

General Purchasing Conditions of AXITEC Energy GmbH & Co. KG

§ 1 Scope

- (1) Insofar as no other arrangement is expressly agreed in writing, these general purchasing conditions apply exclusively in business transactions to all contracts concluded by us with a supplier and to related pre-contractual obligations. Other business conditions shall not become part of the contract, even where we have not expressly objected to such. This also applies if, in full awareness of conflicting or differing terms and conditions, we accept deliveries without reservation, or reference to these conditions is made in individual correspondence. Our silence with regard to contrary conditions, including in order acceptance confirmations, shall not be regarded as recognition.
- (2) Even if not expressly referred to when similar contracts are concluded in on-going business relations, our general purchasing conditions shall apply exclusively in the version which can be downloaded at <http://www.axitecsolar.com/en/terms-policies.html> upon commissioning of the supplier, unless another agreement has been concluded in writing between the contractual partners. On request, the supplier shall also be provided free of charge with the current version of the general purchasing conditions in a printed form.
- (3) All agreements concluded between us and the supplier in connection with the contracts are recorded in the contracts, these general purchasing conditions and our offers.
- (4) We reserve the right to demand the conclusion of a quality assurance agreement from the supplier. This quality assurance agreement is then a component part of these general purchasing conditions.
- (5) The general purchasing conditions only apply to companies, legal entities under public law or a special fund under public law pursuant to § 310 Subparagraph 1 BGB (German Civil Code).

§ 2 Conclusion of contract

- (1) The contents of our written orders apply exclusively. Orders placed verbally or verbal ancillary agreements shall only become effective when we confirm them in writing. Delivery contracts (order and acceptance), delivery requests and their amendments and supplementing require the written form.
- (2) We are no longer bound to our order if the supplier does not accept our order within five working days of receipt. Should the supplier be unable or unwilling to accept our order, he is obliged to inform us of this without any undue delay/instantaneously.
- (3) The supplier shall confirm our orders with a written order confirmation. The order confirmation must show the price, discount, order number, binding delivery date and any further order details. Deviations from our order, in particular from the prices, discounts and delivery deadlines detailed in our order, shall only become a component part of the contract if confirmed by us in writing.
- (4) Drawings, plans and other documents belonging to the order remain our property. We reserve all copyrights relating to these documents. If the supplier does not accept our orders within the period stipulated in Subparagraph 2, these documents are to be returned to us immediately.
- (5) We are entitled to demand changes to the design and execution of the delivery items if these can be reasonably demanded of the supplier. The consequences in this case, especially regarding additional or reduced costs and delivery dates, shall be settled in an appropriate and mutually agreeable manner.

§ 3 Prices, payment, set-off

- (1) The price stipulated by us in the order is binding. It covers the delivery free domicile, including the respective statutory value added tax and the cost of packaging, unless otherwise expressly agreed in writing by the parties.
- (2) The supplier's offers, drafts, samples and specimens are free of charge for us, unless otherwise expressly agreed. Remuneration of compensation for visits or drafting of offers, projects, etc. shall not be granted in the absence of another agreement.
- (3) Invoices shall be sent as a single copy to our business address when shipping the goods, but separate from the goods shipment. Invoices must contain at least the following details: name and address of the parties, tax number, order number, supplier number, number and date of order, additional customer data, unloading locations, number and date of delivery docket, quantity of goods or services invoiced, the country of origin and bank details. Invoices not drafted in a proper manner are regarded as not having been issued.
- (4) Payment shall be due within 14 days of orderly receipt of invoice with a 3% discount or net within 45 days of orderly receipt of invoice. In case of acceptance of early deliveries, the due date of payment shall be governed by the agreed delivery date.
- (5) In case of a defective delivery, we are entitled to withhold payment proportionate to the value until the delivery has been properly realised. Otherwise, payment (without reservation) neither represents the acknowledgement of correct delivery nor a waiver of the supplier's liability for defects.
- (6) We are fully entitled to all legal rights of set-off and retention. Set-off entitlements may only be accorded the supplier if his counterclaims are not contested or recognized as legally valid by us. Apart from § 354 a HGB (German Commercial Code), the supplier may only assign rights from this contract to a third party with our prior written agreement which may not be unreasonably withheld. The supplier shall only be entitled to exercise a right of retention or plead the defence of non-fulfilment of contract within the respective contractual relationship.

§ 4 Time of performance, delays

- (1) All delivery dates mentioned in the order or otherwise agreed are binding. The receipt of goods at our premises is decisive when it comes to compliance with the delivery date or delivery deadline.
- (2) The supplier is obliged to inform us immediately of any imminent or current non-compliance with a stipulated delivery date/delivery deadline, the reasons for said and the estimated duration of the delay. The onset of the delay in delivery remains unaffected by this.

