



# General Business Conditions

## of Wagner Solar GmbH Germany

General Business Conditions of Wagner Solar GmbH (hereinafter referred to as "Seller") applicable in business relationships with corporations (hereinafter referred to as "Buyer").

Dated: July 2017

### 1. General

1.1. The following terms are exclusively applicable to all deliveries and services of the Seller for the duration of the business relationship. Any conflicting confirmations given by the Buyer referring to their own business terms and conditions are hereby objected to.

1.2. The Business Conditions apply only to contractors and legal entities operating under public law or public special funds.

### 2. Offers and Orders

2.1. A legally binding agreement exists only after a written or e-mailed order confirmation from the Seller.

2.2. The Seller reserves the right to technical modifications regarding the construction, form and material up to and including the period of delivery, provided they are reasonable for the Buyer.

### 3. Delivery, Shipment, Period of Delivery, Default

3.1. Save any other agreement, deliveries are conducted Ex Works (EXW Kirchhain or Cölbe, Incoterms 2010).

3.2. The time of delivery indicated by the Seller are only binding if explicitly agreed upon in writing.

3.3. Should the Seller be in default with services and/or the delivery of goods, the Buyer must allow a reasonable respite of at least 20 work days. The Buyer may withdraw from the contract should the Seller fail to deliver or perform the service within the respite period. Any other claims by the Buyer are excluded except in the case of malicious intent or gross negligence.

3.4. The Seller is not liable for any default in delivery or service due to force majeure or any other unforeseen events occurring through no fault of the Seller (for example but not limited to disruptions, strike, lack of transportation, official interferences, problems obtaining materials or power supply problems), that may also occur within the sphere of suppliers of the Seller, even if a binding delivery date was agreed upon. The Seller has the right under such circumstances to extend the delivery date or date of service respectively by the duration of the interference or to withdraw from the contract, even if the interference occurs during a period of default. Any claims for damages are precluded in cases of force majeure or any other unforeseen events or events occurring through no fault of the Seller.

### 4. Prices, Terms of Payment

4.1. All prices are calculated ex factory or storage facility plus packing and shipping expenses. The list prices at the time of the close of contract are applicable. In the case of call-off orders and any other agreements with recurring obligations, the price is determined on the date of delivery/service by the respective list price on that date.

4.2. The Seller may adjust the price according to the extent of the changes if a change in the price calculation occurs between close of contract and delivery/performance (for example salary increases, increased price of commodities).

4.3. All prices are net prices plus value added tax (VAT), if applicable. Unless otherwise stipulated, the costs for any recycling, re-use or disposal under EC-Guideline 2002/95/EG (WEEE) and the "Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten" ("ElektroG")\* are not included in the price. \*(German law regarding the placing and disposal of electric appliances and electronic devices)

4.4. Offsetting is only permitted in the case of the Buyer's uncontested counterclaims or counterclaims that were determined in a legally binding fashion. The Buyer only has a right of retention if it is based on the same contractual relationship and it is acknowledged or established in a legally binding way.

4.5. Checks will only be accepted on account of performance if previously agreed upon.

4.6. Should the Buyer default or justifiable doubts regarding the Buyer's solvency or creditworthiness arise, then the Seller shall have the right -without waiving any other rights the Seller may have - to demand payment in advance

or securities for deliveries or services not yet performed or to demand that all claims are payable upon receipt in this business relationship. The Seller's obligation to deliver or perform is put on hold for the duration of the Buyer's default.

4.7. If an annual bonus was agreed upon, the bonus calculation is based upon the net amounts for each invoice for deliveries of that business year, perhaps off-set by credits of any kind from that same business year.

### 5. Passing of the Risk

The risk passes from the Seller to the Buyer at the time the goods are transferred at the factory or storage facility, if the goods are being shipped the risk passes as soon as the shipment is handed over to the person responsible for the shipment or as soon as the shipment leaves the factory or storage facility for the purpose of shipment. If the shipment is delayed due to the Buyer's request or at the Buyer's fault, then the risk passes from the time of the notification that the shipment was ready.

### 6. Default of Acceptance, Damages due to Default of Acceptance

The Seller has the right to demand 25% of the purchase price of any goods not accepted should the Buyer not accept the goods even after a demand to and a reasonable extension of time without having the right to refuse acceptance. The demand of compensation for higher damages, as well as the introduction of proof regarding the lack of any damages or of significantly lesser damages remains open to both parties.

### 7. Cancellation

The conditions under which contracts may be cancelled must be agreed upon in writing.

### 8. Condition, Quality and Measurements

Quality and measurements are exclusively determined by the contractual specifications and not by any public comments made by the Seller or a third party.

### 9. Software

9.1. The Buyer obtains only the non-exclusive, non-transferable usage rights to the software. Without the previous, written consent of the Seller, the Buyer may not reproduce, alter or make the software available to third parties. This clause also applies to altered or supplemented software. The Buyer is obligated to impose these obligations to the acquirer should a resale or transfer occur.

