

# General Terms and Conditions (GTC) for the purchase of products or services of ENERTRAG SE or its affiliated companies As of 01/2022



## § 1 General, scope of application

1.1 These General Terms and Conditions (GTC) apply to all business relationships between ENERTRAG SE or its affiliated companies (ENERTRAG) and the business partners and clients (client), insofar as ENERTRAG SE or its affiliated company provides a service as a contractor.

1.2 The GTC apply in particular to contracts for deliveries and services of ENERTRAG, irrespective of whether the Customer uses the service of ENERTRAG itself or acts for third parties, §§ 433, 650 BGB. The GTC shall also apply in their respective version as a framework agreement for all future service relationships with the same Customer, without ENERTRAG having to refer to them again in each individual case; the Customer shall be informed immediately of any changes to these GTC.

1.3 These GTC shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Customer shall only become part of the contract if and insofar as ENERTRAG has expressly agreed to their validity in writing. This requirement of consent shall apply in any case, for example even if ENERTRAG delivers to the Customer without reservation in the knowledge of the Customer's General Terms and Conditions.

1.4 This contract shall be governed by German law to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. The conditions and effects of the retention of title are subject to the law at the respective location of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective. If the Customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be the registered office of ENERTRAG. However, ENERTRAG is also entitled to bring an action at the place of fulfilment of a contractually agreed delivery obligation.

1.5 Amendments and additions to this contract must be made in writing to be effective. This also applies to any amendment or cancellation of this written form clause. There are no verbal collateral agreements.

1.6 Legally relevant declarations and notifications to be submitted by the Customer to ENERTRAG after conclusion of the contract (e.g. setting of deadlines, reminders, declaration of cancellation) must be made in text form to be effective.

1.7 All correspondence with ENERTRAG relating to the contract must quote the order or contract number.

1.8 If copies of these GTC are made in languages other than German, in case of doubt only the German version and its interpretation shall be authoritative for the contracting parties.

1.9 ENERTRAG reserves unrestricted property and copyright utilisation rights to cost estimates, drawings and other documents - also in electronic form. The documents may only be made accessible to third parties with the prior consent of ENERTRAG and must be returned to ENERTRAG immediately upon request if the order is not placed by ENERTRAG.

## § 2 Conclusion of contract

2.1 The order to ENERTRAG shall be deemed binding at the earliest upon written acceptance by the Customer. The Customer must point out obvious errors (e.g. typing and calculation errors) and incompleteness of the order placement including the order documents for the purpose of correction or completion; otherwise the contract shall be deemed not concluded. The Customer must check an offer from ENERTRAG professionally and expressly point out any deviations from the enquiry documents.

2.2 If the offer is made by ENERTRAG, ENERTRAG shall be bound by this offer for at least 14 days from the date of the offer. Delayed acceptance by the Customer shall be deemed a new offer and requires acceptance by ENERTRAG.

## § 3 Prices, terms of payment

3.1 The prices are quoted ex place of dispatch, plus costs of packaging and insurance without VAT, which ENERTRAG shall be additionally remunerated at the applicable statutory rate, unless otherwise stated in the offer. Delivery is always at the risk of the Customer, unless otherwise agreed.

3.2 If ENERTRAG has provided the contractual service at the location specified by the Customer and nothing else has been agreed, the Customer shall bear all necessary ancillary costs, such as travelling time, travelling expenses and costs for the transport of the required tools and equipment and personal luggage as well as allowances in addition to the agreed remuneration.

3.3 ENERTRAG's invoices are due on the third day after the invoice date and payable without deduction within 14 days of the invoice date. If the payment deadline is exceeded ENERTRAG shall be entitled, without further reminders, to demand interest from the due date at a rate of nine percentage points per annum above the respective base rate of the European Central Bank. § Section 288 BGB remains unaffected.

3.4 The Customer may only offset such claims that are undisputed or have been recognised by declaratory judgement. ENERTRAG is permitted to assign claims. § Section 354a HGB remains unaffected.

