

General Terms and Conditions

Version: February 2018

1. General Information

- 1.1 All our deliveries and services, in particular deliveries and services on the basis of a purchase contract (*Kaufvertrag*), a contract dealing with the supply of movable things to be produced or manufactured (*Werklieferungsvertrag*), or a contract for works and services (*Werkvertrag*), including installation, assembly, and other services as well as consultations and other ancillary services (hereinafter "Delivery/Deliveries") will be exclusively executed under these General Terms and Conditions (hereinafter "Delivery Terms"). We do not accept any terms of the customer (hereinafter "Customer") which deviate from or amend these Delivery Terms or any statutory provisions, unless we have explicitly consented to their applicability in writing. Even if we have not expressly rejected such terms of the Customer after having received them or have executed any Deliveries without reservation, we do not accept any such terms.
- 1.2 These Delivery Terms apply to business transactions with entrepreneurs within the meaning of Sec. 14 German Civil Code [*Bürgerliches Gesetzbuch* – "BGB"], legal entities under public law, and special trusts under public law.
- 1.3 Within the scope of an ongoing business relationship, these Delivery Terms shall also apply to all our future Deliveries to the Customer.

2. Offers and Conclusion of Contract, Form

- 2.1 Our offers are always made without engagement and are non-binding. A contract with the Customer (hereinafter "Contract") shall only come into effect by an order of the Customer and our written order confirmation or upon the rendering of the Delivery.
- 2.2 We may accept an order by the Customer within two weeks following its submission. Until the expiration of this delay, orders are binding for the Customer. Our silence does not allow the Customer to trust in the conclusion of Contract. Should the Customer receive our order confirmation late, he shall inform us about it without undue delay.
- 2.3 Should these Delivery Terms or the Contract require the written form, text form within the meaning of Sec. 126 b German Civil Code (BGB) (e.g. fax or e-mail) suffices to comply with the written form requirement. This shall also apply to any other written form requirements contained in any other integral parts of the Contract, unless otherwise agreed upon.
- 2.4 Any commercial terms shall be construed in accordance with the Incoterms applicable at the time of the conclusion of Contract.

3. Acceptance

- 3.1 Deliveries only require acceptance if it has been expressly agreed upon or if is required by statutory provisions.
- 3.2 The Customer shall bear the costs of the acceptance.
- 3.3 Unless otherwise agreed upon, acceptance must be conducted within two weeks following the announcement of the readiness for acceptance.
- 3.4 The Customer may not refuse acceptance due to irrelevant defects.
- 3.5 Should the Customer fail to carry out an agreed acceptance which has to take place prior to the shipment without undue delay after the announcement of the readiness for acceptance, we shall have the right to dispatch the Delivery without acceptance and to charge it to him as delivered.

4. Transfer of Risk, Execution of Delivery, Delivery Dates

- 4.1 In the case of Deliveries under a purchase Contract or a Contract dealing with the supply of movable things to be produced or manufactured, the risk of accidental loss and accidental deterioration shall pass to the Customer upon selection of the goods and the announcement of the readiness for dispatch, but at the latest when the goods leave the factory. In the case of Deliveries and services under a Contract for work and services, the risk of accidental loss and accidental deterioration shall pass to the Customer as soon as the Delivery or service is within the sphere of the Customer's authority, but at the latest upon acceptance.
- 4.2 Unless otherwise agreed upon, we determine the shipment route and means of shipment as well as the carrier and forwarder.
- 4.3 Our delivery obligations shall be subject to the correct and punctual deliveries by our own suppliers.
- 4.4 The compliance with the agreed delivery dates requires the clarification of all technical questions, the timely reception of all documents, permits, and clearances to be delivered by the Customer as well as the compliance with the agreed payment terms and any other obligations

of the Customer. Should the Customer fail to fully or timely meet one of these conditions, the delivery delays shall be extended accordingly.

