

# General Terms and Conditions

## General terms and delivery conditions of

AxSun Solar GmbH & Co. KG  
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88471 Laupheim-Baustetten

(As of December 2017)

### § 1 General scope and area of validity

The terms are subject to written and specified agreements if there is nothing expressed to the contrary. If such written agreements are made, these terms and conditions can only be replaced or modified with respect to those clauses, which are contents of the written agreement. In addition, these terms and conditions apply exclusively. Conflicting terms of the customer are expressly prohibited. These terms and conditions apply to all our offers, sales, supplies, services and business services including installation, repair, maintenance, consulting and other contractual services.

### § 2 Offer and conclusion of contract

Our offers are subject to change and non-binding, unless expressly made in writing. Technical changes and changes in shape, colour or material remain within the scope of technical progress and are subject to other usual general prevailing practises for customers. The customer makes a binding declaration with the order, to purchase the goods ordered. The contract is subject to the provision that we are supplied by our suppliers in time. If we are not supplied with goods, the agreement between us and our customers is considered as inapplicable.

We expressly do not take over a procurement risk. If there is insufficient availability of the service, the customer will be informed immediately, and reimbursed if any payments are already made. The order shall be given to us in writing. It is binding for the customer for two weeks. If we do not refuse the customer's order within this time, it is considered as confirmation on our part. We reserve the property rights and copyrights for all documents forwarded to the customer. The disclosure of such documents to third parties needs our written consent.

### § 3 Prices and Payment

Prices apply "ex-factory". Fixed rates are applicable, only if the price agreement in individual cases, e.g. due to an offer, contain neither a price increase nor a time limit in the price agreement. We reserve the right to price changes without prior notice to the buyer. We reserve the right to price adjustments due to errors on order confirmations, price lists, delivery notes and quotations. The price does not include the sales tax currently in force. Shipping costs, packing costs, delivery costs and the cost of ancillary services are not included in the price, unless it is otherwise agreed on in individual contracts.

Additional services that are not included in the offer are to be paid for separately. This applies in particular to increased expenditure resulting from a reasonable use of third party services and services supplied outside business hours. The deduction of discount requires a separate written agreement. The customer may only add up to our reimbursement claims, if the counterclaims are legally established or recognised by us. An assertion

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of retention rights is available to the buyer only if his counterclaim is based on the same contractual relationship.

The invoices provided by us are to be paid within 7 days from date of the invoice, whereby payments with changes are not permitted. We reserve the right to demand payment in advance.

## § 4 Delivery date

Delivery dates are non-binding as long as they are not confirmed as "binding delivery date" by us. Even in the latter case timely delivery depends on timely delivery of our supplies. A late delivery of our supplies causes no adverse legal consequences for us. If the involvement of the customer is agreed on for the provision of our services, the binding date of delivery also extends to that amount of time obliged by the customer to cooperate and which was not fulfilled. Delays due to changes in customer requirements or due to third party products, extends the delivery time accordingly.

In the event that we cannot carry out our contracted services due to labour disputes, force majeure, or other unavoidable circumstances, no adverse legal consequences occur for us. If changes or additions are ordered by the customer which are of no minor extent, delivery dates and deadlines which are based on the original contract lose their validity. If the customer is in default of acceptance, particularly in breach of his contractual obligations to cooperate, we are entitled to demand compensation for damages incurred, including any additional expenses.

If a contractually obligated delivery is late due to us, and the customer suffers damage caused by the delay, he may demand delay damages. Compensation claim is to be made earliest after expiry date of a grace period of three weeks to be set by the customer. Damage claims are for the estimated damages set at the time of the conclusion of the contract, calculated at an amount of 0.5 % but not more than 5% of the purchase price of the delivery part, which cannot be put to use because of the delay, for each full week after the expiration of the grace period. This restriction applies through gross negligence or deliberate intent only as far as they are related to atypical and not predictable damages.

## § 5 Guarantee

The customer warranty claims presuppose that the customer has duly met his inspection and complaint obligations according to § 377 HGB. The buyer is obliged to check the delivered goods immediately upon delivery and notify us in writing of obvious defects existing at the latest within 5 working days after delivery. Defects that are alleged contravention of § 5 No. 1 of these terms are excluded from the guarantee.

The customer is not entitled to warranty against us if any damage occurs to the goods caused by improper use, incorrect installation or commissioning, failure to follow our assembly instructions, normal wear and tear or modifications to the entire system or parts thereof contrary to the original specification. In the case of proper complaint according to § 5 No. 1, the customer has a right to rectification, whereby the rectification of defects may take place through delivery of a new defect-free part at our discretion. If the repair fails the customer is entitled to legal claims. We undertake to bear all expenses necessary for the remedy of defects, provided that the goods were not transported to a place other than the place of performance. The limitation period for warranty claims is one year from the transfer of risk, except in the case of § 438 paragraph 1 No. 2 German Civil Code.

