

General Terms and Conditions for the Supply of Products for EagleBurgmann KE, Inc.

These General Terms and Conditions shall apply to all deliveries and orders unless otherwise agreed and confirmed in writing by EagleBurgmann KE, Inc., hereinafter called "EB-KE".

- 1.1 Purchasers' orders are only binding on EB-KE if the purchaser has received an order confirmation in writing.
- 1.2 The prices quoted are net prices ex works, and do not include packaging and duties, unless otherwise specified.
- 2.1 The obligations of EB-KE include only those specified in the order confirmation.
- 2.2 All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the contract.
- 2.3 All drawings and technical documents relating to the Product or its manufacture submitted by EB-KE to the Purchaser, prior or subsequent to the order confirmation - or contract shall remain the property of EB-KE. Drawings, technical documents or other technical information received by the Purchaser shall not without the consent of EB-KE be used for any other purpose, than that for which they were provided. They may not, without the consent of EB-KE, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

3. Prices

- 3.1 All orders are booked at the prices current on the order date, unless the order is subject to a binding quotation made by EB-KE.
- 3.2 Prices are ex works and are valid in the currency and for the goods and services itemized in the order confirmation. The prices do not include VAT and packaging, and are based on the rates of exchange and prices for materials, wages, transport costs and duties current on the order date. In the event of any changes in these factors, EB-KE reserves the right to adjust its prices in accordance with current levels at any time up to the delivery date. EB-KE reserves the right to charge a handling or changeover fee for small deliveries. In the event that the purchaser wishes changes to be made in the order or specifications placed or made, the cost of such changes shall be charged to the purchaser as per a statement issued by EB-KE.

4. Payment

- 4.1 Unless otherwise specified in the order confirmation, payment shall be made in cash net on delivery.
- 4.2 If the Purchaser fails to pay by the stipulated date, EB-KE shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.
- 4.3 If the Purchaser does not take delivery by the agreed date, the purchase price shall fall due for payment when EB-KE notifies the Purchaser that the consignment is ready for delivery. Subject to the other provisions of these General Terms and Conditions, EB-KE shall not be liable for any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the products, nor shall any delay entitle the Purchaser to terminate or rescind the contract.
- 4.4 If the Purchaser fails to order the dispatch of the Products in accordance with the order confirmation, EB-KE shall be entitled to store and insure the Products at the expense of the Purchaser. If the Purchaser (despite written request to do so) fails to collect the Products in accordance with the order confirmation, EB-KE shall be entitled to sell or scrap the Products at the best possible price and apply any sale proceeds to any outstanding debt of the Purchaser to EB-KE. If EB-KE cannot sell the Products, the entire purchase price, plus any costs incurred by EB-KE shall fall due for payment immediately and without further notice.
- 4.5 If it has been agreed that the purchasing price is to be paid in installments, EB-KE shall be entitled to consider the purchasing price as due for payment if any installment is not paid by the due date. In the event of part deliveries, each shall be payable on delivery, and if payment for any delivery has not been made by the due date, EB-KE shall be entitled to withhold further deliveries without thereby forfeiting the right to demand the completion of the transaction.
- 4.6 The purchaser shall not be entitled to offset any counter claims not accepted by EB-KE against the price payable.

5. Delivery

- 5.1 Any agreed trade terms shall be construed in accordance with the INCOTERMS in force at the formation of the contract. If no trade term is specifically agreed, the delivery shall be Ex. works (EXW). If, in the case of delivery Ex works, EB-KE, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier. Partial shipments shall be permitted unless otherwise agreed.
- 5.2 EB-KE shall only insure the purchaser's risk in connection with transport if so agreed in writing.
- 5.3 Unless otherwise agreed, delivery will be made according to EB-KE's instructions. In cases where the delivery date has been agreed, delivery up to one week before or one week after the specified delivery date shall in every respect be considered punctual delivery.

5.4 EB-KE may demand postponement of the delivery date in cases where the purchaser requests changes in the order, in the event of force majeure (cf. Art. 10) and in cases where work on the consignment must be stopped or is delayed by official requirements.

5.5 If the purchaser requests packaging, or if EB-KE considers packaging necessary to protect the consignment, such packaging shall be charged to the purchaser. No return of packaging is accepted. EB-KE's rules concerning transport, storage and unpacking are in force.

6. Retention of title

6.1 The Product shall remain the property of EB-KE until paid for in full to the extent that such retention of title is valid under the applicable law. The Purchases shall at the request of EB-KE assist him in taking any measures necessary to protect EB-KE's title to the product in the country concerned. The retention of title shall not affect the passing of risk under Clause 5.

7. Defects and shortcomings

7.1 EB-KE's liability is limited to defects and shortcomings which appear within a period of 18 months from delivery, or 12 months after installation, whichever occurs first. If the use of the Product exceeds that which is agreed, EB-KE shall not be held liable for any defects or shortcomings, and EB-KE's guarantee shall be void.

7.2 The scope of the liability of EB-KE is as specified below:

7.3 - Within the period specified above, EB-KE undertakes to remedy all defects or shortcomings in the goods delivered by repair or redelivery at the discretion of EB-KE. The obligation of EB-KE to remedy defects or shortcomings is conditional on the presentation of proof by the purchaser that the delivered equipment suffers from defects or shortcomings, including documentation that the equipment has been stored, assembled, installed, put into operation and maintained correctly in accordance with the operation and maintenance instructions provided by EB-KE.

