

SCHNEIDER ELECTRIC POWER DRIVES GmbH
(Hereinafter referred to as **SEPD**)
GENERAL PURCHASING TERMS AND CONDITIONS
UPDATED JUNE 2009

1. General provisions - Acceptance

The acceptance of the Order by the Supplier (hereinafter referred to as the "S.") implies *ipso facto* acceptance of these General Terms of Procurement which are an integral part thereof and which govern the contractual relations between the parties, subject to the provisions of the specific terms of the Order, with the S. definitively waiving its own General Terms of Sale.

All the provisions of this Order shall be considered as having been definitively accepted by the S. ten (10) business days after its receipt, unless reservations are sent within this timeframe, in writing, to the Buyer managing the Order, whose contact details appear on the first page of the Order.

It is hereby specified that **SEPD's** procurement commitment (i.e. the validity of the Order placed with the S.) is dependent on the latter's acceptance of all the provisions of the Order.

2. Delivery – Acceptance of delivery

The contractual delivery date is understood as being when the goods have arrived and been unloaded at the delivery address specified in the Order. It is an imperative and fundamental term of the Order. The effective delivery date is the date stamped by the receiving agent of the goods on the receipt slip (*bon de prise en charge*) (or delivery slip), duly signed by one of its authorized representatives.

No early deliveries may be made without **SEPD's** prior and written agreement.

If an acceptance procedure is provided for under the specific terms of the Order, the latter is the instrument by means of which, at the S.'s initiative, **SEPD** represents that it accepts (with or without reservations) the Supplies, works and/or services which are the subject matter of the Order (hereinafter referred to as the "Supply").

3. Lead-times – Penalties

In the event of delays in delivery or acceptance, which are not attributable to an event of force majeure or to **SEPD's** negligence, the S. shall owe penalties for delay calculated on the total amount of the Order at a rate of 1% per calendar week of delay up to a maximum of 5% of this amount. Over and above this maximum limit, **SEPD** reserves the right:

- to claim its actual loss from the S.
- to unilaterally announce, at any time and as of right, total or partial termination of the Order for breach of the S. (without prejudice to any damages), with, in this case, the extent of the delay being considered purely and simply as a default of the S.

4. Modifications

At any time during performance, **SEPD** reserves the right to change the volumes and/or the nature of the Supplies, services or works which are the subject of the Order, without the S. being entitled to claim any indemnity on these grounds nor to change the unitary prices decided upon pursuant to the basic Order. The conditions under which such an addendum shall be considered as having been accepted are those set forth in Article 1 hereinabove. Where applicable, the addendum shall specify the new contractual delivery / acceptance dates.

5. Transfer of risks

Notwithstanding any verification work or acceptance procedure in the S.'s premises, the transfer of risks takes place upon delivery of the Supplies. If an acceptance procedure is provided for, the S. nevertheless continues to bear the inherent risks affecting the Supply until **SEPD** issues an acceptance statement without reservations.

In all cases, the Supply is transported at the S.'s risk.

6. Packaging and documentation

The Supply is delivered with the packaging required for its warehousing and due and proper preservation. Unless otherwise provided for, the packaging is not subject to a deposit but, if this were the case, it shall be returned at the S.'s expense.

The Supply is delivered together with the documentation required for its use, maintenance and upkeep.

7. Verification

The S. is responsible for verifying and certifying, under its responsibility, the compliance of the Supply with the conditions applicable to it under **SEPD's** specifications, with which the S. hereby represents that it is perfectly familiar. Under no circumstances shall the verification work carried-out by **SEPD** prior to, during or subsequent to delivery / acceptance discharge the S. from this obligation.

8. Shipping

At the same time as any shipping of the Supply, the S. shall send to **SEPD**, by mail, a copy of the dispatch note mentioning the references and date of the Order, the number of parcels and an exact description of the shipped Supplies. The original of this note shall accompany each shipment of parcels, together with the certificates of conformity and the verification reports.

9. Scrapping

SEPD may inform the S. of the scrapping of any Supply which is found to be non-compliant with the specifications of the Order. All Supplies having been scrapped shall be considered as not having been delivered / accepted and shall be taken-back by the S., at its expense, within the 48 business hours following receipt of the notice of scrapping. Otherwise, the Supply shall be sent back to the S. at its expense and risk. Any Supply having been scrapped is immediately subject to the issuing of a debit note.

10. Invoicing

Any invoice shall be sent in only one copy to the invoicing address mentioned in the Order and shall imperatively contain **SEPD's** references and those of the corresponding Order.

Each invoice relates to only a single Order and shall include the description of the Supplies, works or services invoiced, and the unitary prices and volumes delivered.

