



A Schaeffler Company

Authorised for external communication

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# Ewellix General Conditions of Purchase

These conditions of purchase shall apply in full unless otherwise agreed in writing.

## 1. Definitions

- 1.1. "Ewellix" shall mean any company within the Ewellix Group of companies purchasing products under these General Conditions.
- 1.2. "Supplier" shall mean any company delivering products to Ewellix under these General Conditions.
- 1.3. "Agreement" shall mean any agreement between Ewellix and the Supplier related to the sale and purchase of any products. These General Conditions and the Ewellix Quality Standards for Suppliers (as defined below) form an integral part of the Agreement.
- 1.4. "Products" shall mean any products and services purchased by Ewellix under these General conditions.
- 1.5. "Defective Products" shall mean Products that are not in accordance with technical and other specifications specified or otherwise established by Ewellix or are not fit for the purpose intended. In the absence of documented Ewellix requirements, "Defective Products" shall mean Products that are not in accordance with approved sample deliveries of the Products or where no samples are delivered, do not conform to generally accepted industry standards.
- 1.6. "Ewellix Quality Standard for Suppliers" shall mean the quality requirements issued by Ewellix.

## 2. Inspection of production

- 2.1. Ewellix shall have the right to inspect the Supplier's production, take samples and carry out other necessary investigations on the Supplier's premises.
- 2.2. It is the Supplier's responsibility to see to it that Ewellix can exert its right according to clause 2.1 even in cases where production is assigned, partially or entirely, to another company.

## 3. Quality, Ethical and Environmental, Health & Safety requirements

- 3.1. The Supplier shall comply with the Ewellix Quality Standards for Suppliers, which implies adoption of the principles of the Ewellix Code of Conduct, of the Ewellix Code of Conduct for suppliers and sub-contractors and of Ewellix's Environmental, Health & Safety (EHS) policy ([www.ewellix.com/suppliers](http://www.ewellix.com/suppliers)) and shall ensure that any Sub-Contractor approved by Ewellix under Clause 6 of these General Conditions, is legally bound to a similar compliance obligation. The Products shall be in accordance with technical and other specifications specified or otherwise established by Ewellix. All specifications will be considered to require that each Product must be new when delivered to Ewellix, unless the applicable specifications expressly permit the delivery of used, reconditioned or remanufactured Product. Ewellix may refuse to accept any Products that do not conform to all applicable specifications, in which case the Products will not be considered to have been delivered by the Supplier.
- 3.2. After Ewellix has approved sample deliveries and respective specifications, if so provided, of the Products, the Supplier is not allowed to change the function, appearance, properties, material, or place of production of the Products, without the prior written consent of Ewellix.
- 3.3. Ewellix's approval of Products shall not affect the Supplier's liability under the Agreement.
- 3.4. The Supplier shall notify Ewellix forthwith of any known or apprehended Defective Products. Ewellix shall notify the Supplier of any Defective Products within 6 months after the Defective Products have been detected by Ewellix.
- 3.5. If, on account of Defective Products, Ewellix deems it necessary to carry out an inspection of any or all Products delivered, this shall be effectuated, after consultation with the Supplier, at the Supplier's



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expense. The Supplier shall compensate Ewellix for the cost of such inspection.

- 3.6. The Supplier shall, immediately upon Ewellix's request, replace or rectify Defective Products free of charge or, if Ewellix so wishes, compensate Ewellix for the value of such Defective Products or for the costs of their rectification. In addition, the Supplier shall compensate Ewellix for all costs, damages and losses incurred by Ewellix as a result of the Defective Products.
- 3.7. If Defective Products have been incorporated in Ewellix products that have been delivered to Ewellix customers, Ewellix shall have the right to recall the Ewellix products concerned, at the expense of the Supplier.
- 3.8. The Supplier shall indemnify Ewellix for freight charges with respect to Defective Products (including those related to Defective Products incorporated in Ewellix products) and, if the Defective Products are returned to the Supplier, the freight charges for returned Defective Products. All transport of the Defective Products in conjunction with rectification of defects shall be at the Supplier's account and risk.
- 3.9. The Supplier's obligations under clause 3.5-3.8 above shall expire two (2) years after the Ewellix products, in which the Defective Products have been incorporated, have been delivered to any Ewellix customer. The period of time under which the obligations shall exist shall however, not exceed three (3) years from delivery of the Defective Products to Ewellix. The time limitations in this clause shall not affect the Supplier's product liability under clause 10 below.
- 3.10. When a Defective Product has been remedied, the Supplier shall be liable for defects in the replaced or repaired Product under the same terms and conditions as those applicable to the original Product.

