

INDUSTRIAL CONTROL TECHNOLOGY PTY LTD.
A.C.N. 007 237 167

STANDARD TERMS & CONDITIONS FOR THE SUPPLY OF SIEMENS' PRODUCTS

1. Definitions

- ICT: Shall mean Industrial Control Technology Pty Ltd.
Purchaser: Shall mean the company, firm of persons to whom the offer is addressed and shall include executors, administrators, successors and permitted assigns.
Siemens: Shall mean Siemens Ltd

2. General

These Conditions of Sale apply to the sale of items and goods included in the current issue of ICT's price lists or, where and offer is made, they shall form part of that offer. No variation or cancellation of any of these conditions shall be binding on ICT unless agreed to by ICT in writing.

3. Precedence, Partial Invalidity

If there is any inconsistency or variance between these conditions and any other offer or document whether originating from ICT or the Purchaser these conditions will prevail. In the event of one or more clauses of these Conditions or any included in ICT's offer being held by a Court of Law to be legally invalid or unenforceable the remainder of such Conditions shall in no way be affected.

4. Acceptance and Order

Unless previously revoked by written notification to the Purchaser, ICT's offer shall remain valid for the period as stated in the offer or where no such period is stated, for thirty (30) days from the date thereof.

5. Extent

Goods offered ex stock are subject to prior sale. Any delivery time offered is without obligation.

6. Cancellation or Variation

- 6.1 An order may at ICT's option be terminated in the event of insolvency of the Purchaser or of execution being levied against any of the goods of the Purchaser or the Purchaser being placed in liquidation whether voluntary or otherwise.
6.2 An order may be cancelled or varied by the Purchaser only if such cancellation or variation is accepted by ICT in writing and any such variation or cancellation shall only occur on terms which will reimburse ICT for any costs or loss (including but not limited to loss of profit) incurred.

7. Prices

- 7.1 The prices charged shall be ICT's prices ruling at the date of delivery ex ICT store. The price offered is based upon the quantities referred to in the offer. Should there be any variation in the total quantity of goods ordered from that offered, ICT reserves the right to amend the prices. The prices of goods which are not sold ex ICT's stock but imported for individual Purchaser's requirements are based on the quoted rate of exchange and shall be subject to adjustment in respect of any variation due to exchange fluctuation.
7.2 A calculation will be made at the date of invoicing, crediting or debiting the Purchaser with any variation which has occurred between the quoted exchange rate and the Westpac Banking Corporation Spot Selling Rate applying at the date of invoicing.
7.3 Should any further significant variation occur between the date of invoicing and the tenth banking day following that on which Purchaser's payment is received by ICT a further adjustment shall be made.

8. Information and Drawings

All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by ICT or otherwise contained in catalogues, price lists and other advertising matter of ICT or Siemens are approximate only and are intended to be by way of a general description of the goods and shall not form part of the contract.

9. Packing

Unless otherwise stated in the offer the prices include packing in accordance with ICT's customary standard of packing. Any other packing requested by the Purchaser or deemed necessary by ICT will be charged for in addition to the price offered.

10. Delivery

- 10.1 Unless otherwise stated in writing the price includes for delivery of the goods ex works into ICT's store. If delivery is required beyond this point ICT may, at ICT's discretion agree to act as agent for the Purchaser in this matter and all costs for carriage and insurance will be to the Purchaser's account.
10.2 The delivery date shall be extended in respect of any delay caused by the Purchaser, industrial disputes including strikes and lockouts, circumstances such as fire, war, mobilisation or by any other cause beyond the reasonable control of ICT.
10.3 In the event of delay caused by reasons other than those mentioned above and if as a result of such delay the Purchaser suffers loss, ICT undertakes to pay for each complete week of delay, pre-estimated and liquidated damages at the rate of 0.5% per week, but not more in aggregate than a total of 5.0% of the contract price of that portion of the goods which in consequence of such delay cannot be commercially and effectively used. Such payment shall be in full satisfaction of damages sustained by the Purchaser due to any such delay and shall be in lieu of any other right the Purchaser may have against ICT.

