

### § 1 Area of application, form

- (1) These General Terms and Conditions of Sale and Delivery (T&C) apply to all our business relations with our customers ("Customer"). The T&C solely apply if the Customer is an entrepreneur (§ 14 of the German Civil Code), a corporate body under public law or legal entity under public law.
- (2) In particular, the T&C apply to contracts on the sale and/or delivery of chattels ("merchandise"), irrespective of whether we manufacture the merchandise ourselves or purchase it from suppliers (§§ 433, 651 of the German Civil Code). Unless otherwise stipulated, the T&C apply in the version effective at the time of the Customer's order; said version is available on the Internet at [www.ssl-energie.de](http://www.ssl-energie.de) at all times. In any case, the last version of the T&C conveyed to the Customer in writing also apply to similar future contracts as a framework contract without us having to refer to them again in each individual case.
- (3) Solely our T&C apply. Differing, conflicting or supplementary general terms and conditions of the Customer or a third party only become an integral part of the contract if and insofar as we have explicitly agreed to their validity. This requirement of consent applies in any case, for example even if we execute delivery to the Customer unconditionally whilst being aware of the T&C from the Customer or third party. Even if we refer to a letter containing terms and conditions of the Customer or a third party or a letter, which refers to them, this does not constitute any agreement with the validity thereof.
- (4) Additions to and alterations of the stipulated agreements including these T&C must be in writing to be valid; this also applies to legally relevant declarations and notifications by the Customer relating to the contract (e.g. deadlines, notices of defects, withdrawals or reductions). With the exception of managing directors or authorised officers, our employees are not authorised, to enter into agreements differing therefrom. Transmission using means of telecommunications, in particular fax or email, suffices to comply with the written form, provided that the copy of the signed declaration is transmitted. Statutory formal requirements and other verifications, in particular in the case of doubt of the legitimacy of the declarant, remain unaffected.
- (6) Notes regarding the validity of statutory regulations merely have clarifying significance. Therefore, even without such a clarification, the statutory regulations apply, insofar as they are not directly changed or explicitly excluded in these T&C.

### § 2 Contract conclusion

- (1) Our offers are non-binding and subject to change if they are not explicitly marked binding or include a specific term of acceptance. This also applies if we have provided the Customer with catalogues, technical documentation (e.g. drawings, diagrams, calculations, references to DIN standards), other product descriptions or documentation – including electronic versions – for which we reserve ownership and copyrights. The Customer may not make these items accessible to third parties; neither as such nor with regard to contents, publish them, use or duplicate them or allow third parties to do so. Upon our request, the Customer must return said items to us in full and destroy possible copies made if no longer required by the Customer in the proper course of business or if negotiations do not lead to the conclusion of a contract with us. This does not apply to the storage of data made electronically available for the purpose of common data back-up.
- (2) Our specifications regarding the delivery item (e.g. weights, dimensions, serviceability, power rating, tolerances and technical data) as well as our descriptions of the same (e.g. drawings and illustrations) are merely approximate indications, insofar as the usability does not require exact conformity in line with the contractually stipulated purpose. These are not guaranteed characteristics rather descriptions or designations of the merchandise. Deviations customary in trade and deviations based on statutory regulations or which constitute technical improvements as well as the replacement of components with comparable parts and other acceptable modifications are permissible, insofar as they do not compromise the usability in line with the contractually stipulated purpose. In particular, technical modifications, improvements according to latest state-of-the-art technology, improvement of construction, composition and material selection are deemed acceptable for the Customer.
- (3) The ordering of the merchandise by the Customer is considered a binding offer of contract. Unless otherwise specified in the order, we are entitled to accept this offer of contract within 14 calendar days after the receipt thereof.
- (4) The acceptance can either be declared in writing (e.g. by means of order confirmation) or by delivering the merchandise to the Customer.

