

SCHNEIDER ELECTRIC SYSTEMS GERMANY GMBH >EUROTHERM< GENERAL TERMS & CONDITIONS OF SALE OF PRODUCTS AND SERVICES AND LICENSE OF SOFTWARE**§ 1 Definitions**

- 1.1 **"Company"** shall mean the company which has ordered Products and/or services with Schneider Electric Systems Germany GmbH >EUROTHERM<.
- 1.2 **"Products"** shall mean all goods, equipment, materials, spare parts, hardware, supplies, and accessories to be supplied as set out in a Purchase Order.
- 1.3 **"Party"** shall mean the Seller or Company, as the context requires and "Parties" shall be construed accordingly.
- 1.4 **"Purchase Order"** shall mean any purchase order, issued subject to these Terms & Conditions and with related attachments including without limitation, any software licenses, pricing schedules, and delivery schedules, which shall describe the Products, Software or Services to be supplied by Seller to the Company and the Specifications. Purchase Orders agreed upon from time to time between Seller and Company shall constitute separate agreements that incorporate these Terms & Conditions by reference and shall be governed by these Terms & Conditions.
- 1.5 **"Seller"** shall mean Schneider Electric Systems Germany GmbH >EUROTHERM<, Ottostrasse 1, 65549 Limburg an der Lahn, Germany.
- 1.6 **"Services"** shall mean the provision of testing, assessment, engineering, installation, start-up, configuration and any development of application programs, customization, implementation, repairs, after sales service, and any other services set out in the Purchase Orders, excluding maintenance and support services which shall be rendered under a separate agreement.
- 1.7 **"Software"** shall mean computer software programs in object code, instructions manuals, specifications and related documentation in written or electronic form, for which Seller grants Company a license. Third party software, its related instructions manuals and documentation are excluded.
- 1.8 **"Specifications"** shall mean the Seller standard specifications applicable to the Products and/or Software at the time of issue of a Purchase Order or the requirements and functional specifications containing a description of the Services to be rendered.
- 1.9 **"Third Party Products"** shall mean Products and/or Software of a third party vendor.
- 1.10 **"Warranty Period"** shall mean the period which Products, Software and Services are respectively guaranteed by Seller. The warranty is 24 months for category 1 (standalone devices of the technical supply business, I&C systems, process control systems and services relating to the delivery of the aforementioned components and systems. Excluded are mechanical paper recorders, where the period shall be one year from date of shipment.). The warranty for category 2 is 3 months (repairs, after sales support, spare parts, parts, components, consumables, etc.) and 12 months for category 3 (third-party Products and non-listed Products of the Seller, as standalone Product or as part of an entire system (e.g. personal computers, electronic assemblies, etc.).

§ 2 Sole Agreement

Any Purchase Order shall constitute the entire agreement between the parties and supersedes all previous written and oral agreements, statements and understandings of the parties regarding the subject matter of the Purchase Order.

§ 3 Price and Payment Terms

- 3.1 Company is responsible for any outstanding taxes, including sales, use, GST, VAT, customs, or excise tax, excluding only those taxes based upon the net income of Seller.
- 3.2 The minimum order value is EUR 80,- net for consumables and accessory components.
For purchase orders less than the minimum order value, the seller shall invoice the following surcharge:
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| - at an order value < EUR 80,-: | EUR 20,- |
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- 3.3 Seller shall submit invoices to Company upon achievement of the payment milestones set out in the Purchase Order.
- 3.4 For the Company, the following payment terms apply:
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| - Products of the technical supply business: | 30 days net, |
| - Services, software, etc.: | 8 days net, |
| - Training: | 8 days net, after the performance. |

Company shall pay any invoices within the above mentioned payment periods from the date of invoice and in the mutually agreed and/or in the invoice currency (ies).

- 3.5 If Company fails pay any invoice in accordance with this Clause 3, then Seller shall be entitled to suspend performance or reduce its rate of performance until such payment is made. Company shall be liable for any costs of such suspension or reduction in rate of performance and Seller shall be entitled to a corresponding extension of delivery time.
- 3.6 Without prejudice to any other rights of Seller, Company shall be liable to pay interest to Seller on the amounts unpaid until such payment is made. The rate of interest shall be 8 % above the then base lending rate of the Deutsche Bundesbank.

§ 4 Delivery, Title and Risk of Loss

- 4.1 Title to all Products shall pass to Company upon full payment of the Purchase Order. Excluded is any Software whose title remains at all times with Seller.
- 4.2 Delivery shall be FCA (Incoterms 2010), Free Carrier warehouse door.

