

STANDARD CONDITIONS OF SALE OF PHOENIX CONTACT (IRELAND) LIMITED

In these conditions Phoenix Contact (Ireland) Limited shall be referred to as the ‘**Seller**’ or ‘**we**’, the buyer shall be referred to as the ‘**Buyer**’ or ‘**you**’ and the goods referred to in the Buyer’s order to the Seller, which includes (without limitation) any item of equipment, hardware, tools, electronic or mechanical equipment but excludes software, shall be referred to as the ‘**Goods**’.

These conditions are the only terms or conditions applicable to any sale or supply of Goods by the Seller to the Buyer and, unless specifically agreed in writing by the Seller and the Buyer, no additional or other terms or conditions shall apply. For the avoidance of doubt, to the extent that the Buyer purchases, downloads or otherwise obtains any software from Seller (whether contained in or bundled with Goods or otherwise), the Seller’s Software Licence Terms (available at <http://www.phoenixcontact.ie/sw-license-terms>) and any Seller Licence Agreement applicable to the relevant software shall apply. Any support and maintenance services provided by the Seller shall be governed by the Seller’s Maintenance Agreement as provided to Customer from time to time where applicable.

A contract (including these conditions) binding the Buyer to purchase the Goods shall exist when the Seller accepts the Buyer’s order for the Goods.

If before the Goods are delivered to the Buyer, the Buyer shall enter into any liquidation or bankruptcy or shall have a Receiver as Manager of its assets appointed or shall in the Seller’s opinion be insolvent, the Seller may without prejudice to all other rights which the Seller may have under this contract or otherwise, cancel the contract relating to the Goods and shall have no further liability whatsoever to the Buyer.

Title

The Goods shall remain the sole and absolute property of the Seller as legal and equitable owner (and the seller reserves the right to dispose thereof) until such a time as the price of the Goods plus VAT thereon shall have been received by the seller. The said amounts shall not be treated as received until a bank account of the seller has been credited therewith in cleared funds. Payments made by the Buyer shall be applied to invoices in the order in which they are issued and to Goods in the order in which they are listed in the invoices.

Until such time as the Seller has been paid in full for the Goods and full legal title in the Goods has passed to the Buyer, the Buyer will keep the Goods in good condition and store them separately from his own or any other person’s goods and in a manner which makes them readily identifiable as the Goods of the Seller.

The Buyer hereby acknowledges that all goods are until passing of property therein to the Buyer held in the Buyer’s possession solely as fiduciary for the Seller. In the event of a sale or any other disposition or use of the Goods by the Buyer prior to such passing of property the Buyer shall hold on trust for the Seller:

- i. If the Goods have not been mixed with or incorporated into other goods or processed the whole of the proceeds of sale and the Buyer’s right thereto or
- ii. If the Goods have been mixed with or incorporated into other goods or processed a just proportion of the proceeds of sale and the Buyer’s right thereto.

The said proceeds of sale shall not be mingled with other monies or paid into any overdrawn bank account and shall at all times be the Seller’s monies and identifiable as such. The right to such proceeds of sale shall belong exclusively to the Seller notwithstanding any purported assignment thereof by the Buyer.

If the Buyer defaults in the punctual payment of any sum owing to the Seller the Seller shall be entitled to the immediate return of the Goods referred to in all contracts between the Buyer and the Seller (and all documents of title thereto) in which the property has not passed to the Buyer and the Buyer hereby authorises the Seller to recover possession of goods and documents and for that purpose to act upon premises where they are stored or reasonably believed to be located. Demand for or recovery of goods or document by the Seller shall not of itself discharge either the Buyer’s liability to pay the whole of the price and to take delivery of the Goods or the Seller’s right to sue for the whole of the price.

Delivery

All delivery dates are estimates only and the time of delivery shall not be of the essence of the contract. In no circumstances shall the Seller be liable to compensate the Buyer in damages or otherwise for non-delivery or late delivery of the Goods or any of them for whatever reasons or for any loss consequential or otherwise arising therefrom.

The Seller may make delivery of part of the Goods when unable for any reason to deliver all of the Goods. Should the Seller be prevented from or hindered in producing or delivering the Goods or any part thereof by any circumstances outside the reasonable control of the Seller, the time of delivery shall be extended until the operation of the cause preventing or hindering delivery has ceased.

Delivery of the Goods shall be deemed to take place and risk of loss or damage to the Goods shall pass to the Buyer at the moment the Goods are unloaded from the carriage or lorry at the address specified on the order or if none at a business address of the Buyer within Ireland.

