

I. Scope

- The following terms and conditions shall apply exclusively; any conflicting or deviating terms and conditions of the purchaser shall not be recognized by Eickhoff Antriebstechnik GmbH (hereinafter referred to as Eickhoff) unless Eickhoff has expressly agreed to their validity in writing. The following terms and conditions shall apply even if Eickhoff executes delivery to the purchaser without reservation, in full awareness of conflicting or deviating terms of the terms and conditions of the purchaser.
- Any agreements or ancillary agreements deviating from these terms shall not be effective unless approved in writing by Eickhoff. Approved deviations shall only apply to a certain individual case and shall have no effect in future.

II. Conclusion of Contract - Offers

- Eickhoff's offers are subject to change and without engagement unless Eickhoff has expressly designated them as binding in writing.
- Eickhoff shall retain all property rights and copyrights for illustrations, drawings and other submitted documents. Any disclosure to third parties by the purchaser shall require the express and previous written consent of Eickhoff.
- An order placed by the purchaser shall be deemed to be a legally binding offer to conclude a contract. A supply agreement shall only enter into effect upon a written acknowledgement of order by Eickhoff. Forwarding by electronic transmission shall be deemed as satisfying the written form requirement.
- Orders transmitted electronically shall be deemed to be received by Eickhoff at the time they are called up and opened. Eickhoff reserves the right to delete orders without opening.
- When being exported out of the EU, goods may be subject to US reexport authorization and/or European or German export authorization due to the end use and purpose for which the goods are to be used. Contract fulfillment by Eickhoff is with the proviso that such fulfillment is not hindered by national and international regulations of the foreign trade law or embargos and / or other sanctions.

III. Parts sent in for Assembly or Purchaser-supplied Parts

- Parts sent in for assembly or purchaser-supplied parts shall be delivered free of our works and, if required, in good packaging with the inclusion of a waybill and delivery note.
- A despatch note quoting our reference number shall be sent to us.
- The material and technical properties of sent-in parts shall be made known.
- Premachined parts or parts provided for assembly shall be delivered in the correct size and within the required tolerances. In the event of failure to fulfil these preconditions we are entitled to invoice the costs of additional work and to seek compensation for prematurely worn or damaged tools or to rescind the contract, in which case the purchaser is required to reimburse the corresponding part of the contract price and the aforesaid additional costs. Faultily premachined parts or defective parts provided for assembly may be reworked or returned at the expense of the purchaser without consultation. Waste material from parts sent in for handling or processing shall become our property.

IV. Prices - Terms of Payment

- All prices quoted by Eickhoff are ex Eickhoff distribution warehouse plus statutory value added tax applicable at the time of invoicing, without packaging. The latter shall be invoiced separately.
- Price changes shall be admissible with the proviso that more than twelve months lie between the conclusion of the contract and the agreed delivery date. If salaries and wages, material costs or market acquisition prices increase thereafter up to completion of the delivery, Eickhoff shall be entitled to increase the price in a reasonable manner in accordance with the cost increases. The purchaser shall only be entitled to rescind the contract if such price increase exceeds the increase in general costs of living between the time of order placement and the time of delivery to a more than insignificant degree.
- Invoices are due for payment within 10 days upon receipt of invoice without any deduction. Without prejudice thereto, Eickhoff shall be entitled at any time to make delivery contingent on matching payment with delivery without giving any reasons.
- For all means of payment, the day of receipt of payment shall be deemed to be the day on which Eickhoff or third parties holding a claim against Eickhoff, may dispose of the funds.
- The purchaser shall only have a right of retention and/or rights of set-off if its counterclaims have been legally established, are undisputed and recognized by Eickhoff. The purchaser may furthermore only exercise its right of retention to the extent its counterclaim is based on the same business relationship.
- Besides the statutory provisions, the purchaser may be put in default by being served a reminder after expiration of the due date. If the date of payment is fixed as a calendar day, the purchaser is put in default without need for a reminder. If the purchaser is in default of payment, Eickhoff shall also be entitled to retain all supplies or services. Eickhoff shall furthermore be entitled to charge the legal default interest rate in case of default of payment.