§ 5 Receiving, Inspection and Acceptance

- 5.1 Company shall be responsible for receiving, installing, starting up and maintaining all Products.
- 5.2 If Company fails to notify Seller of any material non-conformities with the Specifications or defective products or services within a reasonable period following delivery, not to exceed thirty (14) calendar days, or is using those Products, Software or Services in a production environment or for the regular conduct of its business, the Products, Software or Services shall be deemed accepted.

§ 6 Force Majeure

Neither Party shall be liable for de lays caused by conditions beyond their reasonable control, provided notice thereof is given to the other Party as soon as practicable. This provision shall not apply to the Company's payment obligations.

§ 7 Warranties for Products, Software and Services

- 7.1 Seller warrants to Company that the Products, Software and Services shall, at time of delivery, materially conform to the Specifications. If the Services are of an advisory nature, including any services performed on a time and materials basis, the Company shall remain the design authority and no specific result is guaranteed or assured.
- 7.2 Non-conforming Products subject to a warranty claim shall be returned to the nearest Seller's repair facility, transportation charges prepaid for the account of the Company. Transportation charges are prepaid for the account of the Company. Seller's obligation and Company's sole remedy under this Clause is, at Seller's option the repair or replacement, correction, of any non-conforming Products, Software or non-conforming parts thereof. The repaired or replaced Products shall be warranted by Seller for the remainder of the original Warranty Period or for three months, whichever is longer. Transportation charges for the return-shipment are prepaid for the account of the Company. Seller shall not be responsible for any offshore transport costs.
- 7.3 The foregoing warranties do not apply to non-conformities caused by (i) Company's design or installation of the Products and/or Software, (ii) modification or repair to the Products and/or Software otherwise than as authorized in writing by Seller; (iii) handling, storage, use or maintenance of the Products and/or Software in a manner or an environment inconsistent with the Specifications and/or instructions or recommendations of Seller; (iv) defect in Company's own products or software or use of the Products and/or Software in combination with any Third Party Product not procured by Seller; (v) Company's failure to observe the payment terms under any Purchase Order or any other of its obligations under any Purchase Order; (vi) normal wear and tear; (vii) installation or wiring of the Products and/or Software other than in accordance with Seller's instructions; (viii) transfer of the Software from the device on which it was originally installed; and/or (viii) any fault of the Company or its agents.
- 7.4 Except as expressly set out in this Clause 7, all warranties whether express or implied (including without limitation any implied warranty as to merchantability, operability or fitness for purpose) are excluded.

§ 8 Third-Party Products

- 8.1 The warranties set out in Clause 7 do not apply to Third-Party Products. Seller shall bear no responsibility for the performance, repair or warranty of any of Company's software or hardware product or any Third-Party Products and Company shall look solely to third-party vendor for all remedies and support with regard to such Third-Party Products. If such Third-Party Product is expressly procured by Seller to Company under a Purchase Order, that Third-Party Product shall be warranted only in accordance with the warranties given to Seller in respect thereof by the relevant third party vendor and to the extent that Seller has the right to assign or transfer such warranties.
- 8.2 If Third Party-Products are supplied by the Seller under any Purchase Order, such supply is made on a "pass-through" basis only and is subject to the terms and conditions of the third party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, and prices. Third-Party Products are quoted subject to price changes imposed by third-party vendor between the date of Purchase Order and the date of Seller's invoice.

§ 9 Laws and Dispute Resolution

- 9.1 The Purchase Order shall be governed by and construed in accordance with the German laws, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Products shall not apply to the Agreement.
- 9.2 Any dispute arising out of or in connection with any Purchase Order, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the ICC, which Rules shall be deemed to be incorporated by reference into this Clause 9.2. The number of arbitrators shall be one. The seat of arbitration shall be Frankfurt am Main, Germany. The language to be used in arbitral proceedings shall be German.

