

# Solarwatt Technologies Ltd.

EN    General Terms and Conditions



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# SOLARWATT TECHNOLOGIES LTD. GENERAL TERMS AND CONDITIONS

## 1. General information

- 1.1. All Solarwatt's (SOLARWATT TECHNOLOGIES LIMITED a company registered in England and Wales under No 13270843)) deliveries and services, in particular deliveries and services on the basis of a purchase contract , a contract dealing with the supply of movable things to be produced or manufactured ), or a contract for works and services , including installation, assembly, and other services as well as consultations and other ancillary services (hereinafter jointly: "Delivery/Deliveries"), will be exclusively executed under these general terms and conditions (hereinafter: "Delivery Terms"). We do not accept any terms of the customer (hereinafter: "Customer") which deviate from or amend the Delivery Terms or any implied statutory provisions (unless the same cannot be excluded by law) , unless we have explicitly consented to their applicability in writing. Even if we have not expressly rejected such terms of the Customer after having received them or have executed any Deliveries without any reservation, we do not accept such terms.
- 1.2. These Delivery Terms apply to Customers who are acting in the course of a business and do not apply to Deliveries to Customers who would be considered to be consumers purchasing for their personal use or consumption.
- 1.3. Within the scope of an ongoing business relationship, the Delivery Terms shall also apply to all our future Deliveries to the Customer.

## 2. Offers and conclusion of Contract

- 2.1. Our offers/quotations are always made subject to formal contract and are non legally binding. Any legally binding contract with the Customer (hereinafter: "Contract") shall only come into effect by an order of the Customer and our written order confirmation or upon our rendering of the Delivery.
- 2.2. We may accept an order by the Customer within two weeks following its submission. Until the expiration of this delay, orders are binding for the Customer. Our silence does not allow the Customer to assume conclusion of a Contract. Should the Customer receive our order confirmation late, he shall inform us about it without undue delay.
- 2.3. Any commercial terms shall ( subject always to these Delivery Terms which shall prevail in the event of conflict) be construed in accordance with the Incoterms applicable at the time of the conclusion of the Contract.

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- 2.4. Information which is provided by us in our offer to the Customers which is manifestly incorrect cannot be held or enforced against us.

### **3. Acceptance**

- 3.1. Deliveries only require acceptance if it has been expressly agreed upon or if it is required by statutory provisions which cannot be excluded by law.
- 3.2. The Customer shall bear the costs of the acceptance.
- 3.3. Unless otherwise agreed upon, acceptance must be conducted within two weeks following the announcement of the readiness for acceptance.
- 3.4. The Customer may not refuse acceptance due to non-material defects.
- 3.5. Should the Customer fail to carry out an agreed acceptance which has to take place prior to the shipment without undue delay after the announcement of the readiness for acceptance, we shall have the right to dispatch the Delivery without acceptance and to charge it to him as delivered.

### **4. Transfer of risk, execution of Delivery, Delivery dates**

- 4.1. In the case of deliveries under a purchase contract or a Contract dealing with the supply of movable things to be produced or manufactured, the risk of accidental loss and accidental deterioration shall pass to the Customer upon selection of the goods and the announcement of the readiness for dispatch, but at the latest when the goods leave the factory or the warehouse. In the case of deliveries and services under a contract for work and services, the risk of accidental loss and accidental deterioration shall pass to the Customer as soon as the delivery or service is within the sphere of the Customer's authority, but at the latest upon acceptance.
- 4.2. Unless otherwise agreed upon, we determine the shipment route and means of shipment as well as the carrier and forwarder.
- 4.3. Our delivery obligations shall be subject to the correct and punctual deliveries by our own suppliers.
- 4.4. The compliance with the agreed delivery dates requires the clarification of all technical questions, the timely reception of all documents, permits and clearances to be delivered by the Customer as well as the compliance with the agreed payment terms and any other obligations of the Customer. Should the Customer fail to fully or timely meet one of these conditions, the delivery delays shall be extended accordingly.

