

# General Terms and Conditions for Deliveries Abroad-Export (GTC)

## § 1 General

1. These general terms of business for export (GTC) exclusively apply to all deliveries made by and services rendered by Solare Datensysteme GmbH (hereafter referred to as SDS). These GTC apply particularly to contracts for the sale and/or supply of movable goods („goods“) regardless of whether SDS has manufactured the goods itself or has procured the goods from other suppliers. They also apply to all services in connection with these sales/deliveries, unless separate conditions apply to these services.
2. Any general terms and conditions enforced by the customer which differ from the general terms of SDS and conditions are only valid when SDS has expressly acknowledged them in writing. This requirement of consent applies at all times, for example even if SDS, being aware of the customer's general terms and conditions, executes delivery without reservation. Any contradicting or deviating terms of the customer are hereby rejected.
3. Provided that nothing to the contrary has been agreed upon and the customer has not expressly objected to their content, these GTC (in the version applicable at the time when the respective contract was concluded) also apply to all future business relations between the customer and SDS without SDS having to refer to these again in each individual case.
4. The brochures and catalogs available for download from the SDS website are not binding. Information in plans, drawings, technical documents and data in software are only binding if they form an integral part of a separate written contract.
5. The term „claims for indemnification“ in these GTC also includes claims for reimbursement of wasted expenditures.

## § 2 Conclusion of Contract

1. Offers, price lists and other information are non-binding and subject to change without notice. This also applies if the SDS has provided the customer with catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which SDS reserves ownership and copyrights.
2. A contract is concluded only when SDS has acknowledged an order in writing or when SDS carries out the order. In the latter case, the delivery note or invoice is considered as the order confirmation. An order confirmation or shipment that deviates from the order is considered a new order which is either expressly accepted by declaration from the customer or implicitly accepted by acceptance of the product.
3. The written order confirmation from SDS is decisive with regard to the scope of the delivery and services.
4. Any changes to the scope of the shipment and services and any resulting price and scheduled changes are to be immediately and mutually confirmed respectively by the customer and SDS. Until the customer and SDS have reached an agreement on the changes, they shall abide by what was originally agreed upon and continue to carry out the contract.

## § 3 Prices and Terms of Payment

1. Unless otherwise specifically agreed upon, all prices are net

prices in EUR, subject to additional payment of statutory value added tax. Any additional costs for packaging and special packaging requested by the customer will be invoiced separately. SDS will not take back this packaging.

2. Unless otherwise agreed, delivery is made in accordance with Incoterms 2020 DAP (Delivered at Place). The costs for the transportation will be added to the invoice.
3. The contract includes the carriage of goods, the risks of accidental loss and/or of deterioration and the risk of delay are transferred to the customer when the goods are dispatched or handed over to the representative of the shipping company or at the place of dispatch. The customer is in charge of the cost for minimum order quantity as well as the costs of any transport insurance requested by the customer.
4. All taxes, custom duties, fees as well as import and export levies incurred in conjunction with the shipment are borne by the customer.
5. Invoices are to be due for payment within ten (10) days after their receipt and delivery unless changes were agreed upon in the order or order confirmation. Upon the expiry of the aforementioned term of payment, the customer will be in default of payment.
6. Delayed payment entitles SDS to charge interest in the amount of 9% above the basic interest rate, to demand the return of the delivered goods, and to cancel or suspend any further deliveries. SDS reserves the right to claim higher damages due to delay.
7. SDS reserves the right to require advance payment or cash on delivery for orders from new customers or from customers who have had delinquent payments in the past. In addition, SDS is entitled, even in on-going business relationship, to require advance payment for a delivery in whole or in part at any time. SDS is to declare such a provision with the order confirmation at the latest. Unless otherwise agreed upon in § 3, the statutory provisions apply to late payments.
8. The customer is only entitled to the right to offset and the rights of retention if the relevant counterclaims have been legally established, undisputed or accepted by SDS. The customer is entitled to exercise a right of retention insofar as the counterclaim relies on the same contractual relationship.
9. If there are any indications after conclusion of the contract that SDS's right to receive the purchase price is at risk due to a lack of ability to perform (e.g. in the event of non-payment by the customer, as well as filing or opening a bankruptcy or insolvency proceedings over the assets of the customer), outstanding invoices are due for payment immediately. Furthermore, SDS is then entitled to refuse service or to cancel the contract according to the statutory regulations.
10. The current price list from SDS applies for payment according to expense.

