

## **General Terms and Conditions for Business Customers**

(hereinafter abbreviated to GTCs)

of the company

**ERTEX SOLARTECHNIK GmbH**

**Peter Mitterhoferstrasse 4**

**3300 Amstetten**

(hereinafter referred to as **Seller**)

### **I. Area of application**

1. Unless otherwise expressly agreed to the contrary, the Seller's GTCs, of which the customer has been informed, are applicable. The customer agrees that if they use the GTCs, in any cases of doubt, the GTCs of the Seller shall be assumed, even if the conditions of the party to the contract remain unchallenged.
2. Action by the Seller to fulfil contractual obligations shall not be deemed as an approval of the conditions deviating from our terms and conditions. However if ambiguities remain when interpreting the contract then these shall be clarified in such a way that those elements apply as agreed that are usually agreed in similar cases.
3. All agreements, subsequent amendments, supplements, ancillary agreements etc. must be in written form to be valid and hence also the original signature or secure electronic signature.
4. The Seller shall supply the goods in merchantable quality; the content of the product descriptions and details at the Seller's disposal shall not form part of the contract unless express reference has been made to these. In particular, product descriptions and details provided by the Seller do not represent any promise of a guarantee unless otherwise expressly agreed to the contrary.

### **II. Cost estimates, offers**

1. In the absence of any other written agreement, cost estimates are non-binding and free of charge. Offers provided by the Seller are subject to change and subject to payment. Any money paid in respect of an offer will be credited to the customer if an order based on the offer is issued.
2. If the customer orders goods, they are making a binding declaration that they wish to acquire the ordered goods (contractual offer). If offers or orders are sent to the Seller, then this binds the offeror to an appropriate period of at least 2 weeks, calculated from the date of receipt of the offer.

3. Every order requires a written order confirmation by the Seller (contract acceptance) in order for the contract to be concluded. Sending or handing over the goods ordered by the customer is also taken as conclusion of the contract.
4. Work drawings produced by the Seller must be approved by the customer by email, fax or letter.
5. Plans sent by the Seller to the customer shall also be in return for payment, whereby point XIV. applies in this regard.

### **III. Prices**

1. Unless otherwise agreed in the order, calculations shall be based on the prices valid at the time of implementation of the order, on the understanding that prices may change at any time. Price increases due to increases in production costs (material costs, purchase prices, wages, customer duties, freight, foreign exchange rates, taxes, bank rates etc.) between the date of order or request and date of delivery shall be borne by the customer.
2. The statutory VAT is not included in the prices, and so the stated prices are quoted exclusive of statutory VAT, unless otherwise expressly agreed to the contrary in writing. The statutory VAT shall, consequently, be invoiced separately and shown separately on the invoice at the statutory rate on the date of invoicing.
3. Unless agreed otherwise, the quoted prices are taken to be ex works without packaging, uninsured and exclusive of statutory taxes.
4. The glass transport racks, insofar as these do not represent disposable packaging, shall remain in the possession or ownership of the Seller. The customer is obliged to return these within 3 months at their own expense, failing which the cost of the glass transport racks shall be charged to the customer.

### **IV. Terms and conditions of payment, interest on late payment**

1. Insofar as no other agreements have been made, 100 % of the contractual sum is payable in advance or to be secured by means of bank guarantee. If other agreements are made, which contain a later payment date, the Seller is entitled to raise a partial invoice, in the event of delays to the provision of services not caused by the Seller, for services already provided. Bills of exchange or cheques, which the Seller reserves the right to accept, are merely accepted as payment, any costs or expenses associated with encashment shall be borne by the customer. No liability shall be assumed for lodging a protest in good time.
2. The assertion of any defects shall not release the customer from their obligation to pay.