7.4 - The obligation of EB-KE lapses if non-EB-KE manufactured or non-EB-KE-approved components are used together with the goods delivered by EB-KE. Moreover, the obligation does not apply to consequences of inappropriate and/or incorrect use of the goods delivered, including deviations from the agreed specifications.

7.5 - The obligations of EB-KE apply only to payroll costs at EB-KE and materials from EB-KE, in so far as same are directly related to the remedying of defects and shortcomings. EB-KE's scope covers alone delivery ex works. All other costs related to any defect or shortcoming - including transport, compensation for waiting time, subsistence or accommodation costs, and the costs of exposing or gaining access to defective parts, shall be no concern of EB-KE. EB-KE assumes no further liability for the equipment delivered, and the purchaser cannot cancel the purchase, demand any proportional price reduction or compensation or withhold the purchasing price in whole or in part.

7.6 - EB-KE is only liable for ensuring that the goods delivered are sufficient and/or appropriate to fulfill the purchaser's requirements in terms of capacity and any other factors in so far as EB-KE has contributed to the planning of the project in question, and in so far as the purchaser is able to document that the information provided by the purchaser as documentation of the purchaser's claim is correct, fully satisfactory and approved by EB-KE, and insofar as any drawings etc. provided by EB-KE have been used in accordance with the information provided therewith.

7.7 - EB-KE can only assume responsibility for information provided on specifications, choice of materials etc., including project planning or contributions to project planning, if such provision of information forms an explicit part of the purchasing agreement.

7.8 - If any defect in design, material or construction of any part manufactured by EB-KE is proven and the purchaser can document that the defect in question is not a result of ordinary wear, poor maintenance or improper handling, EB-KE shall, within normal working hours, carry out any repairs or renovation to the extent deemed necessary by EB-KE. Parts manufactured by third parties which form part of the goods or services provided by EB-KE shall be subject only to the same guarantee as is issued by the subcontractors or sub suppliers in question.

7.9 - Beyond this, the purchaser shall not be entitled to compensation for damage to products or other equipment not supplied by EB-KE, nor to compensation for consequential loss, loss of profits, losses due to late delivery or the like. EB-KE shall not be obliged to cover expenses incurred by the purchaser in connection with the discovery of defects in or the repair of equipment supplied unless EB-KE has specifically agreed to do so.

8. Complaints

8.1 Complaints of shortcomings in a delivery are to be submitted in writing without undue delay after the discovery of the shortcoming. Returned goods will only be accepted by prior written agreement due to defect.

9. Product liability

9.1 The Purchaser shall indemnify and hold EB-KE harmless to the extent that EB-KE incurs liability towards any third party in respect of any damage for which EB-KE is not liable towards the Purchaser according to paragraph a) and b) of this Clause. EB-KE shall not be liable for loss or damage caused by the goods a) to any (movable or immovable) property where the damage

occurs while the goods are in Purchaser's possession, or b) to products manufactured by the Purchaser or to products of which the Purchaser's products form a part or for loss or damage to any property, where the damage is caused by these products because of properties in the goods.

9.3 EB-KE shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

9.4 The above limitations in EB-KE's liability shall not apply where EB-KE has been guilty of gross negligence.

9.5 If a claim for loss or damage as described in this Clause is raised by a third party against either party to the contract, the latter shall forthwith notify the other party thereof.

9.6 EB-KE and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them, where the claim is based on damage alleged to have been caused by the goods. The liability between EB-KE and the Purchaser shall however always be settled in accordance with Clause 14.

10. Limitation of liability

10.1 There shall be no liability for EB-KE towards the Purchaser for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

11. Force majeure

11.1 EB-KE shall not be liable for failure to complete, or delay in completing the agreement as a result of force majeure, war, riots, civil unrest, government intervention or the intervention of public authorities, fire damage, strikes, lockouts, export and/or import bans, non-delivery or late delivery from subcontractors or sub-suppliers, shortage of labor or of fuel, nor for any other circumstance beyond the control of EB-KE, and liable to delay or prevent the manufacture and delivery of the goods sold.

11.2 In the event that due delivery of goods without defects or shortcomings is temporarily prevented by one or more of the above circumstances, delivery shall be postponed for a period corresponding to the duration of the hindrance, plus a reasonable period thereafter to allow for the normalization of the situation. Delivery by the deferred date thus specified shall in all respects be deemed delivery by the due date. In the event that the obstacle to delivery may be expected to last more than eight weeks, both EB-KE and the purchaser shall be entitled to cancel the agreement without thereby becoming guilty of breach of contract.

12. Cancellation

12.1 Orders processed in whole or in part to the specifications of the purchaser shall be as per the following schedule:

After Order Entry; Prior to Drawing Approval:	5%
Prior to Production Release:	10% Plus material purchased
After Production Release:	25% Plus material purchased
After Release for Manufacture:	
25-50% Complete:	50% Plus material purchased
50-75% Complete:	75% Plus material purchased
75-100% Complete:	100% Plus material purchased
100% - After Final Acceptance or notification of completion.	

13. Information, structural drawings, instruction material and certificates

13.1 Without further notice, EB-KE reserves the right to make changes in its products, provided such changes have no adverse effect on the product purchased. This shall also apply to products already ordered.

13.2 When delivering the products, EB-KE undertakes to send instructional material to ensure that installation, storage and maintenance required by regulations are observed when requested.

13.3 Attention, approvals and certificates shall be paid for separately by the purchaser.

14. Applicable law and legal venue

14.1 Any dispute between the parties which cannot be settled amicably shall be settled either by arbitration or in a court of law within the State of California or Kentucky.

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