SEPD reserves the right to suspend payment of any invoice which fails to comply with regulatory provisions and/or those of this article. Any disagreement by **SEPD** as regards the volume or quality of the delivered Supply or the invoiced price, shall lead to the issuing of a debit note. The S. shall have 45 days as from the issuing of the debit note during which to challenge the latter.

11. Prices and terms of payment

The prices mentioned in the Order are firm and non-revisable and are understood as being carriage paid and inclusive of packaging expenses.

In the absence of provisions to the contrary in the Order, payments are made by Immediately-Available Bank Transfer (*Virement Commercial Mobilisable* (VCOM)), at 90 days net from the end of the month of delivery / acceptance, on the 10th of the following month. Debit notes issued by **SEPD** shall be automatically deducted from payments subject to **SEPD** having received the corresponding invoice.

At **SEPD's** choice, the S. may be paid either by **SEPD**, or by Boissière Finance, the company responsible for centralized management of the cash of the Schneider Electric Group, and which is 100%-controlled by **SCHNEIDER ELECTRIC INDUSTRIES SAS** (Hereinafter referred to as **SEI**), to which the latter has granted a mandate to pay **SEPD's** suppliers.

Under no circumstances may payments made by Boissière Finance cause it to assume the rights and obligations of **SEPD** vis-à-vis the S. pursuant to the Order; as a result, the S. may not validly make any claim nor institute any proceedings against Boissière Finance concerning the Order, its performance or the resulting consequences.

12. Assignment or subrogation of the receivables, rights and/or obligations under the Order

The S. undertakes not to assign or transfer the whole or part of its receivable under the Order without having duly informed **SEPD's** Supplier Accounts Department in writing at least 15 days beforehand. This prior information procedure also applies to any agreement (its termination, expiry date, changes, etc.) relating to a factoring operation.

The S. also undertakes not to assign / transfer the whole or part of the rights and/or obligations under the Order without **SEPD's** prior and written authorisation.

Should the S. have signed a factoring contract and have duly notified **SEPD** thereof, all its invoices shall be paid to the factoring company with which it concluded the contract.

13. Moulds, tools, test resources (hereinafter referred to as the "Equipment")

Any Equipment manufactured specifically in the context of performing the Order becomes the exclusive property of **SEPD** as soon as it is created and may only be used by the S. in order to meet Orders placed by **SEPD**. If it is deposited in the S.'s premises, this Equipment shall have an ownership plate in **SEPD's** name affixed to it, and it shall be immediately returned to the latter, in good working order, at its first written request. The S. is responsible for maintenance and routine repair work to the Equipment at its expense. It shall be the custodian of the Equipment, at its risk, and ensure that it is sufficiently covered by its own insurance policies.

In the event of an incident, the S. shall repair the Equipment at its expense in the best allowable time or, if it is considered as being irreparable, it shall indemnify **SEPD** up to the limit of its replacement value.

The Equipment shall be depreciated over 30 months as from the date of its first use.

14. Contractual warranty

14.1 Operational warranty

The S. undertakes to warranty **SEI** against any design, manufacturing and/or material defect affecting the Supply for 12 months as from delivery or acceptance, if an acceptance procedure is provided for. As a result, were **SEI** or its own customer to notice a defect / malfunctioning affecting the Supply, the S. undertakes to rectify, repair or replace the Supply in its environment at its expense (including any staff travel, dismantling / reassembly expenses) so that the latter operates in full compliance with the provisions of the Order and the use for which it is intended.

Should the S. be called upon to honour its warranty, but fails to effectively do so within 15 calendar days, **SEI** reserves the right to intervene or to have any third party intervene instead of the S. at the latter's expense.

Any service furnished and/or any item replaced / rectified / repaired under this warranty are themselves guaranteed for 12 months under the abovementioned conditions. Only the items / services with a normal lifecycle of less than 12 consecutive months are excluded from the scope of this operational warranty.

14.2 Supply of spare parts

The S. shall deliver all spare parts for 10 years as from delivery / acceptance of the Supply.

15. Intellectual property

Any study (its results and its various constituent elements such as the drawing, diagram, model, prototype, etc.) carried-out by or for the S. pursuant to meeting the Order is the exclusive property of **SEI**.

Consequently, the S. undertakes not to use / exploit (or allow a third party to do so) said study results / items for purposes other than meeting the Order.

If specific software is supplied under the Order, its acceptance implies *ipso facto* the S.'s assignment to **SEI** of the exclusive rights of use / exploitation / commercialisation of said software. The S. also undertakes to provide **SEI**, at its 1st request, with the source and object code of said software as well as the associated documentation.

