

General Terms of Supply and Delivery of Bauer Solarenergie GmbH, Selzen

Section 1 Scope

- (1) All deliveries, services and offers by Bauer Solarenergie GmbH are governed exclusively by these General Terms of Supply and Delivery. These are incorporated in all agreements that Bauer Solarenergie GmbH concludes with its partners (also referred to hereinafter as "Customers") for the supplies or services it offers. They also apply to all future deliveries, services or offers to the Customer, even when they are not separately agreed upon.
- (2) Terms of business used by the Customer or third parties are not applicable, even when Bauer Solarenergie GmbH does not separately oppose their applicability in the specific case. Even when Bauer Solarenergie GmbH refers to a letter containing or referring to terms of business of the Customer or of a third party, this shall not be construed to mean consent to the applicability of such terms of business.

Section 2 Offer and conclusion of agreement

- (1) All offers made by Bauer Solarenergie GmbH are non-binding and without obligation unless they are explicitly designated as binding, or contain a specific acceptance period. Bauer Solarenergie GmbH may accept orders within fourteen days after receipt.
- (2) Legal relations between Bauer Solarenergie GmbH and the Customer are governed exclusively by the written offer from Bauer Solarenergie GmbH, the written order from the Customer and the written confirmation of order by Bauer Solarenergie GmbH, including these General Terms of Supply and Delivery. These contain all the agreements between the Parties in respect of the subject matter of agreement. Verbal commitments made by Bauer Solarenergie GmbH prior to conclusion of this Agreement are legally non-binding, and verbal agreements by the Parties shall be replaced by the written agreement unless they explicitly determine in the respective case that they shall continue to apply. Any amendments or additions to concluded agreements, including these Terms of Business, must be in writing to obtain legal effect. With the exception of managers or persons with power of representation (Prokuristen), the employees of Bauer Solarenergie GmbH have no right to conclude verbal agreements that depart from the above. Transmission by telefax suffices to conform with the requirement of written form, but transmission by other forms of telecommunication, in particular by email, is not sufficient.
- (3) Statements by Bauer Solarenergie GmbH in respect of the subject matter of delivery or service and any descriptions of the latter are only approximate, unless use for the contractually envisaged purpose requires that such statements and descriptions are precise. They do not constitute guaranteed features. Customary variations, variations resulting from legal regulations, or variations that are technical improvements, and the replacement of components by equivalent parts are permitted unless they are detrimental to use for the contractually envisaged purpose.
- (4) Bauer Solarenergie GmbH reserves ownership or copyright in respect of all offers and cost estimates it provides, and in respect of any drawings, figures, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Customer. The Customer may not disclose, provide access to or publicise these items, either as such or in respect of content, to third parties without the express consent of Bauer Solarenergie GmbH, and shall not use or reproduce these items either itself or through third parties. At the request of Bauer Solarenergie GmbH, the Customer shall return these items in their entirety to the former and shall destroy any copies made if these are no longer required in the normal course of business, or if negotiations do not lead to conclusion of an agreement.

Section 3 Prices and payment

- (1) The prices quoted are for the scope of service and supply as specified in the confirmations of order. Additional or special services are separately invoiced. Prices are stated in euros for ex warehouse Selzen, plus packaging, statutory value added tax, as well as customs duty, fees and other public levies in the case of export deliveries.
- (2) If the agreed prices are based on the list prices of Bauer Solarenergie GmbH and delivery is not until more than four months after conclusion of agreement, the list prices of Bauer Solarenergie GmbH applicable on delivery shall apply (minus any percentage or fixed rebate that has been agreed).
- (3) Set-off against counterclaims of the Customer, or retention of payments due to such claims is not permitted unless the counterclaims are undisputed or have been established by a final court decision.
- (4) Bauer Solarenergie GmbH has the right to execute or provide outstanding deliveries or services only against prepayment or against provision of collateral, if, after conclusion of the agreement, it becomes aware of circumstances that are liable to significantly reduce the creditworthiness of the Customer and which jeopardise the payment of outstanding receivables of Bauer Solarenergie GmbH by the Customer under the respective contractual relationship (including from other individual orders for which the same framework agreement applies).