(3) In case of a delay in delivery, we are entitled to avail of all statutory claims. In the event of a delay in delivery, we are entitled to demand 0.5% of the order value per full week of delay as a contractual penalty, but not more than 5%. The right to avail of further-reaching statutory claims is reserved.

§ 5 Packaging, shipping, partial deliveries, transfer of risk

(1) Delivery and shipping are realised free domicile at the supplier's risk to our business address or a delivery location specified by us. The supplier shall bear the costs of packaging, freight and insurance. Insofar as no packaging regulation exists on our part, all deliveries shall be packed expertly and as is commercially customary by the supplier so that the packing is guaranteed to protect the delivery items until they reach the delivery address. Packaging can be returned by us free of charge. The location where the goods are handed over is also the performance location for the obligation of the supplier pursuant to § 4 of the Packaging Ordinance to take back the goods.

Insofar as delivery ex works is agreed in an individual case, the supplier shall select the most favourable terms of shipment for us and ensure correct declaration. The supplier is also liable in this case for damages occurring during transportation.

(2) A single copy of a delivery docket should be enclosed with the goods which, in addition to exact designation of the scope of delivery with the order number, article number, type and quantity, contains the container number, weight and volume in m³. In addition, our documentation and marking regulations, which should be obtained from us, are to be observed. Should the supplier fail to do so, delays in processing are inevitable for which we assume no liability.

(3) Partial deliveries shall only be accepted following express agreement. In case of partial deliveries, the remaining quantity shall be listed in all cases.

(4) The transfer of risk shall take place at the delivery address stipulated by us.

§ 6 Material defects and defects of title, obligation of inspection and notification of defects, claims for defects

(1) Unless otherwise agreed, the supplier shall guarantee that all goods delivered conform to state-of-the-art technological standards, comply with the relevant legal provisions of the delivery location and, if known to the supplier, the location where the goods/our product are to be used, insofar as this can be reasonably expected of the supplier in an individual case and conforms to the regulations and directives of official authorities, employers' liability insurance associations and trade associations. The goods must in all cases be suitable for ordinary utilisation and display a quality which is usual for items of the same type and which we can expect of this type of item. Insofar as deviations from these regulations are necessary in individual cases, the supplier must obtain the express written permission of the customer in this respect. Where the supplier has reservations regarding the manner of execution desired by us, he shall inform us of this immediately.

(2) The supplier shall ensure that the goods are delivered free from third party rights and that no third party rights are violated by the delivery. The vendor shall release us from any third party claims in this respect on our first request.

(3) In the scope of application of § 377 HGB (German Commercial Code) (commercial sale, if both parties are commercial businesses), the obligation to inspect and notify of defects stipulated therein is modified as follows:

- We will notify the supplier of defects relating to the delivered goods within one week of receipt of delivery as soon as the said defects have been discovered during the inspection conducted in the proper course of business. We will indicate defects which were not detectable in an inspection of this nature within a period of one week after detection. Timely notification of defects to the supplier shall suffice to meet the deadline.

- The inspection of incoming goods entails only the examination of the goods with regard to externally visible deviations in terms of identity and the number of units and obvious externally visible transportation damage.

In this respect, the supplier shall refrain from objecting to delayed notice of defects and unreserved acceptance.

This does not prejudice our right to perform a more extensive inspection of incoming goods.

(4) In the case of purely work contracts, § 377 HGB shall not apply, neither directly nor analogously. Likewise, we do not assume any obligation for inspection and notification of defects in connection with other contracts not covered by §377 HGB.

(5) We are unconditionally entitled to avail of statutory guarantee rights.

(6) As an extension to statutory guarantee rights, we are also entitled in the case of non-fulfilment of a work contract to demand, at our discretion, rectification of a defect or delivery of an item free of defects.

Furthermore, even if a sales contract exists, we are entitled to act, in urgent cases or as part of our duty to minimise damages, at our own discretion under the conditions of § 637 BGB (analogously) after consulting the supplier.

(7) Claims for defects are limited to 48 months from the transfer of risk, provided no other explicitly divergent written agreement has been concluded or a longer statutory limitation period has been provided for. § 634 a Subparagraph 3-5 BGB if a work contract exists, § 438 Subparagraph 3-5 BGB if a sales contract exists and § 479 Subparagraph 2 and 3 BGB remain unaffected.

(8) Our written notification of defects inhibits expiration of the guarantee period. The guarantee period only continues after two months, following completion of successful rectification or if the supplier has rejected the guarantee in writing. In the case of a substitute delivery, the guarantee period starts anew from the time of delivery of the substitute goods.

§ 7 Product liability, exemption, third party insurance coverage

(1) In the case of third-party claims for damages against us because of a product defect for which the supplier is responsible, the supplier must exempt us on our first request from all third-party claims, including the necessary costs of defending ourselves against these claims, insofar as the cause is to be found in the supplier's domain and organisational area.

