

October 2017

## 1 Subject Matter and Scope

1.1. Subject Matter. The following terms and conditions ("Terms") govern the sale and use of MindConnect hardware devices including all software (including firmware) installed on or provided with or in connection with such hardware (the "Product"). The Product is further described in the applicable data sheet (the "Data Sheet") which is accessible at our document repository <https://mindsphere.io/legal>.

1.2. Parties and Contract Formation. These Terms are agreed between the Siemens entity ("we", "us", or "our") and the contracting person or entity ("you" or "your") indicated in the order referencing these Terms, which may be in the form of a document, an electronic form, or an online instrument ("Order"). We are only obliged to provide you with the Product once we have accepted your Order of the Product by email or otherwise by executing the relevant document or confirming the electronic or online Orders. We may reject any of your Orders in our sole discretion. We and you are referred to individually as a "Party" and collectively as the "Parties". The Order which has been accepted by us, the Terms, the general conditions for the supply of products and services of the electrical and electronics industry for commercial transactions between businesses ("Green Terms of Delivery") and the Data Sheet constitute together the Product purchase agreement ("Agreement").

## 2 Use of the Product

2.1. Prerequisites. The transmission of data from devices, systems and equipment (collectively hereinafter referred to as "Assets") to the cloud-based platform known as MindSphere ("MindSphere Platform") through the Product requires that the Asset be MindSphere enabled and that you have an active account to access the MindSphere Platform with onboarding information (e.g. token, IDs) to connect the Product to the MindSphere Platform ("Onboarding Information"). You acknowledge that the mere ownership and/or use of the Product does not grant you or any third party any rights in relation to the use of the MindSphere Platform.

2.2. Responsibility for the use of the Product. Except to the extent any liability or consequence you incur that arises directly from your use of the Product is directly caused by us violating our obligations under this Agreement, you are solely responsible for the use of the Product (and all liabilities or other consequences arising therefrom), regardless of whether the use is undertaken by you, your employees, or any third party that buys, leases, or is otherwise provided with a Product by you. You will ensure that the use of a Product by you, or your employees, or any third party complies with your obligations under this Agreement. Should you become aware of any violation of your obligations under this Agreement, you will (i) immediately inform us thereof in reasonable detail, and (ii) cease to use the Product, and (iii) ensure that the respective employees and third parties cease to use the Product. You are solely responsible for the content, integrity, security, accuracy, and timeliness of data being transferred from a Product to the MindSphere Platform and vice-versa from the MindSphere Platform to a Product.

2.3. Your Rights to Use Software in the Product. We grant you the non-exclusive, non-transferable, royalty-free and, subject to these Terms, perpetual right to install and use the software installed on or provided with or in connection with the Product solely to configure and use the Product in accordance with this Agreement, with the limited right to transfer the right to use software as specified in this Section 2.3 solely to a third party to which you provide the Product. This license excludes the right to install or use the software for applications other than the Product.

2.4. Your Obligations when Using the Product. You are solely responsible for (i) properly configuring and using the Product, (ii) making sure that a Product is able to connect to the MindSphere Platform, (iii) regular monitoring of the content, integrity, security, accuracy and timeliness of the data transmission (e.g. by monitoring such transmission over the MindSphere Platform), (iv) the security of a Product, and (v) the security of your and any third party system or any data stored on such systems. You shall:

- a) comply with all applicable laws and regulations at all times when using the Product, in particular by obtaining and maintaining at your own expense all necessary permits and registrations, and not violate any third party rights (including without limitation intellectual property rights);
- b) refrain from adapting all or parts of the Product in any fashion that will change its mode of operation, e.g. not translate, disassemble, decompile, reverse engineer or otherwise modify, tamper with, repair or attempt to discover the source code of any software contained in the Product (unless required by applicable laws or expressly permitted otherwise);
- c) not install additional software or hardware on a Product, unless explicitly permitted by us or our affiliates (collectively hereinafter referred to as "Siemens");
- d) not create derivative works of, or based on, the Product or any parts of the Product;
- e) not engage in any activity or modification or attempt to modify the Product in such a way as to introduce a vulnerability or otherwise undermine the security or negatively impact on the performance of the MindSphere Platform;
- f) use the Product only to transmit data from Assets to the MindSphere Platform;
- g) use the software installed on the Product only in connection with your use of the Product;
- h) carefully store any Onboarding Information and protect them from unauthorized access and only use Onboarding Information for the Product for which it was created; and
- i) not use the Product to send data volumes to the MindSphere Platform which exceed the data volume you defined in the data model for the respective Product.

