

# Standard Terms

## 1. General Provisions

Unless otherwise agreed, these Standard Terms apply to all agreements entered into with Empacher. Any different or additional conditions or provisions specified by our customers to which we have not expressly agreed in writing are not binding even though we have not expressly rejected them.

## 2. Quantity and Delivery of Goods or Services

1. For business with merchants, the Empacher letter of confirmation is binding with regard to the quantity of goods to be delivered or the extent of services to be performed.
2. The time period within which Empacher is required to deliver or perform begins to run on the day the contract is closed, but subject to, and not before, Empacher actually receives all documents, information, permits, authorisations, licenses and/or clearances to be supplied by the customer in connection with the order and letter of confirmation. In particular, the time period does not begin to run until Empacher has received the agreed down payment.
3. All cases of force majeure, acts of God, as well as strikes, lockouts, insufficiencies in the supply of materials, energy shortages, delays caused by Empacher's suppliers and other contractors or subcontractors, and any other similar occurrences or causes beyond Empacher's control extend the due date for delivery or performance proportionately, and at least for the period of time of the delay which resulted from any of these causes. The customer waives any and all rights or claims he may otherwise have because of Empacher's delay in delivery and/or performance due to any of these causes. The same is true even though the cause of the delay occurs after the deadline for delivery or performance has already expired.
4. Should Empacher be responsible for its failure to deliver or perform by the specified deadline, the customer has a right to rescind the agreement after first granting Empacher a reasonable grace period to deliver or perform. Assuming Empacher is responsible solely for simple negligence, then damage claims based on delay or impossibility of performance are limited to the typical and foreseeable harm. For contracts between merchants, liability for damages resulting from delay and impossibility of performance are excluded even for simple negligence unless the breach involves primary contractual duties that are of the essence.

## 3. Prices

1. All prices are quoted as net prices to which Value Added Tax will be added.
2. Prices are quoted ex works Eberbach shipyard (for international sales according to INCOTERMS 1990).
3. Additional costs such as packing and similar costs are not included in the prices quoted and must be borne by the customer. The customer is responsible for arranging for transportation and insurance, unless otherwise expressly agreed. In all events the customer must bear the costs of transportation and insurance.

## 4. Terms of payment

1. One-third of the contract price is to be paid at the time the contract is closed.
2. The remaining amount is to be paid in total and without any deductions without 30 days of the invoice date. For international sales, the remainder is to be paid before delivery.
3. If the customer fails to make timely payment, Empacher may charge the customer interest in the amount of the German Federal Bank (Bundesbank) discount rate (respectively the corresponding referential interest rate of the European Central Bank) plus 5 % . Empacher reserves the right to charge a higher rate of interest in the event that it can show it has incurred higher costs from the payment delay.

4. Set-offs or rights of retention based on performances due under prior or different contractual relations between Empacher and the customer are excluded unless they are undisputed or have been determined in a final, enforceable and executable judgement or decision.

## 5. Retention of Ownership

1. Empacher retains its property rights in the goods delivered until the customer has fulfilled all of his duties under the contract.
2. The customer is prohibited from in any way encumbering the goods in which Empacher has retained ownership, in particular by pledging or mortgaging them, or by transferring ownership in them by way of security or under a conditional bill of sale.

## 6. Warranty, Liability for Defects

1. All visible defects must be reported to Empacher in writing at the latest within two weeks of delivery. Failure to give timely notice of defects extinguishes any warranty claim. If the customer is a merchant, the provisions relevant to business between merchants contained in §§ 377,378 HGB (Handelsgesetzbuch=German Commercial Code) apply (duty of inspection and requirements to give notice)
2. If the notice of defects is justified, Empacher is obliged, under exclusion of any further claims, at its own option to replace the defective goods, repair or correct the defect in the goods at its shipyard, or to exchange the defective parts. If the defect is not cured after two attempts to repair or two replacements, the customer may require a reduction in the invoice amount or, at his option, rescission of the contract.
3. Empacher is not liable for defects if during the warranty period third parties have, without Empacher's approval, undertaken any work on the goods delivered unless it is demonstrated that this work did not cause the defect. Damage that occurs after the risk has passed to the customer as a result of natural wear and tear, erroneous or negligent treatment, improper or excessive use, or from any other treatment or influence for which the customer is responsible is not a defect covered by warranty.

## 7. Liability

Damage claims based on injury suffered as a consequence of the defect, of faulty contractual performance, of fault at the time the contract was closed, or out of tort are limited to typical and foreseeable injuries if Empacher or its employees are liable solely for simple negligence. As between merchants liability for damage claims is excluded in cases of simple negligence unless primary contractual duties that are of the essence have been breached.

## 8. Concluding Provisions

Should any provision of these Standard Terms be invalid or ineffective, the remaining terms remain in force.

All legal relations between Empacher and the customer are governed exclusively by the law of Germany. The application of the United Nations uniform rules on the international sale of goods (CISG) is herewith excluded.

Cancellation, supplementation, or any other alteration of the contract must be made in writing to be legally binding unless an oral, individual contractual agreement was indisputably closed by the parties.

For trade with merchants, and the non-merchant customers who are by virtue of their residence not subject to jurisdiction of a German court, all disputes arising with regard to our delivery contracts, including any legal action based on a bill of exchange or any summary action based on a cheque, are subject to the jurisdiction of the courts of Heidelberg, Germany. Empacher, however, retains the right to file suit against the customer with the court of competent jurisdiction at the customer's location.