

# **General Terms and Conditions of Purchase Eickhoff**

**Date: 01.04.2016**

## **1. Conclusion of contract**

- 1.1 Eickhoff places orders exclusively on the basis of its General Terms and Conditions of Purchase. These Terms and Conditions of Purchase shall also apply if Eickhoff accepts the delivery and/or makes payments although it is aware of terms and conditions of the supplier to the contrary or diverging from its Terms and Conditions of Purchase. They shall also be applicable to all future business transactions with the supplier.
- 1.2 Any deviations from these Terms and Conditions of Purchase shall only be effective if confirmed in writing by Eickhoff. Confirmed deviations shall only apply to the respective individual case without effect on any future dealings.
- 1.3 Our purchase orders can only be accepted within ten (10) working days after receipt.
- 1.4 Purchase orders shall only be binding if submitted in writing. This shall also be valid for any other agreements made before or after the conclusion of the contract. Purchase orders placed orally or by telephone require the subsequent written confirmation by Eickhoff to become legally valid. The same shall apply to oral supplements and amendments to the contract. Any performances rendered or deliveries made without written order will not be accepted. Orders, call-offs as well as their modifications, amendments and additions can – after prior written agreement - also be effected by remote data transmission or via machine-readable data carriers.
- 1.5 Any remunerations for visits or the preparation of quotations, projects, etc. shall have to be agreed separately.
- 1.6 The supplier has to treat the conclusion of the contract confidential and shall only be allowed to indicate business relations with Eickhoff after Eickhoff has given its approval in writing.
- 1.7 The parties to the contract undertake to treat as business secret any and all commercial or technical details of which they learn in the course of the business relations and which are not a matter of common knowledge. Subsuppliers shall be bound accordingly.
- 1.8 Eickhoff shall have the right to demand changes to the delivery item even after the contract has been concluded to the extent as they are reasonable to accept by the supplier. The impacts in connection with this change of contract shall be suitably taken into consideration by both parties, particularly with respect to additional or lower costs incurred and the delivery times.

## **2. Prices, shipment, packaging**

- 2.1 The prices agreed are fixed and exclude additional claims of any kind. These prices are inclusive of costs for packaging and transport to the shipping address and/or point of use specified by Eickhoff as well as for customs formalities and customs duties. Unless agreed otherwise in writing, the price „free Bochum works" is inclusive of packaging. If an „ex works", „ex warehouse" price or the like is agreed the forwarder of choice specified by Eickhoff shall be employed. Any additional costs incurred by non-compliance shall be borne by the supplier. The supplier shall bear all costs incurred including loading up to the point of transfer to the carrier.
- 2.2 A dispatch note must accompany each shipment. Dispatch notes, consignment notes, parcel labels, invoices, and all correspondence must show number and date of the purchase order as well as drawing number or material code number, if any. The delivery note shall also give the gross, tara and net weights. For all shipments where Eickhoff has to bear the freight costs partially or in whole it is imperative to observe the routing order.
- 2.3 Eickhoff shall only accept the quantities or numbers of items ordered. Higher or lower quantities shall only be allowed after prior agreement with Eickhoff.
- 2.4 Shipment shall be made at the supplier's risk. The risk of any deterioration including that of accidental loss shall thus remain with the supplier until the goods are delivered to the shipping address or place of use as requested by Eickhoff.
- 2.5 The obligation of the supplier to take back packaging is subject to the legal provisions. The goods shall be packed such that transport damage is prevented. Packaging materials shall only be used to the extent as required to achieve this purpose. Only environmentally friendly packaging materials are allowed to be used. If – after prior consultation – packaging is invoiced separately to Eickhoff by way of exception Eickhoff shall be entitled to return to the supplier freight paid those packages which are in a good condition against payment of 2/3 of the value resulting from the invoice.

## **3. Invoicing and payment**

- 3.1 The invoices shall be sent to us in one copy immediately after delivery. All invoices must show number and date of the purchase order as well as references, supplier number and material code number. On no account shall invoices accompany the shipments. If the supplier fails to comply with sentences 1 and 2 Eickhoff shall not be responsible for any delays in processing based on such non-compliance.

