

**SANYO Component Europe GmbH  
General Standard Terms and Conditions - Conditions of Purchase****1. Scope:**

- 1.1 These Conditions of Purchase shall apply exclusively; terms and conditions of the Contractor that are contrary to or deviate from these Conditions of Purchase shall not be recognized, unless the Purchaser had expressly agreed to their applicability in writing. Matters not covered by a provision of these Conditions shall be governed by the law. These Conditions of Purchase shall also apply if the Purchaser accepts the delivery from the Contractor without reservation when in knowledge of terms and conditions of the Contractor that are contrary to or deviate from these Conditions of Purchase.
- 1.2 All agreements that are made between the Purchaser and the Contractor for the purpose of implementing this contract must be set down in writing in this contract.
- 1.3 These Conditions of Purchase shall apply only vis-à-vis companies, public law entities or federal special funds in accordance with § 310, German Civil Code (BGB).
- 1.4 These Conditions of Purchase shall also apply to all future transactions with the Contractor.

**2. Order and confirmation of order**

- 2.1 The Purchaser can cancel the order in writing if the Contractor has not accepted it in writing within two weeks of receiving it (order confirmation).
- 2.2 If the order confirmation diverges from the order, the Purchaser shall be bound by it only if he/she has consented to the divergence in writing. The acceptance of deliveries of goods or the provision of services and of payments shall not signify consent.
- 2.3 Alterations or additions to the order shall be effective only if they are confirmed in writing by the Purchaser.
- 2.4 The Contractor shall render his/her deliveries of goods and provision of services free from rights of third parties.
- 2.5 If it is intended to change the production process of the Contractor (e.g. change of upstream suppliers, change in production methods, change in materials used, change of location, etc.), the Purchaser must be informed about the relevant circumstances in writing without delay to facilitate quality assurance by the Purchaser and to make it possible to obtain the written consent of the Purchaser.

**3. Period of delivery**

- 3.1 The period of delivery specified in the order shall be binding. Divergences in the order confirmation shall be authoritative only if the Purchaser has consented to them. The Contractor shall guarantee strict compliance with the delivery period. If the delivery period is overrun, the Contractor shall be in default without a reminder or the setting of a time limit being necessary.
- 3.2 The punctuality of deliveries shall be determined by their receipt by the receiving agency specified by the Purchaser; the punctuality of deliveries involving erection or assembly and of services shall depend on their acceptance.

- 3.3 If there is a discernible delay in a delivery of goods or a provision of services, the Purchaser must be notified without delay and his/her decision must be requested. The Purchaser shall have the choice between postponing the delivery date, approving performance by installments or rescinding the contract.
- 3.4 In the event of default in delivery, we shall be entitled to claim flat-rate default damages amounting to 1% of the value of the delivery for each whole week, but no more than 10%; the right to further-reaching legal claims (rescission or compensation instead of performance) shall be reserved. The Contractor shall be entitled to prove to us that no, or far less significant, damage occurred as a result of the default.

#### **4. Passage of risk and dispatch**

- 4.1 Provided that nothing to the contrary is agreed in writing, the delivery must be made free domicile. In the case of deliveries involving erection or assembly, and in the case of services, the risk shall be passed upon acceptance; in the case of deliveries not involving erection or assembly, the risk shall be passed upon delivery to the receiving agency specified by the Purchaser.
- 4.2 Provided that nothing to the contrary is agreed, the cost of dispatch and usual industry packaging shall be borne by the Contractor. In the case of pricing ex works or ex the Contractor's sales warehouse, the items shall be dispatched at the lowest available cost, provided that the Purchaser has not stipulated a particular forwarding method. Additional costs incurred as a result of non-compliance with a dispatch instruction shall be borne by the Contractor. In the case of pricing free consignee, the Purchaser can also determine the forwarding method. Additional costs incurred as a result of accelerated forwarding that may be required to fulfill a delivery date shall be borne by the Contractor.
- 4.3 Every delivery must be accompanied by packing slips and delivery notes with details of the contents and the complete order designation. Notification of the dispatch accompanied by the same details must be given to the Purchaser.
- 4.4 If deliveries are sent directly to a customer or suppliers of SANYO Energy (Europe) Corporate GmbH, it must be indicated clearly on the delivery note that the delivery is being made in the name of the Purchaser.

#### **5. Price / Costs / Invoices**

- 5.1 The price shown in the order shall be binding. In the absence of a divergent written agreement, the price shall include delivery "free house" or "free domicile", including packaging. The statutory rate of value added-tax shall not be included in the price.
- 5.2 All of the information contained in the order (order date, order numbers, price, quantity and Purchaser's article number) must be given in invoices. Invoices shall not be payable if this information is missing. Duplicates of invoices must be marked as duplicates.
- 5.3 We shall be entitled to offsetting and retention rights within the scope of the law.

#### **6. Payments**

- 6.1 Unless otherwise agreed, payments shall be made as follows:
- within 14 days with deduction of 3% discount
  - or within 30 days with deduction of 2% discount,
  - or within 90 days net.

