

General Terms and Conditions (GTC) of eccovisions GmbH

§ 1 Scope of application of these terms and conditions

1. These General Terms and Conditions apply exclusively to all business transactions between us, eccovisions GmbH, as the supplier and our customers, even if they are not expressly mentioned in subsequent orders or contracts between us and the customer. They apply accordingly to work and services. Acceptance of the delivered products shall be replaced by acceptance in the case of work performances and by receipt of the service in the case of services. Conflicting, additional or deviating terms and conditions of the customer shall not become part of the contract unless we have expressly agreed to their validity in writing. These Terms and Conditions of Sale and Delivery shall also apply if we provide the service without reservation in the knowledge of conflicting, additional or deviating terms and conditions of the customer.
2. Any conflicting, additional or deviating agreements to these terms and conditions of delivery and payment, which are made between us and the customer for the execution of a contract, must be agreed in writing. This also applies to the cancellation of this written form requirement.
3. These terms and conditions of sale and delivery apply exclusively to entrepreneurs within the meaning of § 14 BGB in the exercise of their commercial or independent professional activity as well as to legal entities under public law.
4. Rights to which we are entitled under statutory provisions or other agreements over and above these Terms and Conditions of Sale and Delivery shall remain unaffected..

§ 2 Conclusion of contract, offer documents, scope of delivery, delivery

1. A contract is only concluded if eccovisions GmbH confirms an order within three weeks of the order date by means of an order confirmation in text form or fulfils the order within two weeks of the order date by delivering the ordered goods. If the order confirmation contains obvious mistakes, typing or calculation errors, it is not binding for eccovisions GmbH.
2. Our offers are subject to change and non-binding, unless expressly stated otherwise. Offers with an acceptance period shall also remain non-binding; the period shall only serve internal capacity planning purposes and shall not constitute a commitment to the offer during this period.
3. eccovisions GmbH shall only be deemed to have given its consent to offers, orders, requests or other declarations by the customer if this has been agreed in writing in advance.
4. If an order is cancelled by the client later than 10 calendar days after the date of the order confirmation, cancellation fees amounting to 12% of the total order value plus statutory VAT shall be payable. However, eccovisions GmbH reserves the right to claim higher actual expenses for the cancellation. The cancellation fees must be paid within 14 days of receipt of the written cancellation by eccovisions GmbH. The client reserves the right to prove that no or only significantly lower expenses have been incurred.
5. the scope of delivery is based on the order confirmation of eccovisions GmbH. Changes to the scope of delivery by the client require the written confirmation of eccovisions GmbH to be effective. We reserve the right to make changes to the design and shape of the products insofar as these are customary in the industry, lie within the usual tolerances (e.g. according to DIN, EN, ASTM standards) or are reasonable for the customer. This also applies to the choice of material, specification and design.
6. eccovisions GmbH is entitled to make partial deliveries, unless a partial delivery is unreasonable for the customer, taking into account the interests of eccovisions GmbH.

7. eccovisions GmbH reserves the right to make excess or short deliveries of up to 15% of the agreed scope of delivery for technical production reasons. This applies both to total deliveries and to permissible partial deliveries. Claims for defects due to such deviations are excluded. The agreed price shall remain unaffected.
8. eccovisions GmbH reserves ownership rights, copyrights and other industrial property rights to illustrations, drawings, calculations and other documents. This applies in particular to documents that are expressly labelled as 'confidential'. Passing on or making available to third parties is only permitted with the express written consent of eccovisions GmbH. Upon request, offer documents, drafts, samples, specimens, models and tools must be returned to eccovisions GmbH immediately if they are no longer required in the ordinary course of business. This shall also apply if the customer has contributed to the costs of the samples, specimens, models or tools.
9. Illustrations, drawings, calculations and other documents in the offer documents are only approximate unless they have been expressly designated as binding. They do not contain any guarantee of quality or durability unless this has been agreed in writing. The customer's expectations with regard to the products or services do not constitute a guarantee or agreement. The customer is responsible for checking the suitability of the product or service for the intended purpose. Unless otherwise agreed in writing, eccovisions GmbH is not obliged to test the suitability of the products for the intended purpose. Even a possible suitability test by eccovisions GmbH does not release the customer from his own obligation to test.
10. eccovisions GmbH shall be entitled to withdraw from the contract in whole or in part if the customer's financial circumstances deteriorate considerably or if an application for the opening of insolvency or comparable proceedings is rejected for lack of assets.
11. If the customer receives products with transport damage, he is obliged to report this immediately in writing to the carrier and to make a note of it on the receipt documents. The same applies in the event of a faulty delivery due to a mix-up on the part of the carrier.

