



## General Terms and Conditions

### 1. Scope

#### I.)

The Terms and Conditions defined below shall exclusively apply for all deliveries and services provided by EverGlow. They shall also apply in case that the buyer has extended a previously placed order, however without receiving EverGlow's specific offer or places a follow-up order on the basis of an offer previously made by EverGlow.

In such case the Terms and Conditions shown below shall also apply, if no specific written offer by EverGlow is made; the General Terms and Conditions below shall also be applicable in the event that orders placed by catalogue will be executed.

On placing the order the said Terms and Conditions are deemed accepted. Should the buyer place an order by referring to his own terms and conditions/purchase conditions, this will not affect EverGlow's Terms and Conditions; the Terms and Conditions defined below shall exclusively apply without EverGlow expressly rejecting the terms and conditions/purchase conditions furnished by the buyer.

#### 2.)

Any deviations from the Terms and Conditions below shall only be effective after the written consent.

### II. Offer, Order, Scope of Supply

#### 1.)

EverGlow's offers are subject to change and without obligation.

#### 2.)

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

#### 3.)

On receipt of the order a contract between EverGlow and the buyer shall be deemed concluded, unless EverGlow revokes the order within three working days from receipt of the order.

#### 4.)

The tolerances customary in trade or such tolerances which are justifiable with respect to their application shall apply for all dimensions and other technical data furnished to EverGlow. As regards serigraphs, EverGlow reserves the right to undertake excess or short deliveries of up to 10 %; such excess or short delivery will be calculated accordingly. Partial shipments are not permitted.

### III. Delivery, Delivery Time, Force Majeure

Delivery times stated by EverGlow are not binding and are merely considered approximate times. Should the buyer wish to agree on a specified delivery period, a written confirmation by EverGlow will be required. Observance of the delivery period agreed between the two parties requires that the buyer submits the documents needed for manufacturing the product or supplying the service in time, as well as pays the deposits to EverGlow as agreed upon in due time.

A delivery date shall be deemed kept, when EverGlow has notified the buyer that the goods manufactured by them are ready for dispatch or that the goods have left the plant, respectively delivered to the forwarder, carrier or any other person responsible for carrying out the dispatch.

2.)

EverGlow shall not be liable for delay in delivery of goods and services due to force majeure. In particular, such occurrences may include 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 will be entitled to partial deliveries.

3.)

If the impediment lasts longer than one month and after the buyer has granted an additional period of time to EverGlow in writing, the buyer will have the right to withdraw from the contract with respect to the part of the contract so far not fulfilled.

4.)

If EverGlow fails to meet the delivery time agreed upon by EverGlow, the buyer, after granting an additional period of two weeks and after its ineffective expiry, will be entitled to withdraw from the contract. The buyer shall only be entitled to claiming damages which are due to delay or non-fulfillment, if such delay is caused intentionally or by gross negligence; any consequential damage shall by no means be included in a claim for damages.

#### 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 receipt of the goods by 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 executed exceptionally at the expense of EverGlow (franco buyer's domicile).

3.)

Any deviations as to dispatch and passing of risk require a written agreement.

4.)

Deliveries 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, inasfar as no written freight instructions have 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.

7.)

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

## V. Price and Packaging

1.)

The prices stated are in German marks ex works plus value added tax amounting to the respective current rate. EverGlow reserves the right to invoice in EURO currency.

Governmental and other taxes which could not be considered when fixing the price, 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 DM 50.-- EverGlow will charge additional DM 10.-- to cover administrative costs.

4.)

Dispatch 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 agreed otherwise, invoices are payable within 30 days net without deduction and costs, irrespective of the receipt of the shipment and /or service. No discount is allowed.

2.)

Payment by acceptance or customer bill require a specific written agreement. In case of payment by acceptance or customer bill - with a maturity date not exceeding 3 months, issued within one week after 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 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 (default) - even if respite was agreed - penalty for default amounting to the interest rates and charges as set by the banks for standing credits may be charged. Even without receiving a reminder, the buyer shall be in default as soon as he exceeds the aforementioned credit period. 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 whether they are due or not and suspend the processing of current orders until such security is made.

5.)

Should the buyer default EverGlow's request for payment after the credit period has already been exceeded, 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 with reservation of ownership 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.)

Setting off any amounts against an amount payable to the buyer shall be excluded unless such demand is final and absolute and acknowledged by EverGlow.

7.)

EverGlow reserves the right to set off any payment made by the buyer against any other payment made by the buyer. It shall be EverGlow's option to set off payments made by the buyer against the buyer's previous debts.

Otherwise, setting off payments made by the buyer against other debts shall be carried out in compliance with the provisions laid down in § 367 BGB (Civil Code).

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.)

Drawings, films, models, plans and tools made and furnished by EverGlow remain EverGlow's property, irrespective whether the buyer paid for them. Besides, EverGlow remains the owner of industrial property rights and copyright acquired at the foregoing. The buyer is neither permitted to disclose any documents made available to him by EverGlow to a third party nor pass such documents to a third party.

2.)

The buyer undertakes that drawings, plans and other prescribed requirements provided by him in order 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 duty to examine in this respect. The buyer shall by all means indemnify EverGlow internally against any claims for damages asserted to EverGlow due to infringement of third party rights.

3.)

The buyer engages to respect any patent, sample, model and brand rights at products manufactured by EverGlow and is not allowed to remove any brands adhered to such products.

4.)

