

General Purchasing Terms and Conditions of Masdar PV GmbH

As at 1 January 2009

§ 1 Scope of application

1. The Purchasing Terms and Conditions set out below shall form an integral part of all purchasing and supply contracts Masdar PV (Masdar PV GmbH, Wolff-Knippenberg-Str. 4, 99334 Ichtershausen, Germany) concludes with the supplier.
2. Our Purchasing Terms and Conditions shall in particular apply to contracts on the sale and/or the delivery of movable objects (hereinafter also referred to as "Goods") irrespective of whether the seller produces the Goods itself or purchases them from suppliers.
3. Our Purchasing Terms and Conditions shall apply exclusively; we will not accept any conflicting terms and conditions or any terms and conditions of the supplier deviating from our Purchasing Terms and Conditions unless we have expressly consented to their application in writing.
4. Our Purchasing Terms and Conditions shall apply even if we accept the supplier's delivery without reservation in spite of being aware of conflicting terms and conditions or terms and conditions of the supplier deviating from our Purchasing Terms and Conditions.
5. All agreements concluded between us and the supplier for the purpose of fulfilling this contract must be stipulated in this contract in writing.
6. Our Purchasing Terms and Conditions shall apply only *vis-à-vis* entrepreneurs (*Unternehmern*) within the meaning of Section 310 (1) of the German Civil Code (*Bürgerliches Gesetzbuch; BGB*).
7. Our Purchasing Terms and Conditions shall also apply to all future transactions with the supplier.

§ 2 Offer and offer documents

1. The supplier is obliged to accept our purchase order within a period of one (1) week.
2. We retain all proprietary and copyrights in illustrations, drawings, calculations and other documents; they must in no case be disclosed to third parties without our express written

consent. They shall be exclusively used for production based on our purchase order. They must be returned to us once our order has been processed. They must not be disclosed to third parties; in this respect, the provisions under para 12, 16 and 18 shall also apply by way of supplement.

§ 3 Correspondence

1. All correspondence should be addressed to Masdar PV's competent purchasing department.
2. Any order-specific data must always be quoted in full on all documents (letters, invoices, delivery notes, bills of lading, etc.) as well as in any other correspondence.

§ 4 Purchase orders

Purchase orders should be made in writing. Purchase orders placed by telephone or electronic means should be accepted by the supplier only if such ordering method has been expressly agreed with Masdar PV beforehand. Masdar PV should be notified of any acceptance of purchase orders by the supplier in deviation from the stipulated method without delay. The contract will then come about only upon Masdar PV's valid written consent.

§ 5 Integral parts of all purchasing and supply contracts

The following shall be deemed integral parts of every contract:

- a) the purchase order including all annexes and, where applicable, the award record including all annexes;
- b) these General Purchasing Terms and Conditions of Masdar PV and, where applicable, any order-specific additional terms.

Any amendments to the General Purchasing Terms and Conditions of Masdar PV shall be made by changes to the relevant provisions or by explicit annexes to the General Purchasing Terms and Conditions.

§ 6 Prices, payment terms, etc.

1. All prices agreed shall be deemed fixed prices excl. VAT; the same shall apply for unit prices. Unless otherwise agreed, the prices shall be free delivery to the place of performance/point

- of destination (*Erfüllungsort/Bestimmungsort*) including packaging and transport.
2. Invoices must be issued in the currencies quoted in the relevant purchase order. Unless otherwise agreed, invoices shall be settled within 30 days of proper receipt of defect-free Goods and of a correct invoice.
 3. In the event of a justified notification of defects we may withhold payment until we receive a defect-free delivery.
 4. We are entitled to retention and set-off (*Aufrechnungs- und Zurückbehaltungsrechte*) within the statutory scope.
 5. Invoices (one copy only) shall be addressed to

Masdar PV GmbH
Rechnungsprüfung (Invoice Verification Department)
Wolff-Knippenberg-Str. 4
99334 Ichtershausen

Only deliveries and/or services from one purchase order may be charged in any one invoice.

6. We can process invoices only if the purchase order number stated on the purchase order is quoted on the invoice as stipulated in our purchase order. The supplier shall be responsible for all consequences arising from the failure to fulfil this obligation unless the supplier submits proof that it is not responsible for such failure/consequences.
7. The supplier may not, without our prior written consent, have the work or services owed performed by third parties (e.g. subcontractors). The supplier must expressly specify or indicate the work or services it intends to contract out to third parties already in the offer. The supplier shall be responsible for procuring its work or services (*Beschaffungsrisiko*). To the extent that the supplier – permissibly – employs subcontractors, the supplier must impose all obligations under these Purchasing Terms and Conditions on the relevant subcontractors.

§ 7 Delivery period, breaches of contract

1. The delivery date specified in the purchase order shall be binding. Receipt of the Goods at the agreed point of destination (*Bestimmungsort*) shall be relevant for determining timeliness of delivery.

