

Terms and Conditions
NET Neue Energie-Technik GmbH, 82216 Maisach
Status: July 2015

§ 1 General terms, Applicability

(1) The present Terms and Conditions apply to all business connections established with our customers (hereinafter referred to as "Purchasers") via the Kutzner + Weber online shop. The Terms and Conditions only apply if the Purchaser is a company (§ 14 German civil code), a legal entity under public law or a special fund under public law.

(2) The Terms and Conditions apply especially to contracts for the sale and/or delivery and/or installation of movable items (hereinafter referred to a "goods"), regardless of whether we produce the goods ourselves or purchase them from sub-contractors (§§ 433, 651 German civil code; § 631 German civil code). The Terms and Conditions in their relevant version are a framework for future contracts for the sale and/or delivery and/or installation of movable items with the same Purchaser even if we do not explicitly refer in every individual case; if our Terms and Conditions change, we will immediately inform the Purchaser about this.

(3) Our Terms and Conditions apply exclusively. Differing, contradictory or additional Terms and Conditions of the Purchaser only become part of the contract if and to the extent that we explicitly approve of their application. This prerequisite of approval applies under all circumstances, even, for instance, if we complete the delivery without reservations while fully aware of the Purchaser's Terms and Conditions.

(4) Individual agreements with the Purchaser (including supplements, additions and changes) always have priority over these Terms and Conditions. The content of such agreements has to be set out in a written contract or our written confirmation.

(5) Legally relevant statements and notifications that the Purchaser has to give us after concluding the contract (e.g. concerning deadlines, notices of defect, cancelations or reductions) are only effective if they are put forward in writing.

(6) Applicable statutory provisions are only pointed out for clarification. The statutory

provisions apply even without such clarification, unless they are directly changed or explicitly excluded in these Terms and Conditions.

§ 2 Conclusion of Contract

(1) The presentation of goods in our online shop is not a binding offer for concluding a contract but simply a non-binding request to the Purchaser to order goods in our online shop.

(2) When the customer places an order on our internet platform, completing the order process forms a binding request for buying the goods in the shopping basket. The request can only be made and transmitted, however, if the customer accepts these contract terms by clicking the button "Accept T&C" and thus includes them in the request.

(3) The contract is only concluded by submitting a separate confirmation (an automatically generated acknowledgement of receipt is not sufficient) or by shipping the goods. Unless the order states otherwise, we have the right to accept the offer of contract within 2 weeks after receiving it.

(4) We reserve the right to not accept online orders. The decision is made at our own discretion. If we do not accept an online order, we will inform the Purchaser immediately after making that decision.

§ 3 Delivery Time and Delayed Delivery

(1) The stated delivery times are merely estimates and approximations. The stated delivery times are non-binding information, subject to other agreements.

(2) If we are unable to meet the delivery period for reasons outside our responsibility (service unavailable), we will inform the Purchaser immediately and at the same time give a new estimated delivery time. If the service is also unavailable within the new delivery period, we reserve the right to withdraw completely or partly from the contract; we will immediately reimburse the Purchaser for any considerations already granted. In this context a service is considered unavailable if we do not receive a delivery

from a sub-contractor on time, if we have concluded a congruent covering transaction, neither we nor our sub-contractor are at fault or in particular cases when we are not obligated to provide the service.

(3) The occurrence of delayed delivery follows the statutory provisions. In any case, the Purchaser is required to send a reminder. If our deliveries are delayed, the Purchaser can demand compensation for any damages based on the respective statutory provisions.

(4) The rights of the Purchaser according to § 8 of these Terms and Conditions and our legal rights, particularly concerning exclusion from obligation to perform (e.g. because the service and/or subsequent performance is impossible or unreasonable), remain unaffected.

§ 4 Delivery, Passing of Risk, Acceptance, Default of Acceptance

(1) Delivery is ex works, which is also the place of fulfilment. The goods will be shipped to a different destination on request and at the Purchaser's expense (purchase to destination). Unless different arrangements were made, we reserve the right to choose the mode of delivery (particularly concerning the transport company, dispatch route, packaging) ourselves.

(2) The risk of accidental loss or accidental deterioration of the goods passes to the Purchaser at the latest when the Purchaser receives the goods. However, in the case of purchase to destination, the risk of accidental loss or accidental deterioration of the goods as well as the risk of delay shall pass to the shipper, carrier or any other person or institution tasked with the shipping when they receive the goods. If an acceptance procedure has been agreed on, this is authoritative for the passing of risk. Otherwise the acceptance procedure is subject to the statutory provisions of the German law for works and services (if applicable). Default of acceptance by the Purchaser shall be equivalent to delivery or acceptance.

(3) If the Purchaser delays acceptance, fails to cooperate or our delivery is delayed for other reasons that are the Purchaser's fault, we reserve the right to demand compensation for the resulting damages including extra costs (e.g. storage costs).

For this we charge a flat rate compensation of 0.5 % of the agreed net commodity value per started calendar week, however no more than 5 % of the agreed net commodity value starting with the delivery period or – if there is no delivery period – with the notification that the goods are ready for dispatch.

