

## Purchasing Terms and Conditions

### 1 Purchase Order and Acknowledgement of Order

- 1.1 These Terms and Conditions shall apply to all orders and/or agreements made by Wincor Nixdorf Retail & Banking Systems (Shanghai) Co., Ltd. ("Purchaser") to a supplier for the purchase of products and/or services ("Vendor").
- 1.2 These Terms and Conditions may be amended by Purchaser from time to time and such amended Terms and Conditions, as applicable to China, shall be made available on Purchaser's website at [http://www.wincor-nixdorf.com/internet/site\\_EN/EN/WincorNixdorf/Suppliers/SupplierServices/TermsConditions/termsconditions\\_node.html](http://www.wincor-nixdorf.com/internet/site_EN/EN/WincorNixdorf/Suppliers/SupplierServices/TermsConditions/termsconditions_node.html) and shall be deemed incorporated into all orders or agreements for the purchase of products and/or services from Vendor.
- 1.3 Any purported modification or amendment to the purchase order or acknowledgement of order from the Vendor differing from these Terms and Conditions shall be binding on Purchaser only if such deviation has been accepted in writing. Any general terms and conditions of the Vendor shall be binding on Purchaser only insofar as they comply with Purchaser's Terms and Conditions or have been expressly approved by Purchaser's authorized representative(s) in writing. The acceptance of products or services or payment by Purchaser shall not constitute such approval.

### 2 Delivery

- 2.1 Delivery of products and/or services shall be in accordance with the mode, method and place of delivery agreed by the Parties.
- 2.2 Each delivery shipment shall include packing lists or delivery notes giving details of the shipment and complete order references. Vendor shall immediately advise Purchaser of shipment, indicating the same data.
- 2.3 In case deliveries are made directly to a customer or to a sub-vendor of the Purchaser, the delivery note has to indicate precisely that delivery is made on behalf of the Purchaser.
- 2.4 Purchaser shall be entitled to re-schedule delivery dates or cancel an order, without incurring any charges, upon providing Vendor with written notice at least 30 days prior to shipment/ delivery of the products.
- 2.5 Unless otherwise agreed, time of delivery of products shall be calculated based on receipt by Purchaser of the products at the point of destination specified by Purchaser in accordance with the agreed method of delivery. In the case of deliveries which include installation or assembly as well as the provision of services, such calculation shall be based on satisfactory testing and acceptance by Purchaser.
- 2.6 Time of delivery shall be of the essence of the agreement.
- 2.7 If a delay in the delivery of products or the provision of services is anticipated, Vendor shall immediately notify Purchaser and shall take all necessary steps to expedite delivery of products and/or services. This shall include bearing the costs of delivering the products by air instead of sea freight.
- 2.8 Purchaser shall be entitled to cancel any orders without incurring any liability if delivery is delayed and to claim compensation or reimbursement of costs, expenses and damages caused by such delay.
- 2.9 Products delivered in excess of the quantity ordered may be returned at Vendor's expense.
- 2.10 In the event of shortfall of products delivered, Purchaser shall have the option of rejecting the entire batch of Products delivered or accepting the quantity of products delivered at a corresponding reduction in price without prejudice to its right to claim against the Vendor for any loss or damage suffered as a result of the shortfall.

### 3 Transfer of Title and Risk

- 3.1 Unless otherwise agreed, title to products shall transfer to Purchaser upon delivery.
- 3.2 Vendor shall deliver products and perform services unencumbered by third party rights.
- 3.3 With regard deliveries without installation or assembly, transfer of risk shall take place upon delivery of products to Purchaser in accordance with the agreed method of delivery. In the case of deliveries including installation or assembly, the risk shall be transferred upon successful testing and acceptance by Purchaser and/or its end customer.

### 4 Acceptance

- 4.1 Acknowledgement of receipt of products by Purchaser at time of delivery shall not constitute acceptance of products.
- 4.2 The products must comply with all descriptions, characteristics and specifications stated in the order or agreement as well as all health, safety and other applicable laws and regulations in force.
- 4.3 Vendor must perform sampling inspection in order to ensure that the products meet applicable industry standards and comply with the Purchaser's Quality Agreement or such other standards as agreed upon by the parties.

