

Schneider Electric Canada Inc. General Terms of Sale

I - Generalities

These General Terms of Sale shall govern any offer made by Schneider Electric Canada Inc. (the "Seller"), and any sales agreements entered into by the Seller with any buyer (the "Buyer"). Any sale by the Seller is expressly subject to Buyer's full assent to the terms and conditions stated below and waiver of Buyer's general purchase conditions, which assent and waiver shall be deemed to have been given in any order placed with the Seller.

II – Purpose and scope of tenders

2.1 Unless the Seller were to issue a specific tender, the applicable prices are those appearing in the Seller's price lists in force on the date when the order is placed.

When the Seller has issued a tender, the prices and terms and conditions of this tender relate exclusively to the products (specifications and quantities) which are specified therein and they remain valid for one month, unless there are express stipulations to the contrary.

2.2 The Seller reserves the right to make any changes at any time, in particular in respect of the format, shape, colour, dimensions or materials, to the products the representations, descriptions and specifications of which are set forth in its catalogues and prospectuses.

III – Concluding sales

The sale shall be considered final only after the express and unconditional acceptance of the order by the Seller. Any changes to this contract must also be expressly accepted by the Seller to be valid.

IV – Intellectual property and confidentiality

4.1 Under no circumstances is the Seller bound to provide its manufacturing and product-implementation plans, even if the products are delivered with an installation diagram. The designs, documents and codes forwarded to the Buyer, if any, shall remain Seller's sole property and are strictly confidential.

4.2 The technology and know-how, whether patented or not, which is incorporated into the products and all the industrial and intellectual property rights related to the products are, and shall remain, the exclusive property of the Seller, and any information pertaining thereto shall be considered by the Buyer as being strictly confidential, including the information set forth in the drawings and documents which may be provided to it.

Consequently, the Buyer undertakes not to communicate said information, whether willingly or not, to any third party and further undertakes to only use it for the products' operating and maintenance requirements.

Any right to manufacture spare parts, or to have such manufactured, is hereby excluded.

The terms and conditions for using software and databases are set forth in the licences which accompany them.

However, regarding third party's technology, such as software, embodied in the products (hereafter « the Program »), the Buyer is granted a non-exclusive and permanent right to use the Program for the sole purpose of using the products for the use for which they are intended.

The Buyer undertakes to comply with the terms of the offer and in particular with the instructions for use of the Program or Seller's technology contained in any furnished documentation as the case may be.

Consequently, the Buyer undertakes not to copy, reproduce, decompile, reverse engineer, disassemble or otherwise seek to reconstitute the source-code of the Program or of Seller's technology. Should the Buyer not fully comply with the above provisions, the Buyer shall bear all and any consequences, including any damages whatsoever, resulting therefrom.

V - Prices – Terms of payment - Taxes

5.1 The prices are expressed exclusive of taxes, whether payable in Canada, or in the country of delivery of the products.

The conditions and terms of payment are specified in the offer/sale agreement. Otherwise, the products and/or services are fully payable upon delivery and/or acceptance, within 30 days of the invoice issue date and payment shall be made in Canada, free of any charge for the Seller, in Canadian Dollars through a letter of credit confirmed by a bank acceptable to the Seller. The Buyer shall obtain Seller's acceptance of the terms of the L/C and of the confirming bank before issuance.

Schneider Electric Canada Inc.

Legal information
A Canadian CBCA incorporated company
Tel: (905) 366-3999

GST/HST no.:
Registered Office: 5985 McLaughlin Road, Mississauga, Ontario L5R 1B8
<http://www.schneider-electric.ca>

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Owing to the management costs borne by the Seller, a minimum invoicing amount of CAD \$200 shall apply to all sales.

5.2 In case of any delayed payment, the Seller shall have the right to claim from the Buyer payment of an interest calculated at a rate equal to the prime rate one month of the applicable currency of payment plus 3%, which prime rate shall be the last rate in effect as published by the Central Bank of the currency of payment on the due date. Interest shall accrue on a day to day basis from the due date to the date of actual payment and shall be equal at least to 1.5% per month of delay.

