

Standard Terms and Conditions of Sale and Supply

Meier Solar Solutions GmbH

1. Conclusion of the Contract	5.6	Where the validity of a retention of title in connection with exporting into the country of the Ordering party is subject to the fulfilment of special requirements or formal regulations, the Ordering party is responsible, at its own expense, to ensure compliance with such.
1.1 All deliveries and services of the firm Meier Solar Solutions GmbH – hereinafter the Supplier – are subject exclusively to the following terms and conditions.		
1.2 Any purchase conditions of the Ordering party are excluded by these terms and conditions. Even in the event that they are not expressly rejected anew upon receipt of them, they will not be recognized.	6. Intellectual property rights, confidentiality	
1.3 Our offers are subject to confirmation; all information contained in our illustrations, process/cost calculations etc. are always approximate values only, unless explicitly determined otherwise and confirmed by the Supplier. The Supplier reserves the right, within reasonable limits, to make technical alterations as well as alterations as to shape, colour and/or weight.	6.1 The Supplier is exclusively entitled to any exploitation rights in respect of all inventions or improvements which may occur in connection with the implementation or preparation of the Contract, unless something to the contrary has been expressly agreed upon in writing.	
1.4 Orders will only be considered as accepted once the Supplier has confirmed them in writing; until then all offers of the Supplier are deemed without obligation. Orders, supplements, amendments or ancillary agreements made by telephone, telegraph, telex or verbally are only valid after written confirmation by the Supplier.	6.2 Title to, and any intellectual property rights in, illustrations, designs, sketches and other documents are retained by the Supplier; the aforementioned documents, including any technical or commercial information contained or incorporated therein, shall be kept confidential and may not be disclosed to third parties. The Supplier retains the right to claim the return of such documents even if a Contract of supply is not concluded.	
2. Extent of the delivery obligation, defects in legal title		Furthermore, circumstances that become known in connection with the business relations with the Supplier that are not public knowledge shall be kept confidential by the Ordering party.
2.1 The extent of the delivery obligation is determined by the Supplier's written confirmation of the order.	7. Delivery periods and deadlines	
2.2 Partial delivery is permitted.	7.1 The delivery period commences upon receipt of the Supplier's confirmation of the order, however not before all particulars regarding implementation have been clarified. The delivery period refers to the completion at the factory.	
2.3 Unless there is an express agreement to the contrary, intellectual property rights of third parties will only give rise to a defect in legal title where such rights exist in, and are duly registered in, the Federal Republic of Germany.	7.2 Compliance with the delivery period or the delivery deadline presupposes the fulfilment by the Ordering party of its obligations under the Contract, in particular the agreed upon terms and conditions of payment.	
3. Prices	7.3 Delivery periods and deadlines are approximate and without obligation, unless specifically agreed otherwise.	
3.1 Prices are valid ex works excluding freight, carriage / cartage, packaging, assembly costs and value-added tax which will be invoiced separately in each case.	7.4 The agreed upon delivery period will be reasonably extended in the case of unforeseeable hindrances that are beyond the control of the Supplier, in particular the interruption of business operations, delays in the delivery of essential materials, production of defective units, strikes and lock-outs, significant shortfall of personnel due to illness regardless of whether these hindrances occur in connection with the Supplier or with a subcontractor. The Supplier is still not responsible for the above-mentioned occurrences if such occurs during an already existing delay.	
3.2 Packaging is charged at cost. No returns will be accepted.	8. Passing of risk	
3.3 The Ordering party bears insurance costs (see paragraphs 5.2 and 8.3).	8.1 Risk passes to the Ordering party no later than the time when the delivery item is dispatched, including the case of partial deliveries, or if the Supplier has taken on other additional obligations, e.g. the forwarding costs or undertaken the transport and assembly.	
