

## ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1. For the purpose of these General Terms and Conditions (“GTC’s”) and all related documents, the capitalised terms as defined below in alphabetical order shall have the following meaning whereby these terms may be used in the singular or the plural form and vice versa, as the context so requires:

“**Affiliated Party**” any legal entity which directly or indirectly controls, is controlled by or under common control with a Party, whereby “control” means the ownership direct or indirect of more than 50% of such legal entity’s voting rights or capital. Any such legal entity shall be deemed to be an Affiliated party of a Party only as long as such control exists.

“**Confidential Information**” all information, documents and/or data in any form whatsoever (including oral, Written and/or digital) of which the receiving Party reasonably understands or should understand that the information presents a commercial value to the providing Party. Confidential Information shall in any case include, but shall not be limited to: Information (article 14) formulations, designs, business plans, technical/financial/marketing/customer/business information, and all data derived directly or indirectly from such Confidential Information.

“**Customer**” the person, firm or legal entity to which Energyra has issued the Offer for the sale and delivery of Products as stated in the confirmed Order.

“**Defects**” defects in materials and workmanship that have an effect on functionality of the Products under normal application, installation, use and service conditions, excluding any colour change of the Products or any other changes in appearance of the Products, insofar as such change does not stem from defects in material and/or workmanship and does not cause degradation of functionality of the Products.

“**Energyra**” Energyra Europe B.V., a company organised and existing under the laws of the Netherlands, with its registered seat in Westknollendam, the Netherlands, and its office address located at Handelsweg 45, 1525 RG, Westknollendam, the Netherlands, and any of its Affiliated Parties.

“**Information**” the information as described in Article 14 (Intellectual Property).

“**Intellectual Property Rights**” all patents, trademarks, tradenames, trade secrets and knowhow, rights in Confidential Information, copyrights, neighbouring rights, database rights, design rights, portrait rights, trade secret rights, rights in domain names and any other intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, related dependent or ancillary rights and priority or goodwill rights and all similar or equivalent rights or forms of protection in any part of the world.

“**Offer**” the quotation for the sale of Products issued in Writing by Energyra to the Customer.

“**Order**” a Written order issued by a Customer and accepted by Energyra, by virtue of which the Customer shall purchase and Energyra shall deliver the Products, of which these GTC’s form an integral part, including all appendices, subsequent amendments hereof and/or addenda hereto as may be agreed upon in Writing between the Parties.

“**Price**” the total amount as specified in the Order which is payable by the Customer to Energyra for the sale and delivery of Products.

“**Party**” or “**Parties**” Customer or Energyra individually or Customer and Energyra collectively.

“**Products**” photovoltaic modules and related goods, (raw) materials, components, devices, equipment, complete systems and/or other independent or accessory parts of goods of any nature whatsoever delivered by Energyra to Customer pursuant to the Order.

“**Written**” or “**in Writing**” in writing by post, by e-mail or other electronic communications equipment commonly used in the market.

## ARTICLE 2 – APPLICABILITY

1. These GTC’s apply to and form an integral part of all Orders, (framework)agreements as well as to all related legal acts of the Parties.
2. The applicability of Customer’s general purchase or other conditions is expressly rejected. Deviating conditions are only valid if and insofar as they have been accepted in Writing by Energyra.
3. Any amendments of and/or addenda to these GTC’s have to be agreed upon in Writing by the duly authorized representatives of both Parties.
4. If one (1) or more provisions of these GTC’s shall be found, by a court with jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of these GTC’s. The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision.

## ARTICLE 3 – OFFERS AND ACCEPTANCE OF ORDERS

1. Every Offer of Energyra is in effect during the period stated therein. An Offer in which no period of validity has been included, is non-binding.
2. No Order shall be binding for Energyra unless 1) the Order has been confirmed by an authorised representative of Energyra in Writing or 2) Energyra takes effect with the execution of the Order.
3. If the Customer provides data, drawings, calculations and such, Energyra may assume the accuracy and completeness thereof and the Offer will be based on the information provided. If the information provided by the Customer proves to be incorrect or incomplete or subsequently changes, Energyra is entitled to adjust the prices, rates and/or delivery terms stated and shall not be liable for the consequences thereof.
4. A composite order does not oblige Energyra to perform a part of the Order against a corresponding part of the Price.

## ARTICLE 4 – PRICE

1. Unless stated otherwise, the Price is always:
  - (a) in EUROS;
  - (b) based on delivery ‘EX WORKS’ (according to the Incoterms 2010 or any other later version thereof), at a location of Energyra as stated in the Order; and
  - (c) exclusive VAT, import duties, levies imposed by the government and other taxes.
2. Energyra is entitled to invoice partial deliveries separately.

