

General Sales and Delivery Conditions

of ETIMEX Primary Packaging GmbH and ETIMEX Technical Components GmbH

Scope

The following conditions are applicable only to businesspersons, legal entities under public law or of public utilities.

I. Applicability

1. Orders become binding only after the supplier has confirmed the order. Variations and additions to the tender shall be made in writing. All offers and tenders are subject to alterations, unless they are explicitly marked as fixed.
2. These terms are valid in respect to on-going business and also future business, even if not expressly referred to, as long as the supplier has been advised of these terms at the occasion of a previously agreed to contract.
3. Any terms of business on the part of the customer are not applicable unless expressly accepted by the supplier.
4. Should a particular term be or become null and void, the remaining terms are unaffected.

II. Prices

1. Prices are considered to be ex works, excluding freight, customs, import duties and packing, plus VAT, applied at the legally proscribed rate.
2. Should relevant costs vary considerably after posting of the tender or confirmation of the order prior to delivery, customer and supplier will consult each other and agree to a price variation and apportioning of the costs.

III. Delivery and Acceptance duties

1. Delivery schedules commence with the receipt of all necessary documentation. The supply deadline is considered fulfilled upon receipt of the delivery advice note, even when the actual delivery is delayed or has become impossible as long as the supplier does not cause the delay.
2. If a delivery deadline is not kept due to remiss action by the supplier, but not due to gross negligence or intent, the customer is entitled to seek compensation due to the delay or rescind the contract, excluding further demands of the customer after an appropriate extension. Compensation due to delays is limited to no more than 5% of the delayed portion of the contracted scheduled delivery. The customer excludes a cancellation of the contract if the delay is due to acceptance delays. The customer retains the right to sue for higher damages.
3. Adequate part delivery as well as reasonable variation of order quantities up to plus/minus 10% shall be deemed acceptable. For orders under 1000 kg the variation limit is plus/minus 20 %.
4. The supplier may delay delivery because of an act of God for the duration of the difficulties including an appropriate time for a return to normality, or in the case of non-completion of a delivery rescind the contract wholly or in part. As acts of God qualify strikes, lockouts or unforeseeable and unavoidable situations, such as breakdowns, which, notwithstanding all reasonable efforts, render on-time delivery by the supplier impossible; however, the supplier must prove such delays. This also is the case when the aforementioned delays occur after previous delays or when delays occur with a sub-contractor. The supplier shall inform the customer without delay when an Act of God, as defined in clause 1 has occurred. The supplier is obliged to minimize the inconvenience to the customer.

IV. Packing, Despatch, Risk Transfer and Acceptance Delays

1. If not specified differently, the supplier chooses packing, mode of transport and transport route.
2. The transport risk transfers to the customer upon goods leaving the works, even if delivery costs are included. If the customer delays a delivery, the risk already transfers to the customer after the issue of the despatch advice note.
3. When requested in writing by the customer the goods will be insured at cost to the customer for the risk coverage requested.
4. In case the delivery is made on returnable packaging material, the customer has to collect these items and send them back to the supplier within a reasonable time frame (max. 2 months from date of delivery), clean and freight paid, unless other agreements have been made. The customer is liable for any damages or loss of the returnable items.

V. Reserved Ownership

Deliveries remain the property of the supplier until all claims of the supplier on the customer have been met.

