

## General Terms and Conditions of Purchase

### 1. General

(1) The following General Terms and Conditions of Purchase the ("T & C") shall apply exclusively over the relationship of the parties, the delivery of products, and the provision of services of any kind, between the SUPPLIER ("Supplier") and PHOENIX CONTACT SERVICES, INC., PHOENIX CONTACT USA, INC. and PHOENIX CONTACT DEVELOPMENT AND MANUFACTURING, INC., (collectively, "Phoenix Contact"). The delivery of products and services shall hereinafter be collectively known as the "Products". Any other terms which conflict with or differ from those contained in this T & C shall not be accepted by Phoenix Contact, unless expressly agreed to in writing; regardless of whether or not Phoenix Contact accepts the Products without reservation and/or pays for the Products with an awareness of the conflicting or deviating terms of the Supplier.

### 2. Confidentiality/Non-Disclosure

The Supplier shall keep all illustrations, drawings, calculations or any other documentation, including but not limited to all information transmitted in writing, in text form or verbally, strictly confidential. Such information may only be disclosed to third parties with the express written consent of Phoenix Contact. The obligation of confidentiality and non-disclosure shall be continuing, and shall expire only when the confidential information contained in the submitted illustrations, drawings, calculations and any other documents enters the public domain. This obligation also applied to any agents or third parties contracted by the Supplier. Additionally, the Non-Disclosure Agreement, signed by the parties, shall apply to this T & C.

### 3. Prices, Shipment and Packaging

- (1) The prices agreed upon in any individual supply agreement, development agreement, quote, purchase order, acceptance document, purchase contract or blanket order, (collectively, the "Agreement"), between Phoenix Contact and the Supplier shall be fixed prices, including any incidental costs plus applicable statutory turnover tax. Such prices shall exclude additional claims of any kind. If no prices are addressed in the individual Supply Agreement, Phoenix Contact shall not owe any compensation for the Product(s) rendered by the Supplier.
- (2) Any Supplier issued Dispatch notes, packing slip, letters of consignment, invoices and any correspondence shall include Phoenix Contact's order number.
- (3) Phoenix Contact shall only be required to accept volumes or quantities as specifically ordered. Over or under deliveries or partial deliveries are only acceptable upon a prior written authorization by Phoenix Contact.
- (4) The delivery or performance of the Supplier shall be FOB ship point, if the shipment is domestic and DDP (Inco terms 2010) if the shipment is international, to the shipping address and/or place of delivery indicated by Phoenix Contact in the respective individual Agreement.
- (5) Supplier shall use 100% recyclable or biodegradable packaging materials unless otherwise agreed to in writing by Phoenix Contact.

### 4. Delivery Period

- (1) The delivery dates agreed upon in the Agreement shall be binding. In determining compliance with the delivery date or delivery period, the Products will be deemed to be delivered if Phoenix Contact receives, with no defects, the Products at the shipping address indicated by Phoenix Contact and/or place of delivery specified by Phoenix Contact or the complete and unreserved acceptance through Phoenix Contact.
- (2) If the Supplier realizes that an agreed deadline or the agreed quality cannot be provided for whatever reasons he shall immediately inform Phoenix Contact, in writing, stating the reasons and the expected duration of the delay.
- (3) In the event the Supplier exceeds the delivery date agreed in the respective individual T & C ("Default") the Supplier shall pay Phoenix Contact a lump-sum compensation in

damages amounting to a minimum of \$200.00 and up to a maximum of 5 % of the value of the Products under the Agreement, per commenced calendar day of the missed deadline.

Phoenix Contact's right to further claims for damages (damage caused by delay) shall remain unaffected. In this case, the lump-sum compensation in damages shall be credited against any further claims for damages due to the delayed performance.

- (4) If Phoenix Contact chooses to set a grace period for delivery of the Products, and such grace period expires, Phoenix Contact shall also be entitled to claim compensation in damages, instead of performance, and shall have the right to withdraw from the Agreement. In addition, Phoenix Contact shall be entitled to continue to claim the delivery/performance of the Supplier and to assert the damages caused by delay.
- (5) Phoenix Contact shall be entitled to any applicable statutory claims in the event of delay on part of the Supplier.
- (6) Phoenix Contact shall not be affected by any waiver of claims provisions asserted by the Supplier, due to the delayed delivery or performance
- (7) If the Supplier requires additional documents or information from Phoenix Contact to fulfil its performance of the Agreement, and Phoenix Contact does not provide such information as requested to the Supplier, Supplier may not invoke contributory negligence against Phoenix Contact in the delay of delivery unless Supplier sent a written reminder to Phoenix Contact and did not receive the information within a reasonable period of time.
- (8) In the event the Supplier delivers the Products before the agreed upon delivery date, Phoenix Contact shall reserve the right to refuse acceptance or return them at the expense of the Supplier. If the Products are not returned or if acceptance is not refused after a delivery ahead of schedule, Phoenix Contact shall store the Products at the expense and risk of the Supplier until the date of delivery. In any event, the payment deadline shall only commence at the agreed upon delivery date.
- ### 5. Force Majeure
- (1) Force Majeure shall apply to these T & C and to any Agreement. Force Majeure is defined as being an event beyond the control of the Phoenix Contact and the Supplier, which prevents a party from complying with any of its obligations, including but not limited to:
- act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
  - war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
  - rebellion, revolution, insurrection, or military or usurped power, or civil war;
  - contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
  - riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Supplier or of his subcontractors; or
  - acts or threats of terrorism.
- (2) Force majeure shall exempt the affected party from its obligations of performance, for the duration of the interference and to the extent of its impact. The affected party, in good faith, shall make every reasonable effort to immediately provide the required information, and adjust his obligations to the modified conditions. Phoenix Contact shall be fully or partially exempt from the obligation to accept the Products and shall be entitled to withdraw from the Agreement if the delivery/performance is no longer practical at its place of business or cannot economically be expected from it anymore due to the force majeure delay.

