

General Purchase Conditions of Eberspächer Climate Control Systems GmbH & Co. KG

1. Conclusion of contract

1.1 Eberspächer shall issue orders exclusively on the basis of its General Purchase Conditions. Other conditions shall not form part of the contract even if Eberspächer does not expressly object to them. If Eberspächer accepts the delivery/service without an express objection to the supplier's conditions, this shall not imply in any case that Eberspächer has accepted the supplier's delivery conditions. The supplier must expressly consent to Eberspächer's General Purchase Conditions when it makes an offer. In the absence of an express declaration, the performance of an order shall in every case imply acceptance of Eberspächer's General Purchase Conditions. These General Purchase Conditions shall also apply to all future contractual relations with the supplier.

1.2 If the supplier makes an offer on the basis of an enquiry by Eberspächer, the offer must precisely adhere to the terms of this enquiry and must expressly refer to any deviation from their terms.

1.3 Eberspächer may revoke any order which the supplier does not accept in writing within 10 working days after its receipt.

1.4 Only written orders shall be legally binding. Verbal or telephonic orders shall require subsequent written confirmation in order to be legally valid. The same applies to supplementary verbal agreements and contractual amendments. Deliveries or services performed without a written order shall not be acknowledged. Orders, calls for delivery, and additions and modifications thereto may also be made by remote data transmission or machine-readable data carriers in accordance with the terms of a prior written agreement. In the case of informal transactions a commercial letter of confirmation shall serve as the order.

1.5 Visits or the preparation of proposals, projects etc. shall not be remunerated in the absence of an express agreement for payment or a legal right to payment.

1.6 If through the submission of a transmission report Eberspächer can prove that it sent a declaration by fax or remote data transmission, it will be presumed that this declaration was received by the supplier.

1.7 The supplier shall treat the conclusion of the contract as confidential and may only refer in advertising material to its business association with Eberspächer with the latter's prior written consent.

1.8 The contractual partners undertake to treat as business secrets all the commercial and technical details not in the public domain of which they become aware as a result of their business relationship. They shall impose a corresponding obligation on their sub-contractors.

1.9 Eberspächer may demand changes to the delivery object after the conclusion of the contract where it would be reasonable for the supplier to make such changes. Reasonable consideration shall be given to the impact on both parties of such contractual amendments particularly with regard to delivery deadlines and increases or reductions in costs.

1.10 During activities on the plant of Eberspächer the safety regulations for third parties are applicable. You can find these under www.eberspaecher.com/safety_regulations_esslingen.pdf.

2. Prices, despatch, packaging

2.1 The agreed prices shall be fixed prices and shall exclude additional claims of any kind. The prices shall include the cost of packaging and the cost of transportation to the delivery address and/or place of use as stated by Eberspächer as well as the cost of any customs charges and formalities. In the absence of any derogatory written agreement, the prices shall include packaging and delivery without railway where delivery is by rail and "free delivery to Esslingen factory" where delivery is by another method. If an "ex-works" or "ex-stores" price is agreed, the shipping agent designated by Eberspächer shall be instructed to transport the goods. All the costs incurred prior to the handover of the goods to the carrier, including loading costs and freight charges, shall be paid by the supplier. If the order does not specify any prices, the supplier's current price lists shall apply with the usual trade discounts. The manner of setting the price shall not affect the agreed place of performance.

2.2 Eberspächer's order number must be quoted on delivery notes, consignment notes, invoices and all correspondence. Offers must quote the enquiry number.

2.3 Eberspächer shall only accept the ordered quantities or items. Excess deliveries or under-deliveries shall only be permitted by prior arrangement with Eberspächer.

2.4 Carriage shall be at the supplier's risk. Therefore the supplier shall continue to bear the risk of deterioration including accidental destruction until delivery has been made to the address for delivery or the place of use designated by the supplier.