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- 4.5. The agreed delivery dates are deemed to be complied with upon announcement of the readiness for dispatch; this also applies if Deliveries cannot be shipped in due time without our fault.
- 4.6. If we have agreed upon collection by the Customer, a Delivery which has been reported ready for shipment as provided in the Contract must be collected without undue delay, otherwise we shall be entitled to ship it at Customer's expense and risk at our own choice and to charge it as delivered.
- 4.7. Insofar as the execution of Deliveries is delayed by more than one week because the Customer is in breach of obligations under the Contract by culpable conduct, we shall be entitled to claim a contractual charge of 0.2% of the net price of the delayed Delivery per working day after the expiry of the period of one week, not to exceed, however, the total of 5% of this net price. Our right to claim further damages at common law remains unaffected. However, already paid contractual charges shall be credited to possible claims for damages.
- 4.8. We are entitled to perform partial deliveries, to the extent such partial deliveries are reasonable for the Customer, and to invoice such partial deliveries separately; any freight costs for all partial deliveries shall not exceed any agreed freight costs. The Customer's right to rescind the Contract as a whole in case of our culpable and undue delay with the remaining partial deliveries, if the partial deliveries are of no value to the Customer, shall remain unaffected.
- 4.9. Excess or short deliveries in line with the industry standard are allowed and are deemed as agreed upon. The same shall apply in case of early Deliveries.
- 4.10. Events of force majeure entitle us to defer the Delivery by the duration of the impediment caused by the force majeure as well as by an appropriate start-up period. Any other inevitable events we are not at fault for shall be deemed as events of force majeure, in particular measures in terms of monetary policy, trade policy and other sovereign measures, strikes, lock outs, significant interruptions of operations (such as fire, machinery breakage, lack of resources or energy or the impact of any endemic or pandemic related events) as well as obstructions of transport routes – in case which are not only temporary – and which make the Delivery substantially difficult or impossible. Should the duration of events of force majeure or their equivalents exceed three months, we and the Customer shall be entitled to rescind the Contract. We will inform the Customer about the beginning and the end of such events as soon as reasonably possible.
- 4.11. Should we have agreed that the Customer be entitled to damages in addition to the performance due to delay, damages to be compensated shall (as the Customer's sole remedy ) be limited to 0.5% of the agreed net price of the Deliveries affected by the

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delay for each full week of delayed Delivery, not exceeding, however, a total of 5% of this net price. These limitations shall not apply if the delay is intentional on our part or the consequence of our gross negligence.

- 4.12. Without prejudice to any statutory conditions to the extent that they cannot be excluded by law, the Customer may only rescind the Contract due to our failure to comply with delivery dates, if we are at fault for the failure. In case we have rendered a partial Delivery, the Customer is only entitled to rescind the entire Contract, if the partial Delivery is of no value to him.

## **5. Prices and Payment**

- 5.1. Unless otherwise agreed, our prices are exclusive of applicable VAT and unforeseen costs necessary to perform our obligations under the Contract which shall be payable in addition by the Customer.
- 5.2. Our invoices are due in 30 days after the date of the invoice, unless otherwise agreed.
- 5.3. In case of export deliveries, any and all taxes, customs duties and other public charges payable abroad or when exporting abroad shall be borne by, respectively reimbursed by, the Customer.
- 5.4. If the Customer is in default in payment, we are entitled to demand the interest at the rate of 4% above the published base rate of Barclays Bank PLC from time to time.
- 5.5. As a matter of good business practice and credit control, we may at our option delay or refuse acceptance of new orders if the Customer is substantially indebted to us in respect of earlier orders.
- 5.6. If a significant decline in the Customer's financial circumstances becomes apparent after the conclusion of the Contract which places one of our claims at risk, including in case of suspension of payments, a request to initiate insolvency proceedings regarding Customer's assets or any bill or cheque protest, we are, in the event that we are obliged to make advanced Deliveries or provide advanced services, entitled to execute outstanding Deliveries only against the provision of an appropriate security. Should the Customer fail to provide us with an advance payment or security within a reasonable time set by us, we shall be entitled to revoke the Contract, without prejudice to other rights of rescission. This does not apply if the Customer makes an advance payment in full.
- 5.7. Prices quoted in the order and in the order confirmation are based on the raw material prices, salaries, taxes, social charges and freight charges applicable upon

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conclusion of the Contract (hereinafter: the "Cost Factors"). The Cost Factors have a direct impact on the sales price of our goods. Should the Cost Factors increase by more than a total of five percent between the conclusion of the Contract and the shipment, we shall be entitled to increase the sales price of our goods accordingly.

