

EverGlow
June 04, 2002

General Terms and Conditions

I. Scope

1.)

Our Terms and Conditions shall only be applicable to companies pursuant to 310 BGB (German Civil Code).

2.)

The following terms of delivery and payment shall apply to all our contracts, supplies and other services, unless modified or excluded as expressly consented by us in writing. They shall in particular also apply, if we perform supplies/services without reservation despite deviating conditions of our customer.

The general terms and conditions of the other party shall only be applicable with our written consent.

3.)

Our Terms and Conditions shall also apply to all future contracts, supplies and services, even if they are not individually attached to our offer or our confirmation of order sent to the other party.

II.

Offer, Order, Scope of Supply

1.)

Our offers are subject to change. Contracts and other agreements shall only be binding upon our written confirmation or our supply/service.

2.)

All agreements entered into by EverGlow and our customers shall be made in writing upon signing the contract. Agreements between our employees or agents and our customer made upon or after signing the contract require our written consent to become legally effective; the power of representation of our employees and agents is insofar limited.

Any supplements, amendments or collateral agreements must also be in writing. This shall also apply to the revocation of the written form requirement.

3.)

Orders shall be typewritten. EverGlow shall not be liable for any transmission errors or errors which are due to illegible orders or orders which contain ill-defined specifications.

EverGlow shall neither be liable for any defects which are due to unclear/faulty data transfer.

4.)

The tolerances customary in trade or such tolerances which are justifiable with respect to their application shall apply to all dimensions and other technical data furnished to EverGlow. As regards serigraphs, EverGlow reserves the right to supply quantities exceeded or reduced by up to 10 %; such excessive or reduced quantity will be calculated accordingly. Partial shipments are permitted.

III.)

Delivery, Delivery Time, Force Majeure

1.)

Delivery times and dates shall only be binding when confirmed by EverGlow in writing. Delivery time shall commence upon expiration of the day when all details of the order have been agreed upon, at the earliest upon acceptance of the order through EverGlow, however not before submitting all necessary documents, approvals, releases by the buyer and not before the receipt of the advance payments owed by the buyer.

The delivery time or date shall be deemed kept, when the goods have left the plant, respectively are transferred to the carrier, forwarder or any other person responsible for carrying out the dispatch or in the event that the goods cannot or are not to be sent, when EverGlow notifies the buyer prior to the deadline that the goods are ready for dispatch.

2.)

EverGlow shall not be liable for delay in delivery of goods and services due to force majeure. Such occurrences include but are not limited to lack of machinery, goods, raw material or fuel, war, ban on imports and exports, fire, disruption or blocking of transport routes, strikes as well as government regulations. EverGlow shall neither be liable for such disturbances occurred in the supplier's or sub-supplier's sphere.

In the event of such an occurrence, the delivery period agreed upon will be extended for an appropriate period after such disturbance has ended, whilst at the same time EverGlow will be granted an appropriate setting-up time. In such case, EverGlow shall be entitled to execute partial deliveries.

3.)

If the disturbance lasts for more than six weeks, the other party is entitled to withdraw from the contract whereas further claims shall be excluded.

4.)

Delivery times shall be extended for the period during which the buyer is in default with its obligations – within the scope of a current business relationship also from other contracts – or the buyer fails to provide the prerequisites required for the start or continuation of the works and in particular, if the buyer fails to submit the necessary documents, plans or other requirements. The other party shall furnish proof that the

necessary prerequisites are fulfilled and the required documents, plans or prescribed requirements are provided.

5.)

On-call orders shall only be accepted by fixing a period for taking delivery. If no specific period is determined, it shall terminate nine months after conclusion of the contract, whereas the goods are to be accepted in almost equal monthly quantities. If the buyer fails to take delivery within the agreed period, it is at EverGlow's discretion to deliver the manufactured goods without further notice or to store them at the buyer's expense. EverGlow is further entitled to grant the customer a grace period for taking delivery threatening that the delivery will be rejected in case of fruitless expiry of the grace period. After the grace period has expired without the goods being accepted by the buyer, EverGlow is entitled to withdraw from the contract while terminating its obligations to supply or to demand compensation instead of the performance, but only in respect of the part of the contract not yet fulfilled.

