

# LMS Software and Hardware

## Product Specific Terms

Siemens Product Lifecycle Management Software Inc., or one of its Siemens Industry Software affiliated companies (collectively referred to herein as “SISW”), has entered into a software license and services agreement with a customer for SISW software, which may have taken the form of a written agreement signed by both parties or a click-wrap or online agreement agreed to by the customer electronically (referred to herein as the “Agreement”). These terms and conditions (the “LMS Amendment”) are specific to LMS software and/or hardware and not to any other software or hardware offered by SISW. These terms are additional to the terms in the Agreement and, to the extent that these terms are in conflict with the terms of the Agreement, these terms will take precedence and supersede the terms of the Agreement with respect to LMS software or hardware.

The additional LMS terms and conditions are as follows:

1. **Definitions.** Capitalized words and phrases used in this LMS Amendment shall have the same meaning as defined in the Agreement unless they are otherwise defined in this LMS Amendment.
2. **Incorporation by Reference.** The terms and conditions of Sections 1 and 4 of the Agreement are hereby incorporated by reference into this LMS Amendment and shall apply to purchases of LMS software licenses, LMS software maintenance services and LMS hardware with such changes as required, mutatis mutandis, to apply specifically to hardware purchases. For LMS software licenses and LMS software maintenance services, the terms and conditions of Sections 2 and 3 of the Agreement are hereby also incorporated by reference into this LMS Amendment and shall apply. If the terms of this LMS Amendment conflict with the terms of the Agreement, the terms of this LMS Amendment shall take precedence and shall supersede any conflicting terms in the Agreement.
3. **Software License Types.** The Agreement is hereby amended to add the following license types which are available with respect to LMS software only:
  - 3.1 **“PLC”** means primary license charge and it signifies the initial fee to be paid at the beginning of a combined PLC/ALC subscription license for the LMS software. PLC covers the license to the LMS software and the maintenance and support services for the software during the initial year of the subscription license, to be followed by the annual payment of an ALC fee.
  - 3.2 **“ALC”** means an annual license charge which, in combination with the PLC, signifies the fee to be paid on a yearly basis following the first year of a combined PLC/ALC subscription license for the LMS software. ALC covers (i) the right to use the LMS software for the applicable annual period, and (ii) the maintenance and support services during that annual period, as a continuation of a PLC fee. The Customer may renew the subscription license indefinitely by ordering ALC and paying the ALC fee in yearly increments. If the Customer fails to order ALC prior to the expiration of any annual subscription term, such as PLC, the license to the LMS software terminates.
  - 3.3 **“Floating”** license means that access to the Software at any given moment will be limited to the maximum number of concurrent users for whom such licenses have been validly acquired under the Agreement and that use of the Software under such licenses is further restricted to a group of users that: (i) are part of the same functional team, and (ii) are geographically located on the same premises or site of the Customer for which the license was purchased, as designated on the LSDA for the purchase of such license(s).
  - 3.4 **“Rental”** means a one-time fee to be paid, covering (i) the right to use the LMS software for a limited period of time of between 3 and 10 months, and (ii) the maintenance and support services for the LMS software during that period of time. The license to the LMS software terminates at the end of the rental period.
  - 3.5 **“YLC”** means a yearly license charge and it is applicable to the fee to be paid on a yearly basis with respect to a subscription type of license that covers (i) the right to use the LMS software for one year, and (ii) the maintenance and support services related to the LMS software. If the subscription is not renewed at the end of the annual subscription period, the license to the LMS software terminates.
4. **Hardware Terms.** The following LMS Hardware and Hardware Maintenance Terms and Conditions shall apply to sales of LMS Hardware and related Support Services.

- 4.1 Scope. Under the terms contained in this LMS Amendment, the Customer may purchase and SISW may sell LMS hardware products including equipment, devices, accessories, parts and all related documentation (the “Hardware”) and standardized support related thereto.
- 4.2 Orders and Delivery. All Customer orders for Hardware and Hardware related standardized support are subject to the terms contained in the Agreement as amended by this LMS Amendment. All such orders are subject to acceptance by SISW and shall be placed on one or more LSDA’s which incorporate the Agreement, as amended herein, by reference. Unless agreed otherwise in the relevant LSDA, all Hardware will be made available to Customer “FCA (SISW’s premises in Leuven, Belgium)” (Incoterms 2010). Making the Hardware available to Customer in accordance with the delivery terms specified in this Section will constitute “Delivery” for the purpose of the Agreement, even if SISW is involved in any transport arrangements for any Hardware after such Delivery. In case a Customer places an order for LMS Software and Hardware on the same LSDA and notwithstanding any other provision of this Agreement, the delivery terms described in this Section shall prevail for that entire combined order, unless expressly agreed otherwise in that LSDA.
- 4.3 Risk and Transfer of Title. Risk of loss and/or damage shall pass to the Customer upon Delivery. Title to the Hardware shall be transferred to the Customer after payment in full has been received by SISW.

