

General Terms and Conditions of Sale and Delivery of EWS GmbH & Co. KG, Am Bahnhof 20, 24983 Handewitt, Germany

These General Terms and Conditions of Purchase and Delivery shall apply to all contracts and written agreements by which EWS GmbH & Co. KG (hereafter referred to as EWS) is liable towards the customers in terms of delivery and acquisition of ownership in accordance with § 433 section 1 of the German Civil Code, if the customers are entrepreneurs, merchants, legal persons under public law or special funds under public law.

§ 1 Conclusion of Contract

1. EWS executes its offers without obligation. Contractual commitments including contracts and acknowledgements of orders shall be required in writing and may only be signed by employees authorised to represent EWS. A written acknowledgement of order is to be placed equal with the agreed completion of the contract.
2. The written contract or the acknowledgement of order from EWS resolves the agreement between the parties completely and conclusively. A legally binding contract cannot result from verbal agreements, promises or deviating business conditions of the customer, unless stated in the written contract.
3. Prospectus information, data sheets, samples, technical drawings or illustrations as well as other objects of purchase descriptive materials shall only function as a description of properties if stated explicitly in the purchase contract or acknowledgement of order.
4. EWS is not the manufacturer of the goods. Warranties of the manufacturers in prospectus information or other object of purchase descriptive materials are solely binding the manufacturer and cannot create claims that are binding on EWS. The manufacturers of the products distributed by EWS and the suppliers of EWS are not entitled to submit a declaration with effect for or against EWS.

§ 2 Characteristics of Products

1. Colour, shape, measurements and construction are subject to change and variation insofar as they are deemed acceptable to the customer and they do not compromise the use of the goods to the contractual purpose.
2. In case of termination or change of production EWS shall be entitled to deliver a successor product or a technical equivalent product, especially a product with a different performance class of the same product line, which differs marginally (maximum 5 %) from the ordered product.

§ 3 Place of Performance and Fulfilment

The place of performance and fulfilment for all duties including supplementary performance shall be the place of business of EWS in Handewitt, Germany. This also applies if the delivery is to be effected by EWS.

§ 4 Payments

1. EWS shall reserve the right to claim advanced payment from the customer. In case of a claim of advanced payment, the customer shall be bound to pay the purchase price including additional costs, which both parties agreed upon, by no later than two workdays before the notified delivery date. The date of the receipt of payment at EWS shall be deemed to be decisive.
2. A cash discount is only to be given if agreed upon in writing and only if arrears of payment of the customer other than the discount agreement are not existent.
3. Agreements of payment by instalment will lose validity if the customer does not default in payment. In this case, all outstanding claims of EWS shall be due.
4. For payment by bank transfer, please use only one of the following bank details:
 - a) HypoVereinsbank
Bank code: 200 300 00
Account: 8045270
IBAN: DE88 2003 0000 0008 0452 70
SWIFT: HYVEDEMM300
 - b) Nord-Ostsee Sparkasse
Bank code: 217 500 00
Account: 17117232
IBAN: DE16 2175 0000 0017 1172 32
SWIFT: NOLADE21NOS
 - c) Sydbank Flensburg
Bank code: 215 106 00
Account: 1911810004
IBAN: DE96 2151 0600 1911 8100 04
SWIFT: SYBKDE22

§ 5 Rights of Retention and Set-off

The customer has no power to offset the purchase price claims or to claim rights of retention from EWS. This exclusion shall not apply to claims, which are subjects to relationships requiring counter-performances from the same contract. Likewise, the exclusion shall not apply to claims of the customer, which are deemed to be uncontended or determined without further legal recourse.

§ 6 Delivery and Terms of Delivery

1. A concrete and binding date of delivery shall only be made by EWS in case of a so called "fixed-date-delivery". If the customer so wishes, this is to be arranged separately within the framework of the delivery agreement. Dates and terms of delivery shall only be binding for EWS if agreed upon in writing.
2. With the exception of "fixed-date-deliveries", dates and terms of delivery are deemed to be adhered if objects of purchase have left the warehouse of EWS 1 workday before expiration of dates and terms of delivery.
3. EWS is entitled to withhold services in the case of a default in payment by the customer.
4. The fixed prices of the contract or acknowledgement of order are applicable. Increases of VAT are to be paid by the customer. Freightage, customs duty, insurances and packaging costs and other additional costs are not included in the prices. These are to be claimed by EWS in an adequate amount.
5. If unforeseen circumstances such as war, natural disasters, other events of force majeure, industrial actions, regulatory actions, difficulties of supply, traffic disruptions, extraordinary traffic conditions or industrial disruptions occur after formation of a contract, which may lead to impairments of production or delivery of the object of purchase, EWS is entitled to adjust the delivery dates and prices accordingly. EWS shall inform the customer immediately about the reasons of the deferred delivery, the expected new date of delivery and suggest alternate dates, new pricing or alternative products as soon as possible. In the event of necessary price increases or postponements of deliveries by more than three months, both the customer and EWS shall be entitled to terminate the contractual relationship by means of a unilateral declaration with respect to the purchase items not yet delivered.
6. EWS is entitled to perform partial deliveries.

