

## General Terms and Conditions of Purchase and Delivery

of epsotech Germany GmbH 2, 52428 Jülich GmbH In the Rheinfeld · as at: December 2019

### 1. General

- 1.1 These General Terms and Conditions of Purchase and Delivery apply to all present and future contracts between a customer and epsotech Germany GmbH (**epsotech**). Conflicting or deviating terms and conditions of delivery only become part of the contract if **epsotech** has expressly agreed to them. These Conditions also apply to such contracts that **epsotech** concludes with knowledge of the customer's conflicting terms and conditions. The latter also apply if **epsotech** unconditionally executes an order of the customer in knowledge of these conflicting or deviating conditions of the customer.
- 1.2 These General Terms and Conditions of Purchase and Delivery together with the respective contract represent the complete agreements between the customer and **epsotech**. Other agreements, amendments and subsidiary agreements are only valid if **epsotech** has agreed to them in writing.

### 2. Definitions

- 2.1 Each reference to "**in writing**" or "**written form**" in these Terms and Conditions also refers to "text form" within the meaning of § 126 b BGB (German Civil Code).
- 2.2 **Place of fulfilment** is the address given in the contract under which **epsotech** will make the goods available to the customer for collection, unless otherwise agreed.
- 2.3 **Specifications** are general information regarding the quantity, quality and characteristics of **epsotech's** goods, which are publicly reproduced by **epsotech** in product descriptions and serve as orientation in connection with the goods; in no case are these specifications quality descriptions within the meaning of § 443 BGB (German Civil Code).
- 2.4 **Headings** in these General Conditions of Purchase and Delivery are for guidance only and remain irrelevant for the interpretation of the respective provision.

### 3. Contract Conclusion

- 3.1 A purchase contract based on these General Terms and Conditions of Purchase and Delivery may be concluded by:
- 3.1.1 **epsotech** submitting a cost estimate to the customer, which is subject to confirmation and non-binding, unless it expressly marked as binding. In this case the cost estimate is an offer from **epsotech**, which must be accepted by the customer within a normal course of business (maximum five working days) on the basis of this.
- 3.1.2 the customer submitting **epsotech** an order; in this case the order constitutes an offer of the customer to buy the goods. In this case, **epsotech** will check the order. The contract is concluded if **epsotech** accepts the order or executes a delivery within a period of 10 working days.

- 3.2 Any change or deviation, either by **epsotech** following a customer order or by the customer following **epsotech's** cost estimate, is deemed to be a rejection of a contractual offer, combined with a new application for deviating or changed conditions set forth in the rejection. This offer must in turn be accepted by the other contracting party in a normal course of business (maximum 5 working days).
- 3.3 The customer is responsible for any errors, incompleteness, ambiguities, omissions, inaccuracies or misunderstandings in any order and shall also examine **epsotech's** cost estimate for such circumstances. If the customer does not report such errors or other ambiguities or if these are contained in the customer order, the customer can not derive any claims therefrom.
- 3.4 Recommendations by **epsotech**, **epsotech** employees or other vicarious agents with regard to the storage, processing or use of the goods are exclusively non-binding without written confirmation or corresponding binding and authorised publications (e.g. in product descriptions, storage instructions, instructions for use etc.).
- 3.5 **epsotech** reserves the right to change the specification of goods, if this is required by relevant legislation, and the quality and usability of the goods are not thereby affected. Impairment is particularly then not given, if the goods can be used for the contractually intended purpose.
- 3.6 Goods delivered in accordance with the contract will only be taken back after prior agreement and with **epsotech's** written consent. The return of the goods will be refused without such consent; **epsotech's** liability for returned goods is excluded. Returns accepted by **epsotech** will be made at the expense of the customer at the delivery location indicated by **epsotech**.

