

## **General Conditions of Sale and Delivery** **EP Ehrler Prüftechnik Engineering GmbH**

### **I. General Information**

1. All deliveries and services shall be governed by these terms and conditions as well as any separate contractual agreements which shall apply to entities and legal persons governed by public law. Deviating purchasing conditions of the Purchaser are not contractually agreed by order acceptance.

In the absence of any special agreement, a contract is concluded with the Supplier's written order confirmation.

2. The Supplier reserves the right to property and copyrights to samples, cost estimates, drawings, etc. of physical and non-physical nature, including data in electronic form; These must not be made accessible to third parties. The Supplier undertakes to make information and documents, which are designated as confidential, only with his consent accessible to third parties.

### **II. Price and payment**

1. The prices, in the absence of any special agreement, shall be valid ex works, including loading at the factory, but excluding packaging and unloading. VAT is added with the respective statutory amount.
2. In the absence of any special agreement, the payment shall be made without any deduction to the Supplier's account:
  - 50% prepayment after receipt of order confirmation,
  - 50% before shipping.
3. The right to withhold payments or to set off counterclaims from other legal relationships shall only be granted to the Purchaser insofar as his counterclaims are undisputed or legally established.

### **III. Delivery time, delivery delay**

1. The delivery time is set by the agreements of the contractual parties. Their compliance by the Supplier requires that all commercial and technical questions have been clarified between the contractual parties and that the Purchaser has fulfilled all obligations incumbent upon him, such as the provision of the necessary official certificates or approvals, or the payment of a down payment. If this is not the case, the delivery time is extended accordingly. This shall not apply if the Supplier is responsible for the delay.
2. The adherence to the delivery time is subject to correct and timely self-delivery. The Supplier shall inform the Purchaser of any delays as soon as possible.
3. The delivery time is observed when items for delivery have left the Supplier's works or have been declared ready for dispatch. Insofar as acceptance is to be carried out - except for justified rejection of acceptance - the acceptance date shall be decisive, alternatively the declaration of readiness for acceptance.

4. If dispatch or acceptance of the delivery item is delayed for reasons for which the Purchaser is responsible, the costs incurred as a result of the delay shall be charged to him, starting one month after the notification of dispatch or readiness for acceptance.
5. If the non-performance of the delivery time is attributable to force majeure, to labor disputes or to other events outside the Supplier's sphere of influence, the delivery time shall be extended accordingly. The Supplier shall notify the Purchaser of the beginning and the anticipated end of such circumstances as soon as possible.
6. The Purchaser may withdraw from the contract without setting a time limit if before the risk has passed and the entire performance becomes finally impossible for the Supplier. The Purchaser may also withdraw from the contract if, in the case of an order, execution of part of the delivery becomes impossible and he has a legitimate interest in rejecting the partial delivery. If this is not the case, the Purchaser shall pay the contract price for the partial delivery. The same shall apply in case of an inability of the Supplier to perform. In addition, Section VII.2 is valid.

If the impossibility or the inability occurs during the acceptance delay or if the Purchaser is solely or largely responsible for these circumstances, he remains obliged to make a counter-performance.

7. If the Supplier falls into arrears and if the Purchaser incurs damages therefrom, he is entitled to demand a lump sum compensation for default. It shall be 0.5% for each full week of the delay, but in total not more than 5% of the value of the part of the total delivery, which cannot be used in time or according to contract as a result of the delay.

If, after the due date, the Purchaser provides the Supplier with a reasonable deadline for performance and the deadline is not met, the Purchaser is entitled to withdraw from the contract within the scope of the statutory provisions. He undertakes, at the Supplier's request, to declare within a reasonable time whether he exercises his right of withdrawal.

Any further claims arising from delay in delivery shall be governed exclusively by Section VII.2 of these conditions.

#### IV. Transfer of risk, acceptance

1. The risk shall be passed to the Purchaser when the delivery item has left the factory, even if partial deliveries are made or the Supplier has also accepted other services, e.g. the shipping costs or delivery and installation. If acceptance is to be carried out, this shall be decisive for the transfer of risk. It must be carried out as soon as possible, alternatively after the Supplier's declaration of readiness for acceptance. The Purchaser may not refuse acceptance in the event of an immaterial defect. Acceptance must be carried out in any case if the technical data of a duty / work booklet are fulfilled. The actual usage replaces the acceptance.
2. If the dispatch or the acceptance is delayed or does not occur due to circumstances which are not attributable to the Supplier, the risk shall pass to the Purchaser from the date of the notification of readiness of dispatch or acceptance. The Supplier undertakes to take out the insurances which the Purchaser requires at the Purchaser's expense.
3. Partial deliveries are permissible as far as is considered reasonable for the Purchaser.

## V. Reservation of title

1. The Supplier reserves the right to ownership of the delivery item until the receipt of all payments - including any supplementary services due - from the delivery contract.
2. The Supplier is entitled to take out the required insurance for the delivery item against theft, breakage, fire, water and other damages at the Purchaser's expense, provided the Purchaser has not proven that he has taken out the insurance himself.
3. The Purchaser may neither dispose of or pledge the delivered item nor transfer it by way of security. In the case of seizures, confiscation or other orders by a third party, he shall immediately notify the Supplier thereof. In the event of a resale, an extended retention of title shall be agreed, the Purchaser assigns as a precaution all receivables from the resale with all subsidiary rights against the third-party debtor up to the amount of the invoice amount to the Supplier with the authority of the pro rata collection of the claim.
4. In case of breach of contract by the Purchaser, in particular in the event of a delay in payment, the Supplier is entitled to take back the delivery item after a reminder and the Purchaser is obliged to surrender the goods.
5. Due to the retention of title, the Supplier can only demand the delivery item if he has withdrawn from the contract.
6. The application for the opening of insolvency proceedings entitles the Supplier to withdraw from the contract and to demand the immediate return of the delivery item.

