

Terms and Conditions of Sale and Delivery

1. GENERAL PROVISIONS

- 1.1. Any and all deliveries, services and offers by Talesun Solar Germany GmbH, Landsberger Strasse 110 in 80339 Munich (referred to hereinafter as “**Supplier**”) shall take place exclusively pursuant to the following Terms and Conditions of Sale and Delivery (the “**Terms**”).
- 1.2. The Terms shall apply only if the purchaser is an entrepreneur (§ 14 of the German Civil Code (BGB–Bürgerliches Gesetzbuch)), a legal entity under public law or a special fund under public law.
- 1.3. The Terms shall form part of any and all contracts which the Supplier concludes with the purchaser with respect to deliveries or services offered by the Supplier. They shall also apply to any and all future deliveries, services or offers to the purchaser, even if they are not agreed upon again separately.
- 1.4. Any general terms and conditions of the purchaser which deviate from, or are contradictory or supplementary to the Terms herein shall form an integral part of the contract only when and to the extent that the Supplier has explicitly approved the applicability thereof. This approval requirement shall apply in all cases, even if, for example, the Supplier, being aware of the general terms and conditions of the purchaser, executes the delivery to the purchaser without reservation.
- 1.5. Any individual agreements concluded with the purchaser in individual cases (including collateral agreements, supplements and amendments) shall, in all cases, take precedence over these Terms.

2. PLACING OF ORDERS AND ORDER ACCEPTANCE

- 2.1. Any and all offers of the Supplier shall always be subject to confirmation and non-binding to the extent that they are not explicitly specified as binding.
- 2.2. The Supplier may accept orders or contracts within ten days after receipt thereof.
- 2.3. Information provided by the Supplier with respect to the subject matter of the delivery or service (e.g. weight, dimensions, practical value, capacity, tolerances and technical data) as well as illustrations of the same (e.g. drawings and images) are only close approximations to the extent that its applicability for the purpose contractually envisaged does not require precise conformity. Such information shall not constitute guaranteed characteristics but serve as descriptions or designations of the delivery or service. Variations customary to the trade and deviations which take place due to legal stipulations or constitute technical improvements shall be admissible to the extent that they do not impair the usability for the purpose contractually envisaged.
- 2.4. The Supplier shall, at all times, retain title or copyright to any and all images, plans, drawings, calculations, instructions for use, product descriptions and other documents which are made available to the purchaser. Such documents shall be used exclusively for the contractual performance and shall be returned to the Supplier upon completion of the contract. The said documents shall be kept secret vis-à-vis third parties; this duty of secrecy shall continue after termination of contract.
- 2.5. Any weights, dimensions, capacities, prices, performance ratings or any other data submitted to the Supplier following formation of a contract shall remain the exclusive property of the purchaser that shall not be entitled to transmit the same to third parties without prior written consent of the Supplier. Such information shall be used exclusively for the contractual performance and must

not be communicated to a third party. This duty of secrecy shall survive termination of each contract regulated by these Terms.

3. PRICES AND TERMS OF PAYMENT

- 3.1. The prices shall apply pursuant to the negotiated terms between Supplier, and where applicable any of its affiliates, and purchaser plus the legally applicable value-added tax. Thus, such prices include the cost of packing or protection required under normal transport conditions to prevent damage and the cost of transportation and duties as may incur from time to time.
- 3.2. The legally applicable value-added tax shall apply to prices negotiated terms between Supplier, and where applicable any of its affiliates, and purchaser.
- 3.3. Invoice amounts shall be paid within thirty days, or as differently negotiated and agreed by the parties in separate written agreements, without any deductions to the extent that nothing to the contrary has been agreed upon. Receipt by the Supplier shall be relevant for the date of payment. Checks shall be deemed as payment only when honored. Should the purchaser fail to pay when due, the outstanding amounts shall be charged interest at 8 percentage points over the base rate from the due date on-wards; the enforcement of further losses in the event of default shall not be affected hereby.
- 3.4. The Purchaser shall be entitled to offset only insofar as the Purchaser's counterclaim is undisputed or has been assessed in a legally binding judgement.
- 3.5. The Purchaser shall have a retention right only insofar as the Purchaser's counter-claim is undisputed or has been assessed in a legally binding judgement.