§ 7 Reservation of Title

1. EWS shall reserve the right of property until completion of all payment obligations which arise from the business relationship with the customer and EWS.
2. Pledging and cession in security of objects of purchase by the customer are not permissible.
3. If the customer sells the goods or uses them to fulfil a contract to produce a work, the customer shall there by cede the payment claims in the amount of the owed, open purchase price including the additional costs as a security to EWS, which arise from the contract to produce work, the onward sale or the additional contractual relationship, and by which the reservation property from EWS ceases to exist. EWS shall accept the cession. The customer shall instruct his/her principals to settle payments to EWS immediately, as far as this is necessary to the expungement of open claims. EWS is entitled to disclose the cession. Alternative dispositions of the objects of purchase by the customer are not permissible.
4. In case of assertion or action for enforcement of rights of lien by third parties with respect to the objects of purchase underlying the retention of title, the customer shall make the third party aware of the retention of title. Additionally, the customer must inform EWS about the asserted claims of the third party.
5. EWS shall approve reservation property, provided that the value of it is 10 % higher than the claim.
6. The customer shall be liable to insure the object of purchase underlying the reservation of title against theft, fire, water and other damages at own charge in favour of EWS. EWS is entitled to insure the object of purchase underlying the reservation of title against theft, fire, water and other damages at the expense of the customer, if the customer has failed to exhibit a reasonable insurance on request within 5 workdays. The customer shall cede EWS claims of payment of the compensation amount in advance and as a security to EWS, against the insurer from an insurance, which he/she him-/herself has covered. EWS shall accept the cession.
7. Processing or alteration of goods, which are subject to reservation of title, through the customer is always made for EWS. If goods, which are subject to reservation of title, are processed with other objects or things, EWS are to be co-owner of the processed new thing or object at the reasonable rate of the good which is subject to retention at the moment of processing. The same applies to the new object which is made by processing.

8. The empowerment to resale goods in accordance with section 8.3 of the present contract commitments does not apply to a delivery to Denmark, since the Danish law of property does not know an extended reservation of title. The resale of goods is thus only permissible if particularly unprohibited by EWS and only in individual cases. EWS shall grant this permission provided that the buyer allocates sufficient substitute collateral. In case of a resale, which was not permitted by EWS, the buyer is liable and EWS is entitled to claim damages.
9. In case of repudiatory conduct by the buyer, especially arrears in spite of a deadline, EWS shall be entitled to withdraw from the contract and to withdraw the goods, which are subject to reservation of title, at the expense of the business partner or to claim the cession of the claim for surrender of the buyer against third parties.

§ 8 Defects of Quality and Examination and Notification Duties

1. The buyer must not refuse to accept the goods from EWS, because of irrelevant defects, which do not affect the use of the goods according to the conventional purpose. In this case the buyer is entitled to only take action within the scope of statutory warranty rights in accordance with the following regulations.
2. Claims for defects of the customer are to be limited to his/her right of supplementary performance. If a second attempt of supplementary performance fails, the customer may require EWS to reduce the purchase price of the goods in question to the customer by an appropriate amount or rescind the contract with regard to those goods.
3. All charges, which can be derived from the defectiveness of the goods delivered by EWS – including claims for damages as well as congruent, competing claims for damages from non-contractual liability – do expire by limitation after 1 year from the time of delivery, if the object of purchase was not used reasonable for a building and has caused the defectiveness. Goods sold by EWS are designed to be used for buildings only if EWS or the manufacturer advert to it particularly. The liability for charges arising from the negligent or scienter injury of life, body or health as well as the breach of an essential contractual commitment shall remain unaffected with respect to section 9.1 and 9.2. Regulations with respect to limitations of rights of recourse in accordance with § 478 of the German Civil Code remain unaffected as well.
4. The customer has to examine the object of purchase immediately when received and must notify complaints regarding quantity and quality to EWS. Complaints must be notified in written form within 8 days from the time of delivery at EWS.
5. The customer's right of recourse from § 478 of the German Civil Code is restricted to what the customer has to perform to the consumer on the basis of legal regulations. For an extending liability on the basis of transferred guarantees or other agreements of liability extensions recourse to EWS shall be excluded.
6. After the delivery of the goods, the customer solely is responsible for a proper handling and storage.
7. The customer shall bear the costs for an examination of the goods completely, if the damage of the goods was caused by the customer him-/herself through careless storage or handling.

