

GENERAL TERMS AND CONDITIONS OF TRADE of **energetica® Industries GmbH**

1. Introduction

The basis of our deliveries and services are formed by these General Delivery, Assembly and Payment Terms and Conditions; any deviations, supplements, amendments or additional agreements are only binding if they are expressly denoted as such with reference to these conditions. Otherwise, the "General Delivery Terms and Conditions for the Electrical and Electronics Industry" shall apply alongside the "Assembly Terms and Conditions of the High and Low-voltage Industry of Austria" in their currently valid version. Any purchase terms and conditions of the party ordering or any other general terms and conditions of the party ordering/contract partner are not valid inasmuch as they conflict with these General Delivery, Assembly and Payment Terms and Conditions. This in particular if they are mentioned in the order or in confirmation of order by the party ordering/contract partner or are denoted as exclusively valid unless conflicting terms and conditions of trade have been recognised in writing on the part of Energetica. Verbal arrangements are only valid if they have been confirmed by us in writing.

2. Conclusion of agreement

- 2.1. Our quotations are non-binding and subject to confirmation. Agreements shall only come into being on receipt of our written confirmation of order. If the General Delivery, Assembly and Payment Terms and Conditions of Energetica Industries GmbH conflict with the General Terms and Conditions of Trade of the contract partner and if the General Delivery, Assembly and Payment Terms and Conditions of Energetica Industries GmbH have not been expressly recognised by the contract partner, it is regarded as having been agreed that Energetica only concludes agreements on the basis of its General Delivery, Assembly and Payment Terms and Conditions and that only the General Delivery, Assembly and Payment Terms and Conditions of Energetica Industries GmbH, even if he has sent conflicting General Terms and Conditions of Trade, by virtue of the fact that he accepts a delivery on the part of Energetica Industries GmbH, in spite of conflicting General Terms and Conditions of Trade, without complaint. This shall also apply for the case that the contract partner only raises objection after receipt of the delivery on the part of Energetica Industries GmbH and does not return the delivered goods immediately at his own expense to Energetica. In the case of objection, no agreement shall come into being.
- 2.2. All information concerning the dimensions, weight and composition or technical data of the plant or the parts of the plant are only approximately relevant. We reserve the right to carry out modifications to the design up to completion or delivery, or the before the plant being handed over.
- 2.3. The customer is obliged to check our confirmation of order immediately. Any deviation from the order shall be pointed out without delay. If this does not occur, the content of the confirmation of order shall be regarded as having been approved by the customer.
3. **Prices, payment conditions, payment delay**
- 3.1. If nothing else has been agreed, the prices for delivery are valid ex works excluding packaging, loading, insurance and transport plus VAT.
- 3.2. If a fixed price has not been expressly agreed, assembly shall be calculated according to time in accordance with our assembly cost rates.
- 3.3. Any taxes, customs duty, charges or other public levies shall be borne by the party ordering.

- 3.4. Payment shall be made as follows: 100 percent of the contract sum in advance against bank guarantee or according to agreement.
- 3.5. If the customer does not make agreed and due payments, even down payments, also from previous deliveries, we can refuse the fulfilment of this and all other orders, without setting a period of grace, and claim damages due to non-performance.
- 3.6. In the case of payment default, we are entitled to charge the party ordering default interest, without setting our own default period with default interest, of 5% above the statutory bank rate of the Austrian National Bank
- 3.7. The party ordering cannot meet his payment obligations through the set-off of claims towards us unless these claims have been recognised by us in writing or the counter claim has been recognised by a court with legal effectiveness.
- 3.8. If the party ordering is fully or partly in default with his payment, a preliminary service to be provided by him or the preparation of the acceptance record, we can withdraw from the agreement, granting a reasonable period of grace, or declare the full purchase price to be due.
- 3.9. If circumstances become known after the conclusion of the agreement which is, in our opinion, liable to impair the creditworthiness of the party ordering, all our demands shall become due immediately. Further, we are entitled to cease production, delivery and assembly immediately.
- 3.10. For the case of payment default, the party ordering undertakes to refund all costs, expenses and cash advances arising for us as well as those costs arising for us through pursuance of our claims.

