

## General Terms and Conditions (GTCs) of ecocoach AG

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## 1. General information

1.1 These General Terms and Conditions are applicable to orders for goods and products from ecocoach AG. They also apply to branches and subsidiaries of ecocoach AG that have been or will be established in the future. For any services provided by ecocoach AG and/or its subsidiaries, the corresponding separate GTCs of ecocoach AG shall apply exclusively.

1.2 The contractual relationship, including these GTCs, is binding upon receipt of the written confirmation of the order by ecocoach AG or one of its subsidiaries (hereinafter referred to as Supplier or we/us). Likewise, the contractual relationship shall come into effect by clicking on the corresponding link in the confirmation e-mail when registering with ecocoach.

1.3 The following General Terms and Conditions are binding if they are declared applicable in the offer. Any other terms and conditions of the customer (hereinafter referred to as the Customer) shall only be valid if they have been expressly accepted by the Supplier in writing. Individual agreements between the Supplier and the Customer shall take precedence over these General Terms and Conditions.

1.4 Amendments to contracts must be made in writing and must be approved by the contracting parties in order to be valid. Communication by e-mail is equivalent to the written form.

## 2. Scope of services

2.1 The scope of the deliveries and services is determined by the Supplier's order confirmation. The Supplier is authorized to make changes that lead to improvements, provided that these do not result in a price increase for the Customer.

## 3. Brochures, catalogues and data sheets

3.1 Brochures, catalogues and data sheets do not constitute offers, are not binding and serve as general customer information.

## 4. Prices

4.1 Unless otherwise agreed, all prices are net, ex works, do not include packaging, and are denominated in Swiss francs. All ancillary costs, e.g. for freight, insurance, export, transit, import and other permits and certifications shall be borne by the Customer. Likewise, the Customer shall bear all types of taxes, duties, fees, customs duties and the associated administrative costs that are levied in connection with the contract and its performance.

4.2 The Supplier reserves the right to adjust prices, if between the time of the offer and the contractual performance

- The delivery period is subsequently extended for one of the reasons stated in clause 8;
- The nature or scope of the agreed deliveries or services has changed;
- The material or the execution has been changed because the documents supplied by the Customer did not correspond to the actual conditions or were incomplete or
- Applicable laws, regulations, interpretation or application principles have changed.

## **5. Terms of payment**

5.1 50% within 30 days of order confirmation (hereinafter the advance payment). 50% within 30 days of delivery of the consignment.

5.2 The payment dates shall also be met if transport, delivery, assembly, commissioning or acceptance of the consignments is delayed or rendered impossible for reasons, for which the Supplier is not responsible, if insignificant parts are missing, or if subsequent work that does not preclude use of the consignments proves necessary.

5.3 If a partial sum is not paid in accordance with the contract, the Supplier is entitled to adhere to the contract or to withdraw from the contract and in both cases to claim damages. This right of withdrawal shall also apply in the event that the consignment is already in the possession of the Customer.

5.4 If the Customer fails to comply with the agreed payment dates, the Customer shall, after being sent a reminder, pay interest on arrears at a rate of 5% from the due date stated in the reminder.

## **6. Retention of title**

6.1 The Supplier shall, to the extent permitted by law, remain the owner of all its consignments until it has received payment in full in accordance with the contract.

6.2 If necessary for the legally effective establishment of a retention of title in accordance with the above provision, the Customer shall (if necessary in addition to any actions by the Supplier) take the necessary steps to register the retention of title in the retention of title register at the Customer's Swiss domicile/registered office. This provision applies analogously in the event that comparable steps have to be taken outside Switzerland.

6.3 The Customer shall maintain the delivered items at his own expense for the duration of the retention of title and insure them in favour of the Supplier against theft, breakage, fire and water.

## **7. Intellectual property rights**

7.1 All intellectual property rights existing prior to the conclusion of the contract, in particular patents, inventions (irrespective of their patentability), copyrights, trademarks, designs, trade secrets and know-how shall remain with ecocoach AG even during the collaboration.

7.2 The legal and financial consequences of new products and/or intellectual property rights resulting from a collaboration shall be regulated separately when the project or product is made concrete.

## **8. Delivery period**

8.1 The delivery period commences as soon as the contract has been concluded in accordance with clause 1.1 of these General Terms and Conditions and the advance payment has been made.

8.2 The expiry of the delivery period is conditional upon the Customer fulfilling his contractual obligations. In the event that the Customer does not fulfil his contractual obligations, the delivery period shall be extended until the Customer has fulfilled these contractual obligations.

8.3 The delivery period shall also be extended by a reasonable period of time in each case in particular if

- The Supplier does not receive in due time the information required for the performance of the contract or the Customer subsequently modifies this information, thereby causing a delay in the deliveries or services;
- Obstacles occur which the Supplier cannot avert despite exercising due care, irrespective of whether they occur at its premises, at the Customer's premises or at those of a third party. Examples of such obstacles include epidemics or pandemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, significant operational disruptions, accidents, industrial disputes, delayed or faulty delivery of the necessary raw materials, semi-finished or finished products, cessation of production of important workpieces, measures or omissions by authorities, state or supranational bodies, embargoes, unforeseeable transport obstacles, fire, explosion, natural phenomena, and any other cases of force majeure;
- The Customer or third parties are in arrears with the work to be performed by them or are in default with the fulfilment of their contractual obligations, or the Customer does not comply with the terms of payment, or
- The delayed delivery is due to other reasons for which the Customer is responsible.

