

# General Terms and Conditions of Purchase

of

**Gebr. Eickhoff Maschinenfabrik u. Eisengießerei GmbH**

**Eickhoff Drive Technology GmbH**

**Eickhoff Bergbautechnik GmbH**

**Eickhoff Maschinenfabrik GmbH**

**Eickhoff Gießerei GmbH**

The aforementioned companies of the Eickhoff Group are hereinafter also referred to collectively as "**Eickhoff**"

January 2025

## **1. Entering into agreements**

- 1.1 Eickhoff places orders exclusively on the basis of its General Terms and Conditions of Purchase. Deviating, supplementary or conflicting terms and conditions of the supplier are hereby rejected and will not become part of the agreement, unless Eickhoff has expressly consented to their application. Any such confirmation applies only to the specific individual case and has no effect for the future. These Terms and Conditions of Purchase apply even if Eickhoff accepts delivery or pays for delivery despite being aware of terms and conditions of the supplier which oppose or deviate from its own Terms and Conditions of Purchase. They will also apply to all future transactions with the supplier without Eickhoff having to refer to them again.
- 1.2 Orders by Eickhoff can only be accepted within ten (10) working days of receipt. Working days are Monday to Friday, except for national public holidays. The date on which Eickhoff receives the declaration of acceptance will be decisive for determining whether the order has been accepted in due time. Any declaration of acceptance is deemed to be made without reservations. Late declarations of acceptance are deemed to be new offers.
- 1.3 Only orders placed in writing are binding. The same applies to any other arrangements made before or after the agreement is entered into. Orders submitted verbally or over the telephone are not binding until they have been subsequently confirmed in writing by Eickhoff. The same applies to verbal side agreements and amendments to the agreement. Services performed or deliveries made without a written order will not be acknowledged. Orders, call-offs and additions and amendments to these may also be made – with prior written agreement – using remote data transmission or electronic data carriers.
- 1.4 Any remuneration for visits or the preparation of quotes, projects, etc. must be agreed separately.
- 1.5 The supplier must treat the fact that it has entered into an agreement as confidential and may only refer to business relations with Eickhoff in advertising materials after Eickhoff has given its written consent. The supplier undertakes to treat as business secrets all commercial or technical details which are not in the public domain, and which become known to it as a result of the business relationship. Subcontractors must be required by the supplier to do the same.
- 1.6 Eickhoff may request changes to the delivery time, delivery address and packaging in writing at any time after entering into the agreement - provided it observes a notice period of twelve (12) working days. The same applies – with a notice period of one (1) month prior to implementation by the supplier – to modifications of the properties and condition (product specifications), to the extent the latter can be implemented within the framework of the normal production procedure without considerable additional effort.
- 1.7 Eickhoff will reimburse the supplier for the verified and reasonable additional costs incurred because of modifications. If such modifications result in delays in delivery that cannot be avoided through reasonable efforts in the supplier's normal course of production and business, the originally agreed delivery date will be postponed accordingly. The supplier will notify Eickhoff without undue delay – on the basis of careful assessment – of the anticipated additional costs and delays in delivery.