2.5 The supplier's duty to take back packaging shall be governed by statutory provision. The goods must be packed in a manner which avoids loss and damage during transportation. Packaging materials must be limited to the extent as necessary for this purpose. Only non-polluting packaging materials may be deployed. In extraordinary cases of invoicing Eberspächer packaging separately Eberspächer is allowed to send back carriage free to supplier packaging which is in good condition against a payment of 2/3 of the value arising from the invoice.

3. Invoice issue and payment

3.1 Invoices shall be separately submitted in the correct form after delivery with all the associated data and documentation necessary for explanatory purposes. Eberspächer may refuse payment until a correct invoice has been submitted. The invoice particulars required for payment are the actual volume, weight or other unit of delivery and the agreed price.

3.2 Payment shall be made by the customary trade method. In the absence of a contrary written agreement, Eberspächer shall pay the purchase price on the basis of the delivery and invoice with the deduction of a 3% discount on the twenty-fifth day of the month following that of the delivery or without any deduction after a period of 90 days.

3.3 If an agreement has been made for certification with regard to the inspection of materials, the relevant certificates shall form a significant integral part of the delivery and should be forwarded to Eberspächer with the delivery. Such certificates must be received by Eberspächer no later than 5 days after the receipt of the invoice. The time allowed for payment shall not begin to run until the receipt of the agreed certificates.

3.4 The payment of an invoice shall not imply the waiver of any claim for invoiced goods which are defective. If defective goods are delivered, Eberspächer may retain that part of the payment which corresponds to the value of the defective goods until the order has been correctly performed.

3.5 If advance payments are agreed, the supplier shall provide appropriate security in the form of a bank surety in accordance with the precedent provided by Eberspächer.

4. Delivery deadlines, delays, force majeure

4.1 The agreed delivery deadlines shall be binding; the supplier shall be in default without the necessity of a warning if it does not make a delivery within the specified deadline. In the case of goods which must be delivered to the purchaser, the key factor in determining compliance with the delivery deadline or period shall be the date on which the goods are received at the place of receipt and/or use specified by Eberspächer. If an acceptance is necessary, the supplier shall be in default without warning if it does not perform its obligations at the agreed time or only does so in a manner which permits the refusal of an acceptance (§ 640 (1) Sentence 2 of the German Civil Code [Bürgerliches Gesetzbuch]).

4.2 If for any reason the supplier becomes aware that it can not adhere to an agreed deadline it must promptly advise Eberspächer of this fact in writing with a statement of the reason for and foreseeable duration of the delay.

4.3 If the supplier through its failure to observe the delivery deadline, Eberspächer may charge a contractual penalty of 0.2% of the total value of the order per working day up to a maximum of 10% of the total value of the order. The right to withhold the contractual penalty may be invoked at any time prior to the payment of the invoice. The contractual penalty shall be taken into consideration in determining the level of compensation payable in respect of the default. The contractual penalty merely represents the minimum amount of compensation.

4.4 The supplier may only rely on a failure by Eberspächer to provide necessary documentation if it has sent a written reminder requesting the documentation and has not received it within a reasonable period.

4.5 Force majeure shall release the contractual partners from the performance of their obligations for the period of the disruption and to the extent that such disruption affects the performance of their contractual obligations. Insofar as is reasonable the contractual partners must promptly provide any necessary information and must in good faith tailor their obligations to the changed circumstances. Eberspächer shall be wholly or partially released from its obligation to inspect the ordered supply/service and shall be entitled to withdraw from the contract if on a commercial consideration of the circumstances it can no longer use the service/supply due to the delay caused by the force majeure.

4.6 Eberspächer shall be entitled to return goods delivered prior to the agreed date at the supplier's cost. If Eberspächer does not return a premature delivery, the goods may be stored at the supplier's cost and risk until the agreed delivery date. In the case of a premature delivery Eberspächer reserves the right to withhold payment until the agreed due date.

4.7 Eberspächer shall only accept partial deliveries by express agreement. Partial deliveries shall be accompanied by a statement of the quantity of outstanding items.

5. Liability

The supplier shall be liable for any form of violation of the contract in accordance with statutory provision in the absence of any contrary provision in these terms and conditions.