**6. Invoicing, Payments and Assignment of Claims**

- (1) Following the delivery of the Products, invoices shall be submitted via email to Phoenix Contact at [acctspay@phoenixcon.com](mailto:acctspay@phoenixcon.com). Only after receipt of a proper invoice, meeting the requirements set forth in sentence 1, shall Phoenix Contact be obligated to pay for the Products within the agreed upon payment target.
- (2) Payment shall be made in the customary manner, net within 45 calendar days, calculated after delivery/performance and date of receipt of invoice, unless different terms are stated in the Agreement.
- (3) In the event of faulty delivery/performance, Phoenix Contact shall be entitled to withhold payment, in an amount proportionate to the value, until proper fulfillment occurs.
- (4) With advance payments, the Supplier is obligated, upon request of Phoenix Contact, to provide an adequate security (e.g. an unlimited directly enforceable bond or bank letter of credit or guarantee in the amount of the advance payment).
- (5) If the Agreement calls for the provision of material test certificates (e.g. acceptance test certificates), Supplier shall provide the certificates to Phoenix Contact, together with or before the delivery of the Products.
- (6) Supplier shall not assign any claims to a third party.
- (7) Phoenix Contact shall be entitled to offset claims against the Supplier for itself or on behalf of any subsidiary, parent or related company of Phoenix Contact considering the value date.

**7. Phoenix Contact Provided Materials and Parts**

- (1) Phoenix Contact reserves the right of ownership to any and all parts and components, whether provided free of charge or sold to the Supplier, to be used in the performance of the Agreement.
- (2) The parts and components provided by Phoenix Contact shall be exclusively used for processing and fulfilling any Agreement with Phoenix Contact and Supplier shall not have the right to resell them. In case of a decrease in value or loss of the parts and components, Supplier must provide compensation for damages. Phoenix Contact reserves the right of ownership of the provided parts and components even after processing and assembly through the Supplier. Phoenix Contact also reserves the right to receive a semi-annual inventory or equipment reconciliation from Supplier, as requested by Phoenix Contact's Strategic Buyer.
- (3) Tooling Arrangements/Phoenix Contact-Furnished Property:
  - (a) If applicable, any tools, machines, jigs, molds, dies, patterns, equipment, material and similar items required for manufacturing and testing of parts to be provided to Supplier ("Tooling") shall not be used by Supplier on any other work without the prior written consent of Phoenix Contact. If applicable, Supplier shall provide tools as described in the Request for Quote ("RFQ") specification requested by Phoenix Contact.
  - (b) The responsibility for designing the Tooling shall lie exclusively with the Supplier, and such design must be approved by Phoenix Contact prior to building. Tooling and such drawings/documents become the property of Phoenix Contact upon final payment by Phoenix Contact to Supplier. Supplier will provide electronic 2-D CAD drawings in ".dxf" format, and 3-D geometry in Creo or SolidWorks and ".step214" format to Phoenix Contact before final payment.
  - (c) Tooling shall not be modified in any way unless prior written authorization is obtained from Phoenix Contact. Supplier shall adhere to Phoenix Contact's design and technical specifications as well as guarantee compliance with such specifications.
  - (d) Shall Supplier fail to complete the Tooling for reasons beyond the control of Phoenix Contact; the full amount of any deposit paid by Phoenix Contact to Supplier shall be returned to Phoenix Contact within thirty (30) days of termination of the applicable agreement.
  - (e) Tooling costs shall include: (i) all costs associated with Tooling design, construction, conditioning, and sampling; (ii) proprietary notice labeling on all Tooling (see subsection (f)); (iii) any fixturing or other Tooling necessary to ensure

functionality of molds; and (iv) storage costs (see subsection (g)).

