

## **General Terms and Conditions of asola Technologies GmbH, Erfurt/Germany**

### **1 General**

- 1.1 All deliveries and services of asola Technologies GmbH (hereinafter referred to as asola) shall be rendered exclusively in accordance with the following conditions. Other conditions – General terms and conditions – shall not become subject matter of the contract, even if not expressly contradicted by asola.
- 1.2 After accepting an order, a confirmation of order, or by placing an order, the ordering party acknowledges the terms and conditions of sale and delivery that are to apply for the entire business relationship with us. Once agreed, the terms and conditions of sale and delivery shall also apply for future conclusions of a contract.
- 1.3 Any provision deviating from the terms and conditions of sale and delivery requires written confirmation on the part of asola.

### **2 Offers of contract**

- 2.1 All offers of asola shall be made without obligation. Documents supporting the offer such as illustrations, drawings or specifications of weights and measurements shall only give approximate indications. We are not bound by obvious mistakes or typographical, printing or arithmetical errors.
- 2.2 Orders only become binding with the written confirmation of asola. Collateral agreements, reservations etc. to a contract require the written confirmation of asola to be valid.
- 2.3 asola herewith reserves any industrial property rights and copyrights pertaining to its cost estimates, drawings and other documents. Any transfer to third parties or reproduction requires the written consent of asola.

### **3 Cancellations**

- 3.1 asola manufactures exclusively to order. Cancellation of orders for publicly documented serial products by the ordering party are therefore only valid if they have been confirmed by asola in writing. For orders cancelled up to two weeks before the confirmed delivery date, the ordering party shall be charged 5% of the cancelled order value, for up to one week 15% and for up to 2 days 25%.
- 3.2 Cancellations are generally not possible for products manufactured specifically to client order. Cancellations shall be granted in exceptional cases if the ordering party bears 100% of the costs of raw materials. Cancellations of orders for special products by the ordering party are thus only valid if they have been confirmed by asola in writing.
- 3.3 asola also reserves the right likewise to charge the ordering party for costs associated with the cancellation.

### **4 Shipping, packaging, risk transfer**

- 4.1 The term specified in the order confirmation applies exclusively as the delivery period. The start of the agreed delivery period assumes that all the documents required to implement the contract have been submitted and any agreed payments made.
- 4.2 Should asola fall behind with delivery, the ordering party shall set a reasonable period of grace. This does not justify a claim for compensation. If asola does not deliver within the term of grace, the ordering party is entitled to withdraw to the exclusion of any further claims. The withdrawal must be in writing within a week of the elapse of the grace period.
- 4.3 asola may discontinue the delivery without notice if the ordering party is in default of payment, or unfavourable financial circumstances of the ordering party become apparent afterwards, such as for example the refusal to honour cheques or bills of exchange, or the presentation of a petition for composition or insolvency proceedings.
- 4.4 Place of delivery is the address of record of asola Technologies GmbH. The risk shall be transferred to the ordering party as soon as the delivery is made available to the ordering party at the asola factory.
- 4.5 The ordering party shall dispose of packaging and pallet(s) at his own expense.

### **5 Prices and terms of payment**

- 5.1 Prices are Ex Works Erfurt/Germany, plus applicable statutory VAT.
- 5.2 Should asola increase its prices generally, asola is also entitled to increase the prices already agreed with the ordering party in the same way if the ordering party is a customer in terms of § 13 BGB. The payment claim of asola becomes due when the delivery is made available to the ordering party.
- 5.3 Invoice amounts are payable in accordance with the payment conditions agreed with the order confirmation without deduction excluding any right of retention or set-off. In case of default on payment within the stipulated time period – without prejudice to further legal claims and without notice – default interests are deemed as agreed conformable to § 246 BGB, with mutual commercial deals conformable with § 352 HGB.