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

- 2.1 The agreed prices are fixed prices including statutory sales tax and preclude subsequent claims of any kind. Costs for packaging and transportation to the shipping address or place of use specified by Eickhoff as well as for customs formalities and duties are included in these prices. If there is no written agreement indicating otherwise, the price for "free domicile Bochum" includes packaging. If a price "ex works", "ex warehouse" or similar has been agreed, the in-house forwarding agent specified by Eickhoff will be charged with the delivery or an alternative forwarding agent will be approved by Eickhoff. Additional costs due to non-compliance will be borne by the supplier. All costs incurred up to handover to the carrier, including loading, will be borne by the supplier.
- 2.2 A delivery note must be enclosed with every delivery. Dispatch notes, consignment notes, parcel labels, invoices and all correspondence must show the number and date of the order and, if applicable, the drawing number or material code number. The gross, tare and net weights must also be listed on the delivery note. In the case of deliveries for which Eickhoff bears all or part of the freight costs, compliance with the routing order is mandatory.
- 2.3 Eickhoff will only accept the quantity or number of items it ordered. Incomplete deliveries or deliveries in excess of the quantity ordered are only permitted after prior agreement with Eickhoff.
- 2.4 The shipment is performed at the supplier's risk. The risk of any deterioration, including accidental loss, is consequently borne by the supplier until delivery to the shipping address or place of use stipulated by Eickhoff.
- 2.5 The supplier's obligation to take back packaging is in accordance with the statutory provisions. The products must be packed in such a way that damage during transportation is prevented. The packaging material used must be commensurate with this purpose. Only environmentally friendly packaging materials may be used. If, in exceptional cases to which Eickhoff has agreed, Eickhoff is invoiced separately for packaging, it will be entitled to return packaging that is in good condition with no delivery costs to the supplier in return for remuneration in the amount of two-thirds (2/3) of the value of the packaging as shown on the invoice.

### **3. Invoicing and payment**

- 3.1 A single copy of each invoice is to be sent to Eickhoff immediately after delivery. All invoices must show the number and date of the order as well as the order reference, supplier and material code numbers. Invoices must not be enclosed with deliveries under any circumstances. If the supplier breaches sentences 1 and 2 of this subsection, Eickhoff will not be responsible for any resulting delays in processing.
- 3.2 Invoices must be submitted with all associated documents and data (such as manufacturer's certificates, acceptance records or documentation) if these are necessary to be able to understand them. Eickhoff will have the right to refuse performance until an orderly invoice has been submitted. The actual quantities, weights or other units on which the delivery is based, and the agreed prices will be decisive for payment.
- 3.3 Unless otherwise agreed in writing, Eickhoff will pay the purchase price within thirty (30) days from delivery and receipt of the invoice without deduction or with a cash discount of three percent (3 %) within eight (8) days or a cash discount of two percent (2 %) within fourteen (14) days from delivery and receipt of the invoice.
- 3.4 If certificates of material testing have been agreed, these will form an essential part of the delivery and will be sent to Eickhoff together with the delivery. Making payment does not constitute a statement about the quality of the delivery nor does it limit Eickhoff's rights. If the delivery is defective, Eickhoff may withhold payment on a pro rata basis pending proper performance.
- 3.5 Eickhoff's rights to set off and rights of retention are as provided for by statute. The supplier only has the right to set off and to assert a right of retention if its counterclaim (a) is either undisputed or has been ruled final and absolute by a court of law, (b) is ready for a decision at the time of the last hearing where it has been asserted in court or (c) is synallagmatic to the principal claim.