6. Warranties

6.1 The agreed specification forms an integral part of the order and may only be modified by the mutual consent of both parties. A drawing or any statement with regard to the scope of the delivery which appears to be binding shall be regarded as a specification.

6.2 The supplier undertakes within the framework of commercial and technical possibilities to employ environmentally-friendly products and methods in the provision of its own and its sub-contractors supplies/services. The supplier shall be responsible for ensuring that the supplied products and packaging materials are environmentally-friendly and shall be liable for all consequential loss and damage which arises through the breach of its statutory waste disposal obligations. The supplier shall issue a quality certificate for the supplied goods if requested to do so by Eberspächer.

6.3 Eberspächer shall promptly complain in writing to supplier of any obvious defects and damage in transit, which it discovers during normal course of business, at the latest 10 days after goods receipt at Eberspächer. Insofar the supplier shall waive the defence of late notification of defects prescribed by § 377 of the German Commercial Code (Handelsgesetzbuch).

6.4 The object or work shall also possess the characteristics which Eberspächer might expect on the basis of public statements made by the vendor, company or manufacturer (§ 4 [1&2] of the German Product Liability Act [Produkthaftungsgesetz]) or their servants or agents particularly in advertising or with regard to the labelling of certain characteristics unless such statements are inconsistent with the agreed characteristics. This rule shall not

apply if the contractual partner did not know about such statements or could not have known that they had been amended in such terms at the time of the conclusion of the contract or if the statement could not have influenced the decision to make the purchase.

6.5 Eberspächer may select the manner of subsequent performance also in the case of a contract of work and services unless the contractual partner is entitled to refuse subsequent performance or Eberspächer selects a method of subsequent performance which is unreasonable for the contractor.

6.6 If the work performed or the products supplied are defective, Eberspächer may remedy the defects and demand compensation for the necessary cost of doing so after the fruitless expiry of a reasonable period of grace for subsequent performance unless the supplier has correctly refused subsequent performance.

To this extent the statutory rules governing self-performance in the case of contracts for work and services (§ 637 of the German Civil Code) shall apply mutatis mutandis to the contract of sale. Without prejudice to the statutory rules, Eberspächer may in urgent cases - particularly in order to avoid a serious risk of considerable loss and damage - remedy the defect itself at the supplier's cost even without setting a period of grace for subsequent performance.

6.7 The term of the warranty shall be 24 (in words: twenty-four) months in the absence of an express contrary agreement. It shall commence on the transfer of the delivery object to Eberspächer or to a third party designated by Eberspächer at the place of receipt and/or use prescribed by Eberspächer. If an acceptance date has been agreed, the term of the warranty shall commence on the date of a successful acceptance.

6.8 If a defect occurs during the first 12 months (guarantee period) of the warranty, a presumption shall exist that this defect was already present on the date of the transfer of the risk unless such a presumption is inconsistent with the nature of the defect or object.

6.9 If delivered parts can not remain in operation during the investigation and/or remedy of the defect, the term of the current warranty/guarantee shall be extended by the period of the operational interruption.

6.10 The term of warranty/guarantee for repaired or newly delivered parts shall commence anew from the date of repair or delivery notwithstanding statutory provisions.

6.11 Claims which already existed at the commencement of the term of the warranty or which arise during the term of the warranty shall be time-barred in accordance with the statutory limitation periods. The limitation period shall commence on the date the claim arises.

6.12 The supplier shall release Eberspächer from any third party claims with regard to defects of title. The limitation period for defects of title shall be three years. This limitation period shall commence at the end of the year in which the claim arose and Eberspächer became aware or should in the absence of gross negligence have become aware of the circumstances giving rise to the claim and the identity of the liable party notwithstanding any knowledge acquired or ignorance due to gross negligence in the ten years since the claim first arose.