#### 4. Technical modifications

- 4.1. Ewellix reserves the right, after the order has been placed, to modify the agreed product specification. Any such modification shall be confirmed in writing. Any difference in price and/or delivery date resulting from such modifications is to be subject to mutual agreement and must be confirmed in writing.

#### 5. Terms of delivery

- 5.1. Delivery clauses shall be construed in accordance with the latest version of "INCOTERMS". If no delivery term is specifically agreed, the delivery shall be "DDP".
- 5.2. Deliveries shall be made in accordance with agreed delivery dates.
- 5.3. Ewellix does not accept any responsibility for Products supplied in quantities exceeding those agreed upon or delivered before the
- 5.4. Agreed date. Such Products may be returned to the Supplier at the Supplier's expense. The risk of loss for such Products shall be borne by the Supplier.
- 5.5. The Supplier shall forthwith notify Ewellix in writing of any known or apprehended events that may result in a breach of the agreed delivery date and advise Ewellix as soon as possible thereafter when delivery can be expected.
- 5.6. The Supplier shall have to pay for any extra freight charges incurred in ensuring that delayed deliveries reach Ewellix on time.
- 5.7. The Supplier shall compensate Ewellix for all costs, damages and losses incurred by Ewellix as a result of late delivery.

#### 6. Sub-Contractors

- 6.1. Supplier's use of a sub-contractor shall require Ewellix's prior written approval. Such use will not relieve Supplier from the responsibility for ensuring that the provisions of the Agreement are complied with.

#### 7. Intellectual Property Rights

- 7.1. The Supplier represents and warrants that the Products do not infringe any Intellectual Property Right of any third party. The Supplier shall indemnify Ewellix for all costs arising out or relating to the Products and/or the incorporation of the Products in the final products sold by Ewellix or by any customer of Ewellix, if such Products infringe the Intellectual Property Right of a third party. The Supplier shall assist Ewellix and, if so requested by Ewellix, shall defend Ewellix, at the Supplier's expense, in disputes in



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which Ewellix is involved as a consequence of said infringement.

**7.2.** In the event the Supplier prepares for Ewellix notes, reports, data, and any other information regardless of the media of expression (collectively, "Material"), these shall be deemed to be works for hire and shall belong exclusively to Ewellix. If by operation of law any of the Material is not work made for hire, then the Supplier hereby assigns to Ewellix the ownership of such Material including all copyrights thereto. The Supplier will not use any Material prepared for Ewellix without first obtaining the written consent of Ewellix.

**7.3.** In the event the Supplier makes an improvement to any Ewellix product, Ewellix shall be entitled to full ownership of any such improvements conceived or first actually reduced to practice by Supplier during the performance of the order. The Supplier agrees to promptly disclose any such improvements and hereby assigns to Ewellix all intellectual property rights thereto. The Supplier further agrees to provide reasonable assistance to Ewellix, at Ewellix's expense, for securing all intellectual property rights pursuant to Sections 7.2 and 7.3.

## **8. Tooling**

**8.1.** Special tools and equipment provided by the Supplier to be used in fulfillment of the Agreement, shall, when wholly or partly paid by Ewellix, become the property of Ewellix ("Tooling").

**8.2.** The Supplier shall mark the Tooling with a clear reference that the tooling is Ewellix's property. The Supplier shall not, without the prior written consent of Ewellix, surrender Tooling to third parties and shall not be entitled to manufacture with the Tooling any products, other than the Products for Ewellix. The Supplier's responsibilities include taking care of repairs, storage, servicing and insurance related to the maintenance of the Tooling.

## **9. Termination**

**9.1.** A party may terminate the Agreement by written notice forthwith and without any liability for compensation, if the other Party becomes insolvent, has a receiver or administrator appointed for its assets, or if a petition for bankruptcy is filed by that Party itself or if other bankruptcy proceedings are commenced. When Products are delivered after the agreed-upon delivery time or when Defective Products are not rectified or replaced within reasonable time, without limitation of Ewellix's other rights, Ewellix has the right to terminate the Agreement in full or in part.

**9.2.** If the Supplier fails to fulfil his obligations under the Agreement, Ewellix shall have the right to terminate the Agreement forthwith.

## **10. Product liability and insurance**

**10.1.** To the extent that Ewellix might incur product liability itself or towards any third party, the Supplier shall indemnify Ewellix as far as the damage or Ewellix's liability is due to Defective Products. The Supplier shall provide evidence of a business and product liability insurance, at an insured level which is adequate having regard to the business impact for Ewellix when purchasing the Products and must maintain such insurance with regard to the risks covered and the amount of coverage for the term of the Agreement. Such insurance shall also cover the actions of a subcontractor or sub supplier that the Supplier may utilize under this Agreement.