## VI. Deficiency claims

In the event of material defects or defects of title, the Supplier shall be liable with the exclusion of further claims, subject to Section VII as follows:

### Material defects

1. All parts must be repaired or replaced at the option of the Supplier, which are found to be defective as a result of a circumstance occurring prior to the transfer of risk. The determination of such defects must be reported to the Supplier without delay in writing. Replaced parts become the Supplier's property.
2. In order to carry out all subsequent improvements and substitute deliveries which appear necessary to the Supplier, the Purchaser shall, after agreement with the Supplier, grant the necessary time and opportunity; Otherwise, the Supplier is exempted from liability for the resulting consequences. Only in urgent cases of endangering operational safety or to avoid disproportionate damage, whereby the Supplier is to be immediately informed, the Purchaser has the right to have the defect eliminated by himself or by a third party, and to demand compensation from the Supplier for the necessary expenses.
3. The Supplier bears the direct costs of the repair or replacement delivery, including the dispatch, as far as the complaint proves to be justified. He shall also bear the cost of dismantling and installation, as well as the costs of any necessary equipment and auxiliary staff, including travel expenses as far

as this does not result in a disproportionate burden on the Supplier.

4. Within the scope of the statutory provisions, the Purchaser shall have the right to withdraw from the contract if, in the light of the statutory exemptions, the Supplier fails to reach a reasonable deadline for subsequent improvement or replacement delivery. If there is only a negligible defect, the Purchaser is only entitled to a reduction in the contract price. The right to a reduction in the contract price is otherwise excluded.
5. Further claims shall be governed exclusively by Section VII.2 of these conditions.
6. No liability is assumed in particular in the following cases:  
Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable equipment, defective construction work, unsuitable foundation, chemical, electrochemical or electrical influences, provided that they are not the responsibility of the Supplier.
7. If the Purchaser or a third party improperly repair the item, the Supplier is not liable for the resulting consequences. The same shall apply to changes of the delivery item made without the prior consent of the Supplier.

#### Defects of title

8. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, the Supplier will, at his expense, procure the Purchaser in principle the right to further use or modify the delivery item in a manner reasonable for the Purchaser so that the infringement no longer exists.

If this is not possible at economically reasonable conditions or in a reasonable time, the Purchaser is entitled to withdraw from the contract. Under these conditions, the Supplier is also entitled to withdraw from the contract.

In addition, the Supplier shall release the Purchaser from undisputed or legally established claims of the according property right owners.

9. The provisions of the Supplier in section VI. 8 are subject to the provisions in Section VII.2 in the case of protection or copyright infringement.

They exist only when

- the Purchaser informs the Supplier immediately of alleged protection or copyright infringements,
- the Purchaser supports the Supplier to an appropriate extent in the defense of the asserted claims or enables the Supplier with the implementation of the modification measures pursuant to Section VI. 8,
- all defence measures, including out-of-court regulations, remain reserved to the Supplier,
- the deficiency in the law is not based on an order of the Purchaser, and

- the infringement was not caused by the fact that the Purchaser changed the delivery item without authorization, or used it in a non-contractual manner.

## VII. Liability of the supplier, disclaimer

1. If the delivery item cannot be used by the Purchaser as a result of the Supplier 's failure or faulty suggestions or deliberations which were carried out before or after the conclusion of the contract, or the negligent infringement of other contractual ancillary obligations, in particular instructions for operation and maintenance of the delivery item, the provisions of Sections VI and VII.2 shall apply to the exclusion of further claims of the Purchaser.
2. The Supplier shall be liable for damages which have not occurred to the delivery item itself - for whatever legal reasons – only
  - a. in case of intent,
  - b. in case of gross negligence on the part of the owner /organs or senior employees,
  - c. in case of culpable injury to life, body, health,
  - d. in case of defects which he has fraudulently concealed,
  - e. within the framework of a guarantee,
  - f. in case of defects of the delivery item, insofar as the product liability law is liable for personal injury or material damage to privately used items.

In case of culpable violation of essential contractual obligations, the Supplier is also liable in the case of gross negligence of non-executive employees and in the case of slight negligence, in the latter case limited to the contract-typical, reasonably foreseeable damage.

Further claims are excluded.

## VIII. Limitation period

All claims of the Purchaser - for whatever legal reasons - expire in 12 months. The statutory periods shall apply to claims for damages pursuant to Section VII.2 a-d and f.

## IX. Use of software / copyrights

As far as software is included in the scope of delivery, the Purchaser is granted a non-exclusive right to use the delivered software including its documentation. It is handed over for the use of the intended delivery item. Use of the software at more than one system is prohibited.

The Purchaser may only reproduce, process, translate or convert the software from the object code to the source code to the extent permitted by law (§§ 69 a ff. UrhG – Copyright Act). The Purchaser undertakes not to remove or change manufacturer's data - in particular copyright notices - without the prior explicit consent of the Supplier.

All other rights to the software and the documentation, including the copies, remain with the Supplier or with the software supplier. Sublicensing is not permitted.

The copyrights of the equipment and problem solving conceived by the Supplier remain with the Supplier.

## X. Applicable law, jurisdiction

1. For all legal relations between the Supplier and the Purchaser, the law of the Federal Republic of Germany, which is decisive for the legal relations between domestic parties, applies exclusively with the express exclusion of the UN purchase law.
2. Jurisdiction is the court competent for the head office of the Supplier. However, the Supplier is entitled to bring an action to court at the head office of the Purchaser.
3. Should a provision in these terms and conditions be or become invalid, the validity of all other provisions shall not be affected.

As of 06/2013