

## § 1 Applicability

- (1) All deliveries, services and offers of the Seller are carried out exclusively on the basis of these general delivery conditions. These are a constituent part of all contracts which the Seller establishes with the Seller's contract partners (hereinafter also referred to as 'Contractor') regarding deliveries or services offered by the Seller. They also apply for all future deliveries, services or offers made to the Contractor, even if these have not been arranged in another explicit agreement.
- (2) Terms and conditions of the Contractor or of third parties shall not apply, even if the Seller does not separately deny their validity in individual instances. Even if the Seller refers to a document which contains or refers to the Contractor's terms and conditions, or those of a third party, this does not mean that those terms and conditions are agreed to, nor that they apply.
- (3) Agreements established between the Contractor and the Seller regarding execution of purchase contracts shall be recorded in writing within the contracts.

## § 2 Offers and contract conclusion

- (1) All offers made by the Seller are subject to confirmation and are not binding, unless they are explicitly identified as binding, or include a specified period for acceptance. The Seller can accept orders or commissions within fourteen days after receipt thereof.
- (2) Only the purchase contract, concluded in writing, including these general delivery conditions, is authoritative for the legal relationships between Seller and purchaser. This completely expresses all understandings between the contract parties regarding the subject of the contract. Verbal acceptance on the part of the Seller before conclusion of this contract are not legally binding, and verbal understandings between the contract parties shall be replaced by the written contract, unless these explicitly state that they shall apply as binding. Additions and amendments to the arrangements made, including to these terms and conditions, only come into effect if put in writing. With the

exception of managers or authorised signatories, the Seller's staff are not entitled to make verbal agreements which deviate from this contract. Transmission of a fax meets the written form requirement sufficiently; any other form of conveyance via telecommunications, especially via email, is insufficient.

- (3) The Seller's specifications regarding the object of the delivery or service (e.g. weight, dimensions, functionality, load capacity, tolerances, and technical data) and our representations thereof (e.g. illustrations and diagrams) only apply as approximate, unless the usability for the contractually intended purpose requires exact correlation. They are not guaranteed characteristics, but instead are descriptions or indications of the delivery or service. Deviations customary in such business, and deviations which occur due to legal regulations, or which constitute technical improvements, as well as the replacement of components by others of equal value, are permitted, unless they compromise the usability for the contractually intended purpose.
- (4) The Seller reserves the right to ownership, or copyright, of all offers and cost proposals made by the Seller, and of all illustrations, diagrams, calculations, prospectuses, catalogues, models, tools, and other documents and resources made available to the Contractor by the Seller. Without explicit approval from the Seller, the Contractor may not make this material, nor the content of such material, available to a third party, nor publicise them, nor use or duplicate them personally or via a third party. Upon the Seller's request, the Contractor must completely return these items to the Seller, and destroy any potential copies made thereof, if they are no longer required by the Contractor in the normal course of business, or if negotiations do not result in conclusion of a contract.

### § 3 Prices and payment

- (1) The prices apply for the scope of services and delivery specified in the order confirmations. Additional or special services are charged for separately. All prices are in EUROS ex works, and do not include packaging, statutory value-added tax, customs (for export deliveries), fees and other public levies.
- (2) The Seller's list prices which are valid at the time of delivery (minus any agreed percentage discount or fixed discount) shall apply if the agreed prices are based on the Seller's list prices, and the delivery is to occur more than four months after contract conclusion.
- (3) Unless otherwise arranged in writing, invoice amounts are to be paid as follows, without deductions: 30% of the invoice sum after order confirmation and payment request on the part of the Seller; 70% upon dispatch. The date on which payment is received by the Seller applies as the date of payment. Cheques only apply as payment once they have been cleared. If the Contractor does not pay by the due date, interest of 5% p.a. shall be charged on the outstanding sums, from the due date onwards; this does not affect the entitlement to claim higher interest and additional damages in the event of default.
- (4) A cash discount is only permitted if a corresponding specific written agreement between Contractor and Seller is in place.
- (5) Offsetting with counterclaims on the part of the Contractor, or withholding of payments due to such claims is only permitted if the counterclaims are undisputed, or have been determined to be legally valid.
- (6) The Seller is entitled to realise outstanding deliveries or services only upon advance payment or security deposit, if after conclusion of the contract, the Seller becomes aware of circumstances which may significantly reduce the Contractor's credit-worthiness, and which jeopardise payment on the part of the Contractor for the Seller's outstanding invoices which have arisen from the respective contractual relationship (including from other individual orders to which the same framework contract applies).

