

Terms and Conditions for Participation in E-Auctions

WINCOR NIXDORF intends to conduct eAuctions to receive electronic offers from potential contract partners via the SRM eAuction platform.

Participant agrees to participate in the eAuction subject to the Conditions of this Agreement.

The delivery of goods and / or services that are awarded to a Participant will be subject to special Terms and Conditions named in the eAuction.

1 Scope of this Agreement

- 1.1 Participant accepts this Agreement by clicking the relevant button in the entry page of the Website related to the eAuction. WINCOR NIXDORF may amend this Agreement from time to time. In this case WINCOR NIXDORF shall inform Participant with adequate notice prior to any amendment becoming effective. Participation in an eAuction after receiving notice of an amendment shall constitute consent to such amendment or supplement.
- 1.2 All additional / separate conditions and comments stated by the Participant within the bid are only valid if confirmed by WINCOR NIXDORF in written form.
- 1.3 In the event Participant does not consent to any amendment, it may terminate its participation at any time and its former bids become invalid. Section 13 (Term and Termination) remains unaffected by this.

2 Authorization to Participate

- 2.1 Online Bidding Events are by invitation. Only Participants who are capable of meeting the requirements and who are approved and invited by WINCOR NIXDORF will be invited to participate to WINCOR NIXDORF eAuction Events.
- 2.2 The Participant is duly authorized to participate in the eAuction Event if it has, before the eAuction, received a valid User ID and password from WINCOR NIXDORF and if it has a system that complies with the technical prerequisites determined by WINCOR NIXDORF.
- 2.3 WINCOR NIXDORF reserves the right to authorize individual Participants to alternatively submit bids via the telephone ("surrogate bidding"), if necessary due to technical reasons.
- 2.4 The Participant has no automatic right to be invited to an Event.
- 2.5 During the use of the SRM Tool the Participant may not:
 - provide incorrect information during registration
 - abuse the SRM Tool (in particular e.g. providing of an offer under a false name)
 - breach public morality in its manner of use
 - violate industrial property or copyrights or any other proprietary rights
 - transfer contents containing viruses, so called "Trojan horses" or other programs which could damage software
 - transmit, store or enter hyperlinks or contents to which the Participant is not entitled, in particular in cases where such hyperlinks or contents are in breach of confidentiality obligations or illegal; or
 - distribute advertising or unsolicited e-mails (so-called "spam") or incorrect warnings of viruses, defects or similar material and the Participant shall not solicit or request the participation in any lottery, snowball system, chain letter, pyramid game or similar action.
- 2.6 WINCOR NIXDORF reserves the right to block the access authorization of users who have or are suspect of having violated these obligations.
- 2.7 The Participant shall give WINCOR NIXDORF all necessary data for creating its user profile. It is responsible for checking its profile data and for giving complete and true data necessary for the registration (especially the e-mail address), i.e. inform WINCOR NIXDORF immediately as to any change in its profile.
- 2.8 The Participant shall ensure that the user ID and the password are carefully stored and treated in such a way so as not to be lost and so that such are secure from access by third parties.
- 2.9 The Participant shall inform WINCOR NIXDORF immediately if the password is lost. WINCOR NIXDORF will disable the account of the Participant directly after having been notified of such loss. Any possible new registration of the Participant remains unaffected thereby.
- 2.10 If any third party receives the user ID and/or password, the Participant shall be made liable for all acts executed under this user ID and password until such time as notice of loss is received by WINCOR NIXDORF, except for cases where the Participant is able to prove that it was not responsible for the act or omission.

3 Participation

- 3.1 As soon as the user ID and the password are used, WINCOR NIXDORF assumes that the Participant or their authorized representative is participating in the eAuction Event. Any declarations provided thereby will be assigned to the Participant except for the case where the Participant is able to prove that a third party has gained unauthorized knowledge of the user ID and password and the Participant was not responsible for the act or omission.

- 3.2 The Participant shall notify WINCOR NIXDORF as to its participation in the eAuction Event; if a date is set for this in the invitation, by that date. The Participant shall specify in particular the person who will participate in the Event in the name and with the authority of the Participant.
- 3.3 The Participants in the Event agree that WINCOR NIXDORF is authorized to inform all Participants about the number and, at the discretion of WINCOR NIXDORF also about the identity of the Participants.

4 Binding effect of bids

- 4.1 The goods or services described by WINCOR NIXDORF within the eAuction Event in order to receive bids shall, itself, not represent any binding offer by WINCOR NIXDORF, but rather a simple invitation for an offer by the Participant.
- 4.2 Bids are legally binding offers with regard to the invitation for offers and the Terms and Conditions issued by WINCOR NIXDORF for the delivery or service to be rendered. All given statements and offers/bids by the Participant have the same validity towards WINCOR NIXDORF as if they were stated in written form.
- 4.3 It is not possible to change or withdraw any offer received by WINCOR NIXDORF. The right to cancel or challenge due to a serious mistake remains unaffected thereby.
- 4.4 The period of commitment for an offer is set forth in the special conditions and / or the invitation. If no period is specified, the Participant shall be bound by its last offer for 30 days.
- 4.5 All offers are made in the currency defined in the special conditions and / or invitation, i.e. currency without the legally-valid sales tax according to German Sales Tax Law, but including eventual regional additional tax that may increase the purchase price.