## **6 Warranty**

- 6.1 To the extent of the following provisions, asola provides warranty for features of the contractual goods on the date of risk transfer that are explicitly assured in writing and legally assumable.
- 6.2 asola provides no warranty for defects resulting from improper treatment, from normal wear and tear, storage or other acts and omissions of the ordering party or third parties.
- 6.3 The ordering party is obliged to check the delivered goods for defects immediately after delivery, in any case however before the goods are processed. If the goods do not comply with the agreed quality, processing may only begin with the written consent of asola. The following provisions further apply for the assertion of claims relating to defects:
- A notification of defects for defects of quantity (exceeding and falling short of the delivery quantity according to the contract) must be immediately upon, in any case within seven days of receipt of documents indicating the weight and/or quantity of the delivered quantity or of delivery;
- B if quality defects are detectable upon inspection of the goods or their packaging or through sampling, notification of defect must immediately follow, in any case within seven days of delivery;
- C if quality defects are not detectable through inspection or through sampling, notification of defect must be immediately upon detection of the defect, at the latest however within three months of delivery. Defects/claims asserted later may not be considered.
- 6.4 With notification of defects, the ordering party must describe the good precisely, instance the rejected defects individually and in detail and at the same time provide asola with documents serving as proof. The complaint must be made in writing. If notification of defects does not take place in accordance with the provisions stipulated above, all claims for warranty, compensation and other claims of the ordering party are excluded.
- 6.5 For justified complaints, asola shall have the option of conducting repairs or delivering defect-free replacement goods. The purchaser is entitled to withdraw if asola allows a reasonable period granted to rectify a defect acknowledged by asola to pass through its own fault. In the event of acknowledged shortfalls of quantity, asola shall have the option of delivering the shortfall at a later date or granting appropriate credit.
- 6.6 In the event of visible damages in transit, the ordering party must have the damages confirmed by the carrying agent on the delivery note and delivery receipt. The goods shall be inspected immediately for damage. Damage to goods is to be reported to asola in writing within 2 working days accompanied by the delivery note, upon which the carrying agent has acknowledged the damages in transit.
- 6.7 asola or its legal agents and proxies are not liable for damages occurring within the scope of the warranty owing to breach of secondary contractual obligations, consulting errors, tort, culpable breach of obligation to remedy a defect or duty of replacement or for other statutory reasons, and particularly insofar as these damages did not occur to the item of delivery itself, unless there is intent or exclusion of liability is not legally permissible for other reasons. Claims for damages are likewise excluded for a lack of warranted services, if the warranties did not specifically signify the avoidance of damages consequent to defects.
- 6.8 The warranty conditions and periods for our high-performance modules according to price lists, brochures, offers and other documents are subject to change and separately documented. They are freely accessible on the internet on our homepage at [www.asola-tech.de](http://www.asola-tech.de) and can be made available as a PDF file or in printed form at the ordering party's request. Reference is made to them for purposes of application.

## **7 Liability**

- 7.1 All claims against asola not expressly conceded in the contract or in these terms and conditions of sale and delivery are - insofar legal - excluded.
- 7.2 Under Section 307 para. 1-3 BGB asola is entitled to liability limitation in case of contempt of certain obligations as well as within the scope of implied warranty. Considering the legal situation asola may permissibly limit the warranty to measures of supplementary performance or rectification of a defect in the event of breach of terms and conditions, unless the ordering party is eligible for legal claims pursuant to Sections 374 HGB and 437 BGB.
- 7.3 Insofar as there is negligent breach of a substantial contractual obligation, asola's liability shall be limited to the foreseeable damage typical for the contract. The general statutory provisions, prescriptions of limitation and liability limitation under German law shall apply to injury to life, body or health. Should asola be guilty of intent or gross negligence, liability under the general statutory provisions of German law shall likewise exist.
- 7.4 Insofar as the ordering party according to the provisions of product liability law has provided a replacement to a third party because of a defect of a processing product, it rests with the ordering party in case of recourse to submit evidence that the defect in the processing product was caused wholly or in part through a defect in the goods supplied by asola.

## **8 Product liability**

- 8.1 The ordering party may only use the goods manufactured, imported or put on the market by asola as designated and must ensure that these goods (also as base material or subproduct) are only ceded for their intended use to persons familiar with the product dangers and risks and only placed on the market by such persons.
- 8.2 Special features of asola products shall only be deemed to be agreed if they have been specifically assured in writing. asola is not legally liable for damages arising through defects in the construction of a product into which goods of asola have been incorporated or which have been caused through instructions of the manufacturer of this product.
- 8.3 Liability for building-integrated photovoltaic elements solely covers their properties as solar-laminated safety glass, being a part of the German Institute for Construction Techniques' (DIBt) "general technical approval (abZ)". Liability is excluded for building-integrated elements serving as basic construction parts. This shall apply irrespectively of whether or not the damage to property comes from the ordering party's area of accountability.
- 8.4 The ordering party is further obliged when using goods supplied by asola as base material or subproducts for his own products also to fulfill his product liability law duty to warn in regard to the goods supplied by asola when placing such products on the market.
- 8.5 The ordering party is obliged to continue to monitor products he has put on the market after their introduction for harmful properties or dangerous consequences of use and to track the development of science and technology in respect of such products and to notify asola immediately of defects detected in goods it has supplied by virtue of these observations.
- 8.6 In order to indemnify asola, the ordering party is liable for all liabilities, losses, damages, costs and outlays accruing to asola from the ordering party's failure to comply with the above obligations.