### § 4 Delivery and time of delivery

- (1) Deliveries are ex works.
- (2) Time periods and deadlines specified by the Seller for deliveries and services always apply only as approximate, unless a fixed time period or deadline is approved or agreed upon explicitly. If dispatch was agreed upon, delivery periods and delivery deadlines refer to the time of handover to the forwarding agent, freight carrier, or other third party appointed to realise the transport.
- (3) The Seller can, without prejudice to the Seller's rights in the event of default on the part of the Contractor, demand from the Contractor an extension of deadlines for deliveries and services, or a postponement of time periods for deliveries and services for the length of time in which the Contractor fails to meet their contractual obligations to the Seller.
- (4) The Seller does not accept liability in the event that delivery becomes impossible or delayed, if this is due to force majeure, or other events which were not foreseeable at the time of contract conclusion (e.g. all forms of operational disturbance, difficulties in the procurement of materials or energy, transport delays, strikes, legal lockouts, lack of staff, energy, or raw materials, difficulties in obtaining necessary approvals from authorities, official measures, or lacking, incorrect, or late deliveries from suppliers), for which the Seller is not responsible. If such events significantly complicate or render impossible the performance of delivery or service on the part of the Seller, and unless the obstacle is in place for only a temporary duration, the Seller is entitled to withdraw from the contract. In the event of obstacles of a temporary duration, the deadlines for deliveries or services are extended, or the time periods for deliveries or services are postponed, for the duration of the obstacle, plus an appropriate start-up period. If, due to the delay, it is not reasonable to expect the Contractor to accept the delivery or service, the Contractor can withdraw from the contract by immediately submitting a written declaration to the Seller.

- (5) The Seller is only entitled to realise partial deliveries if
  - the partial delivery can be used by the Contractor in the scope of the contractually intended purpose,
  - the delivery of the remaining ordered goods is guaranteed, and
  - this does not entail any significant additional effort or costs for the Contractor (unless the Seller agrees to cover these costs).
- (6) If the Seller defaults on a delivery or service, or if a delivery or service becomes impossible for the Seller, for whatever reason, the Seller's liability is limited to compensation as specified in § 8 of these general delivery conditions.

