

**General Terms and Conditions of Delivery and Installation of Conductix-Wampfler AG, to be used in business transactions with entrepreneurs, based on the conditions of the Central Association of the Electrical Industry (ZVEI) Weil am Rhein as of August 27<sup>th</sup>, 2008**

**I. General Provisions**

1. The following Standard Terms and Conditions shall exclusively apply to all of our deliveries and services (subsequently: the Deliveries) if nothing to the contrary has been agreed in writing. The standard terms and conditions of the customer shall be valid only if the supplier or provider (subsequently: the Supplier) has explicitly agreed to them in writing.

2. The Supplier shall retain all ownership and copy rights in cost estimates, drawings and other documents (subsequently: the Documents). The Documents shall be made available to third parties only after prior consent of the Supplier and shall be returned to it immediately upon request if the order is not placed with the Supplier. Sentences 1 and 2 shall apply accordingly to the documents of the customer; they may, however, be made available to such third parties to which the Supplier has permissibly transferred Deliveries.

3. Partial delivery shall be permitted, so far as they are reasonable for the customer.

**II. Prices and terms of payment**

1. The prices shall be "ex works" excluding packaging but the respectively applicable value added tax.

2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the customer shall pay the agreed remuneration and any incidental costs required, e.g. travelling expenses, costs for the transport of tools, equipment and personal luggage as well as allowances. The version of the installation price list of Conductix-Wampfler AG current on the date of the conclusion of the contract shall apply.

3. Payments shall be made free place of payment of the Supplier.

4. Withholding payments or offsetting claims is allowed only to the extent that the claims are undisputed or legally binding.

**III. Delivery period; delay**

1. The observance of delivery deadlines shall require the timely receipt of all documents, necessary approvals and releases, especially of plans, to be provided by the customer as well as the observance of the agreed payment terms and other obligations of the customer. If these requirements are not observed on time the deadlines shall be extended appropriately; this shall not apply if the Supplier is responsible for the delay.

2. If non-observance of deadlines is due to force majeure, e.g. mobilisation, war, uprising or similar events outside of the sphere of influence of the Supplier, e.g. strike, lockout, the periods shall be extended.

3. If the Supplier is responsible for the delay (hereinafter referred to as "Delay") and the customer demonstrably suffered a loss therefrom the customer may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay but in no case more than a total of 5 % of the price of that part of the Deliveries which could not be put to the intended use because of the Delay.

4. Further claims for damages due to default shall be excluded in case of ordinary negligence. Claims for damages instead of performance shall not be affected and shall be governed by Art. XI. The customer shall inform the Supplier about contractual penalties applicable in relation to the customer's buyer latest upon the conclusion of the contract. The customer shall be entitled to rescind the contract based on statute only if

the Supplier is responsible for the delay or after an appropriate extension has expired unsuccessfully.

5. Upon Supplier's request and within an appropriate period of time the customer shall be obliged to state whether he rescinds the contract due to the delayed performance or insists on delivery.

6. If shipment or delivery is delayed, upon the request of the customer, for more than one month after notice of readiness for despatch has been given, the customer may be charged storage costs amounting to 0.5 %, maximum, however, 5 % of the price of the items of the Deliveries for each month commenced. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred. After the unsuccessful expiry of an appropriately extended period, the Supplier shall be entitled to dispose of the goods at its discretion and to supply the customer within an appropriate, extended period of time.

**IV. Passage of risk**

1. Unless subsequently stipulated differently, the risk shall pass upon the notice of readiness for despatch.

2. In the case of delivery carriage paid, the risk shall pass to the customer upon despatch or collection of the goods. This shall also be applicable if the Supplier has taken over, e.g., the installation in addition.

3. If the goods are subject to acceptance, the risk shall pass to the customer after the acceptance. The customer may not refuse acceptance on basis of an immaterial defect.

4. If despatch or acceptance is delayed due to circumstances for which the Supplier is not responsible, the risk shall pass to the customer on the day the readiness for despatch or acceptance is notified.

**V. Retention of title**

1. The Supplier reserves ownership in all delivered goods (hereinafter "reserved goods") until all payments have been received and cheques and notes accepted in the course of the business relations with the customer have been irrevocably credited. In case of the operation of a current account, the retention of title shall extend to the authorised balance.

2. The customer shall treat reserved goods carefully and maintain them; the customer shall be particularly obliged to insure them sufficiently against loss and damage for their reinstatement value for its own account. The insurance policy as well as proof of payment of premiums shall be presented to the Supplier upon request. The customer assigns its insurance claims to the Supplier already at this point in time.

3. Treatment and processing of reserved goods shall always be carried out on behalf of the Supplier without obliging the Supplier. If reserved goods are mixed or combined with other goods, the supplier shall acquire joint ownership in the new goods at the ratio of the invoice value of the reserved goods to the other materials.