### § 3 Delivery time and delay in delivery

- (1) The delivery time is agreed upon individually or indicated by us upon accepting the order. If this is not the case, the delivery time is approx. six weeks as of contract conclusion.
- (2) If the merchandise is sent to a different place of destination (sale by delivery to a place other than the place of performance) upon request by and at the expense of the Customer, the delivery times and delivery dates refer to the point in time, in which the merchandise is transferred to the forwarding agent, carrier or other third party charged with the transport thereof.
- (3) If we cannot adhere to binding delivery times for reasons beyond our control (non-availability of the merchandise), we will immediately inform the Customer thereof and at the same time, convey the estimated, new delivery time. If the merchandise is still not available within the new delivery time, we have the right to withdraw from the contract entirely or in part. We will immediately reimburse the Customers for any payments already made. In this sense, cases of non-availability are, in particular, the unpunctual delivery to us by our supplier, if we entered into a congruent hedging transaction, neither we nor our supplier are/is at fault or if we have no obligation of procurement in individual cases.
- (4) Irrespective of our rights pertaining to the Customer's default, we can request an extension of the delivery times and performance deadlines from the Customer by the period of time, in which the Customer does not meet his/her contractual obligations towards us.
- (5) The commencement of delay in delivery is determined by the statutory regulations. However, a reminder by the Customer is required in any case. If we are unable to adhere to the delivery date, the Customer can request compensation for liquidated damages caused by default in delivery. The compensation for liquidated damages amounts to 0.5% of the net price (value of merchandise delivered) for each complete calendar week of default of the merchandise delivered late; however, a total not exceeding 5% of the value of the merchandise delivered late. We reserve the right to prove that the Customer did not incur any damages or merely considerably less damage than the preceding lump sum.
- (6) The Customer's rights pursuant to § 8 of these T&C and our statutory rights, in particular in the event of the exclusion of the performance obligation (e.g. based on impossibility or unacceptability of performance and/or supplementary performance) remain unaffected. We are not liable for the impossibility of delivery or for delays in delivery, insofar as these were caused by force majeure or other occurrences, which were not foreseeable at the time of contract conclusion (e.g. operational disturbances of all kinds, difficulties in the procurement of materials or electricity, delays in transport, strikes, legitimate lock outs, absence of manpower, electricity or raw materials, difficulties in obtaining necessary official approvals, official measures or the non-existent, inappropriate or unpunctual delivery by suppliers), which are beyond our control. If such occurrences make delivery or performance significantly difficult or impossible and said hindrance is not merely of temporary nature, we have the right to withdraw from the contract. In the event of hindrances of temporary nature, delivery times or performance deadlines are extended or delivery and performance dates are delayed by the time of the hindrance plus an appropriate lead time. Insofar as the acceptance of delivery or performance is unacceptable to the Customer as a result of the delay, the Customer can withdraw from the contract by immediately informing us in writing.

### § 4 Delivery, passing of risk, acceptance, default of acceptance

- (1) Delivery is executed Ex Works Geesthacht or Haag (EXW Incoterms 2010), where the place of performance for the delivery as well as possible supplementary performance is as well. Unless otherwise stipulated, we have the right to determine the type of shipment (in particular carriers, dispatch route, packaging) for sales by delivery to a place other than the place of performance.

- (2) We only have the right to partial deliveries if
  - (a) the partial delivery can be used by the Customer in line with the contractual intended use,
  - (b) the delivery of the remaining merchandise ordered is ensured and
  - (c) no considerable additional work or expenses arise for the Customer (unless we are prepared to assume these costs).
- (3) At the latest, the risk of accidental loss or accidental deterioration of the merchandise is passed to the Customer upon delivery of said merchandise. In the case of sales by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the merchandise as well as the risk of delay is already passed to the forwarding agent, carrier or other person or establishment designated to carry out shipment upon delivery of the merchandise; the commencement of the loading process is decisive here. This also applies if partial deliveries are executed or if we have assumed other services (e.g. shipment or installation). If shipment or delivery is delayed as a result of circumstances caused by the Customer, the risk is passed to the Customer as of the day on which the merchandise is ready for shipment and we have notified the Customer accordingly.
- (4) Insofar as acceptance has been stipulated, this is decisive for the passing of risk. Furthermore, the statutory regulations in line with the law on contracts for work and services apply to a stipulated acceptance. If the Customer is in default of acceptance, this will be considered as delivery or acceptance.
- (5) If the Customer is in default of acceptance, fails to provide cooperation or if our delivery is delayed due to other reasons for which the Customer is responsible, we have the right to demand compensation for damages resulting therefrom including additional expenditures (e.g. costs for storage). We charge costs for liquidated damages amounting to 0.2% of the amount invoiced for the delivery item to be stored per passed working day, a maximum of 5% of the amount invoiced, commencing with the delivery time or – in the absence of a delivery time – with the notification of the merchandise being ready for shipment. The assertion and verification of other or lesser storage costs remain reserved, equally the verification of greater damage and our legal claims (in particular the reimbursement of additional expenses, appropriate compensation, termination); however, the lump sum is to be deducted from further monetary claims. The Customer has the right to prove that we did not incur any damages or merely considerably less damage than the preceding lump sum.
- (5) The shipment is only insured against theft, breakage, damage in transit, damage caused by fire or water or other insurable risks upon explicit request by the Customer and at the expense of the Customer.