- 3.2 To the extent as required to understand them invoices shall be submitted including all pertinent documents and data like acceptance reports and test certificates. Eickhoff shall have the right to refuse performance until a due invoice has been submitted. Payment shall be made according to the actual quantities, weights or any other units on which the delivery is based as well as the agreed prices.
- 3.3 Payment shall be made according to normal trade practice. Unless otherwise agreed in writing, Eickhoff will pay the purchase price within thirty (30) days after delivery and receipt of the invoice without deduction or with 3% discount within eight (8) days or 2% discount within fourteen (14) days after delivery and receipt of the invoice.
- 3.4 To the extent that certificates on material tests have been agreed they constitute an integral part of the shipment and have to be sent to Eickhoff together with the shipment.
- 3.5 Payment shall neither include a statement regarding the quality of the shipment nor does it limit the rights of Eickhoff. If the shipment is faulty Eickhoff shall be entitled to withhold the payment proportionately to the value until the contract has been duly performed.
- 3.6 Rights of offset or retention are due to us to the extent as defined by law.

#### **4. Delivery dates, default in delivery, force majeure**

- 4.1 The delivery dates agreed are binding; the supplier will be in default as the delivery date expires, without the need to send a reminder. If the obligation is to be performed at the creditor's domicile, receipt of the goods at the place of receipt or use specified by Eickhoff shall be relevant for observance of the delivery date or the delivery time. If an acceptance is required the supplier shall be in default without reminder when he does not offer Eickhoff the performance ready for acceptance at the agreed date. Eickhoff shall not have the right to refuse acceptance due to immaterial defects.
- 4.2 If the supplier realizes that an agreed deadline cannot be met for any reasons whatsoever he shall have to inform Eickhoff immediately in writing stating the reasons and the expected duration of the delay.
- 4.3 If the supplier is in default by exceeding the delivery date Eickhoff shall be entitled to demand a penalty of 0.1% of the total order value per workday, however, 5% of the order value as a maximum. The right reserved to enforce the contractual penalty can be asserted until the invoice is paid. The penalty payment can be appropriated to a claim for damage due to default. The right to claim further damages is reserved.

- 4.4 If no delivery date has been agreed the deliveries shall be made on workdays during normal business hours. By signing the delivery note and/or taking delivery of the goods supplied no statement is made as to whether the delivery meets specifications.
- 4.5 Force majeure shall relieve and discharge the parties to the contract from their obligations of contractual performance for the duration of the disturbance and to the extent of its impact. The parties to the contract shall be committed to make every reasonable effort to immediately provide the necessary information and to adapt their obligations to the changed circumstances in good faith.
- 4.6 In the event the goods arrive earlier than agreed Eickhoff shall reserve the right to return the goods at the supplier's cost and risk. In such a case Eickhoff shall be entitled to make the payment not earlier than at the due date agreed.
- 4.7 Eickhoff shall accept partial deliveries only after they have been expressly agreed.

## **5. Reservation of Title**

The supplier has to transfer the ownership/title of the goods unconditionally and irrespective of the payment of the purchase price. In any case all kinds of extended or overall reservations of title shall be excluded, so that a potential validly declared reservation of title shall only apply until payment of the purchase price for the respective delivered goods and only for those goods.

## **6. Liability**

The supplier shall be liable for any form of contract violation according to legal provisions unless stipulated otherwise in these Terms and Conditions.

## **7. Warranties**

- 7.1 The specification agreed is part of the order and can only be changed by mutual consent. Specification shall also mean every description of the scope of supply to be regarded as binding or a drawing.
- 7.2 The supplier undertakes to use environmentally friendly products and processes in his supplies/services and also for supplies or additional services of third parties within the scope of the economic and technical capabilities. Upon request of Eickhoff the supplier will provide a certificate of inspection for the goods supplied.
- 7.3 Eickhoff will inspect the goods supplied for any defects immediately after their arrival. Obvious defects will be notified by Eickhoff immediately, latent defects will be notified by Eickhoff as soon as they have been detected. If the notification is sent in due time the deadline is deemed to be met.
- 7.4 On principle, Eickhoff shall have the right to choose the type of supplementary performance, also in connection with the contract for work and services, except

where the contract partner has a right to refuse the selected type of supplementary performance or Eickhoff chooses a right to supplementary performance unreasonable to accept for the contracting party.