11. Storage

If after notification that the goods are ready for delivery, delivery is delayed for any reason beyond ICT's reasonable control ICT shall be entitled, at its option, to arrange suitable storage at its premises or elsewhere and shall take reasonable measures to protect the Purchaser's interest in the goods. The Purchaser shall accept all costs of storage, insurance, demurrage, handling and other charges associated with such storage.

12. Risk

The goods sold shall be at the Purchaser's risk immediately upon delivery to the Purchaser or Purchaser's agent or where delivery is delayed, risk shall pass to the Purchaser after fourteen (14) days from the date of notification that the goods are ready for delivery.

13. Title

- 13.1 Notwithstanding that the risk in the goods sold shall pass to the Purchaser as provided for in Clause 12 hereof title and property in the goods sold shall remain with ICT until such time as full payment is made to ICT for all amounts owing by the Purchaser so that the Purchaser's total indebtedness to ICT under the terms and conditions of sale is discharged.
13.2 In the event that the Purchaser fails to make payment for the goods in accordance with the terms of this contract then ICT shall have the right to recover from the Purchaser the goods and for that purpose the servants or agents of ICT may enter upon the Purchaser's premises in order to effect recovery and use any reasonable means of force in order to effect recovery. ICT shall have the right to resell or otherwise dispose of the goods so recovered without reference to the Purchaser.
13.3 If any of the goods are incorporated into or used by the Purchaser as parts, components or materials in respect of any other product of the Purchaser before payment in full has been made for the goods then the property in the whole of the product into which the parts or components have been incorporated shall be and become that of ICT and remain the property of ICT until such time as payment in full has been made by the Purchaser.
13.4 Notwithstanding the provisions of the terms and in particular Clause 15 hereof payment shall become due immediately upon the Purchaser (being a natural person) committing any act of bankruptcy or if the Purchaser (being a company) commits any act which entitles any person to apply to wind up the Purchaser or if a receiver or receiver and manager of the Purchaser is appointed.
13.5 The Purchaser acknowledges that until his total indebtedness to ICT is discharged he holds the goods sold as bailee of ICT and that a fiduciary relationship exists between ICT and the Purchaser.
13.6 In the event that the Purchaser sells the goods to the Purchaser's customers before payment in full for the goods has been made then the Purchaser in a position of fiduciary shall:
(a) assign to ICT the benefit of any claim against such customers,
(b) account fully to ICT for the proceeds of the sale of the goods sold or any part thereof until the Purchaser's total indebtedness to ICT is discharged.

14. Sales Tax and Goods and Services Tax

14.1 The prices offered are exclusive of Sales Tax or other Government Imposts. Should such charges become applicable they will be for the Purchaser's account at actuals.

14.2

14.2.1 For the purpose of this clause 14.2

"GST" means GST within the meaning of the GST Act.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.

14.2.2 To the extent that a party makes a *taxable supply* in connection with these terms and conditions, except where express provision is made to the contrary in any documentation, and subject to this clause 14.2.2, the *consideration* payable by a party under this agreement represents the *value* of the *taxable supply* for which payment is to be made.

14.2.3 Subject to clause 14.2.4, if a party makes a *taxable supply* in connection with this agreement for a *consideration* which, under clause 14.2.2, represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

14.2.4 A party's right to payment under clause 14.2.3 is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.

15. Terms of Payment

15.1 Unless otherwise stated in the offer, prices offered are strictly net. Any payment due to ICT shall be made in full not later than thirty (30) days from the date of invoice. ICT reserves the right to deliver and invoice any item or items comprising the whole or part of any order or to proceed in accordance with Clause 11 hereof.

15.2 If delivery is delayed as a result of circumstances beyond the reasonable control of ICT then fourteen (14) days after notification by ICT that the goods, or part thereof are ready for delivery, payment of 50% of the contract price applicable to the goods or part thereof referred to in the notice of delivery, shall fall due and be paid, the balance becoming payable on delivery or within three (3) months of the date of such notification, whichever is the earlier.

15.3 Should the Purchaser delay in respect of any payment due to ICT then ICT shall have the right, in addition to all other rights to which ICT is entitled at law, to charge interest on the overdue amount at the rate of 3% per annum in excess of the interest rate prescribed by the Westpac Indicator Lending Rate for Overdrafts above \$100,000.00 calculated from the date of invoice to the actual date of full and final payment. Any payment by the Purchaser shall be credited first against any interest so accrued and the balance of payment if any shall be applied in reduction of the outstanding balance of the contract price.

