

## SunEnergy General Terms and Conditions of Sale

### 1. Application

(1) These General Terms and Conditions (GT&Cs) are intended to apply to offers and order confirmations issued by the SunEnergy Europe GmbH ("Seller") for the supply of Products as contemplated herein, whether such offers or confirmations are issued under a frame agreement or on a stand-alone basis. In no event shall the Buyer's general terms and conditions or other terms of whatever kind apply (whether the same are in addition to or in lieu of any provision set forth in the these Terms & Conditions) unless the Seller has expressly agreed thereto in writing.

In these GT&Cs, the Contract, in documents and communications between the Parties relating to the Contract, except where the context otherwise indicates or requires the following defined terms shall have the following meanings:

"Buyer" shall mean the entity designated as such on the cover page of the Purchase Order.

"Contract", "Purchase Order", "PO" and "Order Confirmation" shall be interchangeable and mean the Order Confirmation document to which these General Terms & Conditions apply and all contract documents belonging to such Order Confirmation, including, as applicable, Appendices, and, whenever the Order Confirmation is issued under a frame agreement, all applicable provisions of such frame agreement.

"Product" shall mean any equipment, instruments, materials, articles, documentation, computer hardware and software and items of all kinds to be provided by the Seller under the Contract.

"PO Price" shall mean the total sum set forth in the Purchase Order to be paid by the Buyer to the Seller for the due and timely delivery of the Product.

"Shipment" shall mean the readiness for dispatch and/ for collection at Seller's warehouse.

(2) These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply, if Seller performs delivery despite his knowledge of differing or contrary terms.

(3) These terms and conditions of sale shall only apply vis á vis legal entities, entrepreneurs, governmental entities, or special governmental estates.

(4) The contract documents are to be taken as mutually explanatory of one another. In case of conflict, the documents shall be interpreted and prevail in the following order of priority:

- the Order Confirmation, including any particular terms and conditions incorporated and annexes attached;
- these Terms and Conditions
- the Purchase Order
- the offer

(5) These Terms of Sale are subject to change by Seller from time to time. In the event of such changes, Seller will provide those changes on Seller's website and/or inform Buyer by email.

### 2. Offers, Acknowledgment Purchase orders

(1) Seller's offers are subject to change and valid for 14 (fourteen) days after the offer's date.

(2) All Buyer purchase orders are subject to written order confirmation by the Seller, at its sole discretion, under the terms and conditions herein. No Buyer Purchase Order shall be binding until Seller issues its written order confirmation.

### 3. Prices, Payment

(1) Unless otherwise stated in Seller's offer or order confirmation all Prices are F.O.B. Seller's warehouses, Hamburg, exclusive of the respective statutory VAT, exclusive of costs for packaging, exclusive costs of transport, including packing, except as otherwise expressly agreed upon. Any applicable federal, state, local or other government tax or charge on the sale or shipment of the goods covered by this Agreement shall be added to the price and paid by Buyer. Buyer agrees to hold Seller harmless from all such taxes, including interest and penalties thereon, and any costs and expenses in connection thereupon.

(2) Unless otherwise stated in Seller's offer or order confirmation the purchase price is due and payable 100 % upfront, latest 5 business days before intended date of dispatch, on Seller's account. From the due date default interest in the amount of 8% above the respective base interest rate p. a. shall accrue. Seller reserves all rights to claim further damages for delay.

(3) The Buyer shall be entitled to offset only insofar as the Buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The Buyer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

(4) Buyer shall have no right of set-off, without Seller's prior written approval.

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### 4. Delivery

(1) Delivery is conditioned upon timely and proper performance of all duties of the Buyer. Defences based on non-performance of the contract are reserved

(2) In case of default in acceptance or other breach of duties to cooperate by the Buyer, Seller is entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the Buyer at the time of such default or breach of duty to cooperate.

### 5. Passing of Risk, Title, Shipment

(1) The risk of accidental loss of or damage to the Product shall pass to the Buyer upon readiness for dispatch or collection of the Product at Seller's warehouse.

(2) Title to the Work and Product or any part thereof shall pass to the Buyer upon full payment of all due amounts.

(3) If requested by the Buyer, product will be insured against normal transport risks by the Seller at the expense of the Buyer.

(4) The shipping method is at the sole discretion of the Seller.

(5) At the place of delivery the Buyer has to inspect the Product and check the transport packaging of the Product. The Buyer has to give notice to Seller immediately if the Product doesn't satisfy the contract requirement.

### 6. Warranty

(1) Precondition for any warranty claim of the Buyer is the Buyer's full compliance with all requirements regarding inspection and objection established by sec. 377 HGB (German Commercial Code).

(2) The defects liability period shall expire, with respect to a given Product, on the date which is twenty-four (24) months after passage of risk of such Product; provided however that (a) with regard to such defects or nonconformities which could not have been discovered by reasonable examination prior to the expiration of such period (latent defects), the defects liability period shall expire twelve (12) months later, and (b) in case of repair or replacement of any parts of the Product, the defects liability period shall start afresh with respect to that part, as from the date when the defective or non-conforming part has been remedied and returned to service, except where the Buyer acknowledges, that the Seller is not responsible for the respective defect.

(3) If during the applicable defects liability period the Buyer discovers any defect or nonconformity, it shall notify the Seller thereof, within four (4) working days from discovery of any defect or nonconformity.

(4) Any claims and remedies relating to defects or nonconformity of the Product notified in accordance with the above may be enforced by the Buyer at any time during the aforementioned periods.