6.)

If the buyer fails to determine the quantity of goods within a period of one month after the period agreed upon for this determination has expired or in the absence of such an agreement within one month after EverGlow's request, EverGlow may supply the goods in quantities as it seems appropriate. EverGlow is further entitled to grant the customer a grace period for taking delivery threatening that the delivery will be rejected in case of fruitless expiry of the grace period. After the grace period has expired without the goods being accepted by the buyer, EverGlow is entitled to withdraw from the contract while terminating its obligations to supply or to demand compensation instead of the performance, but only in respect of the part of the contract not yet fulfilled.

7.)

EverGlow is entitled to execute partial deliveries and charge them separately.

IV.

Dispatch, Passing of Risk

1.)

Dispatch will be executed ex works, freight collect, for the account and at the risk of the buyer, on transfer of the goods to the forwarder or carrier.

2.)

On receipt of the goods by the forwarder or carrier, the risk will be passed to the buyer; even if the dispatch was exceptionally executed at the expense of EverGlow (free domicile).

3.)

Any deviating arrangements as to dispatch and passing of risk are to be made in writing.

4.)

Shipments to foreign countries shall only be executed against irrevocable letter of credit or advance payment. We reserve the right to deliver the goods against cash on delivery.

5.)

Mode of dispatch and means of transportation shall be exclusively at EverGlow's discretion, insofar as no written freight instruction has been submitted to EverGlow by the buyer.

6.)

In the event that EverGlow and the buyer agreed on the buyer's collection of the goods manufactured by EverGlow, such collection has to be executed as soon as the buyer receives EverGlow's notification indicating that the goods are ready for dispatch.

Upon such notification – at latest three days after sending the respective notification to the buyer – the risk passes to the buyer, whereas wilful conduct or gross negligence of EverGlow shall be excluded.

7.)

Insurance against damage to goods in transit will only be effected upon express written agreement and at the buyer's expense.

V.

Price and Packaging

1.)

Our prices are plus value added tax to be paid by the buyer at the respective current rate.

Governmental and other taxes not considered when fixing the price, which however increase the price for the goods or services directly or indirectly, will also be at the buyer's expense. EverGlow is further entitled to adjust prices, if between ordering and manufacturing the product the price for raw material, labour, energy or other costs have gone up or if alterations affecting production require the use of different raw material. In the latter case, the buyer will immediately be notified by EverGlow.

The aforementioned price adjustment shall not apply, if an order by catalogue is placed during its validity period and delivery from EverGlow stock is possible.

2.)

Samples and pilot lots will be manufactured on a price-per-unit basis as agreed upon.

3.)

In the event of small orders not exceeding a net value of 30.00 €, EverGlow will charge additional 5.00 € to cover administrative costs.

4.)

Shipping and packaging charges are calculated on the basis of cost price and are to be borne by the buyer.

VI.)

Terms of Payment

1.)

Unless otherwise agreed, invoices are payable within 30 days net without deduction and costs. No discount shall be granted.

2.)

Payments by acceptance or customer bill require a specific written agreement. In case of payment by acceptance – with a maturity term not exceeding 3 months, issued within one week after the date of invoice – discount charges according to the bank rate will be charged.

3.)

Bills and cheques are credited according to the value on the day the equivalent amount is at EverGlow's disposal. Discount charges will be charged according to the respective bank rate.

4.)

In the event of exceeding the credit period pursuant to VI. item 1, we are entitled to interest of 8 % above the respective basic interest rate.

Further claims – in particular in respect of default of the other party – shall remain unaffected.

Even without receiving a reminder, the buyer shall be deemed in default as soon as the aforementioned credit period has expired. In case of failure to pay within the credit period, all outstanding accounts become due at once, notwithstanding the maturity date of any accepted bills. In such case, EverGlow will be entitled to claim immediate security for all outstanding accounts, irrespective of whether they are due or not and suspend the processing of current orders until such security is made.

5.)

Should the buyer fail to fulfil EverGlow's request for payment after the credit period has expired, EverGlow shall have the right to cancel any orders in process, to charge the buyer with the costs so far incurred and to take back the goods delivered under reservation of title at the buyer's expense. The foregoing shall not affect the option of a special agreement between EverGlow and buyer as regards the extension of credits.

