

Beckhoff Automation Ltd Standard Terms & Conditions for Canada

Updated 11//2023

1. **APPLICABILITY:** The following terms and conditions ("Standard Terms and Conditions") of Beckhoff Automation Ltd ("Beckhoff") govern the sale of all goods and services to each customer of Beckhoff purchasing Beckhoff products or services in Canada ("Customer").
2. **ORDERS:** Customer shall submit all orders for products in writing, specify the description and quantity of the products ordered, address to which delivery is to be made, manner of delivery and such other information as requested by Beckhoff. A minimum order of \$75.00 is required. Beckhoff has the absolute right to accept or reject any order, in whole or in part and shall be under no obligation to Customer for the mere placing of an order by Customer. An order shall only be deemed accepted and binding on Beckhoff if Beckhoff expressly confirms its acceptance in writing with an order confirmation or invoice. Once Beckhoff sends written confirmation to the Customer, the order will not be cancelable by Customer pursuant to the Non-Cancellation clause in Section 8. If Beckhoff accepts a portion of an order, Beckhoff will send an order confirmation or invoice for the portion of the order accepted or the portion of the order shipped. Order confirmations have a price validity of 12 months from the date of order confirmation. The confirmed price is subject to change after 12 months if delayed delivery is requested by Customer.
3. **ACCEPTANCE:** Acceptance by Customer of the goods and services provided by Beckhoff constitutes an express acceptance of these Standard Terms and Conditions and a repudiation of any other inconsistent terms or conditions. Terms or conditions contained in any of Customer's documents, including but not limited to orders and acknowledgments, that alter, differ from, or add to the Standard Terms and Conditions herein are deemed by Beckhoff to be a material alteration of the Standard Terms and Conditions and are hereby rejected by Beckhoff unless agreed to in a writing signed by an authorized representative of Beckhoff.
4. **PRICING:** Prices and other information listed in any publication by Beckhoff (including catalogues and brochures) are subject to change without notice, including for the reasons set out in Section 2. Such publications are not offers to sell and are not subject to acceptance by Customer. Beckhoff shall provide services in accordance with the Standard Terms and Conditions, and at the rates in effect at the time the services are provided. Beckhoff's service rates are available upon request by Customer. Customer acknowledges that Beckhoff has the right to invoice Customer for travel time as well as any waiting time necessary to provide the services properly. Any applicable duties or sales, use, excise, withholding, value added or similar taxes shall be added to the price and invoiced separately, unless an acceptable exemption certificate is furnished.
5. **PAYMENT AND CREDIT:** Unless otherwise stated, all payments shall be in Canadian dollars and shall be due and payable in full within thirty (30) days of the date of invoice, which shall ordinarily be the date of shipment. If Customer delays shipment, the date on which Beckhoff is prepared to make shipment shall be deemed to be the date of shipment for payment purposes, and Beckhoff may invoice Customer on that date. If Customer delays shipment or is unable to receive goods, Beckhoff may place the goods in storage for Customer's account, and risk of loss shall pass to the Customer. Customer shall pay all charges for storage, transport and other related expenses. Customer agrees that a monthly administrative and finance charge of 1.5% of the outstanding balance (19.5618% per annum), but not in excess of the lawful maximum, may be charged to Customer for any account having a balance remaining unpaid after thirty (30) days. Customer agrees to pay Beckhoff's costs of collection, including lawyers' fees, incurred in collecting any past due amounts. If at any time, in Beckhoff's judgment, Customer is unable or unwilling to meet the terms specified, Beckhoff may require satisfactory assurance or full or partial payment as a condition of commencing or continuing manufacture of goods or making shipment, and may, if

shipment has been made, recover the goods from the carrier, pending receipt of such assurances.

