

# General Terms and Conditions of Sales

## AST Eis- u. Solartechnik GmbH, A-6604 Hoefen

### 1. General

1.1 These General Terms and Conditions of Sales as well as any other additional terms and conditions of AST Eis- u. Solartechnik GmbH (hereinafter AST) apply to all orders. Deviating agreements, especially contradicting terms of purchase of Client/Buyer, are not binding for AST if not in writing and explicitly accepted by AST.

### 2. Cost estimates

2.1 Cost estimates are provided in writing only and are non-binding. Cost estimates are basically free of charge. However, in case chargeable estimates are agreed upon, the latter will be credited for the amount of the estimate when placing an order. All technical documents shall remain the intellectual property of AST.

2.2 The submission of a cost estimate does not bind AST to accept an order for the realization of the services indicated in the cost estimate.

### 3. Offers

3.1 Offers by AST are always non-binding.

3.2 Offers by AST are submitted in writing only. Acceptance of an offer submitted by AST is only possible for the entire service offered.

### 4. Orders

4.1 All orders shall be deemed to be accepted if they were confirmed in writing by AST.

4.2 The contract is considered concluded after having acknowledged its receipt and accepted the order in writing or made delivery to Client/Buyer.

4.3 Verbal or telephonic agreements, amendments and side agreements of accepted orders are only binding upon written confirmation by AST.

### 5. Pricing

5.1 Unless otherwise agreed, all prices are valid ex works AST not including VAT nor packaging and transportation costs. Any fees, taxes or other levies in connection with supply are to be borne by the Client/Buyer. If supply including delivery is agreed upon, the latter will be charged separately to the Client/Buyer, however, shall not include unloading or any further transport on site (shipment is generally insured by AST).

Packing material remains with Client/Buyer and disposal is to be carried out according to the legal prescriptions at Client/Buyer's own charge.

5.2 The prices agreed upon are non-binding inasmuch as they can be changed after accepted order modification even without prior notice.

5.3 If, between the conclusion of contract and performance of contract

a) increases in wage costs by virtue of law, ordinance, collective agreement, or

b) material costs based on recommendations of the equal representation committee due to changes of global market prices for raw material or purchase prices, or

c) extra costs and additional services due to circumstances which are beyond the reasonable control of AST, arise, the respective prices will be increased accordingly, unless the period between placing the order and delivery/service performance amounts to less than two months.

Commitments for lump-sums are only binding if expressly agreed upon in writing.

5.4 Latest AST fitting rates for assembly works apply.

### 6. Delivery

6.1 Information on the delivery date quoted on offers and confirmation is correct to the best of our knowledge, however, it implies no liability on our part, and is quoted ex works. Failure by

AST to meet the delivery date does not entitle the Client/Buyer to cancel the order or to claim damages due to default, non-delivery or delayed delivery. AST is entitled to determine an extension of the delivery period, at sole discretion, in case the Client/Buyer does not provide all necessary information needed for completion of the order after being given sufficient opportunity to do so by AST.

6.2 Acts of Nature beyond control such as war, mobilization, disruption in operation, strikes and embargo at AST or subcontractors, lack of raw material or lack of electrical energy and so forth entitle AST to revoke the existing delivery obligations completely or partially in accordance with the relevant scope of the exigency.

6.3 Dispatch shall be at Client/Buyer's risk, even in case of delay and carriage paid consignments.

6.4 If the Client/Buyer does not accept the goods supplied in accordance with the contract at the contractually agreed place or within the contractually agreed time, AST is entitled to withdraw from the contract and to assert claims for all damages. The same rights shall accrue if goods are not called off in the intended manner and time where goods are sold on a call-off order basis.

6.5 The Client/Buyer is obliged to provide all equipment and auxiliary personnel necessary for unloading free of charge.

6.6 The delivery period shall be extended until all conditions are fulfilled, in case the Client/Buyer is unable to meet all technical, commercial and other conditions or does not obtain all necessary official licences for the delivery of goods in time or does not open a letter of credit or does not provide a bank guarantee.

6.7 Use and risk shall pass to the Client/Buyer upon shipment ex works respectively ex stock AST, irrespective of the pricing terms agreed for delivery (e.g. carriage paid, cif or similar). This shall also apply if the shipment is made within the scope of assembly work or if the transport is carried out or organized or redirected by AST.

6.8 In the case of services that do not constitute a delivery or part thereof, the place of performance shall be where the contractual services are provided. The risk of complete rendering of service or agreed parts thereof transfers to Client/Buyer with supply of service.

6.9 In the event of delayed dispatch ex works respectively ex stock AST due to circumstances which the Client/Buyer is liable for, the risk passes to the Client/Buyer upon the day of readiness for dispatch. If delivery "on call" has been agreed upon, the goods are considered as called off at the latest one year after supply. All time periods set by AST for the fulfilment of the contract are triggered at the mentioned point in time.

6.10 Separately agreed upon quality tests, TÜV guidelines, official permits or operating trial runs shall have no effect on the provisions regarding place of performance and transfer of risk.

### 7. Payment/Reservation of Proprietary Rights/Due Date

7.1 Unless stipulated otherwise in the contract/order/invoice payments have to be effected within 14 days of the invoice date on the account specified on the invoice and by referring to the order number.

