

General Terms and Conditions for Delivery

§ 1 Scope and Application

- (1) All deliveries, services and offers of Efficient Energy GmbH (hereinafter referred to as "EE") are made exclusively on the basis of these General Terms and Conditions of Delivery (hereinafter referred to as "Delivery Terms"). The Delivery Terms are an integral part of all Agreements that EE concludes with its contractual partners (hereinafter also referred to as "Customer") for the deliveries or services offered by EE. The Delivery Terms apply to customers who are merchants, a legal entity under public law or a special fund under public law. Should this not apply to the Customer, the Customer shall notify EE thereof in writing prior to the conclusion of the Agreement. The Delivery Terms shall also apply to all future deliveries, services or offers to the customer, even if they are not separately agreed again.
- (2) Terms and conditions of the Customer or third parties shall not apply, even if EE does not expressly object to their validity in individual cases. Even if EE refers to a letter which contains or refers to the terms and conditions of the Customer or a third party, this does not constitute an agreement on or an acceptance of those terms and conditions.

§ 2 Offer and Conclusion of the Agreement

- (1) All offers by EE are subject to confirmation and are non-binding, unless they are expressly marked as binding or contain a specific acceptance period. EE may accept orders or commissions within (14) days after receipt.
- (2) The legal relationship between EE and the Customer shall be governed solely by the purchase contract (hereinafter referred to as "Agreement") concluded in writing, including these Delivery Terms. The Agreement and the Delivery Terms shall fully reflect all agreements between the parties concerning the subject matter of the Agreement. Oral commitments made by EE prior to the conclusion of this Agreement shall be legally non-binding and oral agreements of the parties to the Agreement shall be replaced by the written Agreement unless it is expressly stated in each case that they shall continue to be binding.
- (3) Supplements and amendments to the agreements made, including these Delivery Terms, must be made in writing in order to be effective. With the exception of managing directors or authorized signatories, the employees of EE shall not be entitled to enter into oral agreements deviating from the written agreement. Text form, in particular by e-mail or fax, shall suffice to comply with the written form, provided that a copy of the signed declaration is transmitted.
- (4) Information provided by EE regarding the subject matter of the delivery or service (e.g. dimensions, operating limits, specifications, tolerances and technical data) as well as representations thereof (e.g. drawings and illustrations) are only approximate unless the usage for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or markings of the delivery or service. Deviations customary in the trade and deviations which occur due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible provided that they do not impair the usability for the contractually intended purpose.
- (5) EE reserves the ownership or the copyright in all offers and cost estimates submitted by EE as well as in drawings, illustrations, calculations, brochures, catalogues, models and other documents and materials made available to the Customer. Without the express consent of EE, the Customer may not make these materials accessible to third parties, disclose them, use them himself or through third parties or reproduce them, either as such or in terms of content. At EE's request, the Customer shall return these items to EE in their entirety and destroy any copies made if they are no longer required by the Customer in the ordinary course of business or if negotiations do not lead to the conclusion of an Agreement. Excluded from this is the storage of electronically provided data for the purpose of customary data backup.

§ 3 Prices and Payment

- (1) The prices shall apply to the scope of services and deliveries specified in the order confirmations. Additional or special services shall be charged separately unless otherwise

agreed or specified in the delivery confirmation. Prices are quoted in EUR ex works, unless otherwise agreed in writing, plus packaging and the statutory value-added tax.

- (2) If a delivery date has been agreed and the Customer does not accept the delivery item on the agreed delivery date for reasons for which EE is not responsible, EE may - after prior written request to accept the delivery item - issue an invoice for the products and services already rendered.
- (3) Invoiced amounts shall be paid within 14 days of the invoice date without any deduction unless otherwise agreed in writing. The date of receipt by EE shall be decisive for the date of payment. Payment by cheque is excluded unless agreed separately in individual cases. If the Customer fails to make payment by the due date, the outstanding amounts shall bear interest at 5% p.a. from the due date; the assertion of higher interest rates and further damages in the event of default shall remain unaffected.
- (4) The offsetting against counterclaims of the Customer or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established and result from the same order under which the delivery in question took place.
- (5) EE shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the Agreement, EE becomes aware of circumstances which are likely to significantly reduce the creditworthiness of the Customer and which endanger the payment of the outstanding claims of EE by the Customer from the respective contractual relationship (including from other individual orders to which the same contractual framework applies).