- 7.5 Unless a longer limitation period is provided by law the limitation period for claims based on defects shall be two (2) years from the date the delivery item is handed over to Eickhoff or the third party specified by Eickhoff at the place of receipt specified by Eickhoff. In those cases where an acceptance test is provided for by law or contract the limitation period shall commence with the acceptance.
- 7.6 With respect to defects of title the supplier shall indemnify Eickhoff against any claims of third parties which may exist.
- 7.7 If a claim is filed against Eickhoff due to the violation of official safety regulations or based on domestic or foreign product liability regulations or laws for a product defect that is attributable to goods of the supplier Eickhoff shall be entitled to request from the supplier compensation for the damage to the extent that such damage has been caused by the products supplied. This damage also includes the cost of any recall action which may be required. The supplier shall implement a quality assurance system of an adequate type and scope complying with the latest state of the art and provide evidence of the same to Eickhoff upon request.
- 7.8 The supplier shall get himself insured against any and all risks arising from product liability including the recall risk to an adequate amount and make the insurance policy available for inspection if requested by Eickhoff.

## **8. Property rights**

- 8.1 The supplier represents that all deliveries are free of property rights of any third party, and particularly, that the delivery and use of the delivery items does not violate any patents, licences, or any other property rights within the European Union. To the extent that the supplier knows of Eickhoff also selling his products to or in certain other countries this shall also apply to these countries.
- 8.2 In the event that claims are made against Eickhoff by any third party on the grounds of the violation of property rights supplier shall indemnify Eickhoff upon the first request. This indemnification shall also apply to customers of Eickhoff. It is not applicable where the supplier manufactured the delivery items according to our drawings, patterns, or descriptions which are equivalent. If the supplier fears that properties rights may be infringed in such a case he will inform Eickhoff without delay.
- 8.3 Eickhoff shall be entitled, due care and diligence of a prudent businessman taken into consideration, to obtain from the person having the title – at supplier's expense - the consent to use the respective delivery items and services.

## 9. Final provisions

- 9.1 The Terms and Conditions shall be governed by the law of the Federal Republic of Germany. The application of the United Nations Convention for the International Sale of Goods is excluded.
- 9.2 Should individual parts of these General Terms and Conditions of Purchase be or become invalid the validity of the remaining provisions shall not be affected.
- 9.3 The supplier shall not be entitled to subcontract the order or any essential parts thereof to any third party without the prior written consent of Eickhoff.
- 9.4 The supplier shall not be entitled to assign claims he has against Eickhoff without the prior written consent of Eickhoff which may not be unreasonably withheld.
- 9.5 Eickhoff shall treat personal data of the supplier in accordance with the Federal Data Protection Act.
- 9.6 Unless otherwise expressly agreed, the place of performance for the delivery commitment shall be the shipping address or point of use requested by Eickhoff; for all other commitments of both parties it shall be Bochum.
- 9.7 Exclusive place of jurisdiction for all disputes arising from the supply relationship shall be Bochum. This shall also apply if the supplier has no domestic place of general jurisdiction.

In terms of these General Terms and Conditions of Purchase "Eickhoff" shall denominate the respective company of the Eickhoff-Group raising the purchase order, e.g.:

Gebr. Eickhoff Maschinenfabrik  
u. Eisengießerei GmbH

Eickhoff Maschinenfabrik GmbH

Eickhoff Bergbautechnik GmbH

Eickhoff Gießerei GmbH

Eickhoff Antriebstechnik GmbH

Eickhoff Wind Power GmbH

Schalker Eisenhütte Maschinen-  
fabrik GmbH