

# General conditions of sale and delivery

of ECOROLL AG, 29227 Celle, Germany (October 2019)

## I. General

1. These general conditions of sale and delivery apply to all deliveries. Contracts of delivery between ECOROLL and the customer are binding only then, when ECOROLL has confirmed the contract in writing. Modifications or supplements to the agreed contracts require the written confirmation from ECOROLL before taking effect. This applies also to agreements made with the customer's representatives.
2. In commercial dealings, these conditions form part of the contract, if the order was made by telephone or telex and the customer was given prior access to these conditions. All deliveries and services - including any future deliveries and services - including proposals, consultations and other ancillary services shall be made exclusively on the basis of these General Conditions. If the customer applies his own business or commercial conditions, which differ from those of ECOROLL, then these do not form part of the agreement, if this has been notified to ECOROLL before ECOROLL has given the customer access to its own conditions.
3. In these General Conditions the following terms shall have the meanings hereunder assigned to them:
  - "Contract": the agreement In Writing between the parties concerning supply of the product and all appendices, including agreed amendments and additions In Writing to the said documents;
  - "Gross Negligence": an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such an act or omission;
  - "In Writing": communication by document signed by both parties or by letter, fax, electronic mail and by such other means as are agreed by the parties;
  - "the Product": the object(s) to be supplied under the Contract, including software and documentation.

4. Product Information: All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.

5. Drawings and technical information: All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

## II. Quotation

1. The documentation relating to the quotation, including diagrams, drawings,

details of weight and dimensions is only approximate, in as far as it is not expressly labeled as such. ECOROLL retains copyright and proprietary rights for estimates, drawings and other documents; these may not be passed to a third party. A customer's confidential plans will be disclosed to a third party by ECOROLL only with the express permission of the customer.

2. The customer assumes responsibility for all documentation produced, such as drawings, patterns, models and the like. The customer must take responsibility that the drafts submitted by him do not infringe the copyright of a third party. ECOROLL is not obliged to check that the drafts submitted, if put into production, are not in breach of copyright of a third party. If a case of liability for ECOROLL AG does however arise, then the customer must compensate. This does not apply in a case of premeditation or gross negligence on the part of the proprietor or senior management of ECOROLL AG.

## III. Delivery and passing of risk

1. A written confirmation of the order by ECOROLL is the authoritative document. In the event of an offer from ECOROLL with a set timeframe and acceptance within a prescribed period the offer itself is the authority if the order confirmation is not issued in time. Any amendment or additional agreement requires a written confirmation from ECOROLL.
2. The agreed delivery clauses shall be interpreted according to the INCOTERMS® 2010 applicable at the time of the conclusion of the contract.
3. The risk passing ensues by means INCOTERMS® 2010. (See VIII!)

## IV. Prices

1. In the absence of a special agreement the prices are given in €, from the Celle works, excluding packing, freight costs and other extras; these will be invoiced at cost price. (INCOTERMS® 2010: EXW Ex Works Celle).
2. The packaging will not be taken back.
3. In addition to the total costs (including extras) the current amount of value added tax (VAT) will be shown as an additional item on the bill.
4. The minimum order amount has to be € 50.00 net, without VAT, otherwise ECOROLL will charge a minimum order surcharge until the minimum order value has been reached.
5. Estimates for repairs are not binding.

## V. Payment

1. Bills from ECOROLL are to be paid within 30 days of the date of the invoice unless otherwise specified. When payment is effected within 14 days, then ECOROLL will allow a discount of 2%, if no overdue demands from ECOROLL are outstanding.
2. ECOROLL expressly reserves the right to accept or reject bills of exchange. Bills of exchange will only be accepted in lieu of payment and are regarded as a payment only on encashment. Discount costs will be charged to the customer's account. In taking bills of exchange, ECOROLL will accept no responsibility for the timely notification of protest.

3. A payment is said to have been effected only when ECOROLL has the amount at its disposal. In the case of a check, the payment is effected when the check has been cleared.

4. In case of late payment, ECOROLL is authorized to charge interest at the normal bank rate. When a customer delays payment, then interest at the normal bank rate, but not less than 3% above the current discount rate of the Deutsche Bundesbank, will be credited to the account of ECOROLL, unless the customer can prove that the late payment charge has not accrued or is considerably less than the flat rate. ECOROLL reserves the right to invoke a higher late payment rate.

