

GENERAL TERMS OF SUPPLY, BUSINESS AND PAYMENT

1. SCOPE

- 1.1. These terms of business are valid for every delivery of KIOTO Photovoltaics GmbH as of 01.10.2010
- 1.2. The conditions form an integral part of every offer issued by KIOTO Photovoltaics GmbH and of every contract concluded with KIOTO Photovoltaics GmbH. General terms of business of whatever kind which are contradictory to these terms of business will not be considered as set and. will not even partly be subject matter to a contracted relationship with KIOTO Photovoltaics GmbH
- 1.3. Deviations from these conditions are only effective when the contracting parties have expressly agreed them in writing.

2. OFFERS

- 2.1. Offers from KIOTO Photovoltaics GmbH are strictly non-binding.
- 2.2. Offer documents may not be either duplicated or made available to third parties without KIOTO Photovoltaics GmbH's explicit consent. KIOTO Photovoltaics GmbH reserves the ownership and copyright of these documents. They can be reclaimed at any time. At the request of KIOTO Photovoltaics GmbH all copies, including electronic copies must be destroyed immediately.

3. CONCLUSION OF THE CONTRACT

- 3.1. The contract is only considered to be concluded when KIOTO Photovoltaics GmbH has issued a written order confirmation after the receipt of order and this has been received by the purchaser, or a delivery has been handed over to the haulier.
- 3.2. The information contained in the technical documentation, public remarks by the consigner or the manufacturer, especially in advertising, or in the information contained in the descriptions included with items is only relevant, if expressly referred to in the order or the order confirmation.
- 3.3. Subsequent modifications or additions and additional agreements will only become effective when confirmed in writing.

4. PRICES

- 4.1. Unless otherwise agreed, prices apply ex works and ex stock respectively of KIOTO Photovoltaics GmbH, not including package, dispatch, installation, insurance and value added tax, which are invoiced to the purchaser separately and are to be taken over by the latter.
- 4.2. If taxes or other duties are due in connection with the delivery in the purchaser's country, these are to be borne by the purchaser alone.
- 4.3. The prices are based on the costs at the date of the conclusion of the agreement. If between the conclusion of the individual contract and the performance of the service there is an increase in the costs of materials, and/or additional services or additional costs are triggered by circumstances which are beyond the influence of KIOTO Photovoltaics GmbH, the accountable prices will increase accordingly, except for when the period between order placement and the performance of the service is less than 2 months.

5. DELIVERY

- 5.1. Delivery periods are always non-binding, unless a fixed deadline has been expressly arranged. The delivery period begins with the date of the order confirmation signed by KIOTO Photovoltaics GmbH. When goods are supplied against a letter of credit, the delivery period starts with the date on which the letter of credit is opened.
- 5.2. The delivery period is considered to have been met if the delivery has left the factory or the warehouse or readiness for dispatch has been notified latest by the expiry of the period.
- 5.3. KIOTO Photovoltaics GmbH is entitled to undertake part deliveries and invoice these. If KIOTO Photovoltaics GmbH makes part deliveries, the purchaser may declare his withdrawal only in respect of the part deliveries which have not yet been delivered in accordance with Paragraph 5.5.
- 5.4. If there is a delay in delivery caused by circumstances beyond the control of KIOTO Photovoltaics GmbH, for example labour conflicts, fire, seizure, embargo or other instance of force majeure, an adequate extension of the delivery period is considered as having been agreed. . Should it be impossible to deliver to the agreed destination due to circumstances which beyond the control of KIOTO Photovoltaics GmbH, such as strikes, fire, confiscation, embargo or other acts of God, KIOTO Photovoltaics GmbH is authorized to select different means of transport, whereby KIOTO Photovoltaics GmbH will request a statement from its customer in advance. Any arising additional costs shall be borne by the buyer.
- 5.5. KIOTO Photovoltaics GmbH is not liable for delays in delivery through no fault of its own or which are due to minor negligence. In such cases the purchaser shall renounce the right to withdraw from the contract and the right to claim damages. If KIOTO Photovoltaics GmbH has caused the delay in delivery at least through gross negligence, the purchaser can either demand fulfilment or after setting an adequate period of grace he has the right to withdraw from the contract. In the case of specially designed products it must be borne in mind when setting the period of grace that it is impossible for KIOTO Photovoltaics GmbH to use elsewhere parts which have already been fitted, and the period of grace must therefore be twice as long as for supplies for which no specially designed parts are required.

