

General Contract Conditions

I) Scope

1. The following general business conditions apply solely and exclusively within the following areas: EU, Switzerland, and Lichtenstein.
2. All legal transactions undertaken with seller are solely governed by the following provisions. Any confirmations by buyer that make reference to other business or purchase conditions governing a transaction are hereby expressly excluded and will have no legal effect.
3. Buyer's written approval is necessary to give legal effect to guarantees, side agreements, and contract modifications.

II) Area of Application

1. The following sales conditions apply to all contracts concluded between us and buyer calling for the delivery of goods relating to solar energy and photo-voltaic areas. These conditions also apply to all business transactions, even when they are not expressly made a part of the transaction. Any conditions that buyer seeks to impose are not binding on us, even in the absence of an express repudiation on our part. The conditions of sale contained in this document also apply when we ship goods ordered by seller without any statement of reservation but in the knowledge that buyer asserts conditions opposed to or deviating from those in this contract.
2. Any agreements put forth in contracts between us and buyer that deal with the carrying out of sales contracts must be in writing.

III) Offer, Order Confirmation, and Contract Conclusion

1. When buyer places an order that acts as an offer to conclude a sales contract, then we have two weeks to respond, either by sending an order confirmation or by sending the ordered products themselves. The content of the order confirmation establishes the determinative contract conditions. Any proposed modifications must be promptly communicated to our firm in writing.
2. We reserve the right the right to make technical alterations, to the extent that this causes buyer no material damages.
3. Our offers are made subject to availability. They therefore remain open and unbinding unless we have expressly stated otherwise in writing.
4. Product characteristics expected by the buyer, due to public statements by us, by those statutorily entitled to represent us, or by other coworkers, or especially those due to advertisements or trade usage, are only binding when put forth in writing in an offer or an order confirmation.
5. Guarantees are only binding if and to the extent that manufacturer has himself issued a warranty. Moreover, our guarantees must be contained in an offer or order confirmation and designated as such. Our duties under the guarantee are to be spelled out in detail. The manufacturer's guarantee is effective for all our delivered goods.

6. For projects and project verification, it is the duty of the one placing the order to obtain official and other permits and to present them to us in a timely fashion.

7. The offer is accepted and the contract is concluded at the time we send an order confirmation or ship the goods that have been ordered.

8. If, in the end, buyer does not transact any business with us, then all documents sent by FLIMPEX AG are to be returned. This includes documents relating to general conditions of business and those related to expedited delivery. Without our written approval, such documents cannot be copied or shown to others. FLIMPEX AG reserves the right to sue for damages in the case of deceptive contracting practices or misuse of data.

9. If a clause in a delivery contract or an order confirmation is not in accord with our general conditions of business, then FLIMPEX AG reserves for itself the sole right to interpret any such clause.

IV) Price/Payment Conditions

1. If our order confirmation does not state otherwise the price is ex factory and includes freight, customs, and insurance. Our prices can therefore be understood as CIF or "free at the door." Our prices do not include the statutory value-added tax. As necessary, we are prepared to specially indicate this tax on the bill as of the day the bill was issued. At the time the goods are successfully handed over the risk of loss passes to the carrier or to the buyer.

2. Extra costs will be added if an order is placed that requires overtime, evening work, work on Sundays or holidays, or work under especially difficult conditions.

3. Payment is to be made in EUROS. While payment can be made in other currencies, for example, Swiss Francs, such payment requires our written confirmation. In such cases FLIMPEX AG is not prepared to suffer any losses because of currency exchange rates.

4. Payment is to be made in accordance with the terms of the order. FLIMPEX AG reserves the right to require that payment for all orders be made in advance. Cash discounts are not made. If other payment methods are allowed, for example, letter of credit or bank guarantee, then the additional costs that they give rise to will be added to the purchase price. Only irrevocable letters of credit are accepted as payment. Bills of exchange are not accepted.

5. Bills issued for items such as PV modules are not final. It is only possible to issue a final bill after receipt of the flash list. Buyer pays for the performance level in wattage units as actually put forth in the flash list.

6. The sales price is strictly net. Unless the matter is otherwise regulated in the confirmation order, payment is due when the goods change hands, whether to the carrier or the end customer. Payment is considered to have been made once we have the money at our disposal. Payment by check is only acceptable if expressly agreed to by the parties. In this case payment is considered to have been made when the check has been cashed and the money has been credited to our account.

7. If buyer fails to make timely payment, then the relevant statutory provisions apply. FLIMPEX AG reserves right to impose 5% delay interest, beginning on the day the account is past due.

8. Buyer is only entitled to a set-off upon notification of a defect if his counterclaim has been given legal effect, we have recognized the claim, or when we do not dispute it. Buyer is only entitled to a right of detention when his counterclaim is based on the same contractual relationship.

