

GENERAL PURCHASING TERMS AND CONDITIONS 01/99
Eisenmann U.K. Limited

A. Placing of Orders

1. We only place orders in accordance with the following Purchasing Terms and Conditions even if no subsequent express reference is made to these Terms and Conditions during continuing business relations. No variations or additions to these Terms and Conditions shall be effective unless expressly agreed in writing by us. Any terms and conditions contained in a supplier's order confirmation or otherwise sought to be imposed by a supplier and not expressly agreed in writing by us shall have no effect. The execution of our order shall of itself imply and constitute acceptance of our Purchasing Terms and Conditions. We consider any amendment to our Terms and Conditions in an order confirmation to be a rejection of our order. Should delivery nevertheless be effected it is deemed, on the basis of the aforesaid, to constitute approval of our Purchasing Terms and Conditions.
2. Our orders are to be confirmed by the supplier without undue delay. Our "Acceptance of Order" form is to be used for this. If we do not receive the order confirmation within 8 days we reserve the right to cancel the order.
3. If it transpires during execution of the order that additional work, which is not covered by the contractually agreed scope of work, is necessary for proper production then the supplier must obtain an additional order on the appropriate Eisenmann form prior to execution. Orders obtained on this "Additional Order" form are only valid up to a limit of EURO 500 net, which on no account may be exceeded. If the supplier considers an additional order of greater amount to be necessary then this must be placed by our Purchasing Department. Our site co-ordinator does not have the appropriate authority to place such an order.

B. Prices, Scope of Delivery or Work

1. Unless expressly agreed in writing otherwise, the agreed prices are fixed prices and free at our works or the place of receipt designated by us, including delivery, packaging and all ancillary costs.
2. All work necessary for the satisfactory completion of our order is within the scope of the work of the supplier, even if not explicitly detailed in our order.
3. If materials required by the supplier to carry out its work on installations and assemblies are supplied or provided by us, the supplier will be responsible for the unloading of the materials from lorries as well as transportation from the parts storage area to the assembly site. The supplier will also provide all [customary documentation] in the case of installations and assemblies.
4. If designs, engineering developments or similar work form part of the order then the supplier is obliged to hand over all design and working drawings as well as any other relevant documentation, user handbooks etc. If software is developed, then (without limitation) the provision to us of the software in source and object program form and all relevant documentation in respect of the program development and application are within the scope of the work.

C. Delivery/Performance Dates, Damages for Delay

1. The delivery/performance dates are the dates stated in our order and are of the essence of the contract. Partial deliveries/performance will only be permitted with our consent.
2. If goods are not delivered or work is not performed by the due date then, without prejudice to any

other remedy which we may have, we shall be entitled, unless otherwise agreed in writing by us, to deduct from the total order price of the goods or work or (if we have already paid the total order price) to claim from you by way of liquidated damage for delay, an amount equal to 1% of the total order price for every week or part week of delay, up to a maximum of 10% of the total order price.

3. If, before the due date for delivery/performance of the goods or work, we form the reasonable opinion that the supplier is unable or unwilling to fulfil our order, we shall be entitled, on giving reasonable notice to the supplier, to require adequate evidence that our order will be fulfilled. In the event that such evidence is not provided by the supplier within the appropriate time period, we shall be entitled (without prejudice to any other remedy which we may have) to treat our contract with the supplier as discharged and to require the repayment of any part of the order price which has already been paid by us.

