

General Terms and Conditions of Sale and Supply of Schletter GmbH

1. Validity, differing terms and conditions of business, authority to represent

- 1.1. The parties agree that these general terms and conditions of business of Schletter GmbH, Alustr. 1, 83527 Kirchdorf, Germany (hereinafter "T&Cs") as amended from time to time shall form the basis of all future supply contracts, contracts for work and materials and any other type of contract concluded under the parties' business relationship. Any subsequent amendments to these T&Cs shall become valid if the customer has demonstrably been informed of the amendment in text form and does not object to such notification within three weeks.
 - 1.2. If services rendered by Schletter are fully or partially a services to produce a work (Werkleistungen), including, but not limited to installation of photovoltaic power plants or other goods, the "General Terms and Conditions for Installation of Schletter GmbH" (hereinafter "Installation T&Cs") shall apply and shall have precedence over the T&Cs. The Installation T&Cs are available at all times in the Internet at www.schletter.de/AGB.
 - 1.3. These T&Cs shall only apply with regard to entrepreneurs, public legal entities and public special funds.
 - 1.4. Any terms and conditions of business of the customer deviating from or supplementing these T&Cs shall not be valid. They shall only become effective if expressly confirmed in writing by Schletter. This shall also apply if Schletter, in the knowledge of deviating terms and conditions of business of the customer, renders delivery or other services without reservation.
 - 1.5. Schletter's employees shall not be entitled to make any subsidiary agreements extending beyond the written contract or which amend or waive these T&Cs. The authority to represent Schletter held by managing directors and holders of general commercial power of attorney (*Prokuristen*) shall remain unaffected.
- ### 2. Offers, conclusion of contract, commercial property rights
- 2.1. Offers by Schletter shall be subject to change. A contract shall only be concluded upon confirmation of customer's order by Schletter in text form.
 - 2.2. Schletter shall retain its ownership rights, copyright, and intellectual property rights in all illustrations, calculations, drawings, drafts, designs, tools and other documents. The customer shall only be granted the right to use these within the contractually agreed purpose. No further use shall be permitted, including but not limited to reproduction, distribution, publication, transformation, transfer to third parties or other commercial use.
 - 2.3. If the customer supplies any illustrations, costings, drawings, drafts, designs, samples, prototypes or other documents, the customer shall be liable to Schletter if the use of such documents infringes any intellectual property rights, including, but not limited to, patents, registered designs, copyright or other rights of third parties. The customer indemnifies Schletter against claims of third parties in respect of such violations of law.
- ### 3. Prices, payment terms
- 3.1. All prices shall be ex works plus packaging and the respectively applicable statutory value added /goods and services tax.
 - 3.2. Generally, the transfer or delivery of goods and services shall take place against advance payment; delivery against invoice shall however be subject to a successful credit check. Unless otherwise agreed, invoices from Schletter shall be due for payment immediately upon receipt and payable by the customer without any deduction within ten days from the date of invoice.
 - 3.3. If the customer is in default with its payment obligations, then Schletter shall be entitled to charge the customer for each payment reminder a reasonable fee in the sum of at least EUR 5.00, unless the customer shows that the costs actually incurred are less. If due dates are exceeded or in the event of extension of time for payment, Schletter shall be entitled to demand interest on sums in arrears and moratorium interest in the annual sum of 8 percentage points above the then-current base rate of the German Bundesbank (German federal reserve bank).
 - 3.4. If the customer is in arrears with payment, notwithstanding further claims and rights, Schletter shall be entitled to terminate any debt-extension agreement for cause and to claim immediate payment of all amounts receivable.
 - 3.5. If the customer does not comply with its payment obligations despite a payment reminder, suspends making payments or a bank fails to honour a cheque or a debit due to insufficient funds, Schletter may claim immediate payment of all existing amounts receivable.
 - 3.6. If, after conclusion of a contract, facts become known which give rise to objective doubts as to whether the customer will fulfil the contract in accordance with its duties, such as insolvency or refusal to honour obligations, Schletter shall be entitled to claim immediate payment of all existing amounts receivable, demand prepayment or securities and in case of the passing of a reasonable extension period to withdraw from the contract.
