

# Terms of Purchase for EagleBurgmann Expansion Joint Solutions

## 1. Placing of orders

Any order from EagleBurgmann KE A/S (hereinafter called "EB") shall be placed on the prices current on the date of order. Any order from EB to any supplier (hereinafter called "the Supplier") shall be based on these terms of purchase and the Incoterms referred to herein. Any order from EB to any Supplier shall be placed on the condition that an order confirmation is forwarded to the Supplier no later than 3 days from the date of order. No terms and conditions of the Supplier other than those stipulated in the relevant EB order shall be included in the contract with EB unless accepted in writing by EB. On signing this agreement, or by submitting an order confirmation, the Supplier confirms that the terms of purchase in this Agreement shall apply to all transactions with EB.

Deviations from or exclusion or rejection of these terms of purchase and/or of the terms of any order that are not approved by EB in writing following the Supplier's acceptance of EB's purchase order, shall in EB's option be treated as a rejection of EB's order and no contract between the parties to have been concluded.

Any terms of sale and/or delivery, business usage or customs of the Supplier shall only form part of the purchase agreement to the extent stated by EB in its purchase order.

## 2. Quotation

Quotations submitted by the Supplier shall not involve EB in any costs and shall not prevent EB from obtaining quotations from another party or from entering into a contract with another party.

Any quotation shall be submitted by the Supplier in accordance with these terms of purchase.

## 3. Compliance with order

The Supplier undertakes to deliver a product that is in compliance with EB's specifications set out in any order and to deliver the same in accordance with these terms of purchase and EB's order.

## 4. Documentation

Any drawing and other technical documents relating to the product or its manufacture submitted by one party to the other prior or subsequent to the conclusion of the agreement shall remain the property of the party that supplied them. Drawings, technical documents or other technical documentation received by any party shall not without the consent from the other party be used for any other purpose, than that for which they were provided. Without the consent of the other party neither information, designs and/or details of the product nor the product itself may be copied, reproduced, transmitted or communicated to a third party.

The Supplier shall prior to delivery deliver free of charge to EB such specified and prescribed technical documents and certificates as are necessary for EB's application and approval of the delivery.

Any drawing and other technical documents and know how related to the delivery fall within the provisions regarding trade secrets and technical drawings in the Danish Marketing Practice Act § 10, and any contravention of that law within 3 years from the termination of the co-operation, may involve the party in breach of such law being subject to legal proceedings by way of injunction, compensation or criminal liability for contravention of the Marketing Practice Act.

Any special tools and/or special moulds, that are made expressly for the purpose of supplying goods to EB and the cost of which has wholly or partially been met by EB, shall only be used to execute orders for EB.

After the termination of the co-operation the Supplier shall be obliged to return to EB documents, drawings, appendixes, know-how, special tools and special moulds, and keep confidential all such material and any other know-how of EB

## 5. Sub-contractors etc.

Sub-contractors may only be used with the prior written approval of EB.

Such approval shall be conditional on the sub-contractor undertaking the same obligations to EB for its part of the delivery as those resting with the Supplier, but this shall not release the Supplier from his obligations in accordance with the terms of purchase in this Agreement.

## 6. Packaging

The Supplier shall be responsible for the packing of goods purchased by EB and shall ensure that such

packing is adequate and secure so as to enable the goods to be transported undamaged to the place named in the purchase order.

Unless otherwise agreed, the Supplier shall be responsible for transport of the goods from the place of production to the place of delivery at the Supplier's own cost and expense. The transport shall include necessary forwarding papers and formalities according to Incoterm latest edition.

## 7. Inspection, Quality Requirements

EB has the right at any time to inspect and/or observe the production of the purchased goods before packing, without thereby forfeiting its right to make objections or to raise any claims or to reject any goods delivered at a later date.

EB shall have the right to request written information on and monitor production at the Supplier's or at any approved sub-contractor's premises. EB shall be entitled to make investigations to ensure that the delivery will be made at the right time and in compliance with this agreement. EB shall have the right to mark goods as EB property or take such other steps that will ensure the individualisation of the delivery and the title of EB to the delivery.

If purchase orders from EB state that sampling, test running or some other form of testing shall be performed, such tests shall be carried out on the premises of the Supplier. The tests shall be carried out during normal working hours under supervision of representatives of EB. The Supplier shall contact EB in good time to arrange an exact time for the testing where EB has stated that it requires to supervise the test. The Supplier shall meet any costs incurred in performing any tests, except those involved in arranging EB representation in supervising the test.

If it is established during sampling or testing that the delivery has not been made in accordance with the Contract, the Supplier shall correct the situation in time to ensure contractual delivery takes place at the agreed time and carry out such new sampling or test if so required by EB.

## 8. Manuals, User instructions

In respect of any delivery the Supplier shall provide the certificates/documents, installation, operation, safety and maintenance instructions and all other information and drawings necessary to ensure that EB and/or EB customers will be able to [properly and safely] use, set up, maintain and repair all parts of the delivery. All such information shall be made available in the language of the Supplier and in English and Danish. User- safety and maintenance instructions shall be made available in Danish. Further the delivery shall include a packing list with exact specification of measurement, weight and marking, all in accordance with the information written on the invoice.

## 9. Prices and Payment

The price of the goods produced by the Supplier, inclusive of transport and packing, shall be the price current at the time EB placed its purchase order.

Terms of payment shall be current month + [xx] days.

