

Square D Conditions Of Sale

- A) in transit shall pass to the Purchaser at time of delivery at the F.O.B. point. Square D is not responsible for breakage after having received "in good order" receipts from the carrier. Purchaser is responsible for pursuing any damage claims with the carrier. No allowance will be made in lieu of transportation if the Purchaser accepts shipment at factory, warehouse or freight station or otherwise supplies its own transportation. **Freight prepaid is defined as:** a) Shipments to destinations within the continental United States to the accessible common carrier point nearest the first destination. b) Shipments to U.S. destinations outside the continental United States shall be to the common carrier free delivery point in the United States nearest the original port of embarkation. All charges associated with F.A.S., C.I.F., or other charges such as pier transfer, lift, ocean freight, and marine or war insurance shall be paid by the Purchaser, unless otherwise specifically agreed in a specific Purchase Order. In no event will Square D be responsible for demurrage or detention charges.
- B) **DELIVERY: F.O.B. DESTINATION:** When the Square D quotation is based on delivery F.O.B. Destination, for shipments for delivery within the continental United States, Square D will retain title and all risk of loss or damage in transit to the common carrier free delivery point in the United States nearest the first destination for a price addition of 2% of the net price. If the Purchaser elects this option, **Purchaser's obligations shall be as follows:** a) Purchaser shall have the responsibility of inspecting the equipment for apparent loss or damage immediately upon its arrival at the free delivery point. b) In the event of apparent shipping loss or damage, Purchaser shall make written notation of the loss on the carrier's delivery receipt and, within 72 hours of delivery shall notify the Square D Customer Information Center. Purchaser shall not remove product from the point of examination and shall retain the shipping container and packing material. Purchaser shall request the carrier to make an inspection and send Square D a copy of the carrier's inspection report. c) In the event of concealed damage which occurred during transit and is discovered by the Purchaser after delivery, Purchaser shall report such damage immediately, but in no event later than 15 days after delivery, to the delivering carrier, and within 72 hours of discovery, shall notify the local Square D field office. If such notification is not made, Square D shall not be liable for loss or damage in transit.
- C) **SHIPMENT AND ROUTING:** Square D shall select the point of origin of shipment, the method of transportation and the routing of the shipment. Purchasers that request expedited or special modes of transportation or routing involving air, premium or any other non-standard Square D shipping shall be assessed additional charges for shipping, handling, freight and expediting. Any rebates, allowances, discounts or incentives received by Square D from its carriers shall be retained by Square D. All prices include domestic packaging only. When other than domestic packaging is required, contact your local Square D field office. Purchaser specified packaging and marking may be subject to additional charges.
9. **SHORTAGES:** Claims for shortages or errors must be made in writing to Square D within 60 days after invoice date, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Purchaser.
10. **INSTALLMENTS:** Square D reserves the right to make shipments in installments, unless otherwise expressly stipulated in a specific Purchase Order; and all such installments when separately invoiced shall be paid for when due per invoice without regard to subsequent shipments. Delay in shipment of any installment shall not relieve Purchaser of its obligation to accept remaining shipments.
11. **FORCE MAJEURE:** Square D shall not be liable for any damages as a result of any delays due to any causes beyond Square D's control, including, without limitation, an act of God; act of Purchaser or Square D supplier; embargo or other governmental act; regulation or request; fire; accident; strike; slowdown; flood; fuel or energy shortage; sabotage; war; riot; delay in transportation and inability to obtain necessary labor, materials or manufacturing facilities from usual sources. In the event of any such delay, the date of delivery shall be extended for a period of time reasonably necessary to overcome the effect of such delay.
12. **STANDARD WARRANTY:** Square D warrants equipment manufactured by it and sold through authorized sales channels to be free from defects in materials and workmanship for eighteen (18) months from date of invoice by Square D or its authorized sales channel. If within such period any such equipment shall be proved to Square D's satisfaction to be non-conforming, such equipment shall be repaired or replaced at Square D's option. This warranty shall not apply (a) to equipment not manufactured by Square D, (b) to equipment that has been repaired or altered by other than Square D so as, in its judgment, to affect the same adversely, or (c) to equipment that has been subjected to negligence, accident, or damage by circumstances beyond Square D's control, or improper operation, maintenance or storage, or to other than normal use or service. With respect to equipment not manufactured by Square D, the warranty obligations of Square D shall in all respects conform and be limited to the warranty actually extended to Square D by its supplier. Non-conforming products must be returned at Square D's expense for evaluation unless this is waived in writing. Replacement products may be new or reconditioned. The foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, temporary power, or any other expenses that may be incurred in connection with repair or replacement.
13. **OPTIONAL WARRANTIES:** (Only available on equipment to be located in the U.S.) **Option 1—Extended—2 or 3 years from Shipment.** If requested by the Purchaser and specifically accepted in writing by Square D, the standard