§ 3 Delivery time

1. The agreement of delivery times (delivery periods and dates) must be made in writing. Delivery periods and dates are non-binding unless they are designated as binding by us in writing in advance.
2. The delivery period shall commence upon conclusion of the contract, but not before all documents, authorisations and approvals to be provided by the customer have been provided, all technical questions have been clarified and an agreed down payment has been received. In the event of a delivery date, this shall be postponed appropriately if the customer does not provide the necessary documents and authorisations in good time, does not issue approvals in good time, does not clarify all technical issues in full in good time or if we do not receive the agreed down payment in full. Compliance with the delivery time presupposes the timely and proper fulfilment of the customer's other obligations.
3. The delivery time shall be deemed to have been met if the products have left the factory or warehouse by the time it expires or if we have notified the customer that the products are ready for collection or dispatch or, in the case of an agreed acceptance, that they are ready for acceptance. Compliance with the agreed delivery time is subject to our proper, in particular timely and correct, self-delivery, unless we are responsible for the reason for the improper self-delivery. We are entitled to withdraw from the contract in the event of improper self-delivery. We shall inform the customer immediately if we make use of our right of cancellation and in this case we shall refund any advance payments made by the customer.
4. In the event of a delay in delivery, the customer shall be entitled to withdraw from the contract after the fruitless expiry of a reasonable grace period which he has set us after the occurrence of the delay in delivery.

5. If we are prevented from fulfilling our contractual obligations, in particular from delivering the products, due to force majeure, we shall be released from the obligation to perform for the duration of the hindrance and a reasonable start-up period without being obliged to pay damages to the customer. The same shall apply if the fulfilment of our obligations is made unreasonably difficult or temporarily impossible due to unforeseeable circumstances for which we are not responsible, in particular due to industrial action, war, a pandemic, official measures, energy shortages, obstacles to delivery at a supplier or significant operational disruptions. This also applies if these circumstances occur at a subcontractor or if we are already in default. If we are released from our obligation to perform, we shall reimburse any advance payments made by the customer. We are entitled to withdraw from the contract after the expiry of a reasonable period if such an obstacle lasts for more than four months and we no longer have any interest in the fulfilment of the contract as a result of the obstacle. At the customer's request, we shall declare after expiry of the period whether we will exercise our right of cancellation or whether we will deliver the products within a reasonable period.

§ 4 Cross-border deliveries

1. In the case of cross-border deliveries, the customer is obliged to submit all declarations and actions necessary for export from Germany and import into the country of destination to the competent authorities in good time. This includes in particular the procurement of the documents required for customs clearance and the fulfilment of any requirements with regard to export controls or other restrictions on marketability.
2. Delivery shall be made subject to the proviso that no obstacles due to national or international regulations, in particular export control regulations, embargoes or other sanctions, prevent the fulfilment of the contract.

