

# GENERAL TERMS AND CONDITIONS OF IBC SOLAR AG

(Version: October 2016)

# General Terms and Conditions of IBC SOLAR AG, Bad Staffelstein, hereinafter: "IBC"

## 1. General provisions

- 1.1 The following General Terms and Conditions only apply to entrepreneurs, legal entities under public law or special funds under public law as defined by section 310 I of the German Civil Code (BGB).
- 1.2 All deliveries, services and offers made by IBC take place exclusively on the basis of these General Terms and Conditions. They form an integral part of all contracts concluded by IBC with its contract partners (hereinafter also referred to as "the Customers") for the deliveries and services offered by IBC. They shall be agreed with the Customer upon placement of the first order and shall apply for all future orders, including if no explicit reference is made to their applicability.
- 1.3 The General Terms and Conditions apply on an exclusive basis; any differing conditions of the Customer shall be excluded unless IBC explicitly confirms their validity in writing. This shall also apply if the delivery takes place without reservation in full knowledge of the Customer's differing terms and conditions.

## 2. Offer, subject matter of the contract

- 2.1 Any offers, whether verbal or written, shall always be subject to change and non-binding, unless they are expressly designated as binding or contain a certain acceptance period.
- 2.2 Orders shall only become legally binding if they are confirmed in writing within a reasonable period or executed as agreed with the Customer's consent (= conclusion of the contract).
- 2.3 The written order confirmation shall, including these General Terms and Conditions, shall determine the type, scope and time of delivery or service. The order confirmation fully represents all the agreements between IBC and its customers with regard to the subject matter of the contract. Verbal assurances made by IBC before conclusion of the contract are not legally binding and verbal arrangements are replaced by the order confirmation, unless it is expressly stated therein that they continue to apply and are binding.
- 2.4 Additions or modifications to the agreements made, including these General Terms and Conditions, must be made in writing to be valid. Transmission by means of fax or e-mail, if these were sent with read confirmation, shall suffice to comply with the written form requirement.
- 2.6 Information from IBC on the object of the supply or service (e.g. dimensions, tolerances, technical data) as well as IBC's representations of the same (e.g. drawings; illustrations) are only approximately applicable, unless its applicability for the purpose contractually envisaged requires precise conformity. These are not guaranteed characteristics, but descriptions or identifications of the supply or service. Differences which are customary in the trade which are the result of legal provisions or which represent technical improvements, as well as the replacement of components with parts of equivalent value, are permissible in so far as they do not affect the applicability for the purpose contractually envisaged.
- 2.7 Assurances of characteristics or guarantees of quality and durability must be agreed separately in writing.

## 3. Prices

- 3.1 Unless stated otherwise in the order confirmation, prices are in EURO and include delivery ex work or warehouse, plus packaging. However, they shall be exclusive of freight, customs, insurance, assembly, other additional costs and the VAT applicable on the day of delivery. These items shall be shown separately in the invoice.
- 3.2 Up to a net order value of EUR 500.00, IBC is entitled to charge a surcharge of EUR 15.00 as a flat fee for additional expenses.
- 3.3 In so far as the prices agreed are based on IBC's list prices and delivery is not to be made until more than four (4) months after the conclusion of the contract, IBC's list prices valid at the time of delivery shall apply (in each case minus an agreed percentage or fixed discount).

## 4. Payment conditions

- 4.1 Unless agreed otherwise in writing, payments must be made net and without deduction immediately after the invoice date. IBC reserves the right only to deliver on advance payment or cash on delivery, and against an irrevocable letter of credit or prepayment, or a similar form of collectible security (such as bank guarantees) for deliveries abroad.
- 4.2 Bills of exchange and cheques are not considered in lieu of payment. Bills of exchange, cheques and securities shall only be accepted with reservation of all rights and with no warranty for timely presentation. Discounting and ancillary expenses shall be borne by the business partner.
- 4.3 Notwithstanding any stipulations by the Customer to the contrary, payments shall first be set off against older payables, and specifically, first against costs and interest and then against the main amount payable.
- 4.4 Offsetting against counter-claims of the Customer or the retention of payments on the basis of such claims is only permitted, if the Customer's counter-claim is undisputed or has been upheld by a court.
- 4.5 The date on which IBC receives payment shall determine whether the payment has been timely made. If the Customer falls into arrears, interest on arrears of 8 percentage points over the applicable base interest rate shall be charged, without prejudice to further claims. The right to apply higher rates of interest and to claim additional damages in the event of default remains unaffected.

- 4.6 IBC is entitled to make outstanding deliveries or provide outstanding services only against advance payment or the provision of security, if after the conclusion of the contract, it learns about circumstances which are likely to considerably reduce the Customer's credit worthiness and due to which the payment of IBC's outstanding accounts receivable under the relevant contractual relations (including those from other individual orders for which the same framework contract applies) is put at risk.