4. Delivery and assembly periods

- 4.1. All information concerning delivery and assembly periods represent probable non-binding delivery dates.
- 4.2. The delivery period commences on the date of our confirmation of order and fulfilment of all technical, commercial, legal and financial prerequisites and preliminary works, which are the responsibility of the party ordering and to be provided by him. In the case of non-punctual fulfilment of the contract obligation of the party ordering and in the case of interruption of execution by the party ordering, the delivery period shall be correspondingly extended.
- 4.3. Further, the delivery period shall be extended on the occurrence of unforeseen events, in particular in case of weather conditions which do not permit undisturbed assembly or starting up of operation of the order. Energetica Industries GmbH shall not be liable for non-culpable or negligently caused delivery delays. In such a case, the party ordering shall waive the right to withdraw from purchase and assertion of any type of claim for damages. In the case of delay in or interruption to the execution of works caused by the party ordering, the party ordering shall bear all additional costs arising through the delay or interruption and Energetica Industries GmbH can declare its work and its outlay to be due by way of a part invoice.
- 4.4. Part and preliminary deliveries are permitted.
- 4.5. Adherence to the assembly and delivery period requires the party ordering to make all necessary arrangements for immediate and unhindered deployment of staff and our machines. Any costs arising through delay shall be borne by the party ordering.
- 4.6. If the delivery or the point of time of assembly is delayed through a circumstance arising on our part but for which we are not responsible, a reasonable extension of the original delivery period shall be granted.
- 4.7. Any withdrawal from the agreement for already provided, independent works is ruled out. In addition, claims of the party ordering, as far as legally permitted, due to non-performance, delayed performance or any follow-up damage are ruled out. No type of claim for damages whatsoever is due to the customer in this connection.

5. Shipping, transfer of risk, acceptance

- 5.1. If no agreement has been made with respect to the shipping ways and the means of conveyance, we shall make such selection.
- 5.2. The party ordering guarantees the accessibility and reachability of all agreed places of assembly and delivery with vehicles, machines and cranes of all kinds which are necessary for delivery or assembly.
- 5.3. If nothing else has been expressly agreed, we always deliver ex works. The transfer of risk is aligned to INCOTERMS in its current version.
- 5.4. If shipping is delayed for reasons for which we are not responsible, the risk shall be transferred to the party ordering from readiness for shipping on.
- 5.5. Our delivery conditions are always valid ex store Klagenfurt, on delivery, transfer is regarded as having taken place at the latest when the goods have been made available to the recipient on the vehicle concerned in front of the point of delivery and on a paved road. Unloading shall be carried out by the customer. On transfer of the goods to the haulage company, no matter by whom it was ordered, the risk is transferred to the customer and this shall also apply for deliveries for which the postage has been paid.

6. Acceptance

- 6.1. If the drawing up of a plant acceptance is agreed for plant, this shall be an integrating part of this agreement. If this is not separately agreed, the plant operator bears the responsibility for creating and keeping such a plant book. The date of acceptance shall be contractually agreed.
- 6.2. The party ordering shall check the goods on delivery both for completeness and for lack of damage. Both for the case of incomplete deliveries and for the case of damaged deliveries, subsequent demands - no matter of which type - are ruled out if complaint is not made correctly.
- 6.3. Slight defects, those are such which do not seriously restrict the function of the plant, do not represent any reason to refuse acceptance.
- 6.4. If the plant is in a functional condition and if the plant has been registered for acceptance twice, but the dates not kept to by the party ordering, the plant shall be regarded as having been irrevocably accepted.
- 6.5. All material examinations, acceptance and calibration costs and the costs for construction supervision required by the authorities or by the party ordering shall be borne by the party ordering.
- 6.6. For the case of any defects existing, the party ordering is entitled to retain the costs necessary for the elimination of defects from our unsettled demands. There is no further-reaching right of retention for the remuneration for work or unsettled demands. Nor is the party ordering entitled to retain unsettled demands from other deliveries due to defects in a delivery.

7. Reservation of title

- 7.1. All deliveries remain our property up to complete payment of the purchase price and all assembly, additional, delivery and ancillary costs; this applies in particular to the settlement of still outstanding demands even if they originate from other deliveries of ours to the Purchaser.
- 7.2. The party ordering shall draw the attention of third parties asserting claims, in particular settlement rights for the reserved goods, to our reservation of title, expressly and without delay.
 - a.) The customer may combine or mix the reserved delivery within the framework of ordinary business operations with goods which belong to us. In this case, we shall acquire the co-ownership in the ratio of the value of our goods to those with which they are combined or mixed. The customer is entitled further, within the framework of ordinary business operations, to process or revise the reserved property. This shall take place then on our behalf so that we acquire co-ownership in the new product in the ratio of the value of our goods to the others. In all these cases, the customer shall keep the ownership or co-ownership for us. The customer assigns now all claims to remuneration against his purchasers due to him from further sale of the goods in our ownership or co-ownership to us. He is obliged to notify us about this without the need for special request.
- 7.3. In the case of further sale, the proceeds achieved hereby shall take the place of the further-sold product. The party ordering assigns from the very beginning the demands due to him for the further sale of reserved goods to us. The party ordering is obliged to keep the proceeds from the sale separate and to note the assignment of demands in his business books.
- 7.4. The party ordering only acquires the right to use in the software, construction drawings, operating instructions, plant design programs, patents etc. necessary for correct operation of the plant. The party ordering undertakes to keep these documents, programs and plans under lock and key, and not to use them in any way except for that necessary for correct operation of the plant and not to pass them on in their original form or as a copy to third parties.
- 7.5. If the goods for which the title is reserved or demands assigned to Energetica Industries GmbH are pledged or if seizure is threatening, Energetica Industries GmbH shall be informed and notified of all circumstances which are necessary for assertion of their claims.

