

Terms of sale and delivery – Products  
Tyco Integrated Fire & Security (Switzerland) AG  
Johnson Controls Systems & Service GmbH  
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## 1. General / Scope of application

1.1. All present and future deliveries of products (hereinafter collectively referred to as "Products") shall be made on the basis of the following terms and conditions.

1.2. Conflicting conditions or conditions deviating from our conditions shall not apply unless we have expressly agreed to their validity in writing. The following terms and conditions shall also apply if we carry out the services or deliveries to the buyer without reservation in the knowledge that the buyer's terms and conditions conflict with or deviate from our terms and conditions.

1.3. Individual agreements with the client shall always take precedence over these terms and conditions.

1.4. All agreements and collateral agreements as well as all amendments must be made in writing. This also applies to the cancellation of this written form requirement.

1.5. Our offers are always subject to change. Offers and cost estimates may only be forwarded to third parties with our consent.

## 2. Prices/payment terms

2.1. We are entitled to charge instalments based on the progress of delivery or a billing schedule to be agreed between the parties. For all projects that exceed a threshold value defined by us, a billing plan shall be agreed between the parties that covers the scope of the project. In particular, this invoicing schedule shall provide for us to send the customer an advance invoice for payment at the end of each month based on the status of deliveries (broken down by the parts completed and/or in progress and indicating the part of the total price to be paid). We reserve the right to invoice the objectively ascertainable costs for the storage of items as part of the project.

2.2. Payments are due without deduction within 30 days of the invoice date of the corresponding invoice.

2.3. The prices quoted in the offer are ex works or ex warehouse excluding packaging and transport plus VAT. Our list prices at the time of the order are authoritative. For goods worth up to CHF 300.00, we charge an additional flat-rate fee of CHF 15.00 (minimum quantity surcharge).

2.4. In the case of spare part deliveries and returns of repaired products outside our liability for material defects, we may demand a reasonable flat-rate shipping

and packaging fee and, if applicable, compensation for the service provided by us.

2.5. Interest on arrears shall accrue at a rate of 5%. In the event of default of payment by the client – under this or other contracts – we are entitled to refuse performance under this or other contracts or to terminate the contract.

2.6. Our calculation is based on the labour, material and ancillary costs applicable at the time of conclusion of the contract; in the event of an increase in these costs, we shall be entitled to invoice our remuneration on the basis of the increased costs no earlier than 4 months after conclusion of the contract.

2.7. If we are obliged to make advance payment and if, after conclusion of the contract, we become aware of circumstances according to which a significant deterioration in the buyer's financial position is to be assumed, we may, at our discretion, either demand security within a reasonable period or concurrent payment against delivery. If the buyer does not fulfil this request, we shall be entitled to withdraw from the contract, subject to further statutory rights.

## 3. Delivery/delivery deadline/delay

3.1. Delivery and other deadlines and dates are only approximate unless expressly confirmed or agreed by us in writing. Delivery periods shall not commence until agreement has been reached in writing on all details of the order and the Buyer has fulfilled its obligations to cooperate (e.g. documents to be supplied by it).

3.2. Delays in delivery due to force majeure or due to unforeseeable and unavoidable circumstances such as operational disruptions, strikes, lockouts, lack of means of transport, pandemics and epidemics, difficulties in procuring raw materials and materials, official orders, late delivery by our suppliers or other circumstances that make it impossible or unreasonably difficult for us to fulfil the contract shall not result in us being in default. An agreed performance period shall be extended by the duration of the hindrance. Claims for damages are excluded in this case.

3.3. If a delay in delivery lasts longer than two (2) months, we and the buyer shall be entitled, after the expiry of a reasonable grace period, to withdraw from the contract with regard to the part not yet fulfilled. Claims for damages are excluded in this case.

3.4. If an agreed delivery deadline is exceeded, we must be granted a reasonable grace period. If we are in default,

the buyer must declare at our request within a reasonable period of time whether he insists on delivery or asserts any other rights to which he may be entitled.

3.5. For claims for damages of the buyer due to delay in delivery for which we are responsible, para. 10 of these terms and conditions.