The warranty conditions and warranty times for our solar technology products are always according to the manufacturer's specifications. Warranty specifications in our price lists, brochures, proposals and other documents are subject to change. In case of warranty we reserve the right to have the manufacturer assess the product, whether a warranty claim exists. If this situation exists, the manufacturer of the product has to

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provide suitable replacement or arrange for the repair. Costs for warranty service lies with the manufacturer for the defective product confirmed by him. In case of insolvency or non-performance of the warranty from the manufacturer, we are under no obligation for warranty.

## § 6 Liability

We are liable according to the statutory provisions, if the customer damage claims apply to intent or gross negligence by us, or our representatives or assistants. If we cannot be accused of intentional breach of contract, the liability for damages is limited to foreseeable typical damage which occur. The liability for culpable injury to life, body or health remains unaffected, and this also applies to mandatory liability under the Product Liability Act.

Any further liability for damages as provided in §§ 5 and 6, is excluded. This limitation applies even if the customer demands, instead of service, expenditures that will be of no use to him. The restriction applies also with regard to the personal liability of our workers, employees, staff, representatives and assistants.

## § 7 Risk assumption

Shipping takes place at the customer's risk, regardless who is bearing the shipping costs. At the request of the customer we offer insurance against breakage if the related fees are paid in advance by the customer to us. A credit voucher is written only after payment is made by the insurance company at that amount stipulated in the insurance.

## § 8 Retention of title

The delivered goods remain our property until the settlement of all outstanding claims from the business relationship - even to the cashing of checks. If delivered goods are processed or connected with goods standing in foreign ownership, we are entitled to the ownership of the new item at the fraction which corresponds to our invoice value of goods in relation to the value of the new item at the time of processing or connection. If the buyer acquires the sole ownership of the new object by law through processing or connection, we agree with him about transferring to us joint ownership of the new item in proportion to the invoice value of the reserved goods to the value of the resulting new object at the time of processing or connection and to keep this for us without charge.

Distributors are allowed to sell our reserved goods in his own name within the framework of a proper business transaction. The buyer already assigns all claims arising from the resale to us. We accept the assignment. In case of a sale of goods after processing or combining with other goods not belonging to us, the assignment of the claims is valid at the amount of the invoice value of our reserved goods. The buyer is only authorized to collect the assigned claims as long as he duly fulfils his payment obligations to us. The buyer has the right to retain the goods until his purchasers have fully paid the purchase price. Pledging or assignment of our reserved goods by the customer is not permitted. He is committed to notify us immediately of third party access to the reserved goods. The agreement of prohibited assignment is not permitted by the purchaser. If the value of securities exceeds the claims to be secured by more than 20%, we are obliged on request of the customer to release securities at our discretion.

The customer is obliged to handle the goods with care, in particular, he is obliged to insure the goods at the replacement value against any damage. As long as maintenance and inspection work is required, the customer must carry out this in required time and at his own expense. In the event of attachments or other interventions of third parties, the customer must notify us immediately in writing so that we can take action according to

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§ 771 ZPO. If the third party is unable to reimburse us for the judicial and extra-judicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for any loss incurred by us.

The processing or transformation of the goods by the customer is always done for us. If the goods are inseparably mixed with other items not belonging to us, we acquire co-ownership of the new item in proportion to the value of the goods to the other processed items at the time of mixing. If the mixing is done so that the object of the customer is to be regarded as the main item, it is agreed that the customer shall transfer proportionate co-ownership to us. The customer shall keep the sole or co-ownership for us.

## § 9 Applicable law and place of jurisdiction

The contractual parties agree to the application of German law to all legal relations arising from this contractual relationship. The German law is also valid in cross-border communication under exclusion of the UN-Sales Convention. The place of performance for all mutual obligations of the contract is the office of our company, if the customer is an entrepreneur within the terms of § 310 paragraph 1 German Civil Code.

## § 10 Severability Clause

If any provision of these terms and conditions is invalid or become invalid, the other terms and conditions remain in effect. The parties shall replace the void provision with a valid provision that is closest to the will of the contracting partner.

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The legally binding version of these terms is the German version. The translation is to be understood as a service. Should contradictions, misunderstandings or errors of translation arise in the foreign-language edition, so shall the German version apply in the case of doubt.