Section 4 Delivery and delivery period

- (1) Unless otherwise agreed, deliveries are ex warehouse Selzen.
- (2) Deadlines and dates for deliveries and services that are prospectively stated by Bauer Solarenergie GmbH are always approximate unless a fixed deadline or a fixed date is explicitly promised or agreed. If shipping was agreed, the delivery periods and delivery dates relate to the date of handover to the transport company, carrier or other third party commissioned with transportation.
- (3) Bauer Solarenergie GmbH shall not accept liability for impossibility of delivery or for delays in delivery if these were caused by force majeure or other events that were not foreseeable at conclusion of the agreement and over which Bauer Solarenergie GmbH has no control (e.g. operational disruptions of all kinds, problems procuring materials or energy, delays in transportation, strikes, lawful lockouts, scarcity of human resources, energy or raw materials, problems procuring necessary official approvals, official measures or non-delivery, incorrect delivery or late delivery by suppliers). If such events make it significantly more difficult or impossible for Bauer Solarenergie GmbH to render delivery or service, and the hindrance is more than temporary in duration, Bauer Solarenergie GmbH shall have the right to withdraw from the agreement. In the case of temporary hindrances, the deadlines for delivery or service shall be extended accordingly, or the dates of delivery or service shall be postponed by the period of hindrance, plus a reasonable start-up period. If, due to the delay, it is unreasonable to expect the Customer to accept the delivery or service, the Customer may withdraw from the agreement by immediately sending Bauer Solarenergie GmbH a written statement to that effect.
- (4) Bauer Solarenergie GmbH has the right to make partial deliveries only when
– the partial delivery can be used by the Customer in accordance with its contractual purpose,
– delivery of the remaining goods orders is assured and
– no additional effort or expense is incurred by the Customer as a result (unless Bauer Solarenergie GmbH states its willingness to bear said costs).
- (5) If Bauer Solarenergie GmbH defaults on a delivery or service, or if it becomes impossible for it to render a delivery or service, regardless for what reason, the liability of Bauer Solarenergie GmbH shall be limited to compensation in accordance with Section 8 of these General Terms of Supply and Delivery.

Section 5 Place of performance, shipping, transfer of risk, acceptance

- (1) Unless otherwise determined, the place of performance for all obligations arising from the contractual relationship is Selzen.

- (2) The risk is transferred to the Customer no later than when the object of delivery is handed over to the transport company, carrier or other third party designated to perform transportation (commencement of loading being the authoritative criterion). This principle shall also apply if partial deliveries are made or if Bauer Solarenergie GmbH has assumed responsibility for other services (e.g. shipping or installation). If dispatch or handover is delayed for reasons attributable to the Customer, the risk shall transfer to the Customer on the day on which Bauer Solarenergie GmbH is ready to ship and has notified the Customer accordingly.
- (3) The consignment shall be insured by Bauer Solarenergie GmbH against theft, breakage, damage in transit, fire and water damage only at the express wish of the Customer and at the latter's expense.

Section 6 Warranty

- (1) Unless otherwise agreed, the warranty period is one year as from the date of delivery.
- (2) The delivered items must be carefully inspected immediately after delivery to the Customer or to the third party designated by the Customer. The delivered items are deemed approved unless Bauer Solarenergie GmbH receives a complaint of defect in the form specified in Section 2 (2) sentence 6, within seven working days after delivering the supplied item, in respect of obvious defects or other defects that were discernible during an immediate, careful inspection, or otherwise within seven working days after discovery of the defect or the date on which the defect was discernible for the Customer without closer inspection through normal use of the delivered item. At the request of Bauer Solarenergie GmbH, the delivered item forming the subject of complaint shall be returned carriage paid to Bauer Solarenergie GmbH. If the complaint of defect is justified, Bauer Solarenergie GmbH shall reimburse the costs for the least expensive method of shipment; this shall not apply if the costs are increased because the delivered item is located at a place other than the place of normal use.
- (3) In cases of material defects in the delivered items, Bauer Solarenergie GmbH is initially obligated and entitled to remedy the defect or to supply a replacement, as decided at its own discretion within a reasonable period. In the event of a failure to remedy or replace, i.e. in cases where it is impossible or unreasonable to remedy or replace, or where such remedy or replacement is refused or unreasonably delayed, the Customer may withdraw from the agreement or may reduce the purchase price by a reasonable amount.
- (4) If a defect is the fault of Bauer Solarenergie GmbH, the Customer may demand compensation pursuant to the conditions stipulated in Section 7 below.
- (5) The warranty is forfeited if the Customer modifies the delivered item or arranges for it to be modified by a third party without the consent of Bauer Solarenergie GmbH, thus rendering it impossible or unreasonably more difficult to remedy the defect. In whatever case, the Customer shall bear the additional costs for remedying the defect that result from such modification.