3. The customer is not permitted to offset any amounts due against claims against the Seller that are not approved by the courts or recognised; this applies correspondingly to rights of retention.
4. Ensuring payment is made by the due date is an essential condition for the Seller to provide further services or fulfil the contract. In the event of late payment by the customer or of an infringement of any other contractual obligation the Seller is entitled to suspend current work after setting an appropriate period of extra time and to withdraw from the contract. The customer shall bear all costs and damages associated with this including any loss of profit as well as all preproduction costs, standby costs and planning costs.
5. In the event of delayed payment, the customer is also obliged to reimburse the Seller for all necessary pre-trial costs for an adequate prosecution, in particular, collection expenses, the costs of any intervening debt collection agencies as well as the costs of any lawyers (based on the scale of charges) engaged by the Seller. Moreover, in the event of any payments being delayed by the customer, invoices shall be due immediately without any discounts.
6. Should the customer be delaying payments or acceptance the Seller shall be entitled to demand 12 % interest on late payment, otherwise the provisions of the Austrian Late Payment Act (ZVG) apply.
7. Payments made by the customer shall be set first of all against the oldest debt, and here first to any costs, then to the interest and any other additional fees and only then to the goods that are subject to retention of title.

#### **V. Delivery period, delivery delay**

1. The Seller shall endeavour to keep to the agreed dates for fulfilment or delivery as far as possible. However there is no legal entitlement to this; all the aforementioned dates of service provision or delivery are non-binding and not guaranteed, unless the delivery period is confirmed by the Seller as being expressly binding.
2. The Seller is, in any case, entitled to make partial deliveries.
3. The delivery period shall not begin until all implementing details have been fully clarified. In the event of an agreed modification to the order, the Seller shall be entitled to recalculate the delivery period.
4. Target fulfilment or delivery dates can, moreover, only be kept to insofar as the customer carries out all necessary preparatory work and accomplishes the basic requirements on their own. The customer must, therefore, comply with their duty to cooperate to the extent necessary and must fulfil their contractual obligations.
5. Price increases caused by delays which are the customer's fault entitle the Seller, in any case, to assert a claim to these separately against the customer or to charge them

subsequently. The Seller is entitled, in any case, to withdraw from the contract if, following order confirmation but before delivery, the Seller becomes aware of circumstances relating to the economic conditions of the customer which lead the Seller to fear that there is no longer sufficient collateral to fulfil the Seller's claims.

6. The Seller shall not be liable for delivery delays caused by pre-suppliers, manufacturers or transporters; nor for those cases which can be ascribed to force majeure or to other circumstances not capable of being influenced by the Seller which also apply to official decrees, strikes, illness rates and operational failures as well as any cases of vis major. The customer shall be made aware of such circumstances without delay. In such cases the delivery period shall be extended by the duration of the impediment plus a reasonable start-up period of at least 2 weeks; the Seller is also entitled to withdraw from the contract, in total or in part, with regard to that part of the contract not yet performed.
7. If the impediment lasts longer than 2 calendar months, the customer is entitled to withdraw from the contract, in writing, having granted an appropriate period of grace, of not less than 2 weeks, with regard to the part of the contract not yet performed.
8. If a delivery period, which has been confirmed as binding, is exceeded, for reasons for which the Seller is responsible, the Seller shall be granted, via a registered letter, an appropriate period of grace of at least 8 weeks to provide the service. After unsuccessful expiration of the grace period, the customer may withdraw from the contract by giving notice in writing. Claims for compensation based on delay in delivery are however excluded.
9. The Seller reserves the right to make slight construction or design modifications during the delivery period.

#### **VI. Quantities supplied, supplies called up**

1. The customer is contractually obliged to divide up and accept the quantity ordered during the term of the contract. If the quantity ordered is not accepted within the call-up period then the Seller is entitled to demand acceptance of and payment for the whole remaining quantity. Upon expiry of the term of the contract the customer is in default if they do not accept the non-divided-up and called up proportion of the quantity ordered.
2. If a call up period has not been specified and if the customer has not called up further quantities within a period usual for such call ups, the Seller is entitled to stipulate a period for the customer for further call ups and, if this period has expired without any result, to demand acceptance and payment in respect of the whole remaining quantity ordered.