4. The customer shall be entitled to sell the reserved goods in the normal course of business, only; however, it assigns to the Supplier, already at this point in time and in advance, the full amount of all receivables that will accrue from the sale or use on behalf of a customer against the same or third parties.

5. The customer shall be entitled to collect receivables assigned to the Supplier as long as it meets its payment obligations from collected proceeds.

6. If the customer fails to meet its payment obligations, the Supplier may revoke the processing authorisation and demand that the customer disclose the assigned receivables and their respective debtors to the Supplier, provide all statements necessary for collection, deliver the pertaining documents and inform its debtors

of the assignment. The return of reserved goods shall not constitute a repudiation of the contract. If the Supplier rescinds the contract, it is entitled to privately sell the reserved goods.

7. The Supplier shall be informed immediately about the seizure of the reserved goods by a third party. Costs originating from the defence against a seizure shall be for the account of the customer if they cannot be collected from the seizing party.

8. If the value of securities exceeds the receivables of the Supplier by more than 10 %, the Supplier shall, upon request of the customer, release securities to the respective extent at its discretion.

**VI. Erection and installation**

If erection and installation form part of the scope of delivery, the following provisions shall be applicable:

1. The customer shall provide on time and for its account:

- a) all excavation, construction and other auxiliary work outside of the Supplier's field of activity including the pertaining skilled and unskilled workers, building materials and tools required,
- b) the facilities required for installation and commissioning, e.g. scaffoldings, hoisting gear, and tools of a general nature as well as the necessary supplies, e.g. beams, wedges, bases, cement, cleaning and sealing materials, fuel, lubricants,
- c) energy and water at the place of utilisation including connections, heating and lighting,
- d) in the immediate vicinity of to the installation site, sufficiently large, suitable, dry and lockable rooms for the storage of machinery parts, apparatuses, materials, tools etc. and appropriate, lockable work and common rooms including heating, lighting and sanitation facilities for installation personnel; otherwise, the customer shall take the same measures for protecting the property of the Supplier and the installation personnel as it would for its own property,
- e) auxiliary staff like odd-job people, and, if required, also masons, carpenters, welders, electricians and other skilled workers in numbers considered necessary by the Supplier. The auxiliary staff shall be at the disposal of the installation manager of the Supplier for the whole installation period and shall follow the instructions of the same,
- f) protective clothing and protective facilities necessary due to the special circumstances at the installation site.

2. Prior to the start of installation work, the customer shall supply the necessary information about the location of hidden electrical lines, gas and water pipes or similar facilities as well as required static details without having been requested to do so.

3. Prior to the start of the erection or installation the materials and items to be provided by the customer which are required for the commencement of work shall be available at the erection or installation site and all preliminary work prior to the start of construction shall be advanced in a manner permitting the commencement and implementation without any interruption of the erection or installation as agreed. Access roads and the erection or installation site shall be levelled and cleared. In case of indoor erection, plastering of walls and ceilings shall be completely finished, doors and windows shall have been installed and wall openings possibly stipulated by the Supplier for the passage of larger installation parts shall have been provided.

4. If erection, installing or commissioning is delayed due to circumstances for which the Supplier is not responsible, the customer shall bear reasonable costs for idle periods of time and additionally required travelling of the Supplier or the staff performing the installation.

**5.** The customer shall confirm to the Supplier the working hours of the staff performing the installation and the materials required for installation on a weekly basis as well as the completion of the erection, installation or commissioning without delay.

**6.** If the Supplier requests the acceptance of the Deliveries after completion, the customer shall perform the same within two weeks. If this is not done, the acceptance shall be considered as performed. The acceptance shall also be considered as performed if the Deliveries are operated – possibly after the completion of an agreed test phase.

**7.** If the installation is included in the total price or a fixed price has been agreed for the installation, idle periods and other additional expenditure caused by the customer shall be charged according to the respectively applicable installation price lists.

#### VII. Taking delivery

The customer shall not refuse to take delivery because of insignificant defects.

#### VIII. Quality Defects

The Supplier shall be liable for quality defects ("Sachmängel") as follows:

**1.** All parts or services embodying a quality defect within the limitation period shall be repaired, replaced or provided again free of charge at the discretion of the Supplier if the cause for the defect was already present at the time of the passage of risk.

**2.** The limitation for claims for quality defects of movable objects shall be 12 months if the Supplier has not committed a breach of duty intentionally or in gross negligence or if the supplier has not concealed the defect with malicious intent.

**3.** The customer shall notify the supplier of quality defects in writing without undue delay.

**4.** If the customer's complaint is unjustified, the Supplier shall be entitled to reimbursement of the expenses incurred by the customer.

**5.** At first, the Supplier shall be granted the opportunity to supplement its performance ("Nacherfüllung") within a reasonable period of time.

**6.** If supplementary performance fails, the customer may – irrespective of possible claims for damages according to Art. XI – rescind the contract or reduce the payment.