### 4. Purchase Price

- 4.1 All prices quoted by **epsotech** are inclusive of packaging and other costs plus VAT.
- 4.2 **epsotech** is entitled to adjust the purchase price prior to delivery of the goods if and to the extent that this is necessary and in line with an increase in general costs for office materials, personnel or other services, currency fluctuations affecting imports, or other price-relevant circumstances beyond **epsotech's** control. Furthermore, **epsotech** is entitled to adjust prices if there are more than four months between a contract and the agreed delivery date.
- 4.3 Unless otherwise agreed, all prices quoted are ex works, i.e. delivery is made by making the goods available at the address specified in the contract. In the event of delivery to another location, all costs for packaging, loading and unloading, transport and insurance of the goods are charged; they become due for payment together with the purchase price.
- 4.4 Pallets and containers are charged to the customer in addition to the purchase price; in the event of undamaged return before the purchase price becomes

- due, a credit note however must be issued in favour of the customer.
- 4.5 **epsotech** is entitled to demand advance payments or securities if, after the conclusion of the contract, facts become known which call into question the reliability of the customer, in particular its solvency.
- 4.6 **epsotech** is entitled to withdraw from the contract if the customer has provided false information about its creditworthiness or if such creditworthiness deteriorates significantly after conclusion of a contract.
- 5. Payment Terms**
- 5.1 Unless otherwise agreed in writing, the purchase price is due for payment no later than 30 days of the date of the invoice. The customer may only offset against recognised, legally binding or undisputed claims.
- 5.2 **epsotech** is entitled, at its own discretion, to demand a security prior to execution of any delivery, even in the case of partial deliveries.
- 5.3 If payment by instalments is agreed, the entire outstanding purchase price becomes due for payment immediately if the customer is in default with an instalment.
- 5.4 **epsotech** is entitled to obtain information and evaluations from credit agencies and comparable service providers in order to verify the creditworthiness of the customer.
- 6. Delivery, Passage of Risk**
- 6.1 Unless otherwise agreed in writing with the customer, delivery is deemed to have been effected,
- 6.1.1 when the goods are made available to **epsotech** at the address stated in the contract, provided that the customer has assumed responsibility for the transport of the goods or
- 6.1.2 upon delivery of the goods to the customer's branch stated in the contract, by handing over the goods to the customer's carrier. In this case the customer shall ensure at its own expense that the equipment and manpower necessary for loading and unloading are available and assume full responsibility for the proper unloading of the goods into the storage area of the customer, even if this is carried out by **epsotech** personnel.
- 6.2 All delivery dates or periods are non-binding, unless the binding force of the latter has expressly been agreed upon in writing. **epsotech** is entitled to premature deliveries to a reasonable extent after prior notification.
- 6.3 As far as reasonable, the customer is obliged to accept partial deliveries; **epsotech** may invoice these individually.
- 6.4 Deviations of the delivered quantity of goods up to 10 % of the value of the goods compared to the quantity of goods stated in the contract (excess or short delivery), which are reasonable for the customer, do not entitle the customer to refuse the acceptance of the goods nor do they oblige **epsotech** to compensate any damage incurred resulting from the deviation. The customer is obliged to pay the contractually agreed price pro rata to the quantity of goods actually delivered.
- 6.5 The quantity of goods registered by **epsotech** upon dispatch of the goods is deemed to have been actually handed over to the customer, subject to proof to the contrary by the customer.
- 6.6 Insofar as the customer culpably refuses to accept a delivery or if this is delayed at the request of the customer or if the delivery cannot be carried out for reasons that are not attributable to **epsotech**, **epsotech** is as a consequence entitled to
- 6.6.1 treat the contract as fulfilled and, if necessary, to store the goods. In this case, the customer shall bear storage and insurance costs.
- 6.6.2 to sell the goods at the current best price and to deduct the excess amount (after deduction of reasonable storage and sales costs) from the purchase price owed by the customer or to invoice the customer for any shortfall in proceeds compared to the purchase price.
- Further claims of **epsotech**, in particular also those in accordance with clause 6.9, remain unaffected.
- 6.7 **epsotech** shall inform the customer immediately if delivery of the goods is impossible or cannot take place on time. In case of impossibility, **epsotech's** liability is limited to a replacement delivery to be effected within a reasonable period of time or to a credit note to the invoice for the undelivered goods. If the replacement delivery does not take place within a reasonable period, the customer is entitled to terminate the contract. If there is a delay caused by **epsotech**, the liability of **epsotech** is limited to the foreseeable, typically occurring damage, unless this delay is due to an intentional or grossly negligent violation of the contract for which **epsotech** is responsible.
- 6.8 If the customer is in default of acceptance, **epsotech** may demand compensation for the damage incurred including any additional expenses (storage and insurance costs). The same applies if the customer culpably violates an obligation to cooperate. With a delay in acceptance, the risk of accidental deterioration and accidental loss passes to the customer.
- 7. Export Conditions**
- 7.1 If goods are to be shipped by **epsotech** to a country other than the place of provision of the goods at the request of the customer, the customer is fully responsible for compliance with all relevant legal regulations for importing the goods into the country of destination desired by the customer as well as for payment of all duties and fees arising in this connection.
- 7.2 The purchase price for the goods delivered for export from Germany is irrevocably paid in a form acceptable to **epsotech** and by a letter of credit acceptable to **epsotech** and confirmed by a bank. Alternatively, the customer may effect payment by other equivalent means of payment.
- 8. Inspection of Goods/Short Deliveries**
- 8.1 The customer must inspect the goods immediately after delivery in accordance with § 377 HGB (German Commercial Code). **epsotech** is liable for non-delivery, partial loss, and damage to the goods or other breaches of contract only under the condition that the customer immediately notifies **epsotech** in writing of the assertion of such claims.
- 8.2 In case of justified claims of the customer, **epsotech** will, at its own discretion, either repair the goods or make a

