

XHQ Software

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 “XHQ Amendment”) are specific to XHQ software (“XHQ Software”) and not to any other software 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 XHQ Software. Sections and topics not mentioned in this XHQ Amendment shall apply as set forth in the Agreement.

1. **Definitions.** The following definitions are specific to XHQ Software and not to any other Software provided under the Agreement.

- a) “**Documentation.**” The XHQ Documentation is available in English. It may only be used in conjunction with the installation and use of the XHQ Software. It is provided in digital format with the XHQ Software. Documentation in paper format may be purchased separately.
- b) For the avoidance of doubt, “internal business activities of Customer” shall not include processing personal data (whether on an outsourcing, service bureau, or other basis) except data supplied by Customer’s customers or suppliers which is necessary for Customer’s internal business purposes.

2. **License Types.** The special License Types available for the XHQ Software are defined further in this Section. For avoidance of doubt, License types defined in the Agreement, but not explicitly mentioned in this Section, remain applicable. Unless otherwise specified, the Customer may install the XHQ licensed server Software on one (1) hardware device per license. The XHQ Software consists of one or more XHQ Basic modules as a prerequisite for the usage of any required number and/or combination of additional modules, except for defined XHQ standalone packages which already includes Basic and specified module functionalities. The type of XHQ module licenses needs to be consistent with the XHQ basic license type as defined further below in this Section. Therefore to use a “Floating” module, the respective user also needs a “Floating” XHQ Basic license. To use a “Named User” module license, the respective user also needs a “Named User” XHQ Basic license.

- a) “**Named User License**” means that this XHQ Software license may only be used by one Named User. Apart from Authorized Users, a Named User may also be a computer system as well as all instances of indirect access to the Software which can, for example, occur via computer system interconnections acting as Named Users of the Licensed Software and interfacing between the Software and other Customer systems. For example, multiplexing or redistributing data from the Software via an intermediary system does not avoid the need to license all individual users or computer systems that access the data from the intermediary system as Named Users. The use of the Multi-Site (Tiered Connector) delivered with XHQ does not count as indirect access for the purposes of this definition. The specified name of the Authorized User may be changed at additional cost (“Rename Counter Fee”). The basic license can be freely used by the user in the Customer’s network and within the domain in which the license server is located. The XHQ Basic module (“Basic XHQ Software package”) is always a Named User License. If the Customer wishes a different user to be the owner of this Named User License, a Rename Counter Fee is to be paid to SISW.
- b) “**Floating License**” means that any user with a License for the XHQ Basic module can use another, non-basic module at the user’s workstation if this module is available on the license server. As soon as a user exits the XHQ Software entirely, all module licenses that the user has been using are released by the license server and the module licenses are then available to other users with a valid License for a XHQ Basic module. Authorized Agents may use the XHQ Software as other Authorized Users according to the License Type models described below but only if they have a business relationship with Customer that requires access to or use of the XHQ Software in connection with the internal business activities of Customer. The general restriction not to use the Software outside of the Customer’s premises does not apply. A Floating License can consist of one of the following four types:
 - (1) “**Site Floating License.**” The use of a Site Floating License is restricted to one site for which the license was issued. A site is defined as a specific fixed location, limited to local area network usage, ideally suited for example to a manufacturing site or refinery location.
 - (2) “**Country Floating License**” is restricted to use of a Floating License in the country in which the software is initially installed as identified in an LSDA, in the Customer’s network and within the domain in which the license server is located.
 - (3) “**Zone Floating License**” is restricted to one Time Zone, as defined below in this Section, covering more than one Territory, which must be specified in an LSDA when the order is initially placed. For this purpose, Time Zones are defined as (a) North and South America, or (2) Europe, the Middle East and Africa, or (3) Asia Pacific. Within a particular Time Zone, the basic license and additional modules can be used as a Floating License in the Customer’s network and within the domain in which the license server is located subject to compliance with

applicable export laws and regulations. In case different legal entities of the Customer shall be allowed to use the respective licenses, this requires the conclusion of a Global Software License Agreement (GSLA).

(4) “Global Floating License.” This license can be freely floated across all Time Zones, covering all potential Territories, subject to compliance with applicable export laws and regulations. In case different legal entities of the Customer shall be allowed to use the respective licenses, this requires the conclusion of a Global Software License Agreement (GSLA).

c) “Per Server” licenses may be physically transferred by the Customer to another Server up to three (3) times per calendar year at no charge provided Customer provides reasonable written notice and continues to comply with the other terms and conditions of this XHQ Amendment. Unless explicitly regulated in an LSDA or a comparable document (additional licensing required), the hardware configuration of each XHQ server, production or non-production, cannot exceed a dual physical CPU Intel-class server and a virtual server cannot be used.