## **5. Delivery, time of delivery.**

- 5.1 Deliveries are made ex works.
- 5.2 Periods and deadlines announced by the IBC in advance shall always be only approximate unless a fixed term or a fixed deadline is expressly assured or agreed. In so far as shipment has been agreed, delivery terms and delivery deadlines refer to the time of handover to the forwarding agent, freight carrier or other third party commissioned for the transport.
- 5.3 If a delivery deadline agreed in writing is not met, the Customer must initially determine a reasonable extension for IBC. If the delivery is not made by the time of expiry of this extension, the Customer shall be entitled to withdraw from the contract by way of written declaration, to the exclusion of other rights.
- 5.4 If only a part of the delivery is made, the right of withdrawal shall be restricted to this part, unless the delivery made is no longer of interest to the Customer. When IBC creates a delay due to reasons for which it is responsible, the Customer shall only be entitled to claim compensation if the cause of the delay is attributable to wilful intent or gross negligence.
- 5.5 If a delay in delivery or service occurs due to force majeure or due to events that make the delivery significantly more difficult or impossible, such as subsequent difficulties in sourcing materials, interruptions to operations, strike, lockout, manpower shortage, transport shortage, official orders, etc., including if these occur with suppliers or their sub-suppliers, the delivery or service may be postponed by the duration of the hindrance or a reasonable lead time or the Customer may withdraw from the contract entirely or in part due to the unfulfilled part.
- 5.6 If the hindrance lasts for more than three (3) months, the Customer shall be entitled, following a reasonable deadline, to withdraw from the contract with regard to the unfulfilled part and request the reimbursement of any advances paid, to the exclusion of further rights.
- 5.7 In case of part delivery, the Customer may only withdraw from the entire contract if the fulfilment of the remainder of the contract is no longer of interest to it.
- 5.8 If the goods are not accepted by the Customer in whole or in part ten (10) days after the confirmed delivery deadline or in the case of deliveries on call, including for partial quantities, if the goods are not requested within ten days of the confirmed availability deadline, IBC shall be entitled to optionally push the Customer's order to the next availability date, i.e. following stipulation and expiry of a reasonable period of grace, to dispose of the object of delivery in whole or in part and to supply the Customer with a reasonable longer lead time or to store the goods and charge a storage fee of 0.5% of the order value for every week commenced, or following expiry without effect of a reasonable period of grace to cancel the order in whole or in part and charge a cancellation fee of 5% of the value of the cancelled order. The right to assert and provide evidence of higher or lower storage costs is reserved.
- 5.9 Beginning with the second time that the customer postpones a confirmed delivery date, IBC is entitled to charge the customer a processing fee of EUR 50.00 per instance. If the postponement(s) induced by the customer leads to an overall delay of the respective delivery of 28 days, IBC is entitled to exercise its options pursuant to section 5.8.

## **6. Place of performance, shipping, packaging, transfer of risk, acceptance**

- 6.1 The place of performance for all obligations under the contractual relationship is Bad Staffelstein, unless agreed otherwise. If IBC is also responsible for installation, the place of performance is the place where installation is to take place.
- 6.2 The shipping method and packaging shall be selected at the discretion of IBC.
- 6.3 The risk shall be transferred upon handover of the object of delivery (determined by the commencement of the loading process) to the forwarding agent or carrier or to any other third party in charge of carrying out the shipment to the Customer, at the latest. This also applies if partial deliveries are made or if IBC has undertaken to provide other services (e.g. shipping or installation). If shipment or handover is delayed due to circumstances caused by the Customer, the transfer of risk to the Customer shall take place on the day IBC is ready to dispatch and has notified this to the Customer.
- 6.4 The shipment shall only be insured against theft, breakages, transport, fire or water damage or other insurable risks at the express request of the Customer and at its own cost.
- 6.5 If acceptance has to take place, the object of purchase shall be deemed to have been accepted if
- the delivery, and the installation, if IBC is also responsible for installation, has been completed,
  - IBC informs the Customer about this with indication of the assumed acceptance as defined herein and has requested the Customer's acceptance,
  - twelve (12) working days have passed since the delivery or installation or the client has begun using the object of purchase (e.g. commissioning of the plant) and in this case, six (6) working days have passed since the delivery or installation, and
  - the Customer has failed to declare acceptance within this period for a reason other than a defect notified to IBC, which prevents or substantially affects using the object of purchase.

