



## GENERAL TERMS AND CONDITIONS

### Article 1 – general

1. In these General Terms and Conditions:
  - a. “Seller” means: EcoChar B.V., having its principal place of business at the address Galileistraat 32, 1704 SE Heerhugowaard, The Netherlands, chamber of Commerce # 71996001;
  - b. “Purchaser” means: any Party entering into an agreement with the Seller concerning the products and / or services delivered pursuant to these General Terms and Conditions;
2. These General Terms and Conditions shall apply to all offers and agreements whereby the Seller delivers products and / or services of any nature whatsoever to the Purchaser, even if these products and / or services are not explicitly described in these General Terms and Conditions.
3. Any General Terms and Conditions that may be submitted by the Purchaser do not apply and are hereby explicitly dismissed and declared inapplicable.
4. If any stipulation of these General Terms and Conditions should be void or nullified, the other stipulations shall remain in full force and the Seller and the Purchaser shall enter consultations in order to replace any stipulations declared void or nullified with new stipulations, the purpose and purport of which shall be as close to those of the void or nullified stipulations as possible.
5. Any agreements / conventions declared applicable in these General Terms and Conditions are deemed to be part of these General Terms and Conditions, provided that they have been brought to the knowledge of the Purchaser and made available for the Purchaser's inspection.
6. Any variations and / or additions to the stipulations of these General Terms and Conditions shall only be possible if they have been specifically agreed in writing by the Parties.
7. Where the wording of these General Terms and Conditions uses the singular, this shall also include the plural, and vice versa.

### Article 2 - offers

1. All offers from the Seller are free of obligation, unless otherwise stated in writing in the offer concerned.
2. The prices stated in offers are valid for 90 days of the date of dispatch of the offer. Insofar as the prices stated in offers relate to spare parts, they are valid for no more than 30 days of the date of dispatch. Where the Purchaser has submitted any data, drawings, etc. with its inquiry, offers are based on these data, drawings, etc., which the Seller may assume to be correct.
3. Drawings, photos, models, designs, catalogs, folders and brochures, pictures and the like are only meant to give the Purchaser an idea of and provide general information about the range of products offered by the Seller and so no rights can be derived from them unless specific reference is made to them in the offer.

### Article 3 - prices

1. All prices are exclusive of additional costs, import duties, levies, packaging, charges and costs relating to extra activities and the like and also exclusive of VAT.
2. Price fixing agreements proposed in a counter offer from the Purchaser shall apply from the moment the Seller has accepted them in writing; until then, no agreement has been accomplished.
3. The Seller is entitled to increase the prices agreed upon if for any reason there are increases in costs of whatever nature, including (without limitation) those due to rises in materials or feedstock prices, general pay rises, corrections for inflation, or transport costs.
4. The currency stated in the invoice shall be specified in the order confirmation provided by the Seller. If conversion of various currencies is required, this shall be done in accordance with the official rates of exchange prevailing on the date when the order is placed. Any levies and taxes required between countries are fixed at the date of the order. In the event of changes in said levies and taxes, however, the Seller shall have the right to pass these changes on in the invoices. Any costs involved in conversion of foreign currency into Euros shall be for the account of the Purchaser.
5. The prices relate to the products and services as specified by the Seller in the order confirmation. If the agreed products and services as specified in the order confirmation are changed at the request of the Purchaser, the Seller is entitled to modify the agreed price accordingly.
6. Where producers of components have not been named and confirmed in the order confirmation drawn up by the Seller and where detailed designs such as electrical circuit diagrams etc. are not specified, the Seller has the right to charge extra costs if the Purchaser requires more detailed information.
7. If the Purchaser and the Seller agree in writing that the Seller will perform the activities mentioned in Article 4 paragraph 4, the Purchaser shall pay the Seller for these activities at the current rate applying at the moment of performance.

### Article 4 – Seller's obligations / service

1. The Seller undertakes to deliver a good and reliable product.
2. The Seller is obliged to provide the Purchaser with information and documentation about the use of the products and services delivered.
3. The Seller ensures that its staff has sufficient experience, knowledge and know-how regarding the installation, testing and repair of its products.
4. The Seller is only obliged to install, test and repair the products sold and delivered to the Purchaser if such has been explicitly agreed. In any other event the installation and setup, the operationalization, the compliance with safety instructions and regulations and the maintenance of the products shall be entirely the Purchaser's responsibility.

