



Terms and Conditions of Sale
Eijkelkamp North America, Inc.

1. Applicability

1.1 These terms and conditions are applicable to all agreements concluded by Eijkelkamp North America, Inc. (hereunder “Eijkelkamp”), to all services provided by Eijkelkamp, and all offers made by Eijkelkamp, notwithstanding the terms and conditions of Purchaser’s or other parties’ orders, invoices, acknowledgements or other documents, as indicated at the time of purchase. Purchaser accepts these terms and conditions by the act of submitting an order.

1.2 “Purchaser” means the individual or entity purchasing the Goods, including any successors thereof. “Goods” means the goods, products, and materials manufactured, imported, supplied and/or delivered for or by Eijkelkamp to Purchaser, as such were approved by Eijkelkamp in reply to Purchaser’s order.

1.3 Any alterations of these terms and conditions must be agreed to in writing at the time of sale by Eijkelkamp and the Purchaser. The details of the purchase (including prices and product specifications) shall be set forth in the relevant order.

2. Offers and confirmations

2.1 All offers are without obligation for Eijkelkamp unless specifically stated to the contrary in writing. Eijkelkamp is not liable for errors or deviations from samples, drawings, indicated measurements, weights, models, colors and/or other data provided by Eijkelkamp to the Purchaser.

2.2 When placing orders, the Purchaser must provide all relevant information with regard to invoice instructions, delivery address, import licenses (where applicable), and shipping labels, as well as instructions for the route to be followed and the preferred shipping method.

2.3 Orders shall only become binding upon Eijkelkamp after they have been accepted or confirmed in writing by Eijkelkamp. If no previous written acceptance or confirmation of an order has been made, the agreement comes into force as a result of Eijkelkamp complying fully or partially with a request for delivery by the Purchaser, or on the basis of Eijkelkamp having sent the Purchaser an invoice.

2.4 Obvious errors and misprints in offers, order confirmations, and invoices can be rectified by Eijkelkamp at any time.

3. Changes and cancellations

Changes to and cancellations of any agreements are not possible unless agreed to and confirmed in writing by Eijkelkamp. If the Purchaser wishes to change or cancel an agreement or if an agreement is changed or cancelled at the request of Eijkelkamp for reasons reasonably attributable to the Purchaser, the Purchaser is responsible for reimbursing Eijkelkamp for all damages, including any loss of profits, and all costs arising from such changes or cancellations, subject to a minimum charge of ten (10) percent of the invoice value.

4. Prices

4.1 The prices specified by Eijkelkamp are exclusive of packaging, freight, postal charges, insurance, and all other costs, fees, and taxes.

4.2 The prices specified by Eijkelkamp are subject to change without notice and are dependent on price changes made by suppliers, exchange rates, price swings, and other price determinative factors. Eijkelkamp is entitled to pass on to the Purchaser any price increases that become effective before the order is confirmed in writing.



5. Delivery and delivery time

5.1 Goods are delivered without packaging, unless expressly agreed in writing to the contrary and/or expressly stated to the contrary in the price lists. Packaging costs are charged to the Purchaser separately. Eijkelkamp retains the right to charge for administration costs for the supply of items below an invoice value, as determined by Eijkelkamp.

5.2 The indicated delivery times are only approximate. Delivery dates are subject to reasonable adjustments. Any exceeding of such delivery times shall not give the Purchaser the right to cancel the order or to refuse delivery or payment for the Goods, nor shall it oblige Eijkelkamp to pay any reimbursement to the Purchaser.

5.3 Goods that have not been accepted by the Purchaser after the delivery period shall be held at the disposal of the Purchaser and shall be stored at the Purchaser's own expense and risk. In such an event, in addition to the storage costs incurred, Eijkelkamp will charge a monthly rate of interest of one (1) percent of the invoice value until final payment is made.

6. Shipping, risk, and insurance

6.1 Eijkelkamp, in its sole discretion, may determine the shipping method. If, instead, the Purchaser selects a shipping company or method, any additional costs will be passed on to the Purchaser.

6.2 When shipping has been agreed upon it becomes at the expense and risk of the Purchaser. If delivery cannot be made due to reasons beyond the control of Eijkelkamp, Eijkelkamp shall have the right to store the Goods ready for delivery or to arrange for the Goods to be stored at the expense and risk of the Purchaser, and may require payment for the Goods as if they have been delivered.

7. Claims

7.1 Claims in regard to deliveries have no effect on other agreements between the parties. Claims must be made by the Purchaser in writing to Eijkelkamp directly and must be in the possession of Eijkelkamp within fourteen (14) days from the receipt of the Goods, or, when the Purchaser was only able to discover the defects at a later time, within fourteen (14) days of the discovery of such defects (but no later than twelve [12] months following delivery). Claims must be conveyed via a precise written statement, detailing the nature of and the grounds for the complaint, and must be accompanied by the packing slip and the invoice number. Claims not made within the aforementioned period of fourteen (14) days will not be entertained. External shipping damage must be reported on the freight note, and the Purchaser must provide satisfactory photographic evidence of this damage.

