

General Terms and Conditions of eCom Logistik GmbH

§ 1 Scope of application

(1) All logistical (additional) services of eCom Logistik, within the meaning of Par. 1.14 of the General German Carrier Conditions 2017 (ADSp 2017) or the ones covered by a freight, forwarding or storage contract will be carried out exclusively on the basis of the following terms and conditions. By placing an order, the customer accepts these terms and conditions as binding. General terms and conditions of the customer are hereby objected to.

(2) The logistical services can be activities for the customer or third parties designated by him, such as order acceptance, goods handling and examination, product adaptation to the requirements of the respective customer or country, assembly, repair, quality control, pricing, installation or commissioning of goods or activities related to the planning, implementation, control, or check of the order, process, sales, return, disposal, recycling, and information management.

(3) The subsequent terms and conditions specifically apply, unless another written agreement is concluded. As long as ADSp 2017 are agreed, these General Terms and Conditions will have priority, if individual clauses contradict each other or a situation cannot be allocated to any type of contracting procedure.

§ 2 Offer and Conclusion

(1) Unless expressly specified otherwise, the offers contained in documents and on the website of eCom Logistik are always subject to change; that means that they should only be understood as a solicitation to make an offer.

(2) Orders are considered as accepted as soon as they are confirmed by eCom Logistik in writing.

(3) If after the conclusion of a contract eCom Logistik becomes aware of any facts, and especially a payment default, which are indicative of a significant worsening of the customer's financial situation according to the best commercial judgement, eCom Logistik will be entitled to demand payment in advance or appropriate securities and in the case of refusal, to withdraw from the contract, whereby the invoices for partial deliveries already made will become due immediately.

§ 3 Obligations of the Customer

(1) The customer - especially if he is regarded as "system manager" of the procedure in which eCom Logistik services is appointed, is obliged to provide objects, information and rights which are necessary for carrying out the logistical services timely and without being asked and to act in a co-operative manner, in particular

- to present primary or intermediate products and materials,
- to inform ECom Logistik about specific characteristics of the goods and processes and the associated legal, regulatory or trade association regulations and, where necessary, to train and instruct its employees,
- to draw up and to update specifications, process and material descriptions (manufacturing instructions, designs and plans) and to check that eCom Logistik complies therewith.

(2) The advance services and co-operative actions indicated in § 3.1 shall be performed completely and in a timely fashion. This also includes all the information required for optimal capacity planning.

(3) The documents submitted in accordance with § 3.1 shall remain the intellectual property of the customer. In this respect, eCom Logistik cannot exercise a right of lien or retention.

§ 4 Obligations of eCom Logistik

(1) eCom Logistik is obliged to perform its services according to the customer's specifications in the sense of § 3. eCom Logistik is entitled, but not obliged, to check these specifications.

(2) If eCom Logistik carries out logistical services within the scope of the customer's operational organisation or at a third party under his instruction, eCom Logistik will perform these services in accordance with the customer's instruction and at the customer's risk.

(3) eCom Logistik is obliged to immediately report to the customer objections or irregularities that may occur during the contract execution and to document these.

§ 5 Impediment to Performance and Force Majeure

(1) If the service performance is impeded and this is not attributable to any contract party's scope of risks, the contracting parties will be released from their performance obligations for the duration of this disturbance and to the extent of its effect. Strikes, lockouts, force majeure, riots, war or acts of terrorism, official measures and other unforeseeable, unavoidable and serious events are considered as such disturbances.

(2) In the case of release in the sense of § 5.1, each contracting party is obliged to immediately inform the other party and to keep the effects for the other party as small as possible to the extent reasonable.

§ 6 Set-off and Retention

A set-off or retention is only possible with regard to mature counter-claims vis-à-vis claims arising out of a contract of logistics services in accordance with § 1.1 and out of the extra-contractual claims connected therewith, if no reasoned objection has been made.

§ 7 Right of Lien and of Retention, Reservation of Ownership

(1) eCom Logistik is entitled to a right of lien and of retention on all goods under its control or other values against the customer by reason of all debts, whether due or not, to which it is entitled vis-à-vis the client as a result of the activities indicated in § 1.1. The right of lien and of retention does not exceed the statutory right of lien and of retention.

(2) eCom Logistik is entitled to exercise the right of lien and of retention for debts from other logistical service contracts concluded with the customer regarding logistical services in the sense of § 1.1 only insofar as they are undisputed or if the financial situation of the customer compromises the debts.