### Article 5 – Purchaser's obligations / purchase commitment

1. The Purchaser is obliged upon the first request to submit all information and documentation the Seller requires for its performance and to cooperate immediately.
2. The Purchaser is obliged to accept delivery of the products purchased. Purchase shall be deemed to have been refused if goods ordered have been presented for delivery to the Purchaser and delivery has appeared to be impossible, or if the Purchaser has refused to take receipt of the products. In these events the Purchaser shall be in default without further notice of default, which also implies that the risk of loss or damage has passed to the Purchaser.
3. Any costs arising from the refusal to purchase shall be for the account and risk of the Purchaser, without prejudice to any



- other rights of the Seller to claim compensation with respect to this failure of the Purchaser. Said costs shall explicitly include the full costs of storage, in accordance with the customary rates charged locally, and the costs of insurance, if any.
4. The Purchaser shall take every reasonable precaution to keep confidential information received from the Seller a secret. The Purchaser is obliged to impose this duty on all its employees and third parties who need to take cognizance of this information.



#### **Article 6 – delivery and risk / transfer of title**

1. All products shall be shipped to the Purchaser free on board (F.O.B.) from the place of shipment, which means that the risk and title shall pass to the Purchaser from the moment the goods are loaded, in accordance with the Incoterms 2000 rules as published by the International Chamber of Commerce. Unless otherwise agreed in writing, the Seller has the right to designate the carrier and the insurance company and to determine the terms and conditions applicable in this context all at the expense of Purchaser.
2. Delivery times stated shall never be regarded as firm dates but shall only count as an indication. There shall be no liability on the part of the Seller for late delivery, but the Seller shall use all reasonable efforts to meet delivery times.

#### **Article 7 – variance in the objects to be delivered**

The Seller is entitled to deliver products which vary in minor respects from the description in the purchase agreement, which implies that in the event of such variance the Purchaser has no right of recovery or any other claims.

#### **Article 8 – liability and indemnification**

1. The liability of the Seller shall be restricted to fulfillment of the guarantee obligations as described in Article 9 of these Terms and Conditions.
2. Save gross negligence or intention of the Seller and subject to the stipulations of paragraph 1, any liability of the Seller, including liability for consequential loss, loss due to delay, business interruption and any other indirect loss or damage and for loss or damage sustained by third parties, is disclaimed.
3. This disclaimer of the Seller's liability extends also to:
  - a. infringement on industrial property rights, copyrights and patent rights, licenses or any other rights of third parties by the Purchaser;
  - b. damage to or loss of raw materials, semi-manufactures, models, tools and other things made available by the Purchaser, irrespective of the cause of such damage or loss.
4. Liability of Seller will in any case and at all times be limited to Euro 2.500.000,--
5. Any right to claim compensation is subject to the condition that the Purchaser shall notify the Seller in writing as soon as is reasonably possible after the loss or damage has arisen.
6. The Purchaser is obliged to indemnify the Seller against, and if necessary compensate the Seller for, any claims from third parties for compensation of loss or damage for which the Seller's liability in its relationship with the Purchaser has been excluded in these Terms and Conditions.

#### **Article 9 – guarantees**

1. The Seller guarantees the reliability of the product delivered and the quality of the material used therefor and delivered. This shall only apply in so far as this involves non-observable defects to the product, which the Purchaser is able to prove that these occurred within 12 months after the delivery in accordance with Article 6. The defect should exclusively or predominantly be a direct consequence of an incorrectness in the construction as applied by the Seller or of faulty workmanship or the use of faulty material.
2. The guarantee period shall commence at the moment that the products leave the Seller's factory site for transportation to the Purchaser. If the assembly and installation is to take place through the Seller, the guarantee period shall commence on the first day after completion of said installation / assembly.
3. Anything to the contrary notwithstanding, the Seller's guarantee shall be in force and effect in favor of Purchaser if:
  - a. the products are used in conformity with the Seller's instructions and with generally accepted directions for use; and
  - b. any repairs, changes and / or replacements other than ordinary and regular maintenance as set forth in Seller's Operation Manual have been carried out as set forth in such Operation Manual; and
  - c. those repairs, changes and / or replacements as set forth in sub B have been carried out with the Seller's prior written permission.
4. Components which are claimed to be out of order or claimed to show any defects shall be returned to the Seller by the Purchaser for inspection. If the components concerned are indeed out of order or show any defects, they shall be repaired or replaced free of charge by the Seller, provided the defect is detected and communicated to the Seller within the guarantee period. In the latter case the forwarding costs, both for the defective or faulty components returned by the Purchaser and for the replacements sent by the Seller, shall be borne by the Seller.
5. Components which are claimed to be out of order or to show any defects, yet which are not simply removable, shall be inspected by the Seller on the spot. If the components are indeed out of order or show any defects, they shall be repaired or replaced free of charge, provided these defects are detected and communicated to the Seller within the guarantee period.
6. No guarantee shall be given by the Seller on any products or parts of products which have not been produced by the Seller itself. These products or parts of products shall be sold by the Seller under such guarantee as given by the manufacturer / seller of these products or parts of products to the Seller and only in so far as the Seller is able to invoke the guarantee of said manufacturer / seller.
7. In so far as this involves products manufactured and sold by the Seller which on the Purchaser's request or in accordance with the Purchaser's design are used in combination with any other products, whether manufactured by the Seller or not, the guarantee given by the Seller shall not extend to the combined use of the aforementioned products or to any products which have been combined with the Seller's products.
8. The guarantee period shall not be extended after repairs have been carried out under guarantee.
9. The aforementioned guarantee stipulations shall replace any other guarantees explicitly or implicitly accepted.

