

Valid as of: 01.2011

**I. General**

1. These terms and conditions shall exclusively apply to all business relationships between the customer (hereinafter referred to as the Customer) and SINGULUS STANGL SOLAR GmbH (hereinafter referred to as the Contractor). They are applicable to all present and future contracts of work services, as well as all quotations by the Contractor.

2. Any provisions by the customer differing, contradicting or supplementing those below are hereby rejected; those shall only be binding to us if we provide written confirmation of this on a case-by-case basis.

3. Only the agreed works and services are owed, not a particular result.

**II. Quotations and Orders**

1. Quotations by the Contractor are subject to change without notice and valid for 3 months with respect to price, quantity and lead time.

2. All documents and information appertaining to the quotation (specifically layouts, drawings, weight and dimensional data) are dimensionally accurate only if specifically specified as such. The Contractor reserves the right to undertake reasonable technical changes.

3. All orders by the Customer shall not be valid until confirmed in writing by the Contractor.

**III. Prices and Amendments**

1. Prices are considered to be ex works, excluding any taxes, customs, duties, packaging and freight (EXW, INCOTERMS 2010).

2. The prices of the latest quotation of the Contractor shall apply. Alternatively the prices of the pricelist valid at the time of contract conclusion may be used.

3. The Contractor is entitled to charge any additional costs incurred (such as new, increased tariffs, taxes, duties, increased freight and labor costs, etc.) to the Customer.

4. Subsequent orders of the Customer will be invoiced, even if a written order has not been received. The Contractor may reject any subsequent order, amendment and supererogation as far as no written order has been placed.

**IV. Terms of payment**

1. All invoices are in EURO and due net for payment by bank transfer without any discount. All fees and charges shall be paid by the Customer.

For total net orders of less than or equal to EUR 25,000.00 invoices are due:  
- within 14 days of the invoice day.

For total net order values greater than EUR 25,000.00, invoices are due:  
- 40 % after receipt of the written order, payable net upon date of invoice  
- 20 % after release of the Execution Design by the Customer, payable within 14 days after date of invoice.  
- 30 % after preliminary acceptance test in our works, payable within 14 days after date of invoice, but no later than 6 weeks after the Customer has been requested by the Contractor to carry out the preliminary acceptance; in either case before shipment.  
- 10 % after Final Acceptance, within 14 days after date of invoice, latest 6 weeks after receipt of the notification by the Contractor that the work is ready for commissioning.

2. In case of a default in payment, the Contractor is entitled to defer the performance and in addition to effect performance only against payment in advance of all unpaid – due and undue – receivables.

3. Payments will be settled in the order expenses, interests, principal claims.

4. The Customer shall only be given the right of set-off or retention if cross claims are legally effective or undisputed.

**V. Delivery and Works and Services; execution period**

1. Notwithstanding any order confirmation, all delivery dates and expected delivery dates shall be subject to change without notice, unless a specific delivery date has been agreed upon in writing. This applies accordingly to target delivery dates. Partial deliveries are permitted.

2. The delivery date shall be the date of delivery ex works or ex warehouse, or if none of these dates can be determined, the date of dispatch.

3. The delivery period shall commence with the receipt of the signed order confirmation, but not before Customer has provided all documents, licenses, releases, other declarations and any applicable down payment to be procured by him.

4. Contractually agreed deadlines for execution will be extended accordingly, should change and/or additional orders, subsequent requests or contract amendments, as well as obstructions caused in the Customer's sphere of responsibility lead to time delays.

5. Cases of force majeure shall result in an adequate extension of the delivery time, even if delay in delivery or performance already exist. Should a delivery or performance be prevented due to such events or should the interruption exceed 3 months, the Contractor shall be entitled to withdraw from the contract. Already executed works and services will be charged to the Customer at contract prices. Costs that are included in not executed parts of works and services shall be refunded at contract prices.

6. In cases covered by item 5 any claims for damages by the Customer shall be hereby excluded.

7. In addition the terms and conditions of INCOTERMS 2010 apply.

**VI. Cancellation of contract or withdrawal**

1. Should the Customer cancel the contract with a notice of cancellation, rescission or any similar statement, the Contractor shall be entitled to retain the paid down payment up to 15% of the respective gross order value as a flat compensation.