6.)

The offsetting of amounts against amounts contested by us, which are not final and absolute, shall be excluded. The assertion of a right of retention due to claims not based on the same contract shall be excluded, unless these claims are acknowledged by us and are final and absolute.

7.)

The customer has the right to retain payments due to a notification of defect, only if the notification of defect is justified and only to an extent that is reasonable with regard to the defects.

8.)

In case of customer-designated products, EverGlow may request a deposit amounting to 35 % on placing the order, 35 % on notification of dispatch and 30 % within 30 days after date of invoice.

VII.

Property Rights

1.)

Pictures, drawings, calculations, films, samples and models, plans and tools made and furnished by EverGlow remain EverGlow's property, irrespective of whether the buyer paid for them or not. Besides, EverGlow remains the owner of industrial property rights and copyrights acquired in the foregoing. The buyer undertakes not to disclose such objects to third parties without EverGlow's prior express consent. The buyer shall pay a penalty to the amount of 5,000.00 € in any individual case for each case of violating the above obligation. EverGlow's right to claim compensation for a damage exceeding the penalty shall remain unaffected thereby.

2.)

The Buyer guarantees that drawings, plans and other prescribed requirements provided by it to execute the order will not infringe any patent, licence, trademark, registered design or other property rights including third party copyrights. EverGlow shall have no obligation to verify this. The buyer shall by all means indemnify EverGlow internally against any claims asserted to EverGlow due to the infringement of third party rights, furthermore, the buyer shall bear all costs incurred by EverGlow due to the fact that third parties claim the infringement of such rights and that we have to defend ourselves.

3.)

If in the course of EverGlow's developments, results, solutions or procedures are generated which need to be protected in any way, EverGlow shall be the sole proprietor of the property rights, copyrights and rights of use. EverGlow shall reserve the right to apply for the respective property rights in its own name and on its own account.

4.)

The Buyer undertakes to respect any patent, design, model and trademark rights in products manufactured by EverGlow and is not allowed to remove any brands adhered to such products.

5.)

EverGlow is allowed to use trademark, copyright and patent rights owned by the buyer on products and goods manufactured for the buyer for its own advertising or presentation purposes in any kind of advertising and presentation (e.g. reproduction in catalogues), unless the buyer expressly opposes such use by EverGlow when placing the order.

VIII. Reservation of Title

1.)

Until settlement of all accounts receivable owed by the customer to EverGlow at present or in future, our customer shall provide the following securities to be made available by EverGlow at its own discretion insofar as their nominal value exceeds EverGlow's accounts receivable persistently by more than 20 %.

The goods supplied remain EverGlow's property.

Processing or modifications shall always be carried out for EverGlow as manufacturer but without binding effect for EverGlow. In case goods supplied by EverGlow are processed with other objects not owned by EverGlow, EverGlow shall acquire the co-ownership in the new object based on the ratio of the invoice value of the supplied goods and the invoice value of the other goods used at the time of processing them.

If EverGlow's goods are combined with other movable objects and one uniform object is received and if the other object is considered to be the main object, the buyer shall transfer the co-ownership to EverGlow on a pro rata basis, insofar as this main object is owned by the buyer. Any transfer necessary for the acquisition of the ownership or co-ownership through EverGlow shall be replaced by the agreement already concluded stating that the buyer shall maintain the object for EverGlow as a borrower or, insofar as it does not own the object itself, replaces the transfer by means of assigning to EverGlow the claim for return of property towards the owner.

Objects owned/co-owned by EverGlow according to the above provisions are referred to hereinafter as reserved property.

2.)

The buyer is entitled to sell the reserved property in the course of ordinary business and to combine it with the objects of third parties. The customer shall assign in full or in part to EverGlow the accounts receivable from the sale, combination or other legal reason

of the reserved goods proportionally to EverGlow's co-ownership in the sold or processed object.

When allocating such accounts receivable to current invoices, this assignment shall also comprise all outstanding balances. The assignment shall have precedence over the balance.

EverGlow authorizes the buyer to collect the assigned accounts receivable subject to revocation. The buyer shall immediately pay the collected amounts to EverGlow, insofar and as soon as EverGlow's accounts receivable become due. If EverGlow's accounts receivable have not yet become due, the amounts collected by the customer shall be recorded separately.