6.13 If as a consequence of the defective nature of the object or work supplied by the contractual partner Eberspächer has to take back the said object or work, accept a price reduction or pay damages or compensation to its customer, the period of grace shall not apply which would otherwise be necessary for claims against the contractual partner under § 437 of the German Civil Code which are made in consequence of complaints by Eberspächer's customers. In such cases the above-mentioned term of warranty shall commence on the transfer of the risk to Eberspächer's customer. The above-mentioned claims shall be time-barred at the earliest two months after the date on which Eberspächer satisfies its customer's claims. This suspension of the limitation period shall terminate no later than five years after the date on which the contractual partner delivered the object and/or work to Eberspächer.

6.14 If a claim attributable to the supplier's goods is made against Eberspächer for the violation of official safety regulations or on the basis of inland or foreign product liability regulations or laws regulating defective products, Eberspächer may demand compensation from the supplier for any loss and damage insofar as such loss and damage has been caused by the latter's products. This loss and damage shall also include the costs of product recall. If a part delivered by the supplier is defective, it will be presumed that the supplier is exclusively responsible for the defect.

6.15 The supplier shall implement quality assurance measures suitable in terms of their nature and extent in accordance with the latest technical standards and shall on demand submit evidence to Eberspächer that it has done so. The supplier shall conclude an appropriate quality assurance agreement with Eberspächer if the latter considers this necessary.

6.16 The supplier shall take out a policy of insurance for an appropriate sum against all product liability risks including the risk of recall and shall on demand submit the insurance policy to Eberspächer for its inspection.

7. Guarantee

7.1 The supplier shall guarantee and ensure that all deliveries/services conform to the latest technical standards, the relevant legal rules and the regulations and directives of authorities, professional organisations, and trade associations. The supplier shall obtain written consent if departures from these provisions are necessary in individual cases. The supplier's warranty obligations shall not be limited by such consent. If the supplier objects to the manner of performance desired by Eberspächer it must promptly provide Eberspächer with written notification of its objections.

7.2 The supplier shall guarantee and ensure that all supplies are free of third party intellectual property rights and in particular that patents, licenses or other third party intellectual property rights shall not be violated inside Germany by the supply and use of the delivered objects. If the supplier is aware that Eberspächer also intends to sell its products in certain countries, the above provision shall also apply to the countries in question.

8. Intellectual property rights

8.1 The supplier shall release Eberspächer and the customers of Eberspächer from third party claims which may arise from a violation of intellectual property rights and shall pay all the costs incurred by Eberspächer in this connection.

8.2 Subject to an obligation to exercise the care expected of an ordinary businessman, Eberspächer may obtain at the supplier's cost a license from the rights holders for the use of the relevant objects and services.

9. Foreign transactions

If the supplier has an office abroad, the following supplementary rules shall apply:

9.1 The relationship between the supplier and Eberspächer shall be exclusively governed by German law to the exclusion of the law on the international sale of moveable goods (Convention on the International Sale of Goods).

9.2 The contractual language shall be German. If the contractual partners also communicate in another language, the German text shall take precedence.

10. Final provisions

10.1. Should individual parts of these General Purchase Conditions be legally ineffective, the effectiveness of the remaining provisions shall not be affected as a result.

10.2 The supplier may not sub-contract the order or significant parts of the order to third parties without the prior written consent of Eberspächer.

10.3. The supplier may not assign its claims against Eberspächer to a third party without the prior written consent of Eberspächer which may not be unreasonably refused.

10.4. Eberspächer shall handle the supplier's personal data in accordance with the German Federal Data Protection Act (Bundesdatenschutzgesetz).

10.5 In the absence of a contrary written agreement, the place of performance for delivery obligations shall be the delivery address and/or place of use specified by Eberspächer; in the case of any other obligation owed by either party it shall be Esslingen.

10.6 If a legal dispute arises as a result of the contractual relationship, the claim shall be filed in the court with jurisdiction for Eberspächer's head office if the supplier is a registered trader, a legal person constituted under public law or a separate public estate. Eberspächer may also sue the supplier in any other lawful jurisdiction.

Issued Nov 2008