- (f) Title to the Tooling shall remain with Phoenix Contact and Supplier shall preserve Phoenix Contact's title thereto free and clear of all encumbrances. Supplier agrees to promptly apply a proprietary notice to Tooling. Such labeling must be clearly visible, legible, and secured against non-destructive removal. The label, at a minimum, shall include the following information: (i) "Property of Phoenix Contact" and (ii) Phoenix Contact's fixed asset number. Should Supplier fail to properly label and preserve Phoenix Contact's title to Tooling, and as a result, Tooling is compromised, Supplier shall reimburse Phoenix Contact for the full value of the Tooling.
- (g) Supplier shall, at its expense, store in a suitable environment, as well as perform all maintenance, repairs and replacements necessary with respect to Tooling so that the same may remain suitable for the use contemplated by the applicable agreement between the parties and may be returned to Phoenix Contact in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.
- (h) The Supplier shall be obligated to bear all risks regarding loss of or damage to Tooling while in the Supplier's care and control. For this purpose, the Supplier shall obtain adequate insurance coverage for the replacement cost of the Tooling against theft or damage and shall provide Phoenix Contact with a copy of the policy as proof. The Supplier must determine and document the insured value of all Tooling annually. Upon request, Phoenix Contact shall be informed of the insured value.
- (i) Supplier waives any and all claims relating to loss, damage, injury or delay arising out of or related to Tooling and Supplier shall indemnify Phoenix Contact against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence or use of Tooling, whether such damage, injury or death be caused by defects in such property, negligence in the use thereof, strict liability or otherwise.
- (j) Supplier is obligated to return Tooling to Phoenix Contact, upon ten (10) days written notice and at the expense of Phoenix Contact. Supplier shall not impede Phoenix Contact in removing the Tooling from Suppliers premises. Prior to removal of Tooling, Phoenix Contact reserves the right to visit Supplier's premises and inspect the Tooling and relevant maintenance and repair records in order to reach an agreement between Supplier and Phoenix Contact on the actual condition of the Tooling. After reaching an agreement, Supplier shall reimburse Phoenix Contact upon request for the replacement cost of Phoenix Contact's property that was not in good condition or that cannot be accounted for to Phoenix Contact's satisfaction. Phoenix Contact shall be responsible for the maintenance thereafter. Phoenix Contact reserves the right to abandon Tooling at no additional cost to Phoenix Contact upon issuance of written notification to Supplier of such intent.
- (k) The Supplier may only assign or subcontract any of the contractual obligations either partially or in their entirety with the written approval of Phoenix Contact. Upon Phoenix Contact's approval, the Supplier shall continue to be liable to Phoenix Contact for all obligations under the applicable agreement between the parties. Additionally, the Supplier shall include terms and conditions that comply with the General Terms and Conditions of Purchase under the applicable agreement and Supplier must ensure that said conditions are enforceable directly by Phoenix Contact.

**8. Passage of Title and Risk**

Title and risk of loss or damage to the Products shall pass from Supplier to Phoenix Contact upon the delivery/transfer of the Products.

**9. Warranty/Guarantee**

- (1) Supplier guarantees and warrants that all Products are made with state-of-the-art technology, including compliance

with any relevant worldwide statutory provisions, standards, regulations, provisions and directives set forth by authorities as well as the EC, professional associations and trade associations. The Supplier guarantees and warrants that all Products are free of faults, are in compliance with the requirements of Phoenix Contact, and are suitable for the intended application purpose as well as the place of application. Supplier shall not deviate from the requirements in this section, unless Supplier submits the deviation form FSH-83003-020. Phoenix Contact's right to warranty claims shall not be affected by giving such consent.

- (2) The Supplier shall provide a durability warranty for the Products by which the Supplier shall guarantee that the Products are free of any quality defects and deficiencies in title for a period of two years starting with the passage of title and risk.
- (3) An incoming-goods inspection of the Products through Phoenix Contact shall be restricted to an inspection of whether the delivered Products correspond to the ordered quantities by piece number; are free of any apparent, externally visible transportation damages and whether the delivered Products correspond to the ordered Products (identity). For these aforementioned defects, a complaint period of 2 weeks shall be applicable. For all other open or hidden defects, a complaint period of 2 weeks upon discovery shall be effective. Any further obligations of complaint and inspection on the part of Phoenix Contact shall be excluded.
- (4) Defects discovered during the warranty period, which also include at Phoenix Contact's sole discretion, the failure of any specified properties, must be remedied by the Supplier immediately and at no additional costs to Phoenix Contact, by means of rework or subsequent delivery (supplementary performance). In urgent cases, or cases where the Supplier does not have staff with the appropriate competency to perform the re-work, or cases where the defect is small, Phoenix Contact may carry out the rework or have it done by third parties, without restricting the rights of Phoenix Contact under the warranty. Phoenix Contact shall be entitled to invoice the costs incurred to Supplier within this rework. Should Phoenix Contact elect to set a grace period for rework or supplementary delivery, and such grace period expires without action by Supplier, Phoenix Contact shall be entitled to all available statutory rights, especially withdrawal, reduction, reimbursement of expenses and compensation in damages instead of performance. With work performance, the Phoenix Contact is additionally entitled to the right of self-performance. As for the rest, the Supplier shall compensate all damages incurred by Phoenix Contact through a defective Product even without a previously set deadline.
- (5) Phoenix Contact shall in any case be entitled to demand a credit of the respective purchase price/remuneration from Supplier instead of the rework or subsequent delivery (supplementary performance).
- (6) The Supplier shall bear all expenses needed for supplementary performance, including costs of travel, labor and material. Supplier shall also bear the costs for installation and removal of the defective Product, as well as costs or damages caused by the fact that the Product was incorporated into other products or devices. Therefore the costs within the supplementary performance also include the damages caused to other objects of legal protection by Phoenix Contact or third parties due to the supply of defective Products.
- (7) Phoenix Contact may, at its sole discretion, immediately sort out and rework the defective Products at the expense of Supplier instead of a supplementary performance in order to secure the delivery capacity Phoenix Contact requires.
- (8) In the event of claims for quality defects and subsequent performance by Supplier, the Supplier shall pay liquidated damages to Phoenix Contact in the following amounts:
  - a) reminders or any other letters: \$7.00 per letter
  - b) telephone calls: \$4.00 per phone call