7.2 Processing or use of the delivered Goods by the Purchaser, or the placing of such Goods under the authority of any third party, shall nullify the Purchaser's right to make a claim. Minor deviations in quality or quantity and deviations that are reasonably regarded as tolerable shall not give rise to a claim. If a claim is substantiated, Eijkelkamp has the right, in exchange for the return of the faulty Goods, to credit the Purchaser in full, to repair the faulty Goods, or to proceed with redelivery or reprocessing of the Goods in question.

7.3 The Purchaser does not have the right to return Goods delivered to it under any circumstances, unless Eijkelkamp has given its prior approval in writing. If the Purchaser should nonetheless return Goods, insofar as such goods are not refused by Eijkelkamp, the Goods shall be held at the disposal of the Purchaser and at the Purchaser's expense and risk, and any warranty will be voided.



8. Warranty and limitation of liability

8.1 The warranty set forth herein is expressly in lieu of all other warranties, whether expressed or implied, including, without limitation, any and all warranties of merchantability, quality and fitness for use and for purpose, any advice and recommendation and any obligations or liabilities which may be imputed to Eijkelkamp, any and all of which are expressly disclaimed, denied and excluded. Purchaser expressly agrees that no warranty that is not specifically stated in this agreement will be claimed or otherwise adhered to by purchaser and/or by anyone acting on purchaser's behalf and/or by anyone deriving the legality of its claim from purchaser, nor that will any such warranty be valid. Eijkelkamp neither assumes nor authorizes any other person to assume for it, any other liability in connection with the sale, use or handling of any and all goods specified or contemplated by this contract. No warranty is made with respect to any of these goods which have been subject to accident, negligence, alteration, improper care, improper storage, improper maintenance, abuse or misuse.

8.2 Eijkelkamp shall not be liable for damages due to delays in delivery or use. Eijkelkamp shall not be liable for special, consequential, or incidental costs or damages of any kind, however caused, whether arising from contract, tort, negligence or otherwise, including (without limitation) damages to persons or property, loss of profits, goodwill, overhead costs or procurement of substitute goods, loss of profits, or any other like damages, even if advised of the possibility of such damages. Except as otherwise expressly provided herein, Eijkelkamp's aggregate liability to purchaser and third parties shall not exceed the refunding of the purchase price of products hereunder.

8.3 Subject to the terms of Article 8.1, Eijkelkamp provides a warranty in respect of new goods supplied by Eijkelkamp for a period of 12 months following delivery unless expressly agreed to the contrary by Eijkelkamp in writing. In the event of any breach of any warranty specified in this Article, Purchaser's exclusive remedy shall be that Eijkelkamp shall, at its option, repair or replace any defective Goods. All items or components of such items in which defects might arise during this period as a result of faulty construction defects or faulty material defects will be repaired or alternatively replaced by Eijkelkamp (at the discretion of Eijkelkamp) free of charge, subject to the condition that such defects are brought to the attention of Eijkelkamp in writing immediately following discovery of the same, and in all cases within the periods referred to in Article 7 of this document. Damage caused as a result of inappropriate use of the products and failure to (correctly) comply with the instructions for use is not warrantied.

8.4 Products shall only be sent back to Eijkelkamp for repair or replacement at the Purchaser's own expense, and after Eijkelkamp has given its prior approval in writing. If a repair or replacement has to be done on site or at the Purchaser's premises, any travel hours, travel costs, and accommodation expenses or any shipping costs are to be paid by the Purchaser. Only in the case of repair or replacement under warranty may the products be returned to the Purchaser at the expense of Eijkelkamp.

8.5 If the warranty relates to a product manufactured by a third party, Eijkelkamp's warranty is limited to the warranty provided to the third party concerned and will be handled directly by that third party unless otherwise specified in writing by Eijkelkamp.

8.6 The Goods are designed for use in a moderate climate. Performance is warrantied for temperatures in the range of thirty-two (32)° Fahrenheit to ninety-five (95)° Fahrenheit, unless otherwise specified in the product specifications. Eijkelkamp does not warrant or guarantee, and is not responsible for: defects, failures, damages or performance limitations caused in whole or in part by power failures, surges, fires, floods, snow, ice, lightning, excessive heat or cold, highly corrosive environments, accidents, actions of third parties; or other events outside of Eijkelkamp's control, or abuse, mishandling, misuse, negligence, improper storage, servicing or operation, or unauthorized attempts to repair or alter the Goods in any way; or the performance of the Goods when used in combination with equipment not purchased, specified, or approved by Eijkelkamp.

8.7 If the Purchaser carries out repairs or alterations during the warranty period or has such work being carried out on its behalf without the permission of Eijkelkamp, or fails to comply with its payment obligations, all warranty obligations shall immediately lapse. The Purchaser is not entitled to refuse payment on the ground that Eijkelkamp has not, not fully, or not timely complied with its warranty obligations.

