

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## of NICE Solar Energy GmbH

As of January 2019

### 1. APPLICATION

- 1.1 These terms and conditions of purchase shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.
- 1.2 These terms and conditions of purchase shall also govern all future transactions between the parties and shall also apply if we except delivery despite our knowledge of differing or contrary terms.
- 1.3 These terms and conditions of purchase shall only apply vis a vis entrepreneurs, governmental entities, or special governmental estates in the meaning of section 310 subsection 1 BGB of the German Civil Code.

### 2. PURCHASE ORDERS AND ORDERS

- 2.1 The seller shall accept offers within a reasonable time not exceeding two working days. Decisive for the timely acceptance is the receipt of the acceptance declaration in written or electronic form by us.
- 2.2 We are entitled to terminate the contract at all times by written declaration by stating the reason if we can no longer use the ordered products in our business operation owing to circumstances which occurred after conclusion of the contract, for which we are not responsible. In this case, we shall remunerate the seller for the partial service provided by it.

### 3. PRICES, PAYMENT

- 3.1 The prices shown in the order are fixed prices and binding.
- 3.2 In the absence of a deviating written agreement, the price shall include delivery and transport to the shipping address stated in the contract including packaging, freight and customs duties.

- 3.3 Insofar as according to the reached agreement the price does not include the packaging and the remuneration is not explicitly determined for the packaging – not only made available on loan, this is to be calculated at the verifiable cost price. At our request, the seller has to take the packaging back at its costs.
- 3.4 The purchase price is due and payable within 14 days from receipt of the proper invoice with a 3 % discount or net within 60 days from receipt of the proper invoice.
- 3.5 Our order number, the article no., delivered volume and delivery address are to be stated in all order confirmations, delivery documents and invoices. Should one or several of these details be missing and hereby within the framework of our normal business correspondence the processing by us be delayed, the payment deadlines stated in subsection 4 will be extended by the period of the delay.

#### **4. OFFSET, RETAINER**

We reserve all rights to offset or retain payment provided by applicable law.

#### **5. DELIVERY, PASSING OF RISK**

- 5.1 All delivery dates stated in the order or otherwise agreed upon are binding.
- 5.2 The seller shall immediately inform us of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.
- 5.3 In the event of the delay in delivery we shall be entitled to the statutory claims to an unlimited extent, including the right to cancellation and the entitlement to damages instead of the service after the fruitless expiry of a reasonable final deadline.
- 5.4 If the day on which the delivery is to be carried out at the latest can be determined owing to the contract, then the seller will be in default with the expiry of this day without this requiring a reminder on our part.
- 5.5 In case of delays in delivery, after the prior written menace towards the seller we are entitled to request a conventional penalty for each commenced week of the delay in

delivery in the amount of 0.5 %, a maximum of 5 %, of the respective order value. The conventional penalty is to be offset against the damages due to default that are to be compensated for by the seller.

- 5.6 The seller is not entitled to make partial deliveries without our prior written consent.
- 5.7 The risk of loss or damage to the goods passes to us upon delivery at the agreed place of delivery.

## 6. PROTECTION OF OWNERSHIP

- 6.1 We reserve the ownership and copyright to purchase orders, orders submitted by us as well as drawings, diagrams, calculations, descriptions and other documents made available to the seller. The seller may neither make these accessible to third parties, nor use these itself or through third parties or copy these without our explicit consent. It has to return these documents to us in full at our request, if they are no longer required by it in the proper course of business or if negotiations do not lead to the conclusion of a contract. Copies made hereof by the seller are to be destroyed in this case; except from this are only the storage within the framework of statutory storage obligations as well as the storage of data for backup purposes within the framework of the customary data backup.
- 6.2 Tools, equipment and models, which we make available to the seller or which are produced for contractual purposes and charged to us separately by the seller, shall remain our property or pass to our property. They are to be marked as our property by the seller, to be stored carefully, protected against damages of all kinds and only used for purposes of the contract. In the absence of an agreement otherwise, the costs for their maintenance and repair shall be borne equally by the contractual partners. Insofar as these costs are however due to defects of such objects produced by the seller or the improper use on the part of the seller, its employees or other vicarious agents, they are to be solely borne by the seller. The seller shall notify us immediately of all damages to these objects that are not only insignificant. It is obliged after request to hand the objects over to us in a proper condition if they are no longer required by it in order to fulfil the contracts concluded with us.
- 6.3 Reservations of title of the seller shall only apply insofar as they refer to our payment obligation for the respective products, to which the seller reserves the property. Extended or prolonged reservations of title are in particular not permitted.

