

EagleBurgmann Espey GmbH General Terms and Conditions of Purchase

Last updated: June 2016

1. Applicability of terms and conditions

1.1 The following terms and conditions of purchase apply exclusively to all assignments, orders and contracts issued or entered into by us to or with companies, legal entities governed by public law and special funds under public law within the meaning of Section 310 Paragraph 1 of the German Civil Code (further the "order") relating to the purchase of goods as well as works or services (further the "deliveries"). We hereby expressly reject as not binding on us any terms and conditions which depart from or add to these terms and conditions of purchase. Our terms and conditions of purchase shall continue to apply exclusively even if, in specific cases, we do not contradict the inclusion of terms and conditions of our supplier or accept the latter's delivery without reservation in the knowledge of the supplier's contrary or supplemental terms and conditions of business.

1.2 Our terms and conditions of purchase shall also apply to future transactions even if they are not specifically agreed to again.

1.3 References to the application of statutory provisions are for the avoidance of doubt only. Statutory provisions shall apply even in the absence of such clarification unless they are directly varied in these terms and conditions of purchase or expressly excluded.

1.4 The invalidity of individual provisions of these terms and conditions of purchase shall not prejudice the validity of the remaining provisions.

2. Conclusion of contract

2.1 Our orders must be in written or text form. Individual arrangements made in specific cases with the supplier (including side agreements, supplemental arrangements and amendments) shall in any case take precedence over these terms and conditions of purchase. For the content of such arrangements, reference shall be a written contract or our confirmation in writing or in text form.

2.2 Our orders may only be accepted either through an order confirmation in writing or in text form within two weeks of the date of the order or by sending the goods without reservation. Any delayed acceptance shall be treated as a new offer and shall require our acceptance. Call-off orders shall be binding if the supplier does not contradict them within three working days of receipt. Order confirmations which deviate from our orders in terms of prices, delivery dates or production data constitute a rejection of our order process. The text of the order, technical documents (drawings etc.) or product descriptions shall be decisive for order processing. Amendments, additions or other deviations must be expressly mentioned in the order confirmation or set out in technical documentation (drawings etc.) and approved by us. A reference to the supplier's terms and conditions of sale shall not suffice.

3. Prices and payment terms

3.1 The prices listed in the order are fixed prices. The prices include "DDP" delivery as well as packaging, reasonable transport insurance to be taken out by the supplier and all other costs of delivery unless expressly agreed otherwise in writing. Unless expressly agreed otherwise, all Incoterms refer to the INCOTERMS 2010 published by the International Chamber of Commerce (ICC). In the exceptional case where no prices are stated, the supplier's price list published at the time the order was placed shall apply with the deductions as referred to in this section. Statutory value-added tax shall be shown separately. Otherwise it is deemed included in the price.

3.2 Where the supplier has taken on the assembly, installation and/or commissioning of a product and where nothing else is agreed in writing, the supplier shall bear all the necessary incidental costs such as, e.g., travel expenses and provision of the tools. No remuneration or compensation will be paid for visits or the preparation of bids, projects etc.

3.3 Each order will be invoiced separately. The invoice shall clearly state the order number shown in our order, the order date, the supplier number as well as our item number, the customs tariff number, the source country and the preference indicator. Invoices are not to be paid as long as any of this information is missing.

3.4 In the case of invoices which are not sufficiently identifiable, in particular where order references are incomplete and numbers are missing, the time period for compliance with the date of payment shall only commence after this is fully clarified by the supplier. Where certificates, documentation, materials tests, test reports etc. which form an integral part of the order are not enclosed with the invoice or delivery, the time period for compliance with the date of payment shall commence once these documents are received in full. The invoice must, even in the case of delivery in instalments, be sent to us separately upon the dispatch of the consignment.

3.5 Invoices shall be issued in the currency specified in the order and otherwise in EUR; payments shall be made exclusively in EUR unless a different currency is specified in the order.

3.6 We shall make payment at our choice by bank transfer and, unless otherwise agreed, following acceptance of the delivery and receipt of the supplier's verifiable invoice (receipt shall be determined from the customer's incoming mail stamp) as well as transfer of all documentation belonging to the items delivered either within 14 days with a 3% discount or within 30 days without deductions. A discount deduction is also permissible where we offset or withhold payments in a reasonable amount as a result of defects.

3.7 If the invoice has arrived before receipt of the goods to be delivered or if the delivered goods contain defects, the period for compliance with the date of payment shall only begin with the arrival of the (defect-free) goods.