Our right to prove that the damage is higher and our statutory claims (particularly reimbursement for additional expenditure, appropriate compensation, cancellation) remain unaffected; however, the flat rate is to be offset against further monetary claims. The Purchaser retains the right to prove that we either suffered no damage at all or that the damage was considerably lower than the previously mentioned flat rate.

§ 5 Prices and Terms of Payment

(1) Unless other individual agreements were made, our current prices at the time of concluding the contract apply, ex works, plus VAT.

(2) In the case of purchase to destination (§ 4 section 1), the Purchaser bears the delivery costs from storage and the costs of a transport insurance if the Purchaser wants one. Unless it has been agreed in individual cases to charge the actual transport costs, we charge fixed transport costs (without transport insurance) of 250 EUR. The Purchaser bears the costs of any duties, fees, taxes or other public charges. Packaging for transport or any other kind of packaging cannot be returned, they become the property of the Purchaser; euro-pallets exempted.

(3) The purchase price or compensation for work has to be paid within 14 days after invoicing and delivery or accepting the goods. However, if the delivery value is more than 25 000 EUR, we reserve the right to charge a prepayment of 30 % of the purchase price or compensation for work. The prepayment has to be paid within 14 days after invoicing.

(4) When the payment period ends, the Purchaser is in default. When in default, the applicable statutory interest rate is charged on the purchase price or the compensation for work. We reserve the right to assert further damage caused by delay. When dealing with traders, our claim for the commercial maturity interest

(§ 353 German commercial code) remains intact.

(5) The Purchaser is only entitled to set-offs or the right to retention if his claims have been established as final and absolute or are indisputable. If the delivery is faulty, the Purchaser's reciprocal rights in accordance with § 7 section 6 sentence 2 of these Terms and Conditions remain unaffected.

(6) If it becomes apparent after concluding the contract that our claims for the purchase price or compensation for work are put at risk due to the Purchaser's lack of solvency (e.g. request to open insolvency proceedings), we retain the right to refuse performance and – after setting a deadline if required – to withdraw from the contract in accordance with the statutory provisions (§ 321 German civil code). In the case of contracts for manufacturing non-fungible goods (custom-made items), we can terminate the contract immediately; the statutory provisions concerning the expendability of deadlines remain unaffected.

§ 6 Title Retention

(1) Upon concluding a contract, we retain the property rights to the sold goods until all our current and future claims under the contract and the current business relationship (secured claim) are paid in full.

(2) The goods under title retention must not be pledged to a third party or transferred as security until they are fully paid. The Purchaser has to immediately notify us in writing about when and to what extent a third party has access to our property.

(3) If the Purchaser acts contrary to the contract, especially failing to pay the due purchase price, we retain the right to withdraw from the contract and demand the return of the goods under title retention in accordance with the statutory provisions. If the Purchaser fails to pay the due purchase price, we may only assert these rights if giving the Purchaser an appropriate grace period was unsuccessful or such a grace period is unnecessary according to the statutory provisions.

(4) The Purchaser retains the right to sell and/or process the goods under title retention as part of the ordinary course of business. In this case the following complementary provisions apply.

(a) The title retention extends to the products created by processing, mixing or combining our goods and extends to their full value, with us being considered the manufacturer. If our goods are processed, mixed or combined with the goods of a third party and the third party's proprietary rights remain intact, we receive co-ownership proportional to the invoice value of the processed, mixed or combined goods. Apart from this, the resulting product is treated the same as the goods delivered under title retention.

(b) The claims against third parties resulting from the resale of the goods or the product are transferred to us immediately as security, either entirely or to the amount of our co-ownership share, in accordance with the previous section. We accept the transfer. The Purchaser's duties specified in section 2 also apply in consideration to the transferred claims.

(c) The Purchaser remains authorized to collect any debts alongside us. We agree to not collect any debts as long as the Purchaser fulfils his payment obligations to us, does not delay payments, there is no request to open insolvency proceedings and there are no other solvency problems. However if this is the case, we retain the right to demand that the Purchaser informs us about the transferred claims and their debtors, gives us all information required to collect the debts, hands over the corresponding documents and notifies the debtors (third parties) about the transfer.

(d) If the liquidable collateral value exceeds our claims by more than 10 %, we shall release securities at our option on the Purchaser's request.

§ 7 Warranty Rights of the Purchaser

(1) Unless specified otherwise hereinafter, the statutory provisions apply concerning the rights of the Purchaser in the case of material defects or defective title (including wrong or insufficient delivery as well as improper installation or inadequate installation instructions). The statutory provisions remain unaffected in any case concerning the final delivery of the goods to a consumer (supplier's redress pursuant §§ 478, 479 German civil code).

(2) Our liability for defects is mostly based on the arrangement made concerning the condition of the goods. Product

descriptions referred to as such (including from the manufacturer) that were given to the Purchaser before placing the order or that were included in the contract in the same way as these Terms and Conditions are considered arrangements made concerning the condition of goods

(3) If the condition of the goods was not arranged, the decision of whether or not there is a defect is based on the statutory provisions (§ 434 section 1 sentence 2 and 3 German civil code; § 633 section 2 sentence 2 and 3 German civil code). However, we assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising messages).