## **7. Defect claims, limitation of liability and testing obligation**

- 7.1 The objects delivered must be carefully examined immediately after delivery to the Customer or to the third party assigned by it. They shall be deemed to have been accepted if IBC does not receive a notice of defects in written form (Article 126 BGB, German Civil Code) with regard to visible defects or other defects that were discernible upon immediate and careful examination within seven (7) days after delivery of the object of delivery or within seven (7) days after discovery of the defect or any other earlier time in which the defect was discernible for the Customer during normal use of the object of delivery without closer examination. At the

request of IBC, the object of delivery must be returned to IBC free of carriage charges. In the event of justified complaint, IBC shall remunerate the costs of the most favourable shipping route; this does not apply if (1) the costs increase because the object of delivery is located at a place other than that of the intended use or (2) the delivered object is moved out of the territory of Europe.

- 7.2 If the notice of defects is made on time and is justified, the Customer's entitlement to remedy shall be restricted, whereby IBC may deliver a defect-free item as a replacement or remove the defect at the place of release or the plant, at its own discretion. If remedial efforts fail twice, the business partner may reduce the contract or withdraw therefrom.
- 7.3 Defect claims shall not arise if repairs, alterations or restorations to the original state are undertaken by the Customer or a third party with respect to the delivered objects, without the express consent of IBC, improvement work is hindered by the Customer or third parties, commissioning is undertaken contrary to the instructions of IBC or if a defect is caused by improper or careless use or natural wear and tear. In any case, the Customer must bear the additional costs of remedying the defect resulting from the modification. In the event the delivered object is moved out of the territory of Europe IBC is not obliged to bear or to reimburse any transportation costs.
- 7.4 The warranty period is twenty four (24) months for IBC brand products and twelve (12) months for all other products from delivery, or if acceptance is required, from acceptance.
- 7.5 Deliveries of used items agreed with the Customer in individual cases shall not be covered by a warranty for material defects.

#### **8. Liability for compensation claims due to fault**

- 8.1 The liability of IBC for compensation claims, irrespective of their legal grounds, in particular due to impossibility, default, defective or incorrect deliveries, breach of contract, infringement of duties during contract negotiations and tort, is limited in accordance with section 8 herein, insofar as it is based on fault.
- 8.2 IBC shall not be liable in the case of simple negligence of its governing bodies, legal representatives, employees or other vicarious agents as far as it does not concern an essential contractual obligation. Essential contractual obligations include the obligation to deliver the object of delivery free of essential defects and in a timely manner, advisory, protective and due care obligations that enable the Customer to use the object of delivery as intended under the contract or those concerning the protection of the life and limb of the Customer's staff or the protection of its property from significant damage.
- 8.3 Insofar as IBC is liable for damages on the grounds of and in accordance with section 8.2, this liability is limited to damage which IBC has foreseen when concluding the contract as a possible consequence of a breach of contract or which IBC should have foreseen by applying due care and attention. Furthermore, indirect damage and consequential damage resulting from defects in the object of delivery is only subject to compensation insofar as such damage is typically to be expected when using the object of delivery as stipulated.
- 8.4 The above liability exclusions and limitations shall apply to the same extent to the governing bodies, legal representatives, employees and other vicarious agents of IBC.
- 8.5 Insofar as IBC provides technical information or acts as an advisor and this information or advice is not part of the contractually agreed scope of services owed by it, this is done free of charge and with the exclusion of any liability.
- 8.6 The limitations of section 8 herein do not apply to IBC's liability on account of deliberate actions, for guaranteed characteristics, on account of injury to life, limb or health or under the product liability law.

#### **9. Retention of title**

- 9.1 Ownership of all goods delivered (retained goods) shall be retained until all outstanding claims which result from the business relationship with the customer are settled. The goods and any goods that replace them according to this section and are subject to this retention of title as defined by this section are hereinafter referred to as the retained goods.
- 9.2 The Customer shall store the retained goods at no cost for IBC. It must store the retained goods separately and indicate the installation site on request.
- 9.3 The Customer may sell and process the retained goods in the regular course of business as long as it is not in arrears or an application is filed for the opening of insolvency proceedings in relation to the assets of the customer. Pledging or collateral assignments are not permitted.
- 9.4 If the retained goods are processed by the Customer, it is agreed that the processing shall be done in the name and on behalf of IBC as manufacturer and the Customer directly acquires the ownership or, if the processing is carried out with materials from a number of owners or the value of the processed objects is higher than that of the retained goods, the co-ownership (fractional ownership) of the newly produced objects according to the relation between the value of the retained goods and the value of the newly produced objects. In the event that no such acquisition of ownership should occur with the vendor, the purchaser hereby transfers his future ownership or, in case of the above-mentioned relation, co-ownership of the newly produced objects as security to IBC. If the retained goods are combined or inseparably mixed with other objects to form an integral object and if one of the other objects is to be seen as the main object, then, insofar as the main object belongs to it, the Customer shall transfer the proportional co-ownership of the integral object to IBC according to the ratio stated in the 1<sup>st</sup> sentence.
- 9.5 The Customer hereby transfers its claims against the acquirer which result from the resale or another legal ground to IBC by way of security. The same applies for other claims which take the place of the retained goods or which otherwise arise with reference to the retained goods, such as insurance claims or claims arising from actions in tort in case of loss or destruction. The Customer is irrevocably authorised to collect the claims in its own name. IBC may only object to this authorisation to collect in case of an enforcement event.
- 9.6 If a third party takes possession of the retained goods, in particular by distraint, the Customer will immediately indicate IBC's ownership and inform IBC of this. Insofar as the third party is not in a position to compensate IBC for court fees or out-of-court costs incurred in this connection, the Customer shall be liable for them.

