

**General Terms and Conditions of Ecofly GmbH, Im Steigert 5 67459 Böhl-Idgheim, Germany**

**1. Conclusion of Contract, Basic Terms**

- 1.1 The Terms and Conditions listed hereunder shall apply to the present and all subsequent business transactions with *Ecofly GmbH* ("Seller"), i.e. Contracts, Delivery of Goods and Services, including Consulting Services, (at the latest when Goods are accepted in the case of orders placed by telephone), irrespective of any other terms and conditions of Buyer, whether or not Seller explicitly points out or raises objections against any other restrictive deviations. Any special agreement at variance with the present Terms and Conditions shall be recorded in writing. Any intent or agreement communicated to or by representatives and/or employees shall take effect only when confirmed in writing by both contract partners. Buyer shall be bound to the offer of the contract made to Seller for a period of thirty days beginning from declaration of intent or else until the contract is accepted.
- 1.2 All offers shall be subject to change without notice. A contract shall arise only upon written confirmation of any received order by Seller. Oral agreements, particularly supplementary agreements made via telephone with regard to the execution of the order shall require separate written confirmation by Seller. Seller's lack of response to subsequent requests for any changes and/or supplements to orders placed shall be taken to mean dissent. All changes and supplements to the present contract shall be recorded in writing, likewise any agreement to waive the requirement of written form.
- 1.3 Unless explicitly specified, all dimensions, functions, weights and standards indicated in document annexes to offers and contracts e.g. diagrams, drawings, brochures and other printed material shall be taken to mean approximate descriptions only. Any assurance that Goods supplied by Seller shall demonstrate specific properties shall only be derived from explicit written statements made by Seller.
- 1.4 Seller shall reserve the right to make any modifications provided such modifications do not impede the contractual functionality of supplied Goods due to deviations from stated weights, dimensions and colour. Said modifications shall not in any manner affect other items of the present Terms and Conditions, neither shall the Buyer derive any rights and claims therefrom.
- 1.5 *Ecofly GmbH* shall reserve all proprietary rights and copyrights to all cost estimates, drawings and enclosed documentation ("Documents"). Said Documents shall not be made available to third parties. Buyer shall return said Documents to Seller upon demand if Buyer does not place an order.

**2. Prices, Terms of Payment**

- 2.1 All prices are indicated in EURO inclusive of the applicable Value-Added-Tax in Germany at the time of delivery ex works of Seller. Binding prices shall be taken from Seller's price list for the respective timeframe. Any increase in prices shall apply only in the event that Seller supplies Goods later than three months of concluding the purchase contract.
- 2.2 Any rebates shall be granted only on the basis of a separate rebate agreement.
- 2.3 Invoices shall be dated on the date of delivery, or in the event of delays caused by Buyer, on the date on which the goods are declared ready for shipment by Seller. The invoiced amount shall be payable in full prior to shipment of Goods. Seller shall be entitled to charge a fixed sum of EURO 20 (twenty) for payment reminders. All payments shall be remitted only to the bank accounts indicated on the invoice.
- 2.4 All claims of Seller arising from any ongoing business transactions with the Buyer shall be payable in full in the event that Buyer fails to fulfil acceptance and payment duties or other duties arising from Item 5 (Title to Ownership) in full or in part, OR suspends payments OR in the event that a legal petition is moved to recover the assets of the Buyer in an insolvency proceeding, even if Buyer has issued post-dated Bills of Exchange or cheques.
- 2.5 Seller's business policy does not generally allow for the acceptance of a Bill of Exchange as collateral for payments; in the event that Seller accepts a Bill of Exchange ("Bill") in exceptional cases, said Bill shall be considered deferral of payments due to Seller provided that financial circumstances of the Buyer are not adversely affected subsequently. Bill charges shall be payable immediately in full. Seller shall not accept any liability for timely presentation of Bill, related claims and objections and/or return. Cheques issued to Seller shall be construed only as formal intent of payment. Goods shall be delivered outside Germany following advance payment. Buyer shall bear all expenses related to Bills, cheques and transfer of payments to Seller.
- 2.6 Irrespective of other claims, Seller shall be entitled to charge an interest of 5 (five) per cent p.a. over and above the current market lending rate, however not less than twelve per cent p.a. on defaulted payments.
- 2.7 Buyer shall not derive any rights to adjust payable dues or to claim Goods delivered by Seller on the basis of any compensation claims not recognised by Seller or by a court of law.
- 2.8 Seller shall be entitled to issue separate invoices for partial deliveries.
- 2.9 Seller shall be entitled to balance incoming payments from Buyer against the oldest payable invoice inclusive of any applicable interest irrespective of any stipulations by Buyer, whereby the Buyer shall not invoke statutory limitations of payment period.
- 2.10 In the event that Seller accepts Goods returned due to Buyer's liability, Seller shall be entitled to claim compensation for loss of prospective profits, expenses and appropriate compensation for depreciation of value.