(2) Where we are obliged to initiate a recall campaign due to a case of damage in terms of Subparagraph 1, the supplier shall be obliged to reimburse us for all costs incurred due to or in connection with the recall campaign. Where it is possible and reasonable in terms of the time involved, we shall inform the supplier about the content and scope of the recall campaign and give him an opportunity to comment on this. Any further statutory claims that we may have remain unaffected in this context.

(3) The supplier is obliged to conclude and maintain product liability insurance with adequate coverage for the goods. Any further statutory claims that we may have remain unaffected in this context. A limitation of liability is not associated with this provision.

§ 8 Other obligations of the supplier

- (1) The supplier shall ensure that he is in a position to supply us with the delivery items or components thereof as replacement parts on reasonable terms for a period of 10 years after termination of the supply relationship.
- (2) The supplier shall ensure that he is aware of all data and circumstances that are relevant for the fulfilment of his contractual duties and that he is also familiar well in advance with our intended use of his deliveries. He shall guarantee that his deliveries include all services necessary for correct, safe and efficient use, that they are suitable for the intended use and that they conform to state-of-the-art scientific and technological standards.
- (3) The supplier shall keep us informed concerning all official approvals and notification requirements necessary for the import and use of the delivery items.
- (4) The supplier shall continually monitor the quality of his deliveries and services. He is obliged to observe the latest valid version of our quality assurance agreement for suppliers. Modifications to the delivery item require our prior consent. The supplier shall document in writing when, in what manner and by whom delivery free of defects was ensured for all products delivered to us.
- (5) These records shall be retained for at least 10 years and handed over to us on demand. Upstream suppliers should be governed by corresponding obligations.
- (6) Further obligations of the supplier remain unaffected.

§ 9 Provisions

- (1) Samples, models, tools, drawings and other documents which we provide the supplier with or which the supplier obtains for us with our financial resources are and shall remain our property. If they remain in the possession of the supplier, a bailment (§ 930 BGB) shall hereby be agreed.
- (2) Materials or components provided remain our property. They may only be used in connection with the order. Processing of materials and the assembly of parts by the supplier is realised on our behalf. If our materials and components are combined, mixed or processed with other objects which do not belong to us, we thereby become joint owners of the new item based on the ratio of the value of the materials and components provided to the other processed objects at the time of combination, mixing or processing. If our item is regarded as the main item, it is considered as agreed that the supplier shall transfer joint ownership to us on a pro rata basis. The supplier shall hold our sole or joint property in safe keeping free of charge.

§ 10 Retention of title

We only recognise simple retention of title. Other forms of retention of title require express written agreement.

§ 11 Nondisclosure

- (1) If and insofar as the supplier obtains knowledge and information during the course of order processing, especially with regard to technical details, he shall pledge himself to nondisclosure of these details.
- (2) The imparted knowledge and information shall only be used in connection with actual orders and therefore only made accessible to employees who are involved in order processing and equally pledged to nondisclosure. Third parties shall only be allowed access to the imparted knowledge with our written consent. In this case, an appropriate nondisclosure agreement must be imposed on these third parties.
- (3) The supplier pledges to surrender all confidential documents already transferred, regardless of whether these documents were handed over at the beginning of the cooperation or created as a consequence of processing our order. This obligation applies in particular at the termination of the cooperation. In this case, the supplier shall guarantee that the surrender of confidential documents is complete and no copies have been retained.
- (4) A right of retention relating to confidential documents is explicitly excluded, regardless of the legal grounds involved.

§ 12 Designation as reference supplier

We are entitled to designate the supplier as a reference supplier and, in particular, use his logo on our homepage and advertising materials free of charge in this context.

§ 13 Written form

All changes and addendums to the contract require the written form to be considered effective. The contractual partners shall comply with this requirement by transmitting documents in text form, particularly by fax or e-mail, unless other requirements exist for individual declarations. The written form requirement itself may only be revoked in writing.

§ 14 Applicable law

The law of the Federal Republic of Germany shall apply to the exclusion of the UN Sales Convention (CISG).

§ 15 Place of performance, place of jurisdiction

- (1) The place of performance for all obligations from this contract is our registered business office at the time of conclusion of the contract, provided nothing else has been expressly agreed in writing.
- (2) The place of jurisdiction for all disputes arising from and in connection with this contract is Stuttgart (Germany), insofar as the supplier is a businessperson, a legal entity under public law or a special fund under public law, or where his status is equivalent to such or if his registered business office or subsidiary is outside Germany. We are also entitled to take legal action at the supplier's commercial address or any other valid place of jurisdiction.

§ 16 Severability clause

In the event of any provision of these general purchasing conditions being or proving ineffective, or in the event of these general purchasing conditions being incomplete, the validity of the other provisions shall remain unaffected by this. The contractual partners shall replace the ineffective provision with a provision which comes closest to the intent and purpose of the ineffective provision in a legally effective sense. The same applies to loopholes in the contract.