6. **DELIVERY:** All goods shall be sold and delivered FCA Beckhoff's facilities in Cambridge, Ontario or Verl, Germany if a direct shipment is made, unless otherwise expressly agreed with Customer in writing. Beckhoff may make partial shipments as determined in its sole discretion. Delivery terms are FCA point of shipment, freight and insurance pre-paid and billed to Customer. Title to goods and risk of loss or damage shall pass to Customer at the FCA point. If insurance is not required, Customer needs to provide a letter disclaiming the need for insurance to Beckhoff. Claims for shortages or incorrect items must be made in writing to Beckhoff within ten (10) days after receipt of shipment. Failure to give such notice shall constitute an unqualified acceptance and waiver by Customer of all claims for such shortages or incorrect terms. If direct international transport is requested by Customer, brokerage duties and taxes will also apply.
7. **PERFORMANCE; DELAYS; USE OF GOODS AND SERVICES:** Timely performance by Beckhoff is contingent upon Customer's supplying to Beckhoff, when needed, all required technical information and data, including approvals, and all required commercial documentation. Beckhoff shall not be liable for any damages or penalty for delay in delivery or use of goods or services or for failure to give notice of delay when such delay is due to any cause or condition beyond the reasonable control of Beckhoff, including, but not limited to, natural catastrophes, acts or omissions of a government or its agencies or departments, labor strikes, lockouts or other disturbances, war, riot or difficulties in procuring labor, energy shortages, shortage of suitable parts, materials, computer malfunction, transportation problems, Customer's failure to fulfill its obligations, especially the completeness of information provided to Beckhoff by Customer, or delay in delivery by Beckhoff's vendors. The scheduled delivery or performance date shall be extended by a period of time equal to the time lost because of any such delay. Delay in delivery or installation shall not relieve Customer of its obligation to accept such later delivery or installation.
8. **NON-CANCELATION:** Subject to Customer's Withdrawal Right in Section 2, Customer may not cancel, terminate or suspend an order after acceptance except with Beckhoff's express written consent, and then only upon terms that will compensate Beckhoff for any engineering, fabrication, and purchasing costs and any other costs relating to such cancellation, termination or suspension, plus a reasonable amount of profit. In any event, Beckhoff shall have the right to reject any requested amendment to an order which Beckhoff, in its sole discretion, believes to be unsafe, technically unsound, not subject to good workmanship or established engineering standards or not in conformity with the goods or services regularly provided by Beckhoff.
9. **RETURN OF GOODS:** No goods shall be returned to Beckhoff without Beckhoff's prior written approval. In the event of a warranty claim, Customer shall observe the provisions of the Limited Warranty clause in Section 10 below. If Beckhoff's permission to return is granted, the amount of credit shall be determined based on the date of initial invoice. All goods must be returned with all manuals, written materials, instructions and accessories in proper packaging to Beckhoff with freight charges prepaid by Customer. Risk of loss shall not pass to Beckhoff until the returned goods are received by Beckhoff.
10. **LIMITED WARRANTY:** The obligations of Beckhoff under this limited warranty are the exclusive remedies for any breach of the warranty of the goods. Beckhoff warrants that any goods manufactured by it shall be of merchantable quality, free from defects in materials and workmanship under normal use and conditions for a period of one year from initial operation, but not more than eighteen (18) months from date of shipment by Beckhoff (the "Warranty Period"). Goods under warranty which have been repaired or replaced are warranted for a period of ninety (90) days from the date of shipment to Customer, or the remainder of the original Warranty Period, whichever is longer. Remanufactured parts (other than original warranty replacements) are warranted for a period of ninety (90) days from shipment. Any and all sales or deliveries of computer software products supplied or delivered to Customer by Beckhoff shall be governed by

a separate license agreement between Beckhoff and Customer. Beckhoff shall provide services requested by Customer, including but not limited to programming, maintenance, troubleshooting, repair, etc. only as agreed in advance in a separate written agreement by Beckhoff. Beckhoff shall perform such services in a professional manner and in accordance with generally accepted industry standards. Any defects in material or workmanship must be reported by Customer to Beckhoff within the Warranty Period. In the event a defect is discovered and reported to Beckhoff within the Warranty Period, Beckhoff will, solely at its option, adjust or repair the defect, replace the defective good, refund the purchase price or issue a credit for the purchase price of the goods involved (the "Remedies"). Customer acknowledges that it shall not be permitted to make any claim for defects arising out of misuse, negligence, negligent handling, improper operation, alteration, modification, improper installation, exposure to external influences or the like, to the extent Beckhoff was not responsible therefore. Prior to returning any goods alleged to be defective, Customer shall notify Beckhoff in writing of the claimed defect and shall include a description of the goods, as well as the number and date of the invoice therefore. No goods shall be returned without a written authorization obtained in advance from Beckhoff, said authorization not to be unreasonably withheld. Customer acknowledges that if Beckhoff elects to replace the goods, that such replacement goods may be new or reconditioned at Beckhoff's sole discretion. Customer further acknowledges that any services provided outside of Beckhoff's place of business (including but not limited to Customer's place of business), regardless of whether the goods are under warranty, may cause Customer to incur additional costs and expenses for such services, for which Customer shall reimburse Beckhoff. The sole purpose of the Remedies shall be to provide Customer with the repair, replacement, re-performance or modification of the good, or alternatively to refund or issue a credit for the purchase price. These Remedies shall not be deemed to have failed of their essential purpose so long as Beckhoff is willing and able to provide one of the Remedies in the manner provided in this Section.