3. An appropriate price adjustment in favour of the Seller in the event of major, unforeseeable cost changes to a particular order (>2 %) or quantity changes (reduction >10 %) during the period of a call up order is deemed to be agreed. The agreed prices may not be changed for other reasons, particularly not where a competitor offers a lower price.

#### **VII. Performance, dispatch and handover conditions**

1. Unless otherwise specified in the written order confirmation, delivery shall be agreed as ex works of the Seller. In this regard, delivery is fulfilled following notification that the goods are ready for collection. The customer shall check and accept the purchase object at the agreed place within 7 days of notification of availability; otherwise the purchase object shall be deemed, in any case, to have been accepted as being in a proper condition and defect-free.
2. If it has been expressly agreed that the purchase object is to be sent, then delivery is fulfilled with the departure of the object from the delivery depot/works. The risk passes to the customer as soon as the Seller has handed over the consignment to the transporter or the consignment has left the delivery depot/works in any other way at the instigation of the Seller. The choice of dispatch type is incumbent upon the Seller unless the customer has provided express written instructions in this regard. Dispatch is always for the account of and at the risk of the customer. Transport insurance shall only be concluded in those cases where the customer requests this expressly in writing. The costs incurred in this regard shall be borne by the customer.
3. The customer is obliged to examine deliveries immediately for damage and to send immediate notification in writing stating any concrete objections. The statutory period for obvious defects starts with the handover; in the case of hidden defects, with their discovery. Claims under warranty are excluded when the statutory period has expired without any defects being notified. The postmark is taken as proof of defects being notified in time.
4. Any danger, including that of accidental loss, passes to the customer at the time of fulfilment; fulfilment is the same if the customer is in default of acceptance.
5. The customer is responsible for providing appropriate access and unloading facilities. The customer shall give notification of any difficulties in good time. If unloading should be delayed or if no one is available for the goods handover on the agreed delivery date, the costs of a repeated delivery attempt shall be borne by the customer.
6. If the delivery date should be different to the assembly date, the Seller is entitled
  - a. to store the goods at the customer's expense (entailing a storage fee of €10 /m<sup>2</sup>/day)

b. to deliver the goods to the customer, who shall make available a lockable room for the temporary storage of the goods free of charge.

In both cases liability passes to the customer; at the same time, the Seller has a claim on fulfilment of contract.

7. If the preparation of an acceptance report is agreed, this shall become an integral element of this contract. The date of acceptance shall be contractually agreed.
8. Slight defects, which do not seriously restrict the function of the goods, do not represent any reason to refuse acceptance.
9. In addition, the relevant product specifications (PV module series) as well as the Seller's installation and safety instructions (VSG EVO and VSG as well as VSG ASI) shall apply.
10. If the goods/plant are in working order and if dates were given twice for acceptance of the goods/plant, but the dates were not observed or accepted by the customer, the goods/plant shall be deemed to be accepted.
11. All material tests, acceptance costs and construction supervision costs required by the authorities or by the customer shall be borne by the customer.

### **VIII. Warranty**

1. The Seller warrants the goods according to the provisions set out below, which contain the warranty rules but are no guarantee in the legal sense. In the case of merchandise, any manufacturer's guarantees shall remain unaffected by these provisions.
2. The warranty period is 12 months from handover.
3. If technical leaflets or installation instructions are not followed or if changes to the products/goods are undertaken, then the warranty shall not apply unless the customer proves that the defect complained about is not based on any of these circumstances.
4. The warranty rights of the customer require that the customer has complied properly with its legally owed obligation to examine the goods and give notification of defects immediately, but, in any case, no later than within 7 days of handover. Written notification of hidden defects shall be provided immediately, but, in any case, within 7 days of their discovery, and shall be described in detail. Not providing the Seller with written notification of and precise description of the defects immediately shall result in termination of all warranty claims, whereby the customer is solely responsible for providing evidence that their claim is justified.
5. There is no primary claim to a price reduction or conversion. Any warranty claims shall, at the discretion of the Seller, be fulfilled within an appropriate period of grace by rectification, replacement or exchange of parts. Any exchange, delivery and/or transport costs resulting from the free replacement of goods as well as any assembly costs incurred by the customer may not be charged to the Seller and shall be borne

exclusively by the customer. Rectification, replacement, exchange or any other similar action undertaken by the Seller shall not extend the warranty and/or guarantee period.