2. Nevertheless, the Contractor may set a higher claim for damages; the flat compensation will be taken into account. The Customer shall be entitled to prove that no damage or depreciation in value was incurred or this value is significantly lower than the lump sum.

3. In any case the Contractor is entitled to a supplementary charge of 10% of the gross order value.

**VII. Passing of risk and packaging**

1. The Contractor reserves the right to decide upon the dispatch route and dispatch type. The Contractor is entitled to charge the Customer with costs caused by special packaging and shipping requests.

2. The risk of decline, loss or damage of the goods passes to the Customer at the time of dispatch or surrender to the authorized transportation company. In case of default of acceptance, risk passes at the time of occurrence of the delay. Should the Customer postpone the delivery, the risk of loss or damage passes to the Customer at the date the readiness of dispatch has been announced.

**VIII. Liability**

1. The Contractor shall only be liable for damages caused by intent or gross negligence.

2. In case of breach of fundamental contractual obligations, the Contractor is also liable for damages caused by slight negligence, but limited to the contract coherent direct average damage foreseeable at the time of conclusion of the contract.

3. Such foreseeable contract coherent damage is limited to the amount of the particular order by the Customer.

4. As far as Contractor's liability is excluded or limited, this provision will also apply to personal liability of our employees, workers, co-workers, representatives and performing and/or vicarious agents.

5. The above mentioned limitation of liability shall not apply with indispensable statutory liability, culpable injury to life, body or health, as well as in the case of acceptance of a legal guarantee or fraudulent concealment of a defect. Liability according to the German Product Liability Act ("Produkthaftungsgesetz") shall also remain unaffected.

**IX. Warranty and notice of defects**

1. The Contractor's warranty is limited to a period of twelve (12) months from the date of delivery, for work and services twelve (12) months after the date of final acceptance.

2. Notifications of defect have to be in writing without culpable delay, no later than 14 days after receipt of shipment. The notification must be supported by documents, samples, packing slips and must also include invoice number, date and marks on the packing.

3. In case of latent defects the notification of defect has to be issued in writing immediately after discovery. The burden of proof for the fact that the defect was latent shall be with the Customer.

4. Wear parts, consumables and commodities, such as sealings, gaskets and liquids are excluded from warranty cover.

5. The Customer shall be obligated to return the warranty parts at his own cost and risk. The Contractor shall be granted at least two attempts to rectify the problem. Contractor

6. In case of significant defects the Contractor shall have the option to resolve the defect by either rectification or replacement (subsequent fulfilment). The Contractor shall be granted at least two attempts to rectify the problem.

7. Damages caused by deferred maintenance, improper operation or handling, improper installation or commissioning, non-observance of maintenance instructions or machine documentation, excessive usage or use of unsuitable utilities by the Customer are not covered by any warranty.

8. Warranty is excluded in case the Customer cannot prove that maintenance work has been carried out by a qualified contractor.

9. Any fitting of parts, which are not part of the scope of supply by the Contractor, will be executed at the risk and responsibility of the Customer and shall not be covered by any Contractor's warranty.

10. For components and work specified by the Customer, but carried out by the Contractor, based on calculations and drawings of the Customer, the Contractor shall only be liable for the proper execution in accordance with drawings and materials.

**X. Installation, maintenance, commissioning and other service features**

1. Tools, equipment and other devices provided by the Contractor, shall remain the Contractor's sole property.

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2. The Customer commits to have all required equipment available at the installation site at the time of commencement of the agreed services. In addition all works must be completed, to allow the Contractor to start the required services without delay.

3. The Customer is required to ensure that access to the installation site is unobstructed, that services will be located in an appropriate location and that transport equipment required for the installation – including equipment for in-house transportation – is available.

4. The Customer is obliged to keep the installation site in an orderly condition in order to allow for uninterrupted working.

5. In case services by the Contractor are protracted for reasons beyond Contractor's responsibility, the Customer shall bear all reasonable costs for such a delay, especially standby and travel time of the Contractor's employees. In case of delay, the Contractor shall have the right to send the employees to a different site.

6. The Customer is obliged to confirm time sheets and service reports containing the hours worked and a description of work performed on site every day.

7. The Customer shall inform the Contractor in due time about any formalities (registration etc.) that have to be considered when dealing with public agencies, as well as all applicable safety regulations.

