

# SIEMENS

## General Terms and Conditions of Sale

The following terms and conditions of sale shall apply to any sale of goods and services by Siemens Canada Limited (hereinafter called "Siemens"). Purchaser shall be deemed to have full knowledge of the terms and conditions herein and such terms and conditions shall be binding if either the goods and services referred to herein are delivered to and accepted by Purchaser, or if Purchaser does not within five days from the date hereof deliver to Siemens written objection to said terms and conditions or any part thereof.

### 1. GENERAL

In the event of any conflict or inconsistency between the terms and conditions of sale herein and the terms and conditions contained in Purchaser's order or in any other form issued by Purchaser, whether or not any such form has been acknowledged or accepted by Siemens, Siemens' terms and conditions herein shall prevail. No waiver, alteration or modification of these terms and conditions shall be binding upon Siemens unless made in writing and signed by a duly authorized representative of Siemens.

### 2. QUOTATIONS

Unless otherwise stated, Siemens' quotation shall be null and void unless accepted by Purchaser within thirty (30) days from the date of quotation.

### 3. PRICES / COST OF TRANSPORTATION

All quoted prices are based on the current exchange rates, tariffs and costs of manufacture. Unless otherwise stated in the quotation, quoted prices are subject to change by Siemens with or without notice until Purchaser's acceptance. Prices are subject to correction for error. Unless otherwise stated, all prices are f.o.b. factory and include domestic packing. Customary methods of transportation shall be selected by Siemens and such transportation will be at Purchaser's expense. Special methods of transportation will be used upon Purchaser's request and at Purchaser's additional expense provided reasonable notice of Purchaser's transportation requirements are given by Purchaser to Siemens prior to shipment.

### 4. TAXES

Prices do not include Goods & Services Tax, Provincial or Municipal sales, use, value-added or similar tax. Accordingly, in addition to the price specified herein, the amount of any present or future sales, use, value-added or similar tax applicable to the sale of the goods hereunder to or the use of such goods by Purchaser shall be paid by Purchaser to the entire exoneration of Siemens.

### 5. DELIVERY

Delivery schedules are approximate and are based on prevailing market conditions applicable respectively at the time of Siemens' quotation and Siemens' acceptance of Purchaser's order. Delivery shall also depend on the prompt receipt by Siemens of the necessary information to allow maintenance of the manufacturer's engineering and manufacturing schedules. Siemens may extend delivery schedules or may, at its option, cancel Purchaser's order in full or in part without liability other than to return any deposit or prepayment which is unearned by reason of the cancellation.

### 6. FORCE MAJEURE

Siemens shall not be responsible or liable for any loss or damage incurred by Purchaser herein resulting from causes beyond the reasonable control of Siemens including, but without limitation, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, lock-outs, strikes or labour disputes, faulty castings or forgings, or the failure of Siemens' suppliers to meet their delivery promises. The acceptance of delivery of the equipment by Purchaser shall constitute a waiver of all claims for loss or damage due to any delay whatsoever.

### 7. SHIPMENT/DAMAGES OR SHORTAGES IN TRANSPORT/RISK

Except for obligations stated under "Warranty" herein, Siemens' responsibility for goods ceases upon delivery to the carrier. In the event of loss or damage during shipment, Purchaser's claim shall be against the carrier only. Siemens will, however, give Purchaser any reasonable assistance to secure adjustment of Purchaser's claim against the carrier provided immediate notice of such claim is given by Purchaser to Siemens. Claims for shortages must be made in writing within ten (10) days after receipt of goods by Purchaser. If Siemens does not receive written notification of such shortages within such ten (10) days, it shall be conclusively presumed that the goods were delivered in their entirety. Unless agreed upon otherwise in writing, Siemens reserves the right to make partial shipments and to submit invoices for partial shipments.

### 8. TITLE

Title to the goods or any part thereof shall not pass from Siemens to Purchaser until all payments due hereunder have been duly made in cash, except as otherwise expressly stipulated herein. The goods shall be and remain personal or moveable property, notwithstanding their mode of attachment to realty or other property. If default is made in any of the payments herein, Purchaser agrees that Siemens may retain all payments which have been made on account of the purchase price as liquidated damages, and Siemens shall be free to enter the premises where the goods may be located and remove them as Siemens' property, without prejudice to Siemens' right to recover any further expenses or damages Siemens may suffer by reason of such nonpayment.

### 9. LIABILITY

Siemens shall not be liable for and shall be held harmless by Purchaser from any damage, losses or claims of whatever kind, contractual or delictual, consequential or incidental, direct or indirect, arising out of, in connection with or resulting from the sale governed hereby or the goods, including, but without limitation, the manufacture, repair, handling, installation,

possession, use, operation or dismantling of the goods and any and all claims, actions, suits, and proceedings which may be instituted in respect to the foregoing.

## **10. WARRANTY**

Goods sold hereunder are covered by a warranty against defects in material and workmanship provided the goods and services are subjected to normal use and service. The applicable warranty period is twelve (12) months from the date of installation or eighteen (18) months from shipping date to Purchaser of any item of the goods, whichever occurs first, or any other warranty period otherwise stipulated in writing by Siemens under this sale. For components not supplied by Siemens, the original manufacturer's warranty shall apply to the extent assignable by Siemens. The obligation under this warranty is limited to the repair or replacement, at Siemens' option, of defective parts f.o.b. point of shipment provided that prompt notice of any defect is given by Purchaser to Siemens in writing within the applicable warranty period and that upon the Purchaser's return of the defective parts to Siemens or, if designated by Siemens, to the location where the works are made, properly packed and with transportation charges prepaid by Purchaser, an inspection thereof shall reveal to Siemens' satisfaction that Purchaser's claim is valid under the terms of this warranty. Purchaser shall assume all responsibility and expense for dismantling, removal, re-installation and freight in connection with the foregoing. The same obligations and conditions extend to replacement parts furnished by Siemens hereunder. Siemens does not assume liability for installation, labour or consequential damages. Siemens makes no warranty other than the one set forth herein. All other warranties, legal, expressed or implied, including but not limited to any expressed or implied warranty of merchantability, of fitness for the intended use thereof or against infringement are hereby expressly excluded.