6. Slight or insignificant reductions in the value or usability of the items delivered do not establish a fault from which rights can be derived.
7. If, following a failure in subsequent performance, the customer chooses to withdraw from the contract, the customer shall not be entitled in addition to compensation for damages due to the defect. If subsequent performance is unsuccessful due to the Seller's fault and if the customer chooses to claim damages in this regard, the goods shall remain with the customer if this is reasonable. Insofar as the contract violation was not caused maliciously by the Seller, the amount of the damages shall be limited to the difference between the purchase price and the value of the defective item.
8. In principle, only the manufacturer's product description applies as agreed as an indication of the quality of the goods. Public statements, recommendations or advertising as defined by paragraph 922 (2) of the Austrian Civil Code (ABGB) are excluded as a basis for determining contractual conformity.
9. Presumption of defect according to paragraph 924 sentence 2 of the Austrian Civil Code (ABGB) is excluded.
10. If the customer's plans contain parameters which are recognised by the Seller as being critical or infeasible from a manufacturing or engineering point of view, the customer shall be informed thereof by submission of a counterproposal. In such cases it is the customer's own responsibility to check whether the proposed modification can be used in their own production process. No assurances or liability shall be assumed by the Seller with regard to the suitability of the proposed modification for the customer's intended use. Insofar as the Seller provides services based on customer guidelines, the Seller is excluded from liability for the suitability of the product with regard to the intended purpose of the goods, their proper construction, compliance with safety regulations and design requirements and the suitability of the material.
12. Warranty claims against the Seller are not assignable and may only be asserted by the direct party to the contract.
13. Where a customer wishes to return goods but not due to defects, these shall only be accepted after prior written approval and the customer shall bear the cost of the returns.

### **IX. Guarantee**

1. For modules from the Seller's production plant, being explicitly not prototypes, a guarantee shall apply for 5 years from handover, that, under normal application, installation, operating and maintenance conditions, these modules shall be free from defects in materials and workmanship for a period of 5 years from the date of handover of the modules from the Seller to the customer. If a module should not conform to this

quality, the Seller shall, during a period of 5 years from handover of the modules from the Seller to the customer, at its own discretion, have the product repaired or replaced or grant a reduction to the sale price. Excluded from this regulation is breakage of glass, of whatever type and whatever cause.

2. All other additional claims and demands by the customer are excluded, in particular claims for compensation for lost profit, compensation for use, direct or indirect damages and claims for replacement due to damage caused outside of the product.
3. The Seller shall guarantee for a period of 5 years from handover that, under normal conditions, the transparency of insulation glass modules shall not be impaired by dust or film formation in the inner part of the pane. If such defects should occur, the Seller will provide a replacement free of charge ex works; any other or additional claims are expressly excluded.
4. Glazing damage which has been caused by exceptional thermal, chemical, dynamic or structural load, is not covered by the guarantee promise, the Seller is hereby excluded from any liability.

#### **X. PV module series output guarantee**

1. If, within a period of 10 years of the date of the sale, the output of a module is less than 90 % of the minimum module output specified on delivery or if, within a period of 20 years of the date of the sale, the output of a module is less than 80 % of the minimum module output specified on delivery, the Seller shall first check whether such loss in output from the module can be traced back at all to defects in materials or workmanship. It is assumed as a matter of principle that the output guarantee can only apply to modules that have been used by the customer in mainland Europe.
2. If the customer should have a reasonable suspicion that modules provided by the Seller are providing a reduced output, the customer shall inform the Seller hereof in writing as soon as the drop in output is discovered. In this regard, the customer must provide the Seller with the following information: original invoice plus receipt + module type + serial number (n).
3. If it appears that the drop in output of a module can be traced back to defects in the Seller's materials or workmanship, the Seller has the right to compensate for the shortfall in output of the module either by replacing it by supplying additional modules or by repairing the module. However, in the event of damage to modules (glass breakage or similar irrespective of fault) for which the original cells from the time of the project launch are no longer available, the Seller reserves the right to recreate modules with a similar cell or to install replacement modules at a different site.
4. Storage of the appropriate quantities of the project-related cell type can be offered to the customer, whereby however the customer will be invoiced separately by the Seller



with regard to storage of the appropriate quantities of the project-related cell type desired by the customer.