4. DEADLINES, DEFAULT OF DELIVERY AND IMPOSSIBILITY OF PERFORMANCE

- 4.1. Deadlines and due dates for deliveries and services shall be binding for the Supplier only if agreed in writing/confirmed by the Supplier in writing in its order confirmation.
- 4.2. The Supplier shall not be held liable for impossibility of delivery or for delays in delivery to the extent that these are caused by force majeure or other events which were not foreseeable upon the conclusion of the contract (e.g. all forms of disruption to operations, difficulties in the procurement of materials or energy, strikes, legitimate lockout, failure of suppliers to deliver promptly when the Supplier has concluded a congruent hedging transaction) for which the Supplier bears no responsibility. To the extent that such events considerably impede the rendering of the delivery or service or make such delivery or service impossible for the Supplier, and such impediment is not only temporary in nature, the Supplier shall be entitled to rescind the contract. Any consideration already rendered by the purchaser shall be refunded by the Supplier without undue delay. In the event of impediments which are temporary in nature, the time limits for delivery or for the rendering of services shall be extended or the dates for delivery or the rendering of services shall be postponed appropriately. To the extent that the purchaser cannot be expected to accept the delivery or service as a consequence of the delay, he shall be entitled to rescind the contract by means of an immediate written declaration in this regard vis-à-vis the Supplier.
- 4.3. The statutory provisions shall determine whether a delivery is in default. However, a reminder by the purchaser shall be required in all cases.
- 4.4. The Supplier shall be entitled to render partial deliveries only if:
 - a) the partial delivery can be used by the purchaser within the scope of the contractually stipulated purpose;

- b) the delivery of the remaining goods ordered has been assured; and
- c) the purchaser does not incur substantial additional effort or additional costs hereby (unless the Supplier declares himself willing to assume the said costs).

5. PLACE OF PERFORMANCE, TRANSFER OF RISK AND DELIVERY

- 5.1. Delivery shall take place ex works of the Supplier. This shall, at the same time, be the place of performance. The goods shall be sent to another destination at the request and expense of the purchaser (sale by delivery).
- 5.2. In the event of sale by delivery and to the extent that nothing to the contrary has been agreed upon, the Supplier shall be entitled to determine the manner of dispatch (in particular the transport companies, transport route, packaging) himself. Packaging and dispatch shall be carried out at the expense of the purchaser with the due diligence customary to the trade. At the request and expense of the purchaser, the consignment may be insured by the Supplier against breakage, damage in transport and damage caused by fire.
- 5.3. The risk of accidental loss or destruction and of accidental deterioration of the goods shall pass on to the purchaser in accordance with the Interpretation Commercial Terms (Incoterms 2010) of the International Chamber of Commerce as negotiated and agreed between the parties. In the event of sale by delivery, the risk of accidental loss or destruction and of accidental deterioration of the goods as well as the risk of delay shall pass on to the carrier, freight forwarder or any other person or entity appointed to dispatch the goods upon the delivery of the goods to the same. Delivery shall nonetheless be deemed to have been effected if the goods are not delivered as per the request of the purchaser or if the purchaser is otherwise in default of acceptance.
- 5.4. Fulfilment of Supplier's delivery obligations under Clauses 4 and 5 is subject to the timely and proper fulfilment of the purchaser's obligations. We reserve the right to plead non-performance of the contract.

6. DEFAULT OF ACCEPTANCE

- 6.1. Should the purchaser be in default of acceptance, fail to co-operate or should the delivery be delayed due to other reasons for which the purchaser bears responsibility, the Supplier shall be entitled to demand compensation for the loss resulting here-from, including additional expenses (e.g. storage costs). In this regard, the Supplier shall charge a flat-rate compensation in the amount of 0.5 (zero point five) percent of the value of goods per calendar day, commencing on the delivery deadline or – in the absence of a delivery deadline – upon notification that the goods are ready for dispatch. The flat-rate compensation shall not exceed 15 (fifteen) percent of the value of goods.
- 6.2. The right to furnish evidence of higher losses and the statutory rights of the Supplier (in particular reimbursement for additional expenses, adequate compensation, re-scission) shall remain unaffected; the flat-rate compensation shall, however, be offset against further monetary claims. The purchaser shall be permitted to furnish evidence that the Supplier has incurred no or only substantially lower losses than the flat-rate compensation mentioned hereinbefore.

7. RIGHT OF RESCISSION

- 7.1. The Supplier may rescind the contract if the purchaser has provided incorrect or incomplete information about facts pertaining to his creditworthiness unless the purchaser makes an immediate pre-payment.