- 5.8. The Customer is entitled to set-off or retention only insofar as its counterclaims are undisputed, if they have been finally adjudicated or in case the Customer's claim derives from the same contractual relationship as our claim and if it is proportionate to our claim.
- 5.9. Additional costs relating to the method of payment will be charged to the Customer.

## **6. Reservation of title, trade mark rights**

- 6.1. We reserve title to all delivered goods until the satisfaction of all our claims accruing under the Contract (the "Reserved Goods").
- 6.2. The Customer is only authorized to resell the Reserved Goods in the ordinary course of business. The Customer has no entitlement to any other acts of disposal regarding the Reserved Goods, in particular to pledge or transfer them by way of security.
- 6.3. The Customer is entitled to process the Reserved Goods but the resulting goods from the process shall be considered as Reserved Goods.
- 6.4. If the Reserved Goods are combined or mixed with items that are not our property, we will acquire co-ownership of the new good to an extent corresponding to the relation of the invoice value of the Reserved Goods to the invoice value of the other items. If our ownership right expires because of processing, combination or mixing, the Customer hereby assigns to us, effective immediately, the ownership rights relating to the new goods and shall hold these new goods for us free of charge as Reserved Goods.
- 6.5. The Customer hereby assigns to us, effective immediately, any and all claims that accrue due to the resale of the Reserved Goods. If the Customer sells the Reserved Goods together with other articles which have not been delivered by us, the assignment of the claims in connection with the resale shall be limited to the amount of the resale value of the Reserved Goods. In case of a resale goods in which we have co-ownership rights, the assignment of the claim shall be limited to the resale value of such coownership shares.
- 6.6. The Customer is authorized to collect such claims assigned to us which arise in connection with the resale of the Re-served Goods.

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- 6.7. We have the right to revoke such resale permit pursuant to article 6.2 and the collection authorization pursuant to article 6.6 of the Delivery Terms If: a) the Customer is in default with the payment of claims arising in connection with the business relationship; b) the Customer has resold the Reserved Goods outside of the ordinary course of business; or c) a significant decline in the Customer's financial circumstances becomes apparent after the conclusion of the Contract which places one of our claims at risk, in particular in case of suspension of payments, a request to initiate the insolvency proceedings regarding the Customer's assets or any bill or cheque protest.
- 6.8. Upon request of the Customer we shall release our securities to the extent that the realizable value of the securities exceeds the claims to be secured by 10%.
- 6.9. The Customer must, at its own expense, insure the Reserved Goods against losses caused by fire, water and burglary and prove this to us upon request.
- 6.10. In the event of attachment or any other intervention by third parties regarding the Reserved Goods the Customer must notify us immediately.
- 6.11. We are entitled to claim our rights from the reservation of title even without rescission of the Contract. Any taking back of goods will always be for safety only; this does not constitute a rescission of the Contract.
- 6.12. We reserve all property, utility model, design patent, patent, trademark, copyright, personal and other industrial property rights in connection with de delivered good, in particular regarding illustrations, drawings and other documents, designs, design suggestions, templates, working documents forms, copyrights, know-how, calculations and software, we have provided in physical or electronic form.

## **7. Inspection and notification obligation**

- 7.1. The Customer is obligated to duly examine the amount, weight, and packaging of the goods without delay after handing over of the Delivery and to note any complaint on the delivery note or the bill of lading. Otherwise amount, weight, and packaging are deemed as agreed upon. Without delay after the handing over of the Delivery, the Customer shall have the quality of the goods examined on a random basis and shall open the packaging (cartons, boxes, foils, etc.) for this purpose. This article 7.1 shall only apply to purchase contracts and contracts dealing with the supply of movable things to be produced or manufactured ).
- 7.2. We must be notified of apparent defects in writing without undue delay but at the latest 24 hours after handing over of the Delivery. We must be notified of hidden defects in writing without undue delay but at the latest five days after they have



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been discovered. Otherwise the goods shall be deemed approved. This article 7.2 shall only apply to purchase contracts and contracts dealing with the supply of movable things to be produced or manufactured .