15.4 The extension of credit facilities is in any case at the discretion of ICT and is subject to confirmation of the receipt of an order however in any event ICT retains the right to withdraw credit facilities at any time prior to delivery without further notification.

16. Goods Returned for Credit

16.1 Goods will be accepted for credit only by prior agreement or to the extent that they have been wrongly or over supplied. Returned goods shall be delivered to ICT free of charge, in good order and condition, unused and in the original unopened packaging, accompanied by a despatch note stating the original invoice number, date of supply and reason for return. Except where goods have been wrongly or over supplied, a charge as determined by ICT will be made for handling costs.

16.2 Goods made to special order cannot be returned or credited unless not to specifications or otherwise not in accordance with any expressed or implied term of the contract.

17. Shortages in Delivery

Claims for shortages in delivery shall only be accepted by ICT if ICT is notified in writing within ten (10) days of receipt of the goods.

18. Warranty

18.1 ICT shall make good by repair or at ICT's option by replacement within a reasonable time after notification by the Purchaser defects caused by ICT's failure to comply with the contract, or which appear in the goods arising from faulty design, material or workmanship provided always that

- such goods have been properly handled and used and have been operated and maintained in accordance with instructions issued by ICT or Siemens and

- such defects (whether apparent or not) occur within a period of

- (i) twelve (12) months after the goods have been delivered

or

- (ii) fifteen (15) months from the date of notification of readiness for despatch

whichever period first expires and

- ICT is notified in writing within seven (7) days of the alleged defect occurring and the Purchaser has stated the date and place of purchase.

18.2 Where in accordance with the foregoing, the Purchaser has notified ICT of an alleged defect, he shall if ICT so requires promptly, and at his own expense and risk, return the defective part(s) to ICT.

18.3 The removal of the defective part and the installation of any repaired or replacement part shall be performed by the Purchaser at his own expense. Where any defective part(s) has been replaced such part(s) shall become the property of ICT.

18.4 ICT shall not be liable for goods of a consumable nature, or those having a low rated service life such as electric lamps, electronic valves and glass components or where any unauthorised repair or alteration to the goods has been performed by the Purchaser or others.

18.5 This express warranty is in lieu of any other rights that would otherwise be conferred on the Purchaser under any Law save that this express warranty does not exclude any conditions or warranties implied into this contract by the provisions of the Trade Practices Act or by any other Federal or State Laws to the extent that such condition or warranties may not be excluded by express agreement.

19. Liability of ICT

Subject to clauses 18 and 20 ICT shall not be under any liability whether in contract, tort or otherwise from any cause whatsoever, whether occasioned by negligence or otherwise, for any injury, damage or loss, including consequential damage or loss whether to persons or property, arising out of this contract or the goods supplied pursuant hereto including any defects therein or anything connected therewith or with repair or replacement or any other work related thereto.

20. Patents and Design Rights

20.1 The Purchaser warrants that any design or instructions furnished or given by him shall not be such as to cause ICT to infringe any Letters Patent, Registered Design, Trademark or Copyright in the execution of the order.

20.2 The patent and design rights held by ICT and relating to goods offered or supplied by ICT shall remain the absolute property of ICT and ICT's designs and drawings shall not be reproduced or disclosed without ICT's written consent. The Purchaser will not, without ICT's written consent, copy or allow others to copy any drawings, goods or part thereof supplied by ICT.

21. When Purchaser is a Consumer

21.1 If the basis of a contract is such that the Purchaser is a consumer as defined in the Trade Practices Act or in any other Law of the Commonwealth (or any State or Territory) of Australia, the Purchaser's rights shall be governed by the provisions of the said Act or any such Law to the extent that such liability may not be excluded by express agreement.

21.2 If a liability may not be excluded by express agreement and where the goods to be provided by ICT are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of ICT for a breach of a condition or warranty implied by the Trade Practices Act (other than a condition or warranty implied by Section 69) shall be limited to the repair of the goods, or, at ICT's option, the replacement of the goods or the supply of equivalent goods.

22. Legal Construction

The contract shall be construed and operate in conformity with the laws of the State of Victoria which is hereby deemed to be the proper Law of the Contract.