## § 4 Delivery and Service Lead Times

1. The delivery time is agreed upon individually and respectively stated by SDS at acceptance of the order. Delivery dates and delivery periods are deemed met if the goods have left the warehouse or if the customer has been informed that the goods are ready to be shipped. When there is a delay in delivery, in any case, fault on the part of SDS and a reminder by the customer are required.
2. In case of a late delivery by SDS, the customer - provided that there is credible proof that a loss was suffered as a result - can demand

a fixed compensation rate of 0.5 % for each complete week of delay, but the total compensation can only be a maximum of 5 % of the price for the goods delivered late. SDS is entitled to provide evidence that the loss is less than the fixed compensation or that there is no loss.

3. Any claims for damages by the customer due to a delay in delivery and claims for damages in lieu of performance that go beyond the limits specified in paragraph 2 are ruled out in all cases of delayed delivery, even after expiry of any period of grace for delivery that has been granted to SDS.
4. The compliance of the delivery obligations requires the timely and proper fulfillment of the obligations of the customer. The plea of unfulfilled contract remains reserved.
5. In the event that the customer is in default of acceptance, or knowingly violates or neglects other obligations of cooperation, or if the delivery is delayed for reasons for which the customer is responsible, SDS is entitled to demand compensation for resulting damages, including any additional expenditures. SDS reserves the right to make further claims.
6. If SDS cannot meet binding delivery deadlines for reasons for which SDS is not responsible (non-availability of the service) and if there is no case of paragraph 3 or paragraph 4 of § 4, SDS will immediately inform the customer in regard to the delay and, at the same time, will announce the new delivery deadline. Any possible deadlines will be extended appropriately. If the goods or services are also not available within the new delivery period, SDS is entitled to withdraw from the contract in whole or in part; SDS will refund, without undue delay, any payments already made by the customer. In particular, the non-availability of goods or services in this sense includes SDS's suppliers failing to deliver in a timely manner. If SDS has concluded a congruent covering transaction, neither SDS nor its suppliers are at fault or SDS is not obliged to procure in the individual case.
7. SDS is not responsible, even for obligatorily arranged deadlines or dates, for delivery and service delays due to force majeure and other events which not only temporarily considerably hamper our deliveries or make them impossible - to which includes (1) force majeure, e.g. mobilization, war, terrorist acts, riot, or (2) similar events such as strikes, lock-outs, government intervention, malware or other attacks from third-parties to SDS's IT infrastructures, insofar as these were carried out despite the usual care taken with protective measures, (3) obstacles due to German, US and other applicable national, EU or international regulations of foreign trade law or other unforeseeable extraordinary circumstances outside SDS's control, or (4) late or improper delivery to SDS; – even if they occur at our suppliers or their sub-contractors. In such a case, SDS is entitled to postpone delivery or service for the duration of the obstruction plus appropriate lead time. In such a case, SDS is also entitled to withdraw from the contract in whole or in part. If the delay of service and delivery lasts more than three months, the customer is entitled to withdraw from the contract due to the unfulfilled portion of the order. In the event that the delivery period is extended or that SDS is released from the obligation to deliver, the customer is not entitled to claim for damages.
8. SDS reserves the right to carry out partial shipments.

## § 5 Customer Contributory and Other Obligations

1. In the event that the customer is in default of acceptance, or knowingly violates other obligations of cooperation, SDS is entitled to demand compensation for resulting damages, including any additional expenditures.
2. The customer is required to inform SDS of any relevant national

laws, regulations, administrative regulations and any other relevant rules in a timely fashion and to obtain all necessary permits in time from the responsible authorities.