3.4 The calculation of the price of the systems is based on our standard components / structural elements and specifications. Customised delivery requirements and assembly regulations must be examined in the individual case and may give rise to a higher price. Interim assembly necessitated by lifts, door measures etc. are not included. The right to make structural alterations is retained.	8.2 In the case of delayed dispatch due to circumstances for which the Ordering party is responsible, risk passes to the Ordering party commencing with the day of readiness for dispatch.	
3.5 Prices are based on the current cost structure. In the event of changes to the cost structure or in the case of currency fluctuations, the Supplier reserves the right to adjust its prices in relation to the respective prevailing new cost structure or currency situation up to the time of full performance of the Contract by both contractual parties.	8.3 The Supplier is entitled but not obliged to insure the shipment commencing with the time of readiness for dispatch against losses caused by theft, breakage, transport, fire and water as well as other insurable risks. These costs will be charged to the Ordering party.	
4. Terms of payment	9. Assembly	
4.1 Payments must be made in Euros without deductions to the office / account designated by the Supplier at no expense to the Supplier.	9.1 If supply with assembly has been agreed upon, the Ordering party shall reimburse the Supplier for all expenses incurred in respect of each fitter in accordance with the hourly assembly rate of the Supplier.	
4.2 Payment in full is due after delivery. Where a preliminary inspection has been agreed to, partial payment in the amount of 50 % is due after the preliminary inspection.	9.2 All construction work must be completed before assembly in such a way that assembly can commence immediately after delivery and be completed without interruption. The foundation must have dried and set completely. The rooms in which the assembly takes place must be adequately protected against external influences, well-lit and sufficiently heated.	
4.3 Bills of exchange and cheques are accepted on account of payment (<i>pending full discharge of the debt</i>) only; the Ordering party bears any discounting and collection costs.	9.3 For the storage of machine components, materials, tools etc., the Ordering party will provide a room that is dry and lockable, which has lighting and which is under supervision and security control.	
4.4 During the period of delayed payment, interest will be charged on the amount owing by the Ordering party at the rate of 8 % per annum above the base rate.	9.4 The following will be carried out / provide for by the Ordering party at its own expense and in a timely manner:	
4.5 The Ordering party is only entitled to set-off against the price if its counterclaims have been declared final / unappealable, are undisputed or have been acknowledged by the Supplier.	1. Unskilled workers and technicians in the number as specified by the Supplier.	
4.6 The Ordering party is only entitled to exercise his right of retention where its counterclaim is based on the same contractual relationship and the counterclaim has been declared final / unappealable, is undisputed or has been acknowledged by the Supplier.	2. The materials and appliances necessary for assembly and start-up.	
5. Reservation of title	3. The unloading of vehicles and the transportation of the delivery item to the place of assembly.	
5.1 The Supplier retains title in the delivery item until all payments in accordance with the Contract of supply have been duly received. Items pertaining to the Supplies ("Retained Goods") shall remain the property of the Supplier until full payment of the price has been effected. For the duration of the retention of title the Purchaser may not pledge the Retained Goods or use them as security. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Suppliers title to the Product in the country concerned. The Purchaser shall also inform the Supplier forthwith of any seizure or other act of intervention of third parties. The retention of title shall not affect the passing of risk in accordance with the respective applicable INCOTERM.	9.5 The Ordering party assumes the transport risk in respect of assembly components brought.	
5.2 The Supplier is entitled to insure the delivery item against losses caused by fire, water and other losses at the expense of the Ordering party where the Ordering party has not provided proof of entering into such insurance policies.		
5.3 For the duration of the retention of title it is not permitted to transfer / loan the use of the goods, to pledge them or to transfer / assign title by way of security.		
5.4 The Supplier is to be informed without delay of any attachments by third parties in respect of the delivery item.		
5.5 Repossession or attachment of the delivery item by the Supplier will not be construed as a termination / cancellation of the Contract unless the Supplier has expressly declared this in writing.		