- 4.5 The agreed delivery dates are deemed to be complied with upon announcement of the readiness for dispatch; this also applies if Deliveries cannot be shipped in due time without our fault.
 - 4.6 If we have agreed upon collection by the Customer, a Delivery which has been reported ready for shipment as provided in the Contract must be collected without undue delay, otherwise we shall be entitled to ship it at Customer's expense and risk at our own choice and to charge it as delivered.
 - 4.7 Insofar as the execution of Deliveries is delayed by more than one week because the Customer is in breach of obligations under the Contract by culpable conduct, we shall be entitled to claim a contractual penalty of 0.2 % of the net price of the delayed Delivery per working day after the expiry of the period of one week, not to exceed, however, the total of 5 % of this net price. Our right to claim further damages in accordance with the statutory requirements remains unaffected. However, already paid contractual penalties shall be credited to possible claims for damages.
 - 4.8 We are entitled to perform partial deliveries, to the extent such partial deliveries are reasonable for the Customer, and to invoice such partial deliveries separately; any freight costs for all partial deliveries shall not exceed any agreed freight costs. The Customer's right to rescind the Contract as a whole in case of our culpable and undue delay with the remaining partial deliveries, if the partial deliveries are of no interest to the Customer, shall remain unaffected.
 - 4.9 Excess or short deliveries in line with the industry standard are allowed and are deemed as agreed upon. The same shall apply in case of early deliveries.
 - 4.10 Events of force majeure entitle us to defer the Delivery by the duration of the impediment caused by the force majeure as well as by an appropriate start-up period. Any other inevitable events we are not at fault for shall be deemed as events of force majeure, in particular measures in terms of monetary policy, trade policy and other sovereign measures, strikes, lock outs, significant interruptions of operations (such as fire, machinery breakage, lack of resources or energy) as well as obstructions of transport routes – in each case which are not only temporary - and which make the Delivery substantially difficult or impossible. Should the duration of events of force majeure or their equivalents exceed three months, we and the Customer shall be entitled to rescind the Contract. We will inform the Customer about the beginning and the end of such events as soon as possible.
 - 4.11 Should the Customer be entitled to claim damages in addition to the performance due to delay, damages to be compensated shall be limited to 0.5 % of the agreed net price of the Deliveries affected by the delay for each full week of delayed Delivery, not exceeding, however, a total of 5 % of this net price. These limitations shall not apply if the delay is caused by intent or gross negligence.
 - 4.12 Without prejudice to other statutory conditions, the Customer may only rescind the Contract due to our failure to comply with delivery dates, if we are at fault for the failure. In case we have rendered a partial Delivery, the Customer is only entitled to rescind the entire Contract, if the partial Delivery is of no interest to him.
- ### 5. Prices and Payment
- 5.1 Unless otherwise agreed, our prices shall be net prices. Our prices shall be understood EXW (Incoterms 2010) plus the VAT applicable at the time of invoicing.
 - 5.2 Our invoices are immediately due and have to be paid to our head office without deduction.
 - 5.3 In case of export deliveries, any and all taxes, customs duties and other public charges payable abroad or when exporting abroad shall be borne by respectively reimbursed by the Purchaser.
 - 5.4 In case of intra-community supply into a member state of the European Union other than Germany, the Customer shall provide us with a certification of the entry of the Delivery into the other EU member state complying with the requirements of Sec. 17 a value German Added Tax Ordinance (*Umsatzsteuerdurchführungs-Verordnung*) in its respective valid version and certifying that the Delivery has arrived into such EU member state. Unless otherwise specified by us, the certification shall contain at least the name and address of the Customer, the quantity of the Delivery and its standard commercial de-