- c) Photocopies: \$1.00 per copy
  - d) travel expenses: \$0.555 for every driven mile
  - e) labor expenses: \$70.00 per working hour and employees
- The labor expenses shall be invoiced in quarter of an hour increments. Phoenix Contact shall be expressly entitled to claim higher damages.
- (9) With devices, tools, machines and systems, the warranty period shall begin with the complete and unconditional written acceptance of the Product by Phoenix Contact. The acceptance may also be refused by Phoenix Contact due to minor defects. The Products shall not be deemed accepted in the event of payment – even with unconditional payment – the putting into use, the actual use or the start-up through Phoenix Contact.
  - (10) For Products that could not be used and/or operated during the inspection of a defect and/or remedy of defects, the current warranty period shall be extended by the time of the interrupted operation. For repaired or newly delivered Products, the warranty period shall recommence on completion of rectification or, if an acceptance was agreed upon, on acceptance.

**10. Defects**

- (1) Defects are defects in which materials, components, part systems or systems have an error frequency that clearly lies outside the usually expected values or the values indicated by the Supplier. A series defect is defined within this T & C and any Agreement as being when the number of rejected Products exceeds 1% of the delivered batch. The Supplier may be required to document rejections using a Phoenix Contact CAR Form, FSH7-853002-001, which requires identification of the defect, how the defect will be remedied, root cause, corrective action plan, and implementation of the corrective action, at Supplier's expense. If there is a series defect, Phoenix Contact may demand the exchange of all Products in the series. If the defective Products of the Supplier are built into another product, Phoenix Contact shall also be entitled to recall the affected products of the Supplier, at Supplier's expense. Phoenix Contact shall have the right to enforce defects within the warranty period, or if the error rate indicated by the Supplier is exceeded. After the warranty period has expired, Phoenix Contact shall be entitled to the full statutory warranty claims for all Products affected by a series defect in the event a series defect exists.

**11. Quality and Environment**

- (1) Supplier shall maintain a quality and environment management system that is suitable in type and extent, and complies with state-of-the-art technology.
- (2) Wherever possible, Supplier shall use compostable or recyclable products and environmentally-friendly processes in its supplies or additional services from third parties to manufacture the Products.
- (3) Supplier shall be liable for the environmental compatibility of the Products and packing material and for all consequential damages resulting from a violation of any legal obligation to dispose of waste. Upon request of Phoenix Contact, Supplier shall issue a certificate of inspection for the Products.
- (4) Supplier shall provide safety data sheets for the Products with the delivery, unless Phoenix Contact already has the updated safety data sheet for the Product. Regardless of the delivery of Products, Supplier shall ensure that Phoenix Contact is provided with the respective updated safety data sheet for the already delivered Products. Supplier shall indemnify Phoenix Contact against all recourse claims by third parties in case Supplier fails to deliver the safety data sheets to Phoenix Contact or if the delivery is late or defective.
- (5) Supplier shall observe banned substance restrictions, including notification and take-back obligations, in accordance with Phoenix Contact's Environmental

Compliance Standards located at [www.phoenixcontact.com/toc](http://www.phoenixcontact.com/toc) and all applicable international, European and national statutory provisions, guidelines and directives. Phoenix Contact shall provide Supplier with its Environmental Compliance Standard upon request. Supplier shall immediately provide a list of the substances to Phoenix Contact, in writing, after Supplier has received the information or upon request by Phoenix Contact. Supplier shall provide the information required in Art. 33 of the current REACH Directive on the candidate list of substances.

Supplier shall be liable for any violation of this section and shall indemnify Phoenix Contact against any claims, as well as compensate any damages that are generated directly or indirectly from the violation.

