

## General Terms and Conditions of Sale and Delivery of EPflex Feinwerktechnik GmbH

### 1. Validity of the Terms and Conditions

Contracts between EPflex Feinwerktechnik GmbH (hereinafter referred to as "EPflex") and merchants, legal persons under public law or special funds under public law for the delivery of goods are concluded exclusively on the basis of the following terms and conditions. Counter-confirmations of the customer with reference to deviating conditions are hereby rejected; EPflex does not acknowledge such conflicting or deviating terms and conditions of the customer, unless EPflex has expressly agreed to their validity in writing. These conditions also apply if EPflex executes the delivery without reservation in the knowledge of conflicting or deviating terms and conditions of the customer. These General Terms and Conditions of Sale and Delivery also apply to all future transactions with the customer, even without reference being made to them. Ancillary agreements and deviating agreements require the written confirmation of EPflex to be legally valid.

### 2. Offer and Order

**2.1.** EPflex's offers are subject to confirmation and are non-binding, unless otherwise stated in the order confirmation. The documents enclosed with an offer, such as illustrations, drawings, dimensions and weights, are only binding if they are expressly marked as binding. The customer is bound to orders, also by telephone, for 1 week. The contract is concluded when EPflex confirms the customer's order by order confirmation or delivery within this period. Order confirmations by EPflex shall always be made subject to a positive credit assessment of the customer and are subject to punctual and proper self-delivery.

**2.2.** Call orders are considered firm orders and are to be accepted within a period of 3 months after conclusion of the contract, unless otherwise stated in the order confirmation. After expiry of this period, the price for parts not called up shall become due and EPflex shall be entitled to charge the customer for storage costs.

**2.3.** For samples ordered by the customer, the agreed price is to be paid even if the planned production order is not fulfilled.

**2.4.** Representatives of EPflex are not entitled to enter into any oral agreements or representations that go beyond or deviate from the content of EPflex's written representations.

### 3. Product Changes

EPflex may deliver goods that have been modified in terms of design and form, provided that this does not impair their overall performance. EPflex would also like to point out that the use of

the products as well as trade and export may only take place in compliance with the applicable foreign trade regulations.

### 4. Prices and Payment

**4.1.** The prices stated in EPflex's order confirmation, which are exclusive of packaging, freight, insurance, customs duties, taxes and other public charges, in particular import sales tax / value added tax, are always decisive. The costs for the return transport of packaging shall be borne by the customer. For orders for which fixed prices have not been expressly agreed, the prices valid at EPflex on the day the contract is concluded shall apply.

**4.2.** Invoices are payable at the terms of payment stated in the order confirmation or invoice, without deduction upon receipt of the goods. In the event of a default in payment, EPflex may charge interest at a rate of 9 percentage points p.a. above the respective base interest rate pursuant to § 247 of the German Civil Code.

**4.3.** If the customer is in arrears in regard to due payments or if EPflex becomes aware of circumstances that give reason to doubt the solvency or creditworthiness of the customer, EPflex may, at its option, demand either advance payment or the provision of security. If this request is not met, EPflex shall also have the right to assert a right of retention with regard to further deliveries and, after expiry of a reasonable grace period, to refuse performance of the contract and claim damages instead of performance. EPflex may also demand immediate payment of all outstanding receivables.

**4.4.** The assertion of a right of retention or offsetting against any counterclaims by the customer shall only be permissible with counterclaims that have been established as final and absolute, are ready for decision or are undisputed.

### 5. Delivery, Delivery Times

**5.1.** The delivery takes place ex works Dettingen. The risk of damage to or loss of the contractual product during transport or delay in transport shall pass to the customer upon delivery by EPflex to the transport company. Delivery is made by EPflex at the expense of the customer without responsibility for the cheapest shipment; the dimensions, weights, quantities etc. determined by EPflex are decisive. Unless the customer gives instructions to the contrary, EPflex shall determine the means of transport and the route. Transport or breakage insurance shall only be taken out upon express request and at the expense and according to the customer's specifications. If dispatch becomes impossible through no fault of EPflex, the risk shall pass to the customer upon notification of readiness for dispatch. This only applies if the customer is not a consumer (§ 13 of the German Civil Code).



**5.2.** The scope and time of delivery shall be determined exclusively by the information contained in EPflex's order confirmation. EPflex is entitled to make partial deliveries and render partial services at any time. Partial deliveries may be invoiced separately by EPflex.

**5.3.** The delivery times stated by EPflex are not binding. Fixed delivery dates require our express written confirmation as fixed dates. The delivery time begins with the day of the order confirmation and is complied with, if the goods have left the factory by the end of the delivery period or the dispatch readiness of the goods has been announced. The delivery period shall be extended appropriately in the event of measures taken as part of labor disputes, as well as in the event of unforeseen hindrances that lie outside the sphere of influence of EPflex, insofar as such hindrances demonstrably have a considerable influence on the manufacture or delivery of the delivery item. This also applies if such circumstances occur with subcontractors. We are not responsible for the aforementioned circumstances even if they arise during an already existing delay. EPflex shall inform the customer of the beginning and end of such hindrances as soon as possible.

**5.4.** In the event of damage caused by delay, we shall only be liable for foreseeable damages that typically occur under such a contract. The limitation does not apply in the case of intent and gross negligence.

**5.5.** If, at the request of the customer or due to circumstances for which the customer is responsible, delivery is not effected by EPflex at the time of readiness for shipment, the risk shall pass to the customer from the date of readiness for shipment. The due date of EPflex's payment claim shall not be affected in such cases; rather, the delivery shall be deemed to have been effected at the agreed time. Storage is then carried out at the customer's expense and risk. If the delivery takes place before the agreed time, it cannot therefore be rejected by the customer.