**3. Passage of Risk, Shipment**

- 3.1 Seller shall ship Goods in accordance with Buyer's instructions, uninsured and at the risk of Buyer, even if free delivery is agreed upon. The passage of risk to Buyer shall be determined by the transfer of Goods to the shipping agent, however at the latest when the Goods leave the premises of Seller. Should shipping of Goods be delayed due to Buyer's liability or for reasons beyond the control of Seller, the passage of risk shall be determined by Seller's announced intent to ship the Goods.
- 3.2 Seller shall invoice packaging and shipping at actual cost.

**4. Delivery of Goods, Delivery Period, Delivery Duties, Acceptance of Delivered Goods**

- 4.1 Seller shall not assume liability to adhere to confirmed delivery periods or deadlines since these may in turn depend on due and timely supply of goods to Seller. The delivery period shall begin on the day on which Seller confirms the order, however not before all details of the order have been clarified, extending automatically to include any delays for which the Buyer may be responsible without prejudice to Seller's rights.
- 4.2 Seller shall be entitled to make partial deliveries of Goods.
- 4.3 In the event of deliveries delayed by Seller, Buyer shall initially grant Seller a grace period not less than twelve weeks. Buyer shall be entitled to withdraw from the contract in the event that the Goods are not ready for shipment upon expiry of the grace period. In the event of delays to partial shipments, Buyer shall be entitled to withdraw from the entire contract only if the partial delivery is irrelevant to Buyer's needs. Buyer shall be entitled no further claims whatsoever except to compensation for damages as under Item 7.
- 4.4 In the event that delivery of Goods is significantly impaired or rendered impossible due to *force majeure* or unforeseen events for which Seller cannot be held responsible, e.g. due to strikes, lock-outs at the plants of Seller or Seller's suppliers, subsequent unavailability of materials, plant malfunctions, government directives, import and/or export restrictions, defective or untimely deliveries to

Seller or Seller's suppliers, Seller shall be entitled, upon communication of the nature of impairment to Buyer, to defer delivery of Goods for the period of impairment taking into account reasonable start-up times or else, to withdraw from unfulfilled portions of the contract. Buyer may demand to know whether Seller intends to withdraw from the contract or resume delivery of Goods within a reasonable period. Buyer shall be entitled to withdraw from the contract in the absence of an appropriate response from Seller. Buyer shall not be entitled to any compensation for damages except to the extent specified under Item 7.

- 4.5 Buyer shall be entitled to inspect the Goods at the pre-arranged location within a period of eight days beginning from the notification of availability and shall be obliged to conduct an acceptance review within the stated period. Should shipping or delivery of the Goods encounter delays arising out of Buyer's risk, Seller shall, upon expiry of an additional, fruitless grace period of two weeks, be entitled to dispense with said Goods at own discretion and resume delivery to Buyer at a later date or withdraw from the contract or claim compensation for non-fulfilment of contract from Buyer. The foregoing term clause shall also apply in the event that Buyer cancels the order prior to delivery, in which case the compensation payable shall amount to 15% per cent of order value, unless otherwise specified.
- 4.6 Buyer shall not refuse to conduct an acceptance review if any detected defect does not significantly impair usability of delivered Goods and Seller accepts responsibility to repair said defect. In the event that delivered Goods comprise several independently usable units, any individual defective unit shall not constitute grounds for summary refusal to conduct acceptance reviews for the remaining units.

