

## **General Terms and Conditions of Sale of ISC Konstanz e.V.**

### **1. Application**

- 1.1 These general terms and conditions of sale (“terms and conditions”) shall apply to all quotations, deliveries, and other services by us, International Solar Energy Research Center Konstanz, ISC Konstanz e.V., to entrepreneurs, governmental entities, or special governmental estates within the meaning of sec. 310 BGB (German Civil Code) (hereinafter referred to as the “Buyer”).
- 1.2 Our terms and conditions shall apply particularly to the sale of goods regardless of whether we manufacture such goods by ourselves or obtain them from other suppliers (sec. 433, 651 BGB). Our terms and conditions shall also apply to any future agreements concerning the sale of goods to the same Buyer without any need for another reference to these terms and conditions in any individual case.
- 1.3 Our terms and conditions shall apply exclusively. Additional or deviating terms and conditions of the Buyer shall not become part of the agreement unless we have expressly agreed to their application. This shall also apply if we deliver the goods despite our knowledge of differing or contrary terms on the part of the Buyer.

### **2. Conclusion of Contracts**

- 2.1 Our offers are non-binding and subject to confirmation. This shall also apply if we have released quotations or other documents.
- 2.2 Any order by the Buyer constitutes a binding offer. Unless otherwise specified in the order, we are entitled to accept the offer within two weeks. We may accept your offer either expressly (e.g. by order confirmation) or implicitly by delivery of the goods.

### **3. Delivery Dates, Default of Delivery**

- 3.1 Delivery dates shall only be binding if they were expressly confirmed by us in writing. Otherwise, the term of delivery shall be at least four weeks from the conclusion of the contract.
- 3.2 We are not liable for any delay or impossibility of deliveries insofar as they were caused by force majeure or other events (e.g. incorrect or late delivery by suppliers) for which we are not responsible. In any such case, we will inform the buyer and set a new

delivery term. If we are unable to perform within the new delivery term, we are entitled to withdraw from the contract in whole or in part.

- 3.3 Any default of delivery requires, at least, that the delivery has been demanded by the Buyer after the due date. If we are in default, the Buyer shall be entitled to liquidated damages. Such lump-sum claims shall be limited to an amount of 0.5 percent of the net price (delivery value) for each week of default, but no more than 5 percent of the total delivery value. In any case, we reserve the right to show that the Buyer has not incurred any damage or a damage substantially lower than the lump sum.
- 3.4 Buyer's rights according to sec. 8 of these terms and conditions and our statutory exemptions from duty to perform shall remain unaffected.

#### **4. Delivery, Passing of Risk, Default of Acceptance**

- 4.1 Delivery is made ex works (place of performance). On request and at the cost of the Buyer, we will also deliver to another destination (hereinafter referred to as "mail order purchase"). Unless otherwise agreed upon, we are entitled to choose the way of delivery (in particular, carrier, delivery method, packaging).
- 4.2 The risk of accidental destruction and accidental deterioration of the goods passes to the Buyer at the time of delivery. In case of a mail order purchase, the risk of accidental destruction, accidental deterioration and delayed delivery of the goods shall already pass at the time of handover to the forwarder, carrier or other person or body specified to carry out the shipment. The same applies if the Buyer is in default of acceptance of delivery.
- 4.3 If the Buyer is in default of acceptance of delivery, the Buyer is in breach of a duty to collaborate, or the delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to damages including any additional expenses (e.g. storage cost). To this extent, we are entitled, at least, to liquidated damages in the amount of Euro 100 per day, beginning with the delivery date or, if we have not agreed on a delivery date, with the day on which we notified the Buyer that the goods are ready for shipment. Our right to claim further damages and statutory claims shall remain unaffected; in this case, however, the lump sum will be credited. The Buyer remains entitled to show that we have not incurred any damage or a damage substantially lower than the lump sum.

## **5. Prices, Payment**

- 5.1 Unless otherwise agreed, our prices current at the time of contract conclusion shall apply ex warehouse plus VAT at the statutory rate.
- 5.2 For mail order purchases, the Buyer shall be responsible for transport costs ex warehouse and for the costs of transport insurance if requested by the Buyer. Unless otherwise agreed, we may claim a delivery charge in the amount of Euro 10. Any customs duties, fees, taxes and other public levies shall be borne by the Buyer. Packaging (including packaging in accordance with the German Packaging Regulation), with the exception of pallets, will not be taken back, and becomes the property of the Buyer.
- 5.3 The purchase price is due within 14 days from invoicing and delivery. For contracts with a delivery value of more than Euro 1,000, however, we are entitled to demand a advance payment of 50 percent of the purchase price. The advance payment is due within 14 days of invoicing.
- 5.4 The Buyer shall be in default with the expiration of the payment deadline. During the period of default, the purchase price shall bear interest at the applicable statutory rate. The assertion of further damages caused by default remains reserved. Our entitlement to claim commercial maturity interest from merchants (sec. 353 HGB - German Commercial Code) remains unaffected.
- 5.5 The Buyer shall only be entitled to exercise set-off and retention rights if the counter claim is undisputed or has been finally adjudicated by a court of law. In case of defects to the delivery, any counter claims by the Buyer in particular in accordance with sec. 7 para. 6 of these General Terms remain unaffected.
- 5.6 If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk through insufficient solvency of the Buyer (e.g. due to an application for opening of insolvency proceedings), we are entitled, according to the statutory regulations, to refuse service and if applicable, after setting a deadline, to cancel the agreement (sec. 321 BGB). In case of contracts for the manufacture of single items (custom-made products), we may withdraw from the contract immediately; the statutory provisions concerning the dispensability of deadlines shall remain unaffected.