EB may require the Supplier to provide a guarantee or performance bond by a reputable Bank or insurance Company for the Supplier's fulfillment of its contractual obligations to EB and if so this shall be stated on the purchase order.

The Supplier shall never be entitled to payment until he has fulfilled his contractual obligations. Any invoice from the Supplier to EB shall state the EB purchase order number and CVR (Company Registration Number). The invoice shall contain the terms of payment stated in the purchase order, including the time limit for payment and the due date. Any terms or dates at variance with those contained in the purchase order shall be void and of no effect.

## 10. Delivery

The delivery of goods shall be made to the place named in the purchase order, as the Supplier shall not be subject to risk after punctual delivery has been documented.

If the Supplier realizes that the delivery will or may be delayed, he shall immediately inform EB hereof in writing. The Supplier agrees to reimburse any loss and any cost incurred by EB as a result of such delay. The Supplier undertakes to pay, without evidence of loss, liquidated damages of 0,5% of the total purchase price for each full working day of the dura-

tion of the delay, up to a maximum of 10% of the total purchase price. Planned holidays (except from National Holidays) applicable to EB shall be regarded as working days.

If the Supplier does not inform EB of a delay, in accordance with this P.10, EB shall have the right to claim compensation and liquidated damages, even when such delay is caused by force majeure.

If delivery is effected before the time requested by EB, the terms of payment shall apply from the time of delivery requested by EB.

If a defect or deficiency is found in the goods delivered, delivery shall not be considered effected until such defect or deficiency has been remedied.

## 11. Deficiency

The Supplier shall guarantee that the delivery is in complete compliance with the technical and commercial specifications in the agreement.

If the delivery is partially or completely not in compliance with these terms, the Supplier shall immediately upon EB's request replace the delivery free of charge with a new delivery or remedy the defect or deficiency. Remedial action shall only take place, if it can be made without delay, otherwise a new delivery shall be made. In the event of a new delivery the Supplier shall pay liquidated damages in accordance with paragraph 10, par. 3.

EB shall not be obliged to inspect the delivery before it has been supplied to the customer of EB. Payment shall not constitute acknowledgement that the delivery fulfils the contractual obligations.

EB shall have the right to claim against the Supplier if defects or deficiencies in the goods manifest themselves 2 years from the time at which the relevant delivery is put into use by the end user. In the case of a serious defect and deficiency that EB could not reasonably be expected to have established before the expiry of the above period, the right of EB to make a claim shall not be limited to a definite period of time.

If there are defects or deficiencies in the goods supplied, the Supplier shall be obliged to take remedial action at the place where the delivery is located and at his own cost, otherwise if this is not practicable the Supplier shall procure that the defective part or if necessary [goods are returned, so that the Supplier can make the repair or replacement at its own premises and the Supplier undertakes to redeliver the goods to EB following the repair. The Supplier undertakes to pay all costs of this including costs for disassembling, transport and reassembling costs. In addition the Supplier undertakes to exempt EB from any costs, incurred by the purchaser caused by defects/deficiencies in the goods. Remedial action shall be taken without delay within the time determined by EB, taking account of its customer and its customer's requirements, even if this time is not within normal working hours.

If a defect or deficiency is not remedied without delay as stated above, EB shall have the right to take remedial action at the cost of the Supplier and to demand a compensatory reduction in the purchase price or, in the case of serious deficiency or defect in the goods to [reject them and to receive a full refund of the purchase price]. In addition EB shall have the right to set off any other direct or indirect costs incurred by EB as a consequence of defects or deficiencies on the part of the Supplier, when making payments to the Supplier.

If defects or deficiencies are found after delivery and the Supplier does not take remedial action without undue delay the Supplier shall be obliged to pay compensation and liquidated damages as stated in P. 10. For parts replaced or repaired in accordance with this provision the Supplier undertakes the same obligations, that are valid for the original product for an additional period of 2 years. For the remaining parts of the material in the delivery the period shall be extended with the period for which the material due to the defects or deficiencies could not have been put in use.

## 12. Insurance

The Supplier undertakes to insure his deliveries appropriately, including the taking out of transport insurance/commercial insurance and product liability insurance for a period of 3 years from the date of delivery.

EB reserves the right to approve and request changes in the contents and extent of such insurance. The Supplier undertakes to inform EB if insurance conditions are changed or terminated.

The Supplier undertakes to put in place a product liability insurance policy against any personal injury or damage to property, wholly or partly as a result of defects or deficiencies in the goods supplied.

In addition the Supplier undertakes to indemnify EB from any claim for compensation in connection with product liability and if delivered goods do not comply with the demands of public authorities.

## 13. General Stipulations

Neither the Supplier nor EB may during or after termination of this Agreement inform any third party of the commercial secrets of the other party that might come to the knowledge of the Supplier or EB, as stated in P. 4.

Any legal notice in pursuance of this Agreement from either the Supplier or EB shall be sent exclusively by registered letter to the stated address of the other party.

The Supplier undertakes to deliver in accordance with the requirements of ISO 9000 and to obtain such certification. The Supplier shall thus meet the requirements of such certification in his deliveries to EB.

## 14. Applicable Law

The terms of this Agreement shall be subject to Danish law.

## 15. Dispute Settlement

Any disputes arising between the Supplier and EB in connection with the Agreement and disputes related to this, cannot be subject to trials before the courts, but shall be settled by arbitration in agreement with the rules of law valid in Denmark (Lov nr. 181 af 24.05.1972 om Voldgift).

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**EagleBurgmann®**  
expansion joint solutions

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