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10. Liability for defects

10.1 Claims based on defects in the delivery item are subject to the requirement that the Ordering party has duly performed his examination and notification obligations under § 377 of the Handelsgesetzbuch (Commercial Code). The notification period in terms of § 377(1) and (2) of the Handelsgesetzbuch is 14 days; determinative is the receipt of a notification of complaint (also per telefax) by the Supplier.

10.2 The limitation period for claims based on defects is one year, unless the delivery item was used in a building in accordance with its customary application and caused damage to such. In the case of such delivery item which had been used in a building in accordance with its customary application and caused damaged to it, the limitation period for claims based on defects is two years.

10.3 Where the notification of defects is justified and lodged within the specified period, the Supplier is liable to remedy defects by means of subsequent performance at his own discretion, either by remedy of the defect or the supply of an item that is free from any defect. The Supplier is entitled, in accordance with statutory regulations, to refuse subsequent performance. In the event that subsequent performance is refused, fails or is unreasonable towards the Ordering party, the Ordering party is entitled to terminate / cancel the Contract or claim a reduction of the purchase price in accordance with the next section.

10.4 The remedying of defects by means of subsequent performance, by remedy of the defect or the supply of an item that is free from any defect shall not be construed as an acknowledgement. Such an acknowledgement exists only if it has been expressly declared. If the delivery item is partially renewed by means of subsequent performance, the limitation period recommences only in respect of the renewed parts.

10.5 The Ordering party is entitled to terminate / cancel the Contract – where termination / cancellation is not prohibited by law – or claim a reduction of the purchase price only after a reasonable time limit set by the Ordering party for subsequent performance has expired without success, unless the fixing of a time limit is superfluous in terms of statutory provisions (§ 323(2) BGB, § 440 BGB, § 441(1) BGB) (Bürgerliches Gesetzbuch, Civil Code). In the event of termination / cancellation, the Ordering party is liable for deterioration, destruction and loss of utilisation caused not only by his own due care but for every act of negligence and intentional fault.

10.6 The provisions of Paragraph 11 apply to any claims to compensation for damage and claims for compensation for expenses.

10.7 In the event of any fraudulent concealment of a defect, or where a warranty is provided in respect of the condition of the delivery item at the time when risk passes in terms of § 444 BGB (declaration by the Supplier at the time when risk passes that the delivery item has a certain characteristic and that the Supplier holds itself responsible for any consequences of its absence irrespective of who bears the fault), the rights of the Ordering party are determined exclusively by the statutory provisions.

A warranty for the condition of the delivery item exists only if the warranty is given expressly in writing and is described in detail as such.

10.8 The Supplier is not obliged to render subsequent performance if the goods supplied have been interfered with or altered without the Supplier's permission, unless the Ordering party can prove that the defect was not caused by such interference or alterations.

10.9 If the Supplier is entrusted with the solution of structural / design / construction tasks, it will only be held liable for defects if the Ordering party proves that the Supplier's product does not comply, in an intentional / negligent sense (*schuldhaft*), with the general state of technology.

10.10 Public statements made by the manufacturer (§ 4(1) and (2) of the Produkthaftungsgesetz (Products Liability Act) or by its skilled assistant, particularly in advertising or in the description of certain characteristics of the item, do not constitute a certain characteristic that may be expected of the delivery item. In addition, public and other statements made by sub-suppliers of the Supplier in respect of characteristics of items delivered by them and which have been incorporated into the delivery item does not constitute a specific condition that may be expected of the delivery item or its components.

10.11 The question as to whether goods supplied are free from defects will, provided that no other quality has been agreed upon, is determined by the quality which results in application of the current technical standards of the Supplier which apply to delivery items of the same type. Provided that nothing to the contrary has been expressly agreed upon, the specifications of the delivery item are to be understood in accordance with the technical standards of the Supplier which apply to such delivery items or specifications.

10.12 The liability for defects is excluded where defects are caused by

- the non-observance of operating or maintenance instructions, or
- the inappropriate, incorrect or improper usage or handling, or
- natural wear and tear, or
- repairs undertaken by the Ordering party or a third party or any other interferences

or as long as the Ordering party has not performed its obligation to pay (deposit).

10.13 The Ordering party shall afford the Supplier the necessary time and opportunity, free of charge, to undertake all the changes deemed necessary, to supply spare parts or machines and shall, if the Supplier desires, place helpers at its disposal free of charge.

10.14 The Supplier can demand that the Ordering party itself, in accordance with the Supplier's instructions, carry out work that falls under the warranty obligation of the Supplier where this can reasonably be expected of the Ordering party. The Supplier shall bear the costs incurred if the reclamation proves to be legitimate, otherwise the Ordering party is liable for the costs.