## ARTICLE 5 – TERMS OF PAYMENT

1. Unless otherwise agreed upon between the Parties in Writing, The Customer shall pay 100% (hundred per cent) of the Price after acceptance of an Order by Energyra and prior to delivery of the Products. Energyra shall not be obliged to deliver any Products to the Customer if no proof of payment has been provided by the Customer.
2. Invoices shall be paid by the Customer within 14 days after the invoice date.
3. Customer shall pay Energyra's invoices in full and without discount, deduction or set-off. Contestation of an invoice by Customer shall not suspend the fulfillment of its payment obligations.
4. If the Customer does not fulfill its payment obligations in time, then the Customer will be in default by operation of law and will then owe an interest equal to 5% (five per cent) per month of the Price. In case the statutory interest should be higher, the Customer will owe the statutory interest. The interest on the amount due and payable shall be calculated as from the date the Customer is in default until the date that Energyra has received the full outstanding amount.
5. All judicial and extrajudicial costs made by Energyra for the enforcement of payment of the amounts due by Customer, are at Customer's expense.
6. Energyra's payment claims vis-à-vis the Customer shall become immediately due and payable if the Customer's company is liquidated, merged, bankrupted, dissolved/wound up, placed under guardianship or granted suspension of payment.
7. Payments made by the Customer may be allocated by Energyra in the first place to reduce the costs, subsequently to reduce the interest due and finally to reduce the principal sum.
8. Energyra may at all times require adequate security from the Customer such as a bank or performance guarantee for the proper fulfilment of the Customer's payment obligations and suspend delivery of Products until such adequate security has been received. The Customer shall provide Energyra with any such requested adequate security at Energyra's first request. Energyra shall be entitled to terminate (the) (all) confirmed Order(s) if the Customer does not provide Energyra with such adequate security.

## ARTICLE 6 – ASSIGNMENT AND SUBCONTRACTING

1. Energyra is at all times entitled to assign all or part of its rights and/or obligations regarding the Customer to an Affiliated Party as well as to conclude agreements with subcontractors with regard to the performance of the Order after prior Written notice thereof to the Customer.
2. The Customer may not (partly) assign or transfer any of its rights and/or obligations regarding Energyra to third parties, not being Affiliated Parties, without the prior Written consent of Energyra, which will not unreasonably be withheld.

## ARTICLE 7 – SERVICES

1. Energyra may provide services to the Customer if specified in the Order.
2. Energyra shall provide the services to the best of its ability, in a professional manner and in conformity with good industry practice.

## ARTICLE 8 – CUSTOM-DESIGN, SPECIFICATIONS AND ADVICE

1. Shown and/or provided samples, models and examples, specifications of colours, measurements, weights, dimensions, capacities, technical data, designs, models, advice and images set out in Energyra's Offer, catalogues, website, stock lists and other promotional material are approximate and indicative only. These data shall not be binding save to the extent they are expressly guaranteed in the Order.

## ARTICLE 9 – DELIVERY AND DELIVERY TIME

1. Unless otherwise agreed upon between the Parties in Writing, Energyra shall deliver the Products according to the Incoterm "EX WORKS", Incoterms 2010, at Energyra's production site or storage location. Upon delivery, the risk of loss of, or damage to, the Products shall transfer from Energyra to the Customer.
2. As soon as Energyra has informed the Customer that the Products are ready for delivery, the Customer shall organize transport within 3 (three) calendar days of such notification. If the Products have not been picked up from the delivery location in time, the Products will be considered delivered.
3. If Energyra has communicated a date or term of delivery, such date or term shall not be of the essence and shall only be indicative. Energyra shall at all times use its reasonable efforts to deliver the Products within the date or term specified in the Order. The delivery term commences on the date Energyra has accepted the Order. Any delay in delivery does not entitle the Customer to suspend or fail to comply with its contractual obligations or to claim damage.
4. Energyra accepts no liability for damages caused by late delivery, if the delivery period has not been exceeded by not more than 60 (sixty) calendar days. If the delivery period has been exceeded by 60 (sixty) calendar days or more, the Customer may decide to send Energyra a Written notice of default, requesting specific performance of the Order within a reasonable timeframe.
5. If the Customer refuses to accept delivery of Products or if the delivery of the Products has been postponed at the request of the Customer, Energyra will charge the Customer for the storage costs of the Products.
6. Unless otherwise agreed upon, Energyra shall be entitled to deliver Products in partial shipments. Any delay of a partial delivery shall not relieve the Customer of its obligation to accept the remaining delivery of Products.
7. Energyra is entitled to suspend deliveries if the Customer is reasonably expected not to be able to pay the amounts due and payable on the basis of the Order. In the event of such suspension, the agreed delivery date will be postponed in accordance with the period of suspension of the delivery concerned. The Customer will reimburse Energyra for all storage costs of the Products during the suspension period.