3. The customer is required to support SDS in obtaining relevant information and to make all of their technical documents, calculations and other information that is required for execution of the order available to SDS. The customer is responsible for ensuring this information is complete and correct.
4. If the customer intends to export or transport the goods to a country or territory against which the United Nations, the European Union or the United States have imposed or enforced an embargo or other export or re-export restrictions or to use them for such a country or territory, the customer has to notify SDS in writing prior to conclusion of the contract. If the customer has such an intention after the conclusion of the contract, the export, transfer or use requires prior written consent from SDS. In the event that the delivered goods are resold by the customer, the customer is to conclude appropriate agreements to ensure that these obligations are passed on to the end customer who receives the delivered goods. In the event of a violation, SDS is entitled to terminate the contract with immediate effect and the customer will indemnify SDS in full for all damages and expenses.
5. In such a case, the customer is solely responsible for compliance with relevant national and international export regulations, e.g. the export control regulations of the European Union.
6. Deliveries to the customer are always subject to national or international regulations of foreign trade law, an embargo or other legal prohibitions.

## § 6 Property Rights and Licenses

1. SDS reserves all rights to the plans, drawings, technical documents and software (also software included with hardware). The customer acknowledges these rights. SDS grants the customer a non-exclusive right to use the delivered software and accompanying documentation exclusively for the operation of the intended hardware. The use of the product - with which the software was sold - on more than one system is prohibited. The right of use is limited to the agreed period of time stated in the order confirmation; In the absence of such an agreement, the right of use is limited to the service life of the associated hardware.
2. The customer is not entitled to copy, reproduce, modify, complement, compile or recompile the software in whole or in part.
3. The provisions above also apply to any modifications or supplements made to the software or accompanying documentation.
4. If the delivered items are transferred, sold or resold to a third party by the customer, the customer is to impose the provisions and limitations above upon the third-party.

## § 7 Warranty and Liability

1. SDS remedies defects of the goods (which already existed before the transfer of risk) at its own discretion either by eliminating the defect or by delivering defect-free goods free of charge (remedial action). When the remedial action has failed twice, the customer may proportionally reduce the purchase price.
2. The customer's warranty claim is subject to the inspection and complaint obligations according to the Swiss Federal Code of Obligations (Art. 201 OR) and the provisions of paragraph 2 of this GTC. If a package is damaged or if the shipment is incomplete, the customer must immediately file a complaint with the parcel service / forwarding agent upon receipt of the product. Notices of defects for any visible defects, shortages or wrong deliveries are only valid if SDS has been informed immediately in writing, via registered

letter, fax transmission or via e-mail with a read-receipt. Notices of defects for defects which are not obviously observable must be declared in writing within 10 days from discovery. The customer bears the burden of proof regarding insufficient observability of any defects.

3. SDS's liability for material defects of third-party products which form part of the delivered goods or are otherwise delivered is limited to the assignment of material claims of SDS against its suppliers. If the fulfillment of the assigned claims for material defects fails, the customer's claims for material defects are to be renewed against SDS (but only in accordance with § 7).
4. SDS will bear the direct costs incurred by repair or replacement - insofar the complaint proves to be justified - and the shipping costs to the place of performance. The assumption of further costs by SDS in connection with the repair or replacement is expressly excluded.
5. The conditions mentioned in paragraphs 3, 4 and 7 must be stated in detail by the customer, documented and, consequently, proven. SDS is entitled to demand reimbursement from the customer for the costs arising from the unjustified demand to remedy defects (in particular inspection and transport costs and installation and removal costs).
6. After consultation with SDS, the customer is to give SDS the necessary time and opportunity to carry out all subsequent improvements and replacement deliveries deemed necessary by SDS; otherwise SDS is exempt from any liability for resulting consequences. In urgent cases, e.g. if operational safety is at risk or to avert disproportionately large damages, the customer has the right to remedy the defect itself and to demand reimbursement from SDS for objectively necessary expenses incurred. SDS must be informed immediately, if possible in advance, when the customer remedies the defect itself.
7. The warranty period begins to run again exclusively for newly delivered or improved parts following replacement delivery by SDS as long as it pertains directly to the same cause of defects. In any case, the warranty period for newly delivered or improved parts according to section 9 is to end not later than six months after the original has expired.
8. Any claims from the customer for reimbursement of expenses or damages due to a material defect exceeding those in paragraphs 5 and 7 of this § 7 are excluded. This shall not apply in the event of fraudulent concealment of the defect, non-compliance with a quality guarantee, injury to life, body or health and in the event of breaches of obligations committed by SDS intentionally or through gross negligence.
9. Defect claims do not apply (1) if there are only insignificant defects, (2) if there is only insignificant impairment of usability, (3) for normal wear and tear, or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, or from other particular external influences not assumed under the agreement in the contract, as well as 4) for non-reproducible software defects, (5) if the customer or third-parties make incorrect use, changes or corrections; or perform incorrect installation / removal or repair work, (6) for defects that are attributable to measures or designs expressly demanded by the customer or that occur in materials or products which have been provided by the customer or whose use the customer has expressly demanded contrary to the SDS's advice, (7) for incorrect installation or commissioning by the customer or a third-party, (8) for the failure to use original parts and materials, normal wear and tear, incorrect or negligent handling, improper maintenance, failure to back up or inadequate backing up of data by the customer; (9) for

