

EagleBurgmann (Malaysia) Sdn Bhd

General Terms & Conditions of Sale of EagleBurgmann (Malaysia) Sdn Bhd.

1.0 Preamble

1.1 These General Terms and Conditions of Sale ("The Terms and Conditions") shall exclusively apply to all business transactions for all sales, supplies or deliveries of goods or the services associated with the sales or supplies of goods ("Goods") made by EagleBurgmann (Malaysia) Sdn Bhd ("Seller") to any person, firm, company or unincorporated association which orders and buys Goods from Seller ("Buyer").

1.2 The Terms and Conditions shall be binding and shall prevail in the event of a discrepancy with any and all of the Seller's other written or oral agreement between the Seller and the Buyer. Any variation to the Terms and Conditions shall not be valid and binding unless agreed by the Seller in writing.

1.3 The Seller may, at its sole discretion, modify or make amendments to the Terms and Conditions at any time and from time to time as it deems fit.

2.0 Offer and formation of contract

2.1 Samples and catalogues provided by the Seller to the Buyer are to be considered as non-binding material for illustration and/or test purposes, giving only an approximation of properties and specification. Nevertheless, the descriptions and specifications of the Goods such as weight, volume or gage measured upon shipment is valid.

2.2 All sales quotations of the Goods to the Buyer shall automatically expire after Thirty (30) calendar days from the date of issuance unless expressly otherwise agreed in writing. The Buyer hereby acknowledges that the Seller shall have the absolute rights to cancel the sales quotations at any time as it deems fit within such period by giving written notice to Buyer.

2.3 All orders placed by the Buyer to the Seller shall be in writing and such orders shall only be considered accepted and final upon a formal acceptance by the Seller in writing. The acceptance of order by the Seller in writing shall form a formal and binding contract between the Seller and the Buyer in accordance with the terms and conditions appearing therein ("Contract").

2.4 The description and specification of the Goods in the Contract shall correspond with the description and specification of Goods specified in the order.

2.5 The price of the Goods shall be set out in the Contract ("Purchase Price").

3.0 Price of the Goods

3.1 The prices of Goods offer in the Seller's quotation are intended to be for general information only and the Seller reserves rights to change the prices of the Goods without prior notice. Prices of the Goods shall be agreed between the parties in each individual case.

3.2 Prices of the Goods on the date of delivery shall be final.

3.3 The Seller reserves the right to increase the price of the Goods in the event there is any increase in the Seller's costs for any events beyond the Seller's control such as Force Majeure Event, shortage of primary material or labor, strikes, official orders, transportation or similar problems, by giving notice to the Buyer at any time before delivery of Goods. The increase of price shall also be applicable to the confirmed orders but yet to be delivered.

3.4 The price of the Goods is/if subject to Sales and Services Tax (SST) and/or such other governmental charges and any other duties or levies (if applicable), which the Buyer shall be solely liable to pay to the Seller.

4.0 Terms of Delivery

4.1 Seller shall deliver the Goods to the designated place of delivery as agreed between the Buyer and the Seller ("Place of Delivery").

4.2 Seller may, at its discretion, deliver the Goods by instalments in any sequence. In the event the Goods are so delivered by instalments, each instalment of such delivery shall deem to be a separate contract and no default or failure by Seller in respect of any of the instalments in respect of the Goods previously delivered or undelivered shall vitiate the Contract.

4.3 Any dates quoted by Seller for the delivery of the Goods are approximate only and shall not form part of the Contract. Seller shall not be liable for any delay in delivery of the Goods and/or services, howsoever caused.

4.4 Buyer shall be deemed to have accepted the Goods unless the Buyer gives the Seller notice in writing of any defect in the quality or condition of the Goods or of their failure to correspond with any specification or description within 7 days from the date of delivery or completion of normal installation procedures (if Seller is obliged to install the Goods under the Contract).

4.5 Unless stated otherwise in writing, confirmed delivery dates are not fixed dates. The Seller reserves the right to postpone delivery of the Goods during Force Majeure Event for the duration of the obstruction. In the event the delivery of Goods has become impossible by an act beyond the Seller's control, the Seller reserves the right to partially or completely rescind the Contract. The Seller reserves the right to partially deliver the Goods unless the Buyer has no interest in them. Unless failure to comply or delay of delivery was caused by the Seller the Seller's lawful representatives or auxiliary persons due to gross negligence or intentional acts, the Seller shall not be liable for such delay in delivery. Unless agreed otherwise by the parties in writing, delivery of Goods shall be made from the Seller's premises and all costs including but not limited to loading, freight and custom duties (if applicable) shall be solely borne by the Buyer

5.0 Order, Price Terms of payment

5.1 The minimum value for each order shall be Ringgit Malaysia One Thousand Five Hundred (RM1,500.00) only.

5.2 Buyer shall not be entitled to deduct, set-off or to withhold payment of any part or all of Purchase Price for any reason whatsoever.