## 7. LIABILITY, WARRANTY

- 7.1 The seller guarantees that the products delivered by it have the agreed condition, in particular that these are suitable for the contractual use envisaged by the orderer.
- 7.2 We reserve all rights and remedies for non-conformity provided by applicable law. We are especially entitled, upon our election, to claim remedy of defects, re-delivery of conforming goods, and damages.
- 7.3 We further have the option to request damages instead of the service according to sections 440, 280, 281, 283 and 311a of the German Civil Code.
- 7.4 In case of imminent danger we are entitled, after giving notice to the seller, to remedy the defects at the seller's cost.
- 7.5 Obvious defects are to be reported in time if we notify the seller hereof within seven workdays since the receipt of the goods by us. Hidden defects of quality are in any case reported in time if the notification is carried out to the seller within seven workdays after these have been discovered.
- 7.6 Warranty claims shall be time-barred after 36 months of the passage of risk.

## 8. PRODUCT LIABILITY, INSURANCE

- 8.1 The seller is responsible for all claims asserted by third parties owing to physical or property damages, which are a result of a faulty product delivered by it, and undertake to indemnify us from the thus resulting liability. If we are obligated to carry out a recall action towards third parties owing to a fault in a product delivered by the seller, the seller shall bear all costs associated with the recall action.
- 8.2 The seller shall, at all times during the term of the contract, maintain product liability insurance with an adequate minimum insurance amount of at least 5.000.000,00 € for each single occurrence of personal and property damage. Further damages shall remain unaffected.

## 9. WARRANTY OF TITLE

- 9.1 The seller warrants that the goods are free from rights of third parties and that delivery of the goods does not violate any rights of third parties. The seller shall indemnify us, upon first demand, from any claims of third parties in this regard.
- 9.2 Claims based on defect in title shall be time-barred pursuant to section 7 subsection 6 above.

## 10. NON-DISCLOSURE OBLIGATION

- 10.1 The seller undertakes to maintain secrecy concerning the conditions of the order as well as all information and documents made available for this purpose (with the exception of information accessible to the public) for a period of up to two years after the conclusion of the contract and only to use this for the execution of the order. It shall return these to us immediately after settlement of enquiries or after processing orders upon request.
- 10.2 Without our prior written consent the seller may not refer to the business relationship in advertising materials, brochures, etc. and not exhibit object of delivery produced for us.
- 10.3 The seller shall oblige its sub-suppliers in line with this section 10.

## 11. FINAL PROVISIONS

- 11.1 The seller is not entitled, without a prior written consent, to forward the order or essential parts of the order to third parties or however to assign claims outside of an extended or prolonged reservation of title.
- 11.2 The place of performance for both parties and exclusive place of jurisdiction for all disputes from the contractual relationship is Schwäbisch Hall.
- 11.3 The contracts concluded between us and the seller are subject to the law of the Federal Republic of Germany under the exclusion of the Convention concerning the International Purchase of Goods (UN Convention).

11.4 Should one provision of these terms and conditions of purchase be or become invalid, this shall have no effect on the validity of the other provisions. The parties undertake insofar to agree upon a valid provision to replace the invalid provision, which shall as far as possible correspond with the purpose intended with the invalid provision.