- scription, the location of the EU member state of entry, the date the Delivery was received in the EU member state or, if the Customer transported the Delivery, the date the transportation ended and the date of issue of the certificate. Unless otherwise requested by us, the Customer shall use for the certification the sample provided by us. The Customer shall either sign handwritten the certification or shall provide it, if requested by us, in electronic form.
- 5.5 If the Customer is in default in payment, we are entitled to demand default interest at the usual bank rate but at least 9% points above the base rate.
- 5.6 Insofar as we are not obliged to make advance Deliveries or provide advance services, we may withhold Deliveries under the business relationship with the Customer on the grounds of our own matured claims against the Customer, until the performance due to us is effected.
- 5.7 If a significant decline in the Customer's financial circumstances becomes apparent after the conclusion of the Contract which places one of our claims at risk, in particular in case of suspension of payments, a request to initiate insolvency proceedings regarding the Customer's assets or any bill or cheque protest, we are, in the event that we are obliged to make advance Deliveries or provide advance services, entitled to execute outstanding Deliveries only against the provision of an appropriate security. Should the Customer fail to provide us with an advance payment or security within a reasonable time set by us, we shall be entitled to revoke the Contract, without prejudice to other rights of rescission. This does not apply if the Customer makes an advance payment.
- 5.8 Prices quoted in the order and in the order confirmation are based on the raw material prices, salaries, taxes, social charges and freight charges applicable upon conclusion of the Contract (hereinafter the "Cost Factors"). These Costs Factors have a direct impact on the sales price of our goods. Should Cost Factors increase by more than a total of five percent between conclusion of the Contract and the shipment, we shall be entitled to increase the sales price of our goods accordingly.
- 5.9 The Customer is entitled to set-off or retention only insofar as its counterclaims are undisputed, if they have been finally adjudicated or in case the Customer's claim derives from the same contractual relationship as our claim and if it is proportionate to our claim.
- 6. Reservation of Title, Trade Mark Rights**
- 6.1 We reserve title to all delivered goods until the satisfaction of all claims accruing under our business relationship with the Customer (the "Reserved Goods").
- 6.2 The Customer is only authorized to resell the Reserved Goods in the ordinary course of business. The Customer has not entitlement to any other acts of disposal regarding the Reserved Goods, in particular to pledge or transfer them by way of security.
- 6.3 The Customer is entitled to process the Reserved Goods. Processing is free of charge and will be carried out for us as manufacturer within the meaning of § 950 German Civil Code (*BGB*) without creating any obligation for us. Articles processed shall be considered as Reserved Goods.
- 6.4 If the Reserved Goods are combined or mixed with items that are not our property, we will acquire co-ownership of the new article to an extent corresponding to the relation of the invoice value of the Reserved Goods to the invoice value of the other items. If our ownership right expires because of processing, combination or mixing, the Customer hereby assigns to us, effective immediately, all ownership rights accruing to the Customer in the new article to the extent corresponding to the invoice value of the Reserved Goods and will safeguard the new article for us free of charge. Our co-ownership rights will be considered as Reserved Goods.
- 6.5 The Customer hereby assigns to us, effective immediately, any and all claims that accrue due to the resale of the Reserved Goods. If the Customer sells the Reserved Goods together with other articles which have not been delivered by us, the assignment of the claims in connection with the resale shall be limited to the amount of the resale value of the Reserved Goods. In case of a resale of goods in which we have co-ownership rights, the assignment of the claim shall be limited to the resale value of such co-ownership shares.
- 6.6 The Customer is authorized to collect such claims assigned to us which arise in connection with the resale of the Reserved Goods.
- 6.7 We have the right to revoke such resale permit pursuant to Sec. 6.2 and the collection authorization pursuant to Sec. 6.6, if a) the Customer is in default with the payment of claims arising in connection with the business relationship; b) the Customer has resold the Reserved Goods outside of the ordinary course of business; or c) a significant decline in the Customer's financial circumstances becomes apparent after the conclusion of Contract which places one of our claims at risk, in particular in case of suspension of payments, a request to initiate the insolvency proceedings regarding the Customer's assets or any bill or cheque protest.
- 6.8 Upon request of the Customer, we shall release our securities if the realizable value of the securities exceeds the claims to be secured by more than 10 %.
- 6.9 The Customer must, at its own expense, insure the Reserved Goods against losses caused by fire, water, and burglary and prove this to us upon request.
- 6.10 In the event of attachment or any other interventions by third parties regarding the Reserved Goods the Customer must notify us immediately.
- 6.11 We are entitled to claim our rights arising from the reservation of title even without rescission of the Contract. Any taking back of goods will always be for safety only; this does not constitute a rescission of the Contract.
- 6.12 We reserve all property, utility model, design patent, patent, trademark, copyright, personal and other industrial property rights in connection with the delivered goods, in particular regarding illustrations, drawings and other documents, designs, design suggestions, templates, working documents, forms, copyrights, know-how, calculations and software, we have provided in physical or electronic form.
- 7. Inspection and Notification Obligation**
- 7.1 The Customer is obligated to duly examine the amount, weight, and packaging of the goods without delay after the handing over of the Delivery and to note any complaint on the delivery note or the bill of lading. Otherwise amount, weight, and packaging are deemed as agreed upon. Without delay after the handing over of the Delivery, the Customer shall have the quality of the goods examined on a random basis and shall open the packaging (cartons, boxes, foils, etc.) for this purpose. This Sec. 7.1 shall only apply to purchase Contracts (*Kaufverträge*) and Contracts dealing with the supply of movable things to be produced or manufactured (*Werklieferungsverträge*).
- 7.2 We must be notified of apparent defects in writing without undue delay but at the latest five days after the handing over of the Delivery. We must be notified of hidden defects in writing without undue delay but at the latest five days after they have been discovered. Otherwise the goods shall be deemed approved. This Sec. 7.2 shall only apply to purchase Contracts (*Kaufverträge*) and Contracts dealing with the supply of movable things to be produced or manufactured (*Werklieferungsverträge*).
- 7.3 After the declaration of an agreed acceptance of the Delivery by the Customer, notice of any defects which were apparent at the point in time of the acceptance shall be excluded.
- 7.4 The notice of defects must exactly describe nature and extent of the defect.
- 7.5 Upon request, the Customer must provide us with the rejected goods or samples thereof for examination purposes without undue delay. Such an examination may be carried out by us, our suppliers or any other third party mandated by us for this purpose.
- 8. Defects of Quality**
- 8.1 If a defect of quality exists at the time of passing of risk, we are entitled to cure the defect, at our discretion, by means of remedy or subsequent delivery.
- 8.2 In particular, delivered solar modules are not defective to the extent that the electric output of a solar module lies within the tolerances specified in the sales brochure or on the goods or if it remains at least 5 % below the electric minimum output specified on the sales brochure or on the goods.
- 8.3 Place of performance for the cure shall be our registered office. We are not obligated to reimburse transportation expenses which Customer had to bear as expenses necessary for curing any defect, insofar as the expenses were increased because the goods were subsequently transferred to a location other than the initial place of destination.
- 8.4 If the cure proves unsuccessful, the Customer has the right to choose, in accordance with the statutory requirements, to demand a reduction in the price or to rescind the Contract. Sec. 9 shall apply to any and all claims for damages due to a defect in quality. Any further claims of the Customer shall be excluded.
- 8.5 Any remedy or subsequent delivery carried out by us takes place on a goodwill basis and without recognition of a legal obligation. An acknowledgement leading in a recommencement of the limitation period requires our express declaration to the Customer. Barring an express acknowledgement, no new limitation period will begin to run upon remedy or subsequent delivery.
- 8.6 Should we agree on any quality of the goods we do not automatically assume a guarantee regarding the quality or bear any procurement risk within the meaning of the law.
- 8.7 Warranty claims shall be excluded in case of losses arising after the transfer of risk as a result of incorrect or negligent treatment, excessive strain, unsuitable utilities, natural wear and tear or due to any other external influences which are not within our field of responsibility.

