.3 only insofar as the Offerings exhibit a material defect whose cause existed already at the time of the transfer of risk.

6.4.2 Rights to claim subsequent performance shall expire 12 months after the commencement of the statutory statute of limitations. The same applies to rescission and reduction of remuneration. This deadline shall not apply

- insofar as longer periods are prescribed by law according to § 438 section 1 no. 2 German Civil Code (BGB) (buildings and

items used for a building),

- in cases of intent,

- in the case of fraudulent concealing of any defect or non-compliance with any guaranteed characteristics.

6.4.3 Claims for the reimbursement of expenses on the part of the Customer in accordance with § 445a German Civil Code (BGB) (entrepreneur's right of recourse) shall likewise be subject to a statute of limitations of 12 months from the start of the statutory statute of limitations, provided the last contract in the supply chain is not a sale of consumer goods.

6.4.4 The legal provisions regarding suspension of the statute of limitations and recommencement of limitation periods shall be unaffected. The suspension of the statute of limitations in accordance with Section 445b (2) BGB shall in any case end at the latest five years after the point at which Siemens delivered the item to the Customer. This shall not apply if the last contract in the supply chain is a sale of consumer goods purchase ("Verbrauchsgüterkauf") or in the cases listed in section 6.4.2 second sentence.

6.4.5 In the case of a notification of defect, the Customer may withhold payments to a reasonable proportion in relation to the related defect. The Customer has no right to withhold payments to the extent that its claim of a defect is time-barred. Unjustified notifications of defect shall entitle Siemens to demand reimbursement of resulting expenses of Siemens from the Customer.

6.4.6 If there are defects of material significance and the subsequent performance is not successful, the Customer may – notwithstanding any other rights to claim compensation in accordance with section 6.7 - rescind this Agreement or reduce the remuneration.

6.4.7 The Customer shall have no claim with respect to expenses incurred in the course of subsequent performance, transportation expenses, travel allowances, work costs and material costs to the extent that such expenses have increased because the Offerings were subsequently brought to another location than the Customer's branch office, unless doing so complies with the normal use of the Offerings. This applies accordingly to claims for the reimbursement of expenses on the part of the Customer in accordance with § 445a German Civil Code (BGB) (entrepreneur's right of recourse).

6.4.8 The Customer's right of recourse against Siemens pursuant to § 445a German Civil Code (BGB) (entrepreneur's right of recourse) is limited to cases where the Customer has not concluded a contract with its customers exceeding the scope to the statutory provisions governing claims based on defects.

6.5 Applies to Non-Perpetual Licenses:

6.5.1 If the Customer has acquired rights of use for the Offerings that are time-limited, in accordance with section 2.2.1 or 2.2.2, the provisions of rental law ("Mietrecht") shall apply in principle for defects in the Offerings.

6.5.2 There shall be no liability for damages irrespective of culpability for defects that were already extant on conclusion of the contract.

6.5.3 Siemens shall provide and maintain the Offerings in a state suitable for use as contractually agreed and shall remedy reported defects in the Offerings in accordance with section 6.3. This obligation to maintain shall not include adaptation of the Offerings to changed conditions of use or technical and functional developments such as changes in the IT environment, specifically including changes to the hardware or operating system or the establishment of compatibility with new data formats.

6.5.4 If defect remediation is unsuccessful, the Customer may terminate this Agreement summarily. Defect remediation shall be deemed to have been unsuccessful in particular if Siemens is not able to remedy the defect, if Siemens declines to remedy the defect or if remediation of the defect by Siemens is unacceptable for the Customer for other reasons. If the Agreement is terminated summarily in such circumstances, Siemens shall refund a reasonable portion of the charges paid in advance on a pro-rata basis for the Subscription Term remaining for the Offering concerned.

6.6 Limited Liability for Defects

The liability for defects described in sections 6.1-6.5 shall not apply in respect of any Offerings which are provided free of license fee and/or for validation purposes such as, e.g., Trial or Demo Licenses or as additional programs with application

examples attached to the Offerings. Siemens shall be liable in such cases only if it has fraudulently concealed a defect.

6.7 Claims for Compensation and Further Claims

Any rights of the Customer to claim for compensation as a result of defects are hereby excluded. This shall not apply to fraudulent concealment of any defect, in case of non-compliance with guaranteed characteristics, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of Siemens. The above provisions do not imply a reversal of the burden of proof to the disadvantage of the Customer. Any further or additional claims of the Customer based on any defect exceeding those rights set out in this section 6 are hereby excluded.

7. **Charges, Payment Terms, Offsetting**

7.1 All amounts to be paid to Siemens are exclusive of taxes and any other charges. Customer agrees to pay or reimburse Siemens for any applicable taxes, duties, or other charges imposed by any government authority on Customer's use or receipt of Offerings. If Customer is required by law to make any income tax deduction or to withhold income tax, the amount payable to Siemens shall be increased so that Siemens receives a net amount equal to the amount invoiced. Customer will promptly provide all tax receipts in connection with the respective Order.