 - 3.7. Schletter shall be entitled to assign the claims arising from the business relationship between Schletter and customer.
- ### 4. Offsetting, right of retention
- 4.1. The customer shall be entitled to offset any amount due in so far as the customer's counterclaim has been established res judicata or acknowledged by Schletter.
 - 4.2. The customer may only refuse payment or services based on the same contractual relationship.
 - 4.3. Any assignment of claims shall only be permitted with the prior written consent of Schletter.
- ### 5. Delivery, reservation of self-supply, default, force majeure, part performance
- 5.1. Adherence to agreed delivery dates shall require that the customer fulfils in a proper and timely fashion all its obligations of cooperation. Schletter reserves for itself the defense of lack of performance of the contract by the customer. Delivery shall be subject to correct and timely delivery of suppliers to Schletter.
 - 5.2. If the customer is in default with accepting goods or services, or if the customer culpably breaches other duties of collaboration, then Schletter shall be entitled to demand indemnity for any losses suffered in this regard, including any additional expenses. The right to assert further claims or rights remains reserved.
 - 5.3. In so far as the conditions of clause 5.2 are met, the risk of any destruction or deterioration of the item purchased shall pass to the customer at such time as the latter shall be in default either in terms of formal acceptance or as debtor. Schletter shall be liable according to the rules of the law in so far as for the underlying purchase contract time is of the essence (within the meaning of Section 286 (2) No. 4 of the German Civil Code [BGB] or Section 376 of the German Commercial Code [HGB]). Schletter shall also be liable according to the rules of law if as a consequence of delivery default attributable to Schletter, the customer is entitled to assert that it no longer has any interest in further contractual fulfilment.
 - 5.4. In cases under section 10.2, Schletter shall be liable in accordance with section 10.2. As liquidated damages, Schletter shall further be liable in the event of delivery delay for each full week of delay for a sum of 0.5% of the net delivery value, but as a maximum no more than 5% of the net delivery value.
- ### 6. Transfer, transfer of risk, transportation, electronic items
- 6.1. Unless individually agreed to the contrary, delivery shall take place ex works Kirchdorf, Germany (EXW Incoterms 2010). In so far as delivery is made to another place at the request of the customer, this shall be at the risk and for the account of the customer. Any instructions as to the type of delivery must be notified in writing by the customer to Schletter on a timely basis. They shall only be binding upon Schletter if confirmed by Schletter in text form.
 - 6.2. The risk of destruction and deterioration shall pass to the customer in the case of delivery ex works as soon as the item purchased has been made available to the customer. Otherwise, the risk of destruction and deterioration shall pass to the customer upon transfer of the item purchased, and at the latest upon transfer of the item purchased to the forwarding agent. This shall also be the case if part performances are rendered, carriage free of charge has been agreed, or Schletter has assumed additional performances, such as transportation.
 - 6.3. Schletter shall only take out transport insurance upon specific instructions and at the cost of the customer.
 - 6.4. The customer shall dispose of delivered electrical items at the end of their use on customer's own cost and in accordance with the law. The customer waives Schletter's take-back obligation and undertakes to indemnify Schletter against claims by third parties (section 10 para 2 ElektroG (electronic item law)). The statute of limitations for Schletter's claims shall not expire prior than 12 months of finally ceasing to use the respective item. The statute of limitation shall however commence at the earliest with receipt of a written notification that the use has ended. In case of a transfer of the item to a commercial third party, the customer undertakes to impose an obligation on such third party to dispose the items at the end of their use in accordance with the law, to bear the respective costs, and – in case of a further transfer – to impose such obligation on the transferee. Any violation shall constitute an obligation of the customer to take back and dispose of the respective item and to bear the associated costs.
- ### 7. Retention of title
- 7.1. Schletter shall retain ownership of the item purchased until the receipt of all payments arising from the business relationship with the customer. Prior to this, the customer must not pawn the item or assign it as security. In the event of a breach of contract by the customer, in particular in the case of payment default, Schletter shall be entitled to reclaim the item purchased. Reclaiming of the item purchased by Schletter shall constitute withdrawal from the contract. After reclaiming and receipt of such item, Schletter shall be authorized to sell the item, and the proceeds of sale shall be set off against the customer's liabilities – less reasonable costs of sale.