7.2 The Client/Buyer is not entitled to refrain from payment or charge against warranty claims or other counter claims.

7.3 The date of payment is deemed the date of receipt on the account specified on the invoice.

7.4 In the event of Client/Buyer falling into arrears with the agreed payments or other services, AST is entitled to:

a) defer discharging its own contractual obligations until full payment is effected

b) claim an appropriate extension of the delivery period

c) call in payment of the outstanding balance on the purchase price immediately

d) charge interest for late payment from the due date at a rate of 1,25% per month, not including VAT, unless AST can provide evidence of costs beyond this amount

e) In case of non-fulfilment despite of granting an appropriate period of grace, withdraw from the contract or demand compensation

f) charge all costs incurred prior to legal action, notably reminder fees and attorney fees.

- 7.5 AST reserves proprietary rights for all delivered goods until full payment including interest and cost is made. Until then, the Client/Buyer may use, sell, process, finish or assemble the goods only with the written consent of AST, except where the goods are destined for usage, resale, processing, finishing or assembling. In order to protect AST's purchase price claim, the Client/Buyer undertakes to assign payments for usage respectively claims from resale and to apply a corresponding note in his books or on his invoices. The Client/Buyer undertakes to refer proprietary rights to AST and to inform AST without delay in the event of seizure or any other claims.
- 7.6 In case of payment delay the Client/Buyer permits AST to withdraw the delivery object without affecting the validity of the contract as well as to sell and dispose of freely against the open purchase price taking into account customary market prices.
- 7.7 The Client/Buyer expressly declares to agree that his data, solely for the purpose of protection of creditors, may be communicated to the officially privileged creditor protection.

#### **8. Warranty claim**

- 8.1 The warranty period is 24 months as far as no special warranty regulations have been agreed upon for individual goods.
- 8.2 The warranty claim implies that the Client/Buyer notifies AST of any defects in writing immediately. In the event of a defect covered by the warranty, AST will have the option to replace defective goods respectively defective parts on site, respectively have them returned for repair.
- 8.3 All costs related to repair works shall be borne by the Client/Buyer (e.g. installation and removal, transport, travel and travel time). If work under warranty is performed on the Client/Buyers business premises, the Client/Buyer shall provide all necessary helpers, lifting devices, scaffoldings and incidentals and so forth free of charge. Any parts replaced will fall into the ownership of AST.
- 8.4 The warranty claim assumes that the Client/Buyer adheres demonstrably to the specifications respectively conditions for assembly, initial operation and/or usage, operating manuals or similar issued by AST.
- 8.5 The provisions of 8.1. to 8.3. shall apply correspondingly for every liability for defects based on other legal ground.
- 8.6 All warranty claims shall expire if the Client/Buyer, whether himself or through third parties, modifies or repairs material defects.
- 8.7 If services have been produced or provided by AST on the basis of Client/Buyers construction details, drawings or models, AST does not assume liability for the accuracy of the construction but only to the fact that execution took place in accordance with the details provided by the Client/Customer.
- 8.8 If the claim or complaint is justified and AST decides for replacement of the defective goods or service, the Client/Customer shall have no right for change or reduction nor compensation for damages, particularly with regard to loss of profit.  
The Client/Buyer will not be entitled to compensation of costs directly or indirectly incurred to Client/Buyer through receipt of goods, use or processing of the rejected goods respectively defective delivery of goods.
- 8.8 If the claim or complaint is justified and AST decides for replacement of the defective goods or service, the Client/Customer shall have no right for change or reduction of price nor compensation for damages, particularly with regard to loss of profit. The Client/Buyer will not be entitled to compensation of costs directly or indirectly incurred to Client/Buyer through receipt of goods, use or processing of the rejected goods respectively defective delivery of goods.

#### **9. Liability**

- 9.1 AST shall be liable for damage outside the scope of product liability legislation only to the extent such damage can be proven

within the framework of the legal prescriptions. Liability for willful and slight negligence shall be excluded as well as replacement of consequential damages and damages to assets, not realized savings, interest loss or third-party claims against the Client/Buyer.

- 9.2 Within the scope of product liability legislation, AST is liable for personal injury and material damage.
- 9.3 All liability shall be excluded where the provisions for assembling, initial operation and/or conditions of use, operating manuals or similar guidelines supplied by AST are not complied with.
- 9.4 AST shall be liable only for those damages arising by AST's fault in all items belonging to Client/Buyer which AST has taken over for execution of works. All other claims of Client/Buyer, especially claims for any further damage including consequential damages, are excluded, unless AST acts in a gross negligent manner.
- 9.5 The liability limitations under 9.2., 9.3. and 9.4. have to be fully assigned to any Buyers respectively Users with the obligation to assign them further.

#### **10. Property rights**

- 10.1 If any goods are manufactured based on the design, drawings, models or other specifications from the Client/Buyer, the Client/Buyer shall indemnify and hold AST harmless for any violation of copyright or property rights. Further it is not for AST to check on suitability of material previously detailed by Client/Buyer, either by its quality or by any specific further processing or use. In such cases the Client/Buyer is held responsible for the full liability, neither the offer nor the delivery cause any liability.

#### **11. Tools**

- 11.1 Unless otherwise specially agreed upon, tools shall remain property of AST, even if the Client/Buyer has contributed to the costs of producing such tools.

#### **12. Applicable law, place of fulfilment and legal venue**

- 12.1 Place of jurisdiction is Hoefen. Contracts and all contractual relationships including all disputes arising out of this contract including the issue whether a valid contract has been brought about and whether it has an effect before conclusion and after termination are subject to **Austrian material law** without regard to the Conflict-of-laws rules and without regard to the UN Sales Convention. **For all disputes arising out of or in connection with this contract the international, factual and local competent court in Reutte is agreed upon.**