**7.** Claims for defects shall not be constituted by insignificant deviation from agreed characteristics or insignificant impairment of usability, ordinary wear and tear or damage caused after the passage of risk due to erroneous or negligent handling, excessive use, unsuitable production facilities, defective construction work, unsuitable foundation or special external influences not assumed under the contract, as well as irreproducible software errors. Improper changes or repair work carried out by the customer or a third party and resulting consequences shall also not constitute claims for defects.

**8.** Claims of the customer for expenditure required for supplementary performance, especially transportation, travelling, labour and material costs shall be excluded as far as this expenditure is increased due to the object of the Deliveries having been subsequently moved to a different location than the operation of the customer, unless the move corresponds to its intended use.

**9.** Art. XI (Other claims for damages) shall otherwise be applicable to claims for damages. Further or other quality defect claims of the customer against the Supplier and persons employed by it to perform its obligations than those stipulated in this Art. VIII shall be excluded.

#### IX. Industrial property rights and copy rights; defects in title

**1.** If nothing to the contrary has been agreed, the Supplier shall only be obliged to perform delivery free of industrial property rights and copy rights of third parties (subsequently: Property Rights) in the country of the place of delivery. If a third party raises justified claims against the customer because of the violation of Property Rights by Deliveries provided by the Supplier and used in accordance with the contract, the Supplier shall be liable to the customer within the period stipulated by Art. VIII No. 2 as follows:

**a)** The Supplier shall, for its own account and at its discretion, either obtain a right of use for the respective Deliveries, change them in such a way that the Property Rights are not violated or replace them. If this is not possible for the Supplier at appropriate conditions, the customer shall be entitled to legal repudiation or price reduction rights.

**b)** The obligation of the Supplier to pay damages shall be governed by Art. XI.

**c)** The obligations of the Supplier mentioned above shall only exist if the customer informs the Supplier immediately in writing of the claims asserted by the third party, does not recognise a violation and all defence measures and settlement negotiations are reserved for the Supplier. If the customer terminates using the Deliveries to minimise losses or for other important reasons, it shall be obliged to inform the third party that the termination of utilisation does not constitute a recognition of a violation of Property Rights.

**2.** Claims of the customer are excluded if it is responsible for the violation of Property Rights.

**3.** Claims of the customer shall also be excluded if the violation of Property Rights has been caused by particular specifications of the customer, by a use which could not be anticipated by the Supplier or by the fact that the customer changed the Deliveries or used them together with products not provided by the Supplier.

**4.** In the case of the violation of Property Rights, the provisions of Art. VIII No. 4 and 5 are otherwise respectively applicable for claims of the customer under No. 1 a).

**5.** In the event of other defects in title, the provisions of Art. VIII shall be accordingly applicable.

**6.** Further claims, or other than those governed by this Art. IX, of the customer against the Supplier and persons employed by it to perform its obligations because of a defect in title shall be excluded.

#### X. Impossibility; contract adaptation

If the provision of Deliveries is impossible, the customer shall be entitled to demand damages, unless the Supplier is not responsible for the impossibility. The claim for damages of the customer shall, however, be restricted to 10 % of the value of the part of Deliveries which cannot be used according to the contract because of the impossibility. This restriction shall not be valid as far as liability is obligatory in cases of intent, gross negligence or injury to life, body or health; this shall not include a change in the burden of proof to the disadvantage of the customer. The right of the customer to rescind the contract shall remain unaffected.

#### XI. Other claims for damages

**1.** Claims for damages and expenditure of the customer (subsequently: Claims for Damages) shall be excluded, based on what ever legal reason, including infringement of duties arising in connection with the contract or tort.

**2.** This shall not be applicable to cases of injury to life, body or health or of the assumption of a contractual

guarantee ("Garantie") or the infringement of material contractual duties which endanger the performance of the purpose of the contract. The Claims for Damages shall, however, be restricted to the extent of the guarantee and, concerning the breach of material contractual duties in case of ordinary negligence, to the predictable damage typical for the contract if liability is not due to the injury to life, body or health. Claims according to the Product Liability Act remain unaffected.

**3.** As far as the customer has a valid Claim for Damages according to this Art. XI, it shall become statute barred, with the exception of claims concerning the liability for defects, within 12 months after the customer has become aware of the damage and the obligation of the Supplier to render compensation or could have become aware of without gross negligence. In case of Claims for Damages according to the Product Liability Act and because of an injury to life, body or health, the legal limitation provisions shall be applicable.

#### XII. Venue and applicable law

**1.** The sole place of jurisdiction for all legal disputes resulting directly or indirectly from the contractual relationship shall be the registered office of the Supplier if the customer is a businessperson. However, the Supplier shall also be entitled to institute an action at the domicile of the customer.

**2.** For legal relations in connection with this contract German substantive law shall apply with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980.