OTHER THAN AS EXPRESSLY SET FORTH ABOVE, BECKHOFF MAKES NO, AND EXPRESSLY DISCLAIMS ALL, REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, REGARDING THE GOODS OR SERVICES PROVIDED HEREUNDER. FOR GREATER CLARITY, BECKHOFF SPECIFICALLY MAKES NO WARRANTIES AS TO THE SUITABILITY OF THE GOODS AND SERVICES FOR ANY PARTICULAR PURPOSE OR APPLICATION, REGARDLESS OF WHETHER FOR CUSTOMER OR AFFILIATES OF CUSTOMER AND REGARDLESS OF WHETHER BECKHOFF KNEW OF OR HAD REASON TO KNOW OF ANY SUCH PARTICULAR PURPOSE OR APPLICATION. BECKHOFF MAKES NO WARRANTIES SPECIFICALLY REGARDING ANY GOODS OR SERVICES PROVIDED HEREUNDER THAT HAVE BEEN FURNISHED OR SPECIFIED BY CUSTOMER AND INCORPORATED INTO THE GOODS OR OBTAINED FROM OTHER MANUFACTURERS OR VENDORS SPECIFIED BY CUSTOMER.

- 11. LIMITATION OF LIABILITY:** IN NO EVENT SHALL BECKHOFF HAVE ANY RESPONSIBILITY OR LIABILITY IN CONNECTION WITH OR ARISING OUT OF ANY ACTION OR INACTION OF BECKHOFF RELATING IN ANY WAY TO THE GOODS AND/OR SERVICES IT PROVIDES, FOR ANY LOSSES OR DAMAGES WHATSOEVER, WHETHER BASED ON CONTRACT (INCLUDING FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM), TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE BASIS, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR LOST PROFITS, EVEN IF BECKHOFF SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. Upon the discovery of facts that reasonably indicate that Beckhoff has failed to perform its obligations or has negligently or otherwise breached a legal duty to Customer, Customer shall notify Beckhoff of such facts in writing within ten (10) business days of such discovery. The failure to give the foregoing notice shall constitute an irrevocable waiver of all claims and causes of action which Customer may have against Beckhoff, and shall cause Customer to be absolutely

barred from the institution of any proceedings or actions based upon such claims or causes of action. In no event shall any action be brought by either party more than one year after the cause of action was discovered or could have been discovered, except that an action by Beckhoff for Customer's nonpayment of fees for goods and/or services shall not be subject to such limitation.

- 12. INDEMNIFICATION:** Customer assumes and shall indemnify and hold Beckhoff harmless from all responsibility and liability to Customer and third parties for personal or property damage, including direct, indirect, special, incidental, exemplary and consequential damages, relating in any way to the goods and/or services provided to Customer by Beckhoff. Customer shall defend, at its sole cost and expense, any action brought against Beckhoff as a result of any such personal injury or property damage and further agrees to indemnify Beckhoff for all costs (including lawyers' fees and expenses) incurred by Beckhoff in defending any such claims or in establishing its right to indemnification herein.
- 13. CONFIDENTIALITY:** All information, data and user manuals provided to Customer as well as all drawings, designs, techniques and improvements (whether patentable or un-patentable) made or conceived by Beckhoff or its agents or employees that relate in any way to the goods or services provided by Beckhoff (hereafter "Information") are confidential and proprietary to Beckhoff and shall not be reproduced, quoted, distributed, or communicated to, or used by, any other person or entity without the express prior written consent of Beckhoff. Customer agrees to take reasonable precautions to prevent unauthorized disclosure or use of the Information and shall only disclose the Information to, and permit its use by, Customer's employees and agents necessarily involved in the use and operation of the goods and services provided by Beckhoff to Customer. Customer shall inform its employees and agents receiving goods and services provided by Beckhoff of the confidential nature thereof and of the obligations of Customer and its employees and agents acting on behalf of Customer. The foregoing confidentiality restrictions shall survive indefinitely.
- 14. COPYRIGHT:** Any drawings and documentation provided to Customer hereunder are furnished only for Customer's own internal use. To the extent not inconsistent with Section 13 hereof relating to confidentiality, Customer shall have the right to make copies of such drawings or documentation to satisfy Customer's internal requirements, provided that Customer includes Beckhoff's copyright notice on each such copy. No other copies or use of any drawings or documentation or any portion thereof shall be made without the prior written approval of Beckhoff.
- 15. INTELLECTUAL PROPERTY RIGHTS:** Beckhoff shall defend any suit brought against Customer so long as it is based on a claim that any good or part thereof in the particular form sold by Beckhoff infringes a Canadian or U.S. patent, trade-mark, servicemark or copyright which had issued at the time of sale. Customer shall notify Beckhoff in writing of any such claim within five (5) business days of Customer receiving notice of the claim and shall give Beckhoff authority for the conduct of such suit, including but not limited to (a) allowing Beckhoff to defend or control the defense of the suit, including settlement negotiations and settlement, and (b) rendering to Beckhoff whatever information and assistance may reasonably be required for such a defense. Customer and Beckhoff shall share all expenses relating to the claim equally including damages, if any, awarded against Customer in such suit and the costs of litigation or settlement including all legal fees. In case such good, or any part thereof is held to infringe and the use of such good or part is enjoined, Beckhoff shall have the option of procuring for Customer the right to continue using such good or part, replacing the same with a non-infringing good, modifying the same so as to avoid infringement or removing the same and refunding the purchase price. Customer shall indemnify and hold Beckhoff harmless for any expense or loss resulting from infringement of patent, trade-mark or copyright or other intellectual property rights arising from compliance with designs or specifications furnished or specified by Customer and incorporated into the goods or obtained from other manufacturers or vendors specified by Customer.
- 16. SPECIFICATIONS:** Beckhoff reserves the right to make substitutions and modifications to the specifications of the goods and services it provides to Customer, providing that such substitutions or modifications will not materially affect the performance of said goods and services.

