

# Terms and Conditions of Purchase

## Conductix-Wampfler GmbH (Version 03/2012)

Unless differing conditions have been agreed upon in writing, all present and future purchases are governed exclusively by the following terms and conditions of purchase. The supplier's or work contractor's (hereinafter jointly "supplier") terms and conditions of business are valid only to the extent that we have confirmed them in writing.

### 1. Placing and Acceptance of Orders

#### 1.1

Only written orders and agreements are binding. Our employees are required to confirm in writing oral collateral agreements or commitments going beyond the contents of the written contract or changing these Terms and Conditions of Purchase to our disadvantage.

#### 1.2

The supplier must confirm the order in writing without delay. If an order confirmation is not received within 5 working days after the date of the order, we have the right to cancel the order without the supplier deriving claims from the cancellation.

#### 1.3

Should the supplier be able to manufacture the goods only with increased expense, the supplier must have the increased expense approved in writing before beginning the additional work. Otherwise, the additional expense will not be taken into account when accounts are settled.

### 2. Period of Delivery and Period of Production

#### 2.1

Agreed-upon delivery dates are binding. For the fulfillment of the delivery date, receipt of the delivery at the final destination is decisive. Should an acceptance test have been agreed upon or be required by law, fulfillment of the delivery deadline requires a successful acceptance by the person authorized by us to do so.

#### 2.2

As soon as the supplier realizes that a punctual - wholly or partly - delivery or performance (jointly "delivery") is not possible, he must inform us thereof without delay, giving the reasons and the probable duration of the delay.

#### 2.3

Partial deliveries are permitted only when we have agreed to them in writing.

#### 2.4

In cases of force majeure, labor disputes, stoppages, shortages of energy or raw materials, disturbances, or other unforesee-

able or unavoidable events for which we are not responsible, the period of time within which we must fulfill our contractual obligations is extended for the duration of the interruption and to the extent of the interruption's effects. We will inform the supplier without delay of the beginning and the end of the above-mentioned hindrances. To this extent, we cannot be made liable for a delay in acceptance or payment.

#### 2.5

Should there be a delay in delivery, we have the right to demand a contractual penalty of 1% of the agreed total price of the delivery for each week of delay, but not more than a total of 5% of the price. Further legal rights remain unaffected. The supplier is free to prove that damages are less than the contractual penalty. We reserve the right to claim the contractual penalty until the final payment has been made.

### 3. Delivery / Acceptance

#### 3.1

Each delivery must be accompanied by a bill of delivery giving our order number, our stock number, the type of packaging, as well as the quantity and weight of the shipment.

#### 3.2

A separate bill for every order must be sent to our address. The bill shall not accompany the delivery.

#### 3.3

We have the right to specify the shipment method as well as the carrier. Otherwise, the supplier is required to select the shipment method that is most economical for us.

#### 3.4

The supplier has not fulfilled his delivery obligations until we receive the proper delivery and shipping documents. We have the right to store the delivery at the supplier's expense and risk until we receive the documents.

### 4. Work at Our or at a Customer's Premises

#### 4.1

Should the supplier's employees or representatives work at our or a customer's business premises, they must observe accident prevention and all other safety regulations, as well as applicable plant rules. These persons are themselves responsible for following these regulations. They may not start work without knowledge of these rules and regulations. Therefore, they must inform themselves about these regulations early enough to ensure that the manufacturing deadline is met.

#### 4.2

Assembly and installation work must be accepted. The work is accepted when our representative has explicitly accepted in writing the supplier's performance as being according to contract. However, we may still

claim defects at the time of the final account. Should we not fulfill our obligation to accept the work, the supplier must allow us a fulfillment period of at least 3 weeks.

#### 4.3

Hours worked as well as material provided by the supplier must be confirmed by a representative of our company in writing immediately after completion of the work or no later than on the day on which the work was carried out.

### 5. Prices and Payment

#### 5.1

The prices upon which have been agreed are fixed prices including packaging and delivery free domicile.

#### 5.2

Unless otherwise agreed upon, payment will be made, at our discretion, either within 30 days with 3 % discount, or within 60 days net.

#### 5.3

We reserve the right to select the method of payment. The period of payment begins with the complete receipt of the goods as per agreement and receipt of the documents given in Section 3, but not before the delivery date upon which has been agreed.

### 6. Packaging

#### 6.1

The goods to be delivered must be packaged in the customary manner or, at our request, in special packaging according to our instructions.

#### 6.2

We have the right to return packaging carriage paid to the point of departure and to charge the supplier one-third (1/3) of the invoiced cost.

### 7. Assumption of Risk

Risk passes to us when the delivery has been properly turned over to us at the specified final destination or has been accepted by us. The same condition applies when we provide our own transportation personnel.

### 8. Warranty

#### 8.1

The period of limitation for claims for defects is 36 months after delivery, or, should an acceptance test be statutory or have been agreed upon, after acceptance.

#### 8.2

The supplier warrants that the delivered goods, at the time of delivery to us or to our customers, are of good title and quality and correspond to the best available technology, the applicable laws and accident prevention and safety regulations, as well as the customary and technical quality assurance standards (e.g., DIN, ISO, VDE, VDI, TÜV, Berufsgenossenschaft Ex-guidelines).