VI. Warranty for Material Defects

1. Relevant for the quality and finish of all goods are the production samples, which the customer makes available to the supplier for examination and reference as requested. Any reference to technical standards is an aid to define product quality and is not to be interpreted as a definition of product integrity.
2. When the supplier has advised the customer beyond his contractual obligation, he only warrants the functionality and suitability of the supplied goods after prior express assurance.
3. Defects are to be notified without delay, hidden defects are to be noted immediately after discovery. In either case the warranty only extends to one year after risk transfer, unless agreed to differently or if the statutory limit of § 438 para. 1 clause 2, § 479 para. 1 and § 634a para. 1 clause 2 of the German Common Law (BGB) proscribes longer warranty periods as mandatory.
4. The supplier must re-supply if the warranty claims are found to be justified - in which case the production samples released by the customer determine the expected quality and finish. The customer is entitled to

reduce the purchase price or rescind the contract if the supplier does not fulfil his duty to re-supply within a reasonable period or replacements fail repeatedly. Further claims, in particular claims for loss or damages due to defective supplies or subsequent resulting damages are regulated by section VII. Replaced parts are to be returned to the supplier at his request and cost.

5. Unauthorized re-working and improper handling of defective parts result in the loss of any right to claims for compensation due to defective parts. The customer is entitled, after prior consultation with the supplier, to repair defective parts to avoid much larger damage or if the supplier fails to make good the defects and to demand compensation for appropriate costs.
6. Normal wear and tear caused by contractual usage does not imply any rights to make warranty claims.
7. Rights to referred warranty provisions according to §§ 478, 479 of Federal Common Law (BGB) only allow the consumer to make claims within the scope of the legislation and do not regulate the understanding of good will provisions with the supplier and assume that any party with referred warranty rights will duly observe their duty, in particular the duty to report defects.

VII. General Limitations of Liability

In all cases, which differ from the conditions outlined above, and to which the supplier is obligated by reason of contractual or legal liability to pay compensation or reimbursement, his liability is limited only to cases in which he, his employees or sub-contractors are guilty of culpable intent, gross negligence or injury to life, limb and health. The statutory product warranty is unaffected independent of any blame as well as any liability in respect of the legal fulfillment in regard of any product integrity warranty; as is the liability for culpable negligence of major contractual duties and obligations, which are, however, limited to typical damages as may be predicted in such contract situations, except for cases outlined in clause 1 above. However, the above rule does not imply a reversal of the onus of proof, putting the customer at a disadvantage.

VIII. Payment

1. Payment is to be made in e (EURO) and is to go solely to the supplier.
2. In the absence of a different arrangement the purchase price for supplies or other services is to be paid applying a discount of 2% within 14 days, net within 30 days from the billing date. Any discount applied presupposes the due settlement of all undisputed outstanding previous accounts. Any payment made by cheque does not attract a discount.
3. Payments made on accounts in arrear attract an interest charge of 8 percentage points over and above the applicable base rate of the ECB, unless the supplier proves higher damages. The customer may prove lower damages.
4. Payment by cheque or notes of exchange may be refused. If cheques or re-discountable bills of exchange are accepted as due payment all associated bank charges are to be met by the customer.
5. The customer may offset an account or use his right of retention only if his claims are indisputable or established in law.
6. Sustained non-compliance with conditions of payment or circumstances, which raise serious doubts as to the credit worthiness of the customer, will result in claims for all payments becoming due immediately. In this case the supplier is also entitled to demand pre-payment for all outstanding deliveries and even to cancel the contract if an appropriate deadline has not been kept.

IX. Forms (Tooling)

Here the additional Sales and Delivery Conditions of the supplier do apply. These conditions will be sent to customers with the acknowledgement of orders.

X. Supply of Materials

Here the additional Sales and Delivery Conditions of the supplier do apply. These conditions will be sent to customers with the acknowledgement of orders.

XI. Commercial Protection, Drawings and Samples

Here the additional Sales and Delivery Conditions of the supplier do apply. These conditions will be sent to customers with the acknowledgement of orders.

XII. Production and Legal Venues

1. The production venue is the works of the supplier.
2. The legal venue, including matters such as deeds, notes of exchange or cheques, is the local court of the supplier in Ulm.
3. Only German law applies. The application of the United Nations convention of 11 April 1980 on contracts for the international sale of goods (BGBl 1989 S. 586) as it applies to the Federal Republic of Germany (BGBl 1990 S. 1477) is not valid.