7.2 Payment is to be made to Siemens without any charge for Siemens and without any deductions within 10 days after receipt of the invoice. Unless otherwise specified in the relevant Order, Siemens shall invoice the Customer in advance for the charges for time-limited licenses and Professional Services.

7.3 Siemens may refuse to provide any performance due if the Customer is delayed in relation to its performance obligations or any other obligations arising under this Agreement or if it does not fulfil such. The Customer may set-off or retain any money only if such relate to undisputed amounts or amounts which have been confirmed by a final legally-binding judgment. In addition, the Customer may exercise such rights of retention only in relation to those claims which arise directly under this Agreement.

8. **Property Rights and Copyright; Defects of Title**

8.1 Siemens shall provide the Offerings free from infringement of third parties' industrial property rights and copyrights (hereinafter referred to as "Property Rights") in the country of the relevant place of delivery. If any third party makes a claim based on infringement of Property Rights with regard to Offerings delivered by Siemens to the Customer for remuneration and used by Customer as contractually agreed, Siemens shall be liable to the Customer as follows within the limitation period agreed for material defects and as provided for in section 6.4.4 in the case of Offerings licensed for an unlimited time and within the statutory limitation period for Offerings licensed for a limited time:

(i) Siemens shall choose whether to acquire, at its own expense, the right to use the Property Rights in relation to the respective Offerings or change the Offerings so that the Property Rights are not infringed or, Siemens may replace the Offerings. If this is not possible for Siemens under reasonable conditions, the Customer may rescind the contract or reduce the remuneration to the statutory provisions in the case of Offerings licensed for an unlimited time or terminate the contract summarily or reduce the remuneration pursuant to the statutory provisions in the case of Offerings licensed for a limited time.

(ii) Any obligation of Siemens to pay compensation shall be subject to section 11.

(iii) The above-named duties of Siemens shall exist only insofar as the Customer notifies Siemens without undue delay in writing as to any third-party claim, does not acknowledge any infringement and reserves for Siemens any defense or settlement negotiations. If the Customer ceases to use the Software for reasons of reduction of damage or other good reason, the Customer shall notify the third party that the cessation of use does not constitute recognition of any alleged infringement of Property Rights.

8.2 Any rights of the Customer to claim shall be excluded insofar as the infringement of Property Rights is the Customer's responsibility.

8.3 Any rights of the Customer are further excluded insofar as the Property Right infringements result from special instructions of

the Customer or from any type of use not foreseeable by Siemens or if such infringements result from a modification of the Offerings by the Customer or use with other products not delivered by Siemens.

- 8.4 In case of any infringement of Property Rights the claims of the Customer regulated in section 8.1a) shall also be subject to the provisions of sections 6.1.5, 6.3.1, 6.4.5, 6.4.7 and 6.4.8 accordingly.
- 8.5 In the case of any other defect of title the provisions of section 6 (Defects Liability) shall apply accordingly.
- 8.6 The aforementioned rights to claim shall not apply in respect of any Offerings which are provided free of charge and/or for validation purposes such as, e.g. Trial or Demo licenses or as additional programs with application examples attached to the Offerings. Siemens shall be liable in such cases only if Siemens has fraudulently concealed the defect in title.
- 8.7 Any other claims of the Customer against Siemens or its agents or any such claims exceeding the claims provided for in this section 8 based on a defect in title, are excluded.

9. Delay

- 9.1 Times set for the provision of the Offerings shall only be binding if all documents to be furnished by the Customer, necessary permits, and approvals are received in time and if the payment obligations according to the agreed terms of payment and other obligations of the Customer are fulfilled. If these conditions are not fulfilled in time, the times set shall be extended reasonably; this shall not apply if Siemens is responsible for the delay.
- 9.2 Any deadlines are subject to reasonable extensions if non-compliance with such results from one of the following reasons:
- (i) force majeure, e.g. mobilization, war, acts of terrorism, riots, or similar events (e.g. strike, lockout);
 - (ii) malware or attacks of third parties on the IT system of Siemens occurring despite protective measures were in place that complied with the principles of proper care;
 - (iii) hindrances attributable to German, U.S. or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Siemens is not responsible; or
 - (iv) the fact that Siemens does not receive its own supplies in due time or in due form.
- 9.3 If Siemens is responsible for the delay, the Customer – insofar as it can credibly establish that the Customer has suffered damage as result – may claim liquidated damages of 0.5% for every completed week of delay, but in no case more than a total of 5% of the charges for the respective part of the Offerings in relation to the provision of which Siemens is in delay.
- 9.4 Any claims for damages by the Customer resulting from delay in performance, as well as any claims for damages as substitute performance which go out beyond the limit set out in section 9.3, are hereby excluded in all cases of delayed provision, even after the expiry of any subsequent deadline period set for Siemens to perform provision. This shall not apply in cases of liability based on intent, gross negligence or due to loss of life, bodily injury or damage to health, which are subject to mandatory liability. Rescission of this Agreement by the Customer based on statute is limited to cases where Siemens is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.
- 9.5 The Customer shall, at the request of Siemens, declare within a reasonable period whether it, as a result of the delay in performance, still requires provision to be performed.

