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Clause 1 General provisions, scope

- (1) These Purchasing Terms and Conditions apply to all business relationships between ENERTRAG SE or companies affiliated with it ("ENERTRAG") and business partners and suppliers ("Vendor"). The Purchasing Terms and Conditions shall only apply if the Vendor is a merchant (*Unternehmer* as defined under German law under section 14 of the German Civil Code [BGB]).
- (2) The Purchasing Terms and Conditions apply but are not limited to the sale and/or supply of movable goods ("Goods") and services regardless of whether the Vendor manufactures the Goods itself or purchases the Goods from suppliers (sections 433, 651 of the BGB). The relevant version of the Purchasing Terms and Conditions shall also apply as a framework agreement to future contracts governing the sale and/or supply of movable goods with the same Vendor without the need for ENERTRAG to refer to such Purchasing Terms and Conditions in each case; in such case, the Vendor shall be informed about any amendments to these Purchasing Terms and Conditions without delay.
- (3) These Purchasing Terms and Conditions shall apply exclusively. Any of the Vendor's terms and conditions that depart from, conflict with or supplement the Purchasing Terms and Conditions shall only become part of the contract if ENERTRAG has explicitly agreed thereto in writing. This requirement for consent shall apply at all times, for instance, even if ENERTRAG accepts the Vendor's shipments without reservation despite being aware of the Vendor's terms and conditions.
- (4) Any separate agreements made with the Vendor (including collateral agreements, additions, and amendments) shall always take precedence over these Purchasing Terms and Conditions. A contract or confirmation by ENERTRAG in writing shall govern the conclusion and content of such types of agreements.
- (5) To obtain legal force, any legally relevant declarations and notifications to be made by the Vendor to ENERTRAG (e.g. the setting of deadlines, reminders, notifications of cancellations of contract) after conclusion of the contract must be in writing.
- (6) Any correspondence concerning the contract conducted with ENERTRAG shall include the relevant reference or order number.
- (7) Should these Purchasing Terms and Conditions be available in languages other than German, only the German version shall be binding for ENERTRAG and the Vendor.

Clause 2 Conclusion of the contract

- (1) ENERTRAG's order shall only be considered binding when submitted or confirmed in writing to the Vendor at the earliest. Before acceptance, the Vendor shall indicate any obvious errors (e.g. typing and calculation errors) and anything lacking in the order, to allow such items to be corrected or completed; otherwise the contract shall be deemed not to have been concluded. The Vendor shall check a quote from ENERTRAG professionally and explicitly

indicate any deviation from the documents that requested the quote.

- (2) Should ENERTRAG provide the quote, ENERTRAG shall be bound by such quote for 14 days from the date of the quote. Delayed acceptance by the Vendor shall be deemed a new quote and require acceptance by ENERTRAG.

Clause 3 Lead time and delay in delivery

- (1) The lead time specified by ENERTRAG in the order shall be binding. Should the lead time not be specified in the order and not agreed elsewhere, it is 1 week after conclusion of the contract. Should delays be expected, the Vendor shall inform ENERTRAG thereof without delay and ask ENERTRAG whether it still wishes to place the order.
- (2) Should the Vendor not provide or default in performance, or not do so within the lead time agreed, the statutory provisions shall govern ENERTRAG's rights, including, but not limited to, the right to cancel the contract and receive damages without prejudice to the stipulations in paragraph 3.
- (3) Should the Vendor be in default, ENERTRAG may demand a contractual penalty of 1% of the net price for each completed calendar week, but not more than 5% of the net price of the Goods or Services that have been supplied with a delay. In addition to performance, ENERTRAG shall be entitled to demand the contractual penalty and, in accordance with statutory provisions, the damages owed by the Vendor as a minimum amount without prejudice to the right to file a claim for further damages. Should ENERTRAG accept delayed performance, ENERTRAG shall claim the contractual penalty when it makes the final payment at the latest.
- (4) ENERTRAG shall not be obliged to accept performance before the delivery date.

Clause 4 Performance, delivery, default of acceptance

- (1) Without ENERTRAG's prior consent in writing, the Vendor shall not be entitled to request that third parties (e.g. subcontractors) provide the performance the Vendor owes. The Vendor shall bear the procurement risk required to provide performance unless otherwise agreed in individual cases (e.g. sale of goods in stock).
- (2) Delivery shall be made free of charge at the Vendor's expense to the location specified by ENERTRAG. Should ENERTRAG have to pay freight charges in exceptional cases, the Vendor shall select the mode of transport specified by ENERTRAG, or the most affordable transport or delivery method for ENERTRAG. The relevant destination is also the place of performance.
- (3) A delivery note stating the date (of issue and dispatch), contents of the shipment (article number and quantity), as well as the transaction number stated by ENERTRAG in the order must accompany the shipment. Should the delivery note be missing or incomplete, ENERTRAG shall not be responsible for any delays in processing and payment that occur as a result.

