

General Business Conditions of
ETT Verpackungstechnik GmbH (hereinafter referred to as „ETT“)

§ 1

Scope of Application

1. All deliveries, services, quotations and offers of our company are made and carried out exclusively on the basis of these General Business Conditions. Deviating purchase conditions of the purchaser do not become part of the contract with the acceptance of the order.
2. The General Business Conditions of the purchasers only apply as far as we have given our express written approval.
3. Our General Business Conditions are available to our customers for call our printout under the homepage: "www.ett-verpackungstechnik.com".

§ 2

Quotations and Contract Conclusion

1. Quotations are made without engagement and commitment. Orders of the customer are only binding after written order confirmation. Our written order confirmation is exclusively decisive for the contents and volume of the contract relation concluded with the customer.
2. Our especially prepared quotations have a maximum validity of 90 calendar days from the date of the quotation.
3. The contract is concluded provided that our subcontractors comply with the deadlines and the contract for the services. We will inform the customer immediately if a service is impossible to be carried out or delayed due to a circumstance for which a subcontractor is responsible. In this case, the assertion of compensation claims is excluded, except the delay was caused by ETT deliberately or by gross negligence. A declaration of the subcontractor is considered as sufficient proof that we are impeded in carrying out the delivery without our fault.

§ 3

Assembly, Commissioning and Training

1. We put at disposal appropriate specialist fitters for a possibly necessary assembly, commissioning and training of the operating personnel at the customer. If no special payment was agreed for this service, the compensation depends on the efforts made and based on the usual rates.
2. Appropriate lifting equipment (e.g. fork-lift trucks, lifting vehicles, etc.) with a sufficient lifting capacity including the personnel authorised to operate it and including the auxiliary material (stopper material, chains, etc.) have to be put at disposal by the customer free-of-charge.
3. The costs for the assembly, commissioning and training are invoiced even if the customer refrains from ordering the necessary goods for his project later-on.

§ 4

Delivery Time / Delays in Delivery

1. The delivery time results from the quotation submitted. Agreements about delivery times and deadlines have to be made in writing. A fix term is only given if an express written agreement has been concluded.
2. For the adherence to the delivery time by ETT, it is necessary that all commercial and technical questions have been clarified between the contract parties and that the purchaser has met all of his obligations, as for example the obtainment of all necessary regulatory certificates and approvals or the execution of a down payment. If these requirements are not met, the delivery time is extended reasonably. This does not apply, if ETT is responsible for the delay.
3. The adherence to the delivery time applies subject to a correct and punctual supply to us. If a delay in delivery becomes apparent, we will inform the customer as quickly as possible.
4. We are entitled to provide partial deliveries and partial services without changing the overall service within the agreed delivery times.
5. The delivery time is observed if the delivery item has left our site until expiry of the delivery time or if the readiness for dispatch has been communicated. If an acceptance has to take place, the date for the acceptance, and alternatively also the notice for readiness of acceptance, is decisive, except in case of a justified refusal of acceptance.
6. If dispatch and/or acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, we will charge to him the costs accrued due to the delay.

§ 5

Prices and Payment Conditions

1. The prices are net prices plus the respective statutory value added tax.
2. The prices do not include the costs for packing, insurance, freight, customs tariffs and other taxes and duties. The prices are ex warehouse/works Fredelsloh and/or in case of direct deliveries ex warehouse of the supplier.
3. In default of a special agreement, the payment has to be made by the customer without any deduction as follows:

40% down payment after receipt of the order confirmation,
50% after preliminary acceptance (FAT) in the premises of the supplier or on delivery,
10% after the final acceptance (SAT) or start of production, however 6 weeks after delivery at the latest
4. We are entitled to payment for deliveries and services with the date of invoice without any deduction. The customer is only entitled to offset against the payment to ETT or retain money if his counterclaims have been legally justified, are not disputed by ETT or have been approved by ETT. Furthermore, the customer is only authorised to execute rights of retention if his counterclaim is based on the same contract relation.
5. If we become aware of circumstances which put into question the credit worthiness of the customer, especially if the customer does not honour a check, we are entitled to claim immediate payment of the remaining total debt. In this case, deliveries can depend on a step-by-step payment.
6. Waiving §§ 366, 367 BGB (German civil code) we set out which accounts payable are settled with the payment of the customer.

