

General Terms and Conditions of Sale and Delivery of
EPflex Feinwerktechnik GmbH
(January 2008)

1. Area of Application

All contracts for delivery of goods between EPflex Feinwerktechnik GmbH (hereinafter „EPflex“) and merchants, legal persons under public law or special funds under public law shall be subject exclusively to 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, carry out the delivery unreservedly. Any additional or deviating agreements shall require our written confirmation to be valid. Our terms of sale and delivery shall be valid also for all future business relations with the customer even without any further reference to them.

2. Offer and Order

2.1. Our offers are subject to change and without obligation unless otherwise noted in the confirmation of order. The documents added to the offer such as illustrations, drawings, sizes and weight specifications shall be binding only as far as they are expressly marked as binding. The customer is bound by orders, also by phone, for 1 week. The contract comes into existence if we confirm the order of the customer by confirmation of order or delivery within this period. Our confirmations of order are always issued subject to a positive credit rating of the customer and subject to punctual and correct supply to ourselves.

2.2. Call orders are considered as firm orders and shall be accepted within a period of 3 months after conclusion of the contract unless otherwise noted in the confirmation of order. After this period the price for the parts not requested falls due and EPflex shall be entitled to charge the customer for storage costs.

2.3. The agreed price for samples ordered by the customer has to be paid even if the intended order is not placed.

2.4. Our representatives are not authorised to arrange supplementary verbal agreements or assurances that exceed the content of our written undertakings.

3. Product Changes

We shall be entitled to deliver goods the construction and form of which are modified provided that this does not impair the overall performance. Further, we point out that the use of the goods as well as trading and export may take place only in accordance with the corresponding valid foreign trade regulations.

4. Prices and Terms of Payment

4.1. Those prices stated in our confirmation of order are binding. They do not include packaging, freight, insurance, customs, taxes and other public charges and import turnover tax / VAT in particular. The costs for the return transport of the packaging shall be borne by the customer. Unless a fixed price was explicitly agreed upon for the order, the prices valid at EPflex on the date the contract is concluded shall apply.

4.2. Invoices shall be paid according to the terms of payment stated in the confirmation of order or the invoice; and in other respects, without deduction on receipt of the goods. In case of delay in payment we charge interest amounting to 8 percentage points p.a. above the respective base interest rate according to article 247 of the German Civil Code (BGB). We and the customer shall be entitled to provide evidence that the resulting damage was major or minor. This shall be without prejudice to further entitlements.

4.3. If the customer falls behind with due payments or if we become cognisant of circumstances which justify reasonable doubt of the customer's solvency or credit worthiness, we shall be entitled to demand, at our own option, payment in advance or provision of security. If this demand is not fulfilled we shall be further entitled to claim a right of retention concerning further deliveries and to refuse the performance of the contract after an appropriate additional respite and to demand damages instead of performance.

4.4. The assertion of a right of retention or the setting off against possible counterclaims of the customer is only permitted in case of legally binding or undisputed counterclaims.

5. Delivery and Delivery Times

The delivery shall be effected ex works in Dettingen. The risk of transport and the loading charges will be to the debit of the customer. The delivery shall be effected for account of the customer without liability for the cheapest mode of transport. The measures, weights, number of pieces etc. determined by EPflex shall be applicable. We determine means of transport and transport route unless the customer issues a different instruction. The closing of an insurance contract that covers transport or breakage shall be effected only on express request, at the expense and according to specifications of the customer.

The risk shall pass to the customer after the consignment has been handed over to the person who carries out the transport or has left our works for the purpose of dispatch. If the dispatch becomes impossible without our fault, the risk will be passed to the customer with the notice of readiness for dispatch. This shall only apply if the customer is not a consumer according to article 13 of the German Civil Code (BGB).

5.2. Our specifications in the confirmation of order are exclusively decisive for scope and date of delivery. We shall always be entitled to partial deliveries and partial performances. Partial deliveries may be invoiced separately.

5.3. The delivery times stated by us are considered as only roughly agreed upon. Fixed delivery dates require our specific written confirmation as such. The delivery time starts with the date of the order confirmation and is met if the goods have left the work by the end of the delivery time or if the readiness for dispatch of the goods is reported. The compliance with our obligation to deliver requires the punctual and correct performance of the contractual obligations by the customer.