9. We reserve the right to retract all price and discount quotes on the basis of error on our part.

10. Buyer is to take all steps to expedite payment in full to us. If payment is not made on time, if FLIMPEX AG identifies circumstances that seriously place buyer's creditworthiness in question, or if a check bounces, then FLIMPEX AG can set a reasonable deadline for performance accompanied by the statement that if there is still no performance once this grace period has passed, work will be stopped and the contract will be terminated. FLIMPEX AG reserves the right to bring a claim for damages based on buyer's nonperformance.

11. The pricing specified in this order confirmation is aligned to the Dollar/Euro exchange rate and can hence be subject to fluctuation/alignment. An index clause is therefore included.

V) Time of Delivery and Performance

1) The delivery times provided are only to be regarded as approximate and subject to availability. FLIMPEX AG is only bound by delivery dates when it has expressly stated so in writing.

2) The time for delivery will be extended in the face of unforeseen circumstances that are outside the control of the company and that affect the manufacture or delivery of the product that has been ordered. Such circumstances include, but are not limited to: acts of God, intervention by the state, interruptions in manufacture, operations, and delivery, as well as labor disputes.

3) FLIMPEX AG is not under an obligation to deliver if its suppliers stop production or do not supply – despite demands to do so – as well as for other reasons, including acts of God. If the goods also cannot be obtained from other suppliers, then FLIMPEX AG has a right of rescission. Under these circumstances buyer does not have a claim for damages. If FLIMPEX AG does not undertake delivery for other reasons and falls behind buyer may then rescind the sales contract but has no claim for damages. Under these circumstances FLIMPEX will repay all monies without interest in the same currency with which they were paid.

4) The delivery time provided by FLIMPEX AG only comes into effect once all technical and financial matters have been settled. In any case, buyer must meet his obligations properly and in a timely fashion.

5) Our order confirmation places the delivered modules in a specific performance class. Performance deviations in the range of +/-3% from this class are still deemed to be in accord with contract expectations. There is therefore no breach of contract when the modules that have been ordered manifest such deviations.

6) As a rule, delivery will be undertaken by means of containers, except for delivery of samples or smaller quantities of goods. If a container delivery includes products that belong...

to different performance classes, then the duty of delivery is to be considered as fulfilled as long as each product does not deviate from its class by more than +/-3%.

7) In regard to complaints made under statutory provisions (the Lichtenstein sections), our liability is limited to foreseeable, typically occurring damages, as long as the delay in delivery is not due to an intentional breach of contract on our part. Further liability for a delay in delivery for which we are not responsible is excluded.

8) If buyer is late in taking acceptance, then we have a claim to compensation for damages suffered as a result, as well as for any additional measures we are forced to take on this account. The same is the case when buyer culpably violates his duty to cooperate. In the extreme case that our bill has not been paid a week after the goods in question have arrived in the harbor of their destination, then we are entitled to retain buyer's deposit in light of possible risks and, in addition, to bring a claim for damages against buyer.

9) When there is delay in either acceptance or payment the risk of accidental loss or deterioration in the goods passes to buyer.

10) If there is delay in acceptance, buyer is responsible for all costs caused by his delay, especially storage costs.

VI) Passing of the Risk of Loss – Shipping/Packaging

1. Loading and shipment are only insured for delivery free domicile. Delivery free domicile may only be commissioned in writing. Buyer bears the additional costs incurred for insurance and for transport from the harbor where the goods arrived.

2. FLIMPEX AG is not responsible for expenses of this nature if buyer himself arranges for insurance and transport of the goods from the harbor of arrival to his storage facilities.

3. The transport and packing measures that FLIMPEX AG undertakes in accordance with the packing ordinance are not its responsibility once delivery has been completed. Buyer must dispose of packing at his own cost.

4. If shipment is delayed either at the request or fault of buyer, then we store the goods at the risk and cost of buyer. Under these circumstances, our statement of willingness to ship is to be treated the same as shipment itself.

VII) Warranty/Liability

1. Manufacturer's warranty for the goods is for 60 months, beginning with the date of delivery (standard guarantee for the product and its performance).

2. If the color varies only slightly from that specified by buyer, then this is considered to be in conformity with the contract. This also applies to color variations caused by use or by the diverse materials used for construction.

3. If the goods delivered are defective, if they lack the agreed-upon characteristics, or if – during the warranty period – they show defects in construction or in materials, we will – thereby excluding other warranty claims and based upon our judgment– make rectification or ship replacement goods.