EverGlow is allowed to use brand, copyright and patent rights owned by the buyer on products and goods manufactured for the buyer for their 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 Ownership

1.)

The goods supplied remain EverGlow's property until all accounts receivable arising from the dealing with the buyer including any future obligations are completely settled. Goods may only be sold or used in the ordinary course of business.

Should the buyer fail to pay in spite of receiving a reminder after the credit period and an extension granted by EverGlow have expired, the latter shall be entitled to claim the return of the supplied goods. In this case the buyer is obliged to return the goods at his expense.

2.)

The buyer will, even at this point, assign all accounts receivable arising from the sale to his customers; but remains revocably authorized to collect such accounts. On EverGlow's request the buyer undertakes to assign the account receivable in writing, to certify the direct debit authorization to EverGlow and notify the third party about assigning the account receivable.

3.)

If, as a result of processing the goods supplied to the buyer or combining them with another object, such goods become an essential part of another object, it shall be deemed to be agreed, irrespective which object is the main object, that the buyer conveys a co-ownership to EverGlow in accordance with the provisions of § 947, section 1 laid down in the BGB (Civil Code) and keeps the object for EverGlow.

4.)

If the goods are sold together with other goods not owned by EverGlow, the buyer's account to be received from his customer amounting to the equivalent of the purchase price agreed between EverGlow and the buyer shall be considered as assigned.

5.) Asserting the reservation of ownership shall not be considered a withdrawal from the contract.

6.)

Pledging or chattel mortgage by the buyer is not permitted unless the goods are paid. In case of attachments, seizures or other measures of a third party or in case of loss of the goods, the buyer undertakes to notify EverGlow immediately about such incident.

#### IX. Warranty, Liability for Defects

1.)

According to §§ 377, 378 laid down in the HGB (German trade code) the buyer is required to make a complaint in respect of a defect, taking into account the scope of the shipment (quantity, number of units).

The deadline for executing this duty shall be 5 working days after receipt of goods on the buyer's premises. Monday to Friday are regarded as working days.

2.)

If the goods or services supplied by EverGlow are defective or if, at the time of the transfer to the buyer, such goods lack a warranted characteristic, EverGlow will, at its own option, whilst any further warranty claims are excluded, be entitled to supply replacement or rectify the defective goods, however in accordance with the following provisions:

a.)

In the event of rectification or subsequent delivery an appropriate, customary period shall be understood.

b.)

In the event that the delivery made by EverGlow is limited to goods which are mainly produced by a third party (supplier), EverGlow will assign its warranty claims to the buyer. In this case EverGlow will furnish all necessary information and documents to the buyer enabling him to enforce a warranty claim.

c.)

The buyer shall only be permitted to have repairs carried out by a third party, if EverGlow definitely refuses to eliminate the defect.

3.)

EverGlow shall not be liable for defects caused by faulty material, which EverGlow was unable to recognize when processing or treating the product.

4.)

EverGlow will not warrant for defects or damages caused by the following:

Unsuitable or inappropriate use, faulty assembly by the buyer himself or a third party, normal wear especially due to exposure to weather or atmospheric conditions or chemical, electrochemical or electric reactions. In any case, a warranty obligation shall only be given for such defects which occur in the proper use of the goods.

5.)

Any liability on EverGlow's part shall expire in the event that rework, treatment or any other alterations are executed without EverGlow's consent or approval.

6.)

The buyer is solely entitled to warranty claims towards EverGlow whilst such claims cannot be assigned.

7.)

The legal regulations are applicable with respect to the limitation of action for warranty claims, whilst in case of rework the warranty period shall be extended by the period required for such rework.

8.)

Except for the foregoing the buyer shall not be entitled to any other warranty claims. EverGlow shall, by no means, be liable for any subsequential damage caused by a defect, unless EverGlow has furnished a warranty to the buyer aiming at preventing the latter from the risk of such damages caused by defect.

Claims for damages of any kind towards EverGlow are excluded by all means; this shall however not affect a liability for damages caused intentionally or by gross negligence on EverGlow's part.

#### X. Buyer's Right to Withdraw from the Contract in case of Impossibility of Performance and Delay in Delivery

1.)

The buyer shall be allowed to withdraw from the contract, in the event that it becomes impossible for EverGlow to execute the complete performance prior to the passing of risk. The same applies in case of EverGlow's inability to perform.

In case of a partial performance the buyer may only withdraw from the contract to the extent of EverGlow's impossibility to supply the performance.

2.)

If EverGlow is in default and the required performance has not been carried out despite granting an additional period of time and threatening not to accept the goods, the buyer shall also be entitled to withdraw from the contract.

3.)

Any further claims for damages by the buyer as well as cancellation and termination rights are, insofar as permitted by law, excluded.

#### 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 for all duties and obligations arising from a contract concluded between EverGlow and the buyer, also with respect to bill or cheque obligations shall be EverGlow's place of business.

2.)

Place of jurisdiction for all disputes between EverGlow and the buyer, no matter what kind they are, shall be Wuppertal, provided the buyer is registered in the commercial register.

3.)

German law shall exclusively apply, whilst expressly excluding the uniform UN law CISG on the sale of goods.

4.)

In the event that one of the aforementioned provisions is ineffective or becomes ineffective in the future, the remaining provisions shall not be affected. The legal regulations shall by all means apply, however taking into account the provisions stipulated in § 24 of the AGB (General Terms and Conditions).

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

EverGlow GmbH, Muggensturm

July 2013