subsequent delivery at its own expense. The customer is entitled to terminate the contract if a subsequent improvement or delivery fails twice or does not take place within a reasonable period of time.

## 9. Retention of Title

- 9.1 The delivered goods remain the property of **epsotech** until all claims, including all balance claims from other contracts, to which **epsotech** is currently or in the future entitled against the customer have been fulfilled. This retention of title also applies in the event that the goods are processed by the customer with other goods; in this case **epsotech** becomes the owner on a pro rata basis of the product thus created as a whole. The retention of title only expires with the complete payment of the purchase price by the customer. This only exists if, in addition to the purchase price, all any outstanding interest or other payments owed under these Terms and Conditions or any other agreement between the customer and **epsotech** arising from the delivery of goods are settled.
- 9.2 Until the time of the transfer of ownership to the customer, the customer must
- 9.2.1 treat the goods as trustees for **epsotech**, to keep them in safe custody and to insure them sufficiently at replacement value against fire, water and theft at its own cost.
- 9.2.2 store the goods properly, safely and marked as **epsotech's** property separately from the goods owned by the customer or third parties.
- 9.2.3 not to damage or obscure the identification and packaging of the goods.
- 9.2.4 keep the goods in a proper condition. Necessary maintenance work must be carried out by the customer at its own expense and in good time.
- 9.3 The customer is entitled to use the goods in the normal course of business, e.g. by processing them with other goods and reselling them at the full market price; in the event of such resale, the resulting claim must be assigned in full to **epsotech** by way of security.
- 9.4 Until the transfer of ownership to the customer **epsotech** may demand the return of the goods at any time.
- 9.5 The customer may not pledge the goods owned by **epsotech** or encumber them in any other way for the purpose of ordering payment security. In the event of an infringement, all amounts owed by the customer become immediately and directly due for payment. Further claims of **epsotech** remain unaffected.
- 9.6 In cases where third parties seize the goods subject to reservation of title (e.g. by attachment), the customer shall refer to the ownership of **epsotech**. At the same time **epsotech** is entitled in this case to prohibit the customer from collecting the claims arising from a resale of the reserved goods and to disclose the assignment as security of the claims arising from the resale to the customers of the customer.
- 9.7 The customer's right to possession of goods not yet paid for ends immediately in the following cases:
- 9.7.1 Insolvency of the customer within the meaning of the provisions of the German Insolvency Code

or filing of an insolvency petition either by the customer or by one of its creditors.