- 7.3. After the declaration of an agreed acceptance of the Delivery by the Customer, notice of any defects which were apparent at the point of time of the acceptance shall be excluded.
- 7.4. The notice of defects must exactly describe nature and extent of the defect.
- 7.5. Upon request, the Customer must provide us with the rejected goods or samples thereof for examination purposes without undue delay. Such an examination may be carried out by us, our suppliers or any other third party mandated by us for this purpose.

## **8. Defects of Quality**

- 8.1. If a defect of quality exists at the time of passing of risk, we are entitled to cure the defect, at our discretion, by means or remedy or subsequent delivery.
- 8.2. In particular, delivered solar modules are not defective to the extent that the electric output of a solar module lies within the tolerances specified in the sales brochure or on the goods or if it remains at least 5% below the electric minimum output specified on the sales brochure or on the goods.
- 8.3. Place of performance of the cure shall be our registered office. We are not obligated to reimburse transportation expenses which Customer had to bear as expense necessary for curing any defect, insofar as the expenses were increased because the goods were subsequently transferred to a location other than the initial place of destination.
- 8.4. If the cure proves unsuccessful, the Customer has the right to choose, in accordance with statutory requirements to the extent that they cannot be excluded by law , to demand a reduction in the price or to rescind the Contract. Article 9 of the Delivery Terms shall apply to any and all claims for damages due to a defect in quality. Any further claims of the Customer shall be excluded.
- 8.5. Any remedy or subsequent delivery carried out by us takes place on a goodwill basis and without recognition of a legal obligation. An acknowledgement leading in a recommencement of the limitation period requires our express declaration to the Customer. Barring an express acknowledgment, no new limitation period will begin to run upon remedy or subsequent delivery.

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- 8.6. Should we agree on any quality of the goods we do not automatically assume a guarantee regarding the quality or bear any procurement risk within the meaning of the law.
- 8.7. Each product has its own warranty conditions. The applicable warranty conditions depends on the product purchased by Customer. The Contract states the product and accordingly the applicable warranty conditions. These warranty conditions are provided to the Customer together with the Delivery Terms.
- 8.8. Warranty claims shall be excluded in case of losses arising after the transfer of risk as a result of incorrect or negligent treatment, excessive strain, unsuitable utilities, natural wear and tear or due to any other external influences which are not within our field of responsibility and which are not assumed under the Contract, including but not limited to chemical or electrochemical influences.
- 8.9. We only provide warranty over products that are manufactured by us.
- 8.10. We are not liable based on warranty that is given on these products by third parties.
- 8.11. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

## **9. Liability**

- 9.1. Claims for damages or reimbursement of expenses of the Customer, regardless of the legal basis, shall be excluded unless in case of intentional breach of contract or gross negligence of/by us.
- 9.2. The limitation of our liability shall equally apply to the respective personal liability of employees, vicarious agents and legal representatives.
- 9.3. Article 4.11 of the Delivery Terms takes precedence over this article 9 in case of damages caused by delay.
- 9.4. The limitation period for claims and rights arising from defects in quality or title is one year from delivery.
- 9.5. For all other claims than the claims mentioned in article 9.4 of the Delivery Terms the limitation period is two years from delivery.
- 9.6. Notwithstanding the limitations of liability in this article and subject to article 9.9, claims for damages by the Customer shall in any case be limited to 100% of the agreed price payable by the Customer under the related Contract without VAT.

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- 9.7. The Customer agrees to indemnify us and hold us harmless for any claims from third parties (indirectly) resulting from the Contract.
- 9.8. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987.
- 9.9. Subject to article 9.9, the following types of loss are wholly excluded as regards our liabilities to the Customer:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.

