

1. General

1.1 The contract shall come into being at the moment IS SaveEnergy AG's ("supplier") written confirmation that he accepts the order (order confirmation) is received. Offers that do not contain any date for acceptance shall not be binding.

1.2 These General Terms and Conditions of supply shall apply if they are declared to be applicable in the offer or the order confirmation. No terms and conditions or any other agreements shall apply unless they have been expressly accepted in writing by the supplier.

2. Goods and services to be supplied

2.1 The goods and/or services to be supplied by the supplier shall be defined exclusively by the supplier's order confirmation. Unless anything to the contrary is communicated within eight days of the despatch of the order confirmation, the specifications contained therein shall be binding.

2.2 Any consignments, materials, or work not contained in the confirmation of order shall be charged separately; this shall in particular apply to any work or costs involved in installation, transport, start-up, or final inspection and acceptance.

3. Illustrations, plans, properties, and technical conditions

3.1 The technical data, illustrations, dimensions, references to industrial standards, weights, and other information contained in the supplier's advertising and other documentation shall have no binding effect unless the order confirmation states them to be assured properties. The right is reserved to make technical modifications. Binding sketches stating dimensions shall be requested in special cases.

3.2 The customer shall inform the supplier about the technical conditions under which the installed system is to function. This shall most particularly apply if they differ from the supplier's general recommendations.

4. Copyright and title over technical drawings and documentation; obligation of secrecy

Technical drawings and documentation handed over to the customer shall remain the supplier's property and are protected by copyright. They shall not be used or passed on, in their unchanged or in any changed form, unless the supplier has given his written consent.

5. Prices

5.1 All prices shall be defined as net ex-works (Incoterms 2000), excluding packaging, without any deductions, unless the parties specifically agree anything to the contrary.

All ancillary costs such as freight, transport, insurance, export transit and import duties and charges, and any other licences, approvals, or documentation shall be charged to the customer.

The customer shall likewise bear the costs of all taxes, charges, fees, duties, or anything similar levied in connection with the goods and/or services supplied and/or with the associated contracts, or alternatively shall reimburse the supplier for them if the supplier has been required to make the payment.

5.2 The supplier shall retain the right to adjust prices if wage rates, materials prices, or the basis for the calculation change between the point in time when the offer is made and the fulfilment of the contract.

An appropriate price adjustment shall also be made if:

- the customer retroactively prolongs the delivery date (the customer shall bear any additional storage costs thus incurred), or
- the quantity and quality of the agreed goods and/or services undergo a change, or
- the material or execution undergoes a change because the documentation supplied by the customer was incomplete or not in line with the actual situation.

6. Payment terms

6.1 Payment shall be made by the customer at the supplier's place of residence in accordance with the agreed payment terms and net of any deductions. The customer shall not be entitled to deduct any prompt-payment discount unless the supplier has granted one in writing. Any unjustified deductions shall be charged. The obligation of payment shall be deemed to have been fulfilled when the amount owed is at the supplier's free disposal at his place of residence in the agreed currency.

6.2 The price shall be paid in the following instalments, subject to other written arrangements:

- 30% upon receipt of order, payable immediately upon receipt of invoice.
- 30% upon delivery or notification that the main components are ready for despatch, payable upon notification by the supplier and immediately upon receipt of invoice
- 30% upon completion of the basic installation/assembly of the main components, payable immediately upon receipt of invoice but before commissioning
- 10% upon acceptance of the installation but no later than three months after the completion of the installation/assembly work. This amount shall be secured by the customer before final inspection and acceptance by a bank guarantee in favour of the supplier.

6.3 The customer shall adhere to the payment terms even if factors outside the supplier's control should delay or prevent the production, transportation, delivery, installation, start-up, and/or final acceptance of the goods and/or services, if any insignificant parts should be missing, or if rework proves to be necessary that does not materially affect the use of the goods and/or services supplied. The customer shall not be entitled to hold back payments on account of alleged defects, and can only off-set them with counter-claims that the supplier has acknowledged or that have been established with final and absolute effect by a court.

