



## Standard Terms and Conditions for Export, 119-018103F

of EPLAX GmbH  
Fritz-Thiele-Str. 12  
28279 Bremen  
- GERMANY -

1. These Standard Terms and Conditions for the sale of goods for export apply exclusively unless they are modified by express written agreement between the parties.

Offers, acceptances of offers, acknowledgements of orders and the sale of products of whatever type are subject to these Terms and Conditions. Any terms or conditions of the Purchaser which have the effect of amending the contract are hereby rejected; they will only be effective vis-à-vis the Seller if the Seller agrees to the modifications in writing.

These Terms and Conditions form the basis for all future individual purchase transactions between the Purchaser and the Seller and exclude all other agreements of whatever kind.

The Seller is entitled to correct any errors in its sales brochures, price lists, offer documents or other documentation without being held responsible for losses or damage resulting from such errors.

These Standard Terms and Conditions only apply to transactions with merchants as defined by German law.

2. **Order and offer documents**

Orders submitted by the Purchaser will only be regarded as accepted by the Seller if they are accepted by letter or by fax by the Seller or its representative/agent within seven days of receipt.

The quantity, quality, description and specifications of the goods will conform to the Seller's offer (if it is accepted by the Purchaser) or the Purchaser's order (if this is accepted by the Seller). All sales documents, specifications and price lists must be kept strictly confidential and third parties may not be given access to them.

The orderer is responsible for the accuracy of the order and for providing the Seller with any necessary information about the goods ordered within a reasonable time so that the order can be executed in conformity with contract.

If goods have to be manufactured or machined or processed in any way by the Seller and if the orderer has supplied specifications for this, the orderer must indemnify the supplier against any loss, damage, costs or other expenses which the latter has to pay or is prepared to pay because the contracted machining or processing of the goods in accordance with the orderer's specifications turns out to infringe a patent, copyright, trademark or other protected right of a third party.

The Seller reserves the right to amend the description of the goods with regard to the specifications to conform with legal requirements, as long as this amendment does not result in any detriment to the quality or usefulness of the goods ordered.

The Seller reserves without restriction its right to make use of cost estimates, drawings and other documentation produced by it (referred to in the following as documents) conferred by its ownership or copyright. These documents may only be made accessible to third parties with the prior agreement of the Seller and must be returned to the Seller immediately if no contract is concluded. This also applies accordingly to documents of the Purchaser, except that the latter's documents may be made accessible to third parties which the Seller employs as permitted for the execution of the contract.

3. **Purchase price**

The purchase price will be the price specified by the Seller or, if no price has been specified, the price quoted in the Seller's price list current at the time the order is placed.

The Seller reserves the right after informing the purchaser in good time and before goods are dispatched to increase the price of goods as necessary to take account of general price movement factors beyond its control (e.g. exchange rate fluctuations, currency rules, customs duties changes, significant increases in material or manufacturing costs) or of changes in suppliers.

Unless otherwise specified in the offer or in sale price lists or otherwise agreed in writing between the Seller and the Purchaser, all of the prices quoted by the Seller are ex works. If the Seller is prepared to deliver goods to other locations, the Purchaser must bear the cost of transport, packing and insurance.

Prices do not include value added tax, which the Purchaser must pay in addition to the Seller.

#### **4. Terms of payment**

The Purchaser must pay the purchase price within 30 days of the invoice date.

Payment may only be made by bank transfer; payments by bill of exchange or cheque will not be recognised as fulfilment of the obligation to pay.

Agreement may be reached between the contracting parties for the Purchaser to open a documentary letter of credit through its bank (or another bank acceptable to the Seller). In this particular case the letter of credit must be opened in accordance with the general guidelines and customary rules relating to documentary letters of credit in ICC Publication No. 500 Revised Issue 1993.

