

# General Terms and Conditions ZILONIS Energy Solutions GmbH

## 1 General

1.1 These Terms and Conditions of Sale shall apply exclusively to our deliveries and services - insofar as the customer is an entrepreneur, a legal entity under public law or a special fund under public law. We do not recognize any terms and conditions that conflict with or deviate from our Terms and Conditions of Sale - in particular in the customer's terms and conditions of purchase - unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall also apply if we carry out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale.

1.2 All agreements, collateral agreements and amendments to the contract must be made in writing. This shall also apply to any waiver of this written form requirement. Verbal or written commitments that deviate from our Terms and Conditions of Sale and/or the order confirmation require the consent of our management to be effective. Our office and field staff are not authorized to make deviating agreements or to grant special conditions.

## 2. Offers, Contracts

2.1 Our offers are subject to change and lose their validity after 6 months. A contract shall only come into existence through our written order confirmation or the execution of the order.

2.2 We reserve the right to make minor changes to the products supplied by us or changes for the benefit of the customer. The same applies to texts and illustrations in our printed matter.

2.3 We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. The customer requires our express written consent before passing them on to third parties.

## 3. Delivery and Performance, Default

3.1 Delivery periods and deadlines shall commence on the date of our order confirmation, but not before all technical and other details of the order have been clearly clarified and not before any agreed advance payments have been received.

3.2 The delivery period or deadline shall be deemed to have been met if the delivery item is handed over to the carrier by the time it expires or, if the goods cannot be dispatched on time or the service cannot be rendered on time through no fault of our own, upon notification of readiness for dispatch. If acceptance is to take place - except in the case of justified refusal of acceptance - the start of acceptance shall be decisive, alternatively the notification of readiness for acceptance.

3.3 If an agreed delivery or performance date is exceeded which is not expressly designated as "fixed" in the order confirmation or another contractual obligation is not fulfilled on time, the customer shall first be obliged to set a reasonable deadline for subsequent performance. If we fail to deliver even then, the customer shall be obliged to threaten this with a further grace period before withdrawing from the contract or claiming damages. Written form is required for this. If we demand this, the customer is also obliged to declare within a reasonable period of time whether he is withdrawing from the contract due to the delay in delivery or insisting on delivery.

3.4 We reserve the right to correct and timely self-delivery. We will inform you as soon as possible of any delays that become apparent.

3.5 Unforeseeable, extraordinary events for which we are not responsible, such as labor disputes, operational disruptions, official measures, transport disruptions or other cases of force majeure, regardless of whether these events occur with us or our suppliers, shall release us from the obligation arising from the respective contract; obstacles of a temporary nature, however, only for the duration of the hindrance plus a reasonable start-up period. If delivery subsequently becomes impossible or unreasonable for one of the parties due to such events, both parties are entitled to withdraw from the contract.

3.6 Our liability for damage caused by delay due to a slightly negligent breach of duty is excluded.

3.7 We are entitled to make partial deliveries insofar as these are reasonable for the customer. Partial deliveries shall be invoiced separately.

3.8 If dispatch or delivery is delayed by more than one month after notification of readiness for dispatch at the request of the customer, the customer may be charged storage costs of 0.5% of the price of the items of the deliveries for each month or part thereof, up to a maximum total of 5%. The contracting parties are at liberty to prove higher or lower storage costs.

#### **4 Prices and terms of payment**

4.1 Unless otherwise stated in the order confirmation, our prices are "ex works", including loading at the factory, but excluding packaging and unloading; these will be invoiced separately.

4.2 All our prices are quoted in euros and net plus value added tax at the applicable statutory rate. Unless expressly agreed otherwise, the customer shall additionally bear all ancillary charges, public charges and customs duties.

4.3 The deduction of a discount requires a special written agreement.

4.4 Unless otherwise stated in the order confirmation, the price is due for payment net (without deduction) within 30 days of the invoice date. The statutory regulations regarding the consequences of late payment shall apply.

4.5 Our claims shall become due immediately if insolvency proceedings are opened against the customer's assets or facts become known which indicate a significant deterioration in the customer's assets. In such cases, we shall be entitled to make further deliveries or services dependent on advance payment or the provision of corresponding securities.  
payment or the provision of corresponding securities.

4.6 Any agreed discounts, rebates or other reductions shall not be granted if the customer is in arrears with the payment of earlier deliveries.

4.7 The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognized by us. In addition, he is only authorized to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

#### **5. Transfer of risk, Acceptance**

5.1 The risk shall pass to the customer when the delivery item has left the factory, even if partial deliveries are made or if we have assumed the shipping costs or other services, e.g. delivery or installation.

5.2 If acceptance is required, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, but at the latest after we have notified readiness for acceptance. The customer may not refuse acceptance in the event of a minor defect.

5.3 If shipment of the goods has been agreed, we shall ship the goods at the risk of the customer, whereby we shall determine the type of shipment, shipping route and carrier.

5.4 If dispatch or acceptance is delayed or does not take place at all due to circumstances for which we are not responsible, the risk shall pass to the customer from the day of notification of readiness for dispatch or acceptance.

5.5 We undertake to take out appropriate transport insurance at the customer's expense, at least in the amount of the invoice value of the goods, if the customer requests this in text form.

5.6 Special packaging material shall only be taken back and paid for on the basis of a separate agreement.

## **6. Warranty**

6.1 We do not assume any guarantees for the quality of the deliveries or services. Product and performance specifications only serve to determine the agreed quality within the meaning of §§ 434, 633 BGB. The assumption of a guarantee of quality going beyond this presupposes that we expressly declare in writing that we assume a guarantee going beyond the statutory claims of the customer, which grants the customer claims independent of the statutory rights.