6.4 If the customer has fallen into arrears with an agreed payment or any other obligation, the supplier can either insist on fulfilment of the contract and ...

- a) postpone the fulfilment of his own obligations until the overdue payment has been made,
- b) claim a suitable postponement of the delivery date, and
- c) request collateral for the whole of the outstanding purchase price,

or, after granting a suitable period of grace, cancel the contract and claim damages.

6.5 Should the customer fail to keep to the agreed payment dates, he shall pay interest at a rate 4 percentage points above the discount rate of the Swiss National Bank at the material point in time, counting from the agreed due-date for payment, and without any payment reminder needing to be sent. The supplier shall reserve the right to claim damages over and above this level.

7. Retention of title

7.1 The supplier shall retain title of all the goods and work he supplies until all payments have been received that are due under the contract of supply.

7.2 The customer shall be under an obligation to collaborate on all measures necessary for protecting the supplier's property, and shall in particular authorise the supplier, by concluding the contract with him, to make an entry or prior entry of the retention of title at the customer's expense in public registers, books, or similar in accordance with the laws of the relevant countries, and to complete all the necessary formalities. Claims to retention of title and/or attachment of the goods by the supplier shall not be construed as implying the cancellation of the contract.

7.3 The customer shall at his own expense keep the goods in a proper condition throughout the duration of the period of retention of title and insure them in the supplier's favour against theft, breakage, fire, water, and other risks. He shall also take all necessary measures to ensure that the supplier's right of ownership is neither affected nor terminated. Should the customer fail to meet any of these obligations, the supplier shall be entitled to take out the appropriate insurance at the customer's expense.

8. Delivery period

8.1 The delivery period shall begin with the date on which the confirmation of order is sent off, provided all official formalities such as import, export, transit, and payment approvals have been obtained, and payments that the customer is required to make, and any collateral has been provided. Moreover, the delivery period cannot begin until all technical and commercial data and details have been clarified definitively.

8.2 The delivery date shall be deemed to have been met if, by then, the goods to be delivered have left the supplier's works or the customer has been informed that they are ready to be despatched.

8.2 If a specific day has been agreed for delivery, this shall be deemed to apply as far as can be expected and shall be adhered to as closely as possible, but cannot be guaranteed. Delivery periods shall only be regarded as binding if they have been expressly described in order confirmation as fixed.

8.3 Adherence to delivery periods and dates shall be conditional upon the customer fulfilling his contractual obligations.

8.4 The delivery period shall be extended and/or the delivery date postponed by the appropriate length of time if:

- the supplier is not provided punctually with the data, meaning technical data in particular, he needs in order to fulfil the contract, or if the customer alters them retroactively and thus causes a delay in the supply of goods and/or services;
- obstacles occur which the supplier cannot avert despite the application of all reasonable diligence, regardless of whether they occur on or near his premises or those of the customer or a third party. These shall include accidents, major interruptions to operations, labour disputes, delayed or faulty delivery of the necessary raw materials, semi-finished goods, or merchandise, high scrap levels in important work-pieces, actions or failures to act on the part of the authorities, and natural catastrophes and other Acts of God;
- the customer or a third party is in arrears of performance of agreed work or contractual obligations.

8.5 If the customer can demonstrate that he has suffered loss as a result of a delay attributable to gross negligence on the part of the supplier, and first sets an extension period by registered letter which is then likewise not met, he shall be entitled to claim damages for arrears of performance. This shall amount to one half of one percent for each 14 days of delay but shall not exceed 5 percent of the contract price of the delayed portion of the delivery. The first two weeks of delay shall provide no grounds for claiming compensation for delayed delivery.