## § 5 Place of execution, dispatch, packaging, transfer of risk, acceptance

- (1) The place of execution for all obligations arising from the contractual relationship is 36211 Alheim near Rotenburg an der Fulda, Hesse, Germany, unless otherwise specified. If the Seller is also responsible for installation, the place of execution is the location where the installation is to occur. Installation of the system on the part of the Seller must be explicitly agreed upon; otherwise, it is not a constituent part of the services provided by the Seller.
  - (2) The mode of dispatch and the packaging are determined according to the dutiful discretion on the part of the Seller.
  - (3) The risk is transferred to the Contractor no later than at the time of handover of the delivery item (here, the beginning of the loading process is authoritative) to the forwarding agent, freight carrier, or other third party appointed to realise the dispatch. This also applies if partial deliveries occur, or if the Seller has assumed responsibility for additional services (e.g. dispatch or installation). If the dispatch or handover is delayed as a result of a circumstance caused by the Contractor, the risk is transferred to the Contractor on the day on which the Seller is ready to dispatch, and has notified the Contractor accordingly.
- (4) Storage costs incurred after transfer of risk are covered by the Contractor. If storage is performed by the Seller, the weekly storage costs are 0.25% of the invoice sum for the delivery items to be stored. The right to assert claims for (and to provide evidence of) additional or lower storage costs is reserved.
  - (5) The insurance of the shipment and of the transport is solely the responsibility of the Contractor. Only if explicitly requested by the Contractor, and at the Contractor's expense, shall the shipment be insured by the Seller against theft, breakage, transport damage, fire and water damage, or other insurable risks.
  - (6) If formal acceptance is required, the goods shall qualify as accepted if
    - the delivery and (if the Seller is also responsible for installation) the installation are completed,
    - the Seller has notified the Contractor accordingly with reference to the notional acceptance as specified here in § 5 (6), and has requested that the Contractor confirms acceptance,
    - either twelve working days have passed since delivery or installation, or the Contractor has begun to use the goods, (e. g. has commissioned the delivered system) and in this event, six working days have passed since delivery or installation, and
    - the Contractor has failed to confirm acceptance within this time period, for a reason other than a defect, of which the Seller has been made aware, and which significantly impairs or renders impossible the use of the goods.

## § 6 Legal guarantee

- (1) The legal guarantee period lasts for one year from the date of transfer of risk (receipt of goods at destination or in case of installation by us from the date of acceptance). In case of a maintenance agreement with us, an extended warranty period may be agreed.
- (2) The delivered items are to be carefully inspected immediately after delivery to the Contractor, or to the third party appointed by the Contractor. They are considered to be approved if the Seller does not receive notification of apparent defects or other defects (which were identifiable during an immediate thorough examination) within seven working days after delivery of the delivery item, or else within seven working days after discovery of a defect, or after the point in time when the defect became noticeable to the Contractor upon normal use of the delivery item without closer inspection, in the form specified in § 2 (2) sentence 6. Upon request of the Seller, the rejected delivery item is to be sent back to the Seller free of charge. If the notification of defects proves justifiable, the Seller is to provide reimbursement of the costs for the most economical method of shipment; this does not apply if the costs increase as a result of the delivery item being situated in a location which is not the location of the intended use.
- (3) If the delivered items exhibit material defects, the Seller is firstly obliged and entitled to provide either repair or replacement, whichever is chosen by the Seller within an appropriate period. In the event of failure to provide repair or replacement, i.e. if this is impossible, unacceptable, refused, or inappropriately delayed, the Contractor can withdraw from the contract, or reduce the purchase price accordingly.
- (4) If the Seller is responsible for a defect, the Contractor can assert a compensation claim under the prerequisites specified in § 8.
- (5) In the event of defects in components from other manufacturers, which the Seller cannot rectify due to licensing reasons, or due to factual circumstances, the Seller shall either assert the Seller's guarantee claims against the manufacturers and suppliers for the Contractor's account, or shall cede such claims to the Contractor, as selected at the Seller's discretion. Guarantee claims against the Seller with regard to defects of this kind are only valid under the other prerequisites and in accordance with these general delivery conditions if the legal assertion of the aforementioned claims against the manufacturer and suppliers has failed, or has no chance of success, for example due to an insolvency. For the duration of the legal dispute, the period of limitation of the Contractor's relevant guarantee claims against the Seller is suspended.
- (6) In the event of defects in components from other manufacturers, which the Seller cannot rectify due to licensing reasons, or due to factual circumstances, the Seller shall either assert the Seller's guarantee claims against the manufacturers and suppliers for the Contractor's account, or shall cede such claims to the Contractor, as selected at the Seller's discretion. Guarantee claims against the Seller with regard to defects of this kind are only valid under the other prerequisites and in accordance with these general delivery conditions if the legal assertion of the aforementioned claims against the manufacturer and suppliers has failed, or has no chance of success, for example due to an insolvency. For the duration of the legal dispute, the period of limitation of the Contractor's relevant guarantee claims against the Seller is suspended.
- (7) No guarantee of any kind applies to any individual delivery of used items arranged with the Contractor.