3.8 We shall be entitled to retain the invoice amount in accordance with the statutory terms until the complete removal of defects related to delivery and service.

3.9 We shall only be in delay if we fail to pay subsequent to receiving a reminder from the supplier after the date the payment is due.

3.10 Payments do not constitute the recognition of the contractually agreed deliveries or services.

4. Delivery terms and delivery period

4.1 Where delivery is not made within the agreed delivery period or the supplier defaults, our rights shall be determined in accordance with the statutory terms unless otherwise agreed below.

4.2 The deadlines listed in the order or agreed elsewhere are binding and shall be strictly complied with. The supplier shall immediately inform us in writing of any imminent delay or exceedance of the agreed dates and deadlines, giving reasons for the same and their anticipated duration.

4.3 The delivery periods fixed in our orders shall commence upon the date of the order. Deliveries are only possible at the agreed times. Goods are accepted only on Monday to Thursday between 7.30am and 9.15am, 9.30am and 12 noon, 12.30pm and 3.30pm and on Fridays between 7.30am and 9.00am and between 9.30am and 1pm.

4.4 Part deliveries and early deliveries are only permitted if we have expressly indicated our agreement to this. Entitlement to payment shall, however, only fall due on the originally agreed delivery date.

4.5 If the supplier is in default we shall, in addition to any further statutory claims, be entitled to charge a penalty for breach of contract in the amount of 0.2% of the order value per calendar day but not more than 5% of the order value; the order value is understood as the agreed remuneration upon completion of the contract. We are obliged to declare the reservation of the contractual penalty for breach of contract no later than upon payment of the invoice following the late delivery.

4.6 The acceptance of the late delivery/service does not imply a waiver of damage claims. This shall be without prejudice to any further statutory claims. In enforcing damage claims any contractual penalty which may already have been imposed shall be offset against the asserted damages.

4.7 Where required by us in the order, a works inspection certificate in line with EN 10204 or an equivalent internationally recognised inspection certificate listing the characteristics agreed with the supplier shall be enclosed with the delivery along with the delivery note. Where required in our order, full initial sample documentation must be enclosed with initial deliveries, in particular those intended as samples. We must receive an advice specifying our order information on the day of dispatch of each freight delivery.

4.8 Where, as a result of force majeure, the supplier is unable to deliver on time either wholly or in part or where the acceptance or use of the delivery in our business or by our customer is rendered impossible or rendered substantially more difficult as a result of force majeure, our duty of acceptance shall be postponed as appropriate in line with our actual requirements. If we or our supplier are affected by force majeure, we shall be entitled, at our discretion, to cancel the contract wholly or in part.

5. Place of performance, transfer of risk, acquisition of title

5.1 The place of performance shall be the place to which, according to the order, the goods are to be delivered or where the works or services are to be carried out. The place of performance for our payments is Moers.

5.2 Delivery shall be made at the cost and risk of the supplier, properly packaged for transportation DDP, to the address indicated by us or shall be generated there. The risk of the delivery's accidental destruction [loss] or accidental deterioration shall, even where we have declared our willingness to bear the freight costs, only pass over to us upon acceptance by us or by the carrier instructed by us at the agreed place of performance or following final acceptance of the delivery, whichever is the later in time.

5.3 Upon the transfer of risk at the place of performance or handover to a carrier specifically instructed by us we shall acquire title to the goods without the reservation of any rights whatsoever for the supplier.

5.4 Where machines and equipment are being supplied, risk shall only pass following final acceptance at the place of performance.

6. Retention of title, tools, documentation

6.1 We reserve title to the goods provided by us (e.g. parts, components, semi-finished goods).

6.2 The reservation of title also extends to the full value of the products arising as a result of processing, mixing or combining our goods whereby these processes are carried out for us so that we are considered to be the manufacturers. In those cases where our products are processed, mixed or combined with goods belonging to third parties with existing proprietary rights, we shall acquire joint ownership pro rata to the objective value of these goods.

6.3 Tools made available to the supplier and tools manufactured by the supplier on our instructions or ordered from third parties shall, where we have contributed to the cost, remain our property or shall become our property on manufacture or acquisition by the supplier and must be clearly marked as our property.

6.4 The supplier is obliged to keep the tools for us free of charge, to insure them adequately and upon request to provide us with evidence of the insurance cover. Unless otherwise agreed, the supplier shall be obliged to use the tools exclusively for the manufacture of the parts determined by us.

