

# Terms and Conditions

## of EVERCYTE GmbH (hereinafter also “Evercyte”)

Last updated: March, 1<sup>st</sup> 2017

### 1. Scope

- 1.1. These general terms and conditions shall apply to all legal transactions within the framework of this online shop between Evercyte and its customers with regard to all offered products/licenses and/or services.
- 1.2. Terms and Conditions may be subject to modifications by Evercyte.
- 1.3. Terms and conditions of a customer which deviate from these general terms and conditions are only relevant, if they have been agreed upon by Evercyte and the customer in writing. Evercyte shall not be required to object to any terms and conditions of the customer.

### 2. Conclusion of the Contract

- 2.1. To conclude a contract via the online shop with Evercyte a person has to be at least 18 years of age, shall not be limited in its legal capacity and/or shall be authorized to conclude legal transactions on behalf of the enterprise/organization.
- 2.2. The products/licenses and/or services described in the online shop represent an offer without any binding commitment for Evercyte to provide the products/licenses and/or services to the customer. Through an order of a product/license and/or services described in the online shop the customer makes a binding offer to Evercyte to conclude a contract.
- 2.3. Evercyte may accept the customer’s binding offer within five (5) calendar days by sending a confirmation of the order via E-mail. In case of an unanswered expiration of the period of five (5) calendar days an offer is considered as refused. An explicit refusal by Evercyte by E-mail or in any other form is not required.



### **3. Delivery date**

- 3.1. Evercyte shall make reasonable commercial efforts to deliver all products and/or perform all services at the earliest opportunity provided there is stock available and while stocks last.
- 3.2. The products are dispatched as follows:
  - 3.2.1. Dispatch within Austria: Monday through Wednesday (before noon).
  - 3.2.2. Dispatch all over Europe: Monday and Tuesday (before noon).
  - 3.2.3. Dispatch overseas to the USA / Canada: Monday and Tuesday (before noon).
  - 3.2.4. Dispatch overseas to Asia: Monday (before noon) and / or Friday (before noon).
  - 3.2.5. Dispatch overseas to Australia: Monday (before noon) and / or Friday (before noon)
- 3.3. The delivery of products and/or the performance of services takes place after the conclusion of the contract, unless applicable import or export regulations, sanctions etc. conflict with it. The transfer of risk to the customer takes place with the handover of the product to the supplier/transport company.
- 3.4. If a product and/or a service is not available after the conclusion of the contract, the customer shall be informed by email without undue delay.
- 3.5. If the delivery of products is delayed and/or impossible due to a fault of pre-suppliers, Evercyte shall not be liable for any inconveniences and/or damages of the customer.

### **4. Packaging and forwarding**

- 4.1. Unless otherwise agreed, the delivery of goods is considered sold as follows:
  - 4.1.1. CPT + place, country for shipments within the European union
  - 4.1.2. DAP + place, country for shipments outside the European union
- 4.2. Cost of shipping and packing charges as well as applicable import or customs fees are announced with the confirmation of the order and shall be borne by customer.
- 4.3. A transport insurance at the expense of the customer is optional. Any damages due to transport have to be notified to the supplier/transport company immediately.

## 5. Prices and payment

- 5.1. All prices are indicated in EURO and do not contain Austrian value-added tax (VAT) of 20 % at present, if such VAT is required for the delivery of goods or the performance of services.
- 5.2. If a product/license or service has to be invoiced in a currency other than EUR, Evercyte shall have the right to convert the foreign currency to EUR based on currency rates, which are calculated individually and dependent on the current expense rates at the invoice date. The customer gets informed accordingly before the invoice is issued.
- 5.3. For check payments an additional charge of EUR 50.- excl. VAT gets invoiced. Foreign currencies shall be calculated according to Section 5.2.
- 5.4. The prices do not include costs for shipping or packaging as well as optional insurances if requested by the customer.
- 5.5. In case of an actualization of prices in the online shop any information with regard to price and state of goods given by Evercyte at an earlier time is no longer binding. Evercyte shall not be liable for errors and misprints.
- 5.6. The prices stated by Evercyte in the online shop at the time the customer is submitting an offer shall be relevant for the bill position.
- 5.7. The payment of the goods/services shall take place either in advance or upon billing. The purchase price as well as given shipping and packing charges shall at the latest be due upon receipt unless stipulated otherwise.
- 5.8. The customer is obliged to pay the amount due within the period outlined in the invoice (if not otherwise stated 10 days from date of invoice). If the customer does not fulfil its payment obligations within the agreed term, Evercyte is entitled to charge additional processing and dunning fees from the customer in the amount of EUR 40.- (plus applicable VAT). Evercyte reserves the right to assert claims and/or damages surpassing such amount.
- 5.9. If the customer is in default with its payment, Evercyte is entitled to assert legal interests on arrears. Any further claims for damages of Evercyte remain reserved.