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- 5.6. If the purchaser does not accept goods provided in accordance with the contract at the contractually agreed place or time KIOTO Photovoltaics GmbH can either demand fulfilment or, after setting a grace period of acceptance, can withdraw from the contract and redeem the goods, if necessary KIOTO Photovoltaics GmbH can remove them from their respective location, in particular the premises of the buyer. If by chance the supply in such a case of default of acceptance should perish after having been made ready, then KIOTO Photovoltaics GmbH shall not be obliged to supply a replacement delivery but reserves the claim to payment.
- 5.7. Dispatch is always made at the purchaser's own costs and risk, including freight paid delivery. KIOTO Photovoltaics GmbH has fulfilled its contractual duties and the risk is transferred to the purchaser when KIOTO Photovoltaics GmbH hands over the ordered goods to the haulier (post, rail or haulier).

6. PAYMENT

- 6.1. Unless anything different has been agreed in writing, payment is to be made before the delivery of the goods net to the point of payment to be specified by KIOTO Photovoltaics GmbH.
- 6.2. The purchaser is not entitled to retain payment due to warranty claims. Offsetting with other counterclaims which are legally associated with the purchaser's liabilities but are not acknowledged by KIOTO Photovoltaics GmbH is possible by consumers but not by companies.
- 6.3. If the purchaser falls into arrears with an agreed payment KIOTO Photovoltaics GmbH can
- Insist on fulfilment of the contract or resign the contract after a respite of 7 bank days;
 - postpone the fulfilment of its own obligations until the receipt of the payments which are in arrears
 - charge interest on late payments from the due date at 1% p.m. plus VAT; and
 - Invoice pre-procedural costs, especially the costs of reminders and the costs of lawyers according to the tariff in force.
- 6.4. Discounts and bonuses granted are subject to the suspensory condition of the duly receipt of full payment.
- 6.5. The delivered goods remain the property of KIOTO Photovoltaics GmbH until full payment. In the case of resale, including further processing, the purchaser undertakes to assign his claim from the resale to KIOTO Photovoltaics GmbH as security for the claim to the purchase price, and to record this in his books and records.

7. WARRANTY

- 7.1. For articles of trade sold by KIOTO Photovoltaics GmbH, unless otherwise explicitly agreed in writing, the warranty terms of the respective supplier shall apply, and at the least however the statutory warranty period of two years according to § 933 ABGB [Austrian Civil Code]. KIOTO Photovoltaics GmbH is entitled to free itself from any duty of warranty and compensation if claims resulting from this are assigned to suppliers of the purchaser.
- 7.2. For photovoltaic modules from KIOTO Photovoltaics GmbH the following warranty conditions apply:

I. Product warranty

- I.1. KIOTO Photovoltaics GmbH guarantees that the modules are free of defects for a period of twelve (12) years.

II. Performance warranty

- a. for the first year from the date of delivery to the customer through KIOTO Photovoltaics GmbH the peak power* (Pmpp) in standard test conditions will not be lower than 97% of minimum peak power (peak power min, Pmpp.min) in the context of the performance tolerance as specified in KIOTO Photovoltaics GmbH product information sheet at the date of delivery.
- b. From the second to the twenty-fifths year from date of delivery to the customer through KIOTO Photovoltaics GmbH the peak power* (Pmpp) in standard test condition will not be lower than $97 - (n \cdot 0,70)\%$ of the minimum peak power (peak power min, Pmpp.min) in the context of the tolerance as specified in KIOTO Photovoltaics GmbH product information sheet at the date of delivery, whereas n is the number of full years passed since the date of delivery.