§ 6

Reservation of Ownership

1. The items of the delivery (goods under reservation of title) remain the property of ETT Verpackungstechnik GmbH until fulfilment of all payment claims and other claims which ETT is entitled to assert against the customer arising from this business relation. As far as the value of all security rights to which ETT is entitled exceed the amount of all secured claims by more than 10 percent, ETT shall release a corresponding part of the security right at its own equitable discretion on request of the customer.
2. As long as the reservation of ownership exists, a pledging or a security assignment is prohibited to the customer and the resale is only allowed for resellers within the usual business and provided that the reseller receives payment from his customer or with the reservation that the property is only transferred to the customer, if the latter has met his payment obligation.
3. If the customer sells goods under reservation of title, he assigns by way of security already now to ETT his future claims against his customers arising from the resale including all ancillary rights and possible balance claims and all securities without any later special explanations being necessary. If the goods under reservation of title are resold together with other items without a unit price being agreed for the goods under reservation of title, the purchaser assigns the proportion of the overall price claim which corresponds to the price of the goods under reservation of title invoiced by the supplier and gives priority to this assigned claim compared to the remaining payment claim. If a justified interest is credibly shown, the customer has to provide to ETT all necessary information and hand over the required documents so that his rights against the customer can be asserted.
4. The customer undertakes to store the goods under reservation safely and thoroughly and to take out insurance in case of loss and damage on his own account. The customer assigns all rights from the insurance contracts in advance to ETT. ETT accepts this assignment.
5. ETT is entitled to take out insurance for the delivery item with respect to theft, break, fire, water and other damages on the account of the purchaser, as far as the purchaser does not prove to have concluded this insurance himself.
6. In case of a processing with other items which do not belong to the customer, we are entitled to a co-ownership of the new item to the proportion which results from the ratio of the value of the processed, mixed or integrated (in the following: processed) goods under reservation of title to the value of the remaining processed goods at the moment of processing.
7. Under the reservation of revocation, the customer is entitled to collect the assigned claims from the resale. In case of an important reason, especially in case of default, suspension of payment, an application for the opening of insolvency proceedings, protest of a bill or in case of justified indications for an excessive indebtedness or an imminent insolvency of the customer, we are entitled to revoke the customer's authority of collection. After previous notice and observing an appropriate period, ETT is entitled to disclose the assignment for security, use the assigned claims and demand the disclosure of the assignment for security by the customer to his own customers.
8. The customer undertakes to inform ETT immediately in case of garnishments, sequestrations or other orders or interventions of third parties.
9. If the customer breaches his contractual obligations, especially if he is in default, ETT is entitled to performance, rescission and withdrawal after expiry of an appropriate respite granted to the customer; the legal regulations about dispensability of fixing a deadline are not affected. The customer is obliged to delivery.

§ 7
Defects

1. As far as the customer is entrepreneur according to the sense of § 14 BGB, he is obliged to check services and products of ETT for defects and to claim defects against ETT. The complaint of obvious defects is given in time if we receive it within 7 calendar days from delivery of the item and/or acceptance of the work. The complaint of hidden defects is given in time, if we, at ETT, receive it within 7 calendar days after its detection.
2. The opportunity of a supplementary performance within a reasonable period of time has to be given to ETT.
3. The customer is not entitled to change the claimed goods himself independently. In this case, the customer loses his rights to claim damages.
4. ETT either removes proved defects free-of-charge or delivers replacement with the return of the complained goods at its discretion. If ETT fails to comply with its obligation to supplementary performance or spare part delivery, the customer has to grant ETT an appropriate respite for supplementary performance.
5. Rights to claim damages do not exist in case of insignificant deviations from the agreed properties and conditions, in case of only insignificant impairment of the usefulness, in case of natural wear or damages which were caused after transfer of risk due to faulty or negligent treatment, excessive stress, inappropriate operating material, defective construction work or which were caused by external influences that were not assumed based on the contract. The customer can only assert compensation claims for a defect under the following conditions if the supplementary performance failed or if ETT refuses the supplementary performance. The right of the customer to assert further compensation claims according to the following provisions of § 10 are not affected.
6. Warranty claims for material defects of the customer become time-barred twelve months from delivery of the items or acceptance of the work. This does not apply if longer periods are prescribed by law.
7. The aforementioned provisions do not apply as far as the cause of damage is based on a deliberate act, gross negligence or culpable violation of a typical contract obligation on our part.

§ 8
Transfer of Risk

1. The risk is transferred to the customer with the delivery of the systems, even if the customer still has to install the system and a following commissioning by ETT has been agreed.
2. Furthermore, the risk is transferred to the customer, even the risk of a regulatory sequestration, on delivery to the carrier, however when leaving the factory or warehouse of ETT at the latest.
3. If the dispatch, the beginning, the installation or the assembly is delayed for reasons for which the customer is responsible, or if the customer is in delay of acceptance for other reasons, the risk is transferred to the customer on occurrence of the delay.