10. Impossibility of Performance

- 10.1 If the circumstances preventing the provision of the Offering are not just temporary in nature, the Customer may demand damages unless Siemens is not responsible for the preventing circumstances. The claim for damages shall be limited to 10% of the charges for that part of the Offering that cannot be used as intended because of the preventing circumstances. This limit shall not apply in cases of liability based on intent, gross negligence or due to loss of life, bodily injury or damage to health, which are subject to mandatory liability. The above provisions do not imply a change in the burden of proof to the detriment of the Customer. The right of the Customer to rescind this Agreement shall remain unaffected in the case of Offerings licensed for an unlimited time and the right of summary termination shall remain unaffected in the case of Offerings licensed for a limited time.

- 10.2 Section 9 shall apply in the case of circumstances preventing performance temporarily.
- 10.3 If events of the type referred to in section 9.2 should substantially affect the economic importance or content of performance or materially affect the operations of Siemens, this Agreement shall be adapted with due consideration of the principles of good faith. If this is economically unacceptable, Siemens may rescind or terminate this Agreement. If Siemens intends to make use of this right of rescission, it shall notify the Customer without delay once it realizes the implications of the event even if an extension of the delivery period has initially been agreed with the Customer.

11. Other Claims for Damages

- 11.1 Unless otherwise agreed in this Agreement, any right of the Customer to claim damages, regardless of the legal basis, but in particular resulting from any duty under the contract or as a result of any tortious act, is hereby excluded.
- 11.2 This shall not apply insofar as liability is established on the basis of the following:
- (i) accord to Product Liability Act,
 - (ii) intent,
 - (iii) gross negligence on the part of the owners, legal representatives or executives,
 - (iv) fraud,
 - (v) failure to comply with a guarantee granted,
 - (vi) negligent injury to life, limb or health or
 - (vii) negligent breach of a fundamental condition of contract ("wesentliche Vertragspflichten").

However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.

- 11.3 The above provision does not imply a change in the burden of proof to the detriment of the Customer.
- 11.4 Where the liability of Siemens is excluded or limited, the same shall also apply in respect of its executive bodies, employees and agents.

12. Confidentiality

12.1 Confidential Information

"**Confidential Information**" means all information disclosed by one party or any of its affiliates to the other party under this Agreement that is marked as confidential or the confidential nature of which is evident to a reasonable recipient. Siemens Confidential Information includes the terms of this Agreement and any Order, products, services, Siemens IP and any information the Customer derives from benchmarking the Offerings. The receiving party shall

- (i) not disclose Confidential Information, except on a need-to-know basis to its and its affiliates' employees, consultants, contractors, and financial, tax, and legal advisors for the purpose of the use of the Offering in accordance with the agreed license conditions,
- (ii) use Confidential Information only as required to exercise or enforce rights or perform obligations under this Agreement and
- (iii) use reasonable care to protect against unauthorized use and disclosure of the disclosing party's Confidential Information.

The receiving party

- (i) shall ensure that all recipients of Confidential Information are bound by confidentiality obligations and use restrictions at least as restrictive as those described in this Agreement and
- (ii) shall be liable for compliance with this section by each of its recipients. Siemens may name the Customer as a customer on its websites and in customer lists and other marketing materials.

12.2 Exclusions

The aforementioned obligations shall not apply to any Confidential Information that

- (i) is or becomes generally available to the public other than as a result of disclosure by the receiving party in violation of this Agreement,
- (ii) becomes available to the receiving party from a source

- other than the disclosing party, provided that the receiving party has no reason to believe that such source is itself bound by a legal, contractual, or fiduciary obligation of confidentiality,
- (iii) was in the receiving party's possession without an obligation of confidentiality prior to receipt from the disclosing party,
 - (iv) is independently developed by the receiving party without the use of, or reference to, the disclosing p,
 - (v) is required to be disclosed by a government authority or law, so long as the receiving party promptly provides the disclosing party with written notice of the required disclosure, to the extent such notice is permitted by law, and cooperates with the disclosing party to limit the scope of such disclosure.

13. Jurisdiction and Governing Law

13.1 Governing Law

This Agreement shall be governed by German substantive law. The United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG) shall not apply.

13.2 Jurisdiction

The exclusive place of jurisdiction for all disputes arising out of or in connection with the contractual relationship shall be the location of the lead Siemens branch office acting under this Agreement. However, Siemens may also claim at the Customer's head office.

14. Miscellaneous

14.1 Formal Requirement

This Agreement may only be amended through an accord signed, manually or electronically, by the duly authorized agents of both parties. The same shall also apply in respect of any amendment of this formal requirement.

14.2 Binding Effect of this Agreement

If individual provisions of this Agreement prove to be legally unenforceable, the remaining parts shall continue to apply with binding effect. This shall not apply if upholding this Agreement would represent an unreasonable hardship for one of the parties.