EverGlow's authorization to collect the account receivable itself shall remain unaffected. EverGlow however undertakes not to collect the accounts receivable, insofar as the buyer meets its financial obligations by means of the proceeds earned, pays in good time and in particular no petition for institution of insolvency or composition proceedings is filed or no payments have been suspended. Should this case arise, the buyer is obliged to disclose the assigned accounts receivable and their debtors, furnish to EverGlow the respective documents, give the necessary information on the collection and inform third debtors about the assignment whereas EverGlow is also entitled to notify the debtor about the assignment itself.

In the event of suspension of payment, petition for or institution of insolvency proceedings, of judicial composition proceedings or out-of-court composition proceedings, our customer's rights to sell, process, mix up or install reserved property and the authorization to collect assigned accounts receivable shall expire even without our revocation.

3.)

The customer shall immediately inform EverGlow about any third-party access to the reserved property and the assigned accounts receivable. Any costs incurred for interventions and their defence are to be borne by the buyer.

The buyer undertakes to handle reserved property with due care and provide for sufficient insurance coverage of the property at new value against fire, water damage and theft at its own expense.

In the event of breach of contract through the buyer – in particular in case of default in payment – EverGlow is entitled to take back the reserved property at the buyer's expense or to claim the assignment of the buyer's claim for return towards third parties. The taking back of reserved property as well as the seizure of reserved property through EverGlow shall not be deemed as withdrawal from the contract, unless we declare such withdrawal expressly in writing.

4.)

If our retention of title is not applicable to deliveries abroad or for other reasons or if EverGlow loses its title to the reserved property for any other reason, the buyer is obliged to immediately grant another security for the reserved property or another security for our accounts receivable effective in compliance with the law applicable at the buyer's place of business and which conforms as closely as possible with the retention of title according to German law.

IX.

Warranty, Liability for Defects and Damages

1.)

The buyer's right to assert claims due to defects of the object requires fulfillment of its obligation to duly examine and give notice of a defect according to sections 377 and 378 HGB (German commercial code), whereas the notice of defect shall be made in writing. The term for executing this obligation shall be five working days after receipt of the goods. Monday to Friday are regarded as working days.

If the buyer fails to give due notice of defect in good time, it is no longer entitled to assert claims due to the circumstances to be indicated, unless EverGlow acts fraudulently.

2.)

The buyer's right to assert claims for defects of the objects supplied by EverGlow shall become statute-barred upon one year after delivery. The limitation period stipulated by law shall however apply to claims for damages and reimbursement of expenses pursuant to section 437, subsection 3 BGB (German civil code) in case of personal injuries caused by EverGlow to the other party or damages caused by wilful or grossly negligent breach of duty through EverGlow, one of our representatives or persons engaged in the performance of our obligation.

3.)

The buyer's rights relating to defects of an object shall be governed by the legal stipulations, whereas the buyer shall grant a reasonable period for rework of at least four weeks to EverGlow, while it may, at its own discretion, grant a period of less than four weeks to EverGlow, insofar as a period of minimum four weeks for rework would be unreasonable for the buyer. The period for rework shall under no circumstances start prior to the date of return of the defective goods, whereas EverGlow shall bear the costs for returning the goods. If only part of the goods supplied by EverGlow is defective, the other party's right to cancel the contract or to claim damages instead of demanding performance shall be limited to the defective part of the delivery, unless this limitation is impossible or unreasonable for the other party.

The extent of the buyer's claims for damages due to defects of the delivered goods or services shall be limited according to the following item.

4.)

EverGlow's liability for damages due to personal injuries sustained by the other party for reason of negligent breach of duty shall neither be excluded nor limited.

EverGlow shall be liable for other damages sustained by the buyer, only if caused wilfully or by negligent breach of duty through EverGlow, one of its agents or persons engaged in the performance of its obligation. If EverGlow caused the damage by slight negligence, it shall only be liable in case of breach of material obligations under this contract, whereas this liability is limited to damage typical according to the contract or predictable to a reasonable extent.

Furthermore, claims for damages by the other party relating to breach of duties, unlawful acts or other legal reason shall be excluded.