### **4. Delivery dates, late delivery, force majeure**

- 4.1 The agreed delivery dates are binding; if the delivery date is missed, the supplier will be in default of delivery without it being necessary to send a reminder. Delivery will be deemed to have been made in due time, where delivery has been agreed, if the goods are received at the place of receipt/use stated by Eickhoff. If acceptance is required, the supplier will be in default without a reminder if it does not offer Eickhoff the service ready for acceptance by the agreed date. Eickhoff is not permitted to refuse acceptance on the grounds of insignificant defects.
- 4.2 If the supplier realizes that the agreed date cannot be met for any reason whatsoever, the supplier must inform Eickhoff of this in writing without undue delay, stating the grounds and the expected duration of the delay.
- 4.3 If the supplier is in default because it failed to deliver before the delivery date, Eickhoff will be entitled to demand a contractual penalty of zero point three percent (0.3 %) of the order amount with regard to the delayed part of the delivery per working day, but no more than five percent (5 %) of the order amount with regard to the delayed part delivery. The right to claim the contractual penalty is reserved until payment of the invoice. The contractual penalty must be offset against any compensation claim for losses resulting from default. The right to assert additional losses is reserved.
- 4.4 If a delivery date has not been agreed, deliveries must be made on working days during normal business hours. Signing the delivery note or actually accepting the delivered goods does not constitute a statement as to whether the delivery complies with the specifications.
- 4.5 Events of force majeure, including but not limited to industrial action, operational disruptions of any kind that are not the fault of Eickhoff, unrest, official/sovereign measures, fire, natural disasters, epidemics, pandemics, weather events, floods, war, insurgency, terrorism, transportation delays, strikes, lawful lockouts, shortages of staff, energy or raw materials, delays in the granting of any necessary official permits and other events that are unforeseeable, unavoidable and beyond Eickhoff's control, will release Eickhoff from any obligation to accept the goods in a timely manner for as long as the disruption persists and to the extent of the disruption's impact. The supplier undertakes to take all reasonable steps to provide the required information without undue delay and to adjust its obligations to the changed circumstances in good faith.
- 4.6 Furthermore, Eickhoff is entitled – without prejudice to other rights – to rescind in whole or in part the order(s) affected by the event of force majeure if this event is of considerable duration, or it results in a significant reduction in Eickhoff's demand.
- 4.7 If Eickhoff has to change the delivery schedule due to an event of force majeure and one or more deliveries are therefore postponed, the supplier will retain the goods concerned in accordance with Eickhoff's instructions and will deliver them after the event of force majeure has ended.
- 4.8 If the goods are shipped earlier than agreed, Eickhoff reserves the right to return the goods at the supplier's cost and risk. In this case, Eickhoff is entitled not to pay until the agreed due date.
- 4.9 Eickhoff will only accept partial deliveries if this is expressly agreed.

### **5. Supplier's reservation of title**

Title to the goods will be transferred to Eickhoff unconditionally and irrespective of payment of the purchase price. In any case, all forms of extended or prolonged retention of title are excluded, with the result that any retention of title effectively declared by the supplier will only apply until payment of the products delivered to Eickhoff and only for these products.

### **6. Liability**

The supplier will be liable for any form of breach of contract in accordance with the statutory provisions, unless otherwise stipulated in these Terms and Conditions of Purchase.

### **7. Nature of the products; product and manufacturer's liability**

- 7.1 The supplier warrants that its products comply with the statutory regulations, state-of-the-art technology and the agreed product specifications, including but not limited to Eickhoff's drawings and other technical specifications. The supplier will notify Eickhoff of any

concerns regarding the product specifications, drawings or other requirements without undue delay and prior to execution of the order. The supplier warrants compliance, in particular, with the German Product Safety Act (*ProdSG*), the provisions on the CE marking, the German Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (*ElektroG*), the German Regulation Restricting the Use of Hazardous Substances in Electrical and Electronic Equipment (*ElektroStoffV*), Directives 2011/65/EU (RoHS) and 2002/96/EC (WEEE) and the additional laws, regulations and other provisions enacted for their implementation in Germany. The agreed specification is part of the order and can only be changed with the mutual consent of both parties.