8.6 Once the maximum amount of compensation for delayed delivery has been reached, the customer shall set the supplier a reasonable final extension of the delivery period. If even this is not met, the customer shall be entitled to refuse acceptance of the delayed part of the delivery. If it is commercially unreasonable to expect him to accept a part-consignment, he shall be entitled to cancel the contract, to return any part-consignments already received, and to request the return of any payments already made.

8.7 The customer shall derive no rights or claims from arrears of performance other than those expressly stated in this Clause 8. This restriction shall not apply to cases of unlawful intent or gross negligence on the part of the supplier.

8.8 If despatch is delayed at the customer's request, he shall be charged the additional costs for storage at the supplier's works after the date when he was notified the goods were ready for despatch, subject to a minimum of one percent of the invoice amount for each month. The supplier shall be entitled to set a period of grace and, if this expires fruitlessly, to make other use of the goods and to supply the customer at some other reasonably later date.

9. Packaging

The supplier shall charge separately for packaging, and shall be under no obligation to take it back. If, however, it is described as being the supplier's property the customer shall return it carriage paid to the place from which it was despatched.

10. Transfer of use and risk

Use and risk shall be transferred to the customer at the latest when the goods leave the supplier's works. If delivery is delayed for reasons attributable to the customer, risk shall be transferred on the date originally envisaged for delivery from the works. From this point in time onwards, the goods shall be stored and insured at the customer's expense and risk.

11. Despatch, transportation, and insurance

11.1 The goods shall be transported at the customer's expense and risk. Should the despatch or transportation of the goods give any cause for complaint, the customer shall address this to the haulier making the delivery as soon as he receives the consignment or the freight documents.

11.2 The customer shall be responsible for insuring the goods against any kind of loss or damage.

12. Customer's obligations

12.1 The customer shall draw the supplier's attention no later than when placing the order to the regulations and industrial standards that will apply to the goods, the installation work, and any other services to be supplied.

12.2 The customer shall be responsible for ensuring that the preparatory work to be done on site and elsewhere is carried out properly and professionally, and if relevant that it is in accordance with the documentation provided by the supplier.

12.3 The customer shall, at his own expense, take the necessary accident prevention measures, meaning in particular that he shall specifically draw the supplier's attention to any need to give

special consideration to him and/or other suppliers or companies or to adhere to relevant regulations.

The supplier shall be entitled to reject or stop work if the safety of the staff is not guaranteed.

12.4 The customer shall ensure that the transportation routes to the place of installation are in a usable condition, that the installation site is in a suitable state for the work that is to be carried out, that access to the place of installation is free and unhindered, and that access for wheeled traffic is suitable secured. Access for lorries will normally have to be guaranteed.

12.5 If such should prove necessary, the customer shall likewise be under an obligation to ensure that suitable cranes and lifting gear, with operating personnel, and suitable scaffolding and means of transportation are available and in proper working order.

12.6 The customer shall likewise ensure that the necessary approval is obtained in good time for the import and, if relevant, re-export of tools, equipment, and material is issued in good time, and shall bear any costs or charges associated with the same.

13. Inspection and acceptance of goods and services

13.1 The supplier shall inspect the goods and services to the usual extent prior to despatch. If the customer requires any additional expenses, these shall be subject to a separate agreement and the cost shall be borne by the customer.

13.2 The customer shall inspect the goods and services within eight days of delivery and shall inform the supplier without delay and in writing of any defects or deficiencies. Should he fail to do so, the goods and/or services shall be deemed to have been approved and guarantee claims to have been met.

13.3 The supplier shall rectify any defects or deficiencies notified to him in the aforesaid manner as quickly as possible, and the customer shall give him every opportunity to do so. Once this has been done, the goods shall be subjected to final inspection and acceptance as soon as either the customer or the supplier so requests.