§ 10 Intellectual Property and Software License

- 10.1 All rights, title or interest in any patent, trademark, service marks, copyrights, trade secrets, ideas, concepts, know-how, techniques or other proprietary right forming part of the Products, Software or, Services shall remain vested in Seller (or third-party owner) and shall not be transferred to Company.
- 10.2 Company shall be granted a non-exclusive, non-transferable, limited license for the use of the Products, Software and Services for the purposes provided.
- 10.3 Seller's Software licensed to Company may contain components that are owned by third-parties. The third party owner shall retain exclusive right to its firmware and software. Use of such third party components may be subject to restrictions contained in the third party's end-user license agreement in addition to the conditions set forth herein.
- 10.4 Company may not without Seller's prior written express consent: (i) copy, modify, sublicense, loan or transfer in any manner the Software licensed herein; (ii) create derivative works based on the Software licensed herein; (iii) subject the Software licensed herein to translating, decompiling, disassembling, reverse assembling, reverse engineering, emulating or performing any other operation on the Software, unless the operation is specifically authorized by law. Company shall be liable to defend, indemnify and hold harmless Seller from all damages and third party claims arising from unauthorized used or transfer of the Software.
- 10.5 Seller shall defend, indemnify and save harmless Company from and against any third party claims, suits, judgments, court costs, reasonable attorney's fees and other liabilities, to the extent such Liabilities according to a final judgment result from an infringement of the rights of third parties due to the Products, Services, the Software's design or construction at the time of execution of the relevant Purchase Order. A liability for damages exists under the following conditions: (i) Seller shall be promptly notified of the bringing of said suits; (ii) Seller shall be given the sole control of the defense and all related settlement negotiations; (iii) Company agrees to fully assist Seller in the defense of the claim and Company complies with Seller's direction to cease any use of the Products or Software which in Seller's reasonable opinion, is likely to constitute an infringement. Seller shall not be responsible for any settlement made without its consent.
- 10.6 The foregoing obligations do not apply when the claim of infringement results from or is related to: (i) Products and/or Software provided pursuant to Company's designs, drawings or specifications; (ii) Products and/or Software stored, used or maintained otherwise than in accordance with Seller's instructions or recommendations or other than for the Seller's internal business purpose; (iii) claims of infringements resulting from a combination with items not furnished by Seller; (iv) modifications to the Products or Software without prior written consent of Seller; (v) parts supplied or designed by Company or third parties; or (vi) Company's failure to use corrections or enhancements made available by Seller.
- 10.7 In case said results of Services, Software or Products, or any part thereof, is in such non-appealable judgment held to constitute infringement and/or its use is enjoined, the Seller shall, at its own expense and option either: (i) procure for the Company a royalty-free license to continue using the Software, results of Services or Products, or (ii), replace the delivered Products and/or Services with substantially equal but non-infringing equipment or modify it so it becomes non-infringing, provided that no such replacement or modification shall in any way amend or relieve Seller of its warranties and guarantees set forth in these terms and conditions. In the event Seller is unable to do either of the foregoing, the allegedly infringing item shall be returned to Seller and Seller's maximum liability shall be to refund to Company the amount paid for such item.
- 10.8 This Clause 10 states the Parties' entire liability and sole remedy with respect to infringement or claims thereof.

§ 11 Confidentiality

- 11.1 "Confidential Information" shall mean the Software and any and all information in any form that the Parties exchange in the course, before or after of any Purchase Order and that either (i) has been marked as confidential; or (ii) is of such nature that a reasonable person would treat as confidential under like circumstances. Confidential Information does not include information which (i) is already known to the other Party at the time of disclosure; (ii) is independently developed by a Party without the benefit of the other's Confidential Information; (iii) has been received from a third party that is not under any confidentiality obligation towards the owner of the information; or (iv) has entered the public domain through no fault of the recipient.
- 11.2 Neither Party shall, except with respect to their employees and affiliated companies within the meaning of §15 AktG (German Stock Corporation Act) with a need to know for purposes of the agreement, disclose to any person any Confidential Information of the other Party without the other Party's prior written consent, except where Confidential Information may be disclosed by law.

§ 12 Limitation of liability

- 12.1 The overall aggregate liability of Schneider - for whatever reason, including claims for breach of contract and tort - is limited to the Contract Price.
- 12.2 Notwithstanding the foregoing, Schneider is not liable for any indirect or consequential damages; as well as not for loss of profit, loss of production, replacement purchase, loss of use, loss of data or similar types of financial damages.
- 12.3 The foregoing limitation or exclusion of liability does not apply in case of personal injury (including death), intent, and liability according to the Product Liability Act or other kinds of mandatory law.

§ 13 Termination for Default

- 13.1 Either Party may terminate any outstanding Purchase Order for default if the other Party has materially breached any of its obligations under the Purchase Order and has not cured the breach within thirty (30) days of receipt of a notice from the other Party.
- 13.2 Termination of a Purchase Order by either Party shall not affect continuing performance by the Parties of their respective obligations under a different Purchase Order, unless otherwise agreed upon by the Parties.

§ 14 Assignment

Neither Party shall assign or transfer any Purchase Order, an obligation resulting from a Purchase Order or parts thereof without the other Party's express prior written consent.

§ 15 Non-Waiver

Failure by either Party to insist upon strict performance of any of the terms and conditions hereof or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify the other in the event of breach shall not be construed as a waiver of any provision of any Purchase Order. No waiver by a Party of a right or default under any Purchase Order shall be effective unless in writing.

§ 16 Severability and Survivorship

- 16.1 If any provision or portion of this contract shall be adjudged invalid or unenforceable, or become invalid or unenforceable upon conclusion of the contract, the remaining provisions and portions shall remain in full force and effect.
- 16.2 Clauses 1, 3, 9, 10, 11, 12 and 15 shall remain in full force and effect, even upon termination of the contract.