- 7.2 The supplier undertakes to implement the applicable national laws and directives as well as all applicable EU regulations for its products and services and for supplies or ancillary services from third parties so that the products are manufactured in a sustainable and resource-efficient manner. At Eickhoff's request, the supplier will issue a certificate of quality for the delivered goods.
- 7.3 The statutory provisions (sections 377, 381 German Commercial Code (*HGB*)) and the provisions in this subsection apply to the commercial duty of inspection and to object to defects. If Eickhoff has agreed with the supplier that the supplier will carry out a quality inspection in accordance with standards defined in a quality assurance agreement prior to delivery of the products (outgoing goods inspection), Eickhoff will only be obliged to inspect the products for externally recognizable transportation damage and for the correct quantities and identity on the basis of the delivery note. Otherwise, Eickhoff's duty to inspect incoming goods is limited to defects that are revealed during a superficial examination including of the delivery documents and during a quality inspection conducted by Eickhoff in the form of a dynamic random sample procedure (e.g., transportation damage, delivery of the wrong products and short deliveries). Eickhoff will report any defects detected within eight (8) days of delivery of the products. The duty to object to defects discovered later, i.e., after the incoming goods inspection, remains unaffected. In these cases, the period during which Eickhoff must give notice of defects is four (4) working days from discovery. For this deadline to be met, it is sufficient for the notification to have been sent within this period.
- 7.4 The supplier will establish and maintain quality assurance mechanisms that are suitable in scope and nature and correspond to the latest state of the art technology. The supplier must prepare records, in particular concerning quality inspections in general or according to Eickhoff's specifications and make the records available to Eickhoff without undue delay upon Eickhoff's request or by agreement.
- 7.5 If claims are asserted against Eickhoff due to violation of official safety regulations or, based on domestic or foreign product liability regulations or laws, due to a defect in the product which can be attributed to the supplier's products, Eickhoff will be entitled to claim compensation for these losses from the supplier to the extent that they are caused by the products delivered by the supplier. These losses also include the costs of any product recall measure that is necessary. Eickhoff will inform the supplier of the content and scope of such product recall measures – as far as possible and as far as can be reasonably expected – and give it the opportunity to comment. This does not affect other statutory rights.
- 7.6 The supplier must insure itself against all risks arising from product liability, including the risk of product recall, at its own expense with at least fifteen (15) million euros (EUR) per instance of personal injury and instance of property damage in coverage. The supplier will provide Eickhoff with the corresponding insurance certificate annually without being requested to do so or upon request.

## **8. Warranty**

- 8.1 The statutory provisions apply to the warranty in the event that the products have material defects or defects of title and in the event of other breaches of duty by the supplier unless otherwise stipulated below.
- 8.2 The supplier warrants that the products comply with the objective, subjective and – where relevant – assembly requirements pursuant to section 434 German Civil Code (*BGB*). In particular, the supplier warrants that the products comply with the specifications and requirements as defined in section 7.1.
- 8.3 If the products are defective, Eickhoff may, at its own discretion, demand either subsequent performance by remedy of the defect (subsequent improvement) or by delivery of an item free of defects (replacement delivery). If the supplier does not satisfy this obligation of subsequent performance within a reasonable deadline set by Eickhoff, Eickhoff may remedy the defect itself (self-help remedy) and request reimbursement of the expenses required for this purpose or a corresponding advance payment from the supplier. If the subsequent performance by the supplier has failed or Eickhoff cannot reasonably be expected to accept it owing to special circumstances (e.g., owing to special urgency, risk to operational safety or impending occurrence of disproportionately great losses), it will not be necessary to set an (if applicable, new) deadline; Eickhoff will inform the supplier of such circumstances without undue delay, if possible before it remedies the defect itself.
- 8.4 The costs incurred by the supplier for the purpose of examination and subsequent performance – including any costs for removal and installation – will be borne by the supplier even if it becomes evident that there was actually no defect. Eickhoff's liability for compensation in the event of unjustified requests for the remedy of defects remains unaffected; however, Eickhoff will be liable only if Eickhoff recognized, or failed to recognize due to gross negligence, that there was actually no defect.
- 8.5 The supplier bears the procurement risk for its services and products unless explicitly agreed otherwise (e.g., obligation in kind restricted to available stocks (*Vorratsschuld*)).
- 8.6 Eickhoff does not acknowledge and hereby objects to any clauses limiting the supplier's warranty or liability.
- 8.7 The limitation period is governed by the statutory provisions unless stated otherwise below. In derogation of section 438 (1) no. 3 German Civil Code (*BGB*), the general limitation period for contractual claims based on quality defects and defects in title is three (3) years, commencing as of transfer to Eickhoff at the place of performance (see section 15.6). If the parties have agreed that the products must undergo an acceptance procedure, the limitation period does not begin in each case until the time of acceptance. Non-contractual claims based on quality defects and defects in title are subject to the regular statutory limitation period pursuant to sections 195, 199 German Civil Code (*BGB*); if, however, the limitation period for contractual claims (sentence 8.7) is longer, this period will apply.