- 9.7 On request and if it so chooses, IBC will release the retained goods and the objects or claims standing in their stead, insofar as their value exceeds the amount of the secured claims by more than 50%.
- 9.8 If, in the event of conduct by the business partner contrary which is to the contract, in particular payment arrears, the company may take back the retained goods at the cost of the business partner or request the assignment of the business partner's claim for return of property against third parties. The taking-back and seizure of the retained goods by the company shall not constitute a withdrawal from the contract.

## **10. Returns**

- 10.1 The acceptance of returned goods constitutes an exception and is a voluntary courtesy provided by IBC. Returned goods will only be accepted if
- they were supplied and invoiced by IBC and
  - they are in their original packaging and are in perfect, resalable condition and
  - IBC has consented to accept the returned goods in writing.
- 10.2 Returns shall not be accepted if
- the net value of the goods is less than EUR 100 and/or
  - the goods were not purchased by the Customer directly from IBC and/or
  - the delivery date for the goods was three (3) months or longer ago (calculated from the date referred to in section 3 (1) herein) and/or
  - the goods are not saleable (e.g. goods no longer included in the official IBC price list, components or products made to measure or tailor-made especially for the Customer, which have since been subject to technical changes) and/or
  - the item is expressly identified as being excluded from the returns policy.
- Furthermore, returned goods will not be accepted if the returns procedure set out in section 10.3 of these General Terms and Conditions is not followed.
- 10.3 If a Customer would like to return goods, it must first ask the order processing department at IBC in writing whether a return is possible, specifying the product number, the quantity ordered, the delivery note and invoice number.  
IBC will then examine whether the goods can be returned and either consent to or reject the return in writing.  
The goods must be returned within two (2) weeks. This period begins on the date IBC issues its written consent. For the deadline to be met, goods must be received by IBC within this two-week period. Goods received after the two-week deadline will not be accepted and will be sent back to the Customer at the Customer's own risk and expense.  
Goods are returned solely under the responsibility and at the expense of the Customer. In particular, the Customer will bear the risk of proper transportation (including correct pallet size), deterioration, damage and loss until the goods are received by IBC.  
Goods sent to IBC without carriage paid or without prior consent will not be accepted and will be sent back to the Customer at the Customer's own risk and expense. The same applies, if one or more inaccuracies and/or incompleteness, with regard to the statements pursuant to section 10.1 and/or 10.2 are noticed after receipt of the respective goods by IBC.
- 10.4 IBC will record all returns in a credit note. Thus, the net value of the goods, minus a processing fee amounting to 10% of the net value of the goods, will be refunded for the returned goods. The credit note will be accounted for against the Customer's next invoice. No credit note amounts will be paid out in monetary form.
- 10.5 Complaints regarding credit notes can only be accepted if they relate to the current month or the previous month.
- 10.6 This returns policy may be extended or modified at any time.

## **11. Final provisions**

- 11.1 The legal venue for all disputes resulting from the business relationship between IBC and the Customer is, at the discretion of IBC, Coburg, Germany or the Customer's place of domicile. Coburg is the exclusive legal venue for legal action against IBC. Mandatory statutory regulations regarding exclusive legal venues shall remain unaffected by this clause.
- 11.2 The laws of the Federal Republic of Germany apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 11.3 If one or more clauses of these Terms and Conditions or a provision of other agreements are or become invalid, this shall not affect the validity of the remaining provisions or agreements. The relevant legal provision shall take the place of the invalid provision. The same applies in the event of a regulatory loophole.

## **NOTE:**

The Customer hereby acknowledges that IBC stores data from the contractual relationship as defined by section 28 of the Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG) for the purpose of data processing and reserves the right to transmit the data to third parties, if required for the purposes of fulfilling the contract.



Smart Systems  
for Solar Power

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