### 5 Invoices

Invoices shall indicate the order reference and the numbers of every single item. Invoices shall not be payable until this information is provided. Copies of invoices shall be marked as such.

### 6 Payment

- 6.1 Unless otherwise agreed, payment for products and/or services shall be within 60 days from date of delivery.
- 6.2 Any applicable payment period shall be calculated from the date the supplies or services have been fully completed and a duly issued invoice is received.
- 6.3 Any payments made by Purchaser shall not imply acceptance of products or services provided by Vendor.

### 7 Warranty

- 7.1 Unless otherwise agreed, Vendor warrants that all products and services purchased shall conform to the applicable specifications as agreed with Purchaser and shall be free from defects in material, workmanship, function and title for a minimum period of 24 months from the manufacturing date code of the products or the date of delivery, whichever is later.
- 7.2 The 24-month warranty period for products delivered to Purchaser's customer shall be calculated from the time the products are successfully tested and accepted by Purchaser's customer.
- 7.3 The conduct of any intermediate or final or any other forms of acceptance tests will not relieve the Vendor from his warranty obligations.
- 7.4 Vendor shall remedy any defects discovered by and notified by Purchaser prior to and within 14 days from expiry of the warranty period by either (at Purchaser's option) correcting the defects at its own expense or by furnishing new products or services free of defects. Defective products shall be returned to Vendor and repaired and/or replaced by Vendor at its own expense and risk.
- 7.5 If Vendor refuses, fails or is otherwise unable to correct a defect, or to furnish new supplies or services, within 30 days or such other reasonable period of time set by Purchaser, Purchaser shall be entitled to:
  - (a) terminate the whole or any part of the contract without paying compensation;
  - (b) demand a reduction of the price;
  - (c) make its own repairs or replacements, or engage a third party to carry out repairs or replacements and recover such costs from the Vendor; or
  - (d) claim damages for non-performance or poor performance of the contract.