4. If rectification of defects does not prove effective (repair, partial replacement, partial exchange of the module and its components), then the parties can agree on a reduction of the purchase price. Contract rescission will only be taken into consideration if delivery of a complete replacement unit also does not meet the contract conditions. The solution of last resort for buyer's complaints is the cash damage value agreed upon by buyer and seller.
5. Buyer must give prompt notice of apparent defects. Written notice must be provided to seller within eight days of delivery.
6. Buyer's duty to immediately inspect the goods and to give seller notice of defects continues. A claim is excluded if buyer has not properly met his duties in this regard.
7. If the seller is to take possession of the defective goods, then they are to be kept in the condition they were in when the defects were discovered. They are to be held ready for inspection by seller or – if requested – to be shipped back to him.
8. The duties provided for by Paragraph VII, No. 4 are excluded when the defect is one based on advertising messages or other contractual agreements that we are not responsible for, or if the buyer provides the end-user with a special guarantee. These duties are also excluded if the statutory provisions did not require the buyer to implement the statutory warranty right in regard to the end-user or if the end-user does not give notice of his intent to use a claim accorded to him. This is also the case if the buyer entered into warranties with the end-user that went beyond those provided by statute.
9. Further liability is excluded regardless of the legal basis for the claim. This applies especially to claims in tort or claims for lost expenses instead of performance. To the extent our liability is excluded or limited, so is that of personnel, employees, coworkers, representatives, and assistants.
10. Buyers may not shift claims for damages brought by their customers to FLIMEX AG. Our liability is limited to complaints brought by our direct clients. If we send products to customers who then undertake to resell them to third parties, we are not liable for third-party complaints, especially when a module has already been installed or used, since we in any case exclude damage claims for improper use or damages incurred by natural phenomena, such as lightning, water, rain, snow, and ice. Those who install our products are themselves liable for damages caused when they do so incorrectly.
11. Warranty claims of a buyer who is a merchant lapse one year after delivery to the merchant unless we have fraudulently concealed defects, in which case the relevant statutory provisions apply.
12. Buyer's complaints must be presented in the following manner: defects in the goods must be presented in a technical and precise manner in both German and English, accompanied by photographic documentation. The defects described must be confirmed by an organization or institution that is generally recognized as an authority in the area under question and promptly sent to us in the form of a report. The costs of this report are to be born by buyer.
13. Upon the request of FLIMPEX AG, buyer is to provide a sample of the module subject to complaint for the purpose of conducting its own examination.....

14. We are with exception from our own brand "Flimpex" not technical producer from other products in our sales program.

We do not take over any responsibility from the technical producer granted warranty. Customer claims out the producers warranty have to be made directly to the technical producer. Our own written warranty stay untouched.

VIII) Reservation of Title

1. Until all outstanding debts - including all payment balance requests out of the current account - that have currently fallen due to buyer or will fall due to him in the future have been paid, the goods (reserved-title goods) that have been or are to be delivered remain our goods. Should buyer behave in a manner contrary to that prescribed by the contract, for example, by falling behind in payment, we retain the right – after establishing a reasonable deadline for contact conformance – to take possession of or to seek return of the delivered goods. If we take the reserved-title goods back, this results in contract rescission. If we attach the reserved-title goods, this also constitutes contract rescission. Once we take back reserved-title goods, we have a right to dispose of them. After deducting a reasonable amount for disposal costs, the proceeds for the transactions are to be used as a set-off of the amounts owed to us by buyer.

2. Buyer has a duty to handle all reserved-title goods with care and to insure them at his cost in the amount of replacement value against damage through fire, water, and theft. Necessary care and inspection are to be carried out by buyer in a timely fashion as his own cost.

3. Only when buyer is not behind in payments does he have the right to alienate and/or use the reserved-title goods in the course of ordinary business transactions.

4. FLIMPEX AG has the right, if buyer has been behind in payment for a long time and a reasonable deadline for payment has been established, to then terminate the sales contract and sell the goods to another customer, even if the original buyer has partially paid for the goods. Reimbursement for the amount paid in will only be made after deduction of all costs (including lost profits, interest, processing and administrative costs), as well as the further costs associated with the sale of the reserved-title goods (advertisements, travel, transfer, etc.).

IX) Place of Performance, Choice of Forum. Applicable Law

1. The place of performance and the designated forum having jurisdiction for deliveries and payments, as well as for all other controversies between us and buyers that arise out of sales contracts we have entered into is that of our company headquarters, located at 9497 Triesenberg, Principality of Lichtenstein. However, we reserve the right to sue the buyer at his place of residence and/or his company headquarters.

2. The applicable law to be applied to all relationships between contracting parties is that of the Principality of Lichtenstein. Application of the Convention on the International Sale of goods and that on the Conclusion of International Sales Contracts is hereby specifically excluded.

X) Severability Clause

If individual provisions of these general conditions for the delivery of and payment for goods are held to be void in part or in full, such a ruling does not affect the remainder of the contract.

Triesen, May 2007
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