2.5. Security Obligations. You shall ensure that your use of the Product will not: (i) constitute a threat to the security or functionality of the MindSphere Platform; (ii) adversely impact the MindSphere Platform, us or any third party; or (iii) subject Siemens or any third party to liability. Further, you shall: (a) during the use of the Product and before transferring data take all reasonable precautions against security attacks, including appropriate measures to prevent viruses, trojan horses or other programs that may damage the Product or data that shall be transmitted through the Product; (b) not interfere with or disrupt the integrity or performance of the Product or other equipment or networks connected to the MindSphere Platform, and in particular not transmit any content containing viruses, trojan horses or other programs that may damage software through the Product; (c) not use the Product in a way that could damage, disable, overburden, impair or compromise the MindSphere Platform or interfere with users of the MindSphere Platform; (d) not connect to the Product any Asset that does not comply with state-of-the-art security policies (e.g., password protection, virus protection, update and patch level).

2.6. Updates. Siemens may, at our sole discretion, make available software updates or security patches for the Product and will provide reasonable notice when such updates or security patches are available. Separate terms and conditions may apply to the download or other installation of such updates or security patches, but these Terms will apply to your use of such update or security patch. A Product with older firmware may not be able to be updated to the current version. A Product running with outdated firmware may not be able to transmit data to the MindSphere Platform. As such, you shall, and you shall ensure that future recipients of the Product shall update the Product without undue delay after the publication of such updates and patches for the Product. Data collected during an update procedure may be lost. We disclaim all warranty and liability for such data loss.

### 3 Third Parties

In case you provide a Product to or provide services in relation to your Product to a third party you acknowledge and agree that any contractual relationship regarding your Product and any related services is solely between you and the third party and you shall:

- a) ensure that the underlying contract with the third party and between such third party and any future recipient of the Product (and so forth) is consistent with and not less protective of Siemens than this Agreement between you and us;
- b) advise the third party that if specific Onboarding Information attributed to a Product is passed on to another third party with access to a MindAccess Developer account on the MindSphere Platform, then such other third party may conduct automatic remote updates of the Product after onboarding the Product onto the MindSphere Platform;
- c) ensure that the underlying contract with the third party fully disclaims our liability and releases us from any claims or damages in connection with the passing of any Onboarding Information attributed to a Product to another third party; and
- d) ensure that the underlying contract with the third party will be suspended or terminated, as the case may be, if the relevant third party commits any of the acts that would

allow us to suspend or terminate the Agreement with you had you committed such acts.

### 4 Proprietary Rights

4.1. Proprietary Rights in the Product. All rights, title, interest and know-how in and to the Product, any part and improvement thereof and all intellectual property rights in or to the foregoing, other than those rights expressly granted in this Agreement, shall remain wholly vested in Siemens or its third party business partners and/or licensors.

4.2. Feedback. You grant Siemens a worldwide, perpetual, irrevocable, transferable, sublicensable, fully paid, royalty-free license to use any suggestion, recommendation, feature request, or other feedback related to the Product provided by or on behalf of you ("Feedback"), and to incorporate or otherwise use any Feedback in connection with the Product and/or any other products or services, without any compensation to you. You acknowledge and agree that you will not share any Feedback with any third party and that Siemens will not treat Feedback as confidential. Any Feedback may be used by Siemens without limitation.

4.3. Third Party Software. Insofar as the Product contains third party software, including open source software (collectively "Third Party Software"), we will provide the applicable license conditions with the Product. With respect to such Third Party Software, those license conditions shall govern your use of such Third Party Software. Details regarding Third Party Software contained in the Product are available in the documentation (e.g. README\_OSS).