**5. Reservation of Ownership**

- 5.1 Until settlement of all outstanding dues and release of all obligations and liabilities – e.g. Bills. – including all requests for balances from current account, which Seller is entitled to claim from Buyer on any legal basis whatsoever, Seller shall be granted the following collateral, which Seller will release at discretion upon request, provided the value of the collateral reliably exceeds the outstanding amounts by more than 10%.
- 5.2 All Goods delivered by Seller shall remain property of Seller. In all cases, any processing and other working on the Goods is performed for Seller as the producer, for which however, Seller assumes no obligations. In the event that (co-) ownership of Goods arises out of conjunction with goods not owned by Seller, it is hereby stipulated that Seller shall acquire co-ownership of said Goods in proportion to Seller's share in the invoice value or, in the event that the invoice value cannot be determined, the current market value of the conjoined goods as applicable. All Goods to which Seller enjoys full or partial rights of ownership are hereinafter called Conditional Commodity.
- 5.3 Buyer shall be entitled to process and sell the Conditional Commodity within ordinary course of business, provided that Buyer is not in default of payments to Seller, that Buyer has not suspended payments and that no legal petition is moved to recover the assets of Buyer in an insolvency proceeding. Buyer shall not pledge, assign as security or otherwise transfer the Conditional Commodity. Buyer hereby undertakes to assign forthwith, any claims arising from resale or other legal basis (insurance, tort) in regard to the Conditional Commodity (including all requests for balances from current account), to Seller, to the extent of Seller's rights on the Conditional Commodity. Seller hereby grants to Buyer, revocable rights to collect such claims on Buyer's behalf as may have been assigned to Seller, which Seller may revoke if Buyer fails to fulfil payment duties. Buyer shall, upon Seller's demand, disclose full whereabouts and addresses of Buyer's debtors and notify assignment of claims to said debtors.
- 5.4 Buyer shall take due care of Conditional Commodity on Seller's behalf free of charge, maintain said commodity in proper condition, insure said commodity sufficiently and bear the costs for the same. Buyer shall assume full liability for delivered Goods, irrespective of any fault of Buyer, until said Goods are fully paid for. In the event that Conditional Commodity is attached by third parties (e.g. by impounding), Buyer shall announce the fact of Seller's (co-) ownership, object immediately to attachment and notify Seller without delay. Buyer shall assume all costs to secure release of Conditional Commodity from third parties, insofar as such costs cannot be claimed from the third parties involved. Furthermore, Seller shall be granted access to Buyer's accounts to the extent as may be necessary to safeguard Buyer's rights.
- 5.5 In the event of breach of contract by Buyer, in particular default of payments, Seller shall be entitled to demand immediate and unconditional return of Conditional Commodity, to enter into the premises of Buyer and recover Conditional Commodity and if necessary, demand transfer of Buyer's rights to recover possession from third parties. Said exercise of Seller's rights, in particular the recovery or attachment of Conditional Commodity shall not be construed as withdrawal from contract, insofar as the (German) instalment payment act is not applicable.
- 5.6 Seller shall be entitled to dispense with Conditional Commodity at discretion, upon expiry of a reasonable grace period and resume delivery of Goods to Buyer upon receipt of payment within a new delivery period.

**6. Liability for Defects**

- 6.1 Buyer shall inspect delivered Goods without delay for defects, quality and assured characteristics and must, in order to avoid foregoing rights to warranty claims, submit a written complaint stating recognisable defects immediately and hidden defects as soon as they are discovered.
- 6.2 Seller warrants that the delivered Goods are free of defects to the extent permitted by the current status of technological development and undertakes to assume following duties for a period of one year (and for two years in regard to the provisions under Article 475 Paragraph 2 and Article 479 Paragraph 1 German Civil Code (Purchase of Consumer Goods) beginning from date of delivery: in the event that the Goods are defective and/or damaged, Seller shall repair defects (if necessary, by using new spares) or deliver replacement Goods upon Seller's discretion. Aforesaid term shall also extend to damage resulting defects in other delivered Goods. Seller shall reserve right of ownership over defective components. Buyer shall grant Seller reasonable and sufficient time and opportunity to correct any defects, failing which Seller shall be released from warranty obligations. In the event that efforts to correct defects or deliver substitutes should fail twice within reasonable periods communicated in writing by Buyer, Buyer shall be entitled to discretion to reduce payments appropriately or to withdraw from the contract.
- 6.3 Buyer shall have no claims to redress or remedy should defects arise from improper use/operation/care/maintenance or use of force, or else if delivered Goods are stored in unsuitable conditions or worked on for repair or other purposes by persons not authorised by Seller in writing.
- 6.4 Defective Goods shall be made available to Buyer's dealer or to a dealer nominated by Seller for repair and remedy. Buyer shall not claim compensation for any additional expenses incurred in the course of redress and remedy of defects in particular for transport expenses and labour and material costs insofar as such additional expenses result from repair and remedy not conducted at Seller's business premises. Any repair and remedy to be conducted outside of Seller's facilities in Speyer shall require prior written consent from Seller. Negotiations conducted over Buyer's complaints shall not free Buyer from the duty to submit a proper complaint report.
- 6.5 Seller shall not entertain any claims due to non-fulfilment of assured properties insofar as Seller has only assured contractual compliance. The provisions under Item 7 shall apply in all other cases.