5.3 Unless agreed otherwise / credit terms have been expressly agreed by the Seller in writing, the invoices issued by the Seller to the Buyer are to be paid immediately. Upon receipt of invoice from the Seller, payment of Purchase Price shall be made in full before the delivery of the Goods. The Buyer shall be deemed in default of payment in the event he fails to pay the Purchase Price or any part thereof to the Seller within Thirty (30) days from the date of the

invoice. Payment of Purchase Price is considered received upon the Seller's receipt of the written notification together with the proof of remittance that such payment has been made.

5.4 Without prejudice to any other rights or remedy available to the Seller, if the Buyer fails to make payment of the Purchase Price to the Seller within the stipulated period ("Due Date"), the Seller is entitled to impose late payment interest of one per centum (1%) per month calculated on a daily basis commencing from the expiry of the Due Date until the date of receipt of the Purchase Price by the Seller. For the avoidance of doubt, the late payment interest accrued shall be paid together on the day the Purchase Price is paid to the Seller.

5.5 Further to Clause 5.4 above, if the Buyer shall default in paying any sum due under the Contract, the Seller shall have the right either to: –

- (i) suspend and/or cease deliveries and/or installation of the Goods to the Buyer until the default is made good; or
- (ii) immediately terminate the Contract in respect of any balance of Goods then due for delivery and/or installation then due for completion.

5.6 The Buyer shall not cancel the order of the Goods at any time after acceptance of the order by the Seller for any reasons whatsoever failing which the Buyer shall pay a sum amounting thirty per centum (30%) of the Purchase Price as liquidated damages to the Seller. All payment made before the acceptance also will be forfeited by the Seller.

5.7 Notwithstanding to Clause 5.6 product such as but not limited to below list are considering final sales and will not be eligible for return, exchange, or refund. Buyer is requiring paying in full:

- (i) Product/s delivered to Buyer;
- (ii) Services delivered to Buyer;

6.0 Retention of Title and Risk

6.1 Until settlement in full of all our current and future claims arising from each Contract, including any accessory claims (secured claims), we reserve title to any of the merchandise sold under such Contract, and title to such merchandise shall remain vested in us and shall not pass to the customer, and the customer shall have no right or interest therein otherwise as a bailee thereof. The customer agrees to, at its own cost and expense, perform all further acts and things and execute and deliver such further documents as may be required by law for the purpose of granting us the full effect of the retention of title under this Clause.

6.2. Notwithstanding to Clause 6.1 herein, the title to the Goods, particularly software, shall remain with the applicable licensor(s) at all material times.

7.0 Warranty

7.1 We warrants that our products supplied by it correspond as to design and manufacture to the current state of the art and are, as regards design, materials and production, free from any defect. Any warranty claims derived

from some future state of the art are expressly excluded. This warranty shall lapse in the event of any failure to maintain the operating conditions specified by the buyer to Seller and confirmed by Seller in writing.

Our liability for defects or for absence of expressly warrant qualities shall be governed exclusively by the Article 7. Warranty claims shall be barred within twelve months of delivery and unless the defects are of a nature which cannot be detected even in the course of a proper examination must be asserted in writing within a preclusive period of two weeks of delivery. Besides, defects must be reported to us promptly upon detection. Our liability for breach of warranty shall be limited-all other claims being excluded, and para 7.2 notwithstanding at our option either to making substitute delivery or-even repeated-remedy for which we shall be granted reasonable time.

7.2 If in case of substitute delivery our goods are found to defective again, of it remedy proves to be unsuccessful after a maximum of three attempts, the buyer shall have the right at his option either to cancel the contract or to reasonably reduce the purchase price. Further claims are excluded, especially claims for damages; including compensation for consequential damage, unless the defect of the goods was brought about by us deliberately or through gross negligence on our part.

7.3 Where products not of our own make are used in our products, our liability shall be limited to assailing our warranty claims against our suppliers to the buyer. We undertake to furnish to the buyer promptly upon receipt of his notice of defect any information the buyer needs to enforce such warranty claims. In such cases any further liability on our part in terms of para 6.1 and 6.2 above shall exist only to the extent the buyer does not prevail over our supplier in court.