#### **Article 10 – intellectual property**

1. Any copyrights, patent rights, trademark and model rights, licenses and any remaining rights of intellectual and industrial property incorporated by the Seller into its products or parts of products, and also any software, advice and procedures, designs, reports, drawings and analyses, whether produced independently or not, shall be vested exclusively in the Seller (or its licensors).
2. The Purchaser and any party acting on the instruction or on behalf of the Purchaser shall exclusively obtain the right to use the rights referred to in Paragraph 1 and to use any software, advice, designs, reports, drawings etc. of the Purchaser, but shall never be authorized to operate, disclose, duplicate, copy or otherwise reproduce the above or help or assist others to do so, unless this should be required to keep the Seller's products operative, however in that case exclusively with the prior written permission from the Seller.



3. The Seller shall be allowed to take technical measures in order to protect the software developed and used by it. If the Seller has secured the software by means of technical protection, the Purchaser shall not be allowed to remove or evade this protection or otherwise modify the software, unless the Purchaser has obtained prior written permission from the Seller.

#### **Article 11 – payment / delivery**

1. Payment by the Purchaser to the Seller shall be effected in advance by transferring the purchase amount to a bank or giro account in the name of the Seller.
2. Any set-off, deduction, discount or suspension of the payment obligation shall not be allowed, unless the Seller has unconditionally and unequivocally acknowledged the counter-claim in writing.
3. If the Purchaser fails to pay within the term agreed, the Seller has the right to charge 2% interest per month on the full outstanding amount of the invoice as from the invoice due date.
4. Any extrajudicial collection costs incurred by the Seller in order to effect fulfillment of the Purchaser's obligation shall be borne by the Purchaser. These costs shall at any rate be fixed at no less than 15% of the amount due, without prejudice to the Seller's right to claim the higher actual loss, including (without limitation) the legal costs actually incurred by it, based on the rates of the Dutch National Bar.
5. Any complaints on invoices shall be submitted in writing within 8 working days of the date of receipt of the invoices.
6. The Purchaser is obliged, upon the Seller's first request, to immediately provide security for the payment of one or more outstanding invoices or orders. The Seller explicitly reserves the right to demand either an advance payment, a letter of credit (documentary credit) or any other form of payment bond or security, all of this exclusively at the Seller's discretion. Any costs involved in the provision of security shall be borne by the Purchaser.
7. Also in connection with the stipulations of [Article 6](#), the Seller shall be entitled to suspend / postpone the transportation of its products to the Purchaser, if the purchase amount has not, or not yet, been paid in full or if no security is provided in good time. Any storage costs and any other costs ensuing therefrom shall be borne by the Purchaser.

#### **Article 12 – early termination**

1. If the Purchaser fails to fulfill any obligation ensuing from any agreement with the Seller, particularly its obligation to pay, the Seller shall be entitled to suspend or terminate its obligations ensuing from the agreement referred to without any warning or notice of default.
2. Without prejudice to the stipulations set out elsewhere in these General Terms and Conditions and without any judicial intervention or notice of default being required, the agreement concluded between Seller and Purchaser shall be dissolved at the moment that the Purchaser is declared bankrupt, has applied for a provisional suspension of payment or, on account of an attachment or tutelage order or otherwise, loses the power to dispose of its property or parts thereof and / or the legal capacity to contract in respect of its property or parts thereof.

#### **Article 13 – force majeure**

1. Neither of the Parties shall be obliged to fulfill any obligation if it is prevented from doing so as a result of force majeure. The term 'force majeure' shall also be taken to mean a non-attributable failure of the Seller's suppliers.
2. If the force majeure situation has exceeded a period of ninety days, either Party shall have the right to terminate the agreement by dissolution in writing. In that event, all that has already been performed pursuant to the agreement shall be settled proportionally, without one Party owing any damages to the other Party.

#### **Article 14 – applicable law and disputes**

1. The agreements between Seller and Purchaser shall be governed by Dutch law. The applicability of the Vienna Sales Convention or any other sales convention has been excluded.
2. Disputes which might arise between Seller and Purchaser from any agreement concluded by the Seller with the Purchaser or from any further agreements possibly resulting therefrom, shall be submitted to the competent court in the district where the Seller is established.

#### **Article 15 – Dutch text**

The Dutch text of these General Terms and Conditions shall prevail over any translations thereof.