

General Terms and Conditions (25.10.2005)

New Objects

I. General

1. Unless otherwise specially agreed upon in writing, all services offered, agreed or rendered on our part are subject to these General Terms and Conditions. The buyer (customer) automatically acknowledges them on placing an order or accepting delivery. Any deviating terms and conditions of the customer which we have not expressly acknowledged in writing shall not be binding for us, even if we do not expressly contest them.
2. Unless otherwise specially agreed upon in writing, any documents relating to an offer such as images, drawings, weight and measurement specifications and other print material shall only be deemed approximately authoritative.

II. Scope of service

1. Our written order confirmation shall be authoritative for the scope of our delivery and other agreed services. In the case of an offer with binding terms and due acceptance by the customer, the offer is effective without a written order confirmation.
2. Any verbal covenants or amendments shall require our prior written consent to be effective.

III. Prices and payments

In the absence of special agreements in writing, the following regulations shall apply:

1. Our prices are without engagement; respective calculations are based on the decisive material prices and salaries on the date of submission of our offer or order confirmation. If any changes should occur until delivery or other agreed services, we shall be entitled to adapt prices correspondingly. The same shall apply to the delivery of goods that we buy from outside the Eurozone ourselves, if the exchange rate used in our calculation changes by 2,0 % or more up to the date of delivery.
2. All agreed upon prices, between contract partners, shall in each case be quoted plus Value Added Tax, shipping and transport costs, as well as similar ancillary costs (other state contributions). All deliveries shall follow ex works.
3. For deliveries abroad the customer shall bear all costs associated with delivery abroad, in particular for the necessary import and export documents and for possible special marking of the goods.
4. Payment shall immediately follow receipt of invoice. The customer shall bear all costs associated with remittance.
5. Any retention of payments or set-off against possible counterclaims of the customer contested by us shall not be admissible.

IV. Deliveries

1. Our delivery terms shall only apply approximately. The delivery term shall start on dispatch of the order confirmation but not before submission of the documents, permits, licences to be obtained by the customer and before receipt of an agreed deposit. In the case of premature delivery the date of such delivery and not the originally agreed date shall be authoritative - also regarding the customer's acceptance duty.
2. The delivery term shall be deemed observed, if the object of delivery has left the works or warehouse until its expiry or if - in the case of dispatch - the goods have been declared ready for dispatch.
3. The delivery term shall be subject to the reservation that we obtain timely and correct deliveries ourselves. If we fail to receive our own deliveries or receive them belatedly or in other cases of incapacity or impossibility of performance, we shall be entitled to deliver equivalent goods to the customer.
4. Partial deliveries shall be admissible.
5. The delivery term shall be reasonably extended in the case of measures associated with labour disputes, in particular strike or lockout, and in the event of unforeseen impediments beyond our control, if such impediments demonstrably have a considerable influence on completion or delivery of the object of delivery. This shall also apply if the circumstances occur to our own supplier. We shall not accept liability for the above-mentioned circumstances even if they occur during an existing delay. In important cases we shall inform the customer as soon as possible of the start and ending of such impediments.
6. If a damage occurs to the customer due to a delay caused intentionally or by gross negligence on our part, the customer shall be entitled, barring all further claims, to claim default damages. Default damages shall amount to 0.25% for each full week of delay but no more than 3.0% of the value of the part of the total delivery which cannot be used in due time or contractually as a result of the delay.
7. If dispatch is delayed at the customer's request, he shall be charged the costs incurred by storage, starting one month after the ready for dispatch announcement, but at least 0.5% of the invoice amount in the case of storage by us for every started month.
8. After setting and fruitless expiry of a reasonable deadline, we shall be entitled to use the object of delivery for other purposes and to make deliveries to the customer within a reasonably extended deadline.
9. Observance of the delivery deadline is subject to the performance of contractual obligations by the customer.

V. Passage of risk and acceptance

1. Risk shall pass to the customer at the latest on dispatch of the delivery, even if we perform partial deliveries or accept other services such as dispatch costs or delivery or installation.
2. If delivery is delayed due to circumstances for which the customer is liable, risk shall pass to the customer on the date when the goods are ready for dispatch.
3. Delivered objects shall -even if they have minor defects - be accepted by the customer regardless of the rights under section VII.

VI. Reservation of title

1. All delivered goods including all accessories shall remain our sole property until full satisfaction of all claims resulting from the business relations between us and the customer. Payment shall be defined as receipt of the full consideration on our part. Inclusion of individual claims in a current invoice as well as statements of balances and their acknowledgement shall not affect the reservation of title.
2. We shall be entitled to insure the object of delivery at the customer's expense against theft, breakage, fire, water and other damages unless the customer has demonstrably taken out such insurance himself.
3. The customer may neither pledge nor place in escrow the object of delivery. He shall immediately inform us of any attachment, confiscation or other disposals by third parties.
4. If the customer acts in breach of contract, in particular by defaulting on payment, we shall be entitled to take back the goods after sending a reminder and the customer shall be obliged to hand over the goods.
5. Our enforcement of the reservation of title and attachment of the object of delivery shall not constitute a withdrawal from the contract.