## **9. Recourse against the supplier**

- 9.1 Eickhoff is entitled, without restriction, to its statutory rights of recourse against the supplier within a supply chain (sections 445a, 445b, 478 German Civil Code (*BGB*)). In particular, Eickhoff is entitled to demand from the supplier the same kind of

subsequent performance (subsequent improvement or replacement) that Eickhoff owes its customer in each case without this restricting its right of choice.

- 9.2 Before Eickhoff acknowledges or fulfills a claim for defects asserted by one of Eickhoff's customers (including reimbursement of expenses as defined in sections 445a (1), 439 (2) and (3) German Civil Code (*BGB*)), Eickhoff will notify the supplier and give it the opportunity to comment in writing. If the supplier does not make use of this opportunity or does not do so with sufficient evidence or within a reasonable waiting period, and if no amicable solution is reached, the claim for defects conceded by Eickhoff to its customer will be deemed to be actually owed. In this case, the supplier will be responsible for providing counterevidence.
- 9.3 Eickhoff's rights of recourse will also apply in the event that the defective goods have been further processed by Eickhoff or another company (for example by being installed in another product).

## **10. Property rights**

- 10.1 The supplier declares that all deliveries are free of the intellectual property rights or copyrights of third parties and in particular that the delivery and use of the items delivered does not infringe patents, licenses or other property rights of third parties within the European Union. If the supplier is aware that its products are also sold by Eickhoff in certain other countries, the above will also apply to these countries.
- 10.2 If any third party should assert claims against Eickhoff due to the infringement of third-party intellectual property rights or copyrights, the supplier will indemnify Eickhoff against these claims at first request. This indemnification will also include all necessary expenses incurred by Eickhoff arising from or in connection with the claim by a third party and will also apply vis-à-vis Eickhoff's customers. It will not apply if the supplier has produced the goods in compliance with the drawings, models or equivalent descriptions provided by Eickhoff. If, in such an event, the supplier fears that intellectual property rights or copyrights may be infringed, it will notify Eickhoff immediately.
- 10.3 Eickhoff is entitled to obtain authorization to use the relevant goods and services from the entitled party at the supplier's expense, taking into account the duty of care of a prudent businessperson.

## **11. Spare parts**

- 11.1 The supplier is required to have replacement parts available for the products delivered to Eickhoff for a period of ten (10) years from the delivery date unless an individual agreement to the contrary is reached.
- 11.2 If the supplier decides to discontinue the production of spare parts for the products supplied to Eickhoff, it will notify Eickhoff of this without undue delay. There must be a period of at least six (6) months between the notice to Eickhoff and the discontinuation of production. This will have no effect on subsection (1).

## **12. Risk management and IT security**

The supplier must maintain a risk management system that, among its functions, assesses cyber risks and takes measures to minimize cyber risks as a result. These measures must be implemented and regularly reviewed. A cyber-attack on the supplier's IT system must not result in Eickhoff data falling into the hands of third parties or Eickhoff IT security being jeopardized.

