

## GENERAL PURCHASING CONDITIONS 10/03

### EISENMANN South Africa (PTY) LIMITED ("EISENMANN")

#### A. Placing of Orders

1. The legal contractual relationship between the Supplier and **EISENMANN** in relation to the subject matter of the supply of goods and services shall be governed by the conditions of this order and no other terms and conditions in the Supplier's acceptance of the order or in any other document given by the Supplier to **EISENMANN** inconsistent with the conditions of this order shall be of any force and effect unless agreed to in writing by **EISENMANN**.
2. The conditions of this order constitute the entire agreement between the Supplier and **EISENMANN** together with all representations, warranties or undertakings of any nature given by the Supplier to **EISENMANN** in relation to the goods or services.
3. All written matter and drawings contained in any of the Supplier's catalogues, price lists or any advertisements in whatsoever form are binding in detail including but not limited to dimensions, measurements, weights, quantities and colours.
4. All models or samples of the Supplier shown to **EISENMANN** shall be construed as illustrative of the type and quality of goods and a representation that the goods conform to the model or sample.
5. All amendments and supplements to the written agreements must be in writing and signed by **EISENMANN**.
6. The provisions of the agreement, which includes these conditions, shall prevail over those of any other document forming part of the agreement. Subject to the foregoing, the several documents forming the agreement shall be taken as mutually explanatory of one another, but any ambiguities or discrepancies shall be explained and adjusted by the Technical Manager of **EISENMANN** and if, in the opinion of the Technical Manager, such explanation or adjustment shall involve the Supplier in any expense which the Supplier did not have any reason to foresee, **EISENMANN** shall pay such additional sum as may be certified by the Technical Manager as being reasonable to cover such expense.
7. **EISENMANN'S** orders may only be accepted by the Supplier on **EISENMANN'S** "Acceptance of Order" form which must be used for this purpose and a binding agreement shall only come into existence on receipt by **EISENMANN** of the "Acceptance of Order".
8. If it becomes apparent during execution of the agreement that additional work, which is not covered by the agreed scope of work, is necessary for proper execution of the agreement, then the Supplier has to obtain an additional order on the **EISENMANN** "Additional Order Form" which is only valid up to a Rand limit equivalent to EURO 500 net. If the Supplier considers an additional order of greater amount to be necessary then this must be placed on the **EISENMANN** Purchasing Department. The **EISENMANN** site co-ordinator does not possess any authority in this respect.

#### B. Prices, Scope of Delivery or Work

1. If not expressly agreed in writing to the contrary, the agreed prices are fixed prices CIF Site designated by **EISENMANN**. CIF means cost insurance freight and that the Supplier must organise and pay for the insurance and freight.
2. All work necessary for faultless supply or faultless production and assembly progress are part of the scope of work of the Supplier even if these are not explicitly specified in the contract.
3. If material required by the Supplier to carry out his work on installations and assemblies is supplied by **EISENMANN**, the work scope of the Supplier also includes the unloading of trucks as well as transportation from the parts storage area to the assembly site. The scope of work includes the delivery of the customary documentation, which accompanies 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 documentation, user handbooks and the like. If software is developed by the Supplier for this order, then the scope of work includes provision of the software's source code, object code and documentation recording the development of the software.

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#### C. Delivery Dates, Contractual Penalty

1. The dates stated in the **EISENMANN** order are dates of delivery receipt/results of performance and are essential and material terms of the agreement and are to be adhered to strictly. Partial deliveries/performances are only permitted with consent in writing of **EISENMANN**.
2. In case of default, **EISENMANN** shall have a right to claim a penalty amounting to 1% (one percentum) of the order value for every commenced week of default, at the most, however, 20% (twenty percentum) of the order value, and in lieu of a penalty, **EISENMANN** shall be entitled to claim damages.
3. Before or after the due delivery, **EISENMANN** can request the Supplier to make a declaration concerning his work capacity or ability and to demonstrate this to **EISENMANN'S** reasonable satisfaction, failing which **EISENMANN** shall be entitled to terminate this agreement immediately and shall not be liable to the Supplier for any claim whatsoever.