## § 7 Property rights

- (1) In accordance with this § 7, the Seller is responsible for ensuring that no commercial property rights or copyrights of third parties apply to the delivery item. If claims are asserted against a contract partner due to infringement of such rights, this contract partner is immediately to notify the other contract partner thereof in writing.
- (2) In the event that the delivery item infringes on a commercial property right or a copyright of a third party, the Seller shall, according to the Seller's preference and at the Seller's expense, either alter or replace the delivery item in such a manner that rights of third parties are no longer infringed upon, and that the delivery item still performs the contractually arranged functions, or shall acquire right of use for the orderer by concluding a license agreement. If the Seller fails to do so within an appropriate period of time, the Contractor is entitled to withdraw from the contract, or to reduce the purchase price accordingly. Any claims for damages on the part of the Contractor are subject to the restrictions stipulated in § 8 of these general delivery conditions.
- (3) If products from other manufacturers delivered by the Seller entail legal infringements, the Seller shall either assert the Seller's claims against the manufacturers and upstream suppliers for the Contractor's account, or shall cede such claims to the Contractor, as selected at the Seller's discretion. Claims against the Seller in such cases as specified here in § 7, are only valid if the legal assertion of the aforementioned claims against the manufacturers and upstream suppliers has failed, or has no chance of success, for example due to an insolvency.

## § 8 Liability for damages on the basis of culpability

- (1) The Seller's liability for damages, regardless of the legal grounds, especially due to impossible, delayed, inadequate or incorrect delivery, breach of contract, breach of obligations in contract negotiations, and prohibited action, if the Seller is at fault, is limited as specified here in § 8.
- (2) The Seller is not liable
  - a) in the event of ordinary negligence exhibited by the Seller's institutions, legal representatives, employees, or other vicarious agents;
  - b) in the event of gross negligence exhibited by the Seller's non-management employees, or other vicarious agents; unless material contractual obligations are breached. Material contractual obligations are: the obligation to provide punctual faultless delivery and installation, as well as duties of counsel, protection and care, which should enable the Contractor to use the delivery item for the contractually intended purpose, or which are for the purpose of protection of the Contractor's staff or third parties against injury or death, or protection of the Contractor's property against significant damage.
- (3) If the Seller is liable for damages on the basis of § 8 (2), this liability is limited to damages which, upon conclusion of the contract, the Seller had foreseen as possible consequences of a breach of contract, or which, upon consideration of the circumstances known to the Seller, or which the Seller must have known of, the Seller must have foreseen if due diligence was applied. Furthermore, indirect damages and consequential damages which result from defects in the delivery item are only eligible for compensation if such damages are typically to be expected upon proper use of the delivery item. Financial expectations of the Contractor or third parties, or promises made by the Contractor to third parties are not foreseeable for the Seller, and thus do not entail any obligation on the part of the Seller to provide compensation for damages.

- (4) In the event of liability for ordinary negligence, the Seller's obligation to provide compensation for damage to persons or property is limited to a sum of EUR 1,000,000 per case of damage (corresponding to the current limit of indemnity in the Seller's product liability insurance or other liability insurance), even if material contractual obligations have been breached.
- (5) The aforementioned exclusions and limitations of liability apply to same extent in favour of the Seller's institutions, legal representatives, employees, or other vicarious agents.
- (6) If the Seller provides technical information, or is active in a consulting capacity, and this information or counsel is not within the contractually arranged scope of services which the Seller is obliged to perform, this occurs free of charge, and upon exclusion of any liability.
- (7) The restrictions specified here in § 8 do not apply to the Seller's liability with regard to acting with intent, guaranteed characteristics, loss of life, bodily injury, damage to health, or the German Product Liability Act.