3.6. Partial deliveries and corresponding invoices are permissible unless they are unreasonable for the buyer.

3.7. If the delivery – and if agreed – an installation is delayed at the request or through the fault of the buyer, the products shall be stored at the expense and risk of the buyer. In such cases, we shall be entitled to charge the Buyer storage costs amounting to 2.0% of the price of the delivery items for each month or part thereof. The contracting parties are at liberty to prove higher or lower storage costs. Further claims due to default of acceptance remain unaffected.

#### **4. Offsetting/rights of retention**

4.1. The purchaser shall only be entitled to set-off if his claims have been legally established, are undisputed or have been recognised by us.

4.2. The purchaser is only entitled to exercise a right of retention or right to refuse performance if his counterclaim is based on the same contractual relationship.

#### **5. Transfer of risk and despatch**

5.1. The risk shall pass to the Buyer – even if carriage paid delivery has been agreed – when the products are handed over to the forwarding agent or carrier, but at the latest when they leave our premises. If the buyer is in default of acceptance, this shall be deemed equivalent to handover.

5.2. This shall also apply if partial deliveries are made or if we have assumed other services, e.g. the shipping costs or transport and installation. Irrespective of this, the risk shall pass to the Buyer at the latest upon delivery of the delivery item to the delivery address specified by the Buyer (without unloading), unless otherwise agreed. The Buyer shall be responsible for unloading the delivery item at its own expense and risk.

5.3. Shipping method and packaging are at our discretion

5.4. The consignment will only be insured against transport damage at the express request and expense of the buyer.

#### **6. Receipt of products/complaints and notices of defects**

6.1. Delivered items are to be accepted by the buyer, even if they show insignificant complaints.

6.2. The Buyer must inspect the products for defects immediately after delivery. The Buyer must report

recognisable defects in writing without delay, but at the latest within ten (10) working days of receipt of the products. Other material defects must be notified by the Buyer in writing immediately after discovery. If the material defect is not notified in good time, the assertion of claims for defects is excluded.

#### **7. Takeover**

7.1. The buyer is obliged to accept the delivered products.

7.2. If the buyer refuses to accept the goods, we may set a reasonable deadline. If the buyer has not declared acceptance within the deadline set, we are entitled to withdraw from the contract and demand compensation. In this case, we shall be entitled to demand 30% of the agreed purchase price as compensation, whereby the buyer shall retain the option of providing evidence that no damage or only significantly less damage has been incurred in the specific case.

#### **8. Retention of title**

8.1. We reserve title to the delivered items until receipt of all payments from the business relationship with the buyer. If a current account relationship exists within the framework of the business relationship, we shall retain title to the items delivered by us until receipt of all payments from the existing current account relationship with the buyer until settlement of the recognised balance.

8.2. The buyer is obliged to treat the items delivered by us with care until acceptance or until the transfer of ownership and to insure them adequately at his own expense against fire, storm, water and theft damage at replacement value.

8.3. In the event of seizure or other interventions by third parties, the buyer must inform us immediately in writing, provided that ownership has not yet been transferred. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action, the buyer shall be liable for the costs incurred by us and the expenses incurred by us.

8.4. The buyer is entitled to resell and/or process the delivered items in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the gross invoice total of our claims which accrue to him from the resale against his customers or third parties, irrespective of whether the delivered item has been resold without or after processing. In the event of processing by the purchaser, this shall be carried out on our behalf. The buyer shall store the newly created item for us with the care of a prudent businessman. The new item is deemed to be reserved goods. The processing/mixing with other items not belonging to us shall in any case establish co-ownership of the new item in the ratio of the value of the combined or mixed

reserved goods to the value of the other goods at the time of combination or mixing. The purchaser remains authorised to collect this claim even after the assignment. Our authorisation to collect the claim ourselves remains unaffected by this. However, we shall not collect the claim as long as the purchaser fulfils his payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed and payments have not been suspended. If this is the case, we can demand that the buyer discloses the assigned claims and their debtors, provides all information necessary for collection, presents the relevant documents and informs the debtors (third parties) of the assignment. Insofar as a current account relationship exists between the Buyer and its customer, the claim assigned to us by the Buyer in advance shall also relate to the recognised balance and, in the event of the customer's insolvency, to the then existing balance surplus.