6.5 The supplier shall, at its own expense, maintain and repair the tools provided. Upon the expiry of the contract the supplier shall surrender the tools to us immediately upon our request without its having any right of retention. When the tools are surrendered they must be in a flawless condition which, both technically and in terms of their appearance, corresponds to their previous use. Maintenance costs shall be for the supplier's account. In no case may the supplier dispose of the tools as scrap without our written consent.

6.6 All documentation (e.g. drawings, images, test specifications), samples and models, tools and other items which we make available to the supplier in the context of the business relationship remain our property and shall, at our choice, either be surrendered at our request at any time but no later than upon the termination of the business relationship (including any copies, transcripts, extracts and replicas) or destroyed at the supplier's expense. The supplier has no right of retention. Models, templates and similar items produced by the supplier or by a third party and used by the supplier shall, where they are invoiced to us, be our property and are to be surrendered to us with delivery of the parts unless otherwise agreed in writing.

7. Confidentiality

7.1 The supplier shall not disclose to third parties any information, formulations, drawings, models, tools, technical records, procedural methods, software or other technical or commercial know-how or deliverables obtained thereby to which we have given access or which have been revealed to the supplier via us (further "confidential information"). Such information may only be used in the supplier's business exclusively for the performance of deliveries to us and may only be made accessible to such persons who, in the context of the business relationship, must have knowledge of the confidential information and are bound by a duty of non-disclosure under this provision. This shall also apply beyond the duration of the business relationship for as long as and to the extent that the supplier is unable to prove that the confidential information was already known at the time it was obtained or that it was common knowledge or subsequently became common knowledge other than through the fault of the supplier.

7.2 The use of confidential information for purposes other than those indicated renders the supplier liable to pay damages.

7.3 The disclosure of confidential information and any transmission of documents, samples or models shall not give rise for the supplier to any entitlement whatsoever to industrial property rights, know-how or copyright and shall not represent a prior publication or right of prior use within the meaning of the German Patent or Utility Models Act (Patent- und Gebrauchsmustergesetz).

8. Warranty, other liability and rights

8.1 Unless otherwise specified below, the statutory terms shall apply in relation to our rights in case of material defects and defects of title affecting the goods (including wrong delivery and short delivery, and deficient assembly, operating or instruction manual) and in case of other breaches of obligation by the supplier.

8.2 Contrary to Section 442 Para 1 Sentence 2 of the German Civil Code we shall be entitled to claims for defects even if, due to gross negligence, we were unaware of the defect at the time the contract was concluded.

8.3 We check the delivered goods against the accompanying documentation only for the purpose of identifying them and to verify the quantity as well as to look for any outwardly visible damage caused during transportation. Within a reasonable period of at least five working days from discovery we shall notify the supplier of any defects in delivery once they are ascertained during our proper course of business. In this respect the supplier waives the objection of late notice of defects (Section 377 of the German Commercial Code). In case of any defects which are not apparent even within the context of proper examinations, this period shall commence upon discovery of the defect. In case of delivery of machinery, machine parts and machine-type equipment which are to be assembled at our premises by the supplier or by third parties instructed by it, the notice period for defects shall commence as soon as the equipment is operational following its assembly.

8.4 Unless provided otherwise in this clause, the supplier shall be liable in accordance with the statutory terms, in particular for delivery defects, without such liability being limited or excluded on the basis of cause or amount, and shall indemnify us to such extent against third-party claims.

8.5 As a rule, the choice of the kind of supplementary performance (removal of the defect or delivery of a replacement) shall be ours. The supplier may refuse the type of supplementary performance chosen by us subject to the requirements of Section 439 Para 3 of the German Civil Code if this is only possible subject to unreasonable costs being incurred. The supplier shall bear all the necessary expenditure for the purpose of supplementary performance. This shall include, inter alia, assembly and removal costs, the costs of transport, infrastructure, work and materials as well as of dispatching and returning the defective delivery items. Items are dispatched at the supplier's risk.

8.6 Should the supplier fail to meet its supplementary performance obligation within a reasonable time limit specified by us, we can remove the defects ourselves and request reimbursement from the supplier for the expenditure necessary in this regard. Where supplementary performance by the supplier has failed or is not acceptable to us (e.g. due to particular urgency, risk to operational safety or the threat of unreasonable damage occurring), we are not required to set a time limit; we shall inform the supplier of such circumstances promptly and, where possible, in advance.

8.7 Otherwise we are entitled in the case of a material defect or defect of title to a reduction in the purchase price or rescission of the contract in accordance with the statutory provisions. In addition, we are entitled to damages and reimbursement of expenditure in accordance with the statutory provisions.