§ 9
Delays in Installation and Assembly

If the installation, assembly or commissioning is delayed for circumstances for which ETT is not responsible, the purchaser has to bear the costs for waiting time and additionally necessary travels of the supplier or his assembly personnel to a reasonable amount.

§ 10
Liability

1. According to the aforementioned and the following limitations of liability, ETT is liable for damages and injury of life, body and health which are caused by a deliberate or negligent violation of the obligations of ETT, its legal representatives or vicarious agents, as well as for damages which are included in the liability according to the product liability act, and for damages which are due to a deliberate or grossly negligent violation of the obligations and to fraudulent intent or the assumption of a guarantee of ETT.
2. ETT is also liable for damages which are caused by simple negligence as far as this negligence refers to the violation of such contract obligations the observance of which is important to achieve the purpose of the contract (cardinal obligations). However, ETT is only liable if the damages typically relate to the contract, are foreseeable and are limited to the respective order sum. In case of simple negligent violations of collateral duties which are not material for the contract ETT is not liable.
3. The limitations of liabilities included in the paragraphs above shall also apply if the liability of the legal representatives, the executives and other vicarious agents of ETT is affected. A further liability is excluded regardless of the legal nature of the claim asserted. If the liability of ETT is excluded or limited, the same applies for the personal liability of its staff, personnel, employees, representatives and other vicarious agents.

§ 11
Force Majeure

In case of a force majeure or other circumstances for which ETT is not responsible, e.g. interruptions of operations, strike, lockouts, regulatory interventions and similar – even if a subcontractor is subject to these circumstances – the delivery time is reasonably extended if ETT is prevented from complying with its obligations in time. If the delivery or the service becomes permanently impossible due to such a circumstance or if ETT is entitled to refuse the service due to such a circumstance (§§ 257, clause 2 and 3 BGB), ETT may rescind from contract. If the delivery time is extended due to one of the above described circumstances or if ETT is released from its obligation to provide service, the customer is not entitled to derive any compensation claim.

§ 12
Instruction and Product Liability

1. The customer is committed to observe thoroughly any product information issued by ETT and to pass it on to his customers. The same applies for safety data sheets which ETT has possibly prepared as well as other written product specification.
2. The customer undertakes to conclude a corresponding agreement with his customers and provide corresponding evidence to ETT on request.
3. If the customer does not meet this obligation and if product liability claims against ETT result, the customer indemnifies ETT from such claims on first request in the internal relationship.

§ 13

Export Provisions

If products of ETT are exported, the customer has to observe the corresponding export and control regulations. The customer has to obtain relevant approvals in time and submit them to ETT. If the customer fails to do so, ETT is entitled to rescind from contract without being liable to any compensation claims to the customer. The verification and assessment of whether a product requires an export approval and/or whether the export is subject to certain control regulations, is within the responsibility of the customer. The customer assures that he will not export services and products of ETT into countries which are subject to embargos on export and/or trade restrictions imposed by the Federal Republic of Germany.

§ 14

Copyright

ETT reserves all property and copyrights for drawings, plans, cost estimates, proposals and other documents handed over to the customer. These documents and/or information shall only be used according to contract in connection with the goods supplied by ETT and are not allowed to be made accessible to third parties without the express written approval of ETT. Programmes and relevant documentation are exclusively for the own use in the business operation of the customer.

§ 15

Place of Jurisdiction and Applicable Law

1. The law of the Federal Republic of Germany in its respectively valid version shall apply for all legal relations between ETT and the customer. The application of the UN sales law is excluded.
2. Place of fulfilment for all disputes arising from or in connection with the contract or these General Business Conditions is Fredelsloh, Germany if the principal is a merchant, a legal entity under public law or a special fund under public law; place of jurisdiction is the court competent for the registered office of ETT. Besides, ETT is entitled to raise a claim against the customer at his legal places of jurisdiction (right to chose).

§ 16

Miscellaneous

1. No other supplementary agreements exist besides the written contract and these General Business Conditions. Amendments and supplements require the written form. The requirement of the written form can only be waived in case of an express, written declaration for each individual case.
2. If individual provisions of these General Business Conditions are or become ineffective, the validity of the remaining provisions of these General Conditions are not affected. The parties undertake to replace any possible ineffective provision by a regulation which meets the intended legal and economic purpose to the greatest possible extent.
3. If this is not possible, any ineffective provision has to be reduced to the extent in which it is legally effective (reduction maintaining the validity of ineffective provisions).

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