5.3 Failure to pay an instalment on the due date shall automatically cause all amounts owed by the defaulting Buyer to become payable, even if they have fully or partly led to the creation of bills of exchange or the receipt of promissory notes. Moreover, the Seller reserves the right to suspend meeting its own obligations until full payment of the payable amounts.

5.4 Should the delay in payment exceed 30 days, the Seller may cancel the sale for reasons attributable to the Buyer and at Buyer's costs, eight days after having sent formal notice which remains ineffective.

5.5 The foregoing provisions shall apply without prejudice to any and all damages which may be claimed by the Seller.

VI – Delivery – Shipping

6.1 Unless provided for to the contrary, deliveries are deemed as having been made once the products are made available in the Seller's plants or warehouses (Ex-works, ICC Incoterm in force on the date of the order).

6.2 If the Buyer does not take possession of the products on the scheduled delivery date, the Seller may automatically cancel the sale without formal notice and without prejudice to any and all damages to which the Seller shall be entitled. Should the Seller not exercise this right, the Buyer shall settle the products' handling and warehousing expenses until it takes possession thereof.

VII – Delivery Periods – Liquidated damages

7.1 Delivery periods are provided as an indication unless the Seller were to expressly accept firm deadlines.

7.2 The delivery periods begin to run as from the last of the following dates: (i) the Seller's unreserved acceptance of the order; (ii) the Seller's receipt of certain information which the Buyer is responsible for providing and which meeting the order is dependent on; (iii) receipt of the down payment which the Buyer undertakes to pay to it, in accordance with the terms of the sales agreement, or in case the price for the products is to be paid by L/C, on the date on which an L/C acceptable to the Seller is notified, and confirmed as the case may be, to the Seller.

Absent any specific period set forth in the offer/sales agreement, if the conditions precedent to the coming into force of the sales agreement have not been fulfilled within six (6) months from its conclusion, said sales agreement shall be null and void and the Seller and the Buyer hereby waive any claim for damages whatsoever in relation thereto.

7.3 The Seller is automatically discharged from any commitment relating to delivery periods in the event of force majeure or events occurring in the Seller's premises or in those of its suppliers which may disrupt the organisation or business activity of the company such as, for example, lock-outs, strikes, war, embargos, fire, flood, machinery accident, scraping parts in the process of being manufactured, interruption or delay in transportation or the procurement of raw materials, energy or components, or any other event outside the control of the Seller or its suppliers.

7.4 In the event of a delay in delivery, when a firm deadline has been accepted and in the absence of provisions to the contrary, the Seller shall be liable to the Buyer for discharging liquidated damages of zero point five (0.5) % of the ex-works price of the products for which the delivery is delayed for each full week of delay following a one-week grace period, it being hereby stipulated that this liquidated damages shall not, in all cases, exceed five (5) % of the amount of this price. The aforesaid liquidated damages shall constitute the sole remedy of the Buyer in the event of delays.

VIII – Reservation of title

8.1 The Seller retains ownership of the products, as defined in the offer/sales agreement, until full payment of the whole price (principal amounts and incidentals) of said products.

8.2 If the products have been processed or incorporated in other equipments, the Seller shall own a lien on the processed products or on the equipments into which products have been incorporated until full payment

of the price. The Buyer undertakes to mention the existence of this reservation of title to third parties to whom/which it may sell the products either "as is" or incorporated in a system.

8.3 Should products be returned under this Article, any down payments received by the Seller shall be acquired by it, without prejudice to any and all damages which the latter may claim.

8.4 As from delivery, the Buyer assumes all the risks relating to the possession, custodianship and/or use of the products as per the applicable Incoterm, and shall from said date be liable for any damages caused by the products.

IX – Packaging

The prices set forth in the offer are understood as being for Seller's standard packaging. Any request from the Buyer for packing modification other than that which the Seller usually uses shall be charged to the Buyer. Under no circumstances shall the Seller take-back packaging.

X – Carriage – Customs

Unless provided for to the contrary in the offer, the products are sold ex-works (refer to Article 6.1). Consequently, the Customer is responsible for carriage, insurance and/or customs' clearance, if any.