The applicable warranty ceases to be effective if the goods are altered or repaired other than by persons authorized or approved by Siemens to perform such work. Repairs or replacement deliveries do not interrupt or prolong the term of the warranty. The warranty ceases to be effective if Purchaser fails to operate and use the goods sold hereunder in a safe and reasonable manner and in accordance with any written instructions from the manufacturers.

## **11. INSTALLATION**

Unless otherwise expressly stipulated, the goods shall be installed by and at the risk and expense of Purchaser. In the event that Siemens is requested to supervise such installation, Siemens' responsibility shall be limited to exercising that degree of skill customary in the trade in supervising installations of the same type. Purchaser shall remain responsible for all other aspects of the work including compliance with the local regulations.

## **12. RETURNED GOODS**

No goods may be returned to Siemens without Siemens' prior written permission. Siemens reserves the right to decline all returns or to accept them subject to a handling/restocking charge. Even after Siemens has authorized the return of goods for credit, Siemens reserves the right to adjust the amount of any credit given to Purchaser on return of the goods based on the conditions of the goods on arrival in Siemens' warehouse. Credit for returned goods will be issued to Purchaser only where such goods are returned by Purchaser and not by any subsequent owner of the goods. Goods will be considered for return only if they are in their original condition and packaging.

## **13. TERMS OF PAYMENT**

Unless otherwise stated, invoices on "open account" shipment are payable within thirty (30) days of invoice date. Unless specifically provided, no cash discount shall be available to Purchaser. When cash discount is offered, the discount price is computed from the date of invoice. Siemens does not offer cash discount on C.O.D. shipments. Should payment not be made to Siemens when due, Siemens reserves the right, until the price has been fully paid in cash, to charge Purchaser with interest on such overdue payments at the rate of eighteen percent (18%) per annum. The charging of such interest shall not be construed as obligating Siemens to grant any extension of time in the terms of payment.

## **14. CHANGES AND CANCELLATION**

Orders accepted by Siemens are not subject to changes or cancellation by Purchaser, except with Siemens' written consent. In such cases where Siemens authorizes changes or cancellation, Siemens reserves the right to charge Purchaser with reasonable costs based upon expenses already incurred and commitments made by Siemens, including, without limitation, any labour done, material purchased and also including Supplier's usual overhead and reasonable profit and cancellation charges from Siemens' suppliers.

## **15. THE AGREEMENT**

An acceptance and official confirmation of Purchaser's order by Siemens shall constitute the complete agreement, subject to the terms and conditions of sale herein set forth, and shall supersede all previous quotations, orders or agreements. The law of the Province of Ontario shall govern the validity, interpretation and enforcement of these terms and conditions of sale and of any contract of which these terms and conditions are a part.

# SIEMENS

## Addendum to General Terms and Conditions of Sale for Authorized Distributors

### 3A. PRICES / COST OR TRANSPORTATION

**STANDARD PACKAGE QUANTITIES:** Discounts apply to standard package quantities only. Orders will be adjusted to reflect standard package quantity in the case of discrepancies.

**GENERAL:** Non-Cataloged Replacement Parts - Orders amounting to less than \$100.00 TNIP will be invoiced at \$100.00 plus transportation charges.

**PRICING:** Prices billed for shelf goods will be in effect at time of shipment. Offering prices for quoted project jobs will be subject to escalated adjustment as stated on the face of our quotation. All Purchase orders must be priced.

**TRANSPORTATION:** Domestic freight shipments on orders for distribution products will be prepaid by Siemens providing the net value is \$1,500.00 TNIP minimum and Siemens selects the common carrier. Domestic freight shipments on orders for motor control and Electrostrip products will be prepaid by Siemens providing the net value is \$500.00 TNIP minimum and Siemens selects the common carrier. For orders combining distribution and motor control products, domestic freight will be prepaid by Siemens providing the net combined value is \$1,500.00 TNIP minimum and Siemens selects the common carrier. Any additional transportation costs incurred by specifying other mediums are to be paid by the purchaser.

**SHELF GOODS & ENGINEERED APPARATUS:** Orders amounting to less than \$100.00 TNIP will be invoiced at \$100.00 plus transportation costs.

### 7A. SHIPMENT/DAMAGES/SHORTAGES IN TRANSPORT/ RISK:

Replacement deliveries for short shipment claims will be reinvoiced. The original shipment will be credited once the validity of the claim is verified.

**CUSTOMER PICK-UPS:** Orders picked up from our warehouse, will be subject to a \$50.00 pick up charge.

**RUSH SHIPMENTS:** Warehouse orders received after 1 pm local time tagged "Rush" or "Sameday" shipment will be subject to a \$50.00 surcharge. Minimum billing and freight charges will apply. Rush orders are limited to 5 line items.

### 12A. RETURNED GOODS

Allowance of 60 days should be considered to issue credits pertaining to valid claims concerning Return Material Authorizations, short shipments, or price differences.

### 13A. TERMS OF PAYMENT

**TERMS OF PAYMENT:** Cash discount 2% - 15th proximo is applicable only to standard shelf goods. All other transactions, including engineered apparatus - Net 30 days unless otherwise agreed to in writing.

# Notes

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