13.4 The completion of the final inspection and the definition of the applicable conditions shall require a separate agreement. If an official inspection is required, the customer shall pay any resultant costs and fees. If exhaust gases are to be analysed, the customer shall provide the agreed fuel. Subject to any separate agreements to the contrary, the following shall also apply:

- The supplier shall inform the customer sufficiently far in advance of the date of the inspection to enable him (the customer) to attend.
- A written record shall be made of the final inspection and signed by the customer and the supplier, usually at the same time as the start-up of the installation. This will record that the goods have been inspected and accepted, or only accepted subject to certain conditions, or that they have not been accepted. In the two latter cases the record shall describe the relevant defects and/or deficiencies in detail.

The customer shall not be entitled to refuse acceptance or withhold his signature on the final inspection record merely on the grounds of minor defects or deficiencies, meaning in particular any that do not materially affect the proper functioning of the installation.

In the event of the goods and/or services failing by a wide margin to comply with the contract, or of any serious defect or deficiency, the customer shall give the supplier the opportunity to rectify the problem within a reasonable extension period. Should serious deviations or defects still be apparent even after this rework, the customer can require the supplier to reduce the price, pay compensation, or carry out other relevant work if the contracting parties have agreed on this eventuality. If it is commercially unreasonable to expect the customer to accept a part-delivery, he shall be free to cancel the contract. The supplier can only be required to pay back the amounts paid to him in respect of the parts relating to the cancellation.

13.5 Apart from this, the following shall apply to the final inspection and acceptance shall be deemed to have been successfully completed ...

- if the final acceptance cannot be carried out on the agreed date for reasons beyond the supplier's control;
- if the customer refuses to accept the goods without having any legitimate reason for doing so;
- if the customer refuses to sign a record of inspection drawn up in accordance with this Clause 13.
- as soon as the customer starts using any of the goods and/or services supplied.

14. Guarantee, liability for defects and deficiencies

14.1 The guarantee period shall be two years from the date of delivery.

14.2 The guarantee period shall be 12 months from the date of delivery for conveyor and transport systems as well as electrical components and on regulators, fittings, and accessories.

14.3 The guarantee period shall be six months from the date of commissioning for all other parts of the order and services, but no more than 12 months from the date of delivery.

14.4 The guarantee period shall start afresh for replaced or repaired parts, and shall be 6 months from the date of replacement or repair.

14.5 When goods are supplied for resale, the supplier's guarantee obligations shall consist of his repairing defective goods or parts on the installation free of charge or, at his free discretion, making replacement parts available free of charge ex-works. The purchaser shall have no claims above and beyond the foregoing, meaning in particular no claim to reduction of the price or conversion of the contract to one for goods of lower quality, for the costs incurred by the purchaser in making the replacement, for the costs of establishing the cause of the problem or of obtaining expert assessments, or for consequent damage such as interruptions to operations or damage to water-courses or the environment.

14.6 The guarantee shall fall immediately null and void if the customer or any third party makes improper alterations or repairs to the goods supplied or, if any defect has come to light, the customer fails to take all immediate action to limit the damage and/or to give the supplier an opportunity of rectifying the defect.

14.7 The supplier shall be under an obligation, if the customer so requests in writing, to repair or, at his free discretion, to replace as quickly as possible all parts of the goods he supplies that can be demonstrated to be defective or unusable as a result of poor materials, incorrect design, or defective workmanship, until the guarantee period expires. The customer shall arrange for all preparatory and subsequent work to be carried out, such as emptying and filling silos and clearing access to the installation, that are necessary in connection with the work the supplier has to do.

For deliveries outside Switzerland, Germany, France, Austria and Italy, the guarantee shall cover the supply of materials only. The customer shall bear the transportation costs.

14.8 Only those properties shall be deemed to have been assured that are expressly described as such in the order confirmation. Assured properties shall exist as such until the expiry of the guarantee period at the latest. If final inspection and acceptance have been agreed, the assured property shall be deemed to be present if this inspection furnishes proof of its presence.