Should the Purchaser fail to meet its payment obligations on the due date, the Seller may without prejudice to any other rights or claims which it may have choose at its discretion

- to terminate the contract or to cease making deliveries to the Purchaser

or

- to charge the Purchaser interest on the unpaid amount at a rate 7% per annum above the European Central Bank's current base rate until full and final payment has been made. The Purchaser is entitled to prove that no loss or only a smaller loss was incurred as a result of the delay in payment.

#### **5. Delivery of goods**

Goods shall be delivered by the Purchaser taking possession of them at the Seller's business premises at any time as soon as the Seller has notified the Purchaser that the goods are ready for collection or, if another place for delivery has been agreed with the Seller, by delivery of the goods to that place.

If a specific delivery date was agreed in the contract and if the Seller fails to deliver within the agreed (or extended) delivery period, the Purchaser may, after giving prior written notice, apply a price reduction equivalent to 2% of the purchase price per week, unless it is apparent from the circumstances of the case that the Purchaser has not suffered any disadvantage. The Purchaser will have no further claims to damages based on delay in delivery except in the following specific cases. This restriction will not apply if delivery by a fixed date was agreed to be of the essence, if the delay was due to deliberate action or gross negligence by the supplier, its representatives or its servants or agents or if the supplier has breached any other substantial contractual obligation.

In the case of force majeure, for example in the form of operational breakdown, transport hold-ups, action related to labour disputes (in particular strikes or lockouts), failure to deliver, incorrect delivery or late delivery by our supplier or any other obstacle to performance which is not the fault of the Seller, the Seller will be entitled to delay delivery by the duration of that obstacle. If an obstacle seems likely to be permanent, the Seller will be entitled to refuse delivery of the goods in whole or in part.

If the Seller fails to deliver on time the Purchaser must grant the Seller an extension of at least three weeks in writing, on the expiry of which it may terminate the contract. The Purchaser will only be entitled to claim damages for non-performance if the delay in delivery was due to deliberate action or gross negligence or if the Seller culpably breached a substantial contractual obligation.

If the Purchaser has failed to accept the goods on the due date, it will still be under an obligation to pay the purchase price. In such cases the Seller will put the goods into storage at the risk and expense of the Purchaser. If requested by the Purchaser the Seller will insure the goods at the Purchaser's expense.

#### **6. Impossibility, amendments to contract**

If delivery is impossible the Purchaser will be entitled to claim damages unless the Seller cannot be held responsible for the impossibility. The Purchaser's entitlement to damages is, however, limited to 10% of the value of that part of the consignment which, because of the impossibility concerned, cannot be put into useful service. This restriction will not apply in cases of deliberate action or gross negligence by the Seller or cases based on injury to life, limb or health where mandatory liability is imposed by law. This does not imply any modification of the burden of proof to the disadvantage of the Purchaser. The right of the Purchaser to withdraw from the contract is not affected.

Should unforeseeable circumstances as defined in Item 5 Paragraph 3 significantly change the economic significance or content of the consignment or have a significant effect on the Seller's operations, the contract must be amended appropriately in good faith. If this is uneconomic, the Seller will be entitled to withdraw from the contract. Should the Seller intend to exercise its right to withdraw in such a case, it must notify the Purchaser of this immediately upon becoming aware of the consequences of the event concerned.

## **7. Passing of risk**

The risk of damage to or loss of the goods will pass to the Purchaser as follows:

- if the goods are not delivered on the Seller's business premises, at the time of handover, or if the Purchaser is late in accepting the goods, at the time when the Seller offers to hand them over,
- if the goods are delivered on the Seller's business premises ("ex works", Incoterms 2000), at the time when the Seller informs the Purchaser that the goods are ready for collection.

## **8. Reservation of title**

Regardless of delivery, the passing of risk or any other provisions of these Terms and Conditions, title to the goods will not pass to the Purchaser until the entire purchase price has been paid.

The Seller will be entitled to require the return of the goods, to sell them to a third party or to dispose of them in any other way if the purchase price has not been paid in full.