## 6. Reservation of proprietary rights

Until full payment the ordered products remain the property of Evercyte. In case of default in payment Evercyte is entitled to reclaim the product from the customer. In this case the customer has to bear the transport costs. The reclaim of the product does not stand for a rescission of the contract, unless this is expressly stated by Evercyte. In case of a rescission of the contract Evercyte may at its sole option claim a contractual penalty in the amount of 20 % of the order value without waiving any other available legal or contractual remedies.

## **7. License agreement**

The delivery of certain products and/or performance of certain services as described within the framework of the online shop require the conclusion of a separate license agreement between Evercyte and the customer. The terms and conditions of such license agreement shall have priority over these general terms and conditions.

## **8. Force majeure**

A party shall not be held liable to the other for any delay in performance or non-performance of that party directly or indirectly caused by reason of force majeure including, but not limited to, industrial disputes, strike, lockouts, riots, mobs, fires, floods, or other natural disasters, civil strife, embargo, lack or failure of transport facilities, currency restrictions, or events caused by reason of laws, regulations or orders by any government, governmental agency or instrumentality or by any other supervening circumstances beyond the control of either party. Provided, however, that the party affected shall: give prompt written notice to the other party of

- the date of commencement of the force majeure,
- the nature thereof,
- expected duration and

shall use its best efforts to avoid or remove the force majeure to the extent it is able to do so; and shall make up, continue on and complete performance when such cause is removed to the extent it is able to do so.

## **9. Warranty**

9.1. Special features and functionalities of any product/services shall only be agreed between Evercyte and the customer, if they are explicitly documented in the product/service descriptions within the online shop.

## **10. Limitation of liability**

- 10.1. Evercyte shall not be liable for damages, which have not occurred in the product itself; this includes in particular an exclusion of liability for lost profits as well as indirect, incidental, exemplary, special, consequential and/or punitive damages.
- 10.2. Evercyte shall not be liable for damage based on whatever legal ground if such damage was caused by slight negligence.



- 10.3. These provisions shall not affect the provisions of the Product Liability Act. In case Evercyte negligently infringes a fundamental contractual obligation, the liability to compensate the customer for damages to property is restricted to the damage typically caused.
- 10.4. Damage claims of the customer prescribe six (6) months after the damages were or could have been known to the customer.

## 11. Data privacy

- 11.1. The customer hereby agrees that his personal data are collected, processed and used insofar as they are essential for the purpose and performance of the business case. For the avoidance of doubt it is pointed out that personal data are only processed insofar as the purpose and content of the data application are within the statutory limitations and the data subjects' interest in safeguarding its data privacy is not infringed.
- 11.2. Evercyte does not transmit personal customer data to third parties. Furthermore the customer agrees that he/she receives recurring newsletters by Evercyte on the subject of new products or services of Evercyte. Such consent of the customer can be revoked at any time. The newsletter is sent by using the software of mail chimp. [www.mailchimp.com](http://www.mailchimp.com). <http://mailchimp.com/legal/privacy>

## 12. Copyright

All displayed corporate symbols of other companies, pictures and graphics are a property of such companies and are protected by copyrights of the licensors. All photos represented within the framework of the online shop and on this website, all logos, texts, reports, scripts and program routines which are developments of Evercyte or have been processed by Evercyte must not be copied or used without the prior written consent of Evercyte. All further rights are reserved.

## 13. Jurisdiction and governing law

The competent commercial court of Vienna shall have jurisdiction over all disputes, claims or controversies arising out of, relating to, or in connection with these general terms and conditions, including any question regarding its formation, existence, validity, enforceability, performance, interpretation, breach or termination. However, Evercyte may at its sole option alternatively select a different place of jurisdiction to assert its claims. These general terms and conditions are governed by the laws of Austria except for (i) its conflict of law's provisions and (ii) for the UN Convention on Contracts for the International Sale of Goods.



#### **14. Validity of the general terms and conditions of Evercyte GmbH**

By submitting an order for products/services within the online shop the customer agrees on the Terms and Conditions of Evercyte. The invalidity of any provision of these general terms and conditions shall not affect the validity of any other provision hereof. The parties undertake to replace the invalid provision with another provision, which reflects legally the originally intended commercial objectives of the parties as closely as possible. Any oral agreements have to be confirmed by Evercyte in writing.

#### **15. Miscellaneous**

- 15.1. The customer is not entitled to set off any claims against payment obligations vis-à-vis Evercyte.
- 15.2. The customer hereby agrees that Evercyte may wholly or partially transfer the customer's rights and obligations under these general terms and conditions to third parties. Within this context, customer states that if Evercyte transfers its company as defined in Art 38 of the Austrian Business Code it will not raise an objection as defined in Art 38 Section 2.
- 15.3. The customer shall immediately notify Evercyte in case of a change of address and/or contact details. Otherwise any communication of Evercyte to the customer shall be deemed to be received by the customer if addressed by Evercyte to the address/contact details originally provided by the customer.