## ARTICLE 10 – INSPECTION & COMPLAINTS

1. The Customer shall inspect Products or have them inspected on visible shortcomings and/or Defects and quantity at the time of delivery.
2. Any claim regarding the quantity, visible shortcoming and/or Defects of Products delivered must be noted at the time of delivery on the consignment note or delivery invoice, in default of which the quality and quantities indicated on the consignment note or delivery invoice constitute compelling evidence against the Customer.
3. Other Defects or shortcomings have to be reported in Writing within 7 (seven) calendar days after such Defects or shortcomings have been or reasonably could have been detected. Any such Written complaint should contain a precise description of the Defect or shortcoming and detailed delivery information of Products such as delivery date and time, delivery note number, box- and/or serial number. Claims which are not filed in accordance with this procedure shall not be taken into consideration.
4. If the Customer files its complaint within the applicable terms set out above, it shall still be held to take delivery and effect payment of the Products purchased. Return of Products shall be done in accordance with the return procedure as set out in the Order.
5. Should the Customer fail to timely notify Energygra of any Defects or shortcomings in the Products in accordance with this Article 10, the Products shall be considered accepted by the Customer and all remedies with regard to detected or detectable shortcomings or Defects in the Products shall be void. The limitation period for claims for hidden defects is two (2) years as of date of delivery of the Products.
6. The content of this article 10 is without prejudice to any product and performance warranties provided by Energygra.

## ARTICLE 11 – RISK AND RETENTION OF TITLE

1. The Customer bears the risk of loss or damage to or caused by the delivery of the Products from the moment of delivery as described in Article 9.2 (Delivery and delivery time).
2. Energygra retains ownership of the delivered Products, until the date on which the Customer has completely fulfilled all of its obligations under the Order.
3. The Customer undertakes to characterise and store the Products under retention of title in such a way that these Products cannot be confused with other similar products originating from third parties. To that extent the Customer is obliged to keep an inventory of the Products delivered under retention of title and store these Products separately.
4. The Customer shall at its own expense insure Products under retention of title and keep them insured against all types of damages, such as but not limited to, damage caused by fire, explosion and water as well as against theft with an insurance company of financial repute. The insurance coverage has to be adequate to cover the value of new Products. On the request of Energygra the Customer shall make the respective insurance policy available for inspection as well as evidence of the payment of the insurance premiums.
5. Until full payment of the Price, the Customer shall not be authorised to pledge or to encumber the Products under retention of title in any way.

6. In the event that Energygra wishes to exercise its ownership rights under this Article 11, the Customer shall give Energygra or third parties appointed by Energygra, now for then, unconditional and irrevocable permission to access all of the Customer's sites and locations where the Products are located in order for Energygra to take them back.

## ARTICLE 12 – LIABILITY

1. The exclusions and limitations referred to in these GTC's will not apply in case of personal injury or death, or intentional acts or willful recklessness of Energygra.
2. Any liability of Energygra for indirect damages, including but not limited to: consequential loss, lost profit, missed savings and damage due to business interruption, is explicitly excluded.
3. Energygra's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Order by the Customer shall at all times be limited to the maximum of the actual invoiced amount (excluding taxes and duties) for the delivered Products which have resulted in Energygra's liability.
4. Any claims for damages or allegation thereof should be addressed and notified to Energygra in Writing within 90 (ninety) calendar days from occurrence of the event giving rise to the alleged damages. Any lawsuit must be filed within 12 (twelve) months of the date of the claim, in absence of which the legal claim or allegation thereof shall lapse.
5. Any laws or statutes with regard to product liability by a supplier do not apply towards Energygra when the Products are physically incorporated into an end product by Customer for its customers.

## ARTICLE 13 – INDEMNITY

1. The Customer shall indemnify and hold Energygra harmless from and against all claims of third parties and costs directly or indirectly arising out of or in connection with Products delivered under the Order other than claims for death or personal injury caused by a Defect in the Products (product liability).
2. Energygra warrants that, at the time of the Offer, it is not aware that the sale and purchase, or use of the Products will cause infringement of third party Intellectual Property Rights, or any other third party rights.