9.2. All rights, especially copyrights to the software, stay with the Seller.

9.3. The Seller is not liable in any case of software defects to provide unreasonable troubleshooting. Furthermore the General Business Conditions remain in effect, particularly with regards to any limitation of liability pursuant to section 14.

### 10. Reservation of Title

#### 10.1 Business Relationship Clause/Checking Account Reservation

The Seller reserves the right of title to all goods delivered by him until the Buyer has satisfied all claims arising out of the business relationship. This also applies to individual or total claims the Seller has, that were factored into a current account and an account balance was stricken.

#### 10.2. Extended Reservation of Title

##### 10.2.1. Manufacturer's and Processing Clause

Any processing, manufacturing or transformation of the delivered goods is done by the Buyer on behalf of the Seller. No obligations for the Seller are created thereby. The Seller is the owner of the processed, manufactured or transformed good(s). If the new product is the result of a combination of various goods subject to reservation of title by different owners, the Seller retains the right to co-ownership of the product. The Seller's ownership rights correspond proportionally to the value of the goods delivered subject to reservation of title.

##### 10.2.2. Assignment in Advance

10.2.2.1. If it is part of the Buyer's ordinary course of business to install or sell goods to a purchaser, then any and all of the Buyer's claims arising from such transactions against the purchaser are assigned to the Seller at the time the sales contract between the Seller and Buyer is concluded. The same applies to goods subject to reservation of title that are sold after being processed or combined with goods in the sole ownership of the Buyer. The Buyer assigns the claims arising from such sales in their total amount to the Seller. The same applies also to those situations

where the goods subject to reservation of title are installed or sold together with other goods subject to reservation of title that do not belong to the Seller. In these cases the Buyer assigns the claims emerging from the sale or installation in the amount of the value of the goods subject to reservation of title with all ancillary rights and ranking higher than the balance of the claim, to the Seller. The assignment occurs in advance at this time. The Seller accepts the assignment. Upon the Buyer's demand the Seller will release the assigned claims, so long as the value of the assigned claims is more than 20% higher than the claims to be secured.

10.2.2.2. At this time the Buyer assigns to the Seller any arising claims based on other legal grounds (Insurance, Torts) regarding the goods subject to reservation of title for security purposes in their full amount. The Seller accepts such assignment. Upon the Buyer's demand the Seller will release the assigned claims, so long as the value of the assigned claims is more than 20% higher than the claims to be secured.

10.2.2.3. The Buyer is authorized to collect the assigned claim after the assignment has taken place. The Seller's authority to collect the claims remains unaffected. The Seller pledges not to collect the claims for as long as the Buyer is not in delay of payment and in compliance with any and all other obligations.

10.2.2.4. The Buyer is obligated upon request of the Seller to inform the Seller of the assigned claims and their debtors, to give the Seller all necessary information for collection, to deliver all records in connection with the claims and to inform the debtors of the assignment.

10.3. For as long as the reservation of title exists, the Buyer is not entitled to pledge or assign the delivered goods as security, or otherwise surrender the goods to third parties except within the ordinary course of business.

10.4. The Buyer is not entitled to offset counterclaims while the reservation of title exists and until the counterclaim is acknowledged or found to be legally binding.

10.5. The Seller has the right to repossess the goods subject to reservation of title and for this purpose enter on to the premises of the Buyer should the Buyer be in delayed payment, or if insolvency proceedings have been commenced regarding the Buyer's assets or should the Buyer's business be transferred to a third party. The repossession shall only constitute a withdrawal from the contract if the Seller declares the same in writing. The Seller is authorized to dispose of the goods. However, the Seller must offset any proceeds minus any deductions for reasonable expenses for the disposal to the liabilities of the Buyer.

#### **11. Disposal of Old Appliances**

The following applies with regards to the obligations under the EC directive 2002/95/EG (WEEE) and the ElektroG:

11.1. The Buyer assumes the obligation to dispose of the delivered goods at his own expense after the end of usage in compliance with the legal mandates. The Buyer releases the Seller from the obligations pursuant to §10 Abs. 2 ElektroG (Seller's obligation to take back) and any claims of third parties in connection with these obligations.

11.2. The Seller may in his own discretion at the expense of the Buyer accept any returned goods and dispose of them in accordance with any legal obligations.

11.3. The Buyer is obligated to make it a contractual obligation with commercial parties to whom he transfers the goods to dispose of the devices in accordance with the legal obligations after the end of usage and to make these commercial parties pledge to do the same should they also transfer the goods. Should the Buyer neglect to transfer said obligation, then the Buyer remains obligated to take the goods back after usage and dispose of them in accordance with the legal requirements at his own expense.

11.4. The Seller's right of release through the Buyer does not become time-barred under the statute of limitations until after the passage of two years after the final usage of the device.

#### **12. Notice of Defects, Buyer's Rights Regarding Defects**

12.1. The Buyer must inspect goods received immediately after receipt regarding defects, condition and guaranteed features. The Buyer must report apparent defects within 10 business days from delivery, hidden defects must be reported within 10 days from discovery by written notice to the Seller. Otherwise the shipment will be considered to have been approved.