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- 7.6. The authority of the customer to sell **9r** combine goods with other goods in ordinary business operations terminates at the latest on its payments being stopped or at the point of time at which the opening of insolvency proceedings for the assets of the customer is applied for. The customer is obliged in this case on first demand by Energetica Industries GmbH to surrender the reserved goods or the proceeds kept in custody to Energetica Industries GmbH. The demand for surrender of the reserved goods does not mean any withdrawal from the purchase agreement.
- 7.7. Any pledge or transfer by way of security of the reserved goods or the assigned demand is not permitted.
- 7.8. Energetica Industries GmbH shall be informed immediately of any pledge stating the execution creditor.
- 8. Warranty**
- 8.1. Warranty claims shall be asserted without any delay by means of registered letter or facsimile with following written confirmation giving an as detailed as possible description of the defects which have appeared and enclosing a copy of the invoice and confirmation of transfer. Decisive for the complaint being lodged in good time is the date of the postmark.
- 8.2. We are not liable for damage which arises for the following reasons:
- incomplete information of the party ordering about the envisaged purpose of use, inappropriate or incorrect use, incorrect assembly or starting up of operation by the party ordering or third parties.
 - incorrect repairs or servicing carried out by the party ordering or his authorised representatives or unauthorised intervention in or modifications to the plant not expressly instructed or permitted by us.
 - natural, operational wear and tear or force majeure.
 - incorrect or negligent treatment, in particular excessive stress - unsuitable operating materials, unsuitable replacement materials, deficient construction works, unsuitable construction soil and all other influences any type.
 - chemical, electrochemical or electrical influences or excessive or deficient supply of energy.
 - plant parts which are already installed at the customer's but which no longer correspond to the state of the art.
- 8.3. For the case of any defects, the party ordering/contract partner has a claim to replacement of the defective goods, price reduction, subsequent delivery of the missing goods or conversion according to the choice of As long as no shorter or longer period has been agreed, warranty claims shall be processed within 15 weeks of assertion in good time by means of registered letter, whereby it is stated once again that the choice of warranty processing is reserved by Energetica Industries GmbH. In the case of replacement or conversion of the agreement, the party ordering/contract partner is obliged to hand over the goods which are subject to complaint to us in our store or our works at his expense. For the case of replacement, we shall be entitled to a period of 15 weeks for the provision of the replacement delivery. Energetica Industries GmbH has the right to provide another remedy instead of the selected warranty remedy. Any further-reaching claims, in particular any claim for compensation for defect follow up damage, loss of earnings, damages, transport costs, compensation for removal or installation costs or other replacement costs are mutually regarded as being ruled out.
- 8.4. The same warranty provisions apply for spare parts as for the original object of delivery.
- 8.5. Claims for damages for only slightly negligently caused damage are ruled no matter what.
- 8.6. We can refuse the elimination of defects as long as the party ordering has not fulfilled his obligations.
- 8.7. Inasmuch as any warranty claims affect the realm of our suppliers, we are entitled, being released from any warranty or damages obligation, to assign our resulting claims against the suppliers to the customer.
- Capacity provision**
- 9.1. The following shall apply to the delivery of photovoltaic modules and for determination and definition of the agreed performance: Modules shall be sold on the basis of module labels which reproduce the nominal capacity of the modules. The contractual number of modules multiplied by the labelled nominal capacity of the modules or the sum of the nominal labelled performance of the modules gives the total delivered capacity. Capacity information in the agreement refers to the nominal labelled module capacity. An agreement is therefore regarded as having been fulfilled when the total of the labelled module capacity corresponds to the contractually agreed total capacity.
- 9.2. The nominal capacity of an individual module is classified by the supplier on the basis of measurements during the production process. The actual capacity of a module is checked through flashing. The party ordering is entitled at any time, at his own expense, with or without the help of the supplier – to flash the module.
- 9.3. It is agreed that checks (module flashings) are to be carried out as follows: The measurement of the individual modules has to take place under standard test conditions, i.e. AM 1.5 at Flashing takes place by means of multi-flashing test devices whereby for the test a reference cell of the supplier has to be used exclusively on a system calibrated by Energetica Industries GmbH and for the purpose of determining the capacity. Within the framework of the multi-flashing test method, the individual light effect period always has to exceed more than 10 milliseconds. It is agreed that the module capacity within the framework of subsequent measurement shall be calculated from the average value of at least 4 tests.
