

General Terms and Conditions of EcoPhi Renewables Engineering GmbH

(Updated: August 2023)

§1 General

1. All deliveries and services of EcoPhi Renewables Engineering GmbH are exclusively based on these General Terms and Conditions of Delivery. In the event of individual written agreements, these shall take precedence over the General Terms and Conditions.
2. General terms and conditions of the customer/user shall only become part of the contract if EcoPhi Renewables Engineering GmbH explicitly agrees to them in writing.

§2 Prices and terms of payment

1. The prices stated are net prices in euros plus the applicable statutory value added tax.
2. Any taxes, customs duties, fees and expenses for import and export in connection with the delivery shall be borne by the customer.
3. Delivery shall be made in accordance with Incoterms 2010 (EXW).
4. 100% prepayment applies for new customers.
5. Unless otherwise stated in the order confirmation or the order, invoices are due for payment within 10 days from the invoice date and delivery. With the expiration of the above payment period, the customer is in delay.
6. In the event of delayed payment, interest on arrears of 9% p.a. may be charged.
7. In case of connection of external data sources (e.g. manufacturer APIs) fees may be charged by the provider of the data. Depending on the provider, these will be paid directly by the customer or invoiced to the customer by EcoPhi in addition to the services provided.
8. In case of outstanding payments of platform subscriptions, EcoPhi reserves the right to discontinue platform services within two months. EcoPhi will inform the customer about the late payment and the possible service discontinuation before discontinuing the platform services.

§3 Retention of title

1. EcoPhi Renewables Engineering GmbH retains title to the goods sold until full settlement of all present and future claims.

2. Goods subject to reservation of title may not be offered to third parties as a pledge or transferred for security purposes without full settlement of the secured claims. In case of any impairment or endangerment of these goods, be it by seizure, initiation of insolvency proceedings or by damage or loss, the customer shall immediately notify EcoPhi Renewables Engineering GmbH. Furthermore, the customer is obligated to directly notify EcoPhi Renewables Engineering GmbH of any change of ownership of the goods.
3. In the event of a breach of contractual agreements by the customer, in particular in the event of outstanding payments or non-compliance with the obligations set forth in this clause, EcoPhi Renewables Engineering GmbH shall have the right to withdraw from the contract or to reclaim the goods subject to retention of title. In this case, EcoPhi Renewables Engineering GmbH reserves the right to exclusively demand the return of the goods without immediate withdrawal from the contract.
4. The customer has the right to resell the goods in the regular course of business and/or install them at the end user, unless this right is revoked. In this context:
 - a. As security, the customer assigns in advance to EcoPhi Renewables Engineering GmbH all claims arising from the resale of the goods to a third party and corresponding to the invoice amount. This assignment is accepted by EcoPhi Renewables Engineering GmbH. The obligations of the customer set forth in paragraph 2 shall apply equally to the assigned claims.
 - b. Even after the assignment, the client remains authorized to collect the claim itself. EcoPhi Renewables Engineering GmbH undertakes to refrain from collecting the claim itself as long as the client duly fulfills its payment obligations, shows no signs of insolvency and EcoPhi Renewables Engineering GmbH does not assert retention of title.

§4 Delivery and use of the systems

1. EcoPhi reserves the right to make partial deliveries, provided that these are reasonable for the customer.
2. The delivery time is agreed individually or stated by EcoPhi Renewables Engineering GmbH upon acceptance of the order. The delivery period shall be deemed to have been met if the goods have left the distribution warehouse by the delivery date. For the occurrence of the delay in delivery a fault of EcoPhi Renewables Engineering GmbH and a reminder by the customer is required.
3. Depending on the country of destination, corresponding import rules and regulations may apply to the hardware. It is the responsibility of the customer to comply with all national and international import guidelines and regulations that relate to the hardware. These regulations could include restrictions on users and final use.