Section 7 Liability for compensation due to culpability

- (1) The liability of Bauer Solarenergie GmbH to pay compensation, regardless of legal basis, in particular due to unfeasibility, default, defective or incorrect delivery, breach of contract, breach of obligations during contractual negotiations and to actionable tort, is limited to that defined in this Section 7, insofar as such liability is dependent on culpability on the part of Bauer Solarenergie GmbH.
- (2) Bauer Solarenergie GmbH shall not accept liability
 - a) in cases of ordinary negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents;
 - b) in cases of gross negligence on the part of its non-executive employees or other vicarious agents, unless a material breach of contractual obligations is involved. Contractual obligations are material when they involve a duty to deliver and install in a timely, defect-free manner, or duties to provide advice, to protect and to exercise due care, which are intended to enable the Customer to use the delivered item in the contractually agreed manner, or which are aimed at protecting the life and body of the personnel of the Customer or of third parties, or the property of the Customer, from material damage.
- (3) If Bauer Solarenergie GmbH bears objective liability pursuant to Section 7 (2), such liability shall be limited to damage that Bauer Solarenergie GmbH foresaw, at conclusion of contract, as potential consequences of a breach of contract, or which it should have foreseen, in consideration of the circumstances known to it or which should have been known to it, if it had exercised due care. Indirect damage, and consequential damages resulting from defects in the delivered item, are eligible for compensation only to the extent that such damage can typically be expected when the delivered item is used in the intended manner.
- (4) In the event of liability for ordinary negligence, the liability of Bauer Solarenergie GmbH to pay damages is limited
 - a) to the sum of € 5,000,000 in each case of material damage or personal injury (in accordance with the current coverage provided by its product liability insurance or indemnity insurance),
 - b) to at most 5% of the purchase price for damages due to delay,
 - c) to a maximum of € 100,000, but at least 10% of the purchase price, for damages resulting from non-performance or malperformance.
- (5) The above limitations and exclusions of liability shall apply to the same extent for the executive bodies, legal representatives, employees and other vicarious agents of Bauer Solarenergie GmbH.
- (6) If and insofar as Bauer Solarenergie GmbH provides technical information or acts in an advisory capacity, and this information or advice is not included in the contractually agreed scope of performance, this shall be done at no charge and with exclusion of any liability.
- (7) The limitations specified in this Section 7 do not apply to the liability of Bauer Solarenergie GmbH for wilful action, for guaranteed features, for injury to life, body or health, or under the Product Liability Act.

Section 8 Final provisions

- (1) The place of jurisdiction for any disputes arising from the business relationship between Bauer Solarenergie GmbH and the Customer is Mainz or the domicile of the Customer, at the discretion of Bauer Solarenergie GmbH. Mainz is the exclusive place of jurisdiction for any court actions against Bauer Solarenergie GmbH. Mandatory statutory provisions concerning exclusive places of jurisdiction are unaffected by the above rule.
- (2) Relations between Bauer Solarenergie GmbH and the Customer are governed exclusively by the laws of the Federal Republic of Germany.
- (3) If the agreement or these General Terms of Supply and Delivery contain gaps, these shall be deemed to be filled by the legally effective arrangements which the Parties would have agreed, if they had known of the gap, in order to meet the business objectives of the agreement and the purpose of these General Terms of Supply and Delivery.

Note:

The Customer acknowledges that Bauer Solarenergie GmbH stores data relating to the contractual relationship, for data processing purposes within the meaning of Section 28 of the Data Protection Act, and that it reserves the right to transmit the data to third parties (e.g. insurance companies) if this is necessary to fulfil the agreement.