ity and which we have not assumed under the Contract (e.g. chemical or electrochemical influences).

- 8.8 Any recourse claims of the Customer directed against us pursuant to Sec. 478 BGB shall be excluded to the extent that the Customer has agreed upon any warranty rights which go beyond the statutory provisions.

9. Liability

- 9.1 Claims for damages or reimbursement of expenses of the Customer, regardless of the legal basis, shall be excluded.
- 9.2 However, this exclusion of liability pursuant to Sec. 9.1 above shall not apply:
- in case of a liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*);
 - in cases of intent or gross negligence;
 - in case of culpably caused injury to life, limb or health;
 - in case of an infringement of material contractual duties, i.e. such duties whose fulfillment is essential for enabling the due performance of the Contract and on whose observation the Customer generally relies and may rely on. In case we are not liable for intent, gross negligence, injury to life, limb or health or pursuant to the Product Liability Act (*Produkthaftungsgesetz*), our liability due to an infringement of material contractual duties shall be limited to foreseeable, contractually typical damages.
- 9.3 Should our liability be limited or excluded pursuant to the preceding Sections, the limitation shall equally apply to the respective personal liability of employees, vicarious agents and legal representatives.
- 9.4 The foregoing provisions will not imply any shift in the burden of proof to the disadvantage of the Customer.
- 9.5 Sec. 4.11 takes precedence over this Sec. 9 in case of damages caused by delay.