### § 5 Prices and terms of payment

- (1) The prices apply to the scope of services and delivery indicated in the order confirmations. Extra services or special services are charged separately. The prices are in EURO Ex Works Geesthacht or Haag (EXW Incoterms 2010) plus packaging, value added tax, customs duty as well as fees and other public charges in the case of exports as well as possible cargo insurance if required by the Customer.
- (2) Insofar as our list prices form the basis for the stipulated prices and delivery is not to be executed until more than four months after contract conclusion, our list prices effective at the time of delivery apply (in each case minus a stipulated percentage or fixed discount).
- (3) The transfer or delivery of the merchandise is strictly executed against advance payment; delivery against invoice is possible however, subject to successful credit assessment. Unless otherwise stipulated, invoices we issue are immediately due for payment after the receipt thereof and must be paid in full by the Customer within ten calendar days as of date of invoice. The deduction of a discount is only permissible in the case of written separate agreement.
- (4) The Customer is in default when the preceding payment deadline has expired. In the event of default in payment, we are entitled to charge the Customer an appropriate fee for each reminder amounting to 5.00 EUR, except if the Customer can verify that the actually incurred costs are lower. During the default period, the purchase price will be charged interest at the respectively applicable statutory default interest rate (§ 288 of the German Civil Code) however, at least nine percentage points above the respectively current base rate (§ 247 of the German Civil Code). We reserve the right to claim further damages caused by default. Our entitlement to maturity interest (§ 353 of the German Commercial Code) from merchants remains unaffected.
- (5) Irrespective of further rights and claims in the event of default, we are entitled to extraordinarily terminate a possibly already existing extension agreement and to make all bills outstanding immediately payable by the Customer.
- (6) The Customer only has the right of set-off or right of retention insofar that the Customer's claim is derived from the same contractual relationship and is established as indisputable, final and absolute. In the event of defective delivered merchandise, the rights on the part of the Customer, in particular pursuant to § 7 sec. 5 sentence 2 of these T&C, remain unaffected.
- (7) If facts come to light after contract conclusion, which constitute objective doubt that the Customer will be able to dutifully fulfil the contract, e.g. insolvency or repudiation of contract, we are entitled to make the balance due immediately payable by the Customer, demand advance payment or collaterals or to withdraw from the contract after the expiration of an appropriate respite (§ 321 of the German Civil Code). For contracts pertaining to the production of non-fungible items (custom-made items), we can immediately withdraw; the statutory regulations regarding the dispensability of deadlines remain unaffected.
- (8) We have the right to assign claims resulting from the business relationship. The Customer is only permitted to assign claims with our prior written consent.