- 7.2. In the event of a rejection of an application for the institution of insolvency proceedings for lack of assets, futile measures of enforcement as well a declaration in lieu of an oath by the purchaser, the Supplier shall be entitled to rescind the contract.
- 7.3. The Supplier shall be obliged to inform the purchaser without undue delay of his intention to assert his right of rescission. Any consideration already rendered by the purchaser shall be refunded without undue delay.

8. WARRANTY

- 8.1. With respect to the rights of the purchaser in the event of defects of quality and title (including wrong and divergence in quantity as well as incorrect assembly or incorrect assembly instructions), the statutory stipulations shall apply to the extent that nothing to the contrary has been agreed upon hereinafter.
- 8.2. The goods delivered shall be examined thoroughly immediately after delivery to the purchaser or to the third party appointed by him. They shall be deemed to have been accepted if the Supplier receives no written notification of defects with respect to obvious defects or to other defects which have become apparent during an immediate, thorough examination within two weeks after delivery of the goods or otherwise within two weeks after discovery of the defect or at any earlier point in time at which the defect was apparent to the purchaser in course of normal use of the goods without closer examination. The time limit shall be deemed as having been observed if the notification of defects is sent off punctually.
- 8.3. Should the goods delivered be defective, and should the purchaser render the defects readily evident with reasonable proof to the Supplier within 2 (two) weeks from delivery of the goods, the purchaser may first choose to render subsequent performance by way of rectification of the defect (subsequent improvement) or by way of delivery of defect-free goods (substitute delivery). Should the subsequent performance fail, i.e. due to impossibility, unconscionability or refusal of subsequent performance, or should the appropriate grace period for the subsequent performance to be determined by the purchaser lapse without result or be dispensed with in accordance with the statutory provisions, the purchaser shall be entitled to rescind the contract or reduce the purchase price in an appropriate manner.
- 8.4. The purchaser shall grant the Supplier the time and opportunity necessary for the rendering of the subsequent performance owed; in particular, he shall hand over the goods which are the object of the complaint for purposes of examination. In the event of substitute delivery, the purchaser shall return the defective goods to the Supplier in accordance with the statutory provisions. In this case and in case of a legitimate complaint of defects, the Supplier shall refund the costs of the most inexpensive dispatch route.
- 8.5. In the event of defects on the structural components of other manufacturers or suppliers which the Supplier may not rectify due to reasons of licensing law or factual grounds, the Supplier shall have the choice of either asserting his warranty claims against the manufacturers and suppliers for the account of the purchaser, or of as-signing these to the purchaser. Warranty claims against the Supplier shall exist with respect to such defects under the pre-requisites of and in accordance with these Terms and Conditions of Sale and Delivery only if the legal enforcement of the claims mentioned hereinbefore against the manufacturer or supplier was unsuccessful or, for example, due to insolvency, has no prospect of success. The statute of limitations with respect to the pertinent warranty claims of the purchaser against the Supplier shall be suspended for the duration of the legal dispute.
- 8.6. The warranty period shall be two years from the date of delivery or, to the extent that an acceptance is necessary, from the date of such acceptance.

9. LIABILITY

- 9.1. The liability of the Supplier for damages, irrespective of their legal grounds, in particular due to impossibility, default, defective or wrong delivery, breach of contract, breach of duties during contract negotiations and tort shall, to the extent that there is a question of fault in each case, be limited in accordance with this item 9.
- 9.2. The Supplier shall be held liable for damages only with respect to losses which he or his legal representatives or agents have caused with intent or in gross negligence. In the event of simple negligence, the Supplier shall be held liable only:
- a) for losses incurred from injury to life, limb or health which are based on a breach of duty by the Supplier or one of his legal representatives or agents;
 - b) for losses incurred from the breach of a material contractual obligation (obligations whose fulfilment makes the due performance of the contract possible in the first place, and the compliance with which the contract partner relies on or may rely on as a rule); in this instance, the liability of the Supplier shall be limited to the reimbursement of the foreseeable, typically occurring damage.
- 9.3. The limitations of liability resulting from item 9.2 shall not apply to the extent that the Supplier has maliciously concealed a defect or assumed a guarantee for the quality of the goods. This shall also apply to claims by the purchaser based on the German Product Liability Act (*Produkthaftungsgesetz*).
- 9.4. To the extent that the liability of the Supplier is excluded, this shall also apply to the personal liability of his salaried staff, employees, representatives and agents.