D. Delivery and Passing of Property and Risk; Statutory Requirements and Factory Regulations

1. Our standard delivery note is to be completed and enclosed with deliveries. In the case of direct dispatch to our customers a [neutral] delivery note is to be used and a dispatch note signed by the carrier is to be sent to us for the purposes of invoice control.
2. The property in any goods or work to be supplied under our order will pass to us, free of any encumbrance, upon delivery, unless payment has been made prior to delivery, when it will pass to us once payment has been made and the goods or work have been appropriated to the contract. Without prejudice to this provision, the risk in such goods or work will not pass to us until such time as the goods or work have been delivered to us in accordance with the contract.
3. In the case of installation and assembly work, the supplier, its servants, agents and employees shall, in undertaking the work, comply with all statutory requirements including (without limitation) all health and safety regulations on the construction site and also with any factory or other regulations applicable on site and notified to the supplier. The supplier must inform its servants, agents and employees of the contents of any factory or other regulations notified to it.

E. Invoicing, Terms of Payment

1. After delivery of the work or goods the invoice is to be sent to us in duplicate. Under no circumstances should it be enclosed with the consignment. All order details are to be stated in the invoice. Partial invoices are only permissible if corresponding partial deliveries were ordered.
2. Unless otherwise agreed, payment is made within 14 days less 3% discount or within 90 days net. These payment periods commence upon the date of receipt of the invoice or, if later, the date of delivery or acceptance of the goods or work, unless otherwise agreed.
3. In the case of notification of defects we are entitled to withhold payment of a reasonable amount of the invoice until the matter has been entirely resolved and we may then still deduct the discount, in accordance with paragraph 2 above, from the amount withheld.
4. Any payments on account which are to be made by us must first be secured by the supplier in the form of an irrevocable bank guarantee, payable on demand, from a bank which is, in our reasonable opinion, acceptable. The Eisenmann standard form of guarantee is to be used for this purpose.

F. Warranty and Liability; Inspection

1. In addition to all statutory warranties, the supplier warrants that the goods or work:-
 - (i) in all respects shall be safe and free from any defects, whether or not affecting matters of safety;
 - (ii) shall comply with all statutory requirements and be such that they can be lawfully supplied or used by us including (but without limitation) supply or use without breach of any requirement to supply or use goods or work which conform to a general safety requirement;
 - (iii) unless notified in writing to us prior to delivery, do not comprise or contain any substance hazardous to health within the meaning of The Control of Substances Hazardous to Health Regulations 1998;
 - (iv) in all respects shall be of merchantable quality and of the best design, materials and workmanship and be fit for the purpose for which they are required;
 - (v) in all respects shall correspond exactly with any samples, drawings, technical data, measures, weights and specifications or other descriptions;
 - (vi) in the case of the provision of work shall be carried out in a good and workmanlike manner and with the best care and skill;
 - (vii) shall comply with any appropriate British Standard specification or British Code of Practice issued by the British Standards Institution current at the date of our order and with any corresponding EC standard or code of practice and on request the supplier shall provide written evidence of conformity with such standards.

and without prejudice to the generality of the foregoing that the goods or work will maintain the above requirements for 12 months from the date of acceptance of the goods or work by us or for such longer period as is reasonable in all the circumstances of the case.

2. The supplier further warrants that it has and will take all reasonable steps (including but not limited to verification of plans, drawings and information supplied by us, examination, testing and the performance of appropriate research) to ensure that the goods or work are fit for their intended purpose, safe and without risk to the health of employees, agents, sub-contractors, customers and any other persons who work on, use, acquire or otherwise come into contact with the goods or work.
3. In the event that any goods or work are not supplied or performed in accordance with the contract and/or by the due date, and without prejudice to any other rights which we may have, we may:-
 - (i) require the supplier at our option to repair or replace the goods or work as soon as is practicable (and the terms of the contract shall apply in full to goods or work so repaired or replaced as though they were the goods or work originally supplied);
 - (ii) repair or replace the goods or work ourselves or instruct a third party to do so, in each case at the expense of the supplier; or
 - (iii) at our sole option, and whether or not we have previously required the supplier to repair or replace goods or work, treat the contract as discharged by the supplier's breach and require the repayment of any part of the price which has already been paid by us.