2. The supplier is obliged to inform Masdar PV without delay in writing if any circumstances occur or become apparent to the supplier which are likely to render delivery within the stipulated delivery period impossible.
3. The supplier may only invoke failure by Masdar PV to supply documents to be supplied by Masdar PV if it has sent a reminder requesting the documents in writing and not received them within a reasonable period.
4. Where the supplier cannot specify a binding delivery date, it must specify an earliest and a latest delivery date.
5. In the event of default of delivery we shall be entitled to the statutory claims and rights.

§ 8 Transfer of risks

1. The transfer of risks (*Gefahrübergang*) shall be based on the Incoterms (2000) agreed.
2. Delivery shall be "DDP Erfurt" pursuant to Incoterms (2000), the exact place may be specified by Masdar PV. As regards machines and technical equipment, risks shall be transferred only after Masdar PV has confirmed that the functional test results were positive.

§ 9 Quality, notification of defects, warranty

1. Masdar PV shall check the Goods for any quality or quantity deviations immediately after receipt of the Goods. Defects shall be deemed to have been notified in time if the supplier receives the notification of defects within five (5) working days calculated from receipt of the Goods or, in the case of hidden defects, from the time of their detection.
2. The supplier shall bear the costs of any checks of Goods beyond the customary scope (checks of incoming and returned Goods) which are necessary as a result of defective deliveries.
3. Functional tests shall be performed shortly after receipt of the notification of readiness for operation. For systems and equipment with various and complex programs, the functional testing period is extended to thirty (30) days.
4. Receipt of deliveries by Masdar PV or Masdar PV's approval of any samples or models presented by the supplier shall not affect the supplier's liability for defects.

5. In the event of breaches of contract in connection with successive supply contracts (*Sukzessiv-Lieferverträge*), the statutory provisions shall apply.

§ 10 Insurances

1. The supplier undertakes to take out at its own expense third-party/product liability insurance (*Haftpflichtversicherung/Produkthaftpflichtversicherung*) for the work or services to be rendered by the supplier. The blanket minimum cover shall be EUR 5.0 million per insured event for damage to persons and property. The insurance cover must be maintained for the term of this contract, i.e. until the respective warranty claims extinguish. The insurance must also cover damage to persons and property as well as indirect damage.
2. The supplier shall submit written proof to Masdar PV upon Masdar PV's request that such insurance has been taken out.

§ 11 Liability

1. In the event that third parties assert claims against Masdar PV on the basis of the German Product Liability Act (*Produkthaftungsgesetz*), the German Environmental Liability Act (*Umwelthaftungsgesetz*) or similar foreign laws, the supplier shall indemnify Masdar PV in the relationship between the parties, provided that the cause of such damage is within the contractor's sphere of control and organisation, and provided that the contractor is liable itself in the relationship with third parties.
2. The same shall apply if claims are asserted against Masdar PV by third parties as a result of IP rights being infringed and the supplier has not pointed out the risk of infringement of IP rights in connection with processing and using the Goods supplied by it. The indemnification obligations set out above relate to any and all expenses necessarily incurred by Masdar PV in connection with the assertion of third-party claims. Masdar PV is entitled to obtain a licence to use the supplied items from the respective beneficiary at the supplier's expense, applying the due care of a prudent businessman.
3. To the extent the supplier is responsible for any damage to products, the supplier is obliged to indemnify Masdar PV on first demand from any claims for damages asserted by third parties to the extent that the cause for this is/was within its sphere of control and organisation and if the

supplier is liable itself in the relationship with third parties.

4. The supplier is also obliged, within the scope of its liability for damage within the meaning of this clause (para 11), to reimburse any expenses pursuant to Sections 683, 670 BGB or pursuant to Sections 830, 840, 426 BGB arising from or in connection with a recall action taken by us.
5. We shall inform the supplier, to the extent possible and appropriate, of the content and scope of any recall actions to be taken, and give the supplier the opportunity to make a statement.

§ 12 Title to execution documents, etc.

1. Any plans, documents, electronic data carriers, drawings, models, etc. provided to the supplier or any third parties working for the supplier shall remain the property of Masdar PV and must be returned once work has been completed. This shall also apply for any copies, data copies and other reproductions prepared by the supplier with Masdar PV's consent.
2. Reproductions shall be prepared on behalf of Masdar PV; Masdar PV is therefore the producer and becomes the owner of such reproductions. If Masdar PV does not become the owner by operation of law, the supplier and Masdar hereby agree on the transfer of such right.

§ 13 General safety and protection provisions/ termination

1. The supplier undertakes to comply with the valid statutory safety and protection provisions relevant for its respective industry in the context of contract performance. In the event of a severe violation of such provisions on the supplier's part, Masdar may terminate this contract without notice for good cause (*aus wichtigem Grund*).
2. The respective contract may also be terminated for good cause if the supplier fails to comply with the environmental provisions, provisions on occupational health and safety, the applicable ethical principles (cf. www.unglobalcompact.org) and the provisions combating illegal employment it has to comply with, and if this could result in Masdar PV's business operations being impaired to a not insignificant extent. Such impairment shall, in particular, be deemed to exist if the image of

Masdar PV is or could be impaired or otherwise adversely affected.