8.4 Subject to the provisions of clause 14 of these GTCs, the Customer shall have no rights or claims on account of delayed deliveries. This restriction does not apply to intent or gross negligence on the part of the Supplier.

## **9. Packaging**

9.1 The Supplier shall invoice the packaging separately and shall not take it back. If, however, it has been designated as the property of the Supplier, it must be returned by the Customer carriage paid to the place of departure.

## **10. Transfer of benefit and risk**

10.1 Benefit and risk shall pass to the Customer at the latest upon dispatch of the consignments ex works.

10.2 If dispatch is delayed at the request of the Customer or for other reasons for which the Supplier is not responsible, the risk shall pass to the Customer at the time originally intended for delivery ex works.

## **11. Dispatch, transport and insurance**

11.1 The Supplier must be notified in good time of any special requirements regarding dispatch, transport and insurance. Transportation is at the expense and risk of the Customer.

11.2 Complaints in connection with dispatch or transport must be made by the Customer promptly upon receipt of the consignments or the freight documents to the last carrier with a copy to the Supplier. The respective carriers are exclusively liable for complaints of the Customer in connection with the dispatch and/or transport.

11.3 Insurance against damages of any kind is the responsibility of the Customer.

## **12. Inspection of the deliveries and services**

12.1 The Customer must inspect the consignments and services within two weeks and must notify the Supplier in writing of any defects without undue delay.

12.2 If he fails to do so, the consignments and services shall be deemed to have been approved unless the defects were not discernible during the routine inspection. If such defects are discovered later, notification must be made immediately after their discovery, otherwise the item shall be deemed to have been approved, including with regard to these defects.

12.3 These limitations of the warranty due to a failure to notify shall not apply in the case of intentional deception.

## **13. Warranty, liability for defects**

13.1 All claims of the Customer for material defects shall be time-barred after 24 months (Art. 210 para. 1 Swiss Code of Obligations). In the case of deliberate deception, the Supplier cannot invoke the limitation period under this provision.

13.2 The limitation period for material defects shall commence upon delivery of the consignment to the Customer.

13.3 In the event of material defects that have been notified in due time, we are obliged and entitled (at our sole discretion) either to remedy the defect (rectification) or to deliver defect-free goods (replacement delivery). All further claims of the Customer such as rescission (reverse transaction step by step), reduction (price reduction) and compensation for damage to the item and any consequential damage are excluded to the extent permitted by law.

13.4 In the case of customary and/or only insignificant deviation from the agreed quality of the goods or in the case of only insignificant impairment of usability, no claims for defects shall exist. In the absence of any express written assurance from us, the properties of any samples submitted shall not be deemed guaranteed if the goods supplied are suitable for the intended use.

13.5 Replaced goods and replaced parts shall become our property. The Customer shall arrange for the transfer of the replaced goods and parts to the Supplier within a reasonable period of time.

13.6 Claims for defects due to the following are excluded:

- Natural wear and tear;
- Defects arising after the transfer of risk as a result of improper handling, storage or installation, failure to observe installation and operating instructions or excessive strain or use;

- Defects arising from force majeure, special external influences not provided for in the contract or from the use of the goods outside the normal use provided for in the contract;
- Non-reproducible software errors.

13.7 Also excluded from the liability for defects are defects that the Customer knew about at the time of the conclusion of the contract, that the Customer should have known about when applying the normal level of attentiveness, or that are due to design specifications and/or instructions of the Customer or instructions of the Customer for the use of a certain material. Furthermore, there shall be no claims for defects if the goods are modified by a third party or by the installation of parts of foreign origin, unless the defect is not causally connected with the modification or use.

13.8 If goods or parts thereof are defective and were not manufactured by us, we can release ourselves from our liability by assigning our own warranty claims against our supplier to the Customer. In this case we are not liable for the creditworthiness of this supplier.

13.9 We do not assume any warranty for the removal of defects that were carried out by a specialist not certified by us.

13.10 We are liable for defects of title in accordance with the provisions of Art. 192 Swiss Code of Obligations.

## **14. Non-performance, poor performance and its consequences, exclusion of liability**

14.1 In all cases of poor performance or non-performance not expressly regulated in these Terms and Conditions, in particular if the Supplier, for no reason, starts the execution of the deliveries so late that the timely completion of the delivery can no longer be foreseen, if an execution of the delivery contrary to the terms of the contract is definitely to be foreseen due to the fault of the Supplier or if deliveries have been executed contrary to the terms of the contract due to the fault of the Supplier, the Customer is entitled to set the Supplier a reasonable period of grace for the affected deliveries under threat of withdrawal in case of default. If this period of grace expires without being used due to the fault of the Supplier, the Customer may withdraw from the contract with regard to the deliveries or services that have been executed contrary to the contract or whose execution contrary to the contract is definitely foreseeable, and demand the return of the portion of payments already made for them.