For the avoidance of doubt, the fact that goods or work are repaired or replaced shall not affect

any liability of the supplier for supplying goods or work which required such repair or replacement nor our right to claim damages arising as a result of the supplier's breach of contract, whether or not such damages were in the contemplation of the supplier at the time the contract was made.

4. We shall be entitled to reject any goods or work and/or all further instalments of goods or work which are not in accordance with the contract (in which event we may dismantle and return goods or work at the supplier's expense or require the supplier to collect them) and we will not be deemed to have accepted goods or work until we have had a reasonable time (which shall not be less than three weeks) to inspect them following delivery or, if later, a reasonable time after any latent defect in the goods or work has become apparent. Payment of or on account of the price shall not imply an acceptance of the goods or work or admission by us of the performance by the supplier of any obligation.
5. We shall have the right to visit any premises to inspect production of the supplier (and to be accompanied on such visits by our customer).

G. Warranty and Security Retention

1. Until expiry of the period ending 12 months after the date of acceptance of the goods or work by us, and without prejudice to any other rights which we may have, we will be entitled to retain from the contract price a sum equal to 10% of the total amount thereof ("the Retention") as security for all or any claims which may arise during such period. At the end of such 12 month period the amount of the Retention shall be paid to the supplier Provided that, if any claims have arisen during such 12 month period, we will be entitled, until settlement or final determination thereof, to continue to retain whichever is the lesser of:-
 - (i) the full amount of the Retention; and
 - (ii) the aggregate amount of all such claims.
2. If any of the events specified in paragraphs (i)-(iv) of section M below shall occur in relation to the supplier then (without prejudice to any other rights which we may have) the amount of the Retention shall increase and shall be a sum equal to 30% of the total amount of the contract price, to which the provisions of paragraph (i) above shall apply.
3. We will not unreasonably withhold our consent to early release of the Retention if the supplier instead provides to us adequate alternative security in the form of an irrevocable bank guarantee, payable on demand, from a bank which is, in our reasonable opinion, acceptable. The Eisenmann standard form of guarantee is to be used for this purpose.

H. Product Liability

If claims are made against us in respect of product liability under domestic or foreign law then the supplier shall indemnify us against all liabilities, actions, proceedings, claims, damages, injury, loss (including consequential loss) costs and expenses arising directly or indirectly by reason of the acts or omissions of the supplier, its sub-contractors or agents. The scope of this indemnity shall include (without limitation) any costs arising from or in connection with a recall campaign carried out by us or other measures to remedy damage or of a preventative nature. The supplier hereby agrees that, in the event of a claim being made by us against the supplier pursuant to this indemnity, the supplier shall not plead the statute of limitations (or any equivalent provision of law whereby a claim would be time barred) unless we have a similar right to plead the statute of limitations (or any such equivalent) in the action taken against us by a third party which has given rise to our claim against the supplier.

I. Violation of Industrial Property Rights or other Third Party Rights

The supplier warrants that no industrial property rights or other rights of third parties will be infringed as a result of the supply of the goods or work and the supplier will indemnify us against all liability, actions, proceedings, claims, damages, injury, loss (including consequential loss) costs and expenses arising directly or indirectly by reason of a breach of this warranty.

J. Assignment; Subcontractors

1. The supplier shall not assign or sub-contract the contract without our consent in writing.
2. Where the supplier has sub-contracted all or part of the contract it will:-
 - (i) furnish us with copies of all relevant documents;
 - (ii) ensure that it contracts with the sub-contractor on terms which are not less favourable to us than the terms of the contract;
 - (iii) remain responsible for the due performance of the contract.
3. Upon request the supplier will assign to us all rights which it might have against any sub-contractor.