## **9. Material defects**

9.1. We shall only be liable for the products supplied by us if they are used under the operating conditions known to us or typical operating conditions at the time the contract is concluded. Damage and/or wear due to excessive or unintended use as well as deviations (tolerances) permitted or customary according to the relevant technical standards shall not constitute a material defect. A construction tolerance of 5% (five per cent) plus the measurement tolerances in accordance with EN 13771-1:2003 applies to the performance data listed in our offers. Claims for defects do not exist in the case of only insignificant deviations from the agreed quality or in the case of only insignificant impairment of usability.

9.2. A guarantee for the quality of an item shall only exist if a guarantee of quality has been expressly designated as such by us in writing in the offer or contract. The documents belonging to our offer, such as catalogues, specifications, illustrations, drawings, weights and dimensions, assembly plans, circuit diagrams and other plans etc. are only approximate and do not lead to a quality agreement unless they are expressly designated as binding.

9.3. In the event of a material defect in the delivered item, the cause of which already existed at the time of the transfer of risk, we may, at our discretion, remedy the defect or deliver a defect-free item as subsequent fulfilment. The buyer is only entitled to withdraw from the contract if the subsequent fulfilment has repeatedly failed.

9.4. The Buyer shall bear the expenses necessary for the purpose of subsequent fulfilment insofar as they are

increased by the fact that the deliveries or services are taken to a place other than the Buyer's branch office, unless the transfer corresponds to their intended use.

9.5. Claims for defects shall become time-barred one (1) year after delivery.

## **10. Liability/claims for damages**

10.1. We are liable for intent, gross negligence, personal injury and damages under the PrHG in accordance with the statutory provisions.

10.2. The following applies to simple negligence:

a) We shall only be liable for foreseeable damage typical of the contract.

b) Our liability is limited to CHF 1 million.

c) We are not liable for indirect or consequential damages such as loss of profit, business interruption, operational downtime, loss of use, loss of production or damages resulting from loss of data.

## **11. Taking back products**

11.1. The buyer is not entitled to take back products delivered in accordance with the contract.

11.2. If we agree to the return of new, defect-free appliances ordered, the buyer will be credited the invoice value less 20%, but at least CHF 140.00. Returns will only be accepted if they are free of defects and in their original packaging. Returns that are not free of defects and not in their original packaging will be returned to the sender at the sender's expense.

## **12. Compliance with export control regulations**

12.1. The customer has to comply with the applicable international export and/or embargo regulations, in particular the applicable Swiss, EU and US regulations. We reserve the right to terminate or withdraw from the contract if it becomes apparent that the customer or the end user of our services is a person or entity listed under Swiss, US, European, and/or international export or embargo regulations or that the delivery is intended for a country to which delivery is prohibited under these regulations. The customer undertakes to inform us in due time if our deliveries are to be passed on to an end user or transferred to such country and if this could violate the afore mentioned regulations.

12.2. The customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation, any goods supplied under or in connection with the Agreement that fall under the scope of Article 14f of the Ordinance on Measures in Connection with the Situation in Ukraine (SR 946.231.176.72). The customer shall undertake its best efforts to ensure that the purpose of this clause is not frustrated by any third parties further down the commercial chain, including by possible resellers. Any violation of this clause shall

constitute a material breach of an essential element of this Agreement, and we shall be entitled to all appropriate remedies, including, but not limited to, termination of the Agreement. The customer shall immediately inform us about any problems in applying the requirements of this clause, including any relevant activities by third parties that could frustrate the purpose of this clause. Upon request, the customer shall make available to us any and all requested information concerning compliance with the obligations under this clause within two weeks of such request.