5 Bidding process

- 5.1 Participants can only submit a bid between the start and end date (within the duration of the eAuction Event) stated in the system. After the end date has been reached and the eAuction is closed, no more bids will be accepted by WINCOR NIXDORF.
- 5.2 Possible bidding period extensions due to individual extension rules for each eAuction have to be considered. The end date is reached after the last bidding period extension has expired.
- 5.3 Depending on the parameters customized by WINCOR NIXDORF, the Supplier may only get access to the live eAuction Event after submitting a first valid bid. Due to this, no Supplier may get access to the eAuction Event details without active and serious participation in the eAuction Event.
- 5.4 In the case that the content or parameters of the eAuction Event are changed by WINCOR NIXDORF during the eAuction Event, all Participants will be informed about the changes. In this case, Participant may terminate its participation. Its bids will then be considered as null and void. Further participation in the eAuction after receiving notice of a change of content or parameters shall constitute consent to such change.
- 5.5 No bid may be cancelled or withdrawn by the Participant except for the reason that the eAuction parameters or content where changed by Wincor Nixdorf without informing the participants about these changes.
- 5.6 By submitting a lower bid within the eAuction Event, an earlier submitted higher bid by the Participant during the eAuction becomes automatically invalid.
- 5.7 WINCOR NIXDORF may transmit all data necessary for the Event (e.g. the best offer) in a depersonalized form to the other Participants.
- 5.8 Wincor Nixdorf and suppliers will not, under any circumstances, enter false or fake bids in an online eAuction Event to stimulate bidding.

6 Monitoring

The eAuctions shall be monitored by WINCOR NIXDORF. If there are any doubts about a mistake in an offer that has been sent WINCOR NIXDORF reserves the right to delete such offer in order not to interrupt the process of the eAuction. If an offer is deleted by WINCOR NIXDORF for this reason, the Participant shall be immediately informed by WINCOR NIXDORF. In case an offer has been deleted due to such reasons, any claims of any kind against WINCOR NIXDORF by the Participant are excluded regardless of the legal basis.

7 Outcome of the eAuction

- 7.1 WINCOR NIXDORF will consider multiple criteria in addition to price to award the business completely or partially to one or more best-total-cost Participant(s) by consideration of the Participant bids. Wincor Nixdorf is not liable to award the business to one or more Participants. All bids may be rejected. Wincor Nixdorf does not have to award business to a bidder in the eAuction Event if the reserve price is not met.
- 7.2 The business specified by WINCOR NIXDORF will be awarded only to one or more Participant(s) that have participated in the eAuction Event.
- 7.3 WINCOR NIXDORF may extend, end or re-open a running Event or repeat a closed Event in order to guarantee fair and transparent procedures.

- 7.4 WINCOR NIXDORF will communicate to all bidding Participants the outcome (whether they won or not) of the eAuction Event within a reasonable time period after the eAuction.
- 7.5 A Participant bid may be influenced and recalculated automatically by the SRM system based on factors entered by WINCOR NIXDORF because of different preconditions of the Participant bids (e.g. unequal Incoterms/ terms of delivery / Currency etc.).
- 7.6 WINCOR NIXDORF will have personnel knowledgeable in both the eAuction tool and the commodity being sourced available for questions and problem solving during eAuction Events.
- 7.7 Any Information given to Participants regarding the Event will be given to all Participants evenly. Participant questions and suggestions, WINCOR NIXDORF responses, lot structures, reserve price and other parameters of the Event will be communicated evenly to all bidding Participants.

8 Exclusion of Participants

WINCOR NIXDORF reserves the right to exclude a Participant from an eAuction, if such Participant does not submit a bid within the deadline after the start of the eAuction; such deadline shall be communicated by WINCOR NIXDORF prior to the eAuction. Thus the other Participants in the Event are protected from unreasonable benchmarking, as the platform is a business platform and not an information platform.

9 Costs

Participant agrees to bear all costs occurring in connection with the Event, e. g. costs of communication, working hours.

10 Personal Data

In relation to any personal data being saved or processed, WINCOR NIXDORF shall meet the requirements of the data protection law. WINCOR NIXDORF shall adopt the technical and organizational measures necessary to secure the data against misuse. At the same time, the Participant gives its consent to process and transmit the data necessary to the implementation of the Event and shall ensure, as far as personal data is concerned (e.g. about its employees), that any concerned person gives consent to the processing and transmitting of personal data for the purposes of participating in the Event.