Should there be different versions of these standards; the German version is the valid one.

### **8.3**

After arrival, we will inspect the goods for obvious defects, identity, and shortfall quantities, as well as for transportation damage. An obligation for further inspection does not exist. We will report any defects to the supplier within a reasonable period of time after their discovery. In this respect, the supplier waives objections based upon the delayed notification of defects.

### **8.4**

Should the goods be defective, we have the choice of demanding either rectification of the defects or subsequent delivery of the defective goods. In addition, after a reasonable additional delivery period has expired without remedy, or, when due to exceptional urgency it is no longer possible to set an additional delivery deadline, after notification of the supplier, we have the right to, at the supplier's expense, undertake correction of faults ourselves, have a third party undertake the correction of faults, or obtain replacement goods elsewhere.

### **8.5**

The supplier must bear all rectification expenses or expenses for delivering replacement goods to the place at which the article is in use. On request, we will inform the supplier of this location.

### **8.6**

Should the supplier rectify delivered goods or replace them partially or wholly, the period of limitations according to Section 8.1 begins again with regard to this defect for these rectified or replaced goods, unless the remedy involves only insignificant effort or is an explicit act of goodwill by the supplier.

## **9. Liability**

### **9.1**

Should we be subject to product liability claims from a customer or a third party, and to the extent that a defect in the goods delivered by the supplier was wholly or partly responsible for the damage, the supplier must indemnify us from such claims upon the first written request. In cases of fault-dependent liability, this clause does not apply if the supplier is not at fault.

### **9.2**

To the extent that the cause of the damage lies in the supplier's area of responsibility, proof that the fault is the cause of the damage is sufficient; otherwise, the supplier carries the burden of proof.

### **9.3**

In any case, the supplier assumes the expenses corresponding to his extent of cause or fault, including the expenses of any court actions or recalls. This clause also

applies in cases of a discernible or imminent epidemic failure.

### **9.4**

The supplier must cover his risk of liability by means of insurance and provide us with proof of appropriate coverage.

### **9.5**

The supplier bears all damages caused by non-compliance with these Terms and Conditions of Purchase. Apart from that, he is liable for every even ordinarily negligent action of his employees or representatives.

### **9.6**

Claims for damages of any sort are excluded when we, our lawful representatives, or our vicarious agents have caused the damages by ordinary negligence. This exclusion of liability does not apply should there be bodily damage nor should material contractual obligations have been violated in a way that endangers the fulfillment of the contract. In such cases, our liability is limited to customary and foreseeable damages.

## **10. Third-Party Property Rights**

### **10.1**

The supplier warrants that, by the use of the goods delivered to us, no property rights (e.g., patents or registered design rights, or other third party rights or business or trade secrets) are violated, also not in the country of use. In this respect, he must indemnify us from any third-party claims upon the first written request.

### **10.2**

The supplier is not liable to the extent that he manufactures goods exclusively according to our drawings or models and he did not know or could not know that the manufacture of these goods violated third-party rights.

## **11. Means of Manufacture, Patterns, Drawings**

### **11.1**

Tools or other means of manufacture made on order for us and paid for by us become our property when the final payment is made. Our taking possession of the tools is supplanted by the supplier holding the articles in safe custody free of charge and with the due care and diligence of a prudent businessman. The supplier must keep the tools belonging to us separate from articles not belonging to us. Our property must be clearly identified as such on the articles themselves as well as in company records. These tools and manufacturing materials may not be used by the supplier for his own purposes, nor may they be made available to third parties. After the termination of the business relationship, the tools must be handed over to us upon request.

### **11.2**

Documents, as well as articles of all types (e.g., patterns, drawings, tools, models, and

similar items) that we have made available to the supplier may neither be used by the supplier for his own purposes nor be made accessible to third parties.

### **11.3**

Products made according to documents drawn up by us (such as drawings, models, and similar items), or according to our confidential specifications, or with our tools or reproductions of our tools may neither be used by the supplier himself nor offered or supplied to third parties.

### **11.4**

The supplier obligates himself to maintain confidentiality with respect to third parties regarding all details of our order, e.g., number of pieces, technical construction details, commercial conditions, etc. as well as with respect to all confidential information intentionally or accidentally received from us. The placing of our company on a reference list or the use of our order for advertising purposes is permitted only after obtaining our written permission.

### **11.5**

Except for those cases in which he is not at fault, the supplier obligates himself to pay a contractual penalty of 20% of the order value upon violation of this confidentiality obligation. In addition, for especially severe violations, we have the right to terminate the complete contractual relationship with the supplier without notice and without compensation, and, when appropriate, demand the return of payments already made. An especially severe violation of the obligation has been committed when the supplier gives knowledge obtained from us or provided by us to competing third parties.

## **12. Assignment**

Rights granted to the supplier under this contract may be assigned or pledged only with our written consent. This condition does not apply to monetary claims. However, we can perform to the supplier with the effect of a full discharge.

## **13. Place of Performance, Place of Jurisdiction, and Applicable Law**

### **13.1**

The place of performance for all deliveries, services and payments is the destination we specify.

### **13.2**

**The place of jurisdiction is the court that is competent at our place of business.** However, we have the right to initiate legal proceedings in the court of competent jurisdiction for the supplier's place of business.

### **13.3**

German law applies.