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Separately from the delivery note, a dispatch note with the same information shall be sent to ENERTRAG electronically (by e-mail/fax) by the day of the dispatch at the latest.

- (4) Statutory provisions govern when ENERTRAG's default of acceptance commences. However, the Vendor shall also be obliged to offer ENERTRAG performance explicitly if a specific or definable juncture on the calendar has been agreed for ENERTRAG to perform a task or cooperate (e.g. by providing material). Should ENERTRAG be in default of acceptance, the Vendor may, based on the statutory provisions, demand compensation for extra expenses incurred (section 304 of the BGB). Should the contract concern a non-fungible (unique) item to be produced by the Vendor, the Vendor shall only be entitled to exercise further rights if ENERTRAG is obliged to cooperate and responsible for any failure to do so.
- (5) Unless otherwise previously agreed, partial performance shall not be permitted. Therefore, ENERTRAG shall be permitted to cancel the remaining items or services owed.

Clause 5 Prices and payment terms

- (1) The price stated in the order is binding. All prices are net plus statutory VAT, unless it is listed separately.
- (2) Unless otherwise agreed in individual cases, the price shall cover all the Vendor's Goods and ancillary services (e.g. assembly, fitting) as well as all incidental costs (e.g. proper packaging, shipping costs including any insurance cover for shipping and liability).
- (3) At ENERTRAG's request, the Vendor is obliged to take back packaging materials. The Vendor shall select the packaging specified by ENERTRAG and ensure that the packaging protects the Goods from damage. When the packaging material is returned, at least two thirds of its calculated cost is to be credited.
- (4) Invoices shall only become due and ENERTRAG can only process them if they comply with statutory requirements, including, but not limited to compliance with the German VAT Act and the order number indicated in ENERTRAG's order as well as the details and/or documents agreed when the order was placed; the Vendor shall be responsible for all consequences resulting from non-compliance with this obligation. Should the aforementioned details and/or documents be missing, the Vendor shall not be authorised to assert a claim for the receivables in question vis à vis ENERTRAG.
- (5) Unless otherwise agreed in writing, the purchase price shall be due 30 days after transfer of the Goods and acquisition of title or acceptance of the service, receipt of an auditable invoice and all documents required by contract. A non-cash payment shall be made to the Vendor's business account. The Vendor shall provide the relevant up-to-date bank details. If partial performance has been agreed, payment shall not be due until the last shipment and the invoice has been made out correctly (see above). Such stipulation shall not apply to successive delivery contracts or in the

event of a partial performance being cancelled as per clause 4.6 of these Purchasing Terms and Conditions.

- (6) Should the Vendor be obliged to provide material samples, test reports, quality management or other contractually agreed documents, ENERTRAG must have access to such items for the Goods to be deemed complete.
- (7) If a discount is granted, payment terms shall be as follows:
 - up to 14 days minus a 3% discount
 - up to 60 days netDelays caused by incorrect or incomplete invoices shall not negatively affect any discount periods.
- (8) ENERTRAG owes no interest after due date. The default interest shall be 5 percentage points annually above the base rate (section 247 of the BGB). The statutory provisions shall apply to default by ENERTRAG, however, by way of derogation a reminder in writing from the Vendor shall be required in every case.
- (9) ENERTRAG shall be entitled to exercise set-off rights and retention of title as well as the defence of non-performance of contract to the extent permitted by law. ENERTRAG shall be entitled, including, but not limited to withhold payments due as long as ENERTRAG is still entitled to assert claims vis à vis the Vendor due to incomplete or faulty performance.
- (10) The Vendor shall only have a right to set-off or retention of title based on receivables established by due legal process or recognised incontestably in writing by ENERTRAG.
- (11) The Vendor's receivables from ENERTRAG may only be assigned to third parties with ENERTRAG's consent. Payments shall be made to the Vendor or assignee.