K. Provision of Materials

1. Any materials/parts provided by us to enable the supplier to supply the goods or work shall remain our property and shall be stored separately by the supplier and used only for our order. The supplier shall be responsible for and shall indemnify us against any damage or loss to our property (howsoever caused) while it is in the supplier's possession or under its control.
2. If any materials/parts provided by us to the supplier are incorporated within or amalgamated with other materials/parts which do not belong to us then we shall be deemed to have a beneficial interest, as tenant in common, in the resultant article (and the proceeds of sale thereof) of such proportion as the value of the materials/parts supplied by us (and so incorporated or amalgamated) bears to the aggregate value of all the materials/parts which constitute the resultant article.
3. The supplier shall at its own cost insure (against such risks as a prudent company would insure and to their full reinstatement value) any materials/parts provided by us, as referred to in paragraph 1 above, and any articles in which we may have a beneficial interest, as referred to in paragraph 2 above, and shall produce to us on demand such policy of insurance and receipt for payment of the current premium.

L. Ownership, Right of Utilisation

1. All items, models, tools, samples, drawings, plans and documents of all kinds handed over to the supplier remain our property. The supplier is to treat such items as strictly confidential and to return them to us at no cost upon request at any time. The supplier shall not disclose the same to any third party nor otherwise duplicate or use the same except as may be necessary for the proper performance of the contract.
2. The obligation contained in paragraph 1 above applies equally to any moulds, tools or similar

facilities or devices for the manufacture of goods to be supplied which are produced in accordance with or by reference to the items mentioned in paragraph 1 above or which are manufactured completely or partly at our expense. Alterations to these articles may only be made with our consent and all industrial property rights in and ownership of these articles shall be deemed to have been assigned to us by this contract.

3. The supplier undertakes at its own cost to keep any items or articles mentioned in paragraphs 1 and 2 above and any other property of ours which is in the possession or control of the supplier safe, properly stored, in good condition and insured in their full reinstatement value.
4. Without prejudice to the provisions of paragraph 2 above, in the case of any such designs, development or work as are referred to in paragraph 4 of section B above, we shall have the exclusive and irrevocable right, unlimited in time and area of applicability, to use the same in such manner as we see fit.
5. If improvements are brought about by the supplier in connection with the order then we have a non-exclusive right of use free of charge to commercially exploit the improvements and any industrial property rights arising out of them.

M. Termination on Supplier's Insolvency

We shall be entitled to terminate the contract without liability to the supplier by giving notice to the supplier at any time if:-

- (i) the supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the supplier; or
- (iii) the supplier ceases, or threatens to cease, to carry on business; or
- (iv) we reasonably apprehend that any of the events mentioned above is about to occur in relation to the supplier and we notify the supplier accordingly.

N. Forum and Applicable Law

The contractual relationship is governed by the laws of England and the supplier shall submit to the jurisdiction of the English courts Provided that we may at our option bring any legal proceedings against the supplier in the courts of any other country.

O. Invalidity

Should any particular provision of these Purchasing Terms and Conditions be found to be invalid, the validity of the remaining provisions is not thereby affected.

Special provisions for making available cranes,
lifting devices or other technical equipment

- a) Where operating personnel are also to be provided by the supplier, those personnel shall be and remain the employees or agents of the supplier and the supplier shall supervise their work and ensure that any items and goods are lifted or transported by them with the best care and skill and to the respective places designated by us.

For the avoidance of doubt the supplier's obligation to supervise the work of its operating personnel and to ensure that work is carried out with the best care and skill shall extend also to circumstances where personnel are provided by the supplier to erect and dismantle equipment.

- b) In all cases the supplier must take out a third party crane insurance with an insurance office of repute and in an insured minimum sum of at least EURO 1 million as well as a hook load insurance in an insured sum of at least EURO 250,000 in each case for personal injury, property damage and financial loss suffered by the supplier's operating personnel or by third parties. Unless agreed by us in writing to the contrary, the cost of effecting and maintaining such insurance shall be borne by the supplier.

The supplier shall produce to us on demand such policy of insurance (or adequate evidence of the terms of it) and receipt for payment of the current premium.

- c) In all other respects our Purchasing Terms and Conditions above apply.