VII. Liability for delivery defects

1. If the object of delivery is deficient or lacks warranted qualities or if it becomes defective within the warranty period, the customer shall be obliged to notify us of such defects immediately however, in the case of recognisable defects within 10 days after acceptance, in the case of non-recognisable defects immediately on detection -in writing; otherwise the customer shall lose his warranty rights towards us.
2. A defect includes the absence of expressly warranted qualities.
3. All parts that prove to be unusable or not inconsiderably affected in their usability within 6 months of first operation due to a circumstance before passage of risk -in particular deficient construction, poor construction materials or deficient execution - shall be repaired or newly delivered free of charge according to our reasonable discretion. We shall be notified immediately of the detection of such defects in writing. Replaced parts shall become our property.
4. If dispatch, installation or first operation are delayed through no fault of our own, our liability shall expire no later than 12 months after passage of risk.
5. For essential outside products our liability shall be limited to the assignment of liability claims due to us against the supplier of the outside product.
6. The customer's right to enforce claims based on defects shall expire in all cases 6 months from the date of timely notice of defects, but at the earliest on expiry of the guarantee period.
7. We shall accept no liability for damages caused by one of the following reasons:
 - unsuitable or improper use,
 - deficient assembly or operation by the customer or third parties,
 - natural wear,
 - deficient or negligent treatment,
 - unsuitable operating materials, substitute materials,
 - deficient construction work,
 - unsuitable building sites,
 - chemical, electrochemical or electrical impacts,unless they are due to a fault of our own.

8. After consultation, the customer shall give us the necessary time and opportunity to perform all repairs and substitute deliveries that appear necessary to us according to our reasonable discretion, otherwise we shall be exempt from our liability for defects. Only in urgent cases of endangered operating safety and to ward off excessive damages - of which the customer must immediately notify us - shall the customer have the right to remedy the defect himself or by third parties and to demand a refund of the necessary costs from us. The same shall apply, if we are in default of remedying the defect. In either case, the customer must immediately notify us.
9. Of the direct costs incurred by repair or substitute delivery we shall bear -if the complaint proves to be justified - the costs of the replaced part including its dispatch and reasonable costs of installation and removal, as well as, if this can be reasonably demanded in the individual case -the necessary costs of providing our fitters and auxiliary staff. Other costs shall be borne by the customer.
10. The guarantee period for the replaced part and repairs shall amount to three months, but it shall run at least until expiry of the original guarantee period for the object of delivery. The period of liability for defects of the object of delivery shall be extended by the duration of business interruption due to repair work.
11. Inexpertly performed changes or repair work by the customer or third parties without our prior written consent shall eliminate our liability for resulting consequences.
12. The customer may withdraw from the contract if full performance becomes absolutely impossible before passage of risk. The same shall apply in the case of our incapacity to effect performance. The customer may also withdraw from the contract if execution of an order of similar objects becomes partly impossible in terms of quantity and he has a justified interest in refusing partial delivery; if this is not the case, the customer may correspondingly reduce the consideration.
13. The customer shall be entitled to withdraw, if, in the case of default of performance according to section IV of these General Terms and Conditions, the customer grants us a reasonable period of respite in writing with the express declaration that he will refuse to accept performance after expiry of this period, and the period is not observed.
14. If impossibility occurs during delayed acceptance on the customer's part or through a fault of the customer's, he shall remain obliged to provide consideration.
15. The customer shall also be entitled to cancel the contract, if we culpably allow a reasonable period of respite for repairs or substitute delivery due to a default we are liable for hereunder to elapse without result. The customer's right to cancel the contract shall also apply in other cases of failure to perform repairs or substitute deliveries on our part.
16. Further claims of the customer, in particular claims for damages not incurred on the object of delivery itself (consequential damages) shall be ruled out. This exclusion of liability shall not apply in the case of intent, gross negligence of the owner or of executives and culpable violation of essential contractual obligations. In the case of culpable violation of essential contractual obligations we shall only be liable - barring cases of intent and gross negligence of the owner or of executives - for contractual and reasonably foreseeable damages. The exclusion of liability shall neither apply in cases where liability arises under the Product Liability Act for personal injuries and material damages to privately used objects caused by defects of the object of delivery. Neither shall it apply in the case of absent but expressly warranted qualities, if the purpose of such warranty was to safeguard the customer against damages that did not occur to the object of delivery itself.

VIII. Liability for ancillary obligations

1. If, due to a fault of our own, the customer cannot use the delivered object as specified in the contract due to neglected or deficient execution of suggestions and recommendations given before or after conclusion of the contract and of other contractual ancillary obligations - in particular instructions for the operation and maintenance of the object of delivery, the provisions in section VII shall apply correspondingly, barring further claims of the customer.
2. Demonstrations and tests at the customer's works by our representatives, specialists and mechanics shall be performed exclusively at the customer's risk. We shall only be liable even in this respect for intentional or grossly negligent behaviour.

IX. Miscellaneous

1. The place of performance for all obligations shall be Frankfurt/Main.
2. Legal relationships between the customer and ecoGSE shall be subject to German law with the exception of the Convention on Contracts for the International Sale of Goods (CISG), Vienna, 11 April 1980. Contractual relationships shall rather be governed by German Civil Law (BGB/HGB). The legal venue shall be Frankfurt/Main. We shall also be entitled to take legal action at the customer's official place of business or in the capital of the state where the customer has his official place of business.
3. ecoGSE shall be entitled to use the name of the customer as a reference.
4. Should individual provisions of this agreement and/or individual agreements concluded under its enforcement be or become ineffective or infeasible, the remaining provisions shall not be affected. The ineffective or infeasible provision shall be replaced by an effected and feasible provision, which economically comes as close as possible to the ineffective or infeasible provision. The same shall apply in the case that this general agreement and/or an individual agreement concluded under it includes a breach. The ineffectiveness of a part of a provision of this general agreement and/or an individual agreements concluded under its enforcement shall not affect other parts of the particular provision.