3.5 If the solvency of the Customer deteriorates in the period between the conclusion of the contract and the delivery or if ENERTRAG subsequently becomes aware that there are concerns about the solvency of the Customer, ENERTRAG shall be entitled to demand the provision of appropriate security, which in principle corresponds to the value of the delivery to be provided under the contract. If the provision of security is refused, ENERTRAG shall be entitled to withhold outstanding deliveries and to withdraw from the contract. § Section 648a BGB remains unaffected.

3.6 We reserve the right to make reasonable price changes due to changes in labour and material costs for the contractual service four months or more after conclusion of the contract.

## § 4 Performance (delivery, maintenance, service), retention of title, transfer of risk

4.1 The risk shall pass to the Customer as follows, even in the case of carriage paid performance:

- for services without installation or assembly, if they have been provided for despatch or collected. At the request and expense of the Customer, ENERTRAG shall insure services against the usual transport risks;
- for services involving installation or assembly on the day of acceptance at the customer's own premises or, if agreed, after a fault-free trial run.

4.2 Unless otherwise agreed, ENERTRAG shall fulfil its contractual obligations to manufacture and deliver contractually agreed products within six weeks of order confirmation, the existence of the system or service requirements and fulfilment of the Customer's obligations to cooperate. Delay in delivery shall only occur after receipt of a reminder by ENERTRAG.

4.3 In the case of a delivery of a contractually agreed product that includes installation and/or commissioning at the Customer's premises or its property, the delivery period shall be extended by the period that lies between the earliest date offered by ENERTRAG and the delivery date actually agreed. If the dispatch, the delivery, the start, the execution of the installation or assembly, the takeover into the own operation or the trial operation is delayed for reasons for which the Customer is responsible or the Customer is in default of acceptance for other reasons, the risk shall pass to the Customer.

4.4 Information about properties of the goods supplied by ENERTRAG are purely product descriptions and only belong to the agreed quality if they are designated as such by ENERTRAG in writing in an offer or an order confirmation and the obligations of ENERTRAG are also set out in detail there. The Customer's recognisable interest in the existence of certain product characteristics alone does not constitute a guarantee.

4.5 The objects of the deliveries (reserved goods) remain the property of ENERTRAG until the fulfilment of all claims to which it is entitled against the Customer from the business relationship.

4.6 For the duration of the retention of title, the Customer is prohibited from pledging or transferring ownership by way of security. The Customer is revocably authorised at any time to process the delivered items in the ordinary course of business or to combine them with others. The processing or combination shall be carried out for ENERTRAG, whereby ENERTRAG shall acquire ownership of the objects resulting

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from the processing or combination. Insofar as ENERTRAG's ownership of the goods is lost as a result of the processing, the Customer shall transfer ownership of the new item created by the processing to ENERTRAG already today.

4.7 The Customer is revocably authorised at any time to sell the goods in the ordinary course of business. He already assigns his claims from the resale to ENERTRAG today. If the goods are the property of ENERTRAG or of third parties, the Customer shall assign the claims from the sale to ENERTRAG in the fraction that corresponds to the co-

4.10 In the event of seizure, confiscation or other dispositions or interventions by third parties, the Customer must inform ENERTRAG immediately. The Customer is obliged to immediately enable ENERTRAG to gain access by third parties to the sole ownership or co-ownership of ENERTRAG, for example in the event of seizure. The same applies in the event of any damage to or destruction of the product. The Customer must also immediately notify ENERTRAG of any change of ownership of the product as well as any change of business or place of residence.

4.11 In the event of breaches of duty by the Customer, in particular in the event of default in payment, ENERTRAG shall be entitled to withdraw from the contract and to take back the goods after the unsuccessful expiry of a reasonable deadline set for the Customer; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The Customer shall be obliged to surrender the goods.

## § 5 Receipt / Acceptance

5.1 If the service consists of a pure delivery, it must be inspected immediately upon arrival at the destination. If the goods are not inspected, any warranty for defects is excluded. The goods shall be deemed free of defects if ENERTRAG does not receive a notice of defects within 7 working days of receipt of the delivery. Hidden defects that cannot be discovered during an immediate inspection can only be asserted against ENERTRAG if the notification of defects is received by ENERTRAG within one year of dispatch of the goods.