XI – Environmental regulations

11.1 Removal & disposal of product waste

The party possessing the waste is responsible for removing and disposing it or for having it removed and disposed.

For the professional electrical and electronic equipment (hereinafter "EEE") concerned by European Directive 2002/96/EC dated January 27, 2003, and European Directive 2006/66/EC dated September 6, 2006 and resulting implementation regulation, or similar purpose legislation in Canada or the provinces therein, the organisational and financial responsibility for the removal and processing of waste originating from this EEE marketed after 13 August 2005 is transferred to the direct Buyer which accepts such. The direct Buyer undertakes to assume responsibility, on the one hand, for the collection and removal of waste originating from the EEE subject to the sale and, on the other hand, for their processing and recycling. The Buyer's failure to comply with these obligations may lead to the application, among other sanctions, of the criminal sanctions provided for by each member state of the European Union or applicable jurisdiction.

11.2 Provisions applicable to REACH chemical substances

11.2.1 For products delivered after publication of the list of candidate substances for authorisation within the meaning of the REACH Regulation no. 1907/2006 and its updates, and in accordance with Article 33, paragraph 1, of said Regulation, the Seller shall inform the Buyer via its www.schneider-electric.com website of the presence of said candidate substances in a concentration above 0.1% weight for weight (w/w) compared to the total weight, in order to ensure use of said product in total safety. Via this same website, the Seller shall inform the Buyer, once it is aware thereof, of changes to the composition of the products / items in question.

11.2.2 The Seller hereby warrants that the substances, whether alone or contained in preparations or products which it has incorporated for the production run in question have been used in accordance with the provisions relating to registration, authorisation and restriction.

XII – Warranty

12.1 Defects covered by the warranty

The Seller undertakes to remedy any defective operation of the products which originates from a defect in design, materials or workmanship, provided however that Seller's obligation shall not apply if :

- the products have not been maintained according to Seller's instructions, or absent said instructions, according to the most common practice in the relevant field, or
- defective operation results from improper storage conditions, or
- defective operation results from non compliance with Seller's instructions for installation or energization.

All warranties are also excluded for consumables and replacement or repair work which may result from normal wear-and-tear of the products, damage or accidents owing to insufficient monitoring of the products or use thereof which is non-compliant with their purpose and/or the Seller's instructions and, more generally, for any incident for which the Seller is not liable. The warranty may not apply if changes or additions are made to the products by the Buyer without the Seller's express agreement.

12.2 The Seller does not provide any guarantee as to the products' capacity to achieve the targets which the Buyer sets for itself, from the moment that such targets have not been expressly accepted by the Seller.

12.3 Term of the warranty

The above mentioned warranty only applies to products which prove defective (as described hereabove) during the term of the warranty, which is eighteen (18) months from the date of shipment. For standard products only, when the invoice date cannot be verified, the warranty shall be Twenty four (24) months from date of manufacture, as indicated on the product or using the serial number, if there is no manufacturing date.

The warranty starts upon delivery of the products within the meaning of Article 6.1. The repairing of, changes to, or replacement of the product or part of it during the warranty period shall in no case cause the product-warranty period to be extended.

12.4 Terms and conditions for exercising the warranty

Under this warranty, the Seller remedies the noted defects, at its expense, as soon as reasonably possible and using the means which it deems fit. Replaced parts once again become the Seller's property and shall be returned to it at its first request.

12.4.1 Upon Seller's choice, the warranty is exercised either by providing the Buyer with a replacement product free-of-charge, or by the product in question being repaired in the Seller's workshops. To this end, the defective parts or products are returned to the Seller at the Buyer's expense with 30 calendar days as of the point in time the relevant product appears to be defective; the Seller shall pay for the carriage of replacement products or those having been repaired. Failure by the Buyer to return the alleged defaulting product with the above 30 day period would allow the Seller to invoice the replacement product or the cost of the repair.

Under no circumstances does the warranty cover the expenses relating to searching for the defective item on-site, to dismantling and reassembling the product in its environment.