3. Warranty and Disclaimers. In addition to the disclaimers contained in the Agreement, the following shall apply:

a) No part of the Software is designed, manufactured or intended for use or resale as a part of on-line control equipment or in hazardous environments requiring fail-safe performance, such as online control of aircraft, air traffic, aircraft navigation or aircraft communications, or in the design, construction, operation or maintenance of any nuclear facility, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). LICENSOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. Customer warrants that they will not use the Software for High Risk Activities.

b) SISW does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the Software, the Documentation or any other written materials in terms of accuracy, reliability, currency, or otherwise. No liability is assumed for damage incurred directly or indirectly from errors, omissions, or discrepancies between the Software and the Documentation. The entire risk as to the results and performance of the Software is assumed by Customer.

4. Other Licensing Issues.

a) Delivered hardware such as a dongle remains the property of SISW if not agreed otherwise in writing.

b) The Customer shall update the XHQ Software in accordance with the installation rules specified in the documentation which is delivered with the XHQ Software. Notices contained in the Documentation, or provided separately by SISW, concerning discontinuance of support for older versions of the XHQ Software shall be binding on the Customer.

c) Lost or Damaged Protection Devices. New protection devices for existing licenses can only be delivered to the Customer upon return of the damaged protection device (e.g. a dongle). In case the protection device is lost, new licenses must be purchased by the Customer. If the Customer provides adequate assurance in writing to SISW explaining why it should not be held accountable for the loss, SISW will have the option to charge the Customer only the value of the protection device. If the Customer subsequently recovers the lost dongle, the Customer shall return it to SISW without undue delay.

d) Database Software. The Software may include embedded database software ("Database Software"). Usage of the Database Software is exclusively restricted to its use with the Software. Customer is prohibited from, among other activities, any of the following:

(1) timesharing, service bureau, subscription service, or rental use of the Database Software;

(2) title to or usage of the Database Software being passed to any other person;

(3) direct usage of the Database Software except as part of the solution using the Software;

(4) installation, usage, or running the Database Software on any computer system upon which the Software is not installed. The Database Software may be used only in conjunction with the Software; and

(5) distribution or other dissemination of the Database Software.

e) Existing License Agreements. Use of the Software may require modifications to certain existing Customer license agreements with other vendors. It is the sole responsibility of Customer to comply with such agreements. Customer is responsible for obtaining any supporting software required for use of the Software, including any operating system software, database software, or third party applications software and for the interoperability between the supporting software and the Software.

5. Software Maintenance Terms and Conditions.

a) Software Maintenance Services. In addition to the Software maintenance services mentioned in the Agreement, the Maintenance Services for XHQ Software also comprises the replacement of hardware delivered by SISW, e.g. a dongle. Software maintenance services do not include services for customizations of the XHQ Software.

- b) New Releases. XHQ Software consists of major and minor versions, service packs and releases. The first digit represents the number of the major version. The second digit (behind the point) represents the minor version. Both, major and minor version may contain extended functionality and may contain bug fixes. A “Release” consists of a combined number of service packs (mainly bug fixes) and is represented by a digit behind a second point (e.g. 8.2.4 in which 8 = the major version, 2 = the minor version, and 4 = the Release number).
- c) Maintenance for Prior Versions. With respect to XHQ Software, the most currently released version and the two preceding minor versions will be supported.
- d) Error Correction. Precondition for Error Correction as described in the Agreement is that the reported incompliance to the documentation is reproducible in a neutral XHQ system environment, meaning a pre-installed XHQ system environment including third party software as described in the Documentation.
- e) Telephone Support. In addition to the Telephone Support as described in the Agreement a Call Center is available 24 hours a day, 5 days a week for bug-reporting and registration purposes. Information about XHQ Software hotline support hours is provided under the following link:
http://www.plm.automation.siemens.com/en_us/support/gtac/index.shtml.
- f) Initial and Renewal Fees. The maintenance fee for XHQ Software is payable in annual increments at the beginning of every calendar year in advance. For the year in which the license is purchased and maintenance services commence the maintenance fee will be pro-rated to cover the period of time from the commencement of the services until December 31st of that year.
- g) Exclusions. The following issues are not covered by, or included in, the XHQ Software maintenance services:
- (1) Improper Use. Any problem resulting from the misuse, improper use, unauthorized alteration, or damage of the Software or use of the Software that deviates from any operating procedures established by SISW in the applicable Documentation; or
 - (2) Unauthorized Modifications. Any problem caused by modifications, alteration or addition or attempted modification, alteration or addition in any version of the Software not made or authorized in writing by SISW; or
 - (3) Unapproved Software or Hardware. Any problem resulting from the combination of the Software with Customer hardware, software or equipment after initial installation of the Software to the extent such combination has not been approved in the Documentation or in writing by SISW; or
 - (4) Accident. Unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media; operation of the Software with other media not meeting or not maintained in accordance with the manufacturer's specifications; or causes other than ordinary use; or
 - (5) Failure of Customer to meet its obligations under the Agreement and this XHQ Amendment.