#### D. Delivery and Passing of Risk; Regulations for the Prevention of Accidents and Factory Regulations

1. **EISENMANN'S** prepared delivery note form is to be enclosed with all deliveries.
2. In the case of sales contracts the risk shall only pass to **EISENMANN** upon delivery of the goods at the site designated by **EISENMANN**; in the case of work contracts always only after acceptance of the completed work.
3. In the case of installation and assembly work, the Supplier is responsible for adherence to all accident prevention regulations on the construction site, to any factory regulations of **EISENMANN'S** customer made known to him or to any other provisions made known to him. The Supplier must inform himself of the contents of provisions made known to him.

#### E. Invoicing, Terms of Payment

1. After dispatch of the goods, the invoice is to be sent to **EISENMANN** in duplicate. Under no circumstances shall it be enclosed with the goods. All order details are to be stated in the invoice. Partial invoices are only permissible if partial deliveries were ordered.
2. Unless otherwise agreed, payment is made within 14 days less 3 % discount or within 90 days net. The term of payment commences upon receipt of the invoice, at the earliest, however, after receipt of the delivery or acceptance of the work and not prior to the receipt of an agreed security.
3. In the event of the discovery of defects in the goods or services, **EISENMANN** is entitled to defer payment of the invoice until the matter has been completely rectified and shall be entitled to deduct discount from the retained amount in accordance with clause 2 after this period.
4. All deposits, advance payments, or payments on account to be made by **EISENMANN** are to be secured before payment by the Supplier in the form of a bank guarantee acceptable to **EISENMANN**. The **EISENMANN** form is to be used for this purpose.

#### F. Warranty including Remedy of Defects; Inspection

1. The Supplier warrants that all goods and services supplied by it shall be suitable for use in **EISENMANN'S** business and shall be free from defects in materials and workmanship under usual and proper use and service in or for **EISENMANN'S** business, the nature of which the Supplier shall be deemed to have full knowledge.
2. The Supplier shall be liable for all direct and consequential damages sustained by **EISENMANN** arising out of a breach of this agreement and/or of any warranty, and the Supplier hereby indemnifies and holds **EISENMANN** harmless against claims instituted against **EISENMANN** by a third party directly or indirectly connected therewith.

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3. The Supplier is to ensure that his goods and services adhere to the most current state of the art developments, safety provisions and the agreed technical data, measures, weights and other features. Fabrication on the basis of drawings or approved samples must correspond strictly to the specifications. Providing no further requirements are stated in the order, the goods and works are to be provided and performed above all in merchantable quality and, as far as there are SABS, DIN, VDE, VDI or corresponding national or EC standards, in conformity with these. In particular, they are to be provided and performed so that they comply with the legal provisions, especially regarding technical equipment, dangerous materials, accident prevention, emission protection and workplace protection, valid at the site designated by **EISENMANN**.
4. As far as may concern him, the Supplier is to check that the **EISENMANN** plans, drawings and other information necessary to execute the work, and materials and parts supplied by **EISENMANN**, or work of other suppliers are complete, correct and suitable for the intended purpose and inform **EISENMANN** of any deficiency or potential deficiency.
5. **EISENMANN** is entitled to inspect production of the Supplier whenever deemed desirable by **EISENMANN**, and the Supplier shall procure **EISENMANN'S** also accompanied by our customer access to the production on demand.
- G. **Warranty and Security Retention**

Up until expiry of the warranty period of **EISENMANN** to its customer in respect of the Supplier's goods or services, **EISENMANN** shall be entitled to a warranty retention amounting to 10% (ten per centum) of the contract price. Warranty retention and additional security retention can be redeemed by the Supplier through a bank guarantee acceptable to **EISENMANN** in accordance with the **EISENMANN** form.
- H. **Product Liability**