§ 5 Prices and terms of payment

1. Unless otherwise agreed, the prices of eccovisions GmbH are ex works or ex warehouse. This means that all packaging, shipping, transport costs, insurance, statutory taxes, customs duties or other charges as well as any assembly costs incurred shall be invoiced separately. The statutory value added tax is not included in the prices and will be shown separately at the rate applicable at the time of invoicing.
2. If the price is calculated on the basis of weight, quantity or number of units, the weight, quantity or number of units determined by eccovisions GmbH shall be decisive. Any additional units stated are non-binding.
3. For orders for which no fixed prices have been agreed and the delivery time is at least three months after conclusion of the contract, the list prices valid at the time of delivery shall apply. The entry of the current list price in an order form or an order confirmation does not constitute an agreement on a fixed price. Should there be price increases of more than 5%, the customer shall be entitled to withdraw from the contract. At our request, the customer shall inform us immediately whether he is exercising this right of cancellation. If there are production-related price increases up to the delivery date, we are entitled to adjust the price accordingly, regardless of an offer or order confirmation and regardless of the period between conclusion of the contract and delivery.
4. Unless otherwise agreed, the purchase price is due for payment net within 14 days of receipt of the invoice without deduction. The deduction of discounts or other rebates is only permitted if this has been agreed in writing. The deduction of agreed discounts or other rebates is subject to the customer having made all payments due under the business relationship on time. The day of payment shall be the day on which eccovisions GmbH can dispose of the amount. Payment of the purchase price shall be made in three instalments:

- 40% of the order value must be paid within 14 days of the date of order confirmation.
- 50 % of the order value shall be paid within 14 days from the date of notification of readiness for delivery.
- 10% of the order value must be paid within 14 days of the commissioning date, but no later than 12 weeks after notification of readiness for delivery.

In the event of late payment, the customer shall pay interest on arrears at a rate of 9 percentage points above the respective base interest rate per annum. Further claims remain unaffected by this.

§ 6 Acceptance

1. The customer is obliged to accept the products and services if acceptance has been agreed in writing or is required by law. In this case, each party is entitled to demand partial acceptance. An acceptance report shall be drawn up on the acceptance, which shall be signed by both parties.
2. eccovisions GmbH shall be deemed to have accepted the work in writing in particular if it has set the customer a reasonable deadline for acceptance after completion of the work and the customer has not refused acceptance within this deadline, stating at least one defect. Furthermore, acceptance shall be deemed to have taken place if the customer puts the products into use or resells them or waives acceptance.
3. Acceptance may not be refused due to minor defects. In particular, the customer may not refuse acceptance if any agreed acceptance criteria have been met.

§ 7 Transfer of risk

1. Unless otherwise agreed, delivery ex works or ex warehouse of eccovisions GmbH is agreed.
2. The risk of accidental loss and accidental deterioration of the products shall pass to the customer as soon as the products are handed over to the carrier or leave our factory or warehouse for the purpose of despatch. If written acceptance has been agreed, the risk shall pass to the customer upon acceptance. In the event of collection by the customer, the risk shall pass to the customer upon notification of readiness for collection, unless the risk has already passed in accordance with the previous sentences. This provision shall also apply if the delivery is made in parts or if eccovisions GmbH assumes additional services, such as transport costs.
3. Eccovisions GmbH may demand compensation for the damage incurred if the customer is in default of acceptance, unless the customer is not responsible for the non-acceptance of the products. Any additional expenses shall also be reimbursed. In particular, eccovisions GmbH is entitled to store the products at the customer's expense during the delay in acceptance. The storage costs shall be charged at a flat rate of 0.5% of the net invoice value per calendar week or part thereof. Further claims remain unaffected by this. The customer has the right to prove that eccovisions GmbH has incurred no or significantly lower costs. The same shall apply if the customer breaches other duties to co-operate, unless the customer is not responsible for the breach of the duties to co-operate. The risk of accidental loss or accidental deterioration of the products shall pass to the customer at the latest when the customer is in default of acceptance. After the fruitless expiry of a reasonable deadline set by eccovisions GmbH, eccovisions GmbH shall be entitled to dispose of the products otherwise and to supply the customer within an extended deadline.
4. If dispatch or acceptance is delayed, insofar as written acceptance has been agreed, due to circumstances for which eccovisions GmbH is not responsible, the risk shall pass to the customer upon notification of readiness for dispatch or acceptance.

5. The products shall be accepted by the customer even if they have insignificant defects, without prejudice to the customer's claims for defects.

