

General Sales Terms and Conditions

KOSTAL Solar Electric GmbH

I. Relevant terms and conditions

1. These general sales terms and conditions are an integral part of all contractual 1. relationships between the Contracting Parties, the Purchaser and KOSTAL Solar Electric GmbH (the Supplier). If different agreements have been made in writing, they shall prevail and replace, wholly or partially, or amend the following terms and conditions.
2. General Terms and Conditions of the Purchaser that have not been explicitly recognized shall not be considered an integral part of the agreement, not even if they have not been specifically objected to or if delivery orders have been processed in the knowledge of deviating terms and conditions.
3. Any modification or amendment as well as waiver, acknowledgment, assignment, compensation, settlement, procuration, rescission, withdrawal or termination is only legally valid if it has been agreed in writing, insofar as it is to the detriment of the Supplier. In case of a unilateral legal act (e.g. termination), the personal signature of the respective authorized person is sufficient. Otherwise, the signature of both Contracting Parties is required to meet the written form requirement.

II. Confidentiality

1. The Contracting Parties are obliged to treat all non-public commercial and technical information that become known to them in the course of the business relationship as a trade secret.
2. The Supplier reserves the right to apply for property rights and to exploit usage rights pertaining to his own materials and information.

III. Orders and delivery schedules

1. Orders and delivery schedules as well as their amendments and additions must be sent in writing by fax, e-mail or letter.
2. Supply agreements shall be binding once the Supplier confirms, in writing, the orders or delivery schedules. If orders or delivery schedules are not confirmed in writing within 2 weeks of receipt, the Purchaser can rescind his order. The Ordering Party is bound to his order during these deadlines, unless the Supplier issues a final rejection at an earlier point in time.
3. The Purchaser is bound to all blanket orders and orders that the Supplier has confirmed. With regard to the agreed delivery dates, the Purchaser is always obliged to accept the release quantities of the previous week as well as those of the first 12 weeks.
4. If there is good cause, the Supplier is entitled to make the delivery subject to the issuance of a letter of credit, advanced payment, the submission of import licenses or the provision of suitable securities (e.g. surety, etc.).

IV. Delivery dates, transfer of risk, special freight costs, packaging

1. The Supplier must comply with the agreed dates and delivery deadlines within the scope of his possibilities and inform the other Contracting Party if it becomes apparent that his performance will be delayed.

2. The decisive factor for determining the timely performance of the agreement is the time of the delivery handover to the forwarding agent at the place of performance. The risk is transferred to the Purchaser upon this handover. The place of performance is the goods issuing department of the Supplier, provided no other agreement has been made with the Purchaser according to INCOTERMS 2000. The terms and conditions of INCOTERMS 2000 apply.
3. Special freight costs must be borne by the party responsible.
4. The goods to be delivered shall be commercially and properly packaged. The Supplier must return, at no charge, the reusable packaging used to deliver the goods.

V. Payment

1. The agreed prices are fixed prices. They exclude value-added tax, customs 1. duty, freight, postage and insurance.
2. The net payment must be made in EUR in accordance with the contractual delivery and invoice date within 30 days or upon special agreement. The payment is due immediately. Payment shall be deferred, provided there is no good cause for revocation, until the payment period expires.
3. The agreed payment method is by bank transfer using direct deposit transactions.
4. Checks or bills of exchange shall only be accepted upon special agreement. The payment claim shall remain valid until it is redeemed.
5. The date of the credit note on the account of the Supplier shall determine deadline compliance.
6. The place of performance for all payments is the principal office of the Supplier.
7. Withholding or reducing payments due to complaints is only permitted upon consent granted by the Supplier. Consent shall be considered granted if claims of the Purchaser have been recognized in writing or determined to be legally binding.
8. The Supplier is entitled to assign his claims against the Purchaser and allow collection by a third party.
9. If the payment term has been exceeded, the Supplier is entitled to invoice delayed payment interests in the amount of eight (8) percentage points above the respective base rate of the European Central Bank.
10. In the event of delayed payment, the Supplier may, upon notifying the Purchaser in writing, withhold the performance of his obligation until payment has been received.

VI. Retention of title

1. The Supplier reserves the right to ownership of all goods delivered by him until payment has been completed. In this case, all deliveries are considered to be a continuous delivery transaction. In case of running account, the reservation of ownership can also extend to the security of the payment balance request of all liabilities arising out of the business relationship. Upon request, the Supplier shall release the securities of the Purchaser as far as their value exceeds the claims to be secured by more than a total of 20%.
2. The Purchaser is entitled to process and sell the delivery during the normal course of business. The processing and selling is carried out on behalf of the Supplier.