## **13. Code of Conduct, German Supply Chain Due Diligence Act (*LkSG*)**

- 13.1 The supplier is required to comply with the currently valid version of the Eickhoff Code of Conduct for Suppliers (available at <https://www.eickhoff-bochum.de/de/node/116>) as communicated to the supplier.
- 13.2 With regard to human rights and the environment, the supplier must at least comply with the due diligence obligations in the currently valid version of the German Supply Chain Due Diligence Act (*LkSG*) to the extent described in this Act (see in particular section 2 German Supply Chain Due Diligence Act (*LkSG*)) and in the manner described in this Act (see in particular section 3 (2) German Supply Chain Due Diligence Act (*LkSG*)). This also applies if the supplier itself does not fall within the scope of the German Supply Chain Due Diligence Act (*LkSG*). The obligation under sentence 2 does not extend to the due diligence obligations with regard to the policy statement, the complaints procedure and the report.
- 13.3 The supplier is required to inform Eickhoff about risks to human rights and the environment and about breaches of corresponding obligations in its own business area and supply chains without undue delay after their discovery and furthermore to inform Eickhoff about the measure(s) it intends to take to remedy the grievance. As far as necessary and possible, Eickhoff will support the supplier in this process.
- 13.4 The supplier will endeavor to ensure that its subcontractors as defined in the German Supply Chain Due Diligence Act (*LkSG*) comply with sections 13.2 and 13.3.
- 13.5 Eickhoff has a right to verify whether the supplier is complying with its obligations under sections 13.2 and 13.3, undertaking this check at its own expense using its own employees or third parties by means of audits on site and/or other suitable measures once a year and any time there is sufficient reason for it to do so. The supplier must provide reasonable access to the relevant areas and documents. Unless otherwise agreed, the inspection may only take place during the supplier's business hours and may not interfere with the supplier's business operations. "Sufficient reason" within the meaning of sentence 1 means cases where Eickhoff has reason to expect that the risks at the supplier and/or at its subcontractors have changed or increased significantly.
- 13.6 If the supplier breaches one of the obligations under sections 13.2 to 13.5, Eickhoff may set the supplier a reasonable deadline by which it must end or otherwise remedy the breach. If the supplier does not end or otherwise remedy the breach before the deadline and does not provide Eickhoff with appropriate evidence of such, Eickhoff may rescind or terminate the agreement without notice for good cause with immediate effect. The supplier is not entitled to any remuneration, compensation or other claims arising from or in connection with a termination pursuant to this section 13.6 or section 7 (3) German Supply Chain Due Diligence Act (*LkSG*).
- 13.7 Notwithstanding the provision in section 13.6, Eickhoff may terminate the agreement with immediate effect and discontinue the business relationship with the supplier in its entirety under the conditions in section 7 (3) German Supply Chain Due Diligence Act (*LkSG*).

- 13.8 If the supplier breaches one of the obligations under sections 13.2 to 13.5, the supplier must compensate Eickhoff for the resulting losses and expenses unless the supplier is not responsible for the breach and the resulting losses and expenses.

**14. Function of the products in the overall system**

The supplier's product makes an important contribution to the functioning of the overall system. For this reason, the functionality of the supplier's products must be checked by the supplier in cooperation with Eickhoff (i) in systematic combination with individual Eickhoff components and (ii) in systematic combination with the Eickhoff machines or gearboxes and (iii) with the respective overall system. For this purpose, the supplier must carry out failure mode and effects analyses (FMEA) either independently or in cooperation with Eickhoff.

**15. Final provisions**

- 15.1 The law of the Federal Republic of Germany applies. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- 15.2 Should individual parts of these General Terms and Conditions of Purchase be invalid, this will not affect the validity of the other provisions.
- 15.3 The supplier is not entitled to subcontract the agreement in whole or in significant part to third parties without prior written consent from Eickhoff.
- 15.4 Unless prior written consent is granted by Eickhoff (which may not be unreasonably withheld), the supplier is not entitled to assign its claims against Eickhoff.
- 15.5 Eickhoff will handle the supplier's personal data in accordance with the German Federal Data Protection Act (*BDSG*).
- 15.6 Unless expressly agreed otherwise, the place of performance for the delivery obligation is the shipping address or place of use requested by Eickhoff; the place of performance for all other obligations of both parties is Bochum.
- 15.7 Exclusive place of jurisdiction for all disputes arising from this supply relationship is Bochum. This also applies when the supplier does not have a general place of jurisdiction in Germany.