## **10. Technical Information**

- 10.1. We are not obliged to provide technical assistance or technical information or recommendations. Any advice regarding the application engineering of the goods we provide verbally, in writing or through tests, is given to the best of our knowledge; nevertheless, they have no binding effect, also in relation to third parties. The Customer shall exclusively bear the risk of application, use and fitness.
- 10.2. We can assume that all data, information and drawings provided to us by or on behalf of the Customer are correct. Our offer can be based on that information.

## **11. Packaging**

Reusable, packaging material such as europallets, any other containers etc. remain our property. Should the Customer fail to return these materials to us in a reusable state without undue delay following our request, we are entitled to charge the replacement costs to the Customer and demand immediate payment of such costs.

## **12. Foreign trade legislation**

- 12.1. Our execution of the Contract concluded is subject to the reservation that no barriers, such as national or international provisions, embargos and/or other sanctions, are opposed to such execution.

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- 12.2. In case the Customer passes the goods delivered by us (hardware and/or software and/or technology and the associated documentation, regardless of the manner in which they are made available) or the work and the services provided by us (including technical support of any kind) on to third parties in the United Kingdom and abroad, the Customer must comply with the applicable provisions of national and international (re)export control law. In any case, the Customer must comply (to the extent applicable) with the export/ (re)export control regulations of the European Union, the United Kingdom and the United States of America.
- 12.3. As far as necessary for export control inspections, the Customer shall, upon request, immediately provide us with any and all information on the final recipient, final destination, and purpose of use of the goods delivered by us or the performance, as well as with any information on export control restrictions in this respect.
- 12.4. The Customer shall exempt us to the full extent and indemnify/ hold us harmless from any and all claims made by authorities or any other parties against us on the grounds of the Customer's noncompliance with the aforementioned obligations under export control law and undertakes to reimburse any and all damage and expenses which we have to bear in connection with it, unless the Customer is not responsible for the breach of duty. This does not cause a modification of the burden of proof.

### **13. Confidentiality**

- 13.1. The Customer shall treat our documents as well as our business and industrial secrets (hereinafter: "Information") as confidential. In particular, the Customer is not entitled to forward any Information to third parties or to make it available to them without out prior written consent. If we have agreed to the subcontracting to third parties, the Customer shall commit the aforementioned third parties to such terms in writing. This confidentiality agreement shall remain in force for a period of ten years after the termination or the performance of the Contract. It does not apply, to the extent that the Information a) was already known to the Customer upon conclusion of the Contract or became known later on and the disclosure was not caused by violation of a confidentiality obligation or b) was already public knowledge upon conclusion of the Contract or became publicly know later on, or c) must be disclosed on the basis of statutory obligations or by order of a court of authority.
- 13.2. The use of the Contract for advertising purposes is prohibited without out prior consent.

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## 14. Privacy

- 14.1. We only gather personal information which is necessary for performing our obligations under the Contract.
- 14.2. Notwithstanding article 14.1 of the Delivery Terms, personal information from the Customer is also gathered and processed for marketing purposes. The Customer hereby explicitly gives permission for processing aforementioned personal information.
- 14.3. Personal information shall be processed in a way compatible with applicable UK data protection legislation .
- 14.4. Personal information shall not be provided to any third party unless we are required to do so by authorities or if it's necessary to perform under the Contract or for marketing purposes.

## 15. Miscellaneous

- 15.1. The place of performance for any and all liabilities is our registered office in the United Kingdom.
- 15.2. In case of conflict between the terms of the Contract and these Delivery Terms, the terms of the Contract prevail.
- 15.3. The invalidity of individual provisions of the Delivery Terms or other integral parts of the Contract shall not affect the validity of the remaining provisions.
- 15.4. We have the right to transfer the rights and obligations under the Contract to third parties. The Customer is not allowed to do so without our written consent.
- 15.5. The English Courts shall have sole exclusive jurisdiction to decide upon any disputes that arise from or related to a Contract.
- 15.6. The Contract and business relationship are exclusively governed by the law of England. The United Nations Convention on Contracts for the International Sale of Goods is excluded.

## ***Any questions? Please contact us.***

*We want to make it as easy as possible to actively participate in the energy revolution. Feel free to use the support area on our website. If you still have questions about the installation, commissioning or maintenance of our products, our technical customer service is looking forward to your call.*

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