**12. Traceability**

Supplier shall put into place adequate systems, which will allow for the identification of any defects in the Products and the identification of any other products which may be affected by the defect. Such systems are subject to review for adequacy and approval by Phoenix Contact. Upon request of Phoenix Contact, the Supplier shall follow the ZVEI Guideline "Identification and Traceability in the Electrical and Electronics Industry", as amended from time to time, and shall confirm this in writing.

**13. Product Liability**

- (1) The Supplier shall indemnify Phoenix Contact against claims for damages, brought by third parties, for Supplier's Product causing bodily injury, loss of life, health or limb, and/or damage to the personal property of Phoenix Contact or its employees, agents or third parties.
- (2) For any such claims, Supplier shall also reimburse any expenses or costs for retrofitting and repair and/or replacement, subsequent delivery and the installation and removal of the corresponding Products, resulting from or in connection with a recall campaign carried out by Phoenix Contact. Phoenix Contact shall, at its own discretion, be entitled to carry out a recall without the approval of the Supplier and at the expense of the Supplier. As far as possible and reasonable, Phoenix Contact shall inform the Supplier about the content and extent of the recall measures to be taken and give the Supplier an opportunity to comment.

**14. Insurance and Indemnity**

In the event Supplier, its employees, agents, contractors and/or subcontractors should enter the premises of Phoenix Contact in the performance of this T & C, Supplier agrees that it will indemnify and hold harmless Phoenix Contact, its officers and employees from any loss, costs, damage, expense or liability by reason of property damage, including, but not limited to, theft, or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry. Supplier shall produce and maintain workers' compensation, comprehensive general liability, bodily injury and property damage insurance in amounts no less than \$1 million per occurrence and \$3 million in the aggregate, and such other insurance as Phoenix Contact may require and shall comply with all site requirements. Supplier shall provide Phoenix Contact thirty (30) days' advance written notice prior to the effective date of any cancellation or change in the term or coverage of any Supplier required insurance. If requested, Supplier shall send a "Certificate of Insurance" showing Supplier's compliance with these requirements. Supplier shall name Phoenix Contact as an additional insured for the duration of this T & C. Insurance maintained pursuant to this clause shall be considered primary. Supplier agrees that Supplier, Supplier's insurer(s) and anyone claiming by, through, under or in Supplier's behalf shall have no claim, right of action or right of subrogation against Phoenix Contact and its affiliates based on any loss or liability insured against under the foregoing insurance.

**15. Patent and Other Intellectual Property Rights**

- (1) The Supplier shall warrant and guarantee that the Product(s) are delivered free of any intellectual property rights or copyrights, including third party intellectual property rights, with no other restrictions or exclusions concerning a use of the Product(s) by Phoenix Contact. The Supplier shall warrant and guarantee that the delivery and use of the Product(s) will not violate any patents, licences or other property rights of third parties.
- (2) The Supplier shall indemnify Phoenix Contact and its customers against any claims by third parties concerning violations of patent or other intellectual property rights, upon request, and bear all costs and expenses arising to Phoenix Contact in this context.
- (3) Phoenix Contact shall immediately be granted rights to use the Product(s). In cases where another party holds rights to the Product(s), Phoenix Contact shall be granted a perpetual license for use at the Supplier's expense.
- (4) In the event claims are made against Phoenix Contact by third parties, alleging Supplier's Product(s) are in breach of intellectual property rights, Phoenix Contact shall immediately be entitled to obtain the approval for using the Product(s), including obtaining a licence from the party holding such rights, at the Supplier's expense. Immediately upon notice of this situation, Supplier shall either modify the involved Product(s) in such a way that they are excluded from the area of protection. In this case, the Product modification shall still comply with any statutory provisions. In the alternative to modification, the Supplier may also obtain the permanent authorization for the use of the Product(s) from the owner of the design, at no cost to Phoenix Contact.

**16. Liability/Further Claims of Damages**

- (1) Regardless of the type of violation of duties, the Supplier shall be liable, without limitation, to Phoenix Contact for claims arising out of warranty issues, impossibility and tort, or for any act of negligence and criminal intent. Limitations and exclusions of liability of any kind by the Supplier are rejected.
- (2) The Supplier shall be liable to Phoenix Contact for faults attributable to others, particularly with regard to the Supplier's purchased parts from third parties, the same as if they were faults attributable to the Supplier.

**17. Corporate Responsibility**

The Supplier shall, in the production of products and/or the provision of services, ensure that human rights are protected, fair labor standards are observed, no discrimination of persons in a protected class occurs, or no forced or child labor shall be permitted. The Supplier confirms that it will neither tolerate any kind of corruption or bribe, nor contribute to such activity in any way. The Supplier shall comply with the contents of the Code of Conduct of ZVEI (German electrical and electronic manufacturers' association). Phoenix Contact shall provide the Supplier with this Code of Conduct upon request. The Supplier also shall not procure raw materials from regions or countries, known as "conflict regions", where serious ethical or environmental concerns are lawfully raised, or to use them in products.