### **13. Software and digital solutions**

13.1. Subject to the terms of the Agreement and the End User Licence Agreement ("EULA") accompanying the Software or, if there is none, the terms of the EULA listed at

<https://www.johnsoncontrols.com/legal/digital/general-eula>), we hereby grant to Customer a non-exclusive, non-transferable, non-sublicensable licence to use the Software installed on site, solely for the purpose of using, operating and maintaining the product in which the Software is installed and to use the Software for internal business purposes.

13.2. JCI Digital Solutions. The use, implementation and provision of software and hosted software products ("Software") offered under these Terms are subject to the applicable JCI Terms of Use for such software and software-related services ("Software Terms"), available at

<https://www.johnsoncontrols.com/legal/digital/general-tos/english-for-switzerland>).

13.3. We and our licensors reserve all rights, including all copyrights and industrial property rights, in the software and in improvements to the software. The Software licensed hereunder is licensed and not sold subject to the Software Terms. In the event of any conflict between any other terms and conditions contained herein and the Software Terms, the Software Terms shall prevail and govern the rights and obligations with respect to the Software, its implementation and deployment, and any improvements thereto.

### **14. Confidentiality, property rights and copyrights**

14.1. Drawings, technical descriptions, operating instructions, cost estimates and other documents are recognised by the purchaser as our trade secrets and shall be treated confidentially. They may not be copied, reproduced or made available to third parties for purposes other than those intended by us - in particular for the purpose of requesting quotations - without our express written consent.

14.2. The purchaser must inform us immediately of any alleged infringements of property rights and - at our

discretion - leave the conduct of legal disputes to us at our express request or - if this is not possible - at least involve us in the conduct of a legal dispute in such a way that we are fully informed and can participate in all decisions that affect us, even indirectly.

14.3. In the event of an infringement of property rights, we shall be entitled, at our own discretion, to obtain a property right for the product in question, to modify it in such a way that the property right is no longer infringed or to replace it with a similar product. If this is not possible for us under reasonable conditions or within a reasonable period of time, the buyer shall be entitled to the statutory rights of cancellation or reduction, provided that he has enabled us to carry out a modification. We may also withdraw from the contract under the aforementioned conditions.

14.4. Claims of the purchaser are excluded insofar as he is (co-)responsible for the infringement of property rights or he has not informed us in a reasonable manner of impending or known infringements of property rights and has not supported us in a reasonable manner in the defence against claims of third parties.

14.5. Claims by the purchaser are also excluded if the (alleged) infringement of the property right results from use in conjunction with other goods not originating from us or if the goods are used in a way that we could not foresee.

14.6. Our obligation to pay damages in the event of culpable infringement of industrial property rights or copyrights is governed by para. 10.

14.7. Further claims or claims other than those regulated here on the part of the purchaser due to the infringement of property rights are excluded.

### **15. Note on data protection**

15.1. Johnson Controls as controller: We collect, process and transfer certain personal data of the Buyer and its personnel in connection with the business relationship between the Buyer and us (e.g. names, e-mail addresses, telephone numbers) as controller and in accordance with Johnson Controls' Privacy Policy at [www.johnsoncontrols.com/privacy](http://www.johnsoncontrols.com/privacy). Buyer acknowledges Johnson Controls' Privacy Policy and consents to the collection, processing and transfer to the extent required by applicable law. To the extent that consent to such collection, processing and transfer by Johnson Controls is mandatorily required of Buyer's personnel under applicable law, Buyer warrants that it has obtained such consent.

15.2. Johnson Controls as a processor: If we are actually acting as a processor of personal data on behalf of the buyer, the conditions at [www.johnsoncontrols.com/dpa](http://www.johnsoncontrols.com/dpa) apply.

## 16. Miscellaneous

16.1. We are authorised to obtain an extract from the debt collection register or information from an information institute and to provide them with the usual information.

16.2. The contract shall remain binding in its remaining parts even if individual points are legally invalid. The invalid provision shall be deemed to have been replaced by a valid provision that is as economically equivalent as possible.

16.3. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is, at our discretion, the location of the branch that received the order or Pfäffikon.

16.4. The contractual relationship shall be governed by Swiss law to the exclusion of the conflict of laws. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.