(5) The foregoing Warranty is exclusive and in lieu of all other warranties, express or implied, written or oral, including but not limited to any implied Warranty of merchantability or fitness for any particular purpose Seller does not assume, nor authorize any representatives or other person to assume for it, any obligation or liability other than as expressly set forth herein.

### 7. Intellectual Property Rights

(1) The Product shall be sold without infringement of any patent, copyright, registered design, trademark, trade name, trade secret or other intellectual property right of a third party.

(2) In case of such infringement Seller, at its option, may (a) procure at his expense the right to use the Product, (b) take such action to alter, modify or replace the Product or part thereof, such that it no longer infringes or (c), refund the PO Price or the corresponding part thereof upon the return by the Buyer of the infringing Product.

### 8. Liability

(1) In case of intent or gross negligence on Seller's part or by Seller's performance Seller is liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally Seller's liability for damages shall be limited to the typically predictable damage.

(2) Seller's liability for culpable damage to life, body or health as well as Seller's liability under the Product Liability Act shall remain unaffected.

(3) Any liability not expressly provided for above shall be disclaimed.

(4) Seller is not liable for any damages to goods sustained during shipment. Buyer is responsible for filing any damage claims with freight carriers and is subject to the rules of the freight carriers regarding the timing and processing of claims.

## **9. Retention of Title**

(1) Seller retains title to the goods until receipt of all payments in full. In case of breach of contract by the Buyer including, without limitation, default in payment, Seller is entitled to take possession of the goods.

(2) The Buyer shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

(3) As long as the purchase price has not been completely paid, the Buyer shall immediately inform Seller in writing if the goods become subject to rights of third persons or other encumbrances

(4) The Buyer may resell goods subject to the above retention of title only in the course of his regular business. For this case, the Buyer hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to Seller. Notwithstanding Seller's right to claim direct payment the Buyer shall be entitled to receive the payment on the assigned claims. To this end, Seller agrees to not demand payment on the assigned claims to the extent the Buyer complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.

(5) Insofar as the above securities exceed the secured claim by more than 10%, Seller is obligated, upon Seller's election, to release such securities upon the Buyer's request.

## **10. Force Majeure**

(1) "Force Majeure" shall mean any event or circumstance, to the extent that such event or circumstance (i) is beyond the reasonable control of the Party relying thereon, (ii) could not reasonably have been foreseen at the date of the Contract, (iii) which the affected Party (and/or any third party within the control of such Party, including any Subcontractor), acting and having acted with all due diligence, could not have prevented, mitigated or overcome, and (iv) is not an act, event or condition, the risks or consequences of which the affected Party has expressly agreed to assume under the Contract; including, but not limited to, acts of God, war, earthquake, terrorist acts and national strikes, production bottlenecks employee strikes or labour disputes.

If the performance by either Party of its obligations under the Contract is, in whole or in part, prevented or delayed by reason of Force Majeure, then such Party shall not be considered in default and shall be excused from the performance or punctual performance, as the case may be, of such obligations, as long as and to the extent that performance of those obligations is affected by the Force Majeure, provided however that, unless otherwise expressly provided herein, the Buyer shall not be entitled to compensation for additional costs incurred by virtue of such Force Majeure.

## **11. Assignments**

(1) The Seller may assign the Contract or any part thereof upon written notice to the Buyer. The Seller shall not assign this Contract or any part thereof without the Buyer's prior written consent.

(2) The Seller will assign its warranty and guarantee rights he might holds against manufacturer to the Buyer after the end of his warranty period under the Contract, provided Seller is entitled thereto by his contract to manufacturer.

## **12. Confidentiality**

Each Party shall maintain any Confidential Information in strict confidence and shall not disclose the same to any third party or use Confidential Information except for performance of the Work; provided however nothing contained herein shall preclude the Buyer from disclosing Confidential Information received from the Seller to the Owner or the Owner's employees, directors, agents and/or advisors. Nothing contained herein shall prevent disclosure of Confidential Information with a view to complying with the requirements of any applicable law and/or an order of the court or arbitral tribunal and/or to the extent necessary to resolve a claim or dispute, or disclosure by the Buyer to the extent necessary to resolve a claim or dispute with third parties and/or insurance claims.

## **13. Miscellaneous**

(1) The invalidity, in whole or in part, of any of the provisions of these Terms & Conditions shall not affect the remainder of such provision or any other provision of the Terms & Conditions and /or the Contract. To the extent allowable under the law applicable to the Contract, the Parties agree in good faith to replace any such invalid provision by a lawful provision having proximate economic effect.

(2) Except where the Contract expressly states otherwise, any amendments, alterations or variations to the Contract shall be binding only if in writing and signed by duly authorised representative(s) of the Parties.

(3) These terms and conditions supersede any prior or contemporaneous agreements or representations written or oral. Any amendment of these terms and conditions must be in writing and signed by Seller to be binding on Seller.

(4) The Buyer agrees to documentation and archival storage of Buyer's data within the context of this agreement according to the German Data protection Act.

## **14. Applicable law, Jurisdiction**

14.1 The Contract shall be governed by and construed in accordance with the law(s) of Switzerland with the exception of its conflict of law rules. United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply.

14.2 Place of jurisdiction shall be Zurich, Switzerland.

14.3 The language of the Contract shall be English and all communications thereunder or in relation thereto shall be delivered in English unless otherwise agreed.