11 Liability

- 11.1 The participation of a Participant in an eAuction Event shall be at the sole responsibility of the Participant. The liability of WINCOR NIXDORF for damage of any kind occurring due to the participation in the eAuction Event, especially for service interruption, lack of profit, loss of information and data as well as consequential harm caused by any defect is excluded. The liability of WINCOR NIXDORF is also excluded for damage due to virus, trojan horses, hoax-virus or comparable programmes or the like, as well as programmes, parts of programmes or codes causing the same kind of damage, destruction or shutdown of systems or parts of the systems. The Participant shall take measures against any virus and other destructive data. WINCOR NIXDORF shall also not be liable for damage regardless of the legal basis, due to the use, or inability to use or due to hard- or software mistakes of the SRM Tool. The liability of WINCOR NIXDORF for the wrong transmission of data, the manipulation of data by a third party, especially through unallowed access to the networks and systems of WINCOR NIXDORF, or the non-transmission of data is excluded.
- 11.2 However, the liability is unlimited with regard to injury to life, body or health, in cases of intent or gross negligence, for breach of a guarantee within the meaning of "Garantie" and according to the law of product liability (Produkthaftungsgesetz).

12 Confidentiality

- 12.1 Neither party, nor its Personnel, agents, directors or advisers, shall use, nor disclose to any third party (other than for the purposes of performing this Agreement), any Confidential Information including the contents of this Agreement or its existence. The parties agree that any Confidential Information obtained from, or relating to, the disclosing party shall be and stay the property of the disclosing party.
- 12.2 The provisions of this Clause shall not apply to Confidential Information which:
- can be proved to have been in the possession of the receiving party prior to disclosure under this Agreement;
 - is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - is in or becomes part of the public domain (otherwise than by a breach of this Agreement);

- is independently developed by the receiving party without dependence on the Confidential Information;
- is disclosed pursuant to legal obligations beyond the control of the disclosing and receiving parties;
- is disclosed to appropriate governmental or self regulatory organisation; or
- is released with the prior written approval of the disclosing party.

- 12.3 Each party hereby agrees that on the expiration or termination of this Agreement, or any subsequent Maintenance Period (whichever is later), or upon the request of WINCOR NIXDORF, it shall within 30 days return, delete or destroy (as the parties shall agree) all of the Confidential Information in its possession, and also procure the return, deletion or destruction (as the parties shall agree) of any Confidential Information in the possession of any third party disclosee; save that one copy of the Confidential Information may be retained to substantiate the deliveries or services and/or for legal purposes where deemed necessary. The Contractor shall, upon request, give a written declaration that these measures have been carried out.
- 12.4 The contents of the present Agreement shall be treated with confidentiality.
- 12.5 If the Contractor is provided with drawings, tools, plans or other documents, said objects shall exclusively remain the property of WINCOR NIXDORF. The Contractor shall not be entitled to copy said objects, pass them on to third parties or give unauthorized parties knowledge of their contents without the prior consent of WINCOR NIXDORF.
- 12.6 Regardless of the above stated obligations relating to the handling of Confidential Information, WINCOR NIXDORF shall be entitled to provide information on the existence and the content of this Agreement to its employees through the company intra-net.
- 12.7 If the parties enter into a separate confidentiality agreement after the signature of this Agreement, the terms of such confidentiality agreement shall take precedence over this Clause only if expressly indicated in such agreement. If the parties have already entered into any separate confidentiality agreement before the signature of this Agreement, the terms of this Agreement shall always take precedence.
- 12.8 In the event of a termination of this Agreement both parties shall be obliged to maintain confidentiality as defined above for a time period of five (5) years after termination of this Agreement unless longer confidentiality is required by any applicable law.
- 12.9 In each case of a violation of these confidentiality obligations the violating party agrees to pay a contract penalty in the amount of EUR 10,000.00 (in words: Euro ten thousand).

13 Term, Termination

Irrespective of Section 1.3 of these General Conditions, this Agreement may be terminated with the observance of a period of notice of 30 calendar days. The validity of any goods and services contract awarded due to an eAuction remains unaffected thereby.

14 Final provisions

- 14.1 Modifications and amendments to the present Terms and Conditions shall not be valid unless made in writing and signed by both Parties. This shall also apply to a rescission of the present provision.
- 14.2 Any provision of the present Terms and Conditions that is found to be invalid, voidable, unenforceable or contrary to law shall be disregarded in the performance or interpretation of these Terms and Conditions; the rest of the Terms and Conditions shall, however, remain in effect. The provision in question shall be replaced by a valid and enforceable provision that most closely reflects the intent and purpose of the Parties as far as is legally permissible.
- 14.3 Terms and Conditions other than those in the present Master Agreement shall only be valid if they have been expressly acknowledged in writing by both Parties to the Agreement and have been signed by the persons authorized by the Parties. In particular, they shall not obligate WINCOR NIXDORF without its express written acknowledgment.

15 Venue, applicable law

- 15.1 The laws of the Federal Republic of Germany shall govern this Agreement, without recourse to rules on its conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG) from April 11, 1980 shall not apply.
- 15.2 The place of jurisdiction for any legal disputes shall be Paderborn, the Federal Republic of Germany. If WINCOR NIXDORF is the plaintiff, WINCOR NIXDORF may also appeal to the court having jurisdiction for the seat of the Supplier.