12.4.2 If, owing to the nature of the products, the repair work has to be carried-out on-site, the Seller shall assume the labour expenses relating to such repair work (with the exception of waiting time and expenses incurred due to the products not being made available).

12.5 Buyer's obligations

In order to benefit from this warranty, the Buyer shall inform the Seller of the defects which it is attributing to the products as soon as the defective operation of the product manifests itself and provide all supporting documents in respect of the reality of such defective operation. The Buyer shall provide the Seller with every assistance in duly noting these defects and in order to remedy them; moreover, unless it has the Seller's express agreement, it shall not carry-out the repair work by itself or have such work carried-out by a third party.

XIII – Liability

The terms of the sales agreement as accepted by the Seller and the terms of these General Terms of Sale conditions set out Seller's entire liability and are in lieu of, and Seller expressly excludes all other warranties and conditions, whether statutory, express or implied, including but not limited to implied warranties and conditions of merchantability, merchantable quality, and fitness for purpose.

The Seller shall in no case be responsible in contract, in tort or otherwise for any special, indirect, incidental or consequential damages whatsoever, such as, and not limited to, loss of profits or revenue, loss of use, lost data or lost production, third party claims relating to or deriving from the products after their delivery to the Buyer to the extent these limitations and exclusions are permitted by law.

In all cases, whatever the causes or subject of the claim, the Seller's liability, with regard to the execution of the sales agreement, is strictly limited to the amount paid of the said sales agreement, exclusive of taxes.

XIV- Disclaimers/Limitations

These disclaimers and limitations of remedies apply to all warranties offered to Buyer and to all purchase orders. The warranties set forth above are exclusive and in lieu of all other expressed or implied warranties, conditions, representations and guarantees (except warranties of title), including, but not limited to implied warranties of merchantability and fitness for a particular purpose, under the Sale of Goods Act (Ontario).

XV- Severability

If any covenant or provision of the General Terms of Sales is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not impair, or affect the validity, legality or enforceability of the remaining covenants and provisions hereof, and each such covenant or provisions shall be interpreted in such a manner as to render them valid, legal and enforceable to the greatest extent permitted by applicable law. Each covenant and provision of this agreement is hereby declared to be separate, severable and distinct.

XVI – Applicable law - Disputes

The sales agreement which is the subject of these terms and conditions is governed by the Province of Ontario law and the Canadian federal laws enforceable therein, to the exclusion of its conflict in laws provision and of the 1980 Vienna Convention on the International Sale of Goods (“CISG”).

Any dispute relating to any offer issued, or any sales agreement entered into, by the Seller, which is unable to be settled out-of-court, shall be the sole jurisdiction of the Court situate in the City of Toronto, even in the event of summary proceedings, the introduction of third parties or multiple defendants.

ADDITIONAL TERMS APPLICABLE TO SYSTEMS OR SOLUTIONS

The following terms are added to the foregoing terms:

“System” or “Solution” means any product or combination of products with or without embedded software, which shall be subject to specific adaptations in order to meet the Buyer’s requirements and/or which is installed by the Seller, or any set of products / software requiring a specific study in order to ensure coherence.

I – Purpose and scope of the tender

1 Tenders are established on the basis of the specifications provided by the Buyer, which shall contain all the information required to determine the features of the System / Solution, in particular:

- The expected functionalities of the System / Solution;
- The installation and environmental conditions;
- The nature and conditions of the tests to be conducted by the Buyer.

2 Unless specially provided for, the option period during which the Seller is bound by its tender is one month as from the date when said tender is issued.

3 Should the sale not be finalised, the studies and documents provided in support of the tender shall be returned to the Seller within a maximum of 15 days as from the tender’s expiry date.

4 In the event of unusual complexity, the tender shall specify the proportion of study costs to be borne by the Buyer should the sale not be finalised.

II – Technical support during commissioning

1 Unless provided for to the contrary, the Seller’s prices do not include either assembly nor commissioning of the System / Solution, nor any batch of spare parts.