- 9.4. It is agreed further that the module capacity then corresponds to the conditions of this agreement when, within the framework of flashing, the test value determined (flash value) achieves at least the classified nominal capacity of the module according to the module label less the production tolerance stated on the label less the test tolerance of the flasher (flash tolerance) less a 3 percent degradation.
- 9.5. It is determined that claims on the part of the party ordering can only be triggered by minimum capacity of modules. . Inasmuch as the modules provide than the contractual capacity, this shall trigger claims neither for damages nor for warranty or product liability on the part of the party ordering.
- 10. Liability limitation**
- 10.1. We are liable for culpably caused damage inasmuch as gross negligence on our part can be verified. Liability for slight negligence is ruled out just as much as any follow-up damage, loss of earnings of financial loss, savings which could not be achieved, loss of interest and damages from the claims of third persons. Also claims for damages of the party ordering/contract partner shall be reduced to the claim for annulment of the agreement, the claim to contract adjustment through price reduction or subsequent delivery or the claim to replacement of defective or damaged goods.
- 10.2. It is agreed that the choice of fulfilment of a claim for damages is the prerogative of Energetica Industries GmbH. Here also, Energetica Industries GmbH can move away from a certain type of remedy for damages already selected and, in its place, provided a different type of remedy.
- 10.3. All further-reaching demands resulting from the title of warranty and damages are mutually ruled out; the party ordering expressly waives the assertion of further demands.
- 10.4. With respect to the periods and modalities of replacement or annulment/adjustment of/to the agreement that already stated with respect to warranty shall apply.
- 10.5. Any liability for personal injury or material damage which the party ordering suffers as an entrepreneur is ruled out just as much as the liability of our suppliers for material damages which the party ordering suffers as an entrepreneur.
- 10.6. We draw attention to the fact that our plant offers the expected safety and functional suitability only at strict observation and complete adherence to the industrial norms, licensing regulations, safety provisions, operating instruction and other regulations, instruction and notes concerning the installation, start-up, function and servicing of the goods delivered.
- 10.7. If Energetica Industries GmbH selects the replacement of the delivered goods or parts of the goods as the warranty remedy, the goods shall be handed over to us in the original removed condition at our works ramp, that is the wages and costs for removal and installation shall be borne by the Employer.
- 10.8. Excluded from warranty and guaranteed claims is damage which can be put down to incorrect or negligent handling or in case of non-observance of the enclosed operating instruction or installation notes.
- 11. Right to withdraw**
- 11.1. The party ordering can withdraw from the agreement if, for reasons for which we are responsible, performance before the transfer of risk has become finally impossible.
- 11.2. If such impossibility is neither our responsibility nor that of the party ordering, we shall have, in the case of withdrawal from the agreement, a claim to part remuneration in line with the performance.
- 11.3. If the impossibility arises during delay in acceptance or through the fault of the party ordering, he shall be obliged to counter performance.
- 11.4. For the case of unforeseen occurrences, we can withdraw fully or partly from the agreement inasmuch as the occurrences appreciably alter the economic significance or the content of the performance or have appreciable influence on our business.
- 11.5. Further, we are entitled to withdraw from the agreement in the following cases:
- in case of non-culpable incapacity to be able to deliver the goods at the agreed price.
 - if the retrievable agreements are not specified or retrieved at the latest 10 days after request.
 - in case of a lack of or loss of creditworthiness or the ability to pay on the party of the customer unless he pays in advance or provides sufficient security.
 - in case of technical, unforeseen difficulties which lie in the type of the order making execution unreasonable.
 - in case of a lack of raw material, labour or energy or other significant operational disturbances with us or the delivery works.
 - in case of force majeure or unforeseen or other hindrances, strike, shut-out, a lack of raw materials or delivery bottlenecks of our preliminary suppliers.
- 11.6. If the customer or the party ordering refuses to accept the already provided goods, we shall be entitled, after setting a period grace of 14 days, to dispose of the goods otherwise. The Purchaser (customer) or the party ordering is obliged in this case to pay 30% of the order value as cancellation fee to us. The cancellation fee can also be set off or invoiced subsequently within the statutory limitation period
- 12. Place of performance, place of jurisdiction and applicable law**
- 12.1. The place of performance and jurisdiction for the obligations of both parties and for resulting disputes is Klagenfurt / Austria.
- 12.2. Only Austrian law is applicable. The United Nations Sales Convention on Contracts for the International Sale of Goods and the two uniform Hague purchase laws are not applicable.
- 12.3. Contracts, which are composed in different languages, the english respectively german version is valid.
- 12.4. As the responsible court the country court of Klagenfurt/Austria is agreed between the parties.
- With this signature, I confirm the General Terms and Conditions of Trade of Energetica Industries GmbH 9073 Klagenfurt**
- Signature**
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