7.4 In the event of any damage the User shall inform Seller in writing promptly upon the occurrence of such damage. No part alleged to have been damaged shall be disassembled without Seller's approval and without the presence of an Seller representative, or dispatched to Seller. The evaluation of failure of the mechanical seal shall be at Seller discretion.

We accepts no liability for any damage caused by improper or unsuitable use, by faulty installation or commissioning, or by normal wear and tear. The start and finish of this warranty term is not affected by the introduction of new or refurbished parts in case of a seal failure.

7.5 This warranty extends exclusively to the repair of the seal involved and to the provision of new parts, if any, with such seal having to be sent to Seller for repair. Any further warranty of any kind, including but not limited to the payment of assembly charges, or liability for consequential damages is excluded. With respect to elastomeric materials and other parts purchased by Seller. Seller's liability shall be limited to the assignment of any warranty claims Seller may have against its suppliers.

If the defective goods are further processed or treated or mingled with products of another origin by the buyer or if the buyer of a third party who is not one of our supplies attempted to make repairs, the burden of proof that the defect existed already at the time of delivery of the articles involved shall be on the buyer.

7.6 Unless otherwise provided for in the Contract, Seller makes no other warranties, whether express or implied, including but not limited to the implied warranties of merchantability or fitness for a particular purpose, and all such warranties are expressly excluded to the extent permitted by law.

No warranty is given for losses due to any of the following reasons unfit or improper use, defective assembly or putting in operation by the buyer or third parties. Natural wear and tear fault or negligent treatment unfit machinery

materials replacement materials poor construction work unfit foundation soil, chemical, electrochemical or electrical influences, unless they were occasioned through our negligence.

8.0 Changes

8.1 Each party may at any time propose changes in the schedule or scope of Goods. Seller shall have no obligation to proceed with any change in the schedule or scope of the Goods until both parties have agreed to such change in writing.

8.2 The scope, Purchase Price, schedule and/or other provisions in the Contract shall be adjusted/amended accordingly to reflect the additional costs or obligations incurred by Seller resulting from the change, after taking into account the Seller's proposal date, Buyer's Site-specific requirements or procedures, or industry specifications, codes, standards, applicable laws or regulations. Unless otherwise agreed in writing by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

8.3 It shall be acceptable and not considered a change if Seller delivers Goods that bear a different, superseding or new part or version number compared to the part or version number listed in the Contract.

9.0 Service and Technical Support

9.1 Seller will provide general service and technical support to Buyer in accordance with the then-current service and technical support policies. Service and support offers may vary from product to product. If Buyer purchases optional services and support as listed in Seller's invoice, Seller will provide the optional service and support to Buyer in accordance with the then-current terms and conditions as stated in the Contract. Seller has no obligation to provide service or support until Seller has received full payment for the Goods or the optional service and support.

10.0 Limitation of Liability

10.1 To the extent permitted by law, the Seller's total liability to the Buyer arising from or in connection with the Contractor in tort (including negligence-subject to strict proof), shall be limited up to RM3,000 only or the Purchase Price as stated in the Contract, whichever is lower.

10.2 Seller shall not be liable for any losses, damages, costs and expenses directly or indirectly suffered by Buyer (including but without limitation to, loss of profits, loss of savings, loss of goodwill, loss of revenue or loss of contracts incurred by Buyer, whether anticipated or actual, or any special indirect or consequential damages of any nature whatsoever) or any action, claims and proceedings taken against Buyer by any third party or parties in connection with, incidental to and consequential upon the purchase, operation and use of the Goods, including but without limitation to, any losses and damages resulting from the interruption or failure in the operation of the Goods.

11.0 Termination

11.1 Seller shall be entitled to terminate the Contract with immediate effect by giving written notice to Buyer in the following events:

Buyer fails to pay any sum under the Contract on its Due Date and remains in default after 14 days of a notice in writing to Buyer to make such payment: or

Buyer suspends, or threatens to suspend, payment of its debts or is, or is deemed to be, insolvent or unable to pay its debts as they fall due for payment or admits inability to pay its debts; or

Buyer enters any composition or arrangement with its creditors; or

An order is made, or resolution is passed, or any analogous proceedings are taken for the winding-up, administration or dissolution (other than for the purposes of a solvent amalgamation or reconstruction) of Buyer; or

Any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, or similar officer is appointed over or in respect of Buyer or any part of its business or assets; or

Any distress or execution is levied upon any of Buyer's property; or

Any Force Majeure Event prevents Seller from performing its obligations under this Contract for any continuous period of 90 days: or

Buyer is in breach of a Contract and fails to remedy the breach within 14 days after being notified in writing by Seller of such breach

11.2 Upon termination pursuant to Clause 11 above, Seller shall have the right to

suspend further deliveries of the Goods to the Buyer, cease providing any services on site; and/or retain any deposit paid by Buyer for the Goods.