9.7.2 Foreclosure in assets of the customer.

9.7.3 Pledging or other debiting of unpaid goods by the customer.

## 10. Warranty, Liability

- 10.1 The customer is only entitled to claims if it has properly fulfilled its obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code), including the inspection of any transport damage.
- 10.2 The Customer is entitled to statutory claims, whereby **epsotech** may, at its discretion, remedy a defect either by repair or replacement. Wear or tear to the usual extent does not constitute any warranty claims.
- 10.3 A specification of goods by **epsotech** is based on best knowledge and conscience as well as the average results of standard tests. **epsotech** is not liable for insignificant deviations of the specification from the actual condition of the delivered goods. Furthermore, **epsotech** is liable for any implied statements regarding the condition or intended use of the goods.
- 10.4 The handing over of samples to the customer must be carried out solely for the purpose of enabling the customer to independently assess the condition of the goods and not for the purpose of a sample purchase.
- 10.5 **epsotech** is liable without limitation in accordance with the statutory provisions for injury to life and limb, intentional or grossly negligent acts, fraudulent intent and claims arising from mandatory statutory provisions, e.g. from product liability.
- 10.6 In the event of slight negligence **epsotech** is liable for foreseeable, typically occurring damage in the event of breach of a material contractual obligation.
- 10.7 The liability of **epsotech** is excluded if the customer does not grant **epsotech** the possibility to inspect a defect or if a defect is due to customer information errors. Furthermore, wear and tear as well as damage resulting from a failure to observe product instructions, operating instructions, or other instructions, misuse, alterations or unauthorised repairs is excluded.
- 10.8 Insofar as **epsotech** has excluded or limited liability in accordance with the above provisions, this also applies to the personal liability of employees, workers, co-workers, vicarious agents or assistants of **epsotech**.
- 10.9 Claims of the customer due to a defect become statute-barred 1 year after delivery of the goods. This does not apply in the case of intentional or grossly negligent behaviour on the part of **epsotech** or in the case of injury to life, body or health for which **epsotech** is responsible.

## 11. Force Majeure

**epsotech** is entitled to delay deliveries, cancel customer's orders or reduce the quantity of goods ordered if circumstances beyond its control prevent it from manufacturing, receiving or delivering the goods through normal business channels or with normal means of delivery, including but not limited to strikes, lockouts, industrial accidents, war, fire, power or machine failures or insufficient availability of raw materials from any of the usual sources.

## 12. Promotional Material

Catalogues, technical descriptions, price lists and all other information or documents relating to the goods are prepared by

**epsotech** with the utmost care. However, these documents are of an informational nature and do not represent any liability declarations of the company, in particular no procurement information.

### 13. Intellectual Property Rights

The customer shall indemnify **epsotech** upon first request against all costs, claims or losses which have arisen or threaten to arise due to an infringement of patents, trademarks, distinctive rights, copyrights or other intellectual property rights, insofar as such an infringement arises in connection with the manufacture or sale of the goods in accordance with the specifications or special wishes of the customer. When placing an order, the customer shall ensure that no patents or other intellectual property rights of third parties are infringed due to the use of the goods by the customer.

### 14. Confidentiality

- 14.1 Except as otherwise required by law, the customer shall grant its own employees, agents or subcontractors access to such confidential information only on a need-to-know basis, unless otherwise required by law, all information disclosed to the customer by **epsotech** or **epsotech's** representatives regarding technical and commercial know-how and specification, invention, experience or other **epsotech** business initiatives (Confidential Information), as well as any other Confidential Information relating to **epsotech's** business activities or products that has become known to the customer. In this case, the customer shall ensure that prior to such disclosure, the employees, vicarious agents and subcontractors are bound by at least as extensive confidentiality obligations as the customer itself. The customer shall protect the Confidential Information to an appropriate extent against access by third parties and set out these protective measures as required and make them available for inspection.
- 14.2 At no time will personal data be processed by **epsotech**, without any legal basis in accordance with the General Data Protection Regulation or the other national data protection provisions. Where necessary, the parties shall conclude a contract for order data processing.

### 15. General Provisions

- 15.1 The contract is expressly concluded with **epsotech** and the customer. The customer is not entitled to assign or transfer its contractual rights and obligations to third parties.
- 15.2 The order is expressly placed with the seller. The latter is not entitled to assign or transfer its contractual rights and obligations to third parties.
- 15.3 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, that provision must be replaced by another provision which is valid and enforceable and which, to the fullest extent possible, has the same economic effect as the invalid or unenforceable provision. The same applies in the case of a gap. In any case, effective other contractual provisions remain unaffected by the ineffectiveness or impracticability of the individual provision.
- 15.4 A contract between **epsotech** and the customer under no circumstances constitutes a partnership, joint venture, partnership, agency or agency of whatever nature between the parties.
- 15.5 These Terms and Conditions and the respective Contract is governed by the laws of the Federal Republic of Germany, excluding the provisions of private international law and the UN - Sales Law. Exclusive place of jurisdiction for all disputes in connection with this contract and its interpretation is Cologne.