Until the goods have been paid for in full the Purchaser must hold the goods in trust on behalf of the Seller and keep them separate from its own property and from goods belonging to third parties. It must store, secure and insure goods subject to reservation of title (reserved goods) and apply an identifying marking to the Seller's property.

Until full payment is made the Purchaser may use or resell goods in the normal course of business. It must, however, hold any payment received (including any insurance payments) on behalf of the Seller and keep such monies separate from its own and those of third parties.

If the goods are subjected to further processing and if they are processed together with items to which the Seller of the reserved goods has no title, the Seller will acquire a corresponding share in title. The same will apply if the Seller's goods are mixed with goods belonging to others.

The Purchaser must inform the Seller immediately of any seizure or other intervention by a third party so that the Seller can bring action in accordance with § 771 ZPO (German Code of Civil Procedure). If the Purchaser fails to satisfy this obligation it will be liable for any loss suffered.

The Seller shall, at the request of the Purchaser, release securities provided to it to the extent that the realisable value of the securities exceeds the Seller's claims. The Seller shall choose the securities to be released.

## **9. Warranty, exclusion of liability**

The Purchaser must inspect the goods as required by § 377 HGB (German Commercial Code) and make any complaints immediately.

If a complaint regarding defects is made immediately, the Seller will be liable subject to the following provisions:

The Seller accepts no responsibility for the suitability of goods for a particular purpose unless it has expressly accepted this liability.

Neither does the Seller accept any liability

- for defects in goods which relate to a description of goods or of specifications supplied by the Purchaser,
- for parts, materials or other items of equipment manufactured by the Purchaser or to the latter's order, unless the manufacturer of these parts accepts liability to the Seller.

The warranty does not cover any product defects which are the result of incorrect installation, inappropriate use, incorrect operation, negligence or other factors.

The Purchaser has no claim to damages or to the reimbursement of expenses on any legal basis whatsoever. This exclusion of liability on the part of the Seller will not apply if a defect is due to deliberate action or gross negligence or if substantial contractual obligations (cardinal obligations) have been breached. A claim for damages based on breach of substantial contractual obligations is, however, limited to foreseeable losses typical of the type of contract concerned.

Neither does this exclusion of liability apply to damages based on injury to life or limb where liability for these is mandatorily imposed by law. If such damage is caused by servants/agents or representatives of the Seller, the Seller will not be liable if the servant/agent or representative was only slightly negligent in causing the damage.

The warranty period is 24 months, beginning on the passing of risk.

If an item purchased has a defect for which the Seller is responsible and this is notified to the Seller, the Seller is entitled to supply a replacement free of charge or rectify the defect. If a defect-free replacement is supplied, the Purchaser must return the defective goods to the Seller. If the Seller is either unwilling or unable either to rectify the defect or to supply a replacement, the Purchaser will be entitled at its discretion either to withdraw from the contract or to demand a reduction of the purchase price.

#### **10. Other terms**

The Seller is entitled to modify or to improve goods without informing the Purchaser of this in advance as long as the modifications or improvements are not lastingly detrimental to the goods either in form or function.

These Terms and Conditions replace all previous written or verbal agreements concluded by the contracting parties. They may not be made accessible to any third party without the written approval of the other contracting party.

Should individual terms of this agreement be or become invalid in whole or in part, this shall not affect the validity of the remaining terms. An invalid term must be replaced by a legally valid one which comes as close as legally possible to achieving the commercial purpose of the invalid term. The same shall apply for any omissions in the agreement.

#### **11. Choice of law, legal venue**

This agreement is subject to German law. The two parties hereby agree that the exclusive legal venue shall be the place where the registered office of the Seller is located. Application of the UN Convention Relating to a Uniform Law on the International Sale of Goods (CISG) or any future international treaty or treaty concluded between different countries is hereby excluded, even after they are adopted into German law.

The Seller is also entitled to bring legal action before the court which has jurisdiction over the Purchaser or before any other court which may have jurisdiction under national or international law.