The S. holds **SEI** totally harmless in respect of any action or lawsuit instituted by third parties based on a claim relating to the intellectual property rights covering the Supply delivered under the Order. Pursuant to such proceedings, and independently of any other penalty, all the procedural expenses (included lawyers' fees) and damages which **SEI** may be ordered to pay, shall be fully assumed by the S.

16. Confidentiality - Publicity

Any information, regardless of its nature (technical or commercial) or its support medium, sent to the S., or to which the latter may have access in the context of the Order, shall be considered by it as being strictly confidential and exclusively reserved for the purpose of performing the Order, to the exclusion of any and all other use.

Moreover, and unless it has **SEPD's** express and prior agreement, the S. undertakes not to mention its business relationship with **SEPD** to third parties, nor to exhibit the whole or part of the Supplies manufactured from technical documents or specifications owned by **SEI** or/and **SEPD**.

17. Insurance

At **SEPD's** first request, the S. undertakes to provide it with a copy of its insurance policies and/or any certificate to be issued by its insurance companies, and to take-out with the latter, at S.'s expense, any additional insurance cover which **SEPD** may consider to be reasonably necessary in light of the risks relating to performance of the Order.

18. Termination

SEPD may unilaterally and automatically terminate the Order without the S. being entitled to claim any indemnity whatsoever in this respect, in the following cases:

- 15 days after sending a formal notice left unremedied that the S. breached any of its obligations under the Order.
- with immediate effect in the event of:
 - Court-ordered, or out-of-court dissolution or liquidation,
 - an event of force majeure, the consequences of which last for more than 6 weeks,
 - the contractual delivery times being overrun, if such cause the maximum amount of penalties to be reached.

19. Disputes – Governing law

The contract between **SEPD** and the S. is governed by Austrian law to the exclusion of the provisions of the Vienna Convention of April 11th, 1980 on the international sale of goods.

Any dispute arising from this contract which cannot be settled amicably shall be referred to the Vienna Commercial Court to the exclusion of any other jurisdiction, even in the event of emergency proceedings, multiple defendants or third party proceedings.

20. Sustainable development

20.1. The S. undertakes to comply with the following principles:

- The OECD's guidelines on sustainable development, which may be consulted on the following website:
http://www.oecd.org/maintopic/0,3348,fr_2649_201185_1_1_1_1_00.html

- the ten principles of the United Nations Global Compact on human rights, labour standards, the environment and anticorruption, which may be consulted on the following website:
<http://www.unglobalcompact.org/Languages/french/index.html>

- the rules defined in the ISO 14001 standard.

20.2. In order to enable use of the Supply in total safety, the S.:
- undertakes to comply with all the national legislation and regulations applicable at the delivery address specified in the Order.

- further undertakes to ensure that none of its Supplies contain one or more of the hazardous substances referred to in Articles 4 and 6 of the European Directive 2002/95/EC of 27 January 2003, also known as the RoHS Directive,

- also undertakes to comply with all the obligations concerning substances which are restricted and/or banned in the European Union and, in particular, those listed in the REACH Regulation (EC 1907/2006) and in the Directive 76/760/EEC,

- and, generally, finally undertakes to systematically comply with the legislation and regulations relating to the ban on, or restriction of, the use of certain products or substances which are effective when the Order is placed, both in the European Union and in other countries, if such is specified in the Order and/or the specifications, or which may become applicable up to the delivery date of the Supply.

Within 45 days of receipt of a request from **SEI**, which may be accompanied by a list which **SEI** may have sent to it and, otherwise, on the basis of the effective lists of restricted substances, the S. shall advise **SEI** of the presence of such substances in its Supply.

At **SEI's** first request, the S. shall provide it with all supporting documents required during the legal timeframe for conserving documents.

20.3. The S. shall compensate **SEI** for all costs, damages and losses borne by **SEI** and/or for which it is found liable under third-party claims, owing to the S.'s failure to comply with any of the provisions of this Article 20.

20.4. Moreover, should the S. decide to stop marketing the Supply and/or should it decide to change the composition thereof, it shall advise **SEI** thereof at least 9 (nine) months prior to the marketing-end date and/or the date when such change becomes effective.

21. Management of Product / Process changes

The S. shall inform **SEPD** in writing of any major changes made to the Product or to its manufacturing process and, in particular, of changes affecting the processes, the procurement of critical Components, the Product's design, the location of the plant(s), provided such changes impact or may impact on the Product's technical specifications, compliance with standards, lifecycle, reliability or quality. The S. shall inform **SEPD** in writing nine (9) months prior to the date scheduled for the implementation of any major change. **SEPD** reserves the right to refuse any major change. All major changes remain under the full responsibility of the S. The S. shall repay to **SEPD** all the costs borne by the latter during, or in the context of, the reclassification of the Product and/or Component affected by the major change.