(Continued)

Square D Conditions Of Sale

13. warranty will be extended to two (2) years from date of invoice for a price addition of 1% of the net face value of the Purchase Order or will be extended for three (3) years from date of invoice for a price addition of 3% of the net face value of the Purchase Order. **Option 2—Special Warranty:** If requested by the Purchaser and specifically accepted in writing by Square D, the standard warranty will be extended, for a price addition of 3% of the net face value of the Purchase Order, to cover reimbursement of the direct costs of: a) Removal of non-conforming equipment or part thereof; b) Transporting equipment or parts to and from the place of repair; c) Off-loading of truck and reinstallation at the original site. Such special warranty, which may be chosen to cover a period not exceeding that of the standard or extended warranty (see above) selected, will not include the cost of providing temporary power or removing or replacing other apparatus or structures, or costs of transportation beyond a common carrier free delivery point in the continental United States. Further, the obligation of Square D for expenses and costs arising under this special warranty coverage will not exceed 50% of the net invoice price on the equipment being repaired. This warranty does not change or affect the allocation of risk or loss during shipment. **Option 3—Extended Warranty—Preventative Maintenance Agreements:** If requested by the Purchaser, and specifically accepted by Square D, a Preventative Maintenance Agreement is available to provide preventative maintenance on equipment covered by the agreement. Terms of the Preventative Maintenance Agreement shall be as defined in a separate Services Agreement agreed to by the parties.
14. **RETURN OF EQUIPMENT:** NO EQUIPMENT MAY BE RETURNED WITHOUT FIRST OBTAINING SQUARE D'S WRITTEN PERMISSION AND A RETURNED MATERIAL IDENTIFICATION TAG. Returned equipment must be of current manufacture, in the original packaging, unused, undamaged and in saleable condition. Returned equipment must be securely packed to reach Square D without damage and labeled with the return authorization number. Any cost incurred by Square D to put equipment in first class condition will be charged to the Purchaser. Purchaser requested returns not involving a Square D error will be assessed Square D's standard restocking fee. Returns will be credited at the pricing specified in Square D's standard return policy. Special Order and Custom equipment is not returnable. Square D shall bear the cost of returns resulting from Square D error, and method and route of return will be at the discretion of Square D. Costs incurred by failure to follow Square D direction will be borne by the Purchaser.
15. **SOFTWARE:** Any software or computer information, in whatever form that is provided with equipment manufactured by Square D, is licensed to Purchaser solely pursuant to standard licenses of Square D or its supplier of such software or computer information which licenses are hereby incorporated by reference. Square D does not warrant that such software or computer information will operate error free or without interruption, and warrants only that during the warranty period applicable to the equipment that the software will perform the essential functions necessary for the normal and customary operation of the equipment. If such software or computer information fails to conform to such warranty, Square D will, at its option, provide an update to correct the non-conformance or replace the software or computer information with the latest available version containing a correction. Square D shall have no obligation to provide updates or revisions.
16. **LIMITATIONS:** These disclaimers and limitations of remedies apply to all warranties offered to Purchaser and to all Purchase Orders. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES (EXCEPT WARRANTIES OF TITLE), INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Except as may be expressly provided in an authorized writing by Square D, Square D shall not be subject to any other obligations or liabilities whatsoever, other than as stated above with respect to equipment sold or services rendered by Square D. Notwithstanding anything to the contrary herein contained SQUARE D COMPANY, ITS CONTRACTORS AND SUPPLIERS OF ANY TIER, SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR LOST TIME, LOST PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER. The remedies of the Purchaser are exclusive and the total cumulative liability of Square D, its contractors and suppliers of any tier, with respect to this contract or anything done in connection therewith, such as the use of any product covered by or furnished under the contract, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the product, part, or service on which such liability is based.
17. **INTELLECTUAL PROPERTY:** As to equipment proposed and furnished by Square D, Square D shall defend any suit or proceeding brought against Purchaser so far as based on a claim that such equipment constitutes an infringement of any copyright, trademark or patent of the United States. This obligation shall be effective only if Purchaser shall have made all payments then due hereunder and if Square D is notified promptly in writing and given authority, information, and assistance at Square D's expense for the defense of the same. In the event the use of such equipment by Purchaser is enjoined in such a suit, Square D shall, at its expense, and at its sole option, either (a) procure for the Purchaser the right to continue using such equipment (b) modify such equipment to render it non-infringing (c) replace such equipment with non-infringing equipment, or (d) refund the purchase price (less depreciation) and the transportation and installation costs of such equipment. Square D will not be responsible for any compromise or settlement made without its written consent. The foregoing states the entire liability of Square D for patent, trademark or copyright infringement, and in no event shall Square D be liable if any infringement charge is based on the use of Square D equipment for a purpose other than that for which it was sold by Square D. As to any