

Terms & Conditions AZUR SPACE Solar Power GmbH

I. General

1. The scope of deliveries and/or services is defined in the mutually agreed written conditions. General terms and conditions of the customer shall apply only if and when expressly accepted by the supplier in writing.
2. Should delivery be made although contradictory conditions are supplied, then the conditions of the supplier apply exclusively. Should the customer confirm the order under the conditions of his own general terms of business, such conditions are excluded in advance.
3. The supplier herewith reserves unrestricted rights of ownership, copyright, exploitation and usage of any drawings, cost estimates or other documents; they may not be made available to any third parties without the supplier's prior consent and shall, upon request, be returned without undue delay to the supplier if the contract is not awarded to the supplier.
4. Subsidiary agreements and any variations to these conditions of delivery and payment are invalid unless confirmed in writing.

II. Prices and Terms of Payment

1. All quotations are provisional. Prices are quoted in Euro net of the current legal Value Added Tax rate.
2. Prices are quoted ex works (EXW), excluding packaging and transport. Special packaging will be charged to the customer. Special conditions may apply to export deliveries.
3. Irrespective of date of receipt of goods, payment is due 30 days from date of invoice without any reductions.
4. The supplier has the right to require an appropriate pre-payment of the total invoice sum at any time before dispatch of the goods insofar as this seems necessary. When a pre-payment is not made, or insufficiently made, within the indicated timescale, the supplier can withdraw from the contract without further explanation.
5. For delayed payment, interest will be charged at the rate of at least the current legal interest rate without prejudice to other damage claims.
6. The customer may set off only those claims that are undisputed or against which no legal recourse is possible.

III. Retention of title

1. Goods delivered remain the supplier's property until full payment of any and all claims arising from the business relationship.

2. Retention of title also applies to the full value of products which are manufactured through processing, mixing or incorporation of the supplier's products and the supplier is to be regarded as the manufacturer.
3. When as the result of processing, mixing or incorporating with third party goods whose property rights remain valid, then the supplier assumes property rights in the processed product in relation to the invoice value of the supplier's goods.
4. The customer is permitted to process or sell the goods in connection with his normal business. He is forbidden to mortgage the goods or to transfer them as a security.
5. Should the customer not fulfil his payment and other obligations implied under retained property rights, his possession of the goods ceases and the supplier has the right to demand their immediate return regardless of any objections or arguments. Unless otherwise stated by the supplier, repossession of the goods does not represent a withdrawal from the contract, it represents merely security for the supplier's claims. The customer remains obliged to fulfill the contract.
6. When the goods are sold the customer is obliged to protect the supplier's property rights. The customer transfers to the supplier as security and in advance, claims from the further sale against third parties in total or to the value of the supplier's co-ownership share. He is permitted until otherwise cancelled or cessation of his payments to the supplier, to collect these debts on the supplier's account. The customer is not permitted to transfer this claim, even for the purpose of debt reduction by way of factoring, unless the factor is simultaneously obliged to transfer to the supplier that part of the debt due directly to the supplier for as long as a claim by the supplier on the customer exists. Access by third parties to the goods and claims belonging to the supplier are to be communicated by the customer to the supplier in written form.
7. The customer bears the cost of return transport in case of repossession, regardless of whether cancellation of the contract is declared or not.
8. Through reimbursement for the cost of tooling, the customer does not acquire any right to the tooling itself. This remains the property of the supplier.
9. The supplier's securities according to the above conditions are – at the customer's choice – to be released when their value permanently exceeds that of the secured claim by 20 % (however, under the condition that, with the exception of a formal current account relationship, the release applies only to deliveries or their replacement value which are fully paid).

10. For the duration of the supplier's ownership rights the customer is obliged to inform the supplier in writing of any execution orders against the goods in delivered or processed state or against the transferred security claims under extended ownership. In case of compulsory execution, the customer has to take all necessary measures to protect the supplier's rights and interests and to prevent any limitation of them. The costs of any such intervention are to be borne by the customer.
11. In case of cessation of payment the customer is obliged to immediately separate goods delivered by the supplier which are still available and to send the supplier an accurate inventory list. Repossession by the supplier of the goods under retention of title are only regarded as a cancellation of the contract when such cancellation is expressly stated.