5.2 If the Customer is in default with the acceptance of the delivery made, ENERTRAG may withdraw from the contract after setting a reasonable deadline or demand compensation for non-fulfilment.

5.3 If the order also includes assembly services, the Customer shall be obliged to accept the assembly as soon as it has been notified of its completion and any contractually stipulated testing of the contractual service has taken place. If the assembly proves not to be in accordance with the contract, ENERTRAG shall be obliged to rectify the defect. This shall not apply if the defect is insignificant for the interests of the Customer or is based on a circumstance attributable to the Customer. The Customer may not refuse acceptance due to insignificant defects.

5.4 The following in particular must be removed on request  
a) self-contained parts of the service,  
b) other parts of the service, if the further execution makes inspection and determination no longer possible. Formal acceptance must take place if one party requests it.

5.5 If ENERTRAG demands acceptance of the delivery after completion, the customer must carry this out within one week. If this is not done, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place if the delivery has been put into use, if applicable after completion of an agreed test phase.

5.6 ENERTRAG's liability for recognisable defects shall lapse upon acceptance, unless the Customer has reserved the right to assert a specific defect at the latest upon acceptance.

## § 6 Liability

6.1 ENERTRAG shall be liable without limitation in accordance with the statutory provisions for

a) damages arising from culpable injury to life, limb or health and  
b) for damages caused by wilful or demonstrably grossly negligent breach of duty.

6.2 Except in the cases of paragraph 1, ENERTRAG shall only be liable in the event of simple negligence for damages arising from the not insignificant breach of a material contractual obligation, whereby liability shall be limited to the amount of reasonably foreseeable damage typical for the contract. Material contractual obligations are those whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely. In the case of a continuing obligation,

ownership share of the Customer. ENERTRAG hereby accepts this assignment subject to a condition precedent.

4.8 The Customer shall be entitled and obliged to collect claims assigned to ENERTRAG as long as it has not expressly revoked this authorisation. The upper limit of the compensation is 20 per cent of the respective order value.

4.9 The Customer shall store the goods carefully and insure them adequately against theft and fire at its own expense.

the reasonably foreseeable damage typical for the contract to be compensated is limited to a maximum of twice the contractually agreed annual remuneration.

6.3 Except in the cases of paragraph 1 and paragraph 2, claims for compensation against ENERTRAG are excluded. This also applies in particular to liability for indirect damage and consequential damage (such as loss of profit, loss of production, financing costs and claims for compensation by third parties).

6.4 The liability modifications according to this clause also apply in favour of the legal representatives, employees and vicarious agents of ENERTRAG. Liability for risks arising from the services of third parties who are not legal representatives or vicarious agents of ENERTRAG and whose co-operation is necessary for the provision of the contractually owed services or for the contractual functioning of the contractual object is excluded between the contractual partners, insofar as the Customer is not entitled to a direct claim against ENERTRAG under consideration of this clause.

6.5 The liability modifications according to this clause do not apply

a) for claims of the Client due to a defect, insofar as the defect was fraudulently concealed or its absence was guaranteed and

b) to the extent that the Customer is entitled to compensation claims under the Product Liability Act or other mandatory statutory provisions.

6.6 Insofar as the Client is entitled to claims for damages under this clause, these shall become time-barred within the statutory periods.

## § 7 Duration of contract, cancellation

7.1 This order comes into force upon conclusion of the contract and is valid until the agreed end of the contract. The installation and commissioning dates shall be bindingly fixed by ENERTRAG with the Customer after conclusion of the contract.

7.2 If ENERTRAG does not fulfil essential contractual obligations despite two written grace periods with a minimum period of 14 days from receipt, the customer shall have a special right of termination. ENERTRAG shall reimburse the user for any resulting additional expenses upon proof up to the amount of the payments due in the calendar year of the breach of contract.