 - 7.2. In the case of forfeiting of delivered items or other encroachment by third parties, the customer must inform Schletter immediately in writing.
 - 7.3. The customer shall be entitled to resell the purchased item in the course of ordinary business dealings; however, it hereby assigns to Schletter all claims in the sum of Schletter's claims. The customer shall retain the right to collect this claim also further to assignment. Schletter however undertakes not to collect the claim for as long as the customer complies with its payment obligations from the proceeds received, does not fall into payment arrears and in particular no application has been made for institution of composition or insolvency proceedings and payments have not been suspended. If this is however the case, then Schletter can demand that the customer notifies it of the claims assigned and their debtors, provides all information required for collection, hands over the pertinent documents and notifies assignment to the debtors (third parties).

- 7.4. Further processing or remodelling of the item purchased by the customer shall always be undertaken on behalf of Schletter. If the item purchased is combined with items not belonging to Schletter, then Schletter shall acquire co-ownership of the new item in the proportion of the value of the item purchased to the other items processed at the time of processing. With regard to the item arising as a result of processing, the same shall further apply as with regard to the item purchased supplied subject to proviso.
 - 7.5. If the item purchased is combined inseparably with other items not belonging to Schletter, then Schletter shall acquire co-ownership of the new item in the proportion of the value of the item purchased to the other combined items at the time of combination. If combination takes place in such manner that the customer's item is to be viewed as the principal item, then it shall be deemed agreed that the customer transfers co-ownership to Schletter on a pro-rata basis. The customer shall retain the sole ownership or co-ownership thus arising on behalf of Schletter.
 - 7.6. The customer also assigns to Schletter as security claims, which arise against a third party due to combination of the purchased item with real property.
 - 7.7. Schletter undertakes to release the security due to it at the request of the customer if the realizable value of Schletter's security exceeds the claims to be secured by more than 10%; selection of the security to be released shall be incumbent upon Schletter.
- ### 8. Agreement as to quality
- 8.1. The purchased item shall be as contractually agreed if it is suitable for ordinary use/has a quality which is usual for items of the same type and which the customer can expect according to the nature of the item. Specimens, brochure indications or information arising from other advertising material are all non-binding reference material.
 - 8.2. Any agreement as to quality deviating from these terms or the assumption of any guarantee shall only be valid when confirmed in writing by Schletter. Schletter's employees shall not be entitled to make or give any quality agreements or guarantees extending beyond the written contract and these terms. The authority to represent of the managing directors and holders of general commercial power of attorney (*Prokuristen*) shall not be affected.
- ### 9. Duty of examination and notification of complaints, claims as to defects
- 9.1. Claims as to defects by the customer shall require that it has complied with its duties of examination and notification of complaint contained in Sections 377, 381 of the German Commercial Code [HGB]. Defects during inspection or later shall be notified in writing without undue delay. A notification shall not be unduly delayed if it has been rendered within two weeks; to keep within this term the time of posting the notification shall be sufficient. Regardless of the obligation to inspect and notify, the customer shall notify Schletter of obvious defects (including delivery of the wrong product or in not enough quantity) within two weeks of delivery in writing; to keep within this term the time of posting the notification shall be sufficient. A general right to return purchased goods is not granted.
 - 9.2. In so far as the item purchased comprises a defect, Schletter shall be entitled to choose between supplementary performance in the form of remedying the defect, or delivery of a new item without defect. In the event of supplementary performance, Schletter shall be under a duty to bear all expenses payable for the purpose of remedying the defect, in particular transport costs, travel costs, labour costs and material costs, provided that these are not increased on the basis that the item purchased was brought to a place other than the place of performance.
 - 9.3. If supplementary performance fails, then the customer shall be entitled to select between withdrawal or price reduction.
 - 9.4. The statute of limitations for claims as to defects shall be 12 months with effect from transfer of risk. The statute of limitations in the event of a supplier recourse claim pursuant to the terms of Sections 478 and 479 of the German Civil Code [BGB] shall not be affected; the period shall be five years with effect from delivery of the defective item.