Clause 6 Ownership, provision and confusion of goods

- (1) Should ENERTRAG supply and/or provide substances and materials, these shall remain the property of ENERTRAG. The Vendor shall process or transform such items for ENERTRAG. Should ENERTRAG's substances and materials be processed with other objects not belonging to it, ENERTRAG shall acquire co-ownership of the new item in proportion to the value of its own substances or materials and the other objects processed at that time.
- (2) Should the item (substances/materials) provided by ENERTRAG be inseparably combined with other items not belonging to it, ENERTRAG shall acquire co-ownership of the new item in proportion to the value of the item subject to retention of title that is combined with the other objects at the time of the combination of goods. Should combination of goods occur in such a way that the Vendor's item is to be regarded as the main item, it is agreed that the Vendor shall transfer ownership to ENERTRAG proportionately; the Vendor shall store the item to which sole or joint ownership applies free of charge for ENERTRAG.

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Clause 7 Intellectual property rights and confidentiality

- (1) The Vendor undertakes to maintain confidentiality over any documents and information received from ENERTRAG. Such documents and information may only be disclosed to third parties with ENERTRAG's explicit consent. The duty of confidentiality shall also apply to personal data. The duty of confidentiality shall also apply once this contract has been completed or has failed; such duty of confidentiality shall expire if information in the documents provided have is public domain. Should a breach of such duties occur, ENERTRAG may demand immediate surrender of the documents or information and assert a claim for damages.
- (2) The conclusion of the contract is to be treated confidentially. Reference may only be made to a business transaction with ENERTRAG in the Vendor's advertising literature if ENERTRAG has given consent in writing thereto. ENERTRAG and the Vendor undertake to treat all commercial or technical information not in the public domain and which were disclosed to each party through their business relationship as trade secrets.
- (3) Third parties appointed by the Vendor to meet obligations resulting from this contract shall also be obliged to comply with paragraphs 1 and 2.
- (4) The Vendor guarantees that there are no breaches of third-party rights in connection with the Goods supplied. Should ENERTRAG be held liable by a third party in this respect, the Vendor shall be obliged to indemnify ENERTRAG without delay against all claims resulting therefrom the first time they are requested to do so and to defend ENERTRAG against such claims. The obligation to indemnify also covers all expenses inevitably incurred by ENERTRAG from or in connection with the claim by a third party. Such expenses shall also include those incurred for legal counsel. The Vendor shall take out adequate insurance against such risk as is customary in the industry.

Clause 8 Defective deliveries

- (1) The statutory provisions shall apply to ENERTRAG's rights in the event of material defects and defective title (including incorrect and short shipments as well as improper assembly, defective assembly, or faulty operating instructions) and as a result of other breaches of duty by the Vendor, unless otherwise specified below.
- (2) Under the statutory provisions, the Vendor shall be liable for including, but not limited to ensuring that the Goods are of the quality agreed upon transfer of risk to ENERTRAG. Product descriptions, which include but are not limited to designations or references in the order, are the subject of the contract concerned or have been included in the contract in the same way as these Purchasing Terms and Conditions, shall be deemed to be an agreement on quality. It makes no difference to ENERTRAG whether the product description came from ENERTRAG, the Vendor or manufacturer.

- (3) Section 442 (1) sentence 2 of the BGB notwithstanding, ENERTRAG shall also have an entitlement without limitation to claims for defects even if ENERTRAG was unaware of the defect as a result of gross negligence at the time of conclusion of the contract.
- (4) The statutory provisions (sections 377, 381 of the German Commercial Code [HGB]) shall apply to the commercial obligation to inspect and give notice of defects, with the following provision: ENERTRAG's duty to inspect Goods is limited to defects that become apparent when it visually inspects incoming goods, including the shipping documents, as well as during ENERTRAG's quality control process through random sample taking (e.g. transport damage, incorrect and short shipments). There is no obligation to inspect the Goods if acceptance has been agreed. Furthermore, it depends on whether an inspection is feasible in the ordinary course of business, taking into account the circumstances each case.

ENERTRAG shall still have the right to give notice of defects discovered later.
- (5) The Vendor shall meet the costs incurred for inspecting the Goods and remedying a defect (including any dismantling and installation costs) even if it become apparent that the Goods were free of defects without prejudice to ENERTRAG's liability for damages in the event of unjustified requests to remedy defects. However, ENERTRAG shall only be liable in such case if ENERTRAG knowingly, or failed with gross negligence to recognise that there was no defect.
- (6) If the Vendor does not meet its obligation to provide cure, at ENERTRAG'S discretion by remedying the defect or by delivering a perfect item (replacement delivery) within an appropriate period of time specified by ENERTRAG, ENERTRAG may remedy the defect itself and demand reimbursement of the costs incurred or an advance payment from the Vendor. Should a cure by the Vendor fail, or be deemed unreasonable for ENERTRAG (for instance, because of exceptional urgency, risk to operational safety, or the threat of imminent and excessive damage) no deadline needs to be specified; ENERTRAG shall inform the Vendor of such circumstances without delay and in advance, if possible.
- (7) ENERTRAG shall also be entitled to reduce the purchase price or cancel the contract in the event of a material defect or defect of title in accordance with the statutory provisions. ENERTRAG shall also be entitled to compensation for damages and expenses as per the statutory provisions.