5. The withholding of payments or raising of extra charges on a basis of any outstanding counter-claims against ECOROLL by the customer is not admissible.

6. If the conditions of payment are not adhered to and liquidity problems become apparent, or other circumstances become known, which put the client's credit-worthiness in question, then ECOROLL is authorized to call in the complete payment. Where deliveries or services have not yet been carried out, ECOROLL can demand payment on delivery or pre-payment, or withdraw from the contract without any liability to payment of claims for damages.

7. If the customer withdraws from the contract without cause, then he is obliged to pay 30% of the gross sales price as all-inclusive compensation. ECOROLL reserves the right to invoke a higher compensation in light of corresponding evidence.

## VI. Delivery dates

1. The stated delivery times are the average delivery times after receipt of the written order by ECOROLL AG and after the conclusion of the final technical clarification and, if necessary, approval by the customer. Subsequent modifications or technical clarifications may lead to additional time requirements (longer delivery time) and a price adjustment. Technical issues will be clarified with the customer, who, on his part, is obliged to provide the required information in a short term. This means that the respective delivery time is still based on the average delivery times for the product, but can differ in some cases according to the individual requirements.

2. When the article to be delivered has left the works or is declared to be ready for dispatch, before the expiry of the delivery date, then the delivery date is said to have been kept to.

3. The delivery date can be extended appropriately in connection with industrial actions, especially a strike or a lock-out, as well as the onset of unforeseen difficulties, which lie outside the control of ECOROLL, together with such difficulties associated with the manufacture or delivery of important components. These conditions apply also to affected sub-contractors. The actions listed above are not defensible with ECOROLL when they occur during an already existing delay. The commencement and cessation of such difficulties will be reported by

ECOROLL to the customer as soon as possible.

4. ECOROLL is authorized to carry out separate deliveries and partial work at any time.
5. The meeting of the delivery date assumes the fulfilling of the terms of the contract on the part of the customer.

#### **VII. Transfer of risk and delivery**

1. The risk is transferred to the customer at latest on the dispatch of the components, and also then, when deliveries are made by installments, or the customer has taken over further jobs, for example postage costs, carriage and installation. The insuring of the delivery against theft, loss, breakage, or damage through transport, fire or water is undertaken by ECOROLL only on the express wishes and expense of the customer.
2. Components to be exhibited at trade fairs are, however, insured against any damage and theft during transportation by ECOROLL.
3. If the dispatch is delayed by circumstances on the part of the customer, then the risk is transferred to the customer from the day of readiness for dispatch; however, ECOROLL is obliged to carry out the insurance in accordance with the wishes of, and at the cost of the customer.
4. Articles delivered, even when displaying minor faults, are to be accepted, without detriment to statutory rights as listed in section IX.
5. Damage and other complaints concerning faults or incomplete deliveries are to be reported to ECOROLL immediately in writing. In the absence of this report the delivery from ECOROLL will be taken as complete, unless the fault was not apparent on inspection, or was deliberately not mentioned by ECOROLL. If such a fault appears at a later date, then the complaint must be made immediately after the discovery, otherwise the delivery, even in the light of this fault, will be taken as approved.

#### **VIII. Reservation of propriety rights**

1. ECOROLL reserves the propriety right of the article until all claims by ECOROLL on the customer connected with the business transaction, including claims arising in the future from contracts made at the same time or subsequently, are discharged. This applies also if individual or multiple claims on the part of ECOROLL are entered in a current account and the balance drawn and acknowledged. When the customer's actions are contrary to the terms of the contract, especially in respect of late payment, ECOROLL is authorized to repossess the delivered article after sending a reminder, and the customer is obliged to surrender it. In the repossession and seizure of the article by ECOROLL, a withdrawal is only possible when ECOROLL has expressed this in writing. In confiscations or other actions by a third party the customer must immediately inform ECOROLL in writing.
2. The customer is authorized to further dispose the delivered article in normal commercial dealings. He relinquishes thereby, however, all claims with all incidental rights, which arise from the disposal, against the purchaser or a third party in favor of ECOROLL.

The customer is authorized to collect debts even after assignment, as long as he keeps to the contract and does not default on payment.