## § 9 Reservation of title

- (1) The reservation of title agreed upon in the following serves to secure all of the Seller's respective current and future requirements of the purchaser arising from the delivery relationship between the contract partners regarding tracking systems for the Seller's photovoltaic systems (sonnen\_system\_3\_X) including balance claims against a current account limited to this delivery relationship.
- (2) The goods delivered by the Seller to the purchaser remain the property of the Seller until full payment of all covered claims has occurred. The goods, as well as the goods which take their place in accordance with this clause and which are subject to the reservation of title, will hereinafter be referred to as 'reserved goods'.
- (3) The purchaser shall store the reserved goods for the Seller, free of charge.
- (4) The purchaser is entitled to process and sell the reserved goods in the course of ordinary business activities until the occurrence of recovery (paragraph 9). Pledging and assignment as security is not permitted.
- (5) If the reserved goods are processed by the purchaser, it is agreed that the processing shall occur in the Seller's name, and for the Seller's account as manufacturer, and that the Seller immediately acquires ownership or (if the processing utilises material from several owners, or if the value of the processed object is higher than the value of the reserved goods) co-ownership (partial ownership) of the newly produced object corresponding to the reserved goods' value in relation to the value of the newly produced object. In the event that the Seller does not acquire such ownership, the purchaser hereby cedes the purchaser's future ownership or (to the extent described above) coownership of the newly produced object to the Seller as security. If the reserved goods are combined or inseparably mixed with other objects to form a unified object, and if one of the other objects is to be considered the main object, the Seller (to the extent to which the main object belongs to the Seller) proportionally cedes co-ownership of the unified object to the purchaser, to the extent specified in sentence 1.

- (6) In the event of resale of the reserved goods, the purchaser hereby cedes the resulting claims against the resale purchaser (if the Seller has co-ownership of the reserved goods: proportionally in accordance with the co-ownership share) to the Seller as security. The same applies to other claims which take the place of the reserved goods, or which otherwise arise with regard to the reserved goods, such as, for example, insurance claims or claims due to prohibited action in the event of loss or damage. The Seller gives the purchaser the revocable right to collect the claims ceded to the Seller in the purchaser's name for the Seller's account. The Seller may only revoke this right to collect in the event of recovery.
- (7) If third parties seize the reserved goods, particularly in the course of attachment, the purchaser shall immediately inform the third parties of the Seller's ownership, and shall inform the Seller to this effect, so as to enable the Seller to realise the Seller's rights of ownership. If the third party is not able to cover the in-court or out-of-court costs which the Seller thus incurs, the purchaser is liable to cover such costs for the Seller.
- (8) Upon request, the Seller can choose to release the reserved goods, and the objects or claims which take the place of the reserved goods, if their value exceeds the secured claims by more than 50%.
- (9) If, in the event of contract-violating conduct on the part of the purchaser, in particular in the event of payment default, the Seller withdraws from the contract (case of recovery), the Seller is entitled to demand the reserved goods.

## §10 Final provisions

- (1) The place of jurisdiction for any disputes arising from the business relationship between the Seller and the Contractor is either Alheim near Rotenburg an der Fulda, Hessen, Germany, or the Contractor's place of business, as selected at our discretion. For claims against the Seller, the exclusive place of jurisdiction is Alheim near Rotenburg an der Fulda, Hesse, Germany. This provision does not affect mandatory statutory stipulations regarding exclusive places of jurisdiction.
- (2) The relationships between the Seller and the Contractor are exclusively subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods from 11 April 1980 (CISG) is not applicable.
- (3) If the contract or these general delivery conditions contain legal loopholes: in order to fill these loopholes, the legally effective provisions which, in accordance with the economic objectives of the contract and the purpose of these general delivery conditions, the contract partners would have agreed upon if they had identified the loopholes, apply as agreed upon.

**D-36211 Alheim-Heinebach, August 2009**

**Note: The Contractor acknowledges that the Seller, as per § 28 of the German Federal Data Protection Act, stores data pertaining to the contractual relationship, and reserves the right to forward this data to third parties (e.g. insurance companies) to the extent necessary for fulfilment of the contract.**