§ 8 Retention of title

1. The delivered products remain our property until full payment of the price and all claims to which eccovisions GmbH is entitled from the business relationship with the customer. The customer undertakes to treat the products subject to retention of title with care for the duration of the retention of title. In particular, he is obliged to insure the products adequately at his own expense against fire, water damage and theft at replacement value. At the request of eccovisions GmbH, the customer must provide proof of insurance cover. The customer hereby assigns to eccovisions GmbH all claims for compensation arising from this insurance. This assignment is hereby accepted by eccovisions GmbH. Should the assignment not be permissible, the customer hereby instructs the insurer to make any payments exclusively to eccovisions GmbH. Further claims remain unaffected.
2. The customer is only permitted to sell the products subject to retention of title in the ordinary course of business. Furthermore, the customer is not authorised to pledge the products subject to retention of title, to assign them as security or to make other dispositions that jeopardise the property of eccovisions GmbH. In the event of seizure or other interventions by third parties, the customer must notify eccovisions GmbH immediately in writing, provide all necessary information, inform the third party of our property rights and co-operate in the measures to protect the products subject to retention of title. If the third party is unable to reimburse us for the judicial and extrajudicial costs of enforcing our property rights, the customer shall be obliged to compensate us for the resulting damage, unless he is not responsible for the breach of duty.
3. The customer hereby assigns to eccovisions GmbH all claims arising from the resale of the products, including all ancillary rights, irrespective of whether the products subject to retention of title are resold with or without processing. This assignment is hereby accepted by eccovisions GmbH. Should an assignment not be permissible, the customer shall instruct the third-party debtor to make any payments exclusively to eccovisions GmbH. The customer is revocably authorised to collect the assigned claims in trust for eccovisions GmbH in his own name. The amounts collected shall be paid to eccovisions GmbH without delay. eccovisions GmbH may revoke the authorisation to collect and the right to resell the products for good cause, in particular if the customer fails to meet his payment obligations, defaults on payment, ceases payment or if an application is made to open insolvency proceedings or comparable proceedings against the customer's assets or if this application is rejected for lack of assets. In the event of a blanket assignment by the customer, the claims assigned to eccovisions GmbH are expressly excluded.
4. At the request of eccovisions GmbH, the customer is obliged to inform the third-party debtor immediately of the assignment and to provide eccovisions GmbH with all information and documents necessary for collection.
5. eccovisions GmbH is entitled, without prejudice to its other rights, to withdraw from the contract after expiry of a reasonable grace period set by eccovisions GmbH in the event of breach of contract by the customer, in particular in the event of default in payment. The customer shall immediately grant eccovisions GmbH or its authorised representatives access to the products subject to retention of title and surrender them. After a corresponding announcement, eccovisions GmbH may utilise the products elsewhere to satisfy the claims due.
6. eccovisions GmbH shall always be authorised by the customer to process or transform the products subject to retention of title. The customer's expectant right to the products subject to retention of title shall remain in force on the processed or remodelled goods. If the products are processed or remodelled with other items not owned by eccovisions

GmbH, eccovisions GmbH shall acquire pro rata co-ownership of the new item in the ratio of the value of the delivered products to the other processed items at the time of processing or remodelling. The same shall apply if the products are combined or mixed with other items not owned by eccovisions GmbH and eccovisions GmbH loses its full ownership. The customer shall store the new items for eccovisions GmbH. The same provisions shall apply to the items created by processing, remodelling, combining or mixing as to the products subject to retention of title.

7. eccovisions GmbH is obliged to release the securities at the customer's request if the realisable value of the securities exceeds our claims arising from the business relationship with the customer by more than 10%, taking into account customary bank valuation discounts. The valuation shall be based on the invoice value of the products subject to retention of title and the nominal value of receivables. The selection of the securities to be released is the responsibility of eccovisions GmbH.
8. For deliveries to other legal systems in which this retention of title regulation does not have the same effect as in Germany, the customer shall grant eccovisions GmbH a corresponding security interest. The customer shall do everything in his power to grant eccovisions GmbH such a security interest without delay and shall co-operate in all measures for the effectiveness and enforceability of this security interest.