### § 6 Retention of title

- (1) We retain title of the merchandise sold until all present and future bills outstanding resulting from the sales contract and an ongoing business relationship (secured claims) have been paid in full.
- (2) The Customer is obligated to treat the purchased item with care, as long as ownership has not yet been transferred to the Customer. If service and maintenance work needs to be conducted, the Customer must duly carry said work out at his/her own expense.
- (3) Merchandise subject to retention of title can neither be pledged to a third party nor assigned as collateral prior to full payment of the secured claims. The Customer must immediately inform us in writing if a bankruptcy petition has been filed or insofar as third party access (e.g. seizures) to the merchandise we own takes place. Insofar as third parties are not able to reimburse us for costs relating to court and out-of-court proceedings in connection with legal action pursuant to § 771 of the Code of Civil Procedure, the Customer is liable for the loss we incur.
- (4) In the event of behaviour contrary to contract on the part of the Customer, in particular non-payment of the purchase price due, we have the right to withdraw from the contract according to the statutory regulations and/or to demand the return of the merchandise based on the retention of title. Demanding the return of the merchandise does not simultaneously include withdrawing from the contract; rather we are entitled to demand the return of the merchandise and reserve the right of withdrawal. If the Customer does not pay the purchase price due, we are only permitted to assert these rights if we have previously, and unsuccessfully, set the Customer a reasonable period for payment or if such a deadline is unnecessary in accordance with statutory regulations.
- (5) Until further notice, the Customer is authorised, pursuant to (c) below, to resell and/or process the merchandise subject to retention of title in the proper course of business. In this case, the following additional provisions apply:
  - (a) The retention of title extends to products resulting from the processing, mixing or combining of our merchandise at their full value; we are considered the manufacturer. If a third party retention of title remains after a processing, mixing or combining with third party merchandise, we acquire co-ownership in the ratio of the invoice values of the merchandise to be processed, mixed or combined. Furthermore, the same applies to the emerging product as for the merchandise delivered subject to retention of title.
  - (b) The bills outstanding against third parties resulting from the resale of the merchandise or product are hereby now assigned to us by the Customer fully or amounting to our possible co-ownership per-

centage according to the preceding section by way of collateral. We accept the assignment. The Customer's obligations stated in sec. 3 also apply in regard to the assigned bills outstanding.

- (c) We and the Customer are authorised to collect any debts. We undertake not to collect the claim, as long as the Customer meets his/her payment obligations, there is no absence of his/her performance and we do not assert the right of retention by exercising a right pursuant to sec. 4. However, if this is the case, we can request that the Customer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the corresponding documents and informs the debtors (third parties) of the assignment. Moreover, in this case we have the right to revoke the Customer's authorisation to resell and process the merchandise subject to retention of title.
- (d) If the feasible value of the securities of our bills outstanding is exceeded by more than 10%, we will release securities of our choice upon request by the Customer.