17. **NUCLEAR:** Customer represents and warrants that the goods shall not be used in or in connection with a nuclear facility, as aircraft flight control or vehicle control or equivalent applications.
18. **TERMINATION:** Beckhoff shall have the right to terminate its provision of goods and services to Customer upon the occurrence of any one of the following: (a) Customer has not made financial arrangements reasonably satisfactory to Beckhoff for the purchase of goods and services to be provided by Beckhoff at least thirty (30) days prior to the scheduled delivery date, (b) Customer assigns any of its rights hereunder without the prior written consent of Beckhoff (the word "assigns" to include, without limiting the generality thereof, the transfer of a majority interest in Customer), (c) Customer neglects or fails to perform or observe any of its obligations to Beckhoff, including but not limited to the timely payment of any sums due to Beckhoff, (d) Customer makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (e) Customer has a receiver and/or manager appointed over its assets or makes an application to do so; (f) Customer becomes bankrupt or insolvent or commits an act of bankruptcy or takes or attempts to take advantage of any law or statute for the relief of bankrupt or insolvent debtors, or (g) Customer violates any of the provisions hereof. Upon termination for failure of Customer to accept and pay for goods and services, Beckhoff shall have the right to retain as liquidated damages any cash deposit made by Customer without affecting adversely Beckhoff's right to claim other expenses and losses as Beckhoff may incur or suffer as a result of such failure by Customer, including lawyers' fees.
19. **GOVERNMENT REGULATIONS:** Beckhoff and Customer shall comply with all local laws, rules and regulations necessary for the performance of these Standard Terms and Conditions and any agreement concluded in conjunction herewith. In the event that any goods are to be exported, the exporter shall comply with all such laws that may apply to such export.
20. **NOTICES:** All notices given by either party to the other under these Standard Terms and Conditions shall be in writing, sent certified mail, return receipt requested to such address as may be provided in writing by either party to the other in the future, provided that notice of exercise of the Withdrawal Right may be provided by email to orders@beckhoff.ca.
21. **ASSIGNMENT:** Beckhoff may transfer any rights or obligations under the orders or contracts governed by these Standard Terms and Conditions to any of its affiliates or to another entity in the event of a merger, consolidation, recapitalization or the sale of all or substantially all of its assets without the consent of Customer. Customer may not transfer its rights or obligations pursuant to these Standard Terms and Conditions without the express written consent of Beckhoff.
22. **DISPUTE RESOLUTION:** Any dispute, claim or controversy arising out of or in connection with these Standard Terms and Conditions shall be negotiated in good faith between the parties. If, after negotiating in good faith, either party is of the opinion that such negotiations will remain unsuccessful, the parties shall refer the matter to mediation in accordance with such rules as the parties may agree. If the matter is not resolved by mediation, either party may then refer the dispute to binding arbitration in Toronto, Ontario in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17.
23. **GOVERNING LAW AND CONSENT TO JURISDICTION:** The validity, construction, and interpretation of the terms and conditions herein and all rights and duties of Beckhoff and Customer shall be governed by the substantive laws of the Province of Ontario (without giving effect to the conflicts of laws principles thereof). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Standard Terms and Conditions or to any agreement that may be executed or performed to implement these Standard Terms and Conditions. Customer hereby irrevocably submits to the nonexclusive jurisdiction of any Ontario provincial court or any Canadian federal court located in the Province of Ontario in any action or proceeding arising out

of or relating to the relationship between Beckhoff and Customer, and Customer hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such court or courts. Nothing herein shall affect the right of Beckhoff to bring any action or proceeding against Customer or its property or assets in the courts of any other jurisdictions. CUSTOMER HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THESE STANDARD TERMS AND CONDITIONS.

- 24. LANGUAGE:** The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only. Les parties aux présentes confirment que c'est leur volonté que la présente convention de même que tous les documents, y compris les avis, s'y rattachant, soient rédigés en anglais seulement.