

## General Terms and Conditions of Purchase of HPS Home Power Solutions AG ("HPS")

Our order is placed subject to the exclusive application of our General Terms and Conditions of Purchase (hereinafter "GTCP").

### **1 Validity**

- 1.1 These GTCP shall apply exclusively. Deviating or conflicting terms and conditions shall not be recognised by us unless we have expressly agreed to them in writing.
- 1.2 These GTCP shall also apply to all future transactions between the parties and even if we accept the goods without reservation in the knowledge of deviating or conflicting conditions.
- 1.3 These GPC apply only to entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law and special funds under public law.

### **2 Offer, acceptance**

- 2.1 All orders, amendments and order confirmations shall only be valid if they are made in writing. The written form requirement also applies to subsidiary agreements and the waiver of the written form requirement.
- 2.2 The contractor is obliged to confirm orders, amendments and order confirmations within a reasonable period of time, but within a maximum period of 10 days. If proper confirmation is not provided, we may revoke the respective order, amendment or order confirmation without any legal or other claims being derived therefrom.

### **3 Prices, payment**

- 3.1 The price is for free delivery to a delivery address specified by HPS in the order, including the respective statutory VAT as well as including the costs for packaging, unless expressly agreed otherwise.
- 3.2 The purchase price is payable within 14 days of proper invoicing with 3% discount or within 30 days of proper invoicing net.
- 3.3 Payments by HPS shall not be deemed an acknowledgement, approval of performance or waiver of notices of defects.

### **4 Set-off, retention**

The Contractor may only assert rights of set-off and retention if the Contractor's due claims are undisputed or have been legally established.

### **5 Delivery**

- 5.1 All delivery dates stated in the order or otherwise agreed are binding. The delivery date shall be the day on which the goods arrive at the delivery address specified in the order.
- 5.2 The contractor is obliged to meet all deadlines defined in this contract. He will inform HPS immediately in text form if circumstances occur or become known to him which indicate that agreed deadlines cannot be met and name a new deadline in agreement with HPS. For the assertion of the claims of the parties, the initially agreed deadlines shall continue to apply irrespective of the naming of new deadlines.
- 5.3 The contractor can only invoke the absence of necessary, contractually agreed duties to cooperate on the part of HPS if these are not provided within a reasonable period of time set by him despite a request in text form.
- 5.4 In the event of a delay in delivery, we shall be entitled to the statutory claims.
- 5.5 It is also agreed that the contractor shall pay us a contractual penalty of 1% of the order volume for each commenced week of exceeding the deadline, but not more than 5 of the order volume, for each culpable exceeding of delivery deadlines. The parties are free to provide evidence that the actual damage incurred is lower or higher than the liquidated damages.
- 5.6 If the contractor is more than 5 weeks in arrears with the delivery, HPS is free to cancel the order free of charge. The cancellation must be made in writing.

### **6 Nature of the service**

- 6.1 The contractor shall provide the contractual services in accordance with the state of the art at the time of conclusion of the contract and by personnel who are qualified to provide the contractual services. The contractor shall inform HPS of relevant changes in the state of the art if these have an influence on the contractual services.
- 6.2 The contractor shall ensure that the contractual services are suitable for the purposes arising from the contract and usable in accordance with the applicable laws.

### **7 Transfer of ownership and risk**

Ownership of the deliveries is transferred to HPS upon arrival of the delivery at the premises of HPS, insofar as HPS has not already acquired ownership of the delivery or individual parts by law or by separate agreement. Until delivery has been made in accordance with the contract, the duty of care and the risk of accidental loss or accidental deterioration shall remain with the contractor.

## 8 Notice of defects

In the case of the delivery of goods which HPS is obliged to inspect in accordance with § 377 of the German Commercial Code (HGB), the period for inspection and notification of an obvious defect in the goods is 30 calendar days from receipt of the delivery. The period for giving notice of hidden defects is 14 calendar days from the discovery of the defect.

## 9 Warranty, recourse of the contractor, limitation period

9.1 HPS is entitled to the statutory warranty claims in full, unless otherwise agreed below.

9.2 HPS can demand the removal of the defect or the delivery of a defect-free item or the production of a new work as subsequent performance at its discretion. The supplementary performance is carried out in agreement with the contractor taking into account the operational concerns of HPS. If several parts of a delivery which are similar according to the state of the art have defects, this is an impermissible partial performance. In the case of such an inadmissible partial performance, the contractor is obligated as a whole to replace all parts of this delivery. - even those for which no specific defect has yet been established - to be taken back.

9.3 The costs of the supplementary performance including the expenses according to §§ 439 para. 2 and 3 BGB as well as the ancillary services required for the supplementary performance shall be borne by the contractor.

9.4 In the event of withdrawal, the contractor shall bear the costs of the return freight.

9.5 The limitation period for claims for defects shall be extended by the time between the notification of the defect and the rectification of the defect.

9.6 The legally determined recourse claims of HPS within a supply chain (recourse of the contractor according to §§ 445a, 478 BGB) are available to HPS without restriction in addition to the claims for defects. In particular, HPS is entitled to demand exactly the type of subsequent performance (rectification or subsequent delivery) from the contractor that HPS owes its customer in the individual case. HPS's statutory right of choice (§ 439 para. 1 BGB) is not restricted by this.

9.7 Before HPS recognises or fulfils a claim for defects asserted by its customer (including reimbursement of expenses in accordance with §§ 445a Para. 1, 439 Para. 2 and 3 BGB), HPS is entitled to inform the contractor of this and to request a statement in writing with a brief description of the facts. If the statement is then not made within a reasonable period of time and no amicable solution is brought about, the claim for defects actually granted by HPS shall be deemed to be owed to the customer of HPS; in this case, the contractor shall be obliged to provide counter-evidence.