11.3 Termination of the Contract shall not prejudice any of the parties' right and remedy which the parties may have at the time of termination

12.0 Force Majeure

12.1 Neither party to the Contract shall be under any liability to the other for any failure to carry out, or delay in carrying out, any of its obligations under the Contract due to Force Majeure provided that the relevant party promptly gives the other party notice of the occurrence of Force Majeure. In these Terms and Conditions and/or Contract, "Force Majeure" means circumstances beyond the reasonable control of a party which is not the result of an intentional or negligent act or omission of the party, which circumstances include but without limitation to acts of God and any natural disaster, acts of war, civil commotions, sabotage, theft, acts or omissions of any local, state, national or governmental authority and strikes or other industrial actions or trade disputes of whatever nature ("Force Majeure Events").

13.0 Indemnity

13.1 The Buyer shall indemnify and hold the Seller harmless against all damages (including interest), penalties, costs and expenses to which Seller may become liable as result of any failure or breach by the Buyer of its obligations under the Contract; and negligence, default, or misuse of the Goods by or on the part of Buyer. This indemnity clause shall survive the completion or termination of the Contract.

14.0 Governing Law

14.1 These Terms and Conditions shall be governed in accordance with the laws of Malaysia. The parties irrevocably agree that any dispute arising out of or in connection with the Contract and/or these Terms and Conditions shall be subject to the nonexclusive jurisdiction of the courts of Malaysia.

15.0 General

15.1 The Contract constitutes the entire agreement of the parties and supersedes any previous contracts, arrangements, understandings and negotiations between them relating to the subject matter of the Contract. No additional terms communicated by Buyer at any time shall apply unless Seller expressly agrees in writing.

15.2 The Buyer shall not assign or otherwise transfer the Contracts and/or these Terms and Conditions or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of Seller. Any such unauthorized assignment shall be deemed null and void.

15.3 Non-Waiver. No failure or delay on Seller's part in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.

15.4 Any notice, approval, consents and/or other communication to be given under the Contract ("Notice") shall be in writing and signed by the authorized person of the party giving it. Any Notice shall be deemed to have received at the time it is received unless otherwise agreed between the parties.

16.0 Rendering of Technical Advice

16.1 The Seller shall not be under any obligation to give technical advice as to the characteristics of the Goods sold to the Buyer. Any technical advice requested for and given shall be on a without prejudice basis, to the best of the Seller's knowledge and ability. Such advice, however, is not binding and does not free the Buyer from the responsibility of carrying out its own tests and trials.

17.0 Severability

If any provision of the Terms and Conditions herein is or becomes legally invalid or unenforceable, then the validity of the other clauses of these Terms and Conditions remains unaffected.

18.0 Confidentiality

18.1 All dealings between the Seller and the Buyer shall be always kept confidential and neither party shall, except with the prior approval of the other and except as provided herein, disclose or divulge to any other any information relating to the dealings between the Seller and the Buyer.

18.2 The obligation of secrecy and confidentiality shall not apply to the following:

- a. any information that is part of the public domain, or which becomes part of the public domain.
- b. information required by law to be disclosed.
- c. disclosure of such information to the parties' respective holding companies.
- d. disclosure of such information to the parties' respective auditors for the purpose of preparing the annual accounts of the parties.
- e. disclosure of such information in any document prepared in connection with the offering of shares, debentures or other capital markets instrument by the parties, its holding company or its subsidiaries.
- f. disclosure that has been authorized by the parties.

19.0 Export Controls

19.1 We refer to the fact that the validity of our offer or the customer's order is subject to the issue of an export permit by the authorities. An agreed delivery date is similarly subject to the availability of an export permit. Therefore, when placing the order the customer should take into account that this could lead to postponement of delivery dates that are beyond our control. In case of any subsequent export the customer must comply independently with the relevant export control guidelines e.g. any regulations relating to the verification of the recipient or end user of the merchandise, the Regulation of Imports and Exports Act is refer to the Malaysian regulatory bodies (Strategic Trade Act 2010 / Customs Act 1967 of Malaysia).