### 5 Indemnification

You will indemnify, and hold Siemens and Siemens' suppliers and contractors and each of their respective employees, officers, directors, and representatives harmless from and against, and, at Siemens' option, defend Siemens from and against all claims, liabilities, losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from or arising out of (i) any violation of this Agreement by you or any other person you provided with the Product, regardless of your knowledge; (ii) any disputes between you and any person you provided with the Product; (iii) any use of the Product by you that impacts the security of the MindSphere Platform or causes any loss of data or content of Siemens or any third party; and (iv) your use of the Product for the operation of or within a system that requires enhanced safety functionalities such as fail-safe or fault-tolerant features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage ("High Risk System"), if (a) the functioning of a high risk system depends on the proper functioning of the Product, or (b) a Product caused the high risk system to fail. We will use reasonable efforts to give you prompt written notice of such claim, provided that our failure to provide such notice will not affect your obligations under this Section 5 except to the extent you are materially prejudiced by such failure. We will use reasonable efforts to provide you with information and reasonable assistance (at your expense) to defend or settle the claim provided that Siemens reserves the right to participate in the defense or settlement of the claim at its expense and with counsel of its own choosing, or to take over control the defense and settlement of the claim. You shall not enter into any settlement admitting liability or incurring obligations on behalf of Siemens without Siemens' prior written consent.

## 6 Export Regulations

6.1. If you transfer hardware and/or software and/or technology as well as corresponding documentation and/or works and services, regardless of the mode of provision, and/or including all kinds of technical support provided by Siemens to a third party worldwide, you shall comply with all applicable national and international (re-)export control regulations. In any event you shall comply with the (re-)export control regulations of the Federal Republic of Germany, of the European Union, and of the United States of America.

6.2. If required to conduct export control checks, you, upon request by us, shall promptly provide us with all information pertaining to a particular end customer, destination and intended use of the software provided by us, as well as any export control restrictions existing.

6.3. Indemnification. You shall indemnify and hold harmless Siemens from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by you, and you shall compensate us for all losses and expenses resulting therefrom, unless such non-compliance was not caused by your fault. This provision does not imply a change in the statutory burden of proof.

## 7 General Provisions

7.1. Assignment. This Agreement will extend to and be binding upon the successors, legal representatives and permitted assigns of the Parties. This Agreement as well as the rights granted therein may be assigned by us, in whole or in part, to any of our affiliates that assume our obligations. You shall not assign the Agreement or any of the rights granted therein without our prior written consent.

7.2. Order of Precedence; Applicable Versions. Unless explicitly set out otherwise in this Agreement, if there is a conflict or inconsistency between any documents, the documents shall prevail in the following descending order of precedence: (i) the Order, (ii) the terms and conditions for Third Party Software, (iii) the applicable Data Sheet; (iv) the Terms, and (iv) other documents referenced in these Terms. The reference to a document that refers to another document shall be deemed to include also such other document. If a document is provided in different languages, the English language version of that document prevails.

7.3. Notices. We may provide notice to you under this Agreement by email. Notwithstanding the foregoing, notices of claims or notices regarding disputes shall always be in writing and be sent by facsimile or postal mail to the contract address provided in the respective Order.

7.4. Validity and Enforceability. If any provision of the Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law.

7.5. Publicity. Except as may be required by applicable law, neither Party shall disclose the terms of the Agreement or issue a press release in connection with the subject matter hereof without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, we shall be permitted to name you as our customer on our websites,

in company presentations, customer lists and in other Siemens marketing materials and we and you shall have the limited right to disclose the terms of the Agreement to their bona fide financial, tax and legal advisors subject to appropriate confidentiality obligations.

7.6. Entire Agreement. The Agreement constitutes the full and complete statement of the terms agreed between the Parties with respect to the subject matter thereof and supersede any previous or contemporaneous agreements, understandings or communications, whether written or verbal, relating to its subject matter. The Agreement may not be varied other than in writing executed by the duly authorized representatives of both Parties or via an online mechanism, if so provided explicitly for such purpose by us. No other terms and conditions, shall apply unless explicitly agreed upon in writing in express deviation from the Agreement, even if such standard terms and conditions are included or referenced in orders, order confirmations or other correspondence by you and/or us.

7.7. Independent Contractors. For all purposes, the Parties will be deemed to be independent contractors and nothing contained in the Agreement will be deemed to constitute a joint venture, partnership, employer-employee relationship or other agency relationship. Neither Party is, nor will either Party hold itself out to be, vested with any power or right to contractually bind or act on behalf of the other Party.