§ 4 Delivery and Delivery Time

- (1) Deliveries shall be made ex works unless otherwise agreed in writing.
- (2) Deadlines and dates for deliveries and services envisaged by EE are always only approximate, unless a fixed deadline or date has been expressly promised or agreed as binding and the commercial and technical details of execution have been conclusively clarified. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
- (3) Without prejudice to EE's rights arising from the Customer's default, EE may ask the Customer for an extension of delivery and performance periods or a postponement of delivery and performance dates corresponding to the period in which the Customer failed to meet its contractual obligations towards EE.
- (4) EE shall not be liable in cases where delivery is impossible or for delays in delivery if these are caused by force majeure (e.g. natural catastrophes, fire, war) or other events not foreseeable at the time of conclusion of the Agreement (e.g. operational disruptions of all kinds, strikes, lawful lockouts) for which EE is not responsible. If such events make it significantly more difficult or impossible for EE to deliver or perform and the hindrance is not only of a temporary nature, EE shall be entitled to withdraw from the Agreement. In the event of hindrances of a temporary nature, the delivery or service periods shall be extended or the delivery or service dates postponed by the period of the hindrance plus an appropriate start-up period. If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, the Customer may withdraw from the Agreement by immediate written declaration to EE.
- (5) EE shall only be entitled to make partial deliveries if
 - the delivery of the remaining ordered goods is ensured and
 - the Customer does not incur any significant additional expense or costs (unless EE agrees to bear such costs).
- (6) If EE is in default with a delivery or service or if a delivery or service becomes impossible for EE for whatever reason, EE's liability shall be limited to damages in accordance with § 8 of these Delivery Terms.

§ 5 Place of Performance, Shipping, Packaging, Passing of Risk, Acceptance

- (1) Place of performance for all obligations arising from the contractual relationship shall be EE's place of business, Hans-Riedl-Straße 5, 85622 Feldkirchen, Germany, unless otherwise specified. If EE is also responsible for the installation, the place of performance shall be the place where the installation is to take place.
- (2) The mode of dispatch and packaging shall be subject to the discretion of EE. If agreed by the parties, EE shall provide the Customer with a lifting device ("*Hebevorrichtung*") for a certain period of time.
- (3) The risk shall pass to the Customer at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party appointed to carry out the shipment. This shall also apply if partial deliveries are made or if EE has taken over other services (e.g. dispatch or installation). If dispatch or handover is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer from the day on which the delivery item is ready for dispatch and EE has notified the Customer accordingly.
- (4) Costs for storage shall be incurred if the Customer does not accept the delivery item at the time of delivery. Storage costs shall be borne by the Customer. In the case of storage by EE, the storage costs for each delivery item to be stored shall amount to EUR 100 per commenced week of storage. The right to assert higher or lower storage costs shall remain reserved.
- (5) EE shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the express request and expense of the Customer.
- (6) If acceptance is to take place, the object of purchase shall be deemed to have been accepted if
 - the delivery and, if EE also owes the installation, the installation has been completed;
 - three months have elapsed since delivery or installation or the Customer has started using the purchased item (e.g. the delivered system has been commissioned) and in this case one month has elapsed since delivery or installation;
 - the Customer has omitted acceptance within this period for a reason other than a defect notified to EE which makes the use of the purchased item impossible or substantially impairs it; and
 - EE has informed the Customer of this with reference to the acceptance fiction in this § 5 (6) and has requested the customer to accept the goods.

§ 6 Obligations of the Customer, Non-Solicitation

- (1) If installation of the delivery item has been agreed, the Customer shall be obliged to permit EE or a third party commissioned by EE to access and install the delivery item. Furthermore, the Customer shall be obliged to comply with the stipulated agreements at the time of installation of the delivery item, to allow access to the installation site and to provide sufficient space for installation.
- (2) The lifting device ("*Hebevorrichtung*") is not part of the delivery item and must be returned to EE. It will be delivered to the Customer together with the delivery item. The lifting device must be returned to EE at Customer's own expense within four weeks of delivery of the lifting device. If the lifting device is not returned within this period, EE shall charge the Customer a lump sum of € 850.00 for the extended period of use. The Customer shall return the lifting device without undue delay.
- (3) If, despite a written request by EE, the Customer does not comply, only partially comply or not comply in time with its obligations to cooperate as described in this Agreement and in particular in § 6 within a reasonable period of time set by EE, and if the Customer thereby directly or indirectly sets a decisive cause for the fact that EE is not able to continue or fulfil the contractually agreed services, the obligation of EE to perform shall be postponed accordingly and EE shall be entitled to issue an interim invoice for the services provided by EE up to that point in time, taking into account the agreed price pro rata.

- (4) During the Agreement and for a period of two years thereafter the Customer shall not solicit for employment of any employees of EE or engage in any other activities which may result in the resignation of EE's employees. The Customer shall in particular refrain from any enticement attempts.