8. All necessary local permits, which are required to execute the required works and services of the Contractor, especially visas, residence and work permits have to be obtained by the Customer in sufficient time. In addition the Customer shall support the Contractor in dealing with the local authorities and obtaining of all required permits. In dealing with the authorities the Customer shall represent the Contractor as far as this is requested and/or required.

9. All public charges including social security contributions which are payable as a result of the performed work and services at the installation site, shall be paid by the Customer or reimbursed to the Contractor.

10. The Customer is obliged to report any illness, accident or death of the Contractor's employees to the Contractor immediately. The Customer will arrange for medical treatment, transport to the hospital etc. and, if necessary, return transport to Germany to the registered office of the Contractor in Fürstfeldbruck.

#### **XI. Acceptance**

1. After the Contractor's request for acceptance of the performed work and services, the Customer shall be obligated to conduct the acceptance within 14 calendar days.

2. Upon request completed parts of the performed work shall be accepted separately (partial acceptance). A formal acceptance may be requested by either party.

3. The signed acceptance protocol shall be sent to the Contractor within one week after performance of the acceptance.

4. In case no acceptance is required, the performed work and services shall be considered as accepted with the lapse of 14 calendar days after the written announcement of conclusion of the performed work and services by the Contractor.

5. In case the Customer has started to use the performed services or parts of it, the successful acceptance shall be granted at the end of 7 calendar days after start of the usage, unless otherwise agreed upon.

6. Reservations based on known defects or contractual penalties have to be claimed by the Customer within the abovementioned periods.

7. Should the acceptance be delayed due to lacking or incomplete support by the Customer, the Contractor shall be entitled to charge to the Customer applicable costs for storage of already delivered parts. In addition financing costs of 0,75 % per month may be claimed by the Contractor as liquidated damages. The Customer shall be entitled to prove that the damage incurred is significantly lower than this flat rate.

8. In addition the Customer is required to pay the remaining order sum immediately or to provide a security for the order sum for the Contractor.

#### **XII. Copyright and industrial property rights**

1. The Contractor retains all property rights, copyrights and industrial property rights, in particular inventor and patent rights as well as utility patents, registered designs, the rights of utilization and exploitation (usufruct) for all cost estimates, drawings, illustrations and any other documents.

2. The Customer shall grant the Contractor a share of those industrial property rights, which are associated with the contract especially intellectual property, inventor rights, utility patent and patent rights, including the associated know-how and copyright for all types of use.

3. Granting of the before mentioned rights in favour of the Contractor shall be compensated by Contractor's performed work and services.

4. All documents and information supplied by the Contractor in whatever form or manner shall only be used by the Customer to fulfill any obligations arising from an individual or framework contract. Any other utilization by the Customer, its employees, freelancers or subcontractors without prior written permission, shall be prohibited.

5. All documents and information supplied by the Contractor shall not be made available to third parties, nor shall they be reproduced for third parties without explicit prior written Contractor's consent. They are to be protected from unauthorized access.

#### **XIII. Retention of title**

1. The Contractor retains title to all goods and deliveries – including exchanged parts – until all payments from the sales contract or any other claims arising out of our business relationship have been received.

2. Combining, mixing and/or processing of goods subject to retention of title are always carried out in the name and order of the Contractor, without committing the Contractor. In case goods subject to retention of title are combined, mixed or processed with other goods not belonging to this group, the Contractor shall acquire property of the new good in a proportion corresponding to the proportion of the value of the goods subject to retention of title (purchasing price plus value added tax) to the value of the goods not belonging to the Contractor at the time of combining, mixing or processing. Should the mixing etc be carried out in such a way that the object of the Customer is considered to be the main object, a co-property equal to the proportion of the value of the provision of material or the goods shall be assigned to the Contractor. The Contractor hereby accepts the assignment.

3. The Customer is revocably entitled to sell the delivered goods in the due course of his business, provided that he on his part resells under retention of title himself and agrees that this reservation of title shall be replaced by the ownership in the new subject or the claim resulting from this if the retention of title lapses due to processing (by combining, mixing or processing) or resale. The right shall forfeit in case of default. The Contractor already assigns any receivables of resale including value added tax and all ancillary rights, in particular securities to the Contractor. The Contractor accepts the assignment herewith.