§ 9 Claims for Damages

1. Claims for damages by the customer shall be excluded with following exceptions. The exclusion shall not apply, if claims for damages are caused by a grossly negligent breach of EWS, the legal representatives or the vicarious agents. Further, the exclusion shall not apply if injuries of life, body or health are caused by a grossly negligent or scienter breach of EWS, the legal representatives or the vicarious agents. The exclusion above shall not apply for charges of the breach, which arises from the contractual duties of EWS.
2. Provided that damages did not arise from injuries of life, body or health, claims for damages of the customer are restricted to typical and predictable damages of the contract.

§ 10 Default in Acceptance

In case of non-acceptance of an order by the customer in spite of a reminder and setting of a reasonable deadline without the customer right to refuse the acceptance, EWS shall be entitled to claim damages in the amount of 15 % of the purchase price. The assertion of higher damages as well as the proof of missing or considerably lower damages shall remain free.

§ 11 Prohibition of Assignment

The customer is not entitled to assign charges from this contract to third parties without the approval of EWS.

§ 12 Extraordinary Right of Withdrawal

EWS is entitled to withdraw from the contract in terms of unfulfilled performances on both sides, if the customer ceases payments, insolvency proceedings in accordance with § 14 and § 15 of the German Insolvency Code or other comparative procedures are requested by the customer, EWS or another obligee, such a procedure is initiated, or the initiation is rejected for lack of assets.

§ 13 Redemption of Delivered Solar Modules

EWS is a member of the organization PV CYCLE. Thus, it is possible to dispose photovoltaic modules purchased at EWS, which are no longer required – free of charge. By this means, however, a claim against EWS to dispose those photovoltaic modules shall not be justified. Therefore, EWS is entitled to withdraw this offer of dispose at all times and to terminate the membership in the organization PV CYCLE without communicating it to the customer. The customer is thus not entitled to claim from EWS.

§ 14 Planning Recommendations, Calculation Tools

1. If EWS proposes planning recommendations for the construction, setup and/or installation of the goods, these shall be seen as advice only, which are given to all conscience as assistance to the business partner.
2. Those recommendations shall not create a contractual obligation. Though, the customer shall be able to engage planning services/performances from EWS by concluding an additional contract.
3. The utilization of the recommendations in according to section 15.1 by the business partner is at his/her own risk and is excluded from any liability by EWS.
4. The authorisation for commercial use of all planning and calculation tools provided by EWS including all supplemental information material by technical planners requires an active business relationship between EWS and the respective user as well as an express written permission by EWS. Without express permission by EWS the download of these tools is prohibited. Permission is only granted by EWS, once EWS has issued the user their individual access code to the EWS partner area (at www.photovoltatics.eu), and can be withdrawn at any time. The entirety of source codes, calculations and graphical representations within these software solutions remain the property of EWS and may not be used in any other way (for example, by linking only parts of the tool or by copying or changing source code) or be disclosed to third parties. EWS accepts no liability for any problems or damages arising from the integration of planning and information offers of EWS GmbH & Co. KG on the websites of business partners.
5. EWS expressly states that any liability on part of EWS is excluded when using all planning and calculation tools provided by EWS as well as all information offers under www.photovoltatics.eu. The use of information and any results obtained with these planning and calculation tools shall be at the user's own risk. This information is solely intended as a point of reference and to simplify the user's calculations as well as ease the communication between end user and technical planners. Special terms of use apply, and each user must accept the validity of these terms before using the tools.

§ 15 Requirement of Form

For all explanations, statements, notification as well as contractual modifications, the parties shall agree on written form as the requirement for the effectiveness.

§ 16 Effect for Subsequent Contracts

The parties shall, with the inclusion of the present General Terms and Conditions of Sale and Delivery, agree on the effectiveness of them for subsequent contracts; an explicit inclusion is not needed.

§ 17 Applicable Law and Jurisdiction

1. The law of the Federal Republic of Germany shall apply for all legal relationships between EWS and the customer arising from or in connection with the present contract. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
2. The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be Flensburg, Germany.
3. The German version of these General Terms and Conditions shall exclusively be legally binding for contractual relationships between EWS and the customer. In the case of deviations and agreements made in another language than German, the German version of these General Terms and Conditions of Sale and Delivery shall be applicable.

§ 18 Complement Regulation

Even if individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected, unless holding onto the contract would constitute an undue hardship for one of the parties. Further, the parties shall bind themselves to replace such an ineffective part with a part which is as close to the economical implications as possible.

23 June 2022 – Handewitt