8.8 To the extent that, in the context of its duty to remove defects, the supplier makes a new delivery or rectifies the defect, the limitation periods regulated in Clause 9 shall start afresh.

9. Limitation periods

9.1 Unless stated otherwise, the limitation period for the contractual parties' mutual rights shall be governed by the statutory provisions.

9.2 Contrary to Section 438 Para 1 (3) German Civil Code, the limitation period for claims in relation to material defects shall be 3 years from transfer of title. Where acceptance is agreed, the limitation period shall begin to run upon acceptance. Where the delivery is, in terms of its normal application, used for a building and it has caused this to be defective the limitation period shall only expire after 5 years. This provision is without prejudice to the further legal rights to which we are entitled, in particular under Sections 478 and 479 of the German Civil Code.

9.3 In case of defects of title the supplier shall additionally indemnify us against any existing third-party claims. For defects of title, the limitation period shall also be 3 years, in which case this is without prejudice to the statutory limitation period for real rights of third parties to the return of a product (Section 438 Para 1(1) of the German Civil Code). Claims in relation to defects of title shall furthermore in no case become time-barred if the third party is still able to enforce its rights against us, particularly in the absence of any limitation period.

10. Product liability

10.1 The supplier indemnifies us against all third-party claims due to and in connection with personal injury or material loss or damage if and insofar as the cause of this lies within the supplier's remit and organisational sphere. In this context the supplier shall also be obliged to reimburse us all expenditure under Sections 683 and 670 of the German Civil Code which is incurred by us due to or in connection with a product recall or any other measure carried out by us. This shall be without prejudice to any further statutory claims.

10.2 The supplier undertakes to take out extended insurance cover for product liability and product recall costs with an insured amount of, in each case, at least EUR 5,000,000 (five million euros) per event of personal injury/material loss or damage - all-inclusive; our claims shall not, however, be limited to the insured amount.

11. Subcontracting to third parties

Subcontracting to third parties shall only be permitted with our written consent; otherwise we shall be entitled to rescind the contract wholly or in part and to claim damages.

12. Industrial property rights, copyright

12.1 The supplier guarantees that the goods, items and equipment supplied and their use are free of industrial property rights, copyright and other third-party rights, that no third-party intellectual property is being infringed and there is no breach of statutory or official regulations.

12.2 The supplier shall be obliged to indemnify us and our customers against all claims brought against us or our customers by third parties as a result of or in connection with the deliveries or their application.

12.3 The supplier's indemnity obligation shall cover all expenditure incurred by us due to or in connection with utilisation via a third party.

13. Quality assurance

The supplier undertakes to maintain throughout the whole of the business relationship a quality management system DIN EN ISO 9000 et seq, which must guarantee the flawless quality of the deliveries to us, to monitor it at regular intervals through an internal audit and where deviations are discovered, to implement the necessary measures without delay. We shall have the right to verify the supplier's quality assurance at any time following prior notice. The supplier shall, upon request, grant us access to certification and audit reports as well as to test procedures carried out, including all test records and documentation concerning the delivery.

14. Advertising

Reference to our orders for advertising purposes shall only be permitted with our express agreement.

15. Assignment of claims and right of retention

15.1 Without our prior written agreement the supplier shall not be entitled to assign its claims against us either wholly or in part or to dispose of them in any other way.

15.2 We shall be entitled to the statutory rights of set-off and retention.

16. Ecology/the environment; occupational safety; reach; conflict minerals; other statutory requirements

16.1 The supplier is obliged to appropriately mark and label products which are subject to the flammable or dangerous goods regulation. Where no proper notification is given the supplier shall be liable to us for the resulting loss or damage. The same shall apply to third-party loss or damage where claims are made against us by third parties as a result of such loss or damage.

16.2 The supplier acknowledges that, as manufacturers of goods/articles, we are a so-called "Downstream User" within the meaning of the European Community Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals No. 1907/2006 ("REACH") and warrants that it will comply with all REACH requirements, in particular those which are necessary in order to be able to process, sell or market within the EU, in particular: (a) to pre-register, register or approve chemical substances or preparations to the extent legally required, (b) to implement internal organisational measures documenting compliance with REACH, (c) to ensure that any use of chemical substances or preparations within goods (including packing materials) which we or our customers have notified/reported to the supplier is covered

by the corresponding (pre-) registration or approval, (d) to provide information on an ongoing basis as to whether the substance or a preparation which has been pre-registered could or should be finally registered within the corresponding transition period and (e) not to sell/deliver any goods of any kind that contain banned substances or substances of very high concern (SVHC) ((a) to (e) together being "REACH compliance").