12.2. The Buyer can only assert the following claims, if he notified the Seller in writing within the proper time period and made the goods available to the Seller immediately and freight paid upon request. If the defect reported is justified, the Seller will bear the costs of the cheapest method to return the shipment.

12.3. In the case of justified and timely reported defects the Seller has the choice of type of supplementary performance between curing the defect or replacement delivery. If the Seller opts to cure the defect it is in the Seller's discretion to do so by repair or exchange of defective parts.

12.4. The Seller is entitled to carry out a supplemental performance twice. The Buyer can at his discretion withdraw from the contract or can reasonably reduce the purchase price should the second supplemental performance fail.

12.5. If the defect reported is unjustified and caused an extensive investigation the Buyer may be charged with the costs of the investigation.

12.6. The statute of limitations for the report of defects is two years from the time of the passage of risk.

12.7. The Seller assumes no liability based on public statements in his advertisements or the advertisements by third parties as long as the Buyer cannot show,

that the decision to buy was influenced by the advertisement, that the Seller knew or should have known the statements or if the statements were already corrected at the time the decision to buy was made.

12.8. Any liability for defects is excluded if the merchandise was not used in accordance with the instruction manual or instructions given by the Seller or otherwise is improperly installed, used or stored or is used in a manner contrary to the stipulated manner in the contract or when the maintenance required as per the instruction manual is not conducted, or if the Buyer or a third party makes any alterations or modifications to the product or parts of the product without the permission of the Seller, unless the Buyer can show, that those circumstances are not the cause for the reported defect.

12.9. The Buyer's claims regarding the reimbursement of expenses are limited to a flat rate for costs of transportation and travel, labor and material. The same is the case for claims based on a right of recourse. The Buyer may request the applicable flat rates from the Seller.

12.10. In a case of corporate liability regarding newly manufactured goods, the Buyer has a claim against the Seller after successful reduction or return by the consumer. §478 BGB is applicable with the stipulation, that the Seller in case of such reduction by the consumer is only liable for the amount of the reduction that was applied between the Buyer or distributor and the consumer. In the case of a return only the purchase price the Buyer was charged with will be reimbursed.

12.11. There is no liability for material defects in the sale of used products, second quality products, products sold "as is" or outclassed goods. The same applies to the sale of prototypes.

#### **13. Returns**

13.1. The return of appliances or goods of any kind i.e. returns for credit, repairs and claims have to be agreed to by issuing a return number. Without a return number it may not be accepted or the goods may be sent back at the Buyer's expense. In case of an agreed upon return of goods the Buyer bears the costs of packing and shipping as well as any other expenses the Seller may have in order to process the return and to make the item available for re-sale.

13.2. A return of appliances or goods of any kind is generally excluded, if such items were already installed or used or if they no longer are included in the Seller's current sales line according to the current pricelist, or if the manufacturing or delivery were completed more than 12 months ago. There is an administrative fee in the amount of 10% of the value. The return of electric appliances is excluded.

13.3. Goods returned at no cost for repair will be inspected and repaired as the case may be. By returning the items the Buyer agrees to bear the repair costs. An estimate is provided only after prior request. The return shipping expenses of repaired or unrepaired goods will be charged.

#### **14. Limitations of Liability**

14.1. Liability claims and indemnity claims (following: "Liability Claims") are excluded except in cases of intentional or grossly negligent conduct independent of the nature of the breach of duty.

14.2. The Seller is liable for any negligent conduct in case of a material breach of contractual obligations, however only up to the amount of contract typical and foreseeable damages. Damages based on lost profits as well as any other collateral or secondary damage cannot be claimed.

14.3. The limitations and exclusions of liability under subsection 14.1. and 14.2. do not apply to loss or injury to life, limb or health, to claims based on fraudulent conduct by the Seller or claims because of liability for guaranteed characteristics and for claims pursuant to the ProdHaftG (German Product Liability Act).

#### **15. Final Clause**

15.1. As long as there are no written agreements to the contrary these terms constitute the complete stipulation between the Seller and the Buyer.

15.2. The Buyer must keep secret and not share any information regarding products, technical specifics and procedure he receives from the Seller in the context of their business relationship unless they are common knowledge or the Seller has given permission to share that knowledge. If this confidentiality requirement is breached the Buyer must indemnify the Seller for any damages. Additionally the Buyer must pay liquidated damages in the amount of € 10 000.

15.3. The legal relations between the Buyer and the Seller shall be governed by German law excluding the UN-Convention on Contracts for the International Sale of Goods, including the signing and execution of the contract.

15.4. Place of performance under this agreement is the Seller's respective factory or storage facility. The venue for all claims arising from this contract is the location of the registered office of the Seller. The Seller reserves the right to take legal action before the court having general jurisdiction over the location of the registered office of the Buyer.

15.5. If at any time any provision of the General Business Clauses is or becomes invalid, the validity of the remaining provisions shall not in any way be affected or impaired.