11. Liability for damages and reimbursement of expenses

11.1 In the event of a breach of an obligation in a preliminary contract, a contract and a breach of an obligation which is outside of a contract, also in the event of defective

supply, a tortious act and product liability, the Supplier is liable for damages and reimbursement of expenses – subject to other contractual or statutory conditions for liability – only in the case of intent, gross negligence, as well as ordinary negligence in the breach of a fundamental contractual obligation (breach of a contractual obligation which endangers the attainment of the objects of the contract). However, the liability of the Supplier is, except in the case of intent, limited to damage typical to the contract which was foreseeable at the time of concluding the contract. The Ordering party is not permitted to assert a claim for expenses incurred in reliance on the contract which later prove to be unnecessary (*nutzlose Aufwendungen*).

11.2 For damages caused by delay, the Supplier is liable in cases of ordinary negligence in an amount not exceeding 5 % of the agreed upon payment.

11.3 Except in the case of a breach of fundamental obligations, liability for ordinary negligence is excluded, in any case is limited to the amount of payment. Paragraph 11.2 remains unaffected in all cases.

11.4 The exclusions of and exemptions from liability provided for in Paragraphs 11.1 – 11.3 do not apply in the event that a warranty for the quality of the delivery item is provided within the meaning of § 444 BGB (see Paragraph 10.7), in the case of any fraudulent concealment of a defect, in the case of damages suffered due to injury to life, body or health, as well as in the case of compulsory liability under the Produkthaftungsgesetz.

11.5 All claims for damages against the Supplier, irrespective of the legal grounds for such claims, is barred by statute no later than one year after delivery of the delivery item to the Ordering party, in the case of tortious liability commencing with the time of knowledge or grossly negligent lack of knowledge of the circumstances which constitute the claim and the identity of the person who is liable for damages. The provisions of this paragraph do not apply in the case of liability based on intent and the cases mentioned in Paragraph 11.4 – the statutory provisions will then apply. Any possible shorter statutory limitation periods take precedence.

12. Preliminary inspection and acceptance of delivery

12.1 Where a preliminary inspection respectively acceptance of delivery has been agreed upon, this shall take place in accordance with the following paragraphs.

12.2 A preliminary inspection will be carried out at the factory of the Supplier.

12.3 Acceptance takes place after delivery, assembly and start-up of operation. A written record of the acceptance will be drawn up and signed by both parties. An attempt at acceptance will take place no later than 8 days after confirmation by the Supplier of readiness of operation of the delivery item. Acceptance cannot be refused due to immaterial defects. Acceptance is deemed as having been made where the Ordering party does not accept the work, although it is obliged to; within a reasonable time period specified by the Supplier.

13. The right of the Supplier to terminate / cancel the Contract

13.1 If it becomes known to the Supplier after conclusion of the Contract that the Ordering party is in an adverse financial situation, it is entitled to demand security for the counter-performance (consideration) or may terminate / cancel the Contract and set-off any expenses incurred by it.

13.2 If the Supplier is entrusted with a solution for construction / structural / design tasks and, after the tasks have been conferred it becomes apparent that these tasks cannot be performed at all or only at an unreasonable expenditure, the Supplier and the Ordering party shall come to an agreement on the further procedure. If no such understanding can be reached, the Supplier is entitled to terminate / cancel the Contract. In respect of any liability for damages or the reimbursement of expenditures, the provisions of Paragraph 11 are applicable accordingly.

13.3 The statutory termination / cancellation rights of the Supplier remain unaffected.

14. Binding force of the Contract

14.1 If any provisions of these terms and conditions or of the Contract are or become invalid, the validity of the other provisions shall not be affected. The invalid provision will be replaced by a suitable provision which reflects as closely as legally possible the intention of the parties upon conclusion of the Contract.

15. Place of performance, legal venue, choice of law

15.1 The place of performance for delivery is the factory of the Supplier, in respect of payment, Bocholt.

15.2 Legal venue for all disputes arising from the Contract, also in connection with an action on a bill of exchange, is the court competent for Bocholt.

15.3 The Supplier is also entitled to institute action at the principle place of business of the Ordering party.

15.4 The Contract, including all supplementary agreements, is governed by the laws of the Federal Republic of Germany; the UN Convention on Contracts for the International Sale of Goods does not apply.