4. The customer is responsible for compliance with local regulations. This includes, but is not limited to, obtaining permits as necessary to operate the Remote Monitoring System.
5. It is the customer's responsibility to check on site and ensure during operation that mobile network, LAN or WLAN is available in sufficient quality. EcoPhi cannot provide the services if the mobile network is not available or insufficient. Costs incurred up to that point (e.g. hardware, setup) cannot be refunded. EcoPhi is not obligated to refund payments already made for platform services (e.g. annual packages, lifetime packages).
6. Network failures of the mobile data network due to external circumstances that cannot be influenced (e.g. network shutdown) may result in no mobile data being available across the board and for longer periods of time. In this case, data cannot be transmitted, so that EcoPhi cannot offer any further services. EcoPhi is not obligated to refund payments already made (e.g. annual packages, lifetime packages).

§5 Software

1. EcoPhi grants the customer a non-exclusive right to use the delivered software and the associated documentation, but exclusively for the purpose agreed with the customer. This right is limited in time to the agreed period.
2. Any reproduction, modification or extension of the delivered software, in whole or in part, is prohibited to the customer.
3. If EcoPhi is commissioned to develop specific software for the customer, the software will only be provided in machine-readable format, whereby the source code is not included.

§6 EcoPhi Cloud Plattform

1. EcoPhi reserves the right to make technical adjustments and urgent maintenance to the EcoPhi Cloud Plattform at any time. This may result in restrictions or temporary suspensions of the cloud platform services.
2. The correctness and accuracy of the measured values is primarily the responsibility of the user / customer. EcoPhi is not liable for incorrect values, e.g. if inverters transmit incorrect values to the EcoPhi hardware and thus to the Cloud Plattform. The transmitted values are displayed graphically on the cloud platform. A plausibility check only takes place within the scope of general and customer-specific alarm settings. The alarm settings can also be modified and expanded independently by the customer and by authorized users.
3. The user expressly agrees that EcoPhi Renewables Engineering GmbH may store, process and use the measurement data in anonymized form, provided this is necessary for the corporate purposes of EcoPhi Renewables Engineering.

§7 Regular Services

1. The term for the regular service with the obligation for regular payment starts in the month in which the hardware has sent data from the project for the first time or in the month in which an external data source (e.g. manufacturer API) has been connected and has sent data.
2. If the customer purchases a monthly service package, it can be cancelled monthly three days before the end of the month. After that, the contract is automatically extended for another month.
3. In the case of annual packages, the contract may be terminated three months before expiry. After that, the contract is automatically extended for another year.
4. The agreed prices are valid for the specified period. Changes in prices must be announced by EcoPhi three months before the beginning of the next year, or in case of monthly packages three months before the end of the current month in advance.
5. The customer is obliged to pay the fee for the regular service by the third of the agreed service period.

§8 Warranty and liability

1. The warranty period is 24 months from delivery. Excluded from the warranty are cases caused by customer fault or force majeure. EcoPhi is not liable for damage caused by improper use by the customer.
2. In case of control systems where the control logic has been specified by the customer, EcoPhi is not liable for any damage caused by the control logic. EcoPhi is not obligated to check the plausibility of the control logic provided by the customer.
3. Notices of obvious defects, wrong deliveries and missing quantities can only be considered if they are received by EcoPhi Renewables Engineering GmbH in writing via e-mail directly after receipt of the goods. In the case of externally damaged or incomplete incoming shipments, the customer must complain to the parcel service/carrier immediately upon receipt of the goods.
4. Notices of defects that are not obviously recognizable must be reported to EcoPhi Renewables Engineering GmbH in writing by e-mail immediately after their discovery. The customer bears the burden of proof that a defect exists and that a defect was not obviously recognizable.
5. The warranty shall not apply to defects that are not reported in a timely and proper manner.

§9 Confidentiality

1. Both parties agree to treat all information exchanged during the initiation or execution of the contractual relationship as confidential. This obligation shall remain in force even after termination of the contractual relationship.

§10 Place of fulfillment and jurisdiction

1. The place of fulfillment and exclusive place of jurisdiction is Karlsruhe.

§11 Applicable law

1. This contractual relationship shall be governed by German law to the exclusion of international civil law and the UN Convention on Contracts for the International Sale of Goods.

§12 Partial invalidity and written form

1. The invalidity of any individual provision of these Terms and Conditions shall not affect the validity of the remaining provisions.
2. All amendments and additions to the contract must be made in writing to be effective.