5. This output guarantee excludes and does not justify additional claims brought by the customer against the Seller, in particular claims for compensation for lost profit, compensation for use, direct or indirect damages and claims for replacement due to damage caused outside of the product.

### **XI. Liability and compensation for damages**

1. Claims for compensation in cases of slight negligence are excluded; this does not apply to personal injury. Claims for compensation are subject to a limitation period of 6 months following acknowledgment of damage and at-fault party and, in any case, of 3 years following the performance of the service or delivery. Claims for compensation due to lost profit, compensation for use, direct or indirect damages and claims for replacement due to damage caused outside of the product are excluded. In any case, all claims for compensation brought against the Seller are limited by the amount of the respective order value.
2. Ertex Solartechnik GmbH is only liable for those damages (this, moreover, also applies to pre-contractual circumstances and to all duties to warn and inform) to the extent that these are based on malicious intent or gross negligence; liability for damages based on slight negligence is excluded.
3. Presumption of fault according to paragraph 1298 of the Austrian Civil Code (ABGB) is deemed to be excluded.
4. Claims for compensation are subject to a limitation period of one year following handover of the goods; claims must be asserted against the Seller immediately in writing as soon as they are known, otherwise this right will be lost.
5. The statutory Austrian provisions apply with regard to product liability. All and any recourse claims made against us by the customer, or a third party, based on the item "product liability" as defined by the Austrian Product Liability Act (PHG) are excluded, unless the recourse claimant proves that the fault is our responsibility and we were grossly negligent as a minimum.

### **XII. Retention of title**

1. The delivered goods shall remain the property of the Seller until there has been full payment of all claims (capital, interest, expenses and costs) arising from the business relationship; however, the buyer has the right to use the goods for their own account and at their own risk. The whole retention of title shall only expire, in any case, on that date when the purchase price has been received in full by the Seller and the Seller has the right of free disposal over this. Retention of title may – with or without withdrawal

from the contract – be asserted with regard to the whole delivery and performance of service.

2. The buyer is liable for any damage to the purchase object, for loss, destruction and withdrawal and shall also bear the risk of an impossibility of use; this provision applies independently of any fault; securities provided remain, in any case, unchanged.
3. The buyer is obliged to treat the purchase object with care and to protect it from contamination and damage. Furthermore, if the Seller so requests, the buyer is obliged to insure the purchase object against fire and water damage and theft at the buyer's own expense, with the insured sum being sufficient to cover the replacement value and to tie the insurance policy for the benefit of the Seller, which the buyer must be able to prove to the Seller upon request. Insofar as maintenance and inspection work is required, the buyer must carry this out at the appropriate time at their own expense.
4. The buyer is entitled to have at their disposal the goods subject to retention of title – including processed goods – in the normal and proper course of business. Ownership must be reserved, however, until full payment of the purchase price has been made.
5. Any pledge or chattel mortgage without the written approval of the Seller is inadmissible.
6. In the event of seizures or other interventions by third parties, the Seller must be informed immediately by registered letter in order to make it possible for the Seller to take the necessary steps. The buyer is liable for all expenses and consequences that the Seller must suffer in order to avert a seizure of this type.
7. In the case of combining, mixing or resale or other further processing of the goods subject to retention of title by the customer, the customer hereby assigns all their demands and claims against third parties, insofar as these arise due to resale or other proceeds including insurance payments, up to the amount of the sale value of the goods subject to retention of title, to the Seller as collateral until all the Seller's claims have been satisfied, whereby this assignment shall be accepted by the Seller. In the event that goods are passed on for payment the buyer shall transfer to the Seller the price to be received from the future buyer by way of anticipated possession. The customer is obliged to inform the third party of this. The customer is also obliged to disclose to the Seller their customers' names and addresses and to provide full access to books and accounts.
8. If the deliveries or services effected by the Seller are combined, mixed or processed with other items, the Seller acquires co-ownership of the new item at the ratio of the value of the goods or services subject to retention of title by the Seller to the value of the new item at the time they were combined, mixed or processed. The Seller's retention of title extends to the proportion that is co-owned.