V. Retention of Title

- Eickhoff shall retain title to the delivery items until receipt of all payments arising from the business relationship with the purchaser.
- We retain all property rights and copyrights for illustrations, drawings and other submitted documents. Any disclosure to third parties by the purchaser shall require our express and previous written consent.
- The purchaser shall adequately insure the goods at its own expense against damage by fire, water and theft for the reinstatement value.
- The purchaser shall be entitled to resell the goods subject to retention of title in its ordinary course of business. The purchaser assigns to Eickhoff its claims resulting from the resale of the goods subject to retention of title already at this stage. Eickhoff accepts such assignment. The purchaser shall be authorized to collect the assigned claims as long as the purchaser fulfils its payment obligations. If the purchaser is in default of payment, Eickhoff shall be entitled to withdraw such collection authorization. In such a case the purchaser shall be obliged, upon Eickhoff's request, to provide Eickhoff with all the details required for collection and to allow an Eickhoff representative to verify the status of the assigned claim by consulting the purchaser's accounting documents. The purchaser shall furthermore notify its debtors of such assignment.
- In case our title to the goods extinguishes due to the goods being combined or processed and the purchaser becomes the owner of the delivery item, the purchaser shall hereby assign to Eickhoff in advance a pro rata co-ownership share in the value of the new item that is being produced. Eickhoff hereby accepts such assignment. Transfer shall be replaced by free-of-charge safekeeping.
- The purchaser shall notify Eickhoff immediately of any third party claims to Eickhoff's property and, upon agreement with Eickhoff, the purchaser hereby undertakes to take reasonable legal steps against such claims at its own expense.
- In case of default of payment by the purchaser or if an application to subject the purchaser's assets to insolvency proceedings has been filed or in the event of an assignment of the contingent rights to third parties or where the purchaser's business is transferred to a third party, Eickhoff shall be entitled to take back the delivered goods and to have access to the purchaser's premises for such purpose. We shall thereupon have the right to freely dispose of the goods subject to retention of title. Any proceeds from such disposal shall be set off against the purchaser's debts (minus reasonable expenses for such disposal).
- Eickhoff undertakes upon the purchaser's request to release any collateral securities to the extent the value of such collateral securities exceeds the value of the as of yet unfulfilled claims to be secured by more than 10 %. In such case Eickhoff shall have the right to freely select the collateral securities to be released.

VI. Delivery, Delivery Date

- Adherence to delivery and service dates shall be subject to timely receipt of all documents, necessary permissions and releases to be provided by the purchaser, and to timely provision of all information and fulfillment of all other obligations by the purchaser. In case such preconditions are not fulfilled in due time, the delivery times shall be extended accordingly. This, however, shall not apply if Eickhoff is responsible for such delay.

- Eickhoff shall only have the right to execute partial shipments if
 - the partial shipment can be used by the purchaser within the scope of the contractually intended purpose;
 - delivery of the remaining ordered goods is ensured and
 - the purchaser does not thereby incur substantial additional expenditure or cost.
- Should delivery be delayed due to the purchaser's fault, the goods shall be deposited or stored in Eickhoff's premises at the purchaser's risk and expense.
- In cases of force majeure, strikes, non-culpable inability to perform and unfavourable weather conditions, the delivery period shall be extended by the period of time corresponding to the duration of such event beyond Eickhoff's control.
- The delivery time shall be deemed complied with when the delivery item has left the works by the end of that time or when readiness for despatch has been notified.

VII. Delayed Delivery

- The delivery time is based on the agreements between the contracting parties.
- Should Eickhoff be in default with delivery, the purchaser shall be entitled to payment of a lump sum penalty. Such penalty is fixed at 0.5% of the purchase price for every full week of delay and limited to a maximum of 5%.
- Should Eickhoff be in default with a partial shipment, such lump sum penalty shall be calculated on the basis of the purchase price of the as of yet unaccepted parts.
- Claims for damages on the grounds of delay and exceeding such lump sum penalties shall not be filed unless such delay is attributable to wilful intent or gross negligence by Eickhoff or was the result of an essential infringement of the contract or caused injury to life, body or health.

VIII. Shipment - Passing of Risk

- Unless stated otherwise in the acknowledgement of order, delivery "ex works" shall be deemed to have been agreed. Shipment shall be at the risk and expense of the purchaser.
- To the extent that Eickhoff is obliged to take back the packaging material used for transportation and/or sales according to the packaging regulation, the Purchaser shall bear the return transportation costs and the reasonable costs of disposal.
- The risk shall pass to the purchaser no later than upon shipment of the delivery items even if carriage paid delivery and erection have been agreed upon.

IX. Proprietary Rights

- The purchaser shall notify Eickhoff immediately of any alleged infringement of third-party proprietary rights regarding the supplied products and shall leave legal defence to Eickhoff's own discretion at its expense.