If the loss of performance is due to faulty components KIOTO Photovoltaics GmbH is entitled to assign claims in respect of suppliers to the purchaser. In this event the significant terms of the supplier's guarantee shall apply.

* Peak Power means the power in WP (Watt Peak) which a PV-module in MPP (maximum power point – maximum power peak) produces. The standard test conditions are:

- (a) light spectrum corresponding to sunlight at AM (atmospheric mass) 1.5;
- (b) radiation of 1000 W per m² and
- (c) cell temperature of 25°C

Measurements are made in accordance with the standard IEC 60904 at the connectors to the laminate on the outlet of the conductor through the backsheet by the means of a suitable, corresponding to the measuring standards of KIOTO Photovoltaics GmbH modules at the date of manufacture of the module, measuring device - under consideration of the measuring tolerance according to industry standards. KIOTO Photovoltaics GmbH's calibration standard corresponds to the standards of international institutes which are accredited for this purpose.

III. Warranty and guarantee prerequisites

III.1. The product warranty and performance warranty from KIOTO Photovoltaics GmbH assume that:

- a) according to the proper discretion of KIOTO Photovoltaics GmbH the damages being claimed are due to material or manufacturing defects which are under the influence of KIOTO Photovoltaics GmbH;
- b) the installation of the PV solar modules supplied has been undertaken according to the assembly instructions in the respective valid version;
- c) the assembly has been carried out by a licensed specialist company (plant construction, electrical installer or fitter);
- d) KIOTO Photovoltaics GmbH was informed in writing immediately the defect appeared and that KIOTO Photovoltaics GmbH or its agents was given the opportunity of examining the objections on the spot immediately any defects appeared;
- e) written confirmation exists of proper maintenance and an annual inspection and servicing by a specialist company licensed to do this; (confirmation of the works carried out to be submitted when the warranty claim is asserted);
- f) there is no surface interference (e.g. by fine sand dust);
- g) the upper surface has been cleaned annually using only water, without chemical additives, with the date and extent of the cleaning being documented in writing;
- h) the model- and serial number of the product have not been changed, cleared, removed or made unreadable and the identification of the product is clearly possible;
- i) the damages are not attributable to a reason excluded in 7.3.2.

III.2. When asserting warranty and guarantee claims the original invoice is to be attached and the delivery date, module type and serial number must be stated. The occurrence of an incident, covered by warranty, due to the fact that the performance guarantee specified under II. has fallen short, must be demonstrated by the presentation of a measurement report by a recognised expert or institute. The measuring tolerance will be taken into account to the favour KIOTO Photovoltaics GmbH. The measurement report must show the date of testing. When asserting claims the date of testing shown in the measurement report relating to the reduced performance must be no more than 2 months old. KIOTO Photovoltaics GmbH reserves the right to prove by means of measurement undertaken by KIOTO Photovoltaics GmbH or a measurement undertaken by a third party instructed by KIOTO Photovoltaics GmbH that contrary to the measurement report submitted the guaranteed performance does indeed exist. If the measurement instructed by KIOTO Photovoltaics GmbH leads to the conclusion that the aberration is admissible according to II. or that there is no aberration, then KIOTO Photovoltaics GmbH is entitled to ask the purchaser to reimburse the third party's costs.

III.3. Warranty and guarantee claims will expire six months after the incident covered by guarantee comes to light. However the period of limitation will end at the latest with the expiry of 10 or 25 years (depending on how high the decline in performance turns out to be according to the measurement report) from the day of delivery of the module.

III.4. In respect of the performance guarantee under II., the entitlement to claim shall apply solely to the particular operator of the solar equipment at the time of the assertion of a claim under guarantee who has himself acquired the module for his own operation (and not for purposes of resale) or has acquired the building or realty on which the module was first mounted. Claims by intermediaries or installation companies or subsequent acquirers of the modules are not justified under this guarantee. The guarantee exists towards the operator, independently of contractual warranty claims towards the intermediary as vendor of the modules and of third party claims beyond the scope of the contract. Such claims will be neither limited, justified nor extended by this guarantee of KIOTO Photovoltaics GmbH. The guarantee is an independent, voluntary and gratuitous service by KIOTO Photovoltaics GmbH and has no effect on the agreements between KIOTO Photovoltaics GmbH and the purchaser. The provider of the guarantee and the addressee for all queries and claims in connection with incidents covered by guarantee is solely KIOTO Photovoltaics GmbH.