The above exclusion of liability shall not apply to defects of guaranteed properties, if and insofar as the guarantee was intended to save the other party from defects not arising in the supplied object itself.

Insofar as EverGlow's liability is excluded or limited, this shall also apply to the personal liability of EverGlow's employees, co-workers, staff members and persons engaged in the performance of its obligation.

The above exclusion of liability shall by all means also apply to consequential damages. The above exclusion of liability shall however not apply to claims according to the Product Liability Act.

5.)

Not included in EverGlow's warranty shall be defects or damages arising from the following:

Unsuitable or inappropriate use, faulty assembly through the buyer itself or third parties, normal wear in particular also due to exposure to weather or atmospheric conditions or chemical, electrochemical or electric reactions. Furthermore, the warranty period shall only apply to defects occurring in the proper use of the goods. Any liability on EverGlow's part shall expire in the event that rework, processing or any other alterations are executed without EverGlow's consent or approval.

6.)

The other party shall indemnify EverGlow against all claims for damages asserted by third parties according to the provisions on unlawful acts, product liability or according to other provisions regarding defects of the goods manufactured or delivered by EverGlow or the other party, provided that the assertion of such claims against the other party is also justified or is no longer justified as the limitation of action for warranty claims has meanwhile become effective. Under these circumstances, the other party shall also indemnify EverGlow against expenses arising from legal disputes brought against EverGlow due to such claims.

Insofar as the assertion of claims against EverGlow is also justified or no longer justified as the limitation for warranty claims has meanwhile come into effect, EverGlow shall indemnify the other party on a pro rata basis, whereas the volume and amount of such indemnification shall be governed by section 254 BGB.

The above provisions shall not affect EverGlow's claims for indemnification and damages according to sections 437, 440, 478 BGB or due to other legal reasons.

X.

Delay in Delivery, Exclusion of Obligation to Deliver

1.)

If EverGlow is in default in delivery or if EverGlow's obligation to render services pursuant to section 275 BGB is excluded, EverGlow shall be liable for damages only under the conditions and to the extent stipulated in IX. item 4, however subject to the following conditions:

If EverGlow is in default in delivery which is due to only slight negligence by EverGlow, the buyer's claims for damages shall be limited to a flat-rate compensation amounting to 1 % of the value of the goods for each week completed during which EverGlow is in default and shall be limited to a maximum of 8 % of the value of the goods, whereas EverGlow shall prove that the delay in delivery caused no or only minor damage.

2.)

In case of EverGlow being in default, the buyer shall only be entitled to claim compensation instead of the performance, if it granted a reasonable grace period of at least four weeks for the delivery, whereas it may grant, at its own discretion, a grace period of less than four weeks to EverGlow, insofar as a period of minimum four weeks for delivery would be unreasonable for it.

The buyer's right to withdraw from the contract and the buyer's claim for damages shall by all means be limited to the part of the contract not yet fulfilled, unless the buyer no longer has a reasonable interest in the part of the contract already fulfilled.

XI.

Data Protection

Customer data will be maintained in accordance with the provisions laid down in the Federal Data Protection Act (BDSG).

XII.

Place of Performance, Place of Jurisdiction, Applicable Law

1.)

Place of performance and exclusive place of jurisdiction for supplies, services and payments including claims with respect to bills or cheques as well as any disputes arising between the parties shall be EverGlow's place of business, whereas EverGlow is also entitled to bring an action against the other party at another place of jurisdiction applicable according to sections 12 ff. ZPO (German code of civil procedure).

2.)

The contractual relation between the parties shall exclusively be subject to German law excluding the international sales convention and in particular the UN Sales Convention and other international conventions regarding the uniform sale of goods.

3.)

Should any individual provision in these terms and conditions or any other provision under other agreements be or become legally ineffective, the remaining provisions and agreements shall remain unaffected thereby. In such a case, the legally ineffective provision shall be replaced by a legally admissible provision, which conforms as closely as possible with the economic purpose of the ineffective provision.

4.)

The headings used in this contract are for convenience purposes only and shall not affect the meaning of this contract, nor be considered as final regulation.

The English version of our General Terms and Conditions is a translation only. In case of doubt the German original shall prevail.