8.8 The Purchaser indemnifies Eijkelkamp against all liability to third parties as a result of any defect in the delivered Goods.



9. Security interest

9.1 Without prejudice to these terms and conditions, all Goods delivered by Eijkelkamp at any time remain the property of Eijkelkamp until the moment of payment of all amounts owed to Eijkelkamp by the Purchaser, including interest charges and costs.

9.2 The Purchaser is not authorized to transfer the ownership of the Goods to third parties until full payment for the Goods has been made to Eijkelkamp. If this condition is violated, Eijkelkamp has the right to repossess all Goods delivered by Eijkelkamp or to have such Goods repossessed on its behalf from the location in which such Goods are to be found, without any authorization from the Purchaser or legal intervention being necessary. All of Eijkelkamp's other claims against the Purchaser shall then become immediately due and payable at that time.

10. Payment

10.1 Unless agreed to the contrary in writing, all invoices must be paid within thirty (30) days of the date of the invoice. Should the Purchaser fail to make this payment within the thirty (30) day period, it shall be in default without any warning or other action by Eijkelkamp, whereupon the Purchaser shall then become liable for interest at the amount of two and a half (2.5) percent, or the maximum rate allowed by law.

10.2 Eijkelkamp is also entitled, in addition to the principal claim and the interest, to claim the full costs, including court costs and attorneys' fees, incurred as a result of non-payment or non-timely payment.

10.3 If a reasonable doubt exists on the part of Eijkelkamp with regard to Purchaser's solvency, Eijkelkamp shall have the right to suspend compliance with its obligations under any agreement with the Purchaser until the Purchaser has provided assurances acceptable to Eijkelkamp regarding compliance with all of its payment obligations arising under the agreement concerned or other agreements.

11. Default of the Purchaser/dissolution of the agreement

In the event that the Purchaser fails to comply with any obligation under any agreement with Eijkelkamp, or becomes subject to or is threatened with becoming subject to suspension of payments, declares bankruptcy, decides to liquidate its business; or if Eijkelkamp receives information indicating that a high degree of probability exists that the Purchaser will be unable to comply with its payment obligations, Eijkelkamp shall be entitled to suspend all agreements with the Purchaser in existence at that time without notice, and may demand immediate payment on any outstanding debts, may repossess all Goods delivered but not yet paid for, without prejudice to Eijkelkamp's right to claim compensation for damages, lost profits, and interest.

12. Force majeure

If Eijkelkamp is unable to deliver the Goods on time due to force majeure, it has the right to suspend delivery or to cancel delivery altogether, depending on the circumstances. Force majeure shall apply to all circumstances outside of the reasonable control of Eijkelkamp that are of a nature such that compliance with the agreement cannot reasonably be expected of Eijkelkamp (including, without limitation, acts of God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, communications or power failure, equipment or software malfunction, or labor disputes). Eijkelkamp is prepared in such cases to consult with the Purchaser regarding measures that might be taken with the intention of preventing damages for both Eijkelkamp and the Purchaser or at least with a view to limiting such damages as far as is reasonably possible. The Purchaser is not entitled to any reimbursement for damages in the event that an instance of force majeure occurs.

13. Severability

Should any provision of these terms and conditions be held to any extent unenforceable, invalid, or prohibited under law, then such provision shall be deemed restated to reflect the original intention of Eijkelkamp as nearly as possible in accordance with applicable law and the remainder of these terms and conditions. The application of such provisions to persons, property, or circumstances other than those as to which it is invalid, unenforceable, or prohibited, shall not be affected thereby, and each provision of these terms and conditions shall be valid and enforceable to the fullest extent permitted by law.



14. Non-transferability

All rights and obligations deriving from any agreement and/or these terms and conditions for the Purchaser cannot be transferred to any third party without the prior written consent of Eijkelkamp.

15. Applicable law & dispute resolution

These terms and conditions and all agreements concluded subject to these terms and conditions and all further agreements that arise from such agreements are governed by North Carolina and United States law. Any legal suit, action, or proceeding arising out of or relating to agreements concluded under these terms and conditions and any related agreements shall be submitted exclusively to the state courts of the State of North Carolina, including proceedings for obtaining preliminary injunctions. Eijkelkamp is nevertheless entitled in all cases to apply to the competent court in the Purchaser's place of business or to a competent court elsewhere. With respect to any litigation arising out of these terms and conditions, the Purchaser expressly waives any right to a jury trial and agrees that any litigation arising out of these terms and conditions shall be tried by a judge without a jury and the prevailing party shall be entitled to recover its expenses, including reasonable attorney's fees, from the other party.

16. Notice

Any notice sent pursuant to these terms and conditions and all agreements subject to these conclusions shall be sent via certified mail, return receipt requested, to the addresses on the order or to such address as Eijkelkamp may in the future designate. A copy of any notice to Eijkelkamp must be also sent to Counsel, PO Drawer 1270, Raleigh, North Carolina 27602. Notices shall be effective upon receipt.