10. Prescription

- 10.1 The limitation period for claims and rights arising from defects in quality or title is one year from the statutory commencement of the limitation period. Notwithstanding, the statutory period of prescription shall apply
- in case of Sec. 438 Subsec. 1 No. 1 a) German Civil Code (*BGB*) (a real right of a third party) and b) (right registered in the land register), Secs. 438 Subsec. 1 No. 2, 634a Subsec. 1 No. 2 German Civil Code (*BGB*) (building; a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building and/or planning or monitoring services for a building), in case of recourse claims pursuant to Sec. 479 Subsec. 1 German Civil Code (*BGB*) as well as in case of fraudulent intent.
 - and in the event of claims for damages additionally in case of a liability due to intent or gross negligence, injury to life, limb or health, or pursuant to the Product Liability Act (*Produkthaftungsgesetz*).
- 10.2 For all other claims of the Customer against us, the regular limitation period is reduced to two years from the statutory commencement of the limitation period. This shall not apply to the cases of claims for damages listed in Sec. 10.1 b).

11. Technical Information

We are not obligated to provide technical assistance or technical information or recommendations. Any advice regarding the application engineering of the goods which we provide verbally, in writing or through tests is given to the best of our knowledge; nevertheless, they have no binding effect - also in relation to third parties. The Customer shall exclusively bear the risk of application, use, and fitness.

12. Packaging

Reusable packaging material such as euro-pallets, any other containers, etc. remain our property. Should the Customer fail to return these materials to us in a reusable state without undue delay follow-

ing our request, we are entitled to charge the replacement costs to the Customer and demand immediate payment of such costs.

13. Foreign Trade Legislation

- 13.1 Our execution of the Contract concluded with the Customer is subject to the reservation that no barriers, such as national or international provisions of the German Trade Legislation, embargos and/or other sanctions, are opposed to such execution.
- 13.2 In case the Customer passes the goods delivered by us (hardware and/or software and/or technology and the associated documentation, regardless of the manner in which they are made available) or the work and services provided by us (including technical support of any kind) on to third parties in Germany and abroad, the Customer must comply with the applicable provisions of national and international (re-) export control law. In any case, the Customer must comply with the (re-) export control regulations of the Federal Republic of Germany, the European Union, and the United States of America.
- 13.3 As far as necessary for export control inspections, the Customer shall, upon request, immediately provide us with any and all information on the final recipient, final destination, and purpose of use of the goods delivered by us or the performances, as well as with any information on export control restrictions in this respect.
- 13.4 The Customer shall exempt us to the full extent and hold us harmless from any and all claims made by authorities or any other parties against us on the grounds of the Customer's non-compliance with the aforementioned obligations under export control law and undertakes to reimburse any and all damage and expenses which we have to bear in connection with it, unless the Customer is not responsible for the breach of duty. This does not cause a modification of the burden of proof.

14. Confidentiality

- 14.1 The Customer shall treat our documents as well as our business and industrial secrets (hereinafter "**Information**") as confidential. In particular, the Customer is not entitled to forward any Information to third parties or to make it available to them without our prior written consent. If we have agreed to the subcontracting to third parties, the Customer shall commit the aforementioned third parties to such terms in writing. This confidentiality agreement shall remain in force for a period of ten years after the termination or the performance of the Contract. It does not apply, to the extent that the Information a) was already known to the Customer upon conclusion of the Contract or became known later on and the disclosure was not caused by a violation of a confidentiality obligation or b) was already public knowledge upon conclusion of the Contract or became publicly known later on, or c) must be disclosed on the basis of statutory obligations or by order of a court or authority.
- 14.2 The use of this Contract for advertising purposes is prohibited without our prior consent.

15. Miscellaneous

- 15.1 Place of performance for any and all liabilities is our registered office (Dresden, Germany).
- 15.2 The invalidity of individual provisions of these Delivery Terms or other integral parts of the Contract shall not affect the validity of the remaining provisions.
- 15.3 Exclusive place of jurisdiction shall be Dresden, where our registered office is situated. However, we shall be entitled to file an action against the Customer at the Customer's general place of jurisdiction or any other competent court. The preceding provisions regarding the place of jurisdiction shall also apply to legal proceedings related to bills of exchange or check.
- 15.4 Any and all contractual relationships between us and the Customer shall be governed and interpreted in accordance with the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).