3. If the delivery is inseparably combined, mixed or processed with other objects that do not belong to the Supplier, the Supplier shall acquire co-ownership of the objects in the ratio of the invoice value of the goods subject to reservation of title at the value of the objects created as a result of such processing, combining or mixing. As a precautionary measure, if the Purchaser sells the goods or the objects manufactured with the goods, the claims resulting from the sale go to the Supplier, on a pro-rata basis if necessary. As a precautionary measure, the Purchaser transfers in advance the ownership of the goods, the claim for return as well as the compensation claim for loss or damage to the Supplier who hereby accepts this assignment. Upon request, the Purchaser shall provide information regarding this matter at any time.
4. The Purchaser is entitled to collect the claims assigned to the Supplier. The Purchaser is not entitled to have the claims at his disposal in any other manner, e.g. by assigning to a third party, pledging, donating, waiving the claims etc. If the Purchaser does not fulfill his contractual obligations (in particular, payment obligations), the Supplier may revoke the power to collect and demand that the Purchaser inform the debtor of the assignment.
5. If objects or rights subject to lien are distrained, or insolvency proceedings regarding the assets of the Purchaser have been initiated, or insolvency or deferral proceedings are conducted due to pending insolvency, this must be disclosed to the Supplier immediately.

VII. Notice of defects and warranty

1. The Purchaser must report obvious damage to the packaging and goods, 1. discrepancies with the delivered items and the delivery note and the item numbers contained in the order, item descriptions and serial numbers as well as quantity discrepancies no later than two working days after goods have been received. In other cases, delivery deficiencies must be reported specifying a comprehensible description of the problem as soon as such problems are detected within the regular course of business. The Purchaser must send the notice of defects, without delay and in writing, to the Supplier.
2. The Supplier must be given the opportunity to sort out or repair defective goods, or to deliver goods free of defects.
3. The Purchaser is only entitled to demand compensation for additional expenditure if this has been explicitly agreed to, in writing, with the Supplier.
4. The warranty period lasts for 2 years starting with the transfer of risk. An extended warranty period is provided by the manufacturer warranty, which is considered favorable for the customers of the Purchaser, and obtained using the KOSTAL Solar Electric GmbH certificate of warranty provided with the product. Any deviating composition and durability warranties offered by the Purchaser to his customers are made at the Purchaser's own risk and expense.
5. No warrant claims can be made if the error is due to non-compliance with the operating, maintenance and installation instructions, unsuitable or improper use or storage, faulty or negligent treatment and natural wear and tear, as well as procedures performed on the delivery item by the Purchaser or third parties.

VIII. Liability

1. Provided no other liability provision has been made elsewhere within these terms and conditions, the Supplier is only obliged to compensate the indirect or direct damage suffered by the Purchaser due to a poor delivery, non-compliance with official safety regulations or any other legal grounds attributed to the Supplier according to the arranged liability provisions contained in this section.

2. The Purchaser must keep the damages and the costs for their remedy as low as possible. The Contracting Parties shall agree on the measures to be taken. The Purchaser must provide the Supplier with comprehensive information and without delay if he wishes to make a claim against the Supplier according to the previous provisions. The Supplier shall have the opportunity to inspect the cause of damage and the faulty parts.
3. The obligation for the Supplier to provide compensation for damages is only applicable if the Supplier is found to be liable for the damage for which he is responsible. This does not apply if an indispensable statutory provision requires that the Supplier be held liable, regardless of negligence or fault, to directly indemnify the damaged third party or the Purchaser.
4. In the event of contributory causation for damage or deficiencies according to the warranty, caused by the Purchaser or third party, who must assume responsibility for their action or failure, the costs to be rendered shall be settled between the Contracting Parties. In this case, the respective liability of the involved parties must be reasonably taken into account. This also applies if a claim of the Supplier is directly asserted by a third party.
5. Claims of the Purchaser are excluded if the damage is due to non-compliance of operating, maintenance and installation instructions, unsuitable and improper use, faulty or negligent handling, natural wear and tear or faulty repairs.
6. The Supplier is not liable for business interruption and lost profit.
7. The compensation claims to be settled by the Supplier to the commercial Purchaser shall be restricted to the amount of 5% of the annual revenue of the faulty item. The annual revenue is determined for the corresponding year in which the damage occurred starting from the time of the notice of loss to 12 months retrospectively. The liability limitation does not apply to damage for which the Supplier is responsible due to intentional or grossly negligent conduct, nor if fundamental contractual obligations are breached.
8. Damage and warranty costs in the form of a flat fee shall only be reimbursed if they have been explicitly agreed to in writing. The Supplier has the right to provide evidence of lower costs and to reimburse such costs instead of the agreed flat fee.

IX. Force majeure

1. Force majeure, industrial disputes, riots, official measures and other unpredictable, unavoidable and major events, within the scope of their implications, exempt the Contracting Parties from their contractual obligations for the duration of the disturbance. This shall also apply if these events take place at a time when the affected party is already in default.
2. The Contracting Parties are obliged to provide the necessary information – as far as can be reasonably expected – without undue delay and to adjust their obligations to the changed circumstances in good faith.

X. General provisions

1. The law of the Federal Republic of Germany shall apply exclusively.
2. Freiburg im Breisgau, Germany is the exclusive place of jurisdiction for both Contracting Parties, provided nothing else has been agreed to in writing or no other mandatory statutory provision exists. However, the Supplier is also entitled to take legal action against the Purchaser at the location of his company headquarters or another appropriate court.

Freiburg im Breisgau, Germany, March 2007