Clause 9 Recourse by the supplier

- (1) In addition to claims for defects, ENERTRAG shall be entitled without limitation to the statutory rights of redress within a supply chain (recourse by the trader pursuant to sections 478, 479 of the BGB). In particular, ENERTRAG is entitled to demand the exact type of cure (remedying a defect or providing a replacement delivery) from the Vendor that ENERTRAG owes its customer in each case but

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without prejudice to ENERTRAG's right to choose (section 439 (1) of the BGB).

- (2) Before ENERTRAG acknowledges or meets a claim for defects asserted by the customer (including reimbursement of expenses pursuant to sections 478 (3), 439 (2) of the BGB), ENERTRAG shall notify the Vendor and request a written comment with a brief outline of the facts. Should such comment not be provided within an appropriate period and no amicable solution be brought about, the claim for defects actually granted by ENERTRAG shall be deemed to be owed to ENERTRAG's customer; in such case, the Vendor shall be responsible for providing evidence to the contrary.
- (3) Claims due to recourse by the supplier shall also apply if the Goods have been processed further by ENERTRAG or one of its customers, e.g. by incorporating such Goods in another product, prior to their sale to a consumer.
- (4) Furthermore, claims arising from liability for defects shall never be subject to a statute of limitations as long as the third party can or does file a claim against ENERTRAG, in particular because there is no statute of limitations.

Clause 10 Liability of producers

- (1) If the Vendor is responsible for product damage, it must indemnify ENERTRAG against third-party claims if the cause of the damage is within the Vendor's sphere of control and organization and the Vendor is liable itself as regards its relationship with third parties.
- (2) As part of its obligation to provide indemnification, the Vendor is obligated to pay for expenses pursuant to sections 683, 670 of the BGB arising from or in connection with claims asserted by third parties, including product recalls by ENERTRAG. To the extent possible and reasonably expectable, ENERTRAG shall inform the Vendor of the scope of the product recalls and what such recalls involve and give the Vendor an opportunity to comment, without prejudice to rights to assert further statutory claims.
- (3) The Vendor shall take out and maintain product liability insurance with cover of at least EUR 5 million per personal injury/property damage.

Clause 11 Statute of limitations

- (1) Unless otherwise stipulated below, the limitation period shall apply in accordance with statutory provisions to reciprocal claims of the parties to the contract.
- (2) Notwithstanding section 438 (1) no. 3 of the BGB, the limitation period for claims for defects is 3 years from the transfer of risk, unless the statutory period is longer. If acceptance has been agreed, limitation period commences once acceptance has been issued. The aforementioned limitation period shall also apply to claims arising from defective title without prejudice to the limitation period for third-party claims for restitution in rem (section 438 (1) no. 1 of the BGB); furthermore, claims arising from defects of title shall never become time-barred as long as the third party can or does assert the right

vis à vis ENERTRAG – in particular in the absence of a limitation period.

- (3) The limitation period regarding the law on the sale of goods, including the aforementioned extension, apply within the statutory limits to all contractual claims for defects. Should ENERTRAG also be entitled to non-contractual claims for damages due to a defect, in accordance with provisions, the statutory limitation period (sections 195, 199 of the BGB) shall apply in this case, unless the statutes of limitations stipulated in the law on the sale of goods is applied and means a longer limitation period in each case.

Clause 12 Choice of law and venue

- (1) These Purchasing Terms and Conditions and any legal relationships between ENERTRAG and the Vendor shall be governed by the law of the Federal Republic of Germany excluding international uniform law and in particular the UN Sales Law. The conditions and effects of the retention of title are subject to the law at the place the item is located should German law have been chosen but is prohibited or has no legal force.
- (2) If the Vendor is a merchant [*Kaufmann*] as defined in the German Commercial Code, a legal entity under public law or an off-budget entity, the sole – also international – venue for all disputes arising from the contractual relationship shall be ENERTRAG's registered place of business. However, ENERTRAG shall also be entitled to bring an action at the place of performance where delivery of the Goods has been specified.