## **11. Confidentiality**

**11.1.** Designs, samples, tools, drawings, plans, programs or other information provided by one party to the other party must not be used by the receiving party for any other purpose than the fulfillment of the Agreement and must not be reproduced or disclosed to a third party without the prior written permission from the disclosing party.

**11.2.** When requested by the disclosing party, the receiving party shall return all documentation and computer readable data, copies included, as received from the disclosing party. Copies made by either party or on behalf of either party shall be destroyed forthwith.

**11.3.** The Supplier shall not advertise or publicize in any way, without the prior written permission from Ewellix, the fact that he supplies, or has been contracted to supply, Products to Ewellix. Further, the Supplier shall not use any Ewellix name, logo, trademark, or other identifying characteristic without



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Ewellix's prior written approval.

**11.4.** Designs, samples, drawing, plans and programs ordered by Ewellix are Ewellix's property.

**11.5.** On delivery, the Supplier shall provide Ewellix free of charge with the agreed number, or at least one copy, of documents and drawings that are sufficiently detailed to enable Ewellix to carry out assembly, starting up, running and maintenance of the Products.

## **12. Laws and regulations**

**12.1.** Supplier shall comply with all relevant laws and regulations.

## **13. Payment**

**13.1.** Unless otherwise agreed in writing, payment shall be made within sixty (60) days from the date of receipt of the invoice. Payment shall never be made before the Product has been delivered.

**13.2.** Reception of payment shall not affect Ewellix's rights under the Agreement.

**13.3.** Ewellix shall not accept additional charges, such as service fees, late payment fees, or invoicing charges.

## **14. Force majeure**

**14.1.** Neither of the parties shall be bound by any undertakings which it is prevented from fulfilling by force majeure such as industrial disputes, third party strikes and lockouts, riots, insurrection, fire, flood, war, confiscation, or if competition is prevented by governmental intervention or regulations or other circumstances beyond the control of the party and which the Ewellix General Conditions of Purchase party could not reasonably be expected to have anticipated at the time of the purchase, and the consequences of which the party could not reasonably have avoided or overcome.

**14.2.** If, for any of the above reasons, the delivery delays, exceed or is estimated to exceed six (6) months, the parties are free to annul that part of the Agreement relating to the delayed delivery or non-delivery without incurring any liability with respect to the other party.

**14.3.** If a party wishes to refer to force majeure, he is obliged to notify the other party forthwith of the arising and ceasing thereof.

## **15. Arbitration**

**15.1.** Any dispute, controversy or claim arising out of or in connection with the Agreement, or breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The number of arbitrators shall be three and at least the chairman shall be from the country in which the proceeding shall take place. The appointing authority shall be the International Chamber of Commerce in the country from where the Contract is issued.

**15.2.** The place of arbitration shall be the capital city of the country in which the Ewellix purchasing company has its principle place of business. The arbitration proceedings shall, unless otherwise agreed, be held in the English language.

## **16. Applicable law**

**16.1.** The Agreement shall be governed by the law of the country in which the purchasing Ewellix company has its principle place of business, notwithstanding its conflict of laws rules. The United Nations Convention for the International Sale of Goods (CISG) of April 11, 1980 shall not be applicable.

## **17. Export control**

**17.1.** The Products supplied to Ewellix and any underlying technology or related information and data thereto may be subject to export controls imposed by applicable laws and regulations, which may prohibit or restrict the distribution of the Products ("Export Control Regulations"). The Supplier shall comply with any and all Export Control Regulations. The Supplier acknowledges that distribution, export or re-export of Products may be subject to the necessity of obtaining approvals and/or licenses required by the Export Control Regulations and the Supplier is solely responsible for obtaining such approvals and/or licenses at its own risk and expense.

The Supplier represents and warrants that the products, including any underlying technology or



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information relating to the product, shall solely be used by the Supplier and/or its customers for peaceful and civil purposes and shall not be used by the Supplier and/or its customers for military purposes—such as, but not limited to, purposes relating to chemical, biological or nuclear weapons, or missiles capable of delivering such weapons. The Supplier represents and warrants that the products will only be sold to customers that accept the above commitment as binding in relation to the Supplier and Ewellix and to its customers that has been verified by the Supplier to be trustworthy and reliable in the observance of such and/or similar commitments.

The Supplier shall indemnify and hold Ewellix, any other Ewellix's or any Ewellix Group company's directors and employees harmless from any loss, claim, damages, costs, expenses, obligations, liabilities, actions, suits, including without limitation, interest and penalties, reasonable attorneys' fees and costs and all amounts paid in settlement of any claim, action or suite due to Ewellix's breach of this clause.