**18. Counterfeit Parts/Materials**

- (1) Definitions.
- (a) "Counterfeit Goods" shall mean items, including any material, part, component, module, or assembly of such items, whose description, origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes items that (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM / OCM") item; (ii) are not traceable to an OEM / OCM sufficient to ensure authenticity in OEM / OCM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM / OCM or are not constructed in accordance with

OEM / OCM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM / OCM design but not disclosed as such or are represented as OEM / OCM authentic or new; or (iv) have not passed successfully all OEM /OCM required testing, verification, screening, and quality control processes.

- (b) **"Authorized Distributor"** shall mean a person, business, or firm that is expressly authorized or franchised by an OEM / OCM to sell or distribute the OEM / OCM's products.
- (2) The Supplier shall not furnish to Phoenix Contact any items under this T & C that are Counterfeit Goods or which contain counterfeit parts.
- (3) The Supplier shall establish, implement and maintain a documented Counterfeit Materials and Parts Prevention system in accordance with Industry Standard AS-5553 as a guideline. Such system shall be adequate to prevent the delivery of counterfeit materials and/or parts and to control materials and parts identified as counterfeit to ensure that items furnished to Phoenix Contact are not Counterfeit Goods. Supplier's system shall include, but is not limited to, the direct procurement of items from only OEM / OCMs or their Authorized Distributors and conducting approved testing or inspection to ensure the authenticity of items. Supplier shall not acquire items from any source other than OEMs / OCMs or their Authorized Distributors unless first approved in writing by Phoenix Contact's Strategic Purchasing representative. Supplier must present complete and compelling support documentation for its request and include in its request all actions Supplier will take to ensure the items thus procured are not Counterfeit Goods. Phoenix Contact's approval of Supplier's request does not relieve Supplier of its responsibility to comply with all requirements of the order for Products, including those contained in this section. Supplier shall make available immediately to Phoenix Contact, at Phoenix Contact's request, OEM / OCM and other documentation that authenticates traceability of the items to that applicable OEM / OCM.
- (4) If the Supplier becomes aware or has reason to suspect that it has furnished Counterfeit Goods to Phoenix Contact, the Supplier immediately shall notify Phoenix Contact and replace, at Supplier's expense, such Counterfeit Goods with OEM / OCMs or Phoenix Contact-approved items that conform to the requirements of the Products. The Supplier shall be solely liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic items after Counterfeit Goods have been replaced. The remedies contained in this section are in addition to any remedies Phoenix Contact may have at law, equity, or under other provisions of this T & C.
- (5) The Supplier shall sole bear the responsibility for procuring authentic items from its suppliers and subcontractors and shall flow down the requirements of this section to its suppliers and subcontractors at any tier for the performance of this T & C.

**19. Assignment/Rights of Third Parties**

- (1) The Supplier shall not be entitled to assign its rights and duties, fully or partially, under the respective individual T & C to third parties without the prior written approval of Phoenix Contact. If Phoenix Contact grants the approval, the Supplier alone shall remain responsible for the fulfilment of the T & C.
- (2) The Supplier shall immediately notify Phoenix Contact, in writing, about every transfer of T & C occurred by operation of law, as well as any legal succession and every change of company.

**20. Data Protection**

The Supplier and Phoenix Contact shall observe compliance with the Federal Data Protection Act and any other data protection regulations when processing personal data, necessary within the service provision, and to take the appropriate technical and organizational measures for data

protection. Personal data of which the Supplier or Phoenix Contact gain knowledge shall be exclusively processed by Phoenix Contact or Supplier for purposes of the parties arrangement, and shall never be passed on to third parties, sold or otherwise be made available for purposes other than those listed above. If need be, information shall also be disclosed by Phoenix Contact to companies affiliated with Phoenix Contact, or to third parties in order to render a service or transaction such as order processing and deliveries. When disclosing personal data to third parties, Phoenix Contact shall restrict itself to only such information which is required to perform its duties under the Agreement. The respective third party may only use this personal data for rendering the requested service or for carrying out the necessary transaction, conducted by order of Phoenix Contact. In this connection, the third parties are committed by Phoenix Contact to comply with the Data Protection Act.

**21. Place of Performance**

Unless otherwise expressly agreed, the place of performance for the delivery and service obligation shall be the address for shipments and/or places of delivery requested by Phoenix Contact; for all other obligations of both parties, the domicile of the respective Phoenix Contact. The risk of accidental destruction and accidental deterioration shall only be passed on to Phoenix Contact with the acceptance or transfer at the place of performance.

**22. Cessation of Payment, Insolvency**

If a Supplier ceases to pay its suppliers by reason of Supplier's insolvency, Phoenix Contact shall be entitled to withdraw fully or partially from the T & C without compensation to Supplier, without this releasing any claims by Phoenix Contact against Supplier.