the failure to check or inadequate checking of programs and data for computer viruses by the customer, unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter), chemical, electrochemical or electrical influences - unless the SDS is at fault for them.

10. Any other or additional claims of material defect from the customer exceeding the claims specified in § 7 are excluded.

## § 8 Retention of Title

1. SDS retains ownership of all goods delivered until the invoices (current and future) from the current business relationship, plus any ancillary costs, are paid in full.
2. The goods subject to retention of title may neither be pledged to third-parties nor assigned as security before full payment of the secured claims. The customer is obligated to inform SDS immediately of any seizure of the product by any third party, an application of insolvency proceedings, for example in the event of possible damages to or the destruction of the product. The customer is required to inform SDS immediately of a change in ownership of the product or of a change of address.
3. In case the customer is in breach of the contract - particularly default of payment or violation of one of the provisions - SDS is entitled to withdraw from the contract and to demand the return of the products. SDS is only entitled to demand the return of the goods and to reserve the right to withdraw from the contract.
4. The customer is entitled to sell the goods in an orderly business transaction (until revoked) and/or to be installed them at the end customers. In this case the following applies:
  - a) The customer herewith assigns to SDS all accounts receivable from a third-party which accrue through the resale to the extent of the invoice sum. SDS accepts this assignment. The obligations of the customer referred to in paragraph 2 also apply in consideration of the assigned claim.
  - b) After the assignment, the customer is also authorized to recover the outstanding account. SDS agrees to refrain from enforcing any such claims as long as the customer fulfills its payment obligations, there is no other indication of the Customer's inability to effect contractual performance and SDS does not assert the retention of title by exercising a right according to paragraph 3.

## § 9 Industrial Property Rights and Copyrights; Defects of Title

1. Unless otherwise agreed upon, SDS is obliged to render the delivery free of any industrial property rights and copyrights of third-parties (hereinafter called: property rights) solely in the country of the place of delivery. To the extent a third-party makes justified claims against the customer because of infringement of property rights by deliveries rendered by SDS and used according to contract, SDS is liable to the customer within the time-limit stipulated in § 10 paragraph 1 as follows:
  - a) SDS shall at the supplier's expense and in SDS's discretion either obtain a right of use for the deliveries concerned, modify them such that the property right is not infringed or exchange them. If SDS is not able to do so under reasonable conditions, the customer is entitled to statutory cancellation or reduction rights.
  - b) SDS's obligation to pay damages is based on § 11.
  - c) The above-mentioned obligations of SDS are only to be given provided the customer immediately informs SDS in writing about claims asserted by third-parties, refuses to acknowledge an infringement, and all and any measures of protection and settlement proceedings remain reserved to SDS. If the customer discontinues the use of the delivery goods for the purpose of re-

ducing the damage or for other reasons, the customer is obliged to inform the third-party about the fact that the discontinuance of use does not represent an acknowledgment of the property rights infringement.

2. Claims of the customer are to be excluded to the extent the customer is responsible for the property rights infringement.
3. Claims of the customer shall furthermore be excluded to the extent the property rights infringement was caused by special standards stipulated by the customer, by use not foreseeable by SDS or by the fact that the delivery goods were modified by the customer or used in conjunction with products not delivered by SDS.
4. In the event of property rights infringements, the claims of the customer stipulated in § 7 paragraph 2, 3, 4, 9 and 10 shall apply correspondingly.
5. In case of other defects of title, the provisions of § 11 (Limitation of Liability) shall apply correspondingly.
6. Any other or additional claims of defects of title from the customer against SDS and its vicarious agents exceeding the claims specified in § 9 are excluded.

