

ECO PHYSICS GmbH – General Terms and Conditions

1. General

- 1.1. Our general terms and conditions shall apply exclusively. Contrary or differing customer's general terms and conditions shall not apply except if we expressly agree upon in writing. Even if we refer to a letter, which contains general terms and conditions of the customer or a third party or other such reference, no agreement to the validity of those general terms and conditions is implied.
- 1.2. Our general terms and conditions shall also apply if we perform delivery without reservations and despite our knowledge of differing or contrary terms.
- 1.3. All provisions between us and the customer in order to fulfil this contract are to be agreed in writing.
- 1.4. Our general terms and conditions shall apply only in relation to merchants within definitions of sec. 1 of paragraph 310 BGB (German Civil Code)
- 1.5. Our general term and conditions shall also govern all future transactions with the customer.

2. Offer – Documents

- 2.1. Our offers and quotes are without obligations, except as otherwise stated in the order acceptance.
- 2.2. We reserve property and copyrights for all illustrations, technical documents, calculations and other documents. Any transfer on to third parties requires our written consent.

3. Prices – Terms of payment

- 3.1. Except as otherwise stated in the order acceptance prices are „ex works“, exclusive of packing charge, export shipments, customs and other public taxes. Such expenses are billed for separately.
- 3.2. The statutory VAT is not included in our prices; it is reported separately in legal amount in the invoice on the day of the issuance.
- 3.3. The deduction of cash discount requires an agreement in writing.
- 3.4. Except as otherwise stated in the order acceptance the purchase price is due and payable net (without deduction) within 30 days from the date of the invoice. A delay of payment is handled according statutory regulations.
- 3.5. Only a legally binding, undisputed and acknowledged judgment on a customer's counterclaim entitles the customer to offset the invoice. Beyond, any practice of retention must be based on the same contractual relationship as its counter-claim.
- 3.6. We are entitled to deliver or to render outstanding deliveries or services only against cash in advance or surety, if circumstances are confessed after conclusion of the contract, which are suitable to decrease the credit rating of the customer fundamentally and through which the payment of the outstanding money is endangered (including other individual orders for which the same business terms apply). Overdue invoices are reminded and charged with a default interest of 1% p. m. (12 % p. a.). Bank expenses and other charges are at the expense of the customer. Complaints about the delivery items do not release the customer from the duty to the payment on time. For amounts over EUR 100.000 generally an instalment payment or a deposit at a factory acceptance test is applied.

4. Delivery time

- 4.1. The dates and delivery time stated by us for deliveries and services are always best estimates, unless a firm delivery period is expressly agreed beyond the order confirmation. In case of shipping, delivery periods and dates refer to the time of handing over the goods to the forwarding agent, carrier or to any third party engaged with the transport.
- 4.2. The beginning of the delivery period is based on an agreement of all technical specifications beforehand. We are entitled to withdraw from the contract by giving the customer immediate written notice, if the implementation of any further changes in

the specifications or any new requests submitted by the customer will be disproportionate or unreasonable to us.

- 4.3. Compliance with our delivery obligation requires timely and proper performance of all duties of the customer. Defences based on non-performance of the contract are reserved.
- 4.4. Without prejudice to our rights of default we can demand from the customer a prolongation of delivering and performance periods or a moving of delivering and performance appointments around this time period in which the customer does not meet his contractual liabilities opposite us
- 4.5. In case of default in acceptance or other breach of duties to cooperate by the customer we are entitled to claim any resulting damage including but not limited to additional expenses, if any. Further claims are reserved.
- 4.6. Provided that the conditions of the previous paragraph are fulfilled, the accidental risk of loss or damage to the goods passes on to the customer at the time when the customer claimed default of acceptance or debtor's delay.
- 4.7. The liability for impossibility of the delivery or for delays in shipment does not exist, if these incidents are caused by acts of god or other, at the time of the conclusion of a contract not foreseeable events (e.g. breakdowns of any kind, difficulties in sourcing raw materials or energy, delays in transit, strikes, lawful lockouts, lack of workers, or the incorrect or not timely deliveries by our suppliers), which we are not responsible for. Provided that such events fundamentally aggravate the delivery or performance and the difficulties are not only of temporary duration, we are entitled to withdraw from the contract. In case of difficulties of temporary duration the delivery or performance periods prolong themselves beyond the time period of the hindrance plus an adequate adaption period. As far as the acceptance of the delivery or service cannot be expected from the customer because of the delay, he may withdraw from the contract by an immediate written explanation.

5. Transfer of risk

- 5.1. Except as otherwise stated in the order acceptance the delivery is agreed "ex works". The accidental risk of loss or damage to the goods passes on to the customer also by freight paid delivery, if the shipment is dispatched. Beyond, the risks transfers to the customer also in cases, when dispatching or delaying of the delivery is requested by the customer and to be more precise for the full time of the delay. When the dispatch or the handing over is delayed because of circumstances caused by the customer, the accidental risk of loss or damage to the goods passes on to the customer from the day the delivery item is ready for shipment and we have reported this to the customer.
- 5.2. The dispatch and transport is carried out on the risk of the customer even on delivery free domicile. Without a special agreement we arrange a transport insurance. In case of any kind of transport damage we shall be informed within 10 days in order to allow for inspections. In case of international transport INCOTERMS 2010 are applicable.

6. Warranty

- 6.1. Precondition for any warranty claim of the customer is the customer's full compliance with requirements regarding inspection and objection established by sec. 377 HGB (German Commercial Code).
- 6.2. In case of non-conformity of the goods we are entitled at our option and within an appropriate period of time to replace or repair the defect for the delivery of conforming goods. If the remedy of defects will be impossible or unreasonably aggravated by the fact that the customer carries out changes without our consent at the purchase item or make them by the third party, so the customer has to bear in any case the additional costs resulting from the alteration of the removal of defects.