7.3 Cancellation of parts of the scope of the order is possible under the same conditions.

## § 8 Services

Unless otherwise agreed, the following provisions shall apply to the services:

8.1 The Customer must ensure in good time and at its own expense that the trades of third-party ancillary services have been performed, that energy and water have been provided and that space or theft-proof premises are available for the construction site equipment and the construction site warehouse of ENERTRAG. The Customer must inform ENERTRAG's assembly manager about existing special safety regulations.

8.2 Prior to commencement of the work, the Customer shall provide ENERTRAG with the necessary information on the location of concealed electricity, gas and water lines or similar installations as well as the necessary structural data without being requested to do so.

8.3 Before the start of the services, the materials and objects required for the start of the work must be available at the place of performance and all preparatory work must have progressed to such an extent that the service can be started as agreed and carried out without interruption. Access routes and the place of performance must be cleared, levelled and paved.

8.4 If the Customer is in default due to failure to co-operate,

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ENERTRAG may demand corresponding compensation.

8.5 If the performance or commissioning is delayed due to circumstances for which ENERTRAG is not responsible, the Customer shall bear the costs for waiting time and additionally required travelling by ENERTRAG or the installation personnel to a reasonable extent.

## § 9 Breach of contract, non-fulfilment by the Client

9.1 If the Customer does not fulfil its payment obligations, ENERTRAG shall be entitled to an immediate and undisputed right of termination after a delay in payment lasting longer than two months. The hardware and installations already installed shall be returned and the uninstallation of any software components from system media shall be guaranteed or granted. ENERTRAG shall be reimbursed in full for the costs of the resulting cancellation procedures and the resulting damage.

9.2 ENERTRAG is entitled to withdraw from the contract and to demand compensation for non-fulfilment if the customer does not pay the purchase price owed after the expiry of a reasonable grace period. During the delay, ENERTRAG is not obliged to carry out further deliveries.

9.3 The Customer shall only be entitled to set-off rights if its counterclaims are legally established, undisputed or recognised by ENERTRAG. Furthermore, he is only authorised to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## § 10 Cancellation

10.1 If the delivery date of a contractually agreed product does not materialise despite the offer of at least two delivery dates due to a lack of feedback from the Customer, ENERTRAG shall have an immediate right to withdraw from the contract. The Customer shall compensate the damage arising from the preliminary work performed at a flat rate of 20 per cent of the order amount of the first calendar year of the contract term or the contractually agreed product. ENERTRAG reserves the right to claim higher damages against proof.

In the event of cancellation of the contractually agreed product or the contractually agreed service prior to delivery by the Customer, ENERTRAG shall pay a lump sum of 20 per cent of the order amount for the first calendar year for damages arising from preliminary work carried out.

## § 11 Maintenance

The Customer shall grant ENERTRAG access to the transformer station, the master system or another installation site of the contractually agreed product for the purpose of installation, maintenance and service. The Customer shall permit the subsequent structural or other adaptation of the contractually agreed product during the term of the contract, insofar as this serves to improve or maintain the function. This also includes the replacement of parts of the contractually agreed product.

## § 12 Secrecy and confidentiality

12.1 The contracting parties shall treat the content of this order and the information received from the other party within the scope of the obligations of this order as confidential. Information on the contents of the contract may only be passed on to third parties with the written consent of the other contracting party, unless there is a legal or equivalent obligation to pass on such information. If a contractual partner is required by law or authorised by contractual obligations to disclose confidential information, the other contractual partner must be informed of the disclosure of this information, unless this is prohibited by law. Furthermore, the parties undertake to only pass on information received to their employees or affiliated companies or third parties to the extent that this is necessary for the assessment, preparation and execution of the order. The contracting parties shall oblige their employees to maintain confidentiality accordingly. This provision shall also apply to information about the other contracting party from non-public sources other than the contracting party itself (e.g. complaints, authorities, affiliated companies).

12.2 The personal data of the Customer obtained by ENERTRAG within the scope of this order, insofar as deposited in writing or stored electronically, shall be deleted upon termination of the contractual relationship, insofar as this is technically and reasonably possible. The only exceptions to this are data that ENERTRAG already had at its disposal when the order was concluded or to which it itself has ownership-relevant rights or obtains these later.