4.4 Warranty.

- (a) Hardware Warranty Period. For Hardware marketed or branded under the name “LMS” (the “LMS Hardware”), SISW offers a product warranty for a period commencing on the date of Delivery to the Customer and ending twelve (12) months after the first day of the month following shipment of the LMS Hardware to the Customer (the “Warranty Period”) in conformity with the warranty scope defined under Section 4(b) below.
- (b) Scope. During the Warranty Period, SISW makes the following express warranties: (i) that the LMS Hardware is free from defects in workmanship and materials under normal use; (ii) that the LMS Hardware materially conforms to the specifications set out in the SISW fact sheet for the LMS Hardware which is in effect at the time of delivery; (iii) that upon a written notice of a valid warranty claim, SISW will at its sole option repair or replace the LMS Hardware product at no additional charge.

The foregoing shall be SISW’s sole and exclusive liability for LMS Hardware warranty claims.

All SISW’s product and service fact sheets can be found on the SISW website and a copy can at all times be requested from SISW.

- (c) Third Party Hardware Warranty. Hardware manufactured, marketed or branded by a third party (i.e. any Hardware that is not LMS Hardware), is delivered “as is” and is covered by the warranty offered by the manufacturer or the related third party vendor, if any.
- (d) No Correction Extension. Defect correction periods do not extend the Warranty Period.
- (e) Warranty Exclusions. The warranty will however not apply for defects resulting from: (i) improper use, installation misuse, improper site preparation, site or environmental conditions that do not conform to SISW’s site specifications (if any), (ii) Customer or third party supplied software, interfacing or supplies, (iii) non-compliance with the SISW specifications and instructions, (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, modifications, enhancements, repairs or unauthorized alterations made by anyone other than SISW or its authorized representatives, (vi) water damage, fire or other hazard.
- (f) EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, SISW DISCLAIMS ALL WARRANTIES IN CONNECTION WITH THE HARDWARE PRODUCTS FURNISHED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITY ON THE PART OF SISW FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE HARDWARE PRODUCTS. THIS SECTION 4.4 STATES SISW’S SOLE AND EXCLUSIVE LIABILITY FOR HARDWARE PRODUCT WARRANTY CLAIMS.

- 4.5 Intellectual Property Rights. Neither Party shall grant any copyrights, patents, trademarks, trade secrets, or other intellectual property rights or rights to use confidential or proprietary information to the other party under this LMS Amendment, unless specifically agreed otherwise.

Under the terms of this LMS Amendment, SISW grants Customer a non-exclusive, non-transferable license to use the firmware incorporated in the Hardware (hereinafter the “Firmware”) for the operation of the Hardware. Any other use of the Firmware shall automatically terminate this license. Customer is not allowed to decompile, change or modify the Firmware or derive other programs from the Firmware. Neither is Customer allowed to modify or delete property rights, copyrights or marks on

the Firmware. The Firmware may only be used in connection with the Hardware in which it is incorporated. The software license and software maintenance terms contained in other parts of this Agreement shall not apply to Firmware.

#### 4.6 Post-warranty Support Packages for LMS Hardware.

- (a) Hardware Support. SISW provides three specific types of standard support packages related to LMS Hardware: (i) the calibration service package (“Calibration”), (ii) the maintenance and support service package (“Maintenance”), and (iii) hardware repairs (“Repair”). Collectively, Calibration and Maintenance are referred to herein as the “Hardware Support”.

Hardware Support will be provided in accordance with the terms of this LMS Amendment to those customers who have purchased such support packages under this Agreement for the applicable Hardware. Hardware Support is, and will continue to be, available under this Agreement only to the extent that these support packages are made available by SISW with respect to the Hardware, or any portion of the Hardware, to its customer base in general.