(3) The customer is entitled to prohibit the exercise of the right of lien, if he provides eCom Logistik with an equivalent security (for example, a directly enforceable guarantee).

(4) § 3.3 shall remain unaffected.

(5) Insofar as eCom Logistik also has to transfer the property to the customer in the course of its logistical services in accordance with § 1.1, eCom Logistik retains the property until all outstanding debts are completely paid.

§ 8 Acceptance, Report on Defects and Default

(1) If the customer has to accept the logistical service, this can be by reason of the cooperative nature of the logistical service by putting into use, resale or further processing of the works, and delivery to the customer or to a third party designated by him. If logistical services are not acceptable, there will be a completion instead of acceptance.

(2) The customer is obliged to report obvious defects at the time of acceptance. The report shall be made in writing or electronically. The timely dispatch is enough to comply with the notice period, if the report reaches eCom Logistik.

(3) If the customer fails to make a report, the logistical service is deemed to be performed in accordance with the contract, unless eCom Logistik has fraudulently concealed the defect.

(4) Claims by reason of the breach of performance deadlines expire, if the customer does not report these to eCom Logistik within 21 days of the service performance.

§ 9 Customer's Claims for Defects

(1) The defectiveness of a logistical service shall be determined by the content of the contract and the legal provisions. Warranties on goods properties and durability are accepted by eCom Logistik only if they are specifically agreed to in the contract as such.

(2) If the logistical service is defective, the customer has a right to a subsequent performance. eCom Logistik has in each case the right to choose between the remedying of the defects and a new delivery/performance. If the subsequent performance is not successful in terms of the contract, the customer is entitled to a second subsequent performance. There are no further subsequent performance rights.

(3) If the subsequent performance fails twice or if it is not possible because of the nature of the service, the customer is entitled to exercise the right of price reduction, of withdrawal from the contract and of compensation for damages as well as of self-execution as follows:

(3.1) If the customer claims a price reduction, it is limited to the omission of the agreed remuneration for the individual, defective logistical service.

(3.2) If the customer uses his right to withdraw from the contract, this withdrawal only applies to the individual, defective logistical service. Apart from that, the customer is entitled to a special termination right in lieu of the withdrawal right under the conditions set out in § 10.

(3.3) The customer can only claim a compensation for damage in lieu of performance under the conditions set out in § 12.

(3.4) In the case of self-execution, the customer's claim for the reimbursement of expenses is limited to an amount of EUR 20,000.

§ 10 Special Termination Right

(1) eCom Logistik is entitled to terminate the contract

(1.1) if the other party breaches essential contractual provisions or does not fulfil these or insufficiently and does not remedy this breach within 30 days despite a warning written by the other party or does not make up the contractual obligations within this period,

(1.2) if a party has requested the opening of insolvency proceedings on its assets, if insolvency proceedings have been opened or if the request is rejected by reason of a lack of assets, or if a party is dissolved or liquidated,

(1.3) if the shareholding in the other contractual party change for the most part.

(2) The right to an extraordinary termination for good cause remains unaffected.

§ 11 Liability of eCom Logistik

(1) eCom Logistik is only liable if it is at fault for the damage caused. The resulting legal and contractual liability of eCom Logistik is limited to the foreseeable and typical damage and the amount is limited

(1.1) to 20,000 EUR per event of damage.

(1.2) if there are more than four events of damage, that have the same cause (e.g. assembly fault) or that relate to the manufacture/delivery with the same defective goods (serial damage), the amount will be limited to EUR 100,000, regardless of the number of events of damage causing this compensation. If there are any differences between the nominal and actual stock of goods delivered to eCom Logistik, eCom Logistik shall be liable from a value of the inventory difference greater than 0.2% of the average stock and to the extent of the liability limit. Positive inventory differences are set off against negative ones.

(1.3) to EUR 500,000 for all events of damage within one year.

(2) The above-mentioned limitations and exemptions of liability also apply to extra-contractual claims against eCom Logistik, its staff, and other agents.

(3) The foregoing limitations on liability and liability exemptions do not apply

(3.1) to injury to life, body and health,

(3.2) to the extent that legal liability provisions, e.g. the Product Liability Law, are mandatory.