- 7.6 In the event that urgent repairs or replacements are essential to mitigate the costs and expenses and loss and damage suffered by the Purchaser and Vendor is unable or has indicated that it is unable to effect such urgent repairs or replacements, Purchaser may proceed to carry out repairs or replacements on its own or through a third party vendor and recover such costs from the Vendor notwithstanding that a period of less than 30 days has yet to lapse.
- 7.7 In the case of products which have been repaired, Vendor shall be obliged to extend its warranty obligation in respect of such repaired Products for a further period of 6 months commencing from the date of repair or to the end of the original warranty, whichever is greater. Warranty for new replacement products shall commence from the date of delivery to Purchaser in accordance with the warranty terms set out in this clause 7.
- 7.8 Vendor shall comply with the Returned Material Procedure of Purchaser, available on Purchaser's abovementioned website, in relation to rejected products as well as products suffering from epidemic failure.
- 7.9 For each justified Rejection Advice issued by the Purchaser, the Vendor shall be charged US\$50. Additional re-work and sorting costs will be charged separately, according to spent effort. This shall be without prejudice to the Purchaser's right to recover any other cost and expense incurred or loss and damage suffered by the Purchaser arising from the Vendor's supply of defective products, provision of unsatisfactory services or other breach of its obligations under the relevant order or agreement.
- 7.10 The above provisions shall also apply to products which are dead on arrival (i.e. products with a rejection rate of 3% or more per batch delivered by the Vendor).
- 8 Subcontracting to Third Parties**
- Subcontracting to third parties is not allowed without Purchaser's prior written approval and shall entitle Purchaser to terminate the whole or any part of the agreement and to claim damages.
- 9 Tools, Materials and Drawings**
- 9.1 Purchaser retains title and ownership of tools and materials supplied / consigned by Purchaser to Vendor for the manufacture of products for Purchaser. Such tools and materials shall be used only in filling Purchaser's orders.
- 9.2 Vendor shall be responsible for the proper maintenance and repair of the tools and materials, at its own costs. The tools and materials shall be at Vendor's risk of loss or reduction in value until returned to Purchaser. Vendor shall ensure that it applies for and maintains adequate insurance coverage for the tools and materials while in its possession and control.
- 9.3 Purchaser shall be entitled to take possession of such tools and materials as and when it deems necessary and Vendor shall comply with all requests by Purchaser to return such tools and materials.
- 9.4 All drawings (including tool drawings), CAD data and specifications shall also remain the sole property of WN. The drawings shall be retained and updated by Vendor and submitted to Purchaser upon parts approval.
- 9.5 In the event of tool transfer, the Vendor shall:
- Allow Purchaser to carry out Last Article inspections, similar to First Article inspections, on the tools;
  - Grant Purchaser reasonable access to Vendor's business premises and shall make their quality engineer available to assist the Purchaser for the duration of the tool transfer.
  - Present to Purchaser the Last Article report and obtain the approval of Purchaser's SQE (Supplier Quality Engineer) prior to Tool Transfer.
- 9.6 Vendor shall process or work the materials on behalf of Purchaser, who shall forthwith become the sole proprietor of the new or worked item. Vendor shall apply due and proper care in keeping the new item at no cost to Purchaser.
- 10 Confidential Materials and Information**
- Tools, moulds, samples, models, sections, drawings, standards, gauges, components, specifications, procedures, technical know-how, documents and all other material or information of a confidential information supplied by Purchaser, as well as items made with or to them, shall not, without Purchaser's written approval, be disclosed or passed on to third parties nor used for purposes other than the limited purposes specified in the order or agreement. They shall be safeguarded against unauthorized inspection or use. Purchaser shall be entitled to demand the return of such items forthwith if Vendor does not comply with this obligation.
- 11 Intellectual Property Warranty and Indemnity**
- 11.1 Vendor warrants that it is the legal and beneficial owner of all patents, trademarks and other intellectual property rights in the products or any part thereof and that the products supplied do not infringe any intellectual property rights belonging to a third party and that Purchaser shall be entitled to use and sell the products both locally and abroad.
- 11.2 Vendor shall defend and indemnify Purchaser and its associated companies, contractors, subcontractors, customers and their respective successors and assigns ("Protected Parties") against all claims and losses and shall compensate for all damages (including reasonable legal fees) resulting directly or indirectly from any infringement, or alleged infringement, of any third party intellectual property right, caused by using, producing, selling or sublicensing Vendor's products; subject to the following conditions:
- Purchaser must notify Vendor in writing without undue delay of any allegation of infringement against them or other Protected Parties;
  - Purchaser must not make any admissions without Vendor's prior written consent; unless Vendor does not react within a reasonable time upon such requests by Purchaser;
  - Purchaser must, at Vendor's request, allow Vendor to conduct and/or settle all negotiations and litigation and must give Vendor all reasonable assistance. The costs incurred or recovered in such negotiations and litigation will be paid or received respectively by Vendor.
- 11.3 If at any time any allegation of infringement of any third party Intellectual Property Rights is made or, in Vendor's opinion, is likely to be made, Vendor shall at its own expense and upon his choice:
- modify or replace such part of the product as it considers necessary so as to avoid the infringement. Any replacement must offer equivalent performance and not violate any third party intellectual property rights; or
  - procure the right for Purchaser to continue using the product.
- 11.4 If despite Purchaser having set a reasonable time limit for Vendor, and after lapse of said time the infringement is not eliminated, or if above rectification attempts fail, Purchaser shall, at its own discretion, be entitled to:
- reasonably reduce the purchase price; or
  - withdraw the respective Order and demand repayment of price or service fee whereas a reasonable sum shall be deducted for the previous use, taking into consideration the expected economic life-time of the software.
- 11.5 The Indemnity in Clause 11 shall apply to Vendor unless Vendor can provide evidence that Purchaser or any other Protected Party is solely responsible for infringing upon the third party's Intellectual Property Rights (through unauthorised modification, combination with other products or services not reasonably foreseeable or similar).
- 12 Escrow**
- 12.1 Where Vendor provides software to the Purchaser, the Vendor shall (if so required by the Purchaser) provide technical information and documentation describing the software (including source codes) ("Materials") to allow Purchaser to correct and maintain the software if Vendor is unable or refuses to do so. The Materials shall contain all information in human-readable form and on suitable data carriers and electronic media to enable a specifically trained programmer or system analyst to understand, maintain or correct the software without the assistance of any other person.
- 12.2 The provision of the Materials may be via a software escrow arrangement, with details to be agreed by the Parties. Costs of the escrow arrangement shall be shared equally by Vendor and Purchaser. Vendor shall be responsible for ensuring that the Materials are regularly updated, at least once a year. The escrow agent or an independent third party appointed by the Parties shall be entitled to inspect the Materials to verify that the Materials are up-to-date and capable of generating the latest version of the software delivered to the Purchaser.
- 12.3 Purchaser shall be granted access to the Materials in the event that:
- Vendor ceases to trade;
  - Vendor becomes insolvent or is the subject of insolvency proceedings or a winding up petition or order is filed or made against Vendor or similar event occurs;
  - Vendor without legal justification has defaulted in its obligations to provide maintenance for the software and failed to remedy such default notified to Vendor;
  - the release is granted by an order or decision following binding legal proceedings.
- 13 Indemnity**
- Vendor shall indemnify and hold harmless the Purchaser for all cost and expenses, loss and damage suffered by Purchaser, including but not limited to legal fees and disbursements, arising from or in connection with a breach of any of these Terms and Conditions and/or the agreement entered into between the Parties.