- ### 10. Liability, damages and repayment of expenses
- 10.1. Claims for damages or reimbursement of expenses – without regard to their legal nature – shall be excluded. This apply also, but is not limited to, claims from fault upon conclusion of contract, other breaches of duty or torts.
 - 10.2. Liability for claims according to the product liability law, in cases of intent or gross negligence, including intent or gross negligence of its representatives or vicarious agents, in cases of a causation of death, physical injury or damage to health or in cases of fraudulent concealment of defects shall remain unaffected. The liability for the breach of material contractual duty shall be limited to the typically foreseeable damages. A material contractual duty shall be if it is essential to achieve the contract's purpose and if the customer may have justifiably relied upon it.
 - 10.3. In so far as liability for damages is excluded or limited in relation to ourselves, this shall also apply with regard to the personal liability for damages of Schletter's employees, staff, representatives and vicarious agents.
- ### 11. Extended durability guarantee for products in the division of Solar Mounting Systems
- 11.1. In so far as Schletter grants the customer a guarantee as to the durability of constructional components or systems, the following terms shall apply:
 - 11.2. The guarantee period for each component defined in the respective product sheet by Schletter shall apply. The guarantee period commences with the transfer of risk of the respective component; if the respective component is part of Schletter's service to produce a work (Werkleistung), the guarantee period commences with acceptance (section 9 of Installation T&Cs) of the work by the customer. If, for particular constructional components, generally or for a particular type of use a possible shorter life is expressly indicated or provided for within the framework of Schletter's individually-generated plans, an exchange is scheduled within a shorter period, the guarantee period shall be restricted to such life or period.
 - 11.3. The guarantee is granted in respect of the durability of the items purchased and shall lead exclusively to the claims specified below.
 - 11.4. If, despite proper installation and handling, in the context of normal use, damage is caused to the items purchased, Schletter shall immediately exchange the constructional component in question within the guarantee period. The guarantee is limited to additional delivery and assembly of the defective components upon notification of the damage within the guarantee period. Any statutory guarantee or liability claims shall remain unaffected.
 - 11.5. The obligation to fulfil the guarantee shall not apply if the damage has arisen in connection with defective installation or handling of the system or in connection with exceptional stress (e.g. storm damage, impact of instability of the sub-surface, particular chemical or biological effects), unless the damage is documented as not having been caused thereby but essentially due to a material or construction error. With regard to installation and handling, the technical product descriptions and installation instructions regarding the respective products as supplied by us shall apply, as shall the statutory and generally-recognized standards and principles of building and construction work as well as, as appropriate, on a priority basis, the plans, statics and instructions prepared by us individually for the customer.
 - 11.6. No claims shall exist if the damage is covered or can usually be covered by insurance against storm and similar events (natural-peril insurance).
 - 11.7. This guarantee shall only establish claims of Schletter's customer, via which all guarantee claims are to be settled. Assertion by third parties shall only be possible if Schletter agrees thereto.
- ### 12. Solicitation of Employees
- 12.1. The customer – by itself or through third parties – may not during the rendering of services or for 12 months after the completion of the respective single work actively recruit or solicit any employee of Schletter without a written permission by Schletter. As employees of Schletter are regarded all employees of Schletter GmbH and the other companies within the Schletter group of companies. The right to generally recruit employees through job advertisements addressed to a previously unknown addressed audience shall remain unaffected.
- ### 13. Applicable law, place of performance, place of jurisdiction
- 13.1. The law of the Federal Republic of Germany shall apply in its currently valid version; excluding the Convention on Contracts for the International Sale of Goods dated 11 April 1980 ("CISG"; "UN trade law").
 - 13.2. Unless otherwise stated in the purchase contract, Schletter's place of business shall be place of performance.
 - 13.3. If the customer is a businessperson, public legal entity or public special fund, place of business shall be place of jurisdiction. Schletter shall however also be entitled to sue the customer at the court of the customer's place of residence.
 - 13.4. Pursuant to Section 33 of the Federal Law on Data Protection [Bundesdatenschutzgesetz], Schletter notifies that customer data is stored and used for business purposes.

Dated June 2012 (AGBEN V3.2012.6)