12.3 The Customer agrees that ENERTRAG may store the system-related data obtained and make it available to other users of the PowerSystem database in the form of analyses or other functions in anonymised or further processed form or publish it in a suitable manner. In return, authorised users will have access to anonymised data of other users within the PowerSystem database.

## § 13 Warranty and guarantee

ENERTRAG assigns to the Customer all warranty and guarantee claims from contracts with suppliers for these products subject to the condition precedent of full payment of the contractual remuneration. The Customer hereby accepts this assignment. The assigned warranty and guarantee claims shall replace the corresponding warranty and guarantee of ENERTRAG for these products after the assignment becomes effective; if shorter warranty periods are agreed in the assigned contracts, these shall apply. The Customer authorises ENERTRAG to assert the assigned claims in its name during the term of the contract.

## § 14 Claims for defects of the client

14.1 If there is a defect in the service for which ENERTRAG is responsible, ENERTRAG shall be entitled at its own discretion to remedy the defect or make a replacement delivery. The choice shall be made at ENERTRAG's reasonable discretion and taking into account the interests of both parties. ENERTRAG shall bear all expenses for the rectification of defects or the replacement delivery, but not the costs incurred by the Customer.

14.2 If ENERTRAG is not prepared or not in a position to remedy the defect or make a replacement delivery, or if this is delayed beyond a reasonable period for reasons for which ENERTRAG is responsible, or if the remedy of the defect or replacement delivery fails in any other way, the Customer shall be entitled to withdraw from the contract or to demand a corresponding reduction in the purchase price.

14.3 The warranty period for repairs and replacement deliveries shall be six months from fulfilment of the warranty obligation, but shall not end before expiry of the warranty period applicable to the original deliveries or services.

## § 15 Legal succession

The contracting parties have the right to transfer the rights and obligations of this contract to third parties. The transfer requires the written consent of the other contracting party. It may only be refused if the third party does not guarantee fulfilment of the contractual obligations or if serious interests of the other contracting party are affected. Consent is not required if the contract is transferred to an affiliated company within the meaning of the German Civil Code. §§ Sections 15 et seq. AktG.

## § 16 Protection against competition

The Client shall refrain from developing a product during the term of the contract that is similar to or can replace the contractual service in terms of form, content, function and view. This shall also apply to affiliated companies of the Client within the meaning of Sections 15 et seq. AktG.

## § 17 Force majeure

If a contractual partner is prevented from performing due to force majeure, e.g. war, terror, forces of nature, public orders or other circumstances that are beyond its control or cannot be eliminated with reasonable technical and economic effort, its obligation to perform shall be suspended until these circumstances and their consequences have been eliminated. In such cases, the other contracting party may not claim any compensation. The affected contractual partner shall use all reasonable means to ensure that it fulfils its obligations under this contract again as soon as possible. The other contracting party shall be released from its obligation to provide counter-performance for the period during which its obligations are suspended.

## § 18 Other provisions

18.1 All regulations specified in this order and in its annexes are based on the technical, economic and legal conditions prevailing at the time of order confirmation. ENERTRAG undertakes to make technical adjustments to the systems operated by ENERTRAG to fulfil the order, subject to economic reasonableness. This is intended to fulfil the then applicable requirements that have been issued by law or by statutory order during the term of the order.

18.2 Should the technical, economic or legal circumstances on which this order is based change significantly in an unforeseen and not merely temporary manner, so that the execution of the order under the previous conditions would represent an unreasonable hardship for one of the contracting parties, the contracting parties shall bring about an adjustment of the order in the sense of a reasonable and equitable reconciliation of interests.

## § 19 Severability clause

Should individual provisions of the contract be or become void and/or legally invalid, this shall not affect the validity of the remaining provisions. Rather, the contracting parties undertake to replace the invalid provision(s) with a provision that is equivalent in economic, technical and legal terms. The same applies in the event of a loophole.