## **6. Retention of Title**

**6.1.** The delivered goods shall remain our property (reserved goods) until all claims (including all current account balance claims) to which EPflex is entitled against the customer for any legal reason now or in the future have been satisfied. Joining, mixing, processing or reshaping shall be carried out exclusively for EPflex. In this case EPflex shall acquire a (co-) ownership share in the finished goods or in the new object which corresponds to the ratio of the value of the reserved goods to the value of the finished goods or the new object. The customer shall keep our (co-)owned goods in safe custody free of charge.

**6.2.** If the customer is in default of payment or if it becomes apparent that our payment claims are at risk due to the customer's inability to pay, we are entitled to demand the return of the goods on the basis of the reservation of title. In order to enforce this right, EPflex may enter the customer's business premises and take possession of the reserved goods. Withdrawal from the contract is not a prerequisite for this request for release of the goods. Furthermore, the request for release of the goods does not mean a withdrawal from the contract.

**6.3.** The customer is entitled to sell the goods subject to retention of title in the ordinary course of business under retention of title as long as the customer is not in default. The customer is not permitted to pledge any reserved goods or transfer ownership of the goods by way of security. The customer hereby assigns to us by way of security all claims (including all current account balance claims) arising from the resale of the reserved goods or any other legal reason (insurance, unlawful act) concerning the reserved goods. We revocably authorize the customer to collect the claims assigned to us in the customer's own name. We may notify the third-party debtors of the assignment of the claim on behalf of the customer if the customer does not meet the customer's payment obligations from the proceeds received from the assigned claims, is in default of payment, an application is made for the opening of insolvency proceedings against the customer's assets or if the customer has suspended payments. Upon notification of the assignment to the third-party debtor, the customer's right to collect expires. In this case EPflex may demand that the customer notify EPflex of the assigned claims and their debtors, provide all information necessary for collection and hand over the relevant documents.

**6.4.** In the event of any action by third parties against the reserved goods, in particular attachments/liens, the customer shall draw attention to our ownership and inform us immediately so that we can assert our ownership rights. The customer shall bear all costs that are incurred for the terminating of any actions brought by third parties, as well as costs for the replacement of the delivery item unless they are actually reimbursed by third parties.

**6.5.** The customer shall treat the goods that are subject to retention of title in a prudent manner, in particular the customer shall sufficiently insure them, at their replacement value, at the customer's own expense against fire, water and theft.

**6.6.** We shall release the securities to which we are entitled at the request of the customer to the extent that the realizable



value of our securities exceeds the claims to be secured by more than 10%, whereby the choice of the securities to be released is up to us to determine.

## 7. Warranty

**7.1.** We guarantee that the goods are free of manufacturing and material defects at the time of the transfer of risk. We reserve the right to under-deliver or over-deliver by up to 10% in terms of quantity. Further guarantee regulations for the individual devices, which are enclosed with the goods in the form of guarantee promises, are to be understood as a pure end customer guarantee in accordance with the respective guarantee provisions and remain unaffected.

**7.2.** The warranty period is twelve months and begins with the transfer of risk. This period is a limitation period and does not apply in the event of fraudulent concealment of a defect, for claims arising from intentional breaches of contract, for culpable injury to life, limb or health and for claims arising from the Product Liability Act.

**7.3.** If the delivered goods show recognizable damages or shortfalls upon delivery, the customer shall note these in writing on the receipt of the transport company. The note must adequately indicate the damage or the shortfall (notice of damage according to § 438 of the German Commercial Code).

**7.4.** The customer shall immediately check the goods after receipt of the delivery for completeness, conformity with the delivery documents and defectiveness (§ 377 of the German Commercial Code) and immediately notify EPflex in writing of a complaint, but at the latest within one week after receipt of the delivery item. If a complaint is not made in due time, the goods shall be deemed to have been properly and completely delivered, unless the defect was not identifiable during the inspection.

**7.5.** The customer is not entitled to assign the customer's warranty claims to third parties.

## 8. Limitation of Liability

**8.1.** In the event of intent or gross negligence – for whatever legal reason – we are liable in accordance with the statutory provisions.

**8.2.** EPflex is not liable for any damage not caused to the delivered product itself; in particular, EPflex is not liable for any loss of profit or other financial loss (indirect and consequential damages) suffered by the customer.

**8.3.** If we culpably violate an essential obligation or a cardinal obligation, then we are liable for damages in the case of

intent or gross negligence without limitation; in the case of simple negligence liability is limited to typically occurring, foreseeable damages. The same shall apply if the customer is entitled to compensation for damages instead of performance.

**8.4.** Unless otherwise agreed above, liability for damages vis-a-vis EPflex shall be excluded; this shall not apply if liability insurance is usually taken out for material damages culpably caused by us.

**8.5.** All claims for damages due to injury to health, body or life shall remain unaffected. Claims based on a provision of the Product Liability Act also remain unaffected.

## 9. Applicable Law, Place of Jurisdiction, Partial Invalidity

**9.1.** These General Conditions of Purchase and all legal relations between EPflex and the customer are governed exclusively by the laws of the Federal Republic of Germany, with the exception of international private law and to the express exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

**9.2.** The place of performance for all obligations arising from the contractual relationship is Dettingen/Erms. The place of jurisdiction for all disputes arising from and in connection with contracts between EPflex and the customer, insofar as the customer is a merchant or a legal entity equivalent in § 38 of the German Code of Civil Procedure, is Dettingen/Erms; however, EPflex shall also be entitled to file a suit against the customer at the location of the customer's registered office.

**9.3.** Should a provision in these General Conditions of Purchase or a provision within the framework of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.