IV. Time of delivery and services

1. Time of delivery begins on the date at which agreement between the supplier and customer on the order is available in writing. Meeting the delivery date depends upon the date of receipt of any documentation due from the customer, the necessary approvals, technical releases, the punctual clarification and approval of drawings and the meeting of agreed payment conditions and other responsibilities. Should these responsibilities not be met on time, the delivery time will be extended accordingly.
2. The delivery date is regarded as met when the delivery is collected or dispatched within the agreed delivery time. Should the delivery be delayed on grounds for which customer is responsible, the delivery time is met when the notification of delivery readiness occurs within the agreed delivery time.
3. Should the delivery time not be met by reasons of vis major such as fire, flood, earthquake or other natural disaster, mobilisation, war, revolution, embargos, strikes, lock-outs, shortages of labour, material or transport failures of other suppliers to deliver in accordance with the terms of their contracts, that lie outside the influence of the supplier, the delivery time will be extended appropriately. In case of such unforeseeable delivery constraints the supplier can withdraw from the contract when it has not been completed. Any such action will not be a basis for damage claims.
4. Any and all other damage claims from the customer due to delivery delay, including delay after a revised delivery date, are excluded. This condition does not apply when deliberate, negligent or culpable infringement of an essential duty under the contract can be demonstrated. The right of the customer to cancel the contract

after unsuccessful expiry of any additional time allowed remains unaffected.

5. Should the dispatch or delivery be delayed at the request of the customer, or should the customer return the goods without reason, storage charges at the rate of 0.5 % of the invoice amount per month or part month can be charged to the customer, beginning one month after advice of delivery readiness or receipt of the goods. The storage charge is limited to 5 % of the invoice value unless higher actual costs can be proven.

V. Risk Transfer

Risk transfers to the customer at latest with the dispatch of the delivery, including when part- or carriage free delivery is agreed. At the request and for the account of the customer, the delivery will be insured against theft, breakage, transport, fire and water damage as well as other insurable risks.

When dispatch or delivery is delayed at the request of the customer, or for reasons for which he is responsible, risk is transferred from the date of delivery readiness. The supplier is however, at the request of and for the account of the customer, obliged to ensure that the necessary insurance cover is obtained within reasonable time.

VI. Acceptance

1. Delivered items are to be accepted by the customer even if they exhibit minor grounds for complaint.
2. Part deliveries are permitted.
3. For supply of specially manufactured items a tolerance in the units delivered is permitted i.e. over or under delivery of up to 10 %.

VII. Defects as to Quality

The Supplier shall be liable for defects as to quality (hereinafter referred to as „Defects“) as follows:

1. The customer shall notify defects to the supplier in writing and without undue delay.
2. Defective parts or defective services shall at the supplier's discretion be repaired or replaced free of charge, provided that the reason for the defect had already existed at the time when the risk was transferred.
3. Claims based on defects are subject to a limitation period of 12 months calculated from the start of the statutory statute of limitations. This Provision shall not apply where longer periods are prescribed by law according to Sect. 438 (1) No. 2 BGB, Sect.

479 BGB or Sect. 634a (1) No. 2 BGB, as well as in cases of injury of life, body or health, or where the supplier intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a defect.

4. The legal provisions regarding suspension of expiration suspension and recommencement of limitation periods remain unaffected.
5. In the case of notification of a defect, the customer may withhold payments only if the subject-matter of the notification of the defect occurred is justified beyond doubt. Unjustified notifications of defect shall entitle the supplier to have its expenses reimbursed by the customer.
6. There shall be no claims based on defects in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the customer or third parties and the consequences thereof shall be likewise excluded.
7. Furthermore, the provisions of Par. VIII (Claims for Damages) shall apply in respect of claims of damages. Any other Claims of the customer against the supplier or its agents or any such claims exceeding the claims provided for in this Par. VII (Defects as to Quality) shall be excluded.

VIII. Claims for Damages

1. Any Claims for damages and reimbursement of expenses the customer may have based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded. This shall not be applicable in the case of mandatory liability, e.g. under the German Product Liability LAW, in the case of intent, gross negligence, injury of life, body or health, or deliberate breach of a substantial provision of the contract and this can be clearly demonstrated by the customer.
2. However, claims for damages arising from a breach of a substantial provision of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. This does not imply a

change in the burden of proof to the detriment of the customer.

3. To the extent that the customer has a valid claim for damages according to this Article, it shall be time-barred upon expiration of the limitation period applicable to defects pursuant to Par. VII No. 3 and 4.
4. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

IX. Intellectual and Industrial Property Rights

1. Unless otherwise agreed, the supplier shall provide the goods and services free off third parties industrial and intellectual property rights ("IPRs") with respect to the country of sale. If a third party asserts a justified claim of IPR infringement against the customer with respect to the goods and services supplied by the supplier and then used in conformity with the contract, the supplier shall be liable to the customer under the following conditions within the time period stipulated in Par. VII No. 3 and 4:
 - a) The supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the goods and services concerned or whether to modify the goods and services in such manner as that they no longer infringe an IPR or replace them. If this would be unreasonable to demand from the supplier, the customer may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
 - b) The supplier's liability to pay damages shall be governed by Par. VIII (Claims for Damages).
 - c) The above obligations of the supplier shall only apply if the customer:
 - (i) immediately notifies the supplier in writing of any such claim asserted by the third party,
 - (ii) does not concede the existence of an infringement and
 - (iii) leaves any protective measures and settlement negotiations to the discretion of the supplier. If the customer stops using the goods and services in order to reduce the damage or for other good reasons, he shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

2. Claims of the customer shall be excluded if he is himself responsible for the infringement of the IPR.
3. Claims of the customer shall also be excluded if the infringement of the IPR is caused by specifications made by the customer, by a type of use not foreseeable by the supplier or by the goods and services being modified by the customer or by being used together with products not provided by the supplier.
4. Par. VII shall apply mutatis mutandis.
5. Any other claims of the customer against the supplier or any such claims exceeding the claims provided for in this Par. IX, based on defect in title, shall be excluded.