9.8 The limitation period is 2 years from complete delivery.

## 10 Product safety, product liability, insurance

10.1 The contractor assures that he complies with the requirements of the EU chemicals regulation REACH (Regulation (EC) No. 1907/2006 of 30.12.2006) as amended from time to time - hereinafter referred to as the REACH regulation -, in particular as soon as the substances have been registered. HPS is not obliged to obtain an authorisation for a delivery item supplied by the contractor within the framework of the REACH regulation. The contractor further assures that it will not deliver any delivery items that contain substances pursuant to:

- Annex 1 to 9 of the REACH Regulation as amended;
- Council Decision 2006/507/EC (Stockholm Convention on Persistent Organic Pollutants, as amended);
- the EC Regulation 1005/2009 on ozone-depleting substances, as amended from time to time
- the Global Automotive Declarable Substance List (GADSL) as amended from time to time (at [www.gadsl.org](http://www.gadsl.org))
- RoHS (2002/95/EC) for products according to their scope of application;
- EU Regulation 765/2008 CE standards must be complied with.

If the delivery items contain substances which are listed on the so-called "Candidate List of Substances of very High Concern" ("SVHC list") according to REACH, the contractor is obliged to notify this immediately. This also applies if substances not previously listed are added to this list in the case of current deliveries. The current list can be viewed at [http://echa.europa.eu/chem\\_data/authorisation\\_process/candidate\\_list\\_table\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp). Furthermore, the delivery items may not contain any asbestos, biocides or radioactive material.

If these substances are contained in the delivery items, HPS must be informed of this in writing before delivery, stating the substance and the identification number (e.g. CAS) and a current safety data sheet for the delivery item. The delivery of these delivery items requires a separate release by HPS. The contractor is obliged to indemnify HPS from any liability in connection with the contractor's non-compliance with the above-mentioned regulations or to compensate HPS for damages arising from or related to the contractor's non-compliance with the regulations.

10.2 The contractor is obliged to indemnify us from any liability towards third parties or from claims of third parties arising from the manufacture, delivery, storage or use of the delivered goods upon first request. The indemnification obligation shall not apply insofar as the claim is based on grossly negligent or intentional breach of duty on our part.

10.3 During the term of this contract, the contractor is obliged to maintain product liability insurance with sufficient minimum coverage of € 10,000,000 per personal injury or property damage at all times. Any further claims for damages shall remain unaffected.

## **11 Ownership**

- 11.1 The contractor guarantees that the goods are delivered free of third-party rights and that no third-party rights are infringed by the delivery. In this respect, the contractor shall indemnify us against any claims of third parties upon first request.
- 11.2 Claims arising from defects of title shall become statute-barred in accordance with § 7 (3).

## **12 Provision of materials and retention of title**

All materials provided to the contractor for the fulfilment of the order shall remain our property. All items produced with our materials may not be passed on to third parties or used for purposes other than the contractual purposes without our consent. They must be stored in such a way that they can be returned to us at any time. A right of retention or lien of the contractor is excluded.

## **13 Confidentiality**

- 13.1 The Contractor shall treat all information made available to it by HPS in connection with the Contract ("Confidential Information") as fully confidential and use it exclusively for the performance of the Contract.
- 13.2 The contractor shall only grant access to Confidential Information of HPS to those employees and third parties who are entrusted with the provision of services within the scope of this contract and who have undertaken to maintain confidentiality in the same manner. The contractor shall provide HPS with evidence of the passing on of the obligation upon request.
- 13.3 All information handed over by HPS remains the property of HPS. The same applies to copies, even if they are made by the contractor. The contractor has no right of retention to the information, copies or data carriers.
- 13.4 The Contractor shall inform HPS immediately of any indications of a breach of the provisions of this Clause 14.
- 13.5 The obligations under this Clause 14 shall not be affected by the termination of the Contract.
- 13.6 HPS may withdraw from the contract in whole or in part if the contractor fails to comply with his obligations under this section "Confidentiality" within a reasonable period of time set. The contractor shall be liable to HPS for all damages incurred by HPS as a result of the breach of its obligations.

## **14 Brexit**

The Contractor shall bear all costs for the performance of its contractual obligations under this Contract arising from the withdrawal of the United Kingdom from the European Union. This includes in particular such costs as are incurred to ensure compliance with the law then in force. Insofar as these costs, taking into account the provisions of this contract and HPS's interest in the contractor's compliance with its contractual obligations, result in an unreasonable economic disadvantage for the contractor and insofar as the contractor proves these costs to HPS accordingly, the parties shall endeavour in joint negotiations to find an amicable agreement on the allocation of costs. Should the parties be unable to reach an agreement, they shall have the right to terminate the contract with a notice period of 3 months in compliance with the applicable contractual regulations.

## **15 Jurisdiction, Contractual Language, Applicable Law, Written Form**

- 15.1 The place of jurisdiction is Berlin.
- 15.2 German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 15.3 The contractual language is German or English depending on the language of the respective order. Accordingly, the General Terms and Conditions of HPS shall also apply exclusively in the language of the contract. Other translations are irrelevant for the interpretation.
- 15.4 In addition to the legally required hand-signed document, an electronically signed electronic document is also permissible as written form within the meaning of the contract, where a digital log of the document history (completion certificate) of the provider ensures that the signatory is identifiable and that a subsequent change of the data is recognisable.