9. The customer is entitled to collect the claims assigned to the Seller from the third-party purchaser for the Seller; the amounts collected shall be paid immediately to the Seller. The Seller also reserves the right, however, to collect the claim directly from the third-party purchaser.

### **XIII. PROPERTY RIGHTS, COPYRIGHT**

1. The customer is responsible for indemnifying the Seller and holding it harmless against claims by others, that goods which have been manufactured by the Seller according to the customer's specifications do not violate or infringe upon the property rights of third parties. The Seller shall only file for litigation in order to avert claims in this regard if the customer expressly demands this and confirms their willingness to assume the costs caused hereby and provides the Seller with sufficient security with regard to the anticipated legal costs.
2. Both the customer and the Seller are obliged to treat as a trade secret all non-public commercial and technical detailed information which becomes known to them both through the business relationship. Drawings, models, templates, patterns, plans and similar objects may not be surrendered or made available in any other way to third parties. The duplication of such objects is only permissible within the scope of operating requirements and copyright provisions.
3. The customer is also obliged to use documents, drawings, plans, constructive performance and proposals for the design and manufacture of modules with which it has been provided exclusively for the agreed purpose. Any publication, passing on or making available to third parties is prohibited without the Seller's express approval.

### **XIV. PROJECT DEVELOPMENT COSTS / CERTIFICATION COSTS**

1. Services provided by the Seller on the customer's instructions in the course of project development or preparation are, in principle, in return for payment. This relates, for example, to grant applications to the competent authorities or detailed technical plans, particularly module drawings, inverter designs and simulations.
2. If an order is placed, these services shall apply as services not shown separately in the invoice but satisfied by the agreed price.
3. If no order is placed, the Seller reserves the right to invoice separately for the costs incurred to this date for the services provided according to point 1. This also applies, in particular, in cases where no order is placed despite approval of the grant application by the authority.
4. If project-specific preparation of certificates should be necessary and/or expressly requested from the Seller by the customer, the customer is obliged to compensate the Seller for the amount incurred by the Seller for the respective certifications, whereby

this shall also include the costs of any external certification agencies used in this regard. Therefore, all certifications desired and/or ordered by the customer must be paid for and the Seller is entitled to assert a separate claim against the customer for the costs incurred in this regard.

#### **XV. Data protection**

The customer has been informed that business transactions are facilitated by data processing equipment. Accordingly, the customer's data (address, delivered products, delivered quantities, prices, payments, cancellations etc.) are recorded in an automated data file and stored until the end of the business relationship. The customer expressly approves the storage and use of their data to the extent described.

#### **XVI. Place of performance, jurisdiction**

1. The place of performance is Amstetten. The exclusive place of jurisdiction is the court which is legally responsible for A-3300 Amstetten (the Seller's court), being at the present time either Amstetten district court or St. Pölten regional court.
2. Austrian law applies exclusively, excluding the UN Sales Convention.

#### **XVII. Final provisions**

1. Even if individual sections of the contract are legally invalid, the remaining parts of the contract shall remain binding.
2. Ineffective provisions shall be replaced by other provisions which come closest to achieving the desired result, according to the principles of care and good faith.
3. The GTCs in the German language are legally binding. Further GTCs in English, French, Italian or other languages are for information purposes. Where translations have been formulated in a way which is disputed, the German GTCs in the German language shall take priority over those translated into other languages.