2 Whenever the Seller’s technicians intervene on the site where the System / Solution is installed, the supply of energy, handling or other equipment and the raw materials of any type required for the Seller’s services, shall be the responsibility of the Buyer.

3 If the sold System / Solution is an automation, the losses and waste in the Buyer’s premises during the whole time when the System / Solution is being configured shall also be the responsibility of the Buyer.

4 Adaptations to the System / Solution which may be required in order for it to operate in compliance with the contractual features shall be the responsibility of the Seller, unless said adaptations are made necessary due to the insufficient nature of, or error in, the information sent by the Buyer, a change to the location of the System / Solution or to its environment. In this case, the cost of the adaptations and the time spent shall be invoiced to the Buyer.

5 If the on-site intervention of the Seller’s specialists is delayed or prevented for reasons outside its control, the travel and/or waiting time and the expenses incurred in connection thereto shall be invoiced to the Buyer.

III – Tests

Tests shall be conducted in the Seller’s plants under the conditions set forth in the order. Any additional tests, whether conducted in the Seller’s plants or on the site where the System / Solution is installed, shall be subject to the express prior agreement of the Seller and shall be carried-out at the Buyer’s expense.

IV – Terms of payment

Schneider Electric Canada Inc.

Legal information
A Canadian CBCA incorporated company
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Registered Office: 5985 McLaughlin Road, Mississauga, Ontario L5R 1B8
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Pursuant to contracts which have staggered performance dates, and unless there is a specific agreement, 30% of the total amount of the order, exclusive of taxes, is payable as a down payment when the System / Solution is ordered, by wire transfer upon receipt of the pro-forma invoice issued by the Seller.

V – Contractual warranty

1 Should the nature of the System / Solution mean that it cannot be returned according to the provisions of Article 12.4.1 of the present General Terms of Sale, the expenses relating to the intervention of the staff required to repair the System / Solution on-site shall not be invoiced to the Buyer by the Seller, with the exception of travel and/or waiting time expenses and expenses incurred due to the Buyer's failure to make the System/ Solution available for repair.

2 The duration of the warranty is 12 months as of issuance of the Provisional Acceptance Certificate, or 18 months from the date of notification of readiness for shipment of the last equipment / component of the System / Solution, whichever occurs first.

Any part or component changed or repaired in the context of the contractual warranty will itself benefit of a 3 months warranty, but shall not cause the duration of the warranty of the overall System / Solution to be extended.

3 Should the Seller incorporate devices or appliances or subsets which it does not manufacture into the System / Solution, the relevant scope and term of the warranty shall be those granted by their manufacturer or seller.

4 The warranty referred to in Article 12 hereinabove does not apply to malfunctioning of the System / Solution owing to materials or components supplied or imposed by the Buyer, or to a design imposed by the latter.

5. If the purchase order specifically requires that documents or drawings be approved, validated or reviewed by the Buyer, Buyer shall notify its approval, validation, rejection or comments to Seller within seven (7) business days after receipt of such documents or drawings, unless otherwise provided for in the quotation or agreed in writing by the parties. Lead time is subject to change if the above timeline is not met.

6. Price and lead time are subject to change in case there is any technical revision after such approvals by Buyer, which shall be in the form of change order (as defined below) to be executed between the parties.

7. Change order means a document signed by the parties specifying the changes to an purchase order or this General Terms of Sale. No changes are binding on the Seller unless such changes are agreed by parties in writing.

8. The Buyer shall obtain all statutory or regulatory consents, wayleaves, approvals, permits or licences required for any part of any work at its own cost and in reasonable time having regard to the time for delivery of the equipment and the time for completion of any work.

9. In the event of any cancellation/termination of the purchase order by the Buyer, the following cancellation charges will apply:

- 25% - Order received and entered on the factory.
- 50% - Drawings for approval submitted.
- 60% - Approved drawings returned. Job released for manufacture.
- 80% - Material ordered or production started.
- 100% - Manufacturing completed.

If cancellation fees do not cover costs incurred for products released for production prior to approval drawings, Seller reserves the right to charge additional expenses with backup invoices. For avoidance of doubt, these charges shall also apply to termination consequent to suspension.