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7. Liability for fault

- 7.1. Provided that the customer takes legal action to enforce a claim for damages we are liable according to the provisions of applicable law in case of intent or gross negligence, including intent or gross negligence our executive and advisory bodies or executive employee. As far as we are accused of grossly negligent breach of contract, the liability of simple not executive assistance personell for damages shall be limited to the typically predictable damage.
- 7.2. The liability for damages, whatever the legal justification is, shall be limited as far as it depends on negligence in particular due to impossibility of performance, default, defective or wrong delivery, breach of contract, negligence in contracting and tort as follows:
 - We are not liable in cases of negligence caused by our executive and advisory bodies, agents, employee or other executive assistances, if it is not a breach of essential contractual obligations (cardinal duties). Essential contractual obligations are obligation to deliver on time, commissioning of items purchased, free from substantial defects in material as well as duties to advise, protect and care, which should enable the customer to use purchased items according to the contract or aiming to protect life and physical condition of staff and of his property from considerable damages.
 - As far as we are liable for damages because of negligence on the merits, the liability shall be limited to damages, which were foreseeable at the conclusion of the contract as a possible consequence of a breach of contract or which shall have been foreseeable by using due care and attention. Indirect damages and consequential losses, which are result of defects of the purchase object, are replaceable only, when such damages are typically predictable by using the purchased item according to the terms.
 - The exemptions and restrictions of liability above shall be applied to the same extent in favour of our executive and advisory bodies, agents, employees or other assistance personnell.
- 7.3. Our liability for culpable damage to life, body or health shall remain unaffected. The same applies to warranted characteristics and to our compulsory liability under the Product Liability Act.
- 7.4. Any liability not expressly provided for above shall be disclaimed. This applies particularly to cases, that we provide free technical information or advice, while such information or advice are not owed by the contractually agreed scope.
- 7.5. Warranty claims are subject to a limitation period of 12 months, counted from the transfer of risk.

8. Guarantee

- 8.1. We guarantee for faultless operation and performance of the delivered equipment and measuring devices during the period of one year from the date of invoice by committing ourselves to repair or to replace parts which should become faulty or useless because of faulty construction, unsuitable material or poor workmanship during this period free of charge and as quickly as possible. The queried material shall be sent free of charge to our service centre and replaced components become our property. Guarantee services which are carried out in our house are cost-free if the device to be repaired is sent to our service centre freight prepaid. In case of guarantee services which are undertaken at the customer the journey and accommodation expenses for our engineer or technician will be charged after the effort. The effective repair time will be for our account while the time expenditure required for the return journey are at the expense of the customer.
- 8.2. Our guarantee obligation expires if the delivered equipment is treated by the customer without compliance with our

instructions, especially when they are mounted, put into operation or treated improperly. Equipment, which is taken out-of-service and stored for a long time has to be put in a dry place. The guarantee also expires if the customer removes seals, sealings and or safeguardings attached to our brands or carries out repairs alone or by third parties without our written consent.

8.3. The guarantee is excluding the following conditions:

- natural material wear, damage due to faulty installation work, freezing or overheating,
- excessive use, corrosion and suchlike.
- Technical services provided to the customer after the expiry of guarantee are subject to our separate conditions. Further guarantee claims do not exist.

9. Retention of Title

- 9.1. We retain title to the goods until receipt of all payments in full.
- 9.2. The Customer shall handle the goods with due care and insurance them suitable. To the extent necessary the customer shall maintain and service the goods at the expense of his own in due time.
- 9.3. If third parties take up steps or pledge to otherwise dispose of the goods, the customer shall immediately notify us in writing in order to enable us to seek a court injunction in accordance with § 771 ZPO (German Code of Civil Procedure). If the third party is not able to reimburse us for the judicial and extrajudicial costs of proceedings under § 771 ZPO (German Code of Civil Procedure), the customer will be held liable for any damages caused.
- 9.4. The customer may resell goods in the course of his regular business; for this case, the customer hereby assigns all claims to us in the amount of the invoice total (including VAT) of our claim, which are arising out of such resale, whether the goods have been processed or not. Notwithstanding our right to claim direct payment the customer shall be entitled to receive the payment on the assigned claims. We agree to not demand payment on the assigned claims to the extent the customer complies with all his obligations for payment, he does not fall into arrears, especially he does not become subject to an application for insolvency or similar proceedings or to any stop of payments. In this case we can demand that the customer announces us the assigned claims and their debtors, provide us all information and hands over documents necessary for collection as well as informs debtors (third parties) about the assignment.
- 9.5. Insofar as the securities exceed the secured claim by more than 10%, we are obliged to release such securities upon the customer's request; the choice of the appropriate securities to release remains on us.

10. Subsequent modification of delivery

- 10.1. Should technical documents submitted by the customer not correspond to the actual conditions or should the customer not have reported to us of circumstances which would have caused another material deployment or other type of the execution or should the working conditions of the plant not correspond to the made preconditions, the costs required for getting necessary amendments are for debits of the customer.

11. Jurisdiction – Place of execution

- 11.1. If the customer is a merchant, our place of business corresponds to the place of jurisdiction; however we are entitled to sue the customer on his place of residence.
- 11.2. This contract shall be governed by the laws of the Federal Republic of Germany excluding the Convention on Contracts for the International Sale of Goods (CISG).
- 11.3. Except as otherwise stated in the order acceptance our place of business is the place of performance.

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