X. Impossibility of Performance

To the extent that supplies are impossible to be carried out, the customer shall be entitled to claim damages, unless the supplier is not responsible for the impossibility. The customer's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health. The right of the customer to cancel the contract shall remain unaffected.

XI. Export Restrictions

1. The customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities.
2. The customer will indemnify and hold the supplier harmless for any violation or alleged violation by the customer of such laws, rules, policies or procedures.
3. The customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the supplies received from the supplier, without first obtaining any licence required by the applicable government or other competent authority, including the German Government.
4. The customer certifies that none of the supplies of the supplier will be sold or otherwise transferred to, or made available for use by any entity that is engaged in the production, design, development or use of nuclear, biological or chemical weapons or missile technology.

XII. Validity and Modification

1. Any modification or departure from these terms and conditions shall be valid only if in writing and signed by an authorised representative of the customer.
2. Should any provision of hereof be, or become, invalid, the validity of all other provisions is not affected.

XIII. Place of Venue and Place of Performance

1. Place of venue for any and all conflicts arising from the performance of the contract is exclusively Heilbronn. The supplier is also empowered to sue the customer in his place of general jurisdiction.
2. Place of performance for deliveries and payments is Heilbronn.
3. German law applies exclusively to all contractual relationships between the customer and supplier. This provision applies also when the customer has his head office outside Germany and/or the contract is to be performed mainly or entirely outside Germany. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

XIV. No Reverse Engineering

1. Except as may be otherwise expressly set forth in this Contract, Buyer and/or its affiliates, without Seller's advance written consent, which may be withheld at Seller's sole discretion, shall not (i) modify, decompile, disassemble, decrypt, extract, or otherwise Reverse Engineer any Product or any portion thereof; (ii) reproduce, replicate or otherwise duplicate the Product, or any portion thereof, distributed under the Contract except as otherwise expressly provided herein; (iii) adapt in any way, modify, insert, delete, replace, change, prepare or create derivative works of or otherwise alter the Product, or any portion thereof (except as such Product may be modified as an incidental effect of the normal operational process); (iv) make any Product available for any certification, analysis, trial or testing, including, without limitation, any performance comparison testing, without prior written approval from Seller which can be withheld at Seller's sole discretion. Seller further agrees to act in good faith and not to sell, otherwise distribute or provide the Product to Seller's customers or any third party if it is reasonably known to Seller that the purpose or one of the purposes of such customer or third party is to undertake Reverse Engineering of the Product as prohibited herein. For purpose of this Contract, the term "Reverse Engineering" shall mean the examination, disassembly, de-

compilation, extraction, decryption, simulation, or code tracing of object code or executable code, debugging, or analysis of the Product, related software, if any, or any confidential information related to the Product in order to determine Product's structure, organization, internal design, constituent technologies, algorithms, source code, or encryption devices or to unveil, without a written permission of Seller, any other relevant information which can reasonably be considered confidential information or information, know-how or knowledge proprietary to Seller.

2. In instances when applicable laws of Buyer's jurisdiction permit the Reverse Engineering and give Buyer the non-waivable right to do so to obtain information through Reverse Engineering, Buyer shall first request such information from the Seller and Seller may, in its discretion, either provide such information to Buyer (subject to confidentiality terms of this Contract or another agreement) or impose reasonable conditions, including a reasonable fee, on such use of the information to ensure that Seller's proprietary rights in the Product are adequately protected.
3. Buyer expressly agrees and acknowledges that any information, data and/or know-how obtained as a result of Reverse Engineering of the Product, or any portion thereof that is permitted by laws of Buyer's jurisdiction shall and always constitutes Seller's confidential information and is subject to confidentiality obligations of Buyer set forth in this Contract or may be otherwise provided to Buyer by Seller. Notwithstanding anything to the contrary herein, Buyer shall not use any information, data and/or know-how obtained as a result of Reverse Engineering of the Product, or any portion thereof, for any purpose other than the one specifically set forth in applicable laws of Buyer's jurisdiction and shall not use such information, data and/or know-how obtained as a result of Reverse Engineering of the Product, or any portion thereof, in connection with Buyer's product or any products of any third party.
4. Buyer shall not sell, grant access to or otherwise transfer the Product under this Contract to any third party, unless such third party agrees to restrictions with respect to Reverse Engineering and confidential information set forth in the preceding paragraphs at least as restrictive as provided in this Contract.