§ 7 Warranty, Defects

- (1) Unless otherwise agreed, the warranty period shall be two years from delivery or, if acceptance is required, from acceptance. Reference is made to § 5 (6) of these Delivery Terms. This period shall not apply to claims for damages by the Customer arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by EE or its vicarious agents, which shall in each case become statute-barred in accordance with the statutory provisions.
- (2) The delivered items shall be carefully inspected immediately after delivery to the Customer or to the third party designated by the Customer. With regard to obvious defects or other defects which would have been recognizable in an immediate, careful inspection, they shall be deemed to have been approved by the Customer if EE does not receive a written notice of defect within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Customer if the notice of defect is not received by EE within seven working days of the time at which the defect was discovered; if the defect was already apparent at an earlier point in time under normal use, this earlier point in time shall, however, be decisive for the commencement of the notice period. If the notice of defect relates to a delivery item which has been installed at the Customer's premises, EE shall be granted access to the delivery item for inspection. In the case of justified notices of defects, EE shall bear the costs of travel and inspection by a technician. In all other cases, the costs incurred shall be borne by the Customer.
- (3) In the event of defects of the delivered items, EE shall initially be obliged and entitled to remedy the defect or make a replacement delivery at its own discretion and within a reasonable period of time. In the event of failure, i.e. if the repair or replacement is impossible, unreasonable, refused or unreasonably delayed, the Customer may withdraw from the Agreement or reduce the price appropriately.
- (4) If EE is liable for the defect, the Customer may claim damages under the conditions specified in § 9.
- (5) In the event of defects in components of other manufacturers which EE cannot remedy for licensing or actual reasons, EE shall, at its discretion, assert its warranty claims against the manufacturers and suppliers in the name of the Customer or assign them to the Customer. Warranty claims against EE for such defects shall only be enforced in accordance with these T's & C's if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the Customer against EE shall be suspended.
- (6) The warranty shall lapse if the Customer modifies the delivery item or has it modified by third parties without EE's consent and the removal of the defect becomes impossible or unreasonably difficult as a result. In any case, the Customer shall bear the additional costs of remedying the defect resulting from the modification.
- (7) In individual cases and as expressly agreed with the Customer, EE may deliver used items. Such used items will be delivered excluding any warranty for material defects.
- (8) Warranty is excluded if the Customer uses the delivery item improperly; this is particularly the case if improper operation, the use of the delivery item outside the operating limits and/or specifications, manipulations of the control technology or if modifications or repairs are carried out by technicians not certified or commissioned by EE. Should EE incur costs due to incorrect operation or the Customer exceeding the operating limits, these costs shall be reimbursed to EE by the Customer.

§ 8 Intellectual Property Rights

- (1) In accordance with this § 8, EE warrants that the delivery item is free from intellectual property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
- (2) In the event that the delivery item infringes an intellectual property right or copyright of a third party, EE shall, at its own discretion and expense, modify or replace the delivery item in such a way that no rights of third parties are infringed, and the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Customer by concluding a license agreement with the third party. If EE fails to do so within a reasonable period of time, the Customer shall be entitled to withdraw from the Agreement or to reduce the price accordingly. Any claims for damages by the Customer shall be subject to the limitations of § 9 of these Delivery Terms.

§ 9 Limitation of Liability

- (1) To the extent liability depends on fault, the liability of EE for damages, irrespective of the legal basis, in particular if the performance of the Agreement becomes impossible, default, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tortious action, shall be limited in accordance with the provisions of this § 9.
- (2) EE shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless in case of a breach of material contractual obligations. Material to the performance of this Agreement are the obligation to deliver and install the delivery item on time, its freedom from defects of title and material defects which more than insignificantly impair its functionality or fitness for use, as well as obligations to provide advice, protection and care, which are intended to enable the Customer to use the delivery item in accordance with the Agreement or are intended to protect the life and limb of the Customer's personnel or the property of the Customer from material damage.
- (3) If EE is liable for damages in accordance with § 9 (2), this liability shall be limited to damages which EE foresaw at the time of conclusion of the Agreement as a possible consequence of a breach of contract or which EE should have foreseen if it had exercised due care. Furthermore, indirect damages and consequential damages resulting from defects of the delivery item shall only be eligible for compensation to the extent that such damages are typically to be expected when the delivery item is used as intended.
- (4) In the event of liability for simple negligence, EE's liability for damages to property and other financial losses resulting therefrom shall be limited to the value of the order within the scope of which the damage occurred per case of damage, even if it is a violation of essential contractual obligations.
- (5) The foregoing exclusions and limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of EE.
- (6) If EE provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by EE, this shall be done free of charge and to the exclusion of any liability.
- (7) The limitations of this § 9 do not apply to the liability of EE for intentional behaviour, for guaranteed characteristics, for injury to life, body or health or according to the Product Liability Act ("*Produkthaftungsgesetz*").