Phoenix Contact shall become a priority creditor in any bankruptcy proceedings by Supplier. In addition, Phoenix Contact shall be entitled to retrieve or have returned any tangible assets it has placed with Supplier under UCC form. Any Phoenix Contact prepayments required by Supplier shall be covered under a bank letter or credit, guarantee or bond and Phoenix Contact shall exercise its rights to secure the prepayment upon the Supplier's insolvency. Phoenix Contact retains the right to collect any partially completed work from Supplier.

If Phoenix Contact withdraws from the T & C, the Products shall only be settled at contractual prices as they can be used by Phoenix Contact in accordance with their designated use. The damages caused to Phoenix Contact shall be considered in the settlement.

**23. Written Form**

To the extent that a declaration has to be made "in writing" or "in written form", such declaration must be signed by an authorized representative of each party and transmitted to the other party as an original or as telefax or by electronic statement (e.g. e-mail, EDI).

**24. Deviating Provisions When Ordering Construction Work**

Provided that construction work is the subject of the order, the VOB/B (Construction Contract Procedures Part B) as well as §§ 1 to 22 and §§ 24, 25 of this T & C, shall be effective with the following restrictions:

- (1) If the parties have concluded a unit price contract, the settlement shall be by quantity in accordance with the provisions of the T & C, the fixed price T & C pursuant to § 3 clause 1 of these General Terms and Conditions of Purchase shall than only refer to the respective unit prices.
- (2) § 4 clause 2 shall not apply when ordering construction work. Instead, the following provision shall be effective: If the Supplier fails to meet the completion date for reasons attributable to him the following penalty shall apply: For every contract-for-work default of the completion of the contractual performance the Supplier shall owe Phoenix Contact 0.2% of the net lump-sum fixed price and/or the provisional total price in case of a unit-price contract per working day. The penalty shall in total amount to maximally

5% of the net lump-sum fixed price and/or the provisional total price in case of the unit-price contract. It is sufficient that the penalty is asserted at the due date of the final payment. The claim of Phoenix Contact to compensation of damage beyond the penalty shall remain unaffected. Penalties paid by the Supplier shall be offset against the claims for damages. If during construction contractual deadlines that were agreed or mutually determined subsequently are modified the penalty does not need to be newly negotiated, instead the aforementioned provisions shall also apply.

- (3) § 4 clause 3 does not apply when ordering construction work.
- (4) § 9 (Warranty/Guarantee) shall be deleted without replacement. As far as nothing deviating is regulated in the construction order, the warranty provisions of VOB/B (Construction Contract Procedures Part B) shall be applicable with the exception of the warranty period. This period shall be five (5) years for construction work from the acceptance through Phoenix Contact. In any event, the construction work has to be accepted formally.
- (5) The § 10 (Series Defect), § 11 (Quality and Environment), § 12 (Traceability) and § 13 (Product Liability) shall not be applied when ordering performance.
- (6) § 22 (Cessation of Payment, Insolvency) shall be applied with the provision that in such cases, Phoenix Contact is entitled to terminate the T & C instead of withdrawing from it.

#### 25. Applicable Law; Jurisdiction

This T & C shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. This T & C specifically excludes the provisions of the Convention for the International Sale of Goods. Phoenix Contact and the Supplier agree that all disputes relating to this T&C or any relevant Agreement shall be subject to the jurisdiction of and venue in the state and federal courts located in Dauphin County, Pennsylvania. Phoenix Contact and the Supplier hereby submit to the jurisdiction of and venue in such courts and waive any defense of *forum non conveniens*.

#### 26. Severability

Should individual parts of this T & C be determined to be invalid or unenforceable, the validity of the remaining provisions shall remain unaffected.

#### 27. Termination

- (1) Phoenix Contact shall have the right to terminate the work hereunder, with or without cause, in whole or in part, at any time. Phoenix Contact will not be liable to Supplier for any costs for completed items, items in process or materials acquired or contracted for, if such costs were incurred more than the permitted number of days prior to the delivery dates as stated on the face of this T & C or, if none is stated, thirty (30) days. If Phoenix Contact cancels this T & C within such time as specified on the face of this T & C or, if none is stated, thirty (30) days, and if the parties cannot agree within a reasonable time upon the amount of fair compensation to Supplier for such termination: (a) Phoenix Contact will pay the contract price for all items reasonably completed in accordance with this T & C and not previously paid for unless said item(s) is part of Supplier's standard commercial items, and (b) Phoenix Contact will pay a fair and proper proportion of the contract price for items in process and for all materials acquired or contracted for within the time specified on the face of this T & C for the purpose of fulfilling this T & C which Supplier is unable to cancel, return or otherwise use in Supplier's operations. Should Phoenix Contact so desire, cancellation charges shall be subject to Phoenix Contact's audit at Phoenix Contact's expense.