## § 10 Statute of Limitations

All claims of the customer – for any legal reasons – have a statute of limitations of 12 months from the beginning of the statutory limitation period. The statutory limitation times apply to intentional or fraudulent behavior, in cases of culpably injury of life, body and health, and to claims stemming from the Swiss product liability law. A limitation period of two years applies to defects for delivery goods which have been used for a building in accordance with their normal use and have caused its defectiveness.

## § 11 Liability

1. The customer's claims for costs, expenses and damages arising from or in connection with the contract, e.g. due to breach of duties arising from the contractual obligation and from tort, are limited to the amount of the purchase price (excluding VAT) of the delivery contract. Further claims for costs, expenses and damages of the customer, on whatever legal grounds, are excluded.
2. This limitation or exclusion does not apply if liability is assumed as follows, in the case of:
  - a) the product liability law or to the extent that liability is mandatory under relevant (foreign or domestic) laws,
  - b) intent,
  - c) gross negligence,
  - d) fraud.
3. The limitations of liability resulting from paragraph 2 also apply to breaches of duty by or to the benefit of persons whose fault is attributable to SDS in accordance with statutory provisions.
4. In particular (without limiting the above paragraphs) the following applies: For services within the area of feed-in management/direct marketing, SDS is not to be held liable for any incidents or events which are beyond their control, for example the accuracy of control commands of an energy supplier or direct marketer/system providers, failure of transmitted control commands, hardware and software failures at the plant operator or end-user switching procedures. Any liability for damages as a result of such incidents or events, such as loss of profit, grid instability, damages to parts of the customer's plant (for example an inverter) are expressly excluded.

## § 12 Place of Performance, Jurisdiction and Applicable Law

1. All legal relations between the customer and SDS are to be governed by the substantive law of Switzerland in addition to

these provisions without the use of a conflict-of-laws rule and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG, 11 April 1980).

2. Any dispute, disagreement or claim arising out of or in connection with the contractual relationship between the customer and SDS, including its validity, invalidity, infringement or termination, is to be decided according to the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution. The version of the arbitration rules in force at the time of arbitration notification apply. In the event of disputes exceeding CHF 300,000.00, the court of arbitration is to consist of three arbitrators, otherwise one arbitrator, all appointed in accordance with the rules of the arbitration rules; the seat of arbitration is Bern, Switzerland. German is the language of the arbitration proceedings. SDS is also entitled, however, at its discretion, to bring suit before the Commercial Court [Handelsgericht] of the Canton of Bern or at the registered office or ordinary place of jurisdiction of the customer.

## § 13 Data Protection

1. SDS saves and uses the customer's personal data (name, address, e-mail, telephone number) for the initiation and processing of business and contractual relationships. The processing of this data is necessary for the initiation or processing of the contract. If the information is not provided, the contract cannot be executed.
2. The data will be stored for the duration of the business relationship and, in addition, as long as the legal retention periods require, legal claims can be asserted from the contractual relationship or other legitimate reasons justify continued storage. Unneeded data will be deleted after a reasonable period of time.
3. The following legal remedies are available to the customer in connection with data processing in accordance with the statutory provisions: the right of access to the data concerning the customer, rectification, cancellation or restriction of processing or the right to object to the processing, transferability of data and the right to submit a complaint to a supervisory authority.

## § 14 Contract Language, Partial Nullity and Written Form

1. If individual provisions of the agreement with the customer including these General Terms and Conditions are or become fully or partly ineffective, the validity of the remaining provisions remains unaffected. The fully or partly ineffective regulation shall be replaced by a regulation whose economic success as far as possible most closely approaches the ineffective one.
2. Any amendments and modifications to the contract are invalid unless confirmed in writing. This also applies to any waiver of the requirement for modifications to be made in writing. Additional agreements which are only made verbally are invalid.
3. Any legally significant declarations and notices from the customer relating to the contract, e. g. setting deadlines, notice of defects, withdrawal or reduction declaration, are to be submitted in written form as a letter, e-mail or fax.

## §15 Consent to the collection, processing and use of my personal data

We would like to inform you about new Solar-Log™ products, events and services by telephone and e-mail as well to send you information by mail. If you no longer want to receive this information, you can withdraw your consent by sending a short message by e-mail or by mail. In this case please send this e-mail to the following address: [marketing@solar-log.com](mailto:marketing@solar-log.com)