## **14 Force Majeure**

- 14.1 No party shall be liable for any failure to perform its obligations under this Agreement if such failure results from circumstances beyond its reasonable control and occurs without its fault or negligence including but not limited to floods, earthquakes and other natural disasters, war, insurrection, acts of terrorists, acts of governments or governmental bodies, riot, civil disturbances, fire, explosions, strikes, lock-outs and industrial actions ("Force Majeure"); provided that such incapacitated party promptly gives written notice to the other party specifying the matters constituting Force Majeure together with such evidence as it can be reasonably give and specifying the period for which it is estimated that such prevention will continue.
- 14.2 If the incapacitated party is excused from the performance of any obligation for a continuous period of thirty days due to Force Majeure, then the parties shall consult each other with a view to effecting such modification and variations to the terms of this Agreement as shall be necessary and expedient to render this Agreement capable of performance forthwith and if not possible then with a view of termination of this Agreement forthwith.

## **15 Insurance**

Vendor shall maintain all relevant insurance, including product liability insurance, underwritten by a reputable insurance company in an amount sufficient to cover any claim or damage arising from or in connection with orders placed and products and services procured by Purchaser.

## **16 Assignment**

Vendor shall not assign the whole or any part of its interest under these Terms and Conditions and/or the Agreement between the Parties without the prior written consent of the Purchaser.

## **17 Severability**

If one or more individual provisions of the present Agreement should be ineffective, the effectiveness of the other provisions shall not be affected. A substitute provision that most approximates the intended purpose of the ineffective provision shall replace the ineffective provision.

## **18 Waiver**

Failure by Purchaser to enforce any of the provisions of these Terms and Conditions and/or the agreement between the Parties shall not be considered a waiver of such provisions or rights.

## **19 Amendment**

Any modification or amendment to the order or agreement shall be effective only if confirmed by Purchaser's authorized representative(s) in writing.

## **20 Applicable Law and Jurisdiction**

- 20.1 These Terms and Conditions and all the orders carried out within their scope shall be governed exclusively by the laws of the People's Republic of China, without regard to choice or conflicts of laws principles. Incoterms 2000 shall be applicable. The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply.
- 20.2 In the event of any disputes arising from or in connection with these Terms and Conditions and/or all orders made thereunder, either Party shall notify the other Party in writing of the nature of the dispute and Parties agree to meet within 7 days (or such longer period as mutually agreed by the Parties) to attempt an amicable resolution of the dispute.
- 20.3 In the event that the dispute is not resolved within 30 days from the meeting mentioned in clause 20.2 (or such extended period as mutually agreed by the Parties), either Party may proceed to submit the dispute to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. Parties agree that clause 20.2 shall be a pre-condition to the commencement of any formal legal proceedings.