(4) When concluding a contract, the Purchaser's warranty rights shall apply if he has attended to his statutory obligations of examination and notification (§§ 377, 381 German commercial code). If a defect is found during the examination or later, the Purchaser has to immediately notify us in writing. The notification is immediate if it is given within two weeks at most; to comply with the deadline, the notification has to only be sent in time. Regardless of this obligation to examine and notify, the Purchaser has to notify us in writing within two weeks from delivery about obvious defects (including wrong or insufficient delivery); in this case the notification has to also only be sent in time to comply with the deadline. If the Purchaser fails to properly examine the goods and/or notify us about defects, we are not liable for the unreported defect.

(5) If the delivered good is faulty, we may choose to rectify this by either fixing the defect (amendment) or by delivering a non-faulty good (replacement) or by creating a new work (rebuilding). Our right to refuse rectification according to the statutory provisions remains unaffected.

(6) We have the right to only offer the owed rectification if the Purchaser pays the purchase price or due compensation for work. However, the Purchaser retains the right to withhold a part of the purchase price or compensation for work that is appropriate in proportion to the defect.

(7) The Purchaser is required to give us the time and opportunity necessary for the owed rectification, particularly to hand over the rejected goods for examination. If we deliver a replacement, the Purchaser

has to return the faulty goods according to the statutory provisions. In the context of a contract of sale, the rectification does not include the removal or re-installation of the faulty goods unless the installation was part of the original agreement.

(8) If the goods are actually faulty, we bear the costs arising from examination and rectification, particularly for transport, travel, work and material (excluded: removal and installation costs). However, if it turns out that the Purchaser's request for rectification is unjustified, we retain the right to demand compensation for the resulting costs from the Purchaser.

(9) If the rectification fails or the rectification was not completed within the appropriate deadline set by the Purchaser or is deemed unnecessary according to the statutory provisions, the Purchaser reserves the right to withdraw from the contract or lower the purchase price or compensation for work. However, if the defect is insubstantial, the right to withdrawal is void.

(10) If we were not contractually obligated to install the delivered goods, the Purchaser's warranty rights only apply if the delivered goods were installed properly and in consideration of our current installation instructions by qualified professionals. We are not liable for any defects caused by improper handling (e.g. transport, installation and processing).

(11) The Purchaser's claims for compensation or replacements for needless expenditures only apply in accordance with § 8 and are otherwise void.

§ 8 Further Liability

(1) Unless these Terms and Conditions including the following stipulations state otherwise, we shall be liable for violating our contractual and non-contractual duties in accordance with the relevant statutory provisions.

(2) We shall be liable for compensation – regardless of the legal foundation – in the case of willful intent or gross negligence. In the case of simple negligence we are only liable

a) for damage caused by injury to life, body or health,

b) for damage caused by violating an essential contractual obligation (an

obligation that needs to be fulfilled to make the proper execution of the contract at all possible and that the contractual partner does and may regularly trust to be met); in this case, however, our liability is limited to the compensation of expectable, typically occurring damages.

(3) The liability limitations resulting from section 2 do not apply if we have fraudulently concealed a defect or taken on a warranty for the condition of the goods. The same applies to the Purchaser's claims according to the law on product liability.

(4) In the case of a neglect of duty that does not involve a defect the Purchaser may only withdraw or cancel if we are responsible for the neglect of duty. A free right to cancellation on the part of the Purchaser (particularly according to §§ 651, 649 German civil code) is excluded. Otherwise the relevant statutory provisions and legal consequences apply.

§ 9 Limitation

(1) In derogation from § 438 section 1 No. 3 German civil code and of § 634a section 1 No. 1 German civil code, the general limitation for claims from material defects and defective title is one year from delivery. If an acceptance has been agreed on, the limitation begins with the acceptance.

(2) In all other cases the statutory provisions apply.

§ 10 Copyright

We hold the copyright to all pictures, films and texts published in our online shop.

The pictures, films and texts may only be used with our explicit consent.

§ 11 Privacy

According to § 28 of the German Data Protection Act we inform you that the data required for business relations are processed, saved and used with an electronic data processing system in accordance with § 33 German Data Protection Act. Personal data shall of course be used discretely.

§ 12 Choice of Law and Jurisdiction

(1) These Terms and Conditions and all legal dealings between us and the Purchaser are subject to the laws of the Federal Republic of Germany to the exclusion of international uniform law, particularly the UN Sales Convention. Requirements and effects of the title retention according to § 6 of these Terms and Conditions are subject to the laws of the corresponding location of the goods in question if this means that the agreed choice of law in favor of German law is unallowable or void.

(2) If the Purchaser is a merchant as defined by the German commercial code, a legal entity under public law or a special fund under public law, the sole – also international – jurisdiction is our place of management in Neuwied, Germany, for all disputes resulting directly or indirectly from the contractual relationship. However, we reserve the right to also bring suit in the Purchaser's jurisdiction