§ 9 Warranty claims

1. The customer's warranty rights require that he inspects the delivered products upon delivery, if reasonable also by trial processing or trial use, and notifies us in writing of any defects immediately, at the latest within eight calendar days after delivery of the products. Hidden defects must be reported to us in writing immediately after their discovery. The customer is obliged to describe the defects in detail when notifying us. In addition, the customer must comply with the specifications, instructions, guidelines and conditions contained in the technical information, assembly, operating instructions, operating manuals and other documents relating to the products when planning, constructing, assembling, connecting, installing, commissioning, operating and maintaining the products, and in particular must carry out and provide evidence of proper maintenance and use recommended components. Claims for defects arising from a breach of these obligations are excluded.
2. In the event of defects in the products, eccovisions GmbH shall be entitled to choose between subsequent fulfilment by remedying the defect or by delivering a defect-free product. In the event of subsequent performance, eccovisions GmbH shall bear all necessary expenses, in particular transport, travel, labour and material costs, with the exception of dismantling and reinstallation costs, which shall not be reimbursed. Personnel and material costs claimed by the customer in this connection shall be charged on a cost price basis. Replaced parts shall become the property of eccovisions GmbH and must be returned to us.
3. Should eccovisions GmbH not be willing or able to provide subsequent fulfilment or should subsequent fulfilment fail twice, the customer may, at his discretion, withdraw from the contract or reduce the delivery price, without prejudice to any claims for damages or reimbursement of expenses. This shall also apply if the subsequent fulfilment fails, is unreasonable for the customer or is delayed beyond reasonable deadlines due to circumstances for which eccovisions GmbH is responsible.
4. The customer's right of cancellation is excluded if he is unable to return the service received and this is not due to the fact that the return is impossible due to the nature of the service received, is the responsibility of eccovisions GmbH or the defect only occurred during the processing or transformation of the products. Furthermore, there is no right of cancellation if the customer has to pay compensation instead of restitution.

5. No claims for defects shall exist for defects caused by natural wear and tear, in particular in the case of wearing parts, improper handling, assembly, use or storage or improperly carried out modifications or repairs of the products by the customer or third parties. The same applies to defects that are attributable to the customer or are due to a technical cause other than the original defect.
6. Claims of the customer for reimbursement of expenses instead of compensation for damages are excluded, unless a reasonable third party would also have had to incur these expenses.
7. We do not assume any guarantees, in particular no guarantees of quality or durability, unless otherwise agreed in writing in individual cases.
8. The limitation period for claims for defects by the customer is one year, unless it is a purchase of consumer goods in which the end customer is a consumer. If the product is used for a building in accordance with its normal use and causes defects there or if it is a defect in a building, the limitation period is five years. The one-year limitation period also applies to claims arising from unauthorised action based on a defect in the products. The limitation period begins with the delivery of the products. The one-year limitation period does not apply to our unlimited liability for breach of guarantee, injury to life, body or health, for intent and gross negligence, for product defects or if eccovisions GmbH has assumed a procurement risk. A statement by eccovisions GmbH on a customer's claim for defects shall not be deemed to be an acknowledgement of the claim if the claim for defects is completely rejected by eccovisions GmbH.

§ 10 Limitation of liability

1. Eccovisions GmbH shall be liable without limitation for damages resulting from the breach of a guarantee or from injury to life, body or health. The same applies to damages caused by intent or gross negligence or if eccovisions GmbH has assumed a procurement risk.
In the event of slight negligence, eccovisions GmbH shall only be liable if essential contractual obligations are violated which arise from the nature of the contract and are of particular importance for the fulfilment of the purpose of the contract. In such cases, liability shall be limited to damages that are typically foreseeable within the scope of this contract. Mandatory statutory liability for product defects remains unaffected by this.
2. Insofar as the liability of eccovisions GmbH is excluded or limited, this applies equally to the personal liability of its employees, workers, staff, representatives and vicarious agents.

§ 11 Product liability

1. The customer undertakes not to modify the products, in particular not to remove or modify any warnings about the dangers of improper use of the products. Should the customer violate this obligation, he shall indemnify us internally from product liability claims of third parties, unless the customer is not responsible for the modification of the products.
2. If we are obliged to issue a product recall or warning due to a product defect, the customer shall co-operate to the best of its ability in the measures we deem necessary and expedient and shall support us in doing so, in particular in determining the necessary customer data. The customer shall bear the costs of the product recall or warning, unless the customer is not responsible for the product defect under product liability law. Our further claims remain unaffected.
3. The customer is obliged to inform us immediately in writing of any risks that become known to him when using the products and possible product defects.