## ARTICLE 14 – INTELLECTUAL PROPERTY RIGHTS

1. The Customer acknowledges that all Intellectual Property Rights in the Products, and in any plans, simulation models, specifications, test models, images, schedules, designs, sketches, drawings, films, source code, software and other material or (electronic) files (the "Information") made available or produced as part of the Product shall vest in Energygra and its Affiliated Parties.
2. Subject to these GTC's, the sale by Energygra of any Products implies the non-exclusive and non-transferable limited license to Customer under any of Energygra's and/or its Affiliated Parties Intellectual Property Rights used in the Products to use and resell the Products as sold by Energygra to the Customer.

3. Notwithstanding anything to the contrary herein, these GTC's shall not be construed as conferring any right, license or immunity, either directly or by implication or otherwise to Customer or any third party under any Intellectual Property Rights of Energygra or Intellectual Property Rights of any third party other than explicitly granted under these GTC's.
4. The Customer shall not modify, translate, disassemble or reverse engineer any Products without the prior Written approval of Energygra.

#### ARTICLE 15 – EXPORT CONTROL

1. The delivery of Products may be subject to laws, customs and export control regulations. Each Party shall comply with such laws, customs and regulations and shall not export Products without first obtaining all required governmental authorisations or licenses. Notwithstanding anything to the contrary in these GTC's or any Order, Energygra shall in no event be obliged to deliver any Products or perform any of its obligations under these GTC's or any Order until the required approvals relating to the export regulations abovementioned have been obtained. Each Party agrees to provide the other Party with such information and assistance as may reasonably be required by the other in connection with securing such authorisations or licenses, and to take timely action to obtain all required support documents. Energygra shall be entitled to cancel the Order or part thereof, if the respective necessary approval(s) according to the applicable export regulations cannot be obtained within a reasonable time period.

#### ARTICLE 16 – FORCE MAJEURE

1. Neither Party shall be liable for any failure or delay in fulfilling the terms of the Order due to fire, strike, war, civil unrest, terrorist action, government regulations, act of nature or other causes which are unavoidable and beyond the reasonable control of the Party claiming force majeure. This provision shall not be construed as relieving either Party from its obligation to pay any sum due to the other Party.
2. Energygra may suspend the execution of its obligations under the Order during the period that the force majeure continues. Parties will consult with each other in order to find a solution. If the force majeure has continued for a period of 6 (six) consecutive months, each of the Parties is entitled to cancel the Order in Writing, for the part of the obligations under the Order that has not been fulfilled by Energygra and without obligation to compensate damage to the other party.

#### ARTICLE 17 – PRIVACY

1. The Customer shall at all times comply with any obligations under applicable data protection legislation. The Customer shall (i) take appropriate security measures to protect the confidentiality of the (personal) data provided by Energygra, (ii) inform Energygra, on Energygra's request, about the security measures taken in respect to the foregoing, and (iii) notify Energygra of any breach of personal data in accordance with and within the timeframe stipulated in the data protection legislation. If applicable, Parties shall enter into a data processing agreement.

#### ARTICLE 18 – CONFIDENTIALITY AND PUBLICITY

1. The Parties agree to treat each other's Confidential Information with the same care as it would treat its own Confidential Information but at least with the minimum care used in a professional organisation and use the Confidential Information solely for the purpose of the performance of the confirmed Order.
2. The Parties will make sure their officers, directors, employees, agents and Affiliated Parties abide by the terms of this **Article 18**. Each Party will be responsible for any breach by its officers, directors, employees, agents and Affiliated Parties of this **Article 18**.
3. If a statutory provision or a judicial decision compels Energygra to convey Confidential Information of the Customer to third parties designated by law or by a competent court, Energygra shall not be held to pay damages or compensation and the Customer shall not be entitled to demand the cancellation of the Order on the ground of any damage resulting from such circumstance.
4. All documents made available or accessible to the Customer by Energygra remain the property of Energygra at all times and must be returned at Energygra's first request. Without the express permission of Energygra, such documents may not be reproduced, nor given to third parties for inspection, except insofar as this is necessary in the context of normal business operations.

#### ARTICLE 19 – APPLICABLE LAW AND DISPUTES

1. These GTC's are construed in accordance with and governed exclusively by the laws of the Netherlands. The applicability of the 1980 Vienna Sales Convention is hereby excluded.
2. In case of any disputes arising out of or relating to these GTC's, the Parties shall endeavour to settle such disputes amicably. If the Parties are unable to settle, the dispute shall be exclusively submitted to the jurisdiction of the competent courts of Noord-Holland, the Netherlands.



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