7.3 Handling of warranty claims

7.3.1. Warranty compliance shall take place at the choice of KIOTO Photovoltaics GmbH by repair of the purchase object, replacement of the defective parts, exchange of goods or price reduction. Should the faulty product not be produced any more at the time of the warranty claim, KIOTO Photovoltaics GmbH can provide a comparable product as replacement. In the case of a warranty claim there is no right for replacement by new or as good as new products. KIOTO Photovoltaics GmbH has the right to deliver used and/or repaired products as compensation. The purchaser's right to conversion is amicably ceded. The exchanged parts will enter into the ownership of KIOTO Photovoltaics GmbH. The wages and costs incurred for assembly and dismantling are to be borne by the purchaser unless the latter is a consumer in the sense of the Consumer Protection Act [KSchG]. This applies analogously to all guarantee agreements, in particular the performance guarantee. Further warranty claims shall not exist. In particular KIOTO Photovoltaics GmbH will not bear any further costs from this guarantee and shall not be liable for loss of profits or sales or other consequential damages caused by a defect. No extension of the guarantee shall occur through the reporting of a defect.

7.3.2. The purchaser is obliged to inspect the goods delivered immediately. Warranty claims will only be preserved if the defects which have become apparent are reported immediately in writing. Notification by word of mouth or by telephone will not satisfy the requirement for inspection and reporting defects in writing.

KIOTO Photovoltaics GmbH warranty obligation will only apply to defects which become apparent provided the assembly and operating instructions supplied are complied with. In particular it shall not apply to damages which have arisen due to the following reasons:

- repairs or alterations undertaken by the purchaser or third parties without the written consent of KIOTO Photovoltaics GmbH (for instance manipulation of the framework or the connection box of the modules);
- unsuitable or inappropriate use, faulty assembly or operation by the purchaser or third parties;
- natural operating wear or deterioration due to force majeure;

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- incorrect or negligent handling – in particular excessive demands, unsuitable equipment or unsuitable building ground;
 - chemical, electrochemical or electrical effects or over- or under-supply of energy;
 - ascendancies of pollution like smoke or exceptionally high salt exposure;
 - through direct or indirect stroke of lightning or other extreme weather conditions;
 - rodent bites, etc.
- 7.3.3. Changes in the appearance of the product, scratches, stains, rust, mildew, discolouration as well as other mechanical and optical adverse affects are not taken as defect, as long as the changes in appearance do not induce any impairment in the functionality of the product.
- 7.3.4. The particular regress according to § 933 b AGBG is not possible and is expressly excluded.

8. LIABILITY

KIOTO Photovoltaics GmbH is liable for defects outside the area of application of the Product Liability Act [Produkthaftungsgesetz] only insofar as intention or gross negligence can be proved on the basis of the statutory provisions. Liability for minor negligence, for the reimbursement of consequential damages, savings not achieved, loss of interest or compensation claims by a third party is excluded. Suppliers do not count as vicarious agents of KIOTO Photovoltaics GmbH and therefore KIOTO Photovoltaics GmbH shall not be liable for any wrongdoing by suppliers. If any conditions for installation and operation or any authorisation requirements by the authorities are not followed, any compensation for damages is excluded.

9. PLACE OF JURISDICTION AND LAW

- 9.1. For all disputes arising directly or indirectly from this contract the sole competence of the responsible court in Klagenfurt is agreed.
- 9.2. Austrian jurisdiction applies to all contractual relationships with the exclusion of the rules regarding the conflict of laws and the UN Convention on Contracts for the International Sale of Goods (UNCITRAL).