#### § 7 Customer's claims for defects

- (1) Unless otherwise stipulated in the following, the statutory regulations apply to the Customer's rights regarding material defects and defects of title (including incorrect and short delivery as well as improper assembly or inadequate assembly instructions). The statutory special regulations for the final delivery of merchandise to a consumer (recourse of the entrepreneur pursuant to §§ 478, 479 of the German Civil Code) remain unaffected in all cases.
- (2) The basis for our liability for defects is primarily the agreement concluded on the quality of the merchandise. All product descriptions, which are the object of the individual contract, or which we (in particular in catalogues or on our website) advertised, are considered to be an agreement on the quality of the merchandise. Agreements on quality, which deviate from these T&C, or the furnishing of a guarantee, require our written confirmation to be effective. Our employees are not authorised to furnish guarantees or conclude agreements on quality, which go beyond the written contract and these T&C. The power of representation of the managing directors and authorised representatives remains unaffected.
- (3) The Customer's claims for defects require that the Customer attended to its duty of inspecting the merchandise and giving notice of the defects (§§ 377, 381 of the German Commercial Code). If a defect is detected upon delivery, during inspection or at any other later point in time, we must be immediately notified thereof in writing. This notification is deemed immediate if it is made within a period of two weeks. Sending said notification in a punctual manner suffices in adhering to the deadline. Irrespective of this duty to inspect and notify, the Customer is obligated to report apparent defects (including incorrect and short delivery) in writing within two weeks as of delivery; here, sending the notification in a punctual manner also suffices in adhering to the deadline. The detection of non-apparent defects must be reported in writing within one week as of the detection thereof; however, if the defect was already visible to the Customer during normal use at an earlier point in time, this earlier point in time is decisive for the commencement of the notice period. If the Customer fails to properly inspect the merchandise and/or give notice of defects, our liability in accordance with the statutory regulations for the defect, which was not, not punctually or not properly reported, is excluded.
- (4) If the delivered item is defective, we can initially choose whether we execute supplementary performance by rectifying the defect (rectification) or by delivering an item without defects (replacement). The supplementary performance neither includes the disassembly of the defective item nor the reinstallation thereof if we were not originally obligated to install said item. In the event of replacement, the Customer must return the defective item to us in accordance with the statutory regulations. Our right to refuse supplementary performance pursuant to statutory requirements remains unaffected.
- (5) We are entitled to make the owed supplementary performance dependent on whether the Customer pays the purchase price due. However, the Customer is entitled to retain a portion of the purchase price appropriate in relation to the defect.
- (6) The Customer must give us the time and opportunity required for the owed supplementary performance, in particular, surrender the rejected merchandise for the purpose of examination. If there is actually a defect, we bear the costs required for the examination and supplementary performance, in particular for transport, route-related transport, labour and material costs (not the costs for disassembly and installation). Otherwise, we can demand reimbursement from the Customer for costs incurred from the unwarranted request for rectification of defects (in particular examination and transport costs), unless the lack of a deficiency was not detectable by the Customer. Costs for transport are not borne if the costs increase because the merchandise is at another location other than the place of intended use.
- (7) In imminent cases, e.g. endangerment to operational safety or to prevent excessive damages, the Customer has the right to rectify the defect itself and to demand reimbursement of the costs objectively required for this from us. We must be immediately informed, if possible in advance, if the Customer applies such measures of his/her own. The right to apply measures of his/her own is not applicable if we were entitled to refuse a respective supplementary performance in compliance with the statutory regulations.
- (8) If supplementary performance has failed, which requires at least two attempts at rectification, or if a deadline to be set by the Customer for supplementary performance has unsuccessfully expired or is unnecessary according to the statutory regulations, the Customer can withdraw from the sales contract or reduce the purchase price. There is no right of withdrawal based on insignificant defects.
- (9) For defects of components from other manufacturers, which we cannot rectify due to licensing or practical reasons, we will, at our own discretion, assert our warranty claims against the manufacturer and supplier for the account of the Customer or assign said claims to the Customer. Warranty claims against us can only be asserted for defects under the other conditions and according to these T&C if the legal enforcement of the aforementioned claims against the manufacturer and supplier was not effective or is futile, for instance due to insolvency. The limitation period of the Customer's respective warranty claims against us is suspended for the duration of the legal dispute.
- (10) The Customer's claims for compensation or reimbursement of fruitless expenditures are only applicable for defects in accordance with § 8 and are otherwise excluded.
- (11) Warranty becomes inapplicable if the Customer modifies the merchandise or has the merchandise modified by a third party without our consent and this results in making rectification impossible or unacceptably more difficult. In any case, the Customer must bear the additional costs of rectification incurred by the modification.
- (12) The delivery of used merchandise agreed upon with the Customer in individual cases is executed excluding any warranty for material defects.

#### § 8 Other liability

- (1) Unless otherwise stipulated in these T&C including the following provisions, we are liable for a breach of contractual and non-contractual obligations according to the statutory regulations.
- (2) Our liability for compensation, irrespective of legal grounds, in particular due to impossibility, default, defective or incorrect delivered items, breach of contract, breach of obligations in contract negotiations and unlawful acts is determined, insofar as culpability is involved in each case, according to this § 8 (2):
- (a) We assume unlimited liability for intent and gross negligence as well as for strict liability required by law (e.g. pursuant to the Product Liability Act) or the liability resulting from a guarantee regardless of negligence or fault.
- (b) In the case of negligence, we assume liability for damages resulting from loss of life, physical injury or damage to health – subject to a more lenient standard of liability according to statutory regulations (e.g. for diligence exercised in own matters).
- (c) Furthermore, in the event of negligence regarding a breach of material contractual obligations, we are only liable for damages, which we anticipated as possible consequence of a breach of contract at contract conclusion or which we should have been able to anticipate practicing due diligence. Material contractual obligations include the obligation to punctually deliver and install the merchandise, its absence of deficiency in title as well as such material defects, which more than merely insignificantly compromise its functionality or usability, as well as obligations to consult, protect and care for, which are to enable the Customer to use the merchandise as specified in the contract or which aim at protecting the lives and health of the Customer's personnel or protecting his/her property against severe damages. Liability for indirect and unforeseeable damages, lost output and downtimes, lost profit, lost savings and financial damages due to third party claims is excluded in the case of negligence.