The authorization of ECOROLL to repossess remains herewith unaffected, however ECOROLL undertakes not to

make the repossession, as long as the customer continues to honor his payments and does not default. ECOROLL can otherwise require the customer to make known to ECOROLL all debts and their debtors, to reveal all particulars regarding the repossession, to hand over all relevant documentation and to inform the debtors of the assignment. If the delivered article has been disposed of together with other objects not belonging to ECOROLL, then the customer's debt against the purchaser amounting to the delivery price agreed between ECOROLL and the customer is taken as assigned.

3. The customer may neither seize the delivered article nor take it into safe-keeping. In a case of seizure or confiscation or other action by a third party he must immediately inform ECOROLL.

#### **IX. Liability for deficiencies on delivery**

ECOROLL accepts responsibility for deficiencies, to include expressly guaranteed properties, excluding further claims, as follows:

1. All those parts rightly judged to be of inferior quality, which turn out to be unserviceable or substantially defective in operation, within 6 months of delivery, as a result of one of the circumstances covered by transfer of risk - especially constructional defects, inferior materials, or poor workmanship - will be replaced free of charge or resupplied by ECOROLL. The finding of such deficiencies is to be reported immediately in writing to ECOROLL. Exchanged parts become property of the customer. If the delivery or installation is delayed through no fault of ECOROLL, then the liability expires at latest 12 months after transfer of risk. For substantial externally produced components the liability of ECOROLL AG is limited to the assignment of claims for liability accruing to it against the suppliers of the externally produced components.

2. The rights of the customer to make valid claims for deficiencies lapses in all cases 6 months from the date of the objection, at the earliest, however, with the expiry of the term of acceptance of warranty.

3. No responsibility will be accepted for damage caused through the following: unsuitable or inappropriate usage, deficient installation or assembly by the customer or a third party, natural wear and tear of properly functioning replaceable parts, e.g. cones, rollers, cages, ball inserts; faulty or careless treatment, unsuitable coolant, exchangeable raw materials, chemical, electrochemical or electrical influences inasmuch as the fault cannot be traced back to ECOROLL AG.

4. In order that ECOROLL can undertake the modification and replacement of the necessary parts, the customer must give ECOROLL the required time and opportunity, otherwise ECOROLL is released from liability. Only in urgent cases of danger to the works safety and to avoid further disproportionate damage, after contacting ECOROLL, or when ECOROLL is delayed in carrying out the rectification of faults, may the customer himself or a third party carry out the repair and claim the necessary costs from ECOROLL.

5. ECOROLL bears the direct costs of the repairs or replacement - insofar as the objection turns out to be legitimate, - the costs of the replacement part plus carriage, furthermore, in a special case, where the situation justifies this, the expenses for the provision of technical

personnel. In general, the customer bears the costs.

6. The warranty for the part replaced or repaired is three months, the term runs however, at least up to the expiry of the original term of acceptance of warranty for the delivered article. The term for liability for deficiencies in the delivered article can be extended by the time of interruption of work caused by the repairs.
7. Modifications or repairs undertaken by the customer or a third party without the prior permission of ECOROLL will lead to the withdrawal of any liability for the ensuing consequences.
8. Further claims by the customer, especially claims for rectification of faults, which do not originate in the delivered article, are excluded, insofar as this is legally admissible. This includes production outage, loss of profit, loss of use, contract loss or any other consequential damage or indirect damage.
9. ECOROLL is not obliged to rectify faults, for as long as the customer defaults on payment.
10. If customer's own products are rejected on grounds of faults in the production, then the customer cannot demand compensation for the products. In this case ECOROLL will carry out without charge the same method of production on a new part, provided free of charge and carriage. If the part becomes unusable because of a fault in the material, or unforeseen faults must be rectified, then the customer must compensate ECOROLL for the ensuing costs.

#### **X. Drawings and leaflets**

Original drawings may not be copied to a third party, especially not to competitors, passed on or be given access to without permission. The copyright for drawings and leaflets remains with ECOROLL.

ECOROLL reserves the right to alter construction plans and leaflets and other technical documents.

#### **XI. Liability for subsidiary obligations**

If through fault of ECOROLL, as a result of neglectful or defective construction through recommendations and advice given before or after sealing the contract, as well as other contractual obligations, especially operating and maintenance instructions for the delivered article, the delivered article cannot be properly operated, then the provisions in sections IX and XII apply excluding further claims from the customer correspondingly.