16.3 The supplier accepts that breaches of REACH compliance result, as a matter of principle within the meaning of applicable law, in a defect in the material, the preparation or other goods/articles and it shall indemnify us against all claims, obligations, costs and loss or damage caused by the supplier as a result of a breach of the aforesaid REACH compliance and shall at its own expense support us in the enforcement of the same.

16.4 The supplier has implemented an HSE management system analogous to ISO 14001 and OHSAS 18001. It continuously undertakes to improve its environmental performance as well as workplace safety. The target for occupational safety is "Zero accidents". Furthermore, through appropriate risk and crisis management, the supplier shall contribute to the avoidance of any missed deliveries caused by disruptions in the production process (fire, strike etc.).

16.5 The supplier undertakes to comply with ILO (*International Labour Organization*) Standards.

16.6 The supplier must provide us with all the information that we need in order to be able to meet our customers' requirements or requests at short notice as well as to comply with any statutory requirements (e.g. the Dodd-Frank Act Section 1502 Conflict Minerals). This applies both in relation to requirements from third countries as well as those of the European Union and the Federal Republic of Germany.

17. Compliance; export controls; customs

17.1 Anti-terrorist measures

The supplier guarantees that it maintains no direct or indirect commercial or other ties with terrorists, terrorist organisations or other criminal or anti-constitutional organisations. In particular, through adopting suitable organisational measures, the supplier shall independently ensure the implementation of applicable embargo orders, the European anti-terrorism and anti-crime regulations applicable in the context of the supplier relationship as well as the corresponding US and other applicable provisions in the context of its business operations, particularly through appropriate software systems.

17.2 Deliveries of goods

Where prohibitions or consent obligations currently exist under the current EU Dual-Use Regulation, under the German Foreign Trade Regulation AL Enclosure of the current export list or the current US Commerce Control List for manufactured or delivered goods (products, software, technology) as such or as components or auxiliary equipment, the supplier shall automatically notify this in writing.

17.3 Evidence of origin

The supplier undertakes to keep evidence of the origin of the goods, i.e. the supplier must promptly supply the necessary declarations regarding the goods' origin in terms of trade and preferences (supplier declaration or certificate of origin) and also promptly and automatically give notice of any change of origin. Where relevant, the supplier shall give evidence of its information on the origin of the goods by way of a data sheet issued by its customs office. If the supplier fails to comply with this obligation, it shall be liable for all loss or damage and commercial disadvantages thereby arising.

18. Compliance with the minimum wage law

18.1 The supplier undertakes and shall ensure when carrying out its orders that it complies with all obligations under the German Minimum Wages Act ("MiLoG") and pays the set minimum wage as amended from time to time. Furthermore, the supplier shall ensure that any sub-contractors and businesses offering services for hire used by it comply with the statutory regulations relating to the minimum wage.

18.2 The supplier shall, upon our written request and taking into account confidentiality obligations and commercial secrets, provide us with evidence of compliance with the provisions relating to it in appropriate form.

18.3 The supplier shall, immediately upon request, indemnify us against any claims brought by third parties against us in connection with breaches by the supplier of the MiLoG.

18.4 In case of any reckless or deliberate breach by the supplier of the above obligations, we shall be entitled to terminate the relevant contract or the relevant contractual relationship without notice.

19. Applicable law, jurisdiction

19.1 The law of the Federal Republic of Germany shall apply exclusively to these purchase terms and conditions and to the entire legal relations between ourselves and the supplier. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and other bilateral and multilateral treaties for the purpose of unifying international sales shall be excluded.

19.2 The place of jurisdiction for all claims arising from the business relations with the supplier, in particular from contracts or concerning their validity, shall, at our discretion, be either the place of performance or Moers. We shall, however, be entitled at our discretion to sue the supplier at any other general or particular place of jurisdiction.

19.3 Where the supplier has its registered offices outside the Federal Republic of Germany, we shall then additionally be entitled, at our discretion, to have all claims, disputes or differences of opinion arising from the business relations with suppliers regulated conclusively and in a manner that is binding in accordance with the arbitration court regulation of the Chamber of Commerce and Industry for Munich and Upper Bavaria (IHK Munich) subject to the exclusion of ordinary legal proceedings. The court of arbitration is based in Munich. The language of the arbitration proceedings shall be German unless the supplier requests English as the language of the proceedings.

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