(d) Our liability to pay material damages resulting from negligence is limited to a maximum amount of 5,000,000.00 EUR per claim, even if it is a matter of a breach of material contractual obligations.

- (3) Insofar as the seller provides technical information or operates in a consulting capacity and this information or consulting service does not belong to the scope of services owed or contractually stipulated, this is conducted free of charge and excluding any liability.
- (4) Insofar as liability in accordance with sec. 2 and 3 is excluded or limited, this also applies to the personal liability of our employees, workers, representatives, bodies and vicarious agents.

#### § 9 Limitation period

- (1) Notwithstanding § 438 sec. 1 no. 3 of the German Civil Code, the general limitation period for claims resulting from material defects and defects of title amount to one year as of delivery. Insofar as acceptance is stipulated, the limitation period commences with the acceptance. The limitation period in the event of a recourse of the entrepreneur pursuant to §§ 478, 479 of the German Civil Code remains unaffected; it amounts to five years calculated as of delivery of the defective item.
- (2) This period does not apply to the Customer's damage claims resulting from loss of life, physical injury or damage to health or from intentional or grossly negligent breaches of duty by us or our vicarious agents, which respectively lapse in accordance with the statutory regulations.
- (3) The preceding limitation periods for sales law also apply to the Customer's contractual and non-contractual damage claims, which are based on a defect of the merchandise, unless the application of the regular statutory limitation period (§§ 195, 199 of the German Civil Code) would, in individual cases, lead to a shorter limitation period. However, the Customer's damage claims pursuant to § 8 sec. 2 lit. a) and b) solely lapse according to the statutory regulations.

#### § 10 Industrial property rights

- (1) According to this § 10, we are responsible for the merchandise not being subject to any third party industrial property rights or copyrights. Each contracting party will immediately inform the other contracting party in writing, in the event that claims are asserted against one of the parties based on the infringement of such rights.
- (2) In the event that the merchandise infringes on a third party industrial property right or copyright, we will, at our own discretion and expense, alter or replace the merchandise in a manner, that third party rights are no longer infringed on but that the merchandise still fulfils the contractually stipulated functions or provide the Customer with the right of use by concluding a licence agreement. If we are unable to do this within an appropriate period of time, the Customer has the right to withdraw from the contract or to appropriately reduce the purchase price. Possible damage claims by the Customer are subject to the limitations stated in § 8 of these T&C.
- (3) In the event of infringements based on products from other manufacturers, which we supplied, we will, at our own discretion, assert our warranty claims against the manufacturer and supplier for the account of the Customer or assign said claims to the Customer. Warranty claims against us can only be asserted in these cases according to this § 10 if the legal enforcement of the aforementioned claims against the manufacturer and supplier was not effective or is futile, for instance due to insolvency.

#### § 11 Applicable law and place of jurisdiction

- (1) The laws of the Federal Republic of Germany excluding international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods, apply to these T&C and the contractual relationship between us and the Customer.
- (2) If the Customer is a merchant in terms of the German Commercial Code, a corporate body under public law or legal entity under public law, the sole – also international – place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is our business location in Kelheim. The same applies if the Customer is an entrepreneur in terms of § 14 of the German Civil Code. In all cases however, we are also entitled to file suit at the place of performance of the delivery obligation in accordance with these T&C or a primary individual agreement or at the Customer's general place of jurisdiction. Primary statutory regulations, in particular regarding exclusive jurisdictions, remain unaffected.
- (3) Insofar as the contract or these T&C contain omissions, the legally effective provisions, which the contracting parties would have stipulated according to the economic objectives of the contract and the purpose of these T&C, had they been aware of the omission, are deemed stipulated to fill these omissions.

#### Note pursuant to § 33 of the Federal Data Protection Act (BDSG):

The Customer acknowledges that we store data resulting from the contractual relationship in accordance with § 28 of the Federal Data Protection Act for the purpose of data processing and that we reserve the right to transmit said data to third parties (e.g. insurance companies), insofar as required for the fulfilment of contract.

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last updated 01/2018