

# **General Terms and Conditions of Purchase of EPflex Feinwerktechnik GmbH** **(January 2008)**

## **1. Area of Application**

All contracts for delivery of goods to EPflex between EPflex Feinwerktechnik GmbH (hereinafter „EPflex“) and merchants, legal persons under public law or special funds under public law shall be effected exclusively on the basis of the following terms and conditions. Customer's confirmations referring to any deviating terms and conditions are hereby rejected. Such conflicting terms or customer's terms in derogation from our terms shall not be recognized, unless we explicitly agreed upon their validity in written form. Our terms shall be valid also if we, being aware of conflicting terms or customer's terms in derogation from our terms, accept the delivery unreservedly. Any additional or deviating agreements shall require our written confirmation to be valid. Our terms and conditions of purchase shall be valid also for all future business relations with the customer even without any further reference to them.

## **2. Order and Acceptance**

**2.1.** An order shall be considered to be placed only if it is set out in writing and signed by us. Oral or telephon orders shall be binding on us only if we confirmed them through subsequent transmission of a written order. We shall accept no liability in case of obvious errors or clerical and arithmetic errors in the documents, drawings and plans provided by us. The supplier shall be obliged to instruct us about such errors so that our order may be corrected and replaced. This shall also apply in case of missing documents or drawings.

**2.2.** In accepting the contract, the supplier agrees to enable the verification of any documentary evidence of origin and supplier's declaration by the customs administration and to provide the necessary information for it as well as any possibly required official confirmations (information sheets). When delivering EU-origin goods the evidence thereto shall be provided by sending a supplier's declaration according to EG VO (European Union regulation) 1207/2001 dated 11.06.2001.

**2.3.** Acceptance of orders shall be confirmed to us by a signed copy of the order within two weeks after ordering; after that time, we shall not consider ourselves bound by the order.

**2.4.** Any variations in quantity and/or quality regarding our order's text or content and any subsequent alterations to contract shall be deemed to have been agreed, only if we expressly confirmed them in writing.

**2.5.** Drawings, tools, samples, models, brands and formats or the like as well as finished products or semi-finished products provided by us or performed to our order, remain in our possession and may be delivered to third parties only with our explicit written approval. Except when otherwise stipulated, these shall be returned to us immediately without any further notice when completing the order. Products manufactured and labelled respectively with such production tools, brands and formats may be delivered to third parties only with our explicit written approval.

**2.6.** The material provided by us will remain in our possession. As such, it shall be stored separately and may only be used to process our orders. The supplier shall be liable for any decline in value or loss even without fault. Objects that are produced with the material provided by us will be our property in the respective production stage. The supplier will store these objects for us. The storage costs for the objects and materials stored for us are included in the purchase price.

### **3. Prices and Terms of Payment**

**3.1.** Unless otherwise expressly specified, the agreed prices are fixed prices, unless the supplier generally reduces those prices. The prices include packaging, freight and all additional expenses free of charge excluding VAT to the delivery address stated on the order.

**3.2.** The supplier will not charge us more unfavourable prices and terms than to other customers, if and as far as these offer him the same or equivalent conditions in a given case.

**3.3.** Invoices shall be issued separately for each order. Payment shall be effected only on complete delivery of the defect-free goods and complete defect-free services respectively and after receipt of the invoice. This shall apply accordingly in case of partial delivery.

**3.4.** Cash discount periods shall not be affected in case of time delays caused by incorrect or incomplete invoices. The cash discount is 3 % when payment is effected within 14 days.

**3.5.** Any claims of the supplier against us may only be assigned to third parties with our approval. Payments shall be made only to the supplier.

### **4. Delivery and Delivery Times**

**4.1.** The delivery shall be effected free of costs, freight paid and with packaging included at supplier's expense to the destination stated by us. In the exceptional case that we have to pay the freight, the supplier shall choose the mode of transport prescribed by us, otherwise the most favourable mode of transport and delivery for us.

**4.2.** Partial or excess deliveries or deliveries in advance are only permitted with our approval. The supplier shall have to bear any possible additional costs. If partial delivery or delivery on call is agreed upon, we may claim the rights owed us under the complete contract when the delivery time is exceeded even when the conditions are met only for the partial delivery at first, but the interest in the performance of the complete contract has ceased to exist due to the delay in partial deliveries.

**4.3.** The risk shall not pass to us until the goods are accepted by our receiving centre.

**4.4.** The packaging is included in the price. In the exceptional case something else is agreed upon the packaging shall be charged at cost price. The supplier has to choose the packaging specified by us and to ensure that the packaging protects the goods against damage. In case of return the total charged price has to be credited.