(4) The parties may agree that the above-mentioned maximum liability amounts are replaced by other amounts against payment of a liability surcharge.

§ 12 Qualified Fault

The above-mentioned liability exemptions and limitations do not apply

(1) in case of grossly negligent or intentional violation of essential contractual obligations by eCom Logistik, its senior officers or agents or any other obligations by eCom Logistik or its officers.

(2) if eCom Logistik has fraudulently concealed the damage or has provided a warranty for the qualities of the logistical service.

§ 13 Right of Indemnification of eCom Logistik

The customer is obliged to release eCom Logistik and its agents from all third-parties' claims under the Product Liability Law and from other provisions protecting third parties, unless eCom Logistik or its agents have caused the third party claim by gross negligence or intent.

§ 14 Prescription

(1) Claims arising from a contract pursuant to § 1.1 are prescribed after one year.

(2) For all claims, the prescription period begins with the end of the day of delivery, for contractual work services, with the end of the day of acceptance in accordance with § 9.1.

(3) The foregoing prescription periods do not apply in the cases referred to in § 13, in cases of injury to life, body and health or where statutory prescription provisions shall necessarily apply.

§ 15 Liability Insurance of eCom Logistik

(1) eCom Logistik is obliged to conclude and maintain a liability insurance with an insurer of its choice and at usual market conditions, which cover its liability to the extent of the amounts indicated under § 12.

(2) Agreements on a maximum compensation per claim and per year are permitted; likewise, an agreement on eCom Logistik's participation to the settlement of the claim is possible.

(3) At the request of the customer, eCom Logistik has to prove this liability insurance protection by means of a confirmation from the insurer.

§ 16 Electronic Data Exchange

(1) Each party is entitled to prepare, transfer and exchange declarations and messages electronically (electronic data exchange), if the transferring party is recognisable. The transferring party shall bear the risk of loss and the accuracy of the data transferred.

(2) If eCom Logistik has to set up a common computer interface connection between the two data systems, it will be reimbursed by the customer for the necessary expenses. Moreover, each party is obliged to perform usual security and control measures in order to protect the electronic exchange of data against access by third parties as well as to prevent the change, loss or destruction of data transmitted electronically.

(3) For the receipt of information, explanations and requests for the execution of the contract, each Party shall have one or more contact persons and notify the names and contact address to the other party. If a party does not state any contact person, its contact person will be the one who has concluded the contract for the party.

(4) Documents created electronically or digitally have the same rank as written documents.

§ 17 Confidentiality and Data Protection

(1) Each party is obliged to treat all non-public data and information confidentially and to use them exclusively for the intended purpose. Data and information may only be communicated to third parties (e.g. insurance companies, subcontractors) that are necessary in relation to the contractual performance. For the confidentiality of electronic data and information, the same principles shall apply.

(2) The obligation of confidentiality shall not apply to data and information that shall be disclosed to third parties, in particular, public authorities, by reason of statutory obligations. The other party must be immediately informed thereon.

(3) The customer is hereby informed that eCom Logistik processes the personal data obtained in the course of the business activity in accordance with the applicable statutory provisions on data protection.

§ 18 Place of Performance, Place of Jurisdiction, Applicable Law

(1) The place of performance for all service obligations is eCom Logistik's registered office.

(2) The entire business relationship shall be governed by the law of the Federal Republic of Germany under exclusion of UN sales law and German international private law.

(3) The place of jurisdiction for any disputes arising from the business relationship is eCom Logistik's registered office. This place of jurisdiction is exclusive for any claims against eCom Logistik.

§ 19 Final Provisions

(1) The amount of claims for compensation to be fulfilled by eCom Logistik shall be determined, in favour of eCom Logistik, with due consideration of the latter's economic conditions, nature, scope and duration of the business relationship, possible causative or responsible contributions of the customer in accordance with § 254 of the German Civil Code and the customer's degree of monitoring and control of the applied processes. In particular, the substitute performances, costs and expenses borne by eCom Logistik shall correspond to the proceeds of eCom Logistik resulting from its services performed for the customer.

(2) If a contracting party suspends its payments or if insolvency proceedings are instituted on its assets or if an extrajudicial settlement is requested, the other party shall be entitled to withdraw from the part of the contract that is not performed.

(3) Should any of the provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. In this case, the contractual parties shall agree on a valid provision which comes as close as possible to the purpose and commercial objective pursued by the invalid provision.