## **6. Retention of Title**

- 6.1 We retain the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase agreement and our current business relationship (secured claims).

- 6.2 Any goods subject to retention of title may neither be pledged to third parties, nor assigned as collateral before the full payment of the secured claims. The Buyer must inform us immediately in writing if and insofar as there are any accesses of third parties to the goods which belong to us.
- 6.3 In case of conduct of the Buyer which is in breach of the contract, in particular with nonpayment of the due purchase price, we are entitled to cancel the contract according to the statutory regulations and/or to request that the goods subject to retention of title are handed over. The request for handing over does not imply a declaration of cancellation, if we merely request that the goods are handed over and reserve the right to cancellation. If the Buyer does not pay the due purchase price, we may, however, only reserve the right to the cancellation if we have unsuccessfully set a reasonable deadline for payment or if the setting of such a deadline is dispensable according to the statutory regulations.
- 6.4 The Buyer is authorized to resell and/or to process the goods which are subject to retention of title in proper business transactions. In this case, the following provisions shall also apply:
- 6.5 The retention of title covers the products which are produced by processing, mixing or combination of our goods at their full value, whereby we are deemed the manufacturer. If the ownership right of third parties continues to exist with a processing, mixing or combination with goods of third parties, then we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. Incidentally the same shall apply to the produced product as to the goods delivered under retention of title.
- 6.6 The Buyer hereby assigns the claims against third parties, which are established from the resale of the goods or product in total or in the amount of our possible co-ownership share, to us as collateral according to the afore-mentioned paragraph. We herewith accept such assignment. Buyer's obligations according to para. 2 shall also apply in relation to the assigned claims.
- 6.7 The Buyer shall, apart from us, remain authorized to collect the claim. We undertake not to collect the claim as long as the Buyer meets its payment obligations, is not in default of payment, no application has been filed for the opening of insolvency proceedings and there is no other deficiency to its ability to pay. In this event, however, we may require the Buyer to disclose the assigned claims and their debtors, to provide all the information necessary for collection, to hand over the related documents and to notify the debtors (third parties) of the assignment.
- 6.8 If the realizable value of the collateral items exceeds our claims by more than ten percent, we shall, upon request of the Buyer, release collateral items at our choice.

## **7. Cooperation of the Buyer**

- 7.1 The Buyer undertakes to provide us with all information required for the performance of the contract in good time.
- 7.2 If we also undertake to set up, assemble and/or implement any of our goods, the Buyer shall (i) ensure the necessary system requirements (hardware and software environment), workspaces, employees, and other requirements in good time and at his own expense, (ii) secure his own data according to the state of the art, and (iii) check any and all of our work results for possible defects before taking them into operation.
- 7.3 If the Buyer does not comply with his obligation to cooperate, we are entitled to withhold our services and to charge the additional costs incurred according to our hourly rates. Further claims on our part remain unaffected.

## **8. Licenses**

- 8.1 The Buyer has the non-exclusive right to use our work results created for him (in particular, drawings, designs, and software) to the agreed extent for its internal business purposes. All other kinds of use, in particular any alteration or distribution of our work results to third parties require our prior written consent.
- 8.2 The Buyer shall not sell our work results to third parties without our prior written consent. We will grant this permission, provided that prior to such transfer, the Buyer assures us in writing that it will refrain from any further use of our results and has not retained any copies thereof.

## **9. Warranty**

- 9.1 In case of defects of quality and title (including false and shortfall in delivery as well as improper assembly or faulty assembly instructions), the Buyer shall have the statutory rights unless otherwise determined below. In any case, the special legal provisions in the case of ultimate delivery of the goods to a consumer (recourse against suppliers according to sec. 478, 479 BGB) shall be unaffected.
- 9.2 Basis for our liability for defects is our agreement on the quality of the goods. Product specifications (including those issued by the manufacturer) shall be considered as an agreement on the quality of the goods if they were presented to the Buyer in advance of its order or included into the agreement in the same way as these terms and conditions.