**4.5.** The agreed delivery periods and dates shall be binding. They run from the date of the order. The goods shall have arrived at the receiving centre stated by us within the delivery period and on the delivery date respectively. In case of expected time delay the supplier has to inform us immediately and ask for our decision regarding adherence to the contract.

**4.6.** In case of delay in delivery, we shall be entitled to claim a contractual penalty of 0.5 % of the net order value per commenced week, not exceeding 5 % of the net order value. The contractual penalty rendered will be credited against a claim for damages. Claims for further damage caused by delay shall not be excluded by the contractual penalty.

**4.7.** We are not obliged to accept the goods before the expiration of the delivery date.

**4.8.** War, civil war, export restrictions and trade restrictions due to changing political circumstances and strikes, lockouts, business disruption, business restrictions and similar events which make the performance of the contract impossible or unreasonable, are considered as force majeure and exempt us from the obligation of punctual acceptance for the duration of their existence. The contractual partners shall be obliged to inform one another about this fact and to adjust their obligations in good faith to the changed circumstances.

## **5. Documentation**

**5.1.** Invoices, bills of delivery and packing slips shall be enclosed with each consignment in duplicate. These documents shall include:

- order number
- quantity and unit of quantity
- gross weight, net weight and calculated weight if applicable
- article description including our item number
- remaining quantity in case of partial deliveries.

**5.2.** In case of freight deliveries an advice of dispatch has to be transmitted to us separately on the date of dispatch.

## **6. Warranty**

**6.1.** The supplier shall dispatch only completely proven and favoured goods and will therefore waive a detailed receiving inspection at our house. We will examine incoming goods as far as and as soon as this is feasible in the normal course of business, and will notify detected defects. In this respect, the supplier will waive the objection of a delayed notification of defect under article 377 of the German Commercial Code (HGB).

**6.2.** The supplier shall be responsible for the delivered goods and provided services corresponding to state-of-the-art technology, contractually-agreed attributes and safety regulations, employment protection regulations, accident prevention regulations and other rules and regulations.

**6.3.** The supplier shall be liable for his delivery and our application of it not infringing any patents or other third-party industrial property rights. He shall indemnify us and our customers for all claims resulting from the use of such property rights. This does not apply as far as the supplier produced the delivered goods according to drawings, models or other equivalent descriptions or instructions we provided and as far as he does not know or, in connection with the goods he has produced, cannot know that the goods infringe property rights.

**6.4.** We shall be entitled to assert our rights against the supplier in case of recourse of the company according to article 478, 479 of the German Civil Code (BGB) even if no purchase of consumer goods exists.

**6.5.** The warranty period is 36 months and commences upon the passing of risk.

## **7. Manufacturer's Liability**

If there are any claims against us due to product liability, the supplier shall be obliged to indemnify us for such claims if and insofar the damage is caused by a defect in the subject matter of the contract delivered by the supplier. In cases of strict liability this shall apply only if any fault lies with the supplier. If the supplier is responsible for the cause of damage he shall thus bear the burden of proof in this respect. In these cases all costs and expenses including the costs of possible litigation or product recall shall be borne by the supplier.

## **8. Environmental Stipulations**

For materials which require special treatment regarding packaging, carriage, storage, handling and/or waste disposal due to laws, ordinances or other regulations or due to their composition or their effect on the environment, the supplier shall attach a completely filled out safety data sheet, the data sheet required for a possible resale abroad as well as an applicable accident procedures sheet to the confirmation of order. In case of any changes in material or a change to the existing legal situation, the supplier shall send us the updated data sheets and leaflets.

## **9. Applicable Law, Place of Jurisdiction, Partial Nullity**

**9.1.** These terms and conditions and the entire legal relations between EPflex and the customer are exclusively governed by the law of the Federal Republic of Germany. The application of the Uniform Law on the International Sale of Goods (CISG) is explicitly excluded.

**9.2.** The place of performance for all obligations from the contractual relationship is Dettingen/Erms. Place of jurisdiction for all disputes resulting from the contractual relationship and about its creation and effectiveness is Dettingen/Erms, as far as the customer is a merchant or legal person so equated in article 38 of the German Code of Civil Procedure (ZPO). However, we are also entitled to sue the customer at his registered office.

**9.3.** If any provision of these terms and conditions or any provision within other agreements should be or become invalid, the validity of all other provisions or agreements shall remain unaffected thereby.

**9.4.** Changes and supplements shall require the written form if they are to be valid. This shall apply likewise for any waiver of the requirement for the written form.