## **9 Reservation of proprietary rights**

- 9.1 The delivered goods remain the property of asola until the settlement of all open claims from the business relationship – also until the cheques have been cleared.
- 9.2 If the ordering party is a reseller, the sale of our goods within the framework of orderly trading on his own behalf is permitted. The purchaser already surrenders the claim receivable from the further sale to asola. asola accepts the assignment. When goods are sold after processing or in combination with other goods not belonging to asola, assignment of the receivables applies to the amount of our invoice value of the asola goods. The purchaser is authorised to collect the assigned receivables only as long as he duly fulfils his payment obligations to asola. The ordering party shall reserve ownership of the property until such time as the purchasers have paid the purchase price in full.
- 9.3 The hypothecation or use as collateral of the goods of asola by the ordering party is not permitted. He is obliged to inform asola immediately of the access of third parties to the goods. The ordering party is not permitted to arrange assignment prohibitions.

## **10 Creditor's default of acceptance**

- 10.1 In the event of default of acceptance/refusal to accept of longer than 14 days, asola is entitled, in addition to all other rights owing to it (such as withdrawal and sale on the open market at the ordering party's expense), to place the goods covered by the contract in storage at the ordering party's expense and risk and charge for them as duly handed over and accepted. In this event, the purchase price is due immediately.
- 10.2 If the ordering party is in default with the payment of amounts due according to the contract, asola is entitled upon expiry of a period of 14 days after a communication on this matter to the ordering party to hold all further deliveries until the amount in question has been received by asola. asola is further entitled in the event of a default of payment by the ordering party according to the contract, after granting an appropriate period of grace, to withdraw from the contract and demand the payment of all outstanding, including not yet due or deferred invoice amounts. In these cases, agreed price reductions (particularly discounts) are inoperative, and asola is entitled to claim the full invoice amount. No liabilities or obligations of asola to the ordering party may arise out of the instanced options for handling creditor's default of acceptance, in particular liability to pay compensation.

## **11 Force majeure**

- 11.1 Events of force majeure entitle asola, to the exclusion of any claim (in particular claims of damages) of the ordering party, to extend the delivery period by the duration of the hindrance and a reasonable start-up period or to withdraw completely or partially from the contract.
- 11.2 Force majeure events are deemed to include all those whose causes lie outside asola's sphere of influence, including, but not limited to:
- A labour disputes of any kind, difficulties in the procurement of material or transport facilities, closed borders, official decrees, export embargos or other circumstances impacting negatively on the operations of asola; or
  - B force of nature, acts of war, uprisings/revolution, terrorism, sabotage, arson, fire, natural disasters, non-obtainment of required official authorisations; or
  - C delivery delays or failures by primary suppliers of asola, particularly as a consequence of energy crises or raw material supply crises and from all other causes for which asola is not responsible; or
  - D other unforeseeable circumstances which asola cannot economically be expected to obviate.

## **12 Data handling**

Personal data of the ordering party obtained within the framework of the business connection shall be stored by asola in accordance with the provisions of the German Data Protection Act.

**13 Applicable law, place of jurisdiction**

- 13.1 German law in the version in force at the time of the signing of the contract is applicable both to the contract and to these General Terms and Conditions.
- 13.2 The applicability of the United Nations Convention on contracts in international sale of goods (UN trade law, CISG) is hereby expressly excluded under the terms of Article 6 of the Convention.
- 13.3 Exclusive place of jurisdiction for all disputes deriving from or in connection with an individual contract or these General Terms and Conditions or with their infringement, cancellation or revocation is the locally competent court of asola.

**14 Final clause**

Should individual provisions of this contract be void or become void, the validity of the remaining provisions of the contract remains unaffected. The contracting parties shall as far as possible replace the void provision with a provision which approximates as closely as possible its economic purpose.

These General Terms and Conditions are effective as of 1<sup>st</sup> June 2014 and invalidate all previous ones.