§ 10 Retention of Title

- (1) The retention of title agreed below serves to secure all existing current and future claims of EE against the Customer arising from relationship existing between the parties for the supply of goods (including any balance claims arising from a current account limited to this supply relationship).
- (2) The delivery items delivered by EE to the Customer shall remain the property of EE until all claims have been paid in full. The delivery items as well as the delivery items covered by the

retention of title shall be governed by the following provisions and shall hereinafter be referred to as "reserved goods".

- (3) The Customer shall store the reserved goods free of charge for EE.
- (4) The Customer shall be entitled to process and sell the goods subject to retention of title in the ordinary course of business up to the time of the occurrence of the event of utilisation § 10 (9). Pledges and transfers by way of security are not permitted.
- (5) If the reserved goods are processed by the Customer, it shall be agreed that the processing shall be carried out in the name and for the account of EE as manufacturer and that EE shall directly acquire ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership by EE should occur, the Customer hereby transfers its future ownership or - in the above ratio - co-ownership of the newly created item to EE as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, EE shall assign to the Customer, to the extent that the main item belongs to EE, the proportionate co-ownership of the uniform item in the ratio stated in S. 1.
- (6) In the event of resale of the reserved goods, the Customer hereby assigns to EE as security the resulting claim against the purchaser - in the case of co-ownership by EE of the reserved goods pro rata in accordance with the co-ownership share. The same shall apply to other claims which take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims arising from tort in the event of loss or destruction. EE revocably authorizes the Customer to collect the claims assigned to EE in its own name. EE may only revoke this direct debit authorization in the event of realization.
- (7) If third parties access the reserved goods, in particular by seizure, the Customer shall immediately inform them of EE's ownership and inform EE thereof in order to enable EE to enforce its ownership rights. If the third party cannot reimburse EE for the judicial or extrajudicial costs incurred in this connection, the Customer shall be liable to EE for such costs.
- (8) The Seller shall release the goods subject to retention of title as well as the items or claims replacing them insofar as their value exceeds the amount of the secured claims by more than 50%. EE shall select the items to be released.
- (9) If EE withdraws from the Agreement in the event of breach of contract by the Customer - in particular default in payment - EE shall be entitled to demand the return of the reserved goods.

§ 11 Hardware and Embedded Software

- (1) For software or programs supplied as an executable component of EE's devices, the following shall apply:
 - a) No ownership of the respective program shall be acquired, but merely the basic right of use. The respective program and, in particular its source code shall remain the sole property of EE. A program may only be used on the delivered device. The customer is not permitted to reproduce or copy the respective program in whole or in part. The right of use may only be transferred together with the device supplied by EE or be handed over to third parties for exercise.
 - b) Decompilation and other forms of reverse engineering of the various manufacturing stages of such a program shall be prohibited. Copyright notices, serial numbers and other features serving to identify the program may under no circumstances be removed or changed.
- (2) The following applies to the devices supplied by EE (the "Hardware"):

The construction plans and manufacturing documents for the devices placed on the market by EE are trade secrets of EE. Hence, it is forbidden to determine, by observation, investigation, dismantling or testing of a device which has not yet been mass-produced or delivered by EE individually adapted to the needs of the customer concerned and therefore not yet made

available to the public in the form in which it has been delivered, a mode of operation which is not recognizable from the outside during operation, or further details of a mode of operation which is only generally recognizable from the outside, or to draw up blueprints or production documents for such a device.

§ 12 Final Provisions

- (1) The place of jurisdiction for any disputes arising from the business relationship between EE and the Customer shall be Munich or the customer's place of business, as EE chooses. However, Munich shall be the exclusive place of jurisdiction for legal actions against EE. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
- (2) The business relationship of EE and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- (3) In case the Agreement or these Delivery Terms contain gaps, such legally effective provisions shall be deemed to have been agreed for filling these gaps which the contracting parties would have agreed according to the economic objectives of the Agreement and the purpose of these Delivery Terms, had the parties been aware of the loophole, as far as this is legally permissible.

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Efficient Energy GmbH

Hans-Riedl-Str. 5

85622 Feldkirchen

Germany

Tel.: +49 (89) 693369-500

Fax: +49 (89) 693369-8610

info@efficient-energy.de