Conditions of Purchase

1. Orders and Confirmation

EagleBurgmann Industries shall confirm orders in writing, email, or fax. Arrangements made orally by or telephone are not effective and non-binding. All contracts and orders are awarded solely on the basis of the following Conditions of Purchase. Any terms or conditions contrary to those laid down herein, in particular such terms and conditions stipulated in a supplier’s confirmation of order, shall solely be valid and operative upon EagleBurgmann Industries’ express written confirmation. Acknowledgements of order containing prices, delivery dates or production dates deviating from the original order shall be considered as a rejection of said order.

The present terms and conditions are available as electronic documents via email or product descriptions are authoritative for the completion of orders. Counter forms of delivery require the express written confirmation of both parties. Alterations or changes shall be explicitly confirmed in the confirmation of order or represented by means of technical documents (drawings, etc.) and are subject to clearance by EagleBurgmann Industries.

Any reference to supplier conditions of sale and delivery does not comply with the above stipulations.

2. Prices

All prices are understood as free our works and include packaging.

Should packaging be subject to additional charge as negotiated in prior written agreement EagleBurgmann Industries is entitled to adjust the packaging and deduct two-thirds of the packaging price from the invoice amount.

3. Invoicing and Payment

In the event that EagleBurgmann Industries is unable to clearly assign an invoice to a record for lack of complete reference or order number the payment term shall be suspended until the supplier has provided full and complete clarification. Inasmuch as a supplier has been duly notified of the non-assignment of his invoice. Should certificates, documentation or similar items expressly designated as an integral part of an order fail to be delivered with the consignment or invoice, the payment term shall be suspended until the supplier has supplied in full the missing certificates, documentation or similar items. The invoice must be sent separately upon dispatch of the goods or partial consignment.

EagleBurgmann Industries settles all invoices 45 days net. The receipt stamp of EagleBurgmann Industries is authoritative.

Should EagleBurgmann Industries receive an invoice ahead of the expected consignment or the consignment have defects then the payment term is suspended until faultless goods have arrived.

In the event that EagleBurgmann Industries accepts premature delivery, the payment term complies with the originally negotiated delivery date.

4. Delivery and Delivery Period

4.1 Delivery periods stipulated in our orders commence as of the date of such orders. The supplier undertakes to immediately inform EagleBurgmann Industries of any delay in delivery and state the expected length of the delay.

The supplier shall send EagleBurgmann Industries notification of dispatch stating all relevant order data simultaneously with the dispatching of the consignment.

4.2 In the event that the supplier fails to deliver the goods within the prescribed time limit EagleBurgmann Industries shall then be entitled to set the supplier a reasonable grace period, upon the expiration of which EagleBurgmann Industries can either withdraw from the contract or claim for damages due to non-performance inasmuch as delivery has not been made within the grace period.

EagleBurgmann Industries’ right to withdraw from the contract or claim for damages due to non-performance shall also exist in the event of late delivery of a part of the order. Should EagleBurgmann Industries have no economic interest in partial performance of the contract, EagleBurgmann Industries is not obligated to grant a grace period. In the event that the supplier defaults on delivery and the delay entails the loss of the former’s economic interest in the fulfilment of the contract, the contract shall be terminated.

Should default or partial default in delivery arise through no fault of the supplier, EagleBurgmann Industries have no economic interest in partial fulfilment of the contract, the latter is entitled to withdraw from the contract after having granted a grace period and the supplier fails to effect delivery within that grace period.

4.3 In the event that the supplier be unable or partially unable to fulfill the delivery term due to act of God, strike, lock-out, labour shortage, official or similar circumstances the supplier shall be entitled to withdraw from the contract entirely or in part after having duly granted a grace period.

Should the default in delivery apply only to a part of the order and the foreseeable contingency be without economic interest, EagleBurgmann Industries retains the right to withdraw from the entire contract.

5. Documents

Any and all drawings, drafts and specimens encoded with an order of said material for any purpose other than those specified shall make the supplier liable for damages. The supplier is explicitly not permitted to retain any duplicates, carbon or photo copies of any materials supplied. EagleBurgmann Industries agrees to written agreement to the contrary, all models, templates and similar items produced by the supplier or procured by third parties and used by the supplier shall pass into the possession of EagleBurgmann Industries should the supplier charge the former for such items.

6. Infringement of Patented Rights

The supplier guarantees that the goods, object and equipment supplied are void of any third party patent rights and is liable for any and all damages and detrimental effects EagleBurgmann Industries or its customers may incur through the infringement of any such rights, claims, obligations, by means of the usage, processing, combination or resale of the goods supplied.

7. Warranty

7.1 EagleBurgmann Industries is entitled to demand subsequent improvement or replacement, in the event that the goods supplied prove defective.

EagleBurgmann Industries is entitled to claim for damages for the delivery of defective goods.

7.2 EagleBurgmann Industries is entitled to exit complaints within a period of 14 days upon receipt of goods. In case of defects that indicate due inspection remained indiscernible the fourteen-day period begins with the discovery of the defect.

For machines, machine parts and other machinery-type equipment, the warranty period is four years.

8. Commissioning of a different hauler than agreed upon shall be charged to the supplier’s account.

13. Application of Goods

Delivery will be accepted Mondays through Friday from 7:00 A.M. to 3:30 P.M.

14. Applicable Law, Place of Fulfillment, Place of Jurisdiction

14.1 The terms and conditions of the State of Texas are authoritative for the Conditions of Purchase herein as well as for the rights of the Parties inter alia. Inasmuch as the supplier is a fully qualified merchant, a legal entity under public law or a public special asset, the State of Texas is the exclusive Place of Jurisdiction for any and all disputes directly or indirectly arising from the contractual relationship.

14.2 The State of Texas Purchase Rights are applicable to any and all contracts between EagleBurgmann Industries and foreign suppliers.

15. Separability Clause

In the event the provision herein or a provision in any other agreement should be or become invalid or ineffective, the effectiveness of all other contractual provisions remains unaffected.

16. Data Protection

EagleBurgmann Industries may store, transfer and use supplier data for the purpose of enquiries and the placement of orders.

17. Obscurity of Service

The supplier undertakes to treat as a business secret any and all commercial and technical details which he acquires through the business relation which are not common knowledge.

Unauthorized persons may not be provided with or in any other way be granted access to any and all drawings, models, templates, specimens or similar objects. The duplication of any such objects is solely permissible within the context of operational necessity and copyright laws.

The supplier undertakes to inform any and all commissioned sub-contractors to such secrecy.

18. Environmental Protection Clause

The supplier undertakes to mark and label any and all products subject to hazardous media and hazardous materials ordinances. The supplier is liable for any and all damages and detrimental effects inflicted upon EagleBurgmann Industries as a result of the supplier’s failure to properly mark and label such materials. This liability extends to damages inflicted upon third parties should a party assert damage claims against EagleBurgmann Industries.

As per: 01/2007