With regard to product liability under domestic or foreign law, the Supplier indemnifies **EISENMANN** and holds it harmless against damage claims of third parties in as far as he is responsible for the defect causing the liability. The scope of this indemnity covers all expenses which directly or indirectly result from or in connection with a recall campaign carried out by **EISENMANN** or other measures remedying damage or of preventive nature.
- I. **Violation of Industrial Property or other Third Party Rights**
  1. The Supplier guarantees that no rights of third parties are infringed in connection with the supply of his goods or services.
  2. If contrary to clause 1, claims are made against **EISENMANN** by third parties, the Supplier indemnifies and holds **EISENMANN** harmless against all claims and all expenses which accrue as the result of the claims.
- J. **Assignment of Claims, Subcontractors**
  1. Claims arising from supply of goods or performance of work can only be assigned to third parties with **EISENMANN'S** written consent.
  2. The Supplier may not assign or subcontract any part of this agreement to third parties without first obtaining **EISENMANN'S** written consent to do so.

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#### K. Provisions of Materials

Material/parts supplied by **EISENMANN** to the Supplier shall remain the property of **EISENMANN** and shall be stored separately by the Supplier and used solely for **EISENMANN'S** order. The Supplier is liable for damage or loss regardless of fault.

#### L. Ownership, Right of Utilisation

1. All items, models, tools, samples, drawings, plans and documents of all kinds delivered to the Supplier on behalf of **EISENMANN** shall remain the property of **EISENMANN**. The Supplier is to treat such items as confidential and to return them to **EISENMANN** at no cost upon request at any time. The Supplier may not allow third parties to inspect such items nor otherwise disclose, duplicate, or make use of them.
2. The provisions of clause 1 shall apply *mutatis mutandis* to moulds, tools or similar facilities or devices for the manufacture of the goods to be supplied and which are manufactured completely or partly at the expense of **EISENMANN**. Alterations to these items may only be made with the written consent of **EISENMANN**. Ownership of the abovementioned items passes to **EISENMANN** immediately on completion of production or manufacture and the Supplier shall place these items in safekeeping for **EISENMANN** free of charge.
3. The Supplier undertakes to insure the items mentioned in clauses 1 and 2 and owned by **EISENMANN** against damage and loss. **EISENMANN** is entitled at any time to request proof of the insurance cover and to inspect the insurance contracts.
4. In the events stipulated under Article B clause 4, **EISENMANN** shall have the exclusive right, unlimited in time and area of applicability, to use the designs and engineering developments and the like in any manner.
5. If the Supplier in connection with the order brings about improvements then **EISENMANN** shall have a non-exclusive right of use free of charge to exploit commercially the improvement and any industrial property rights emanating from them.

#### M. Place of Performance, Forum and Applicable Law

1. Place of performance is that place at which the goods to be supplied are to be delivered in accordance with the order or at which the work is to be carried out in accordance with the order.
2. The contractual relationship is governed by the laws of the Republic of South Africa.

#### N. Invalidity

Should particular provisions of these General Purchasing Conditions become ineffective by law or through a particular contract, this does not affect the validity of the remaining provisions.

#### O. Force Majeure

In case of force majeure affecting any aspect of this agreement **EISENMANN** shall be entitled to terminate this agreement in whole or in part or to postpone specific performance of any obligation to a later date without the Supplier acquiring any claims against **EISENMANN** in this regard.

#### P. Secrecy

The Supplier undertakes to treat as confidential all business and technical information of **EISENMANN** to which he gains knowledge due to his business relationship with **EISENMANN**, and shall not divulge such information to a third party without the written consent of **EISENMANN** first being obtained.

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

- a) When the Supplier in terms of the order provides operating personnel, the Supplier undertakes to have the goods lifted or transported properly by the persons employed in the performance of his obligation to the site designated by **EISENMANN** and to conduct diligent supervision of this.
- b) In all cases the Supplier must, at his own cost, take out a third party crane insurance with an insured flat-rate sum of Rand equivalent of at least EURO 1 000 000,00 (One Million) as well as a hook load insurance with Rand equivalent of at least EURO 250,000,00 (Two Hundred and Fifty Thousand) in each case for personal injury, property damage and financial loss. **EISENMANN** is entitled at any time to request proof of the insurance cover and to inspect the insurance contracts.

**Acceptance:** We herewith accept the GENERAL PURCHASING CONDITIONS 10/03 mentioned before, consisting of 5 pages.

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date:

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signature:

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company stamp: