

MARKETPLACE TERMS OF USE

Siemens Digital Industries Software

These terms (“**Marketplace Terms**”) govern use of the [Siemens Digital Exchange marketplace](#) (including any online store hosted thereon) for access to or purchase of certain products and services (“**Marketplace**”). By placing an order (“**Order**”) for an Offering (as defined below), or accessing or using the Marketplace, the relevant person or entity (“**User**”) indicates assent to be bound by these Marketplace Terms, which form a binding agreement between User and Siemens Industry Software Inc. 5800 Granite Pkwy Ste 600, Plano, TX, 75024-6612, US. If User does not agree to these Marketplace Terms, User must not place an Order or use or access the Marketplace. These terms are in addition to the general [terms of use](#) governing access and use of the Siemens.com website, which also apply to the extent they do not conflict with these Marketplace Terms.

1. OFFERINGS; OWNERSHIP; MAINTENANCE AND SUPPORT

- 1.1 **Types of Offerings.** The Marketplace may list products or services (“**Offerings**”) sold, licensed or access to which is granted by Siemens Industry Software Inc. or its affiliates (“**SISW**”), as well as Offerings from various third-party sellers (each such selling party, a “**Seller**”). Where SISW is the Seller, Offerings are “**SISW Offerings**”, and where a third-party is the Seller, they are “**Third-Party Offerings**”.
- 1.2 **Terms Governing Use of SISW Offerings.** Use of a SISW Offering is governed by the applicable SISW agreement document(s), links to which are provided on the Offering’s listing page and/or through the Order process on the Marketplace (“**SISW Terms**”). In the event of a conflict between these Marketplace Terms and the SISW Terms, the SISW Terms will control as to each party’s rights and responsibilities related to the SISW Offering itself, while these Marketplace Terms will control as to the Marketplace.
- 1.3 **Terms Governing Use of Third-Party Offerings. Use of a Third-Party Offering is governed by the terms and conditions provided by the third-party Seller (“Third-Party Terms”), not the SISW Terms. By ordering, installing or enabling a Third-Party Offering, User is entering into the Third-Party Terms directly with the third-party Seller.** User acknowledges that (i) SISW is not a party to, or responsible for compliance with, the Third-Party Terms, (ii) SISW does not guarantee any Third-Party Terms are adequate for User’s needs, (iii) SISW is under no obligation to test, validate, or otherwise review the Third-Party Offering, (iv) SISW does not assume any obligation or responsibility with regard to the use of the Third-Party Offering, its support or any other related services or products, whether or not they are designated by SISW as “certified” or otherwise.
- 1.4 **Ownership.** Except for the rights explicitly granted to a User in these Marketplace Terms, all right, title and interest (including intellectual property rights) in the Marketplace are reserved by SISW, and all right, title and interest (including intellectual property rights) in the Offerings are reserved and retained by their respective Seller (whether SISW or a third-party) and its licensors. Unless expressly stated in the applicable Order, Offerings are provided on a license or subscription basis, not sold, and User does not acquire any ownership rights in the Marketplace or the Offerings.
- 1.5 **Maintenance and Support.** Maintenance and support of SISW Offerings will be pursuant to the applicable SISW Terms. Any maintenance and support of Third-Party Offerings will be provided by the applicable Seller and only to the extent described in the applicable Third-Party Terms. SISW is not responsible for any maintenance and support for Third-Party Offerings, and a third-party Seller’s failure to provide any support or maintenance does not entitle User to any refund from SISW.

2. USER ACCOUNTS

- 2.1 **Creation of User Account.** In order to make purchases via the Marketplace, Users must create an account through the Marketplace (“**User Account**”). User is responsible for keeping User Account information accurate, current, and complete.
- 2.2 **Confidentiality and Security of User Account.** User is solely responsible for maintaining the confidentiality of the User Account (including access credentials provided thereto) and the information in the User Account, and, except as otherwise required by applicable law, User is solely responsible for all use of the User Account, whether or not authorized by User. User agrees to immediately notify SISW of any unauthorized use of the User Account or any other breach of security related to use of the Marketplace.