14.2 In such a case, any claim for damages shall be limited to the direct damage and to 10% of the contract price of the deliveries for which the rescission is made. This limitation does not apply to intent or gross negligence.

14.3 Any further liability of the Supplier from or in connection with the contractual relationship is excluded insofar as legally permissible.

## **15. Adjustment of the contract by the Supplier**

15.1 If unforeseen events substantially change the economic importance or the content of the deliveries or services or have a substantial effect on the Supplier's work, or if subsequent performance becomes impossible, the contract shall be adapted by a provision such as would be agreed by average parties acting in good faith in line with the Supplier and the Customer, and aware of the circumstances involved.

## 16. Data protection

16.1 The parties shall ensure that they provide each other with personal data only if this is lawful under the applicable data protection laws, i.e. after the necessary obligations to provide information have been fulfilled and, where appropriate, the necessary consents have been obtained.

16.2 The parties may use the personal data received from the other party only to the extent necessary for the conclusion and performance of the contract. They may disclose such personal information to their employees, consultants and other internal and external parties only to the extent necessary for their work under the contract, unless such disclosure is required by law. The Supplier processes information and personal data about the Customer for the purposes of processing the order, delivering the goods, offering and providing services, handling payments (including credit checks), marketing and customer relations. In this context, data may be passed on to companies affiliated with the Supplier and/or sales partners at home and abroad. The Supplier may also outsource the processing of personal data to third parties in Switzerland or abroad acting on its behalf. The data may therefore also be transferred to countries that do not have the same level of data protection as Switzerland, the EU or the EEA. In this case, the Supplier shall take appropriate measures to ensure that the data is adequately protected abroad.

16.3 The Customer may prohibit the processing of his data for marketing purposes by sending a written notice to the Supplier at the following contact details: [info@ecocoach.com].

16.4 Each party shall notify the other party without undue delay of any accidental or unlawful disclosure or use of personal data and of any accidental or unlawful access to personal data in connection with the contract and shall implement appropriate technical and organisational measures to ensure a level of security of personal data commensurate with the risks involved.

16.5 If a data subject's data protection request (e.g. a request for access to their personal data) relates to personal data for the processing of which the other party is responsible, the receiving party shall immediately forward the request to the other party.

16.6 The Privacy Policy and Cookie Policy of ecocoach AG form an integral part of these General Terms and Conditions in their respective valid and current versions in addition to these provisions. These provisions can be viewed on the ecocoach AG website under the following link: <https://ecocoach.com/de/datenschutz/>.

## 17. Confidentiality obligation

17.1 If the Customer or the Supplier obtains information or data within this collaboration which is not publicly accessible and has not been released by the Supplier or the Customer, the respective other party is obliged to keep this information or data secret. This information may only be used for the fulfilment of the contractual relationship.

17.2 In particular, the Customer and the Supplier warrant that such information shall not be disclosed to unauthorized third parties or made available to third parties in any other form and that all reasonable precautions shall be taken to prevent third parties from accessing the data and information.

If information classified as secret must be disclosed due to statutory information duties, legal provisions, legal orders, official regulations or legally binding decisions, the respective other party must be informed immediately in writing.

17.3 The obligation to maintain secrecy shall continue for five years after the end of the collaboration and applies to all persons involved in the business relationship.

17.4 In the event of a breach of the confidentiality obligation, a penalty payment of 10% of the contract sum, but at least CHF 100,000, shall be due by the breaching party. The right to claim further damages is reserved.

## **18. Software**

18.1 If the Supplier's deliveries and services also include software, the Customer shall be granted the non-exclusive right to use the software together with the delivery item, unless otherwise agreed. The Customer is not authorized to make copies (unless these are for archiving purposes, for troubleshooting, or to replace defective data carriers). The software must be processed exclusively in accordance with the manner designated as permissible in the online help. Otherwise all warranty claims shall expire. The Customer shall ensure that all owners of the system and authorized service recipients have given their consent to the Supplier to carry out remote updates of the software. In the case of third-party software, the terms of use of the licensor – who may assert claims in addition to the Supplier in the event of infringement – shall apply. With regard to the aforementioned third party software providers, the provisions of this clause shall be deemed to be a contract for the benefit of third parties within the meaning of Art. 112 Swiss Code of Obligations.

## **19. Right of recourse of the Supplier**

19.1 If persons are injured or third-party property is damaged as a result of actions or omissions on the part of the Customer or his auxiliary persons and if a claim is made against the Supplier for this reason, the Supplier shall have a right of recourse against the Customer.

## **20. Place of jurisdiction and applicable law**

20.1 Subject to deviating mandatory legal provisions, the courts that are competent for the registered office of ecocoach AG (Brunnen/Switzerland) shall have exclusive jurisdiction for all disputes arising from or in connection with the contractual relationship. The courts at the domicile or residence of the Customer and other authorities that are competent in accordance with statutory provisions shall also optionally have jurisdiction for actions brought by us against the Customer.

20.2 The contractual relationship is subject in all parts to Swiss substantive law (excluding the provisions of the Vienna Convention on the International Sale of Goods).