- 6.6 By purchasing the Goods, Buyer undertakes to observe the instructions in the operating manual, to carry out checks and to receive operating instructions from manufacturer or authorised third parties.

**7. Limitation of Liability**

- 7.1 Seller shall not entertain any claims for damages suffered by Buyer arising from *culpa in contrahendo* (violation of mutual confidence in the preparation of a contract), from breach of principal or auxiliary contractual duties, from positive breach of contract particularly in regard to consequential damages, from illicit action or other legal grounds, also insofar as these are based on actions of Buyer's legal representative or agent. The foregoing term shall not apply insofar as liability is mandatory, e.g. in accordance with product liability laws, in the event of intentional tort, gross negligence, injury to life, body or health.
- 7.2 In all cases, the extent of liability shall be limited. Compensation for damage shall not exceed actual loss and lost profits which Seller ought to have anticipated at the time of entering into the contract on the basis of facts known to Seller or such facts that Seller might be reasonably expected to have known. The foregoing term shall not apply to compensation claims which are limited to the purchase price of delayed and non-delivered Goods.
- 7.3 In regard to duty to compensate as under Item 4.4, compensation to be paid to Buyer shall be limited to such damages that might have been reasonably assumed to exist at the time of concluding the contract, however not in excess of 10 % of the value of the delivered Goods or parts thereof, which may have been rendered contractually unusable in due time because of non-delivery or delays.
- 7.4 All damages claimed from Seller shall be limited in time by the periods stated under Liability for Defects (Item 6.2), beginning from the time when the defect was detected by Buyer and the liable party.
- 7.5 No executive organ or employee of Seller who has performed agent's duties shall be held personally liable.
- 7.6 Seller assumes no liability for the function and safety of delivered Goods. The Instructions for Use and Maintenance accompanying the Goods and the Warranty Terms of Seller shall be valid at all times. Seller does not assume liability for any damages or damage to other objects that might result from the use of delivered Goods.

**8. Other Terms and Conditions**

- 8.1 Rights and duties in regard to the present contract shall be transferred only upon receiving prior written consent from Seller.
- 8.2 The legal relationship between Seller and Buyer shall be exclusively governed by the law of Federal Republic of Germany. Standard Laws governing international purchase of movable goods and those governing international purchase contracts for movable goods shall not be applicable to the present contract.
- 8.3 Seller's headquarters (Speyer) shall be the place of jurisdiction for all disputes including disputes related to cheques and bills, provided that Buyer is a fully qualified merchant and does not have recourse to a place of jurisdiction in Germany or that Buyer has relocated to a foreign country since entering into the present contract. Seller however reserves the right to initiate legal proceedings against Buyer at Buyer's place of jurisdiction.
- 8.4 Nullification of individual parts of the aforementioned Terms and Conditions shall not affect the validity of the remaining parts in any manner whatsoever. Nullified items shall be replaced by regulations that best reflect the intended purpose of the voided part.
- 8.5 Tact non-utilisation of rights by Seller shall not be construed as waiver of said rights.

While every effort has been made to faithfully preserve the letter, Spirit and legal intent of the German text of the contract in the present translation, the contract partners hereby agree that the German text of the contract alone shall retain legal validity.

**Speyer, 4.4.2003**