10. COMPLIANCE WITH RULES OF CONDUCT INCLUDED IN THE PRODUCT INSTRUCTIONS

- 10.1. The purchaser shall be obliged to carefully observe the product instructions published by the Supplier and to pass these on to any and all users and his customers, specifically requesting them to observe the said instructions as well.
- 10.2. Should the purchaser fail to fulfil his obligations pursuant to item 10.1 and should this result in product and producer liability claim against the Supplier, the purchaser shall indemnify the Supplier against these claims with respect to their internal relationship. Should circumstances for which the Supplier is responsible be contributory, such indemnification shall take place in proportion to the cause.
- 10.3. The purchaser shall be obliged to keep track of the products of the Supplier and their practical use. This shall continue to apply after the re-sale of such goods. The product monitoring obligation pertains, in particular, to harmful characteristics of the product which are yet unknown and to uses and consequences thereof which are suitable for the creation of a hazardous situation.

11. RETENTION OF TITLE

- 11.1. The goods delivered by the Supplier to the purchaser shall remain the property of the Supplier until the complete payment of the corresponding claims of the Supplier. The goods subject to such retention of title shall be referred to hereinafter as "Condition-al Goods".
- 11.2. The purchaser shall store the Conditional Goods on behalf of the Supplier at no cost.
- 11.3. The purchaser shall be entitled to re-sell and/or process the Conditional Goods in the course of proper business. Pledging and chattel mortgages shall not be permitted.
- 11.4. Should the Conditional Goods be processed, it is agreed that such processing shall take place on

behalf of and for the account of the Supplier as manufacturer and that the Supplier shall directly acquire ownership or – in the event that the processing takes place using materials of several owners or if the value of the processed item is higher than that of the value of the Conditional Goods – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the Conditional Goods to that of the newly created item. In the event that no such ownership is acquired by the Supplier, the purchaser shall now transfer his future ownership or – in the ratio mentioned hereinbefore – co-ownership of the newly created item as security to the Supplier.

- 11.5. Should the Conditional Goods be combined or inseparably mixed with other items to create a single item and should one of the other items be deemed the main component, the Supplier shall, to the extent that the main component belongs to him, transfer to the purchaser the co-ownership of the single item on a pro rata basis in the ratio mentioned in sentence 1.
- 11.6. In the event of the re-sale of the Conditional Goods, the purchaser shall now assign the claim resulting herefrom against the buyer – in the event of the Supplier's co-ownership of the Conditional Goods on a pro rata basis according to the co-ownership share - to the Supplier as security. This shall also apply to other claims which take the place of the Conditional Goods or otherwise arise with respect to the Conditional Goods, such as, for example, insurance claims or claims resulting from tort in the event of loss or destruction. The Supplier shall revocably authorize the purchaser to collect the claims assigned to the Supplier in his own name. The Supplier shall reserve the right to collect the claims himself should the purchaser fail to fulfil his payment obligations vis-à-vis the Supplier, is in default of payment, makes an application for the institution of insolvency proceedings, or if his contractual performance is impaired in any other manner. Should this be the case, the Supplier may demand that the purchaser disclose to him the assigned claims and the corresponding debtors, provide all the information necessary for such collection, hand over the pertinent documents, and inform the corresponding debtors (third parties) of such assignment.
- 11.7. Should third parties lay claim to the Conditional Goods, in particular by way of attachment, the purchaser shall, without undue delay, inform the third party of the Supplier's ownership, and inform the Supplier hereof in order to allow him the enforcement of his ownership rights. To the extent that the third party is unable to reimburse the Supplier for the judicial and extra-judicial costs incurred in this connection, the purchaser shall be held liable vis-à-vis the Supplier in this regard.
- 11.8. The Supplier shall release at his own discretion the Conditional Goods as well as the items or claims taking the place of the Conditional Goods upon request if their value exceeds the amount of the secured claims by more than 20%.

12. EXPORT OF GOODS

- 12.1. The export of the goods delivered out of the territory of the Federal Republic of Germany shall be subject to German export regulations and may not be permissible without official authorization in this regard. The export of the goods delivered out of the territory of the Federal Republic of Germany shall require the written consent of the Supplier. Independent thereof, the purchaser shall be solely responsible for obtaining any and all official import and export permits.

13. FINAL PROVISIONS

- 13.1. The law of the Federal Republic of Germany shall apply to the contract. Rules on conflict of laws as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 13.2. The exclusive place of jurisdiction for any and all disputes arising from the business relationship between the Supplier and the purchaser shall be Munich. The Supplier shall reserve the right to take legal action at the legal place of jurisdiction of the purchaser according to his choice. Mandatory statutory provisions with respect to exclusive places of jurisdiction shall not be affected hereby.