14.9 The following shall be excluded from the supplier's guarantee obligations and legal liability: all those that cannot be demonstrated to have been caused by poor material, incorrect design, or defective workmanship, including those caused by fair wear and tear (this excludes liability for wearing parts), improper maintenance, failure to comply with operating instructions (e.g. in using foreign bodies or allowing excessively coarse pieces of wood to enter the silo), overloading, unsuitable consumable materials, water of a quality that falls short of the supplier's specification, failure to meet the supplier's technical guidelines, construction or installation work not carried out by the supplier, insufficient footings or foundations, chemical, electro-chemical, or electrolytic factors, and any other factors or causes outside the supplier's control.

14.10 For goods and services from sub-suppliers specified by the customer, the supplier shall only accept guarantee obligations within the parameters of the relevant sub-supplier's own guarantee obligations.

14.11 The customer shall have no rights or claims in respect of defects in material, design, or workmanship or the absence of any assured properties apart from those stated specifically in this present clause.

15. Non-fulfilment and inadequate fulfilment and the consequences thereof

15.1 Should any case of inadequate fulfilment or non-fulfilment of contract arise that is not specifically covered by these Terms and Conditions, and if the contract has been culpably violated by the supplier, the customer shall be entitled to set a period of grace, threatening to cancel the contract if it is not met. If the supplier still culpably fails to meet it, the customer can cancel the contract and request the return of all payments already made in respect thereof.

15.2 In any such case, the following clause shall apply with regard to any claims for damages the customer may raise and to the exclusion of further liability, and the claim for damages shall be limited to 10 percent of the contract price for the goods and services in respect of which the contract is being cancelled.

16. Exclusion of further supplier's liability

These Terms and Conditions shall exclusively and definitively govern all cases of violation of contract and their legal consequences, and all claims the customer may have, regardless of the legal grounds on which they are raised. In particular, all claims for damages not expressly covered here and relating to damages, reduction, or cancellation of the contract shall be excluded. The customer shall under no circumstances have any claim to compensation for injury, loss, or damage other than those occurring to the contract goods themselves, meaning for instance loss of production, loss of use, costs of substitute fuel and emergency heating, loss of orders, forgone profit, and other direct and indirect costs and losses. This exclusion of liability shall not apply in cases of unlawful intent or gross negligence on the part of the supplier, but it shall apply even in cases of unlawful intent or gross negligence on the part of vicarious agents. Apart from the foregoing, this exclusion of liability shall not apply if mandatory law dictates otherwise.

17. Supplier's right of recourse, product liability

17.1 Should any persons be injured as a result of any action, or failure to take action, on the part of the customer or his vicarious agents, or if third parties' property is damaged, and if as a result a claim is raised against the supplier, the supplier shall have right of recourse against the customer.

17.2 The customer shall be under an obligation to take out the necessary insurance against all risks arising in connection with this contract of supply and the operation of the installation, such as operating liability, product liability, and non-life insurance. The customer shall be under a particular obligation to ensure that all third-party claims that could arise from the operation of the plant are covered by his product liability insurance. A third party raises a claim against the supplier in connection with the operation of the plant, the customer shall release and absolve the supplier from this claim and shall bear all the costs related thereto.

18. Miscellaneous provisions

18.1 Should any provision of these Terms and Conditions prove to be invalid, in its entirety or in any part or parts, the contracting parties shall replace this provision with a new one that comes as close as possible to the invalid one in terms of its legal and commercial effects.

18.2 These General Terms and Conditions of Supply shall take effect on 1st January 2012. IS SaveEnergy AG is entitled to unilaterally amend these General Terms and Conditions of Supply at any time.

19. Place of jurisdiction and applicable law

19.1 The place of jurisdiction for the customer and the supplier shall be the supplier's place of business, currently 8360 Eschlikon, Switzerland.

However, the supplier shall be free to sue the customer at his place of business.

19.2 The contract shall be subject to Swiss material law, to the exclusion of the United Nations Convention of 11th April 1980 on contracts for international sale of merchandise.