3. **ORDERS; PAYMENT TERMS; ELECTRONIC INVOICES**

- 3.1 **Orders.** The order confirmation for each purchase made via the Marketplace will confirm the identity of the Seller, the Offering(s) purchased, license and/or subscription term, quantity, and access credentials/download instructions, as applicable.
- 3.2 **Request Quote Option.** Certain Offerings permit User the option to request a quote from the applicable Seller in lieu of placing an Order via the Marketplace. Where User selects the Request Quote option, all transactions will be concluded outside the Marketplace in accordance with applicable Seller's terms provided to User along with the quote.
- 3.3 **Payment Terms for Orders via the Marketplace.**
- 3.3.1 **Credit Card Payment Option.** Notwithstanding anything to the contrary in any SISW Terms or other governing terms for an Offering, where Offerings are available via a credit card payment option, User must pay the applicable fees in advance (unless otherwise stated in the Order), at the time of purchase via the Marketplace. SISW may use certain third-party vendors and service providers to process payments and manage credit card information.
- 3.3.1.1 **Authorization.** By entering credit card information, User: (i) is stating that User is an authorized user of the credit card and that the associated information entered (account holder name, account number, billing address, etc.) is accurate; (ii) authorizes SISW to charge the full amount due for the SISW Offering(s) to the credit card; (iii) authorizes SISW to charge the amount due, if User authorizes automatic payments, for renewals of a subscription for the SISW Offering to the credit card; and (iv) authorizes SISW to return to the credit card any funds due to User by SISW resulting from any purchase of SISW Offerings made using a credit card.
- 3.3.1.2 **Incomplete Payments.** SISW is not liable for any payments that are dishonored/not completed by User's credit card issuer due to insufficient funds or credit limit, incorrect credit card information provided by User, expiration of the credit card, or other circumstances beyond SISW's control. To the extent any amounts owed cannot be collected from the credit card provided by User, SISW has the right to charge the amount of any such transaction to User's account (if any), or to otherwise collect the amounts due from User, or terminate the related Order.
- 3.3.2 **Purchase on Account Option.** Where User has an existing account with SISW, User may be allowed to purchase SISW Offerings on such account. User must enter a valid PayerID and Purchase Order number to use this option, and the payment terms contained in the agreement between SISW and User shall apply.
- 3.4 **Electronic Invoices.** User hereby consents to receiving invoices from SISW in electronic form.

4. **DISCLAIMER; LIMITATION OF LIABILITY; INDEMNIFICATION**

- 4.1 **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, SISW OFFERS THE MARKETPLACE AND ALL THIRD-PARTY OFFERINGS "AS IS" AND "AS AVAILABLE", AND SISW HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE MARKETPLACE OR THESE MARKETPLACE TERMS. USER MAY HAVE OTHER STATUTORY RIGHTS, IN WHICH CASE THE DURATION OF ANY STATUTORY WARRANTIES WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. SISW DOES NOT WARRANT THAT (A) ALL REPORTED ERRORS WILL BE CORRECTED, (B) THE MARKETPLACE WILL BE UNINTERRUPTED, TIMELY, ERROR FREE, FAIL-SAFE, FAULT-TOLERANT OR FREE OF HARMFUL COMPONENTS, OR (C) THAT DATA LOSS WILL NOT OCCUR.
- 4.2 **Limitation of Liability.** To the maximum extent permitted by law, in no event will SISW be liable for any direct, indirect, consequential, special, exemplary, punitive or other liability related to the Marketplace or any Third-Party Offerings, including for any loss of use, lost or inaccurate data, failure of security mechanisms, interruption of business or costs of delay. If the foregoing disclaimer of direct damages is not enforceable at law for any reason, in no event will SISW's aggregate liability to a User under these Marketplace Terms exceed \$1,000.00 USD.
- 4.3 **Indemnification.** User will indemnify, defend and hold harmless SISW and its suppliers and contractors and each of their respective employees, officers, directors, and representatives from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable attorney's fees) arising out of (i) User's

violation of these Marketplace Terms, or (ii) any violation of laws or rights of others by User's use of the Marketplace. User may not settle any such claim without SISW's prior written consent.

5. **GENERAL**

5.1 **Feedback.** If User provides any ideas regarding the Marketplace, including suggestions for changes or enhancements (collectively "**Feedback**"), Feedback may be used by SISW without condition or restriction.

5.2 **Data Processing.** SISW's personal data processing activities and data subject rights in connection with Users' personal data and the Marketplace can be found under: <https://www.plm.automation.siemens.com/global/en/legal/privacy-policy.html> ("**Privacy Policy**"). The Privacy Policy shall not form part of these Marketplace Terms, but Users are highly recommended to become familiar with SISW's processing practices. SISW is not responsible for third-parties' processing activities and implemented security measures in connection with User's use of any Third-Party Offering.

5.3 **Termination/Discontinuation of Marketplace and Removal of Offerings.** SISW may change, limit, suspend, or terminate the availability of the Marketplace at any time. SISW may also remove an Offering from the Marketplace at any time in accordance with its applicable policies, or update these Marketplace Terms, and Sellers may also update, modify or remove their own Offerings at any time. If User does not accept the changes to the Marketplace Terms, User should cease use of the Marketplace.

5.4 **Governing Law and Jurisdiction.** These Marketplace Terms shall be subject to the applicable laws of the State of Delaware, United States. Any dispute arising out of or in connection with these Marketplace Terms shall be subject to the jurisdiction of the courts of the State of Delaware, United States. Each party hereby irrevocably submits itself to the personal jurisdiction of the relevant court of the State of Delaware for any such disputes. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Marketplace Terms. Nothing in this Section shall restrict the right of the parties to seek interim relief intended to preserve the status quo or interim measures in any court of competent jurisdiction. Notwithstanding the foregoing, to the extent permissible under applicable laws and to the extent it would not result in the invalidity or inapplicability of this Section, it is agreed that SISW, at its sole discretion, may bring an action in the courts of the jurisdiction(s) where the Marketplace is being used or User has its place of business, (i) to enforce its intellectual property rights; or (ii) for the payment of fees.