3. The supplier undertakes to accept an assessment of its performance in respect of environmental and occupational safety issues by Masdar PV (by questionnaires and, where applicable, audits) based on entrepreneurial and social responsibility.
4. The supplier undertakes to extensively inform Masdar PV without delay of any circumstances that may, in connection with the contractual relationship between Masdar PV and the supplier, result in Masdar PV becoming the focus of public interest. Such circumstances shall, in particular, include accidents during transport or during the handling the products or waste.

§ 14 Data protection

Masdar PV reserves the right to process the data required for handling business transactions – including personal data – in compliance with the applicable data protection acts. The supplier hereby consents to such processing and ensures that all requirements under data protection law are met on its part.

§ 15 Product and/or process changes

Suppliers with whom permanent business relations are maintained are obliged to inform Masdar PV in time of any intention to carry out product and/or production and/or process changes relating to the products purchased by Masdar PV. This duty of information (*Informationspflicht*) covers as well all changes in respect of the method of analysis, that can influence the product certificates or product certification.

§ 16 Rights of use

The supplier must not use, reproduce or disclose to third parties any execution documents provided to it for manufacturing the delivery item for any purposes outside the contract. Masdar PV reserves all rights herein as well as in any reproductions. Upon request, the supplier must surrender the documents provided to it without delay and declare vis-à-vis Masdar PV in writing that it has returned all documents and destroyed any copies that may have been made.

§ 17 IP rights

1. The supplier represents that to the extent the Goods delivered are used in accordance with the stipulated purpose, no patents, copyrights, trademark rights or any other third-party IP rights are infringed in Germany or abroad.
2. The supplier shall indemnify Masdar PV without delay from any third-party claims which may nonetheless exist or arise.
3. The supplier shall transfer to Masdar PV the worldwide, exclusive and perpetual right to publish, distribute, reproduce, process and otherwise exploit all ideas, conceptions, drafts and designs produced by the supplier and commissioned by Masdar PV. The rights granted above shall include all types of present and future use, in particular printed advertising as well as multimedia exploitation (website, print on demand, e-book, online publishing). The transfer of the above rights under this provision expressly includes the right to transfer such rights to third parties. The supplier warrants that it holds all rights which are relevant in this respect.
4. The acquisition of the above rights shall be deemed compensated by the remuneration agreed in accordance with the respective awarding of contract.
5. Any references by the supplier to any business relationships with Masdar PV for advertising purposes the express consent of Masdar PV's management.

§ 18 Confidentiality

1. The supplier is obliged to keep confidential all information on operational facilities, business transactions and work methods it obtains in the course of fulfilling the contract with Masdar PV.
2. This confidentiality obligation shall not include any generally known technical or commercial information relating to Masdar PV. This confidentiality obligation shall also not include any technical or commercial information which has become publicly known or of which the supplier has otherwise gained knowledge, without a breach of contract being the cause therefor.
3. These confidentiality obligations shall continue to apply also after this contract has ended. The confidentiality obligation shall cease to exist if and to the extent the technical or commercial

information covered by it becomes publicly known.

4. The supplier shall impose a corresponding confidentiality obligation in favour of Masdar PV on the staff deployed by it and ensure compliance with such obligation. The supplier shall be liable for all damage incurred by Masdar PV as a result of a culpable breach of these obligations. The above obligations shall not apply for information the supplier was provably aware of before its disclosure or which was accessible to the public before the disclosure or which was made accessible to the public after the disclosure through no act of the supplier.

§ 19 Applicable law – place of jurisdiction – place of performance

1. The legal relations between Masdar PV and the supplier shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is expressly excluded.
2. Unless stipulated otherwise in the Incoterms (2000), the place of performance (*Erfüllungsort*) is Erfurt.
3. If the supplier is a merchant, the place of jurisdiction (*Gerichtsstand*) is Erfurt.
4. Any action by Masdar PV may also be filed at the supplier's general place of jurisdiction (*allgemeiner Gerichtsstand*).

§ 20 Miscellaneous

1. Where Masdar PV makes own resources (planning services etc.) available to the supplier, the costs for the use of such resources shall be charged in accordance with the relevant transfer price list.
2. If the supplier has reservations about any materials, lifting equipment or components provided by Masdar PV or any work or services performed by third parties, it must notify Masdar PV thereof in writing without delay; otherwise the contractor will remain fully responsible for the performance of the work.
3. The supplier is aware of the fact that Masdar PV has not taken out any CAR/EAR insurance (*Bauwesen- und Montageversicherung*).

§ 21 Severability

Should any provision of these Terms or Conditions be or become invalid, this shall not affect the validity of the remaining provisions of the contract.