6.2 Claims for defects shall not exist in the event of only insignificant deviation from the agreed quality, in the event of only insignificant impairment of usability and in the event of natural wear and tear.

6.3 The purchaser must notify us immediately in writing of any material defects in deliveries and provide detailed information regarding the defect and its effects. Further obligations of the merchant according to § 377 HGB remain unaffected.

6.4 In the event of notices of defects, payments by the customer may be withheld to an extent that is in reasonable proportion to the material defects that have occurred. The customer may only withhold payments if a notice of defects is asserted, the justification of which is beyond doubt. If the notice of defects is unjustified, we shall be entitled to demand compensation from the customer for the expenses incurred by us.

6.5 Any defects shall be remedied by way of subsequent performance. Subsequent performance shall be effected at our discretion by repair or delivery of a defect-free product or manufacture of a defect-free work. The claim for subsequent performance does not include the elimination of defects or malfunctions caused by external factors not intended by the external influences not intended according to the contractual use, operating errors, third-party products brought in by the customer or similar.

6.6 If the subsequent performance fails or if we do not remedy a defect within a reasonable period set by the customer, the customer may withdraw from the contract or reduce the remuneration without prejudice to any claims for damages. In the case of contracts for work and services, the customer is also entitled to remedy the defect himself and to demand reimbursement of the corresponding expenses from us.

6.7 Claims of the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, are excluded insofar as the expenses increase because the object of the delivery has subsequently been moved to a location other than the customer's branch office, unless the transfer corresponds to its intended use.

## **7 Liability for damages**

7.1 Claims for damages or reimbursement of expenses by the customer (hereinafter referred to as "claims for damages") over and above the provision in clause 6, irrespective of the legal grounds, in particular due to breach of duties arising from the contractual obligation and from tort, are excluded.

7.2 This shall not apply where liability is mandatory, e.g. under the Product Liability Act, in cases of intent, gross negligence, injury to life, limb or health, or due to the breach of material contractual obligations. However, the claim for damages for the breach of essential contractual obligations is limited to the foreseeable damage typical for the contract, unless there is intent or gross negligence or liability for injury to life, limb or health.

## **8. Limitation period**

8.1 The limitation period for claims pursuant to clauses 6 and 7 is 1 year. This shall not apply if longer periods are prescribed in accordance with § 438 para. 1 no. 2 (buildings and items for buildings), § 479 para. 1 (right of recourse) and § 634 a BGB (building defects) as well as in cases of injury to life, body or health, in the event of an intentional or grossly negligent breach of duty and in the event of claims for damages under the Product Liability Act.

## **9. Reservation of title**

9.1 The objects of the deliveries (reserved objects) shall remain our property until all claims against the customer arising from the business relationship have been fulfilled. If the value of all security rights to which we are entitled exceeds the amount of all secured

claims by more than 20%, we shall release a corresponding part of the security rights at the request of the customer; we shall be responsible for selecting the securities to be released.

9.2 In the event of breach of contract by the customer, in particular default of payment, we shall be entitled to take back the reserved goods. Our repossession of the reserved goods shall constitute a withdrawal from the contract. After taking back the goods subject to retention of title, we shall be entitled to sell them; the proceeds of the sale shall be set off against the customer's liabilities - less reasonable selling costs.

9.3 The customer is obliged to treat the reserved goods with care; in particular, he is obliged to insure them adequately at his own expense against theft, breakage, fire and water damage at replacement value. Unless the customer has demonstrably taken out the insurance himself, we reserve the right to insure the reserved goods against theft, breakage, fire, water and other damage at the customer's expense. If maintenance and inspection work is required, the customer must carry this out in good time at his own expense.

9.4 In the event of seizures or other interventions by third parties, the customer must inform us immediately in writing so that we can file a suit in accordance with § 771 ZPO (German Code of Civil Procedure). If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for the loss incurred by us.

9.5 The customer shall be entitled to resell the reserved goods in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including value added tax) of our claim which accrue to him from the resale against his customers or third parties, irrespective of whether the reserved goods have been resold without or after processing. The customer shall remain authorized to collect this claim even after the assignment. Our authorization to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the customer meets his payment obligations from the proceeds received, is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed and payments have not been suspended. If this is the case, however, we can demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

9.6 The processing or transformation of the reserved goods by the customer shall always be carried out on our behalf. If the reserved goods are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount, including VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the item created by processing as to the items subject to retention of title.

9.7 If the items subject to retention of title are inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the items subject to retention of title (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer shall transfer co-ownership to us on a pro rata basis. The customer shall hold the resulting sole ownership or co-ownership for us.

9.8 The customer shall also assign to us the claims to secure our claims against him which arise against a third party through the combination of the reserved goods with a property.

## **10. Embargo provisions**

10.1 The customer shall be responsible for compliance with export and embargo regulations.

## **11 Place of performance and Jurisdiction**

11.1 The place of performance for all obligations of the customer is our registered office.

11.2 The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office. However, we shall also be entitled to bring an action at the customer's registered office.

11.3 The legal relationships in connection with this contract shall be governed by German substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## 12. Other

12.1 Should individual provisions of these terms and conditions be wholly or partially invalid, this shall not affect the validity of the remaining provisions.

12.2 Insofar as these Terms and Conditions are drafted in German and English, the version drafted in German shall expressly prevail.