- (b) Scope of Hardware Support. Customer may purchase Hardware Support for selected Hardware products only. The relevant fact sheet will specify which Hardware Support package is available for that Hardware product (if any) and provide details for the scope of such Hardware Support.

- (c) Special Conditions for Hardware Support:

(i) Calibration and/or Maintenance packages should be ordered prior to the end of the Warranty Period of the LMS Hardware. In the event that Calibration and/or the Maintenance are ordered after the expiration of the Warranty Period, SISW reserves the right to perform a system check and make a price-offer for repair before the Customer can purchase Calibration and/or Maintenance packages.

(ii) Provided such support packages are made available for a particular LMS Hardware product as specified in the applicable fact sheet, SISW guarantees the availability of Hardware Support for at least 5 years after the officially announced last production date of the applicable LMS Hardware product.

(iii) The Maintenance package does not cover Hardware which has been modified, altered or serviced by anyone other than SISW or its authorized representatives, nor cases where the Hardware has been damaged by misuse, abuse of any kind, misapplication or accident, or any other cases for which warranty has been excluded as specified under Section 4 of this LMS Amendment.

(iv) Upgrades of modules are not included in any Hardware Support package and are always charged separately. A module is considered upgraded when after the (re)delivery of the relevant Hardware product to the Customer it carries a new product identification number that corresponds to a different entry on the SISW pricelist. Such upgrades are only performed upon an express order made by Customer.

(v) Hardware Support is by default performed in one of SISW’s regional offices (decided at the discretion of SISW). Each party will bear the costs related to shipping the relevant Hardware to the other party’s relevant address for the performance of the Hardware Support. If an on-site visit is requested by Customer, Customer agrees to bear the travel expenses for lodging, travel time and transportation for such on-site visit.

- (d) Repairs. If a defect of LMS 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 3.4 of this LMS Amendment nor by a Maintenance package ordered for that Hardware product, Customer may request SISW to attempt to repair such defect. However, SISW does not represent or warrant that all such defects can or will be repaired. For such repairs and repair attempts, Customer agrees to pay for SISW’s services at SISW’s then-current rates plus any reasonable out-of-pocket expenses. Any repaired LMS Hardware is covered by a new warranty on the repaired parts or modules in accordance with the terms and conditions of Section 3.4 of this LMS Amendment for a period of 3 months commencing on the first day of the month following return shipment of the repaired Hardware to the Customer.

- (e) Warranty. SISW represents and warrants that the Hardware Support will be performed in a professional and workmanlike manner. EXCEPT AS PROVIDED HEREIN, SISW MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- (f) Fees – Payments. The Hardware Support fee will be payable each year in advance. For the first year, the fee will be payable upon the effective date specified in the LSDA. Thereafter, the applicable fee will be payable on the anniversary of the effective date. If the Customer fails to pay any amount due for Hardware Support on the due date, SISW will be entitled to suspend the performance of the Hardware Support and cancel any outstanding supply of Hardware Support.

- (g) Term and Termination. The term for providing the Hardware Support will enter into force on the effective date specified in an LSDA to remain in effect for a period of one (1) year, or such longer period of time as agreed by the parties in an LSDA. Hardware Support purchased by Customer can only be terminated in accordance with the termination provision contained in the Agreement. Termination shall not affect the rights of the parties which have accrued prior to termination.

Upon expiration or termination of Hardware Support for any reason, Sections 4.6(e), 4.6(f) and 4.6(g) shall remain in full force and effect.

(h) Subcontracting – Assignment. SISW will be entitled to subcontract some or all of its obligations to provide Hardware Support to a third party, who will have the same rights and obligations as SISW has hereunder.

4.7 Limitation of Liability and Indemnification. In addition to the limitation of liability provisions contained in the Agreement, the following shall apply with regard to the Hardware and Hardware Support:

- (a) SISW 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 Hardware Support provided by SISW; (ii) any loss or damage caused by Hardware which has been modified or maintained by other parties than SISW; (iii) any loss or damage caused by data generated by the Hardware or the use thereof.
- (b) The Customer will indemnify and hold SISW harmless from any and all claims, demands, losses (financial or otherwise), damages, liabilities, costs, fees, 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 Support were performed if such manner results from instructions of the Customer or its authorized representative.

The provisions of this Section will survive the expiration or termination of the Agreement and this LMS Amendment for any reason.