- 9.3 In the absence of any agreed specification, the existence of defects shall be determined according to statutory law (sec. 434 para. 1 clauses 2 and 3 BGB). We assume, however, no liability for public statements by third parties (e.g. advertising statements). Unless this has been expressly agreed, we also do not guarantee that the goods are marketable in countries outside the Federal Republic of Germany.
- 9.4 The Buyer's claims for defects presume that it has satisfied its statutory obligations for inspection and reporting of complaints (sec. 377, 381 HGB). If any defect should be during or after the inspection, it shall be reported to us immediately in writing. The report is deemed to be immediate if it is made within two weeks, whereby the timely dispatch of the report is sufficient in order to safeguard the deadline. Irrespective of this obligation for inspection and reporting of complaints, the Buyer must report obvious defects (including false and short delivery) within two weeks from delivery in writing, whereby the timely dispatch of the report is sufficient in order to safeguard the deadline. If the Buyer fails to carry out the proper inspection and/or report, our liability for the defect which was not reported is excluded.
- 9.5 If the delivered goods are defective, we can initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless object (substitute delivery). Our right to refuse the chosen type of subsequent performance under the statutory pre-requisites remains unaffected.
- 9.6 We are entitled to make the owed subsequent performance dependent on the fact that the Buyer pays the due purchase price. The Buyer is however entitled to retain a part of the purchase price which is reasonable in proportion to the defect.
- 9.7 The Buyer must give us the time and opportunity which are necessary for the owed subsequent performance, in particular, to hand over the rejected goods for inspection. In the event of substitute delivery, the Buyer must return the defective goods according to the statutory regulations. If we were not obliged to install the goods in the first place, subsequent performance does not include the disassembly of the defective goods or the assembly of their replacement.
- 9.8 The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs (not, however, disassembly and assembly costs), shall be borne by us, if there is actually a defect. However, if it is determined that a request for remedy of a defect by the Buyer is unjustified, we may request reimbursement of our costs.
- 9.9 In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Buyer is entitled to remedy the defect itself and to demand reimbursement of any reasonable costs that arise in connection thereof. The Buyer shall notify us immediately and, if possible, in advance of any such remedial action. The Buyer shall

not be entitled to remedy the defect if, according to statutory law, we would have been entitled to refuse subsequent performance.

- 9.10 If the subsequent performance has failed or a reasonable deadline which is to be set for the subsequent performance has expired without any success or it is dispensable according to statutory law, the Buyer may cancel the purchase contract or reduce the purchase price. However, cancellation shall be excluded in case of insignificant defects.
- 9.11 Claims of the Buyer for damages or reimbursement of fruitless expenses shall only exist according to sec. 8 and are otherwise excluded.

## **10. Liability**

- 10.1 Unless otherwise specified in these terms and conditions, we shall be liable for breaches of contractual and non-contractual obligations according to statutory law.
- 10.2 We shall be liable for damages, regardless of the legal grounds, in the case of willful intent and gross negligence. In the case of simple negligence, we shall only be liable
- 10.3 for damages from injuries to life, the body or health,
- 10.4 for damages from the breach of an essential contractual duty (obligation, the fulfillment of which is essential for the proper performance of the contract, and on which the other contracting party usually relies and is allowed to rely); in this case, however, our liability is limited to the reimbursement of the foreseeable, typically occurring damage.
- 10.5 The liability restrictions according to para. 2 shall not apply if we have maliciously failed to disclose a defect or assumed a guarantee for the quality of the goods. The applies to claims of the Buyer according to the Product Liability Act.
- 10.6 If the breach of duty does not consist in a defect of the goods, the Buyer may only cancel or terminate the contract if we are responsible for the breach. Any other right of termination of the Buyer (in particular, according to sec. 651, 649 BGB) is excluded.

## **11. Limitation of Claims**

- 11.1 Notwithstanding sec. 438 para. 1 no. 3 BGB, the general statutory limitation period for claims from defects of quality and title is one year from delivery. If the agreement requires acceptance of the goods, the statutory limitation period shall begin with the acceptance.
- 11.2 The afore-mentioned limitation periods shall also apply to contractual and non-contractual claims for damages of the Buyer which are due to a defect of the goods,

unless the application of the regular statutory limitation (sec. 195, 199 BGB) would, in the individual case, lead to a shorter period of limitation. The statutory limitation according to the Product Liability Law shall remain unaffected.

## **12. Choice of Law, Jurisdiction**

- 12.1 These terms and conditions and all relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of its conflicts of law rules and international conventions, in particular, the United Nations Convention on Contracts for the International Sale of Goods (CISG). The prerequisites and effects of the retention of title set out in sec. 6 are governed by the laws applicable at the location of the goods if, according to this law, the choice of German law is inadmissible or void.
- 12.2 Exclusive place of jurisdiction for all national and international disputes under or in connection with these terms and conditions and the legal relationships of the Parties shall be Konstanz, Germany. We may, however, also select another place of jurisdiction, in particular, the Buyer's general place of jurisdiction.
- 12.3 These terms and conditions shall be construed in accordance with German law. The English version serves for information only and does not form part of the agreement. In the event of any inconsistency, therefore, only the German version shall apply.

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