The time for delivery shall be extended appropriately due to any measures taken in the context of industrial actions or due to any unforeseen circumstances beyond our control, as far as there is evidence that such circumstances have a material impact on the production or the handover of the delivery item. This shall also apply if such circumstances impact any sub-contractor. We are not responsible for the previously mentioned circumstances even if they emerge during an already existing delay. We shall inform the customer in important cases as soon as possible of the start and termination of such circumstances.

5.4. We shall be liable only for damage caused by delay in case of typically occurring, predictable damage. The limitation shall not be applied in case of malicious intent and gross negligence.

5.5. If the handover is delayed on demand of the customer or due to circumstances caused by him, the risk passes to the customer from the date of readiness for dispatch. The maturity of our payment claim shall not be affected in these cases, in fact, the delivery is considered as having taken place on the agreed date. The storage shall be effected at customer's cost and risk. If the delivery is carried out before the agreed date, it therefore cannot be rejected by the customer.

6. Reservation of Title

6.1. The goods delivered remain our property (so-called reserved goods) until all claims (including all outstanding balance claims on open account) have been fulfilled. We shall be entitled to submit these claims on every legal ground against the customer now or in the future. If our (co-) ownership expires due to union or processing, is hereby agreed that our (co-) ownership of the uniform object will be passed to us pro rata value (invoice value). The customer shall store our (co-) ownership free of charge.

6.2. We shall be entitled to demand the restitution of the goods on the strength of reservation of title if the customer defaults on payment or if it becomes apparent that our payment claims are at risk due to defective performance by the customer. A cancellation of the contract is no precondition for this demand for restitution. Furthermore, the demand for restitution does not imply the cancellation of the contract.

6.3. The customer shall be entitled to resell the reserved goods in orderly business transactions as long as he does not default on payment. The customer hereby assigns any claims in full (including all outstanding balance claims on open account) concerning the reserved goods which result from resale or any other legal grounds (insurance, unlawful act) as a precaution. We hereby grant the customer revocable authorisation to collect the claims assigned to us in his own name. We shall be entitled to announce the assignment of a claim to the garnishees even in the name of the customer, if the customer does not comply with his payment obligations from the proceeds obtained from the assigned claims, if he defaults on payment; if an application for the opening of insolvency proceedings is filed or upon cessation of payment. The collection authorisation of the customer expires in the case of notice of assignment to the garnishee. In this instance, we may demand that the customer informs us about the assigned claims and their debtors, gives all information required for collection and furnishes the corresponding documents.

6.4. In case of access to the reserved goods, garnishments in particular, by third parties, the customer will point out our property and inform us immediately so that we are able to enforce our proprietary rights. All costs required for the cancellation of the attachment and for the replacement of the delivery item shall be borne by the customer insofar as they are not to be repaid by third parties.

6.5. We undertake to release the securities due to us upon request of the orderer inasmuch as the realisable value of our securities exceeds our claims to be secured by more than 10%. The choice of the securities to be released is incumbent upon us.

7. Warranty

7.1. We guarantee the goods to be free of manufacturing and material -defects at the time of transfer of risk. We reserve the right to a quantitative under- or over delivery up to 10 %. Further guarantee provisions regarding several equipment attached to the goods in the form of promise of guarantee, are to be understood as a pure guarantee for the end customer according to the respective guarantee provisions and remain unaffected.

7.2. The warranty period is 12 months and commences at the passing of risk. This period is a period of limitation that shall not apply in case of fraudulent concealment of a defect, in case of claims resulting from intentional interference with contract, in case of culpable injury to life, body, health and in cases of claims based on the Product Liability Act.

7.3. The customer has to check the goods immediately upon receipt of the delivery and has to inform us immediately, but within one week of receipt of the delivery item, in writing of any defects.

7.4. The customer is not entitled to assign his warranty claims to third parties.

8. Limitation of Liability

8.1. In case of intent or gross negligence – on whatever legal grounds – we shall be liable pursuant to the legal provisions.

8.2. If we culpably violate a material obligation or a cardinal obligation we shall be strictly liable without limitation for damages through gross negligence or with intent, in case of simple negligence the liability shall be restricted to the typically occurred, predictable damage. The same applies if the customer is entitled to claims for damages instead of performance.

8.3. The liability for damages vis-à-vis us is excluded, unless otherwise specified beforehand. This does not apply as far as a liability insurance generally covers any property damage culpably caused by us.

8.4. All claims for damages based on the injury of life, body, health remain unaffected. Any claims based on provisions of the Product Liability Act also remain unaffected.

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 UN Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.

9.2. The place of performance for all liabilities 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 applies likewise for any waiver of the requirement for the written form.