§ 12 Industrial property rights

1. eccovisions GmbH guarantees in accordance with this paragraph that the delivery item is free of industrial property rights or copyrights of third parties. Each contracting party undertakes to notify the other contracting party immediately in writing if claims are asserted against it due to the infringement of such rights.

§ 13 Confidentiality

1. The parties undertake to keep secret all business secrets of the other party that become accessible to them for a period of five years from delivery, to protect them by means of suitable and appropriate measures and, unless this is necessary for the business relationship, neither to record them nor to pass them on to third parties, to use or exploit them. In particular, the parties shall ensure that the business secrets of the other party are only made accessible to those employees and other persons to whom this is necessary for the business relationship. The duty of confidentiality shall also extend to objects that embody business secrets. The receiving party is prohibited from obtaining the trade secrets contained therein by reverse engineering a product or item. Trade secrets include all information that is designated as confidential or secret or is recognisable as a trade secret due to other circumstances, in particular technical information (e.g. drawings, product and development descriptions, methods, processes, formulas, techniques and inventions) and commercial information (e.g. price and financial data, sources of supply).
2. The confidentiality obligation shall not apply if the business secrets were demonstrably already known to the receiving party before the contractual relationship began or were generally known or accessible before the contractual relationship began, or become generally known or accessible through no fault of the receiving party. The burden of proof for this shall be borne by the receiving party.
3. The parties shall ensure through appropriate contractual agreements with their employees, other staff and third parties to whom the business secrets of the other party become accessible that they are also obliged to maintain confidentiality for a period of five years from delivery.
4. If the receiving party, its employees or other persons for whom the receiving party is responsible violate the above-mentioned confidentiality obligations, the receiving party undertakes to pay a contractual penalty in an appropriate amount. The amount of the contractual penalty shall be determined by the party providing the information at its reasonable discretion. The receiving party has the option of having the appropriateness of the contractual penalty reviewed by the competent court.

§ 14 Data protection

1. The parties undertake to comply with the applicable data protection regulations, in particular the EU General Data Protection Regulation ('GDPR'), in the context of the fulfilment of the contract and to ensure that these requirements are also imposed on their employees.
2. The parties process the personal data received (such as names and contact details of contact persons) exclusively for the fulfilment of the contract and take appropriate security measures (Art. 32 GDPR) that correspond to the current state of the art in order to protect them. As soon as the processing of personal data is no longer necessary, the parties are obliged to delete it, whereby statutory retention obligations remain unaffected.
3. If one party processes personal data on behalf of the other party as part of the fulfilment of the contract, the parties shall conclude an agreement on commissioned processing in accordance with Art. 28 GDPR.

§ 15 Final provisions

1. Place of fulfilment for all services of the customer and eccovisions GmbH arising from the contractual relationship is the registered office of eccovisions GmbH, unless otherwise agreed..
2. The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between eccovisions GmbH and the customer, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
3. If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the court at the registered office of eccovisions GmbH shall have exclusive jurisdiction for all disputes arising from the business relationship between the parties. However, eccovisions GmbH reserves the right to sue the customer before the court responsible for the customer's place of residence/business or at any other permissible place of jurisdiction. Arbitration clauses are contradicted.
4. The transfer of rights and obligations of the customer to third parties is only permitted with the prior written consent of eccovisions GmbH.
5. Counterclaims of the customer shall only entitle the customer to set-off if the counterclaims have been legally established or are undisputed. The customer may only assert a right of retention if the counterclaim results from the same contractual relationship.
6. The contract language is German.
7. Should any provision of these GTC be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall remain unaffected. The invalid or unenforceable provision shall be replaced by a valid provision that comes closest to the purpose of the original provision. In the event of a loophole, the provision that would correspond to what the parties would have considered when concluding the contract shall be deemed to have been agreed.

In addition to these General Terms and Conditions, the General Terms and Conditions for Services shall apply to all services, maintenance, repair or installation services as well as consulting and training services of eccovisions GmbH. These can be requested from eccovisions GmbH at any time.