4. As far as not withdrawn, the Customer is authorized to collect the receivables assigned. This shall be without any prejudice for the Contractor's right to collect the account by himself. The authorization shall lapse even without an express revocation if the Customer defaults, if a petition for opening insolvency proceedings is filed or if he stops his payments.

5. Other acts of disposal, for instance transfer by way of security or pledging of securities of the Contractor's goods or the assigned receivables, are not permitted. The Customer shall immediately notify the Contractor in writing about distraint or other involvement of third parties.

6. The Customer shall be required to handle and store with care the goods subject to retention of title, mark them as Contractor's property and adequately insure them referring to replacement value. The Customer assigns all claims for damages resulting from these insurances to the Contractor, who hereby accepts the assignment. The Customer is required to conduct necessary maintenance and inspection work as well as servicing and repairs at his own cost in a timely and orderly manner. Any incidents have to be reported immediately. Should the Customer culpably neglect this, the Contractor shall be entitled to demand claims for damages.

7. The Customer will store wholly or jointly owned property of the Contractor at no charge.

#### **XIV. Documentation**

1. All documentation by the Contractor will be in German language.

2. Also in case of customised facilities, the documentation and the included user and service manual shall only serve as support for trained or skilled technical staff. It does not include every single detail necessary to operate and maintain the equipment and therefore cannot replace the technical staff of the Customer.

3. For deliveries within the EU the Customer shall be obligated to translate the documentation into English. In addition the Customer is required to translate the user manual into the respective national language.

4. In case of retrofitting of machines of other manufacturers, documentation will only be provided for the conducted changes.

#### **XV. Technical consultation**

The sole responsibility for the utilization and processing or the purchased goods shall be with the Customer. Consultation of the Contractor with respect to the technical application shall be considered for information only and without responsibility, also with respect to intellectual property rights of third parties and does not release the Customer from any obligation to check the applicability of the products with respect to their intended use and operation.

#### **XVI. Software**

1. Item XII. concerning property rights, copyrights as well as industrial property rights is applicable to software provided by the Contractor as well.

2. No explicit or implicit licence shall be granted or any rights be transferred through this agreement. The Customer is not allowed to develop the software further, use it arbitrarily and in particular sell the software to any third party. Unless explicitly agreed upon in writing, no right of use is transferred to the Customer.

3. In case rights of use are transferred, these shall be limited to the particular contractual use.

4. The Customer may only change or pass on software to third parties with prior written consent by the Contractor. The Contractor will consent to this, unless good cause conflicts, in particular if there is no fear that secret knowledge will be revealed to third parties and an agreement concerning an appropriate remuneration has been reached.

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5. Change requests by the Customer concerning scope of operation, program structure, screen layout or any other attribute do not have to be taken into account by the Contractor as far as they constitute a deviation from the original contract.

6. With respect to software the Customer's right to rectify a defect on his own and claim the resulting expenses is denied explicitly.

7. Liability of the Contractor for data loss is limited to the typical recovery costs, which would have arisen in case regular and proportional to risk backup copies had been created.

8. The Contractor may outsource, either completely or in part, the programming of the software to subcontractors.

**XVII. Non disclosure agreements and data protection**

1. The customer shall maintain silence about the conclusion of the contract and all pertaining information towards unauthorized third parties. The customer commits to make accessible the Contractor's information, documents and drawings to third parties only with prior written consent.

2. The Contractor shall be entitled to store customer data within legal requirements, specifically the German Data Protection Act, process them internally and - if required by business operations - to pass them to third parties.

**XVIII. Written form**

Any agreements made between the Contractor and the Customer must be made in writing. This will also apply to amendments and additions of contracts, as well as amendments to the clause stipulating the written form, except for item III. 4.

**XIX. Final clause**

1. This contract and the entire privity of contract between its parties will be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any other conventions. The contractual language is German.

2. Place of fulfillment and court of jurisdiction – if permissible – shall be the place of business of the Contractor.

3. The Contractor shall be entitled to transfer any rights and duties arising from this contract to a possible legal successor or affiliate company and may work with third parties to fulfill this contract.

4. In the event that any provisions of this contract should be partly or entirely invalid, the validity of the remaining provisions shall not be affected. The partly or entirely invalid provision shall be replaced by a provision coming closest to the economic result of the invalid or incomplete provision.