#### **XII. The customers rights to withdraw and other liability of ECOROLL**

1. The customer can withdraw from the contract when the entire process before transfer of risk finally becomes impossible for ECOROLL to fulfill. The same applies to ECOROLL's incapacity. The customer can also withdraw from the contract if when ordering the same article the production of a part of the delivery is considered impossible because of the quantity and the customer has a justifiable ground for rejecting a partial delivery. If this is not the case, then the customer can reduce the compensation.
2. If a delay in delivery as provided in Section VI occurs, then the customer must grant the offending supplier a suitable extension of delivery deadline with an express declaration, that after expiry of this date the delivery may be rejected. If the deadline is not kept, then the customer is authorized to withdraw.
3. If the incapacity occurs during the delay in acceptance, or through fault of the customer, then the latter remains liable to compensation.

4. Furthermore, the customer has the right to withdraw, if ECOROLL lets the adequate time-scale set for the repair or replacement of a fault for which it is responsible in line with the conditions of delivery, elapse without notice. The customer's right to withdraw exists also through the incapability or incapacity to carry out repairs or replacement on the part of ECOROLL.
5. All other continuing claims from the customer, especially for alteration, notice to quit, or reduction, as well as compensation for damages in any art or form, expressly also those damages which have not been done to the delivered article, in as far as they are legally permissible, are excluded.

### **XIII. The right to withdraw of ECOROLL**

1. In the case of unforeseen occurrences as provided in Section VI of the conditions of delivery, in as insofar as they considerably alter the commercial significance or the content of the product or exert considerable influence on ECOROLL's production, and if afterwards it appears that the production is impossible the contract will be changed appropriately. If this is economically not viable, then ECOROLL is authorized wholly or partially to withdraw from the contract.

Claims for damages from the customer over such a withdrawal are not acceptable. If ECOROLL intends to withdraw then it must do this after realization of the significance of the occurrence and immediately notify the customer, and even then, when an extension of the delivery date was agreed with the customer.

### **2. Export Control**

- 2.1 The deliveries from this contract are subject to the proviso that the fulfillment does not prevent any obstacles due to national or international export regulations, for example embargoes or other sanctions. The purchaser undertakes to provide all information and documents required for export or shipment. Delays due to export controls or approval procedures will void the deadlines and delivery times. If the necessary permits are not granted, or if the delivery and performance are not permissible, the contract shall be deemed not to be concluded with regard to the parts concerned.
- 2.2 The supplier is entitled to terminate the contract without notice if the termination by the supplier to comply with national or international law is required.
- 2.3 In the case of termination pursuant to section 2.2, the assertion of a claim for damages or the assertion of other rights by the customer due to termination is excluded.
- 2.4 The Purchaser shall comply with the respective applicable provisions of the national and international export control laws when the goods supplied by the supplier are passed on to third parties in Germany and abroad.

### **XIV. Force Majeure**

1. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters,

extreme natural events, terrorists acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after the formation of the contract shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.

2. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice. If Force Majeure prevents the purchaser from fulfilling his obligations, he shall compensate the supplier for expenses incurred in securing and protecting the product.
3. Regardless of what might otherwise follow from these general conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under clause XIV 1 for more than six months.

### **XV. Place of business and court jurisdiction**

1. Place of business and court jurisdiction is Celle, insofar as the customer is an independent tradesman or corporation under the law applying to public bodies. The same applies if the customer does not have a general court of jurisdiction in Germany or if his domicile or habitual residence is not known at the time of commencement of proceedings. However, ECOROLL is also entitled to sue the customer at his business or residence court.
2. The law of the Federal Republic of Germany shall apply; the validity of the UN purchase law is excluded. This also applies if the purchaser is a foreigner or has his seat abroad.

### **XVI. Invalidity of individual contract clauses**

If individual conditions of this contract are or become invalid, then this will not affect the validity of the contract as a whole. In such a case the sense of the invalid condition is to be changed in meaning or supplemented so that the intended commercial aim of the invalid condition is achieved.

### **XVII. Information on data processing (B2B)**

Our notes on data processing in the B2B area can be viewed on the website at [www.ecoroll.de/en/service/downloads.html](http://www.ecoroll.de/en/service/downloads.html).