(2). Phoenix Contact's ability to terminate this T & C for cause shall be immediate and without prior written notice, in the event of any of the following by Supplier: (i) a breach of any covenant, representation or warranty hereunder; (ii) in

the event of (a) any change in the active management or ownership of Supplier or (b) the sale, transfer or other disposition of all or substantially all of the assets of Supplier or any affiliate, division or unit of Supplier, either of which Phoenix Contact, in its sole discretion, believes may have an adverse effect on Supplier's ability to fulfill its obligations under this T & C; or (iii) (a) any proceeding in bankruptcy, reorganization or arrangement for the appointment of a receiver or trustee to take possession of Supplier's assets or any other proceeding under any law for relief from creditors shall be instituted by or against Supplier (and such proceeding is not dismissed within sixty (60) days from the filing date); or (b) if Supplier shall make an assignment for the benefit of its creditors.

#### 28. Certificate of Origin

The Supplier agrees to provide Phoenix Contact with a completed North American Free Trade T & C (NAFTA) Certificate(s) or Origin for all NAFTA-qualifying items identified in or sold to Phoenix Contact pursuant to the individual T & C. For items not qualifying for NAFTA treatment, Supplier agrees to provide Phoenix Contact with correct Country of Origin information for each item. If Supplier does not provide either the required Certificate(s) or correct Country of Origin information, Phoenix Contact may charge back to Supplier the costs of any duties, penalties or other expenses (including reasonable attorney's fees) it is required to pay as a result of such failure.

#### 29. Supply Chain Security

Supplier agrees to comply with the minimum Security Criteria of the U.S. Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT) program and/or any other applicable global supply chain security programs, to the extent these criteria are relevant to Supplier's operations. Information about the C-TPAT Program can be found at <http://www.cbp.gov>. The World Customs Organization's SAFE Framework standards can be found at: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~/\\_media/55F00628A9F94827B58ECA90C0F84F7\\_F.ashx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~/_media/55F00628A9F94827B58ECA90C0F84F7_F.ashx) Authorized Economic Operator (AEO) programs and mutual recognition framework can be found at [http://wcopscg.org/4.AEO\\_Compndium.pdf](http://wcopscg.org/4.AEO_Compndium.pdf)

#### 30. Order of Precedence

In the event of any inconsistency in this T & C regarding the Products, or any documents referenced or attachments hereto, the inconsistency shall be resolved by the following in descending order of priority:

1. The purchase order
2. The product specifications
3. The drawings
4. This T & C
5. Any other documents referenced herein

#### 31. Obsolescence, Diminishing Sources, & Discontinued Products

1. Upon determination by the Supplier that a component required in the delivery of the contractual products hereunder is unavailable, through no fault of Supplier, during the performance of this T & C due to obsolescence or diminishing sources, or that such component is discontinued, Supplier shall immediately notify the Phoenix Contact of this condition or intention. The Supplier shall immediately define the shortage or pending obsolescence/discontinuance by providing the Phoenix Contact with (a) satisfactory evidence that its best efforts were made to obtain the affected parts required to meet current contractual requirements and that Supplier initiated a preliminary investigation of availability of alternate parts (i.e. parts that are technically and physically compatible with hardware design.); (b) identify / propose any potential third party supplier capable of supplying enough parts in the current year to meet the

total contractual requirements; and (c) offer Phoenix Contact an opportunity for a life-time buy of the affected product beyond the current contractual requirement, to include price and availability information. The forgoing is in addition to Supplier's other obligations pursuant to this T & C and shall in no event relieve Supplier from any liability to Phoenix Contact for any damages arising as a result of any failure by Supplier to fully comply with the terms of this T & C. If, there are insufficient parts to meet current contractual requirements, the Phoenix Contact may, in addition to any other rights and remedies available to it under this T & C or applicable law take one or more of the following actions: (a) assist Supplier with the procurement from a third party supplier of enough parts to meet current contractual requirements; or (b) authorize the procurement of the life-time buy parts; or (c) terminate this T & C for default.

2. Supplier acknowledges and agrees that a consistent and reliable source of supply is of utmost importance to Phoenix Contact. Supplier further acknowledges that Phoenix Contact has an expectation of Supplier's willingness to maintain a reliable and consistent source of supply to Seller for the contractual product ordered hereunder. Therefore, Supplier covenants and agrees, by

accepting this T & C, to use its best efforts to maintain the ability to fulfill future orders placed by Phoenix Contact for any of the products subject to this T & C for a period of at least twelve months following the last delivery date specified under this T & C. If Supplier anticipates any difficulty in meeting Phoenix Contact's demand for any such product during such twelve month period (based on forecasts submitted by Phoenix Contact, whether binding or otherwise, or, if no such forecasts are available, then based on Phoenix Contact's purchasing history of the applicable product for the past two years), then Supplier shall immediately provide written notice of any such anticipated difficulty and shall use best efforts to remediate such difficulty to ensure an uninterrupted source of supply for Phoenix Contact. Supplier acknowledges that this provision is a material term of this T & C, and shall defend, indemnify and hold harmless Phoenix Contact from and against any and all loss, cost, expense claims and damages related to or arising out of Supplier's failure to fully comply with this provision