No claim by the Buyer for damage in transit or shortage will be considered unless notification of the claim is received by the Seller, in writing, within five (5) days from delivery of the Goods concerned.

All delivery and other charges shall be paid by the Buyer in accordance with the Seller’s then current delivery and billing practices.

Price

Prices in any of the Seller’s publications are subject to change without prior notification. All written quotations are valid for thirty (30) days from the date of quotation. The price quoted by the Seller is based on information available to the Seller at the date of their acceptance of the Buyer’s order and if between that date and the date on which the Goods are delivered to the Buyer there shall be any variation in the price of any metal required to produce the Goods, or any Government or other authority imposes any requirements which increase the cost of acquisition of the Goods by the Seller, the price may, at the absolute discretion of the Seller, be adjusted to take account of such variation or imposition.

Payment Net Monthly

The price and any other sums due to the Seller shall be paid to the Seller within thirty (30) days of the end of the month in which the invoice is raised by the Seller. The Buyer shall pay interest on all sums due at the rate of 3% above the European Central Bank rate per month until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest), after as well as before any judgement. The price shall be paid in full on the due date without deduction, set-off or counterclaim whatsoever.

If the Buyer defaults in paying any sum on its due date, the Seller may by giving written notice to the Buyer, without prejudice to any other rights it may have, either suspend future deliveries under any contract with the Buyer until the default is remedied or cancel such contract as far as any further goods remain to be delivered and to recover any damages and expenses involved in such suspensions or cancellations.

If the Buyer defaults in the punctual payment of any sum owing to the Seller then the Seller shall be entitled to the immediate return of all goods sold by the Seller to the Buyer and all related documents of title to the Goods and the Buyer hereby authorises the Seller to recover the Goods and for that purpose to enter upon any premises where they are stored or reasonably believed to be located. Demand for or recovery of the Goods by the Seller shall not of itself discharge either the Buyer’s liability to pay for the whole of the price and to take delivery of the Goods or the Seller’s rights to sue for the whole of the price.

Limited Warranty

The Seller warrants solely to the Buyer that the Goods purchased shall be free from defects in material and workmanship under normal use and service for a period of one year from delivery.

Written notice and an explanation of the circumstances of any claim that the Goods have proved defective shall be given promptly by the Buyer to the Seller.

The Buyer’s sole remedy in the event of breach of warranty as set forth herein is expressly limited to (i) the correction of the defect by adjustment, repair, modification, or replacement or (at the Seller’s option) (ii) issue of a credit or refund of the purchase price for the defective Goods.

Subject to anything expressly stated in these conditions and to any unavoidable Statutory provision to the contrary the Seller hereby excludes all statements, representations, warranties and conditions and all liability whatsoever in relation to the Goods.

Without limiting the foregoing the Seller will not be liable for any misuse, improper operations, improper installation, improper maintenance, alteration, modification, accident or unusual degradation of the Goods due to an installation environment contrary to the product specification for the Goods.

The Buyer undertakes to observe all statutory obligations in relation to the Goods and their use and safety and to procure such observance from any purchase of the Goods from the Buyer.

Indemnity

The Buyer shall indemnify the Seller against all claims, demands, liabilities, costs and expenses incurred by the Seller in connection with the Goods or their condition or use and the breach by the Buyer or by any Purchaser from the Buyer of any patent copyright design or similar right as a result of use of the Goods whether alone or in conjunction with any other product. The Buyer may not recover a contribution from the Seller for any liability relating to the Goods which the Buyer has discharged.

Changes

The Buyer acknowledges and agrees that the Seller may from time to time make non-material changes to this Agreement without prior notification. Any such changes shall be made by way of an update this Agreement displayed on the Seller’s website. Where the Seller makes any material change to this Agreement, it shall provide the Buyer with prior written notice of the material change.

Governing Law

The contract for the supply of the Goods and all matters arising in connection therewith shall be governed and construed in accordance with the laws of Ireland and the Seller and the Buyer, each hereby submit to the exclusive jurisdiction of the Irish Courts.

Arbitration

If at any time any question, dispute or difference shall arise between the Seller and the Buyer which can not be resolved by agreement between them, then the matter shall be referred to a single arbitrator to be appointed by the Seller and the Buyer or (if they fail to agree) by the President for the time being of the Law Society, in accordance with the rules of the Arbitration Act 2010. The decision of any such arbitrator shall be final and binding on the Buyer and the Seller.

Assignment

The Buyer may not assign the benefit or burden of this Agreement or of any related or other contract with the Seller for the supply of Goods.

These Standard Terms and Conditions (as amended from time to time) are available at <http://www.phoenixcontact.ie/general-terms>.