X. Warranty / Liability / Damages

- The purchaser undertakes to inspect the goods received for defects upon receipt. The purchaser shall immediately notify Eickhoff in writing of obvious defects but no later than 10 business days upon receipt of the delivery, and of hidden defects within 5 business days upon detection. The delivery shall otherwise be deemed to have been accepted.
- The Purchaser shall give Eickhoff the opportunity to verify the complaint, and shall in particular provide Eickhoff with the damaged goods and the corresponding packaging for inspection.
- If a rectification of defects or a replacement delivery is not feasible or refused or not carried out or failed for other reasons attributable to Eickhoff within a reasonable period of time granted by the purchaser, the purchaser has the option to either rescind the contract or to reduce the purchase price at its own discretion. In such cases there is no need for setting a deadline unless required by law.
- Warranty claims shall be excluded for defects that are not attributable to Eickhoff except where a contractually assured property is absent. Components which are typically exposed to natural wear and tear or damaged due to faulty or negligent treatment after passing of risk, shall also be excluded from the right to claim damages for defects.
- Any additional claims by the purchaser, in particular to damages instead of performance and to replacement of another direct or indirect damage, including collateral or consequential damage, irrespective of their legal grounds, shall be excluded. This shall not apply in cases where
 - Eickhoff fraudulently concealed a defect in title or a material defect or gave a guarantee for their absence or for the healthy condition of the goods;
 - the damage is attributable to wilful intent or gross negligence by Eickhoff, one of its legal representatives or vicarious agents or to a negligent infringement of essential contractual obligations by Eickhoff or such persons;
 - a culpable infringement of obligations by Eickhoff, its legal representatives or vicarious agents caused injury to body or health;
 - the product liability law is applicable.In the event of negligence Eickhoff's obligation to compensate shall, however, be limited to the amount of the typical and foreseeable damage under the contract.
- The provisions pursuant to the above sub-section shall apply accordingly to direct claims by the purchaser against Eickhoff's legal representatives and vicarious agents.
- In case the purchaser faces penalties (contractual penalties, lump sum penalty, etc.) from a third party, it shall, irrespective of the other preconditions, only be entitled to claim compensation for damages against Eickhoff, when this has been previously expressly agreed upon between the purchaser and Eickhoff and provided that Eickhoff was notified in writing of the potential imposition of penalty so agreed upon between the purchaser and a third party before conclusion of the contract.

XI. Acceptance

- If acceptance is required, the risk shall pass upon acceptance. Acceptance shall be carried out on the acceptance date. The Purchaser shall not refuse acceptance on the grounds of immaterial defects.
- Where no acceptance date has been agreed upon, Eickhoff shall notify the purchaser of the readiness for acceptance in writing.
- Acceptance shall be deemed to have been performed when the purchaser has not carried out acceptance after expiration of a reasonable period of time granted by Eickhoff. This shall not apply when the purchaser was entitled to refuse acceptance due to substantial defects in the delivery item.

XII. Involvement of Subcontractors

- If the defective delivery item is a product that Eickhoff purchased in whole or in part from a third party, Eickhoff shall be entitled to assign its rights in respect of material defects against the subcontractor to the purchaser and to notify the purchaser of its option to assert claims against the subcontractor in and out of court. In such an event, claims against Eickhoff on the grounds of defectiveness of the item may only be asserted if the claims against the subcontractor are not enforceable in spite of an assertion of claims in or out of court in due time and/or in case the assertion of claims is unreasonable in individual cases.

XIII. Statute of Limitations

- Any and all claims of the purchaser, irrespective of their legal grounds, shall become statute-barred after 12 months, insofar as this is legally admissible.
- This shall not affect the limitation period in the event of delivery recourse in accordance with sections §§ 478, 479 of the German Civil Code.

XIV. Place of Performance, Place of Venue, Applicable Law, Miscellaneous

- Unless otherwise expressly agreed upon, the seat of Eickhoff shall be the place of performance.
- Bochum shall be the exclusive place of venue for any disputes arising from the supply relationship. The same shall also apply in cases where the supplier has no general domestic place of jurisdiction.
- The agreement shall be subject to the laws of the Federal Republic of Germany. The application of the UN Sales Convention shall be excluded.
- Should one of the provisions in these terms and conditions or a part of a provision be or become ineffective, this shall not affect the other provisions and/or the remaining part of the provision.