- 6.2 The term of payment shall begin as soon as the delivery or performance has been rendered and the properly issued invoice has been received. Discount deduction shall also be permissible if the Purchaser offsets or retains payments to an appropriate amount on grounds of defects; the term of payment shall begin when the defects have been fully rectified. If payments on account or by installments have been agreed, the discount deduction shall be determined separately for each payment on account or installment.
- 6.3 Payments shall not signify the recognition of deliveries or performances as being in accordance with the contract.

## **7. Liability for defects**

- 7.1 The Contractor must warrant his deliveries and performances for two years. The warranty period shall begin with the passage of risk (Section 4, Item 1). If deliveries are made to locations at which the Purchaser executes orders outside of his/her plants or workshops, it shall begin with acceptance by the receiving agency specified by the Purchaser.

Interim checks or final inspections carried out by the Purchaser and/or the Contractor shall not exempt the Contractor from liability for defects.

- 7.2 If defects are ascertained before or during passage of risk, or become evident during the warranty period, the Contractor must either rectify the defects at his/her own expense or effect new deliveries or performances that are free from defects, whichever the Purchaser prefers. This shall also apply to deliveries for which the inspection is limited to samples. The Purchaser shall make this choice according to his/her reasonably exercised discretion.

- 7.3 If the Contractor does not rectify the defect(s) or effect the new delivery or performance within an appropriate period to be set by the Purchaser, or if the rectification proves to be abortive, the Purchaser shall be entitled:

- to rescind the contract wholly or partly without compensation,
- or to demand a reduction in the price,
- or to carry out or arrange for defect rectification or a new delivery himself/herself at the expense of the Contractor,
- or to demand damages, or damages instead of performance.

This shall apply analogously if the Contractor declares that he/she is unable to rectify the defect or effect a new delivery or performance within an appropriate period. The rescission of the Purchaser shall not exclude damages claims.

- 7.4 Rectifications can be carried out without setting time limits at the expense of the Contractor if delivery is made after the defect occurred and the Purchaser has an interest in immediate rectification on grounds of his/her own default or other urgent reasons.
- 7.5 The claims referred to above shall become statute-barred two years after the notification of defect.
- 7.6 Further-reaching legal claims of the Purchaser, particularly in respect of compensation for processing or production costs fruitlessly incurred, shall remain unaffected.
- 7.7 Notices of defects can be submitted within one month of the delivery or performance or, if the defects were not noticed until their processing or use, their ascertainment.
- 7.8 The above provisions shall apply analogously to the defect rectification activities.
- 7.9 The Contractor shall bear the costs and risk involved in returning defective delivered items.

**8. Product liability / Exemption / Liability insurance protection**

- 8.1 If the Contractor is responsible for an incidence of product damage, he/she shall be obliged to exempt the Purchaser from third-party damages claims on first request in so far as the damage was caused in his/her own control and organizational sphere and he/she is liable vis-à-vis third parties.
- 8.2 As part of his/her liability for damages claims as defined by Item 8.1, the Contractor shall also be obliged to reimburse any expenses incurred in accordance with §§ 683, 670, German Civil Code (BGB) and §§ 830, 840, 426, BGB that arise from or in connection with a call-back campaign carried out by the Purchaser. The Purchaser shall notify the Contractor - if this is possible and reasonable - of the content and scope of the callback measures to be carried out and provide him/her with the opportunity to make a statement. Other claims under the law shall remain unaffected.
- 8.3 The Contractor undertakes to maintain a product liability insurance policy with an adequate amount insured; if the Purchaser is entitled to damages claims that exceed the insured sum, these shall remain unaffected.

**9. Passing on orders to third parties**

The passing on of orders to third parties shall be impermissible without the written agreement of the Purchaser and shall entitle the Purchaser to rescind the contract wholly or partly and demand damages.

**10. Supplies of materials / Reservation of title**

- 10.1 Supplies of materials shall remain the property of the Purchaser and shall be stored, designated and administered separately free of charge. Their use shall be permissible only for orders from the Purchaser. In the event of value diminution or loss, compensation must be paid by the Contractor. This shall also apply to the calculated transfer of order-related material.
- 10.2 The material shall be processed or transformed for the Purchaser, who shall immediately become the owner of the new or transformed item. Should this not be possible for legal reasons, the Purchaser and the Contractor are agreed that the Purchaser shall become the owner of the new item at every moment of processing or transformation. The Contractor shall hold the new item in safekeeping free of charge for the Purchaser with the diligence of a prudent businessman.

**11. Tools, forms, models, secrecy, etc.**

- 11.1 The tools, forms, patterns, models, sections, drawings, standard specification sheets, artwork masters and instructions provided by the Purchaser shall remain the property of the Purchaser and, similar to items produced in accordance with them, may be neither forwarded to third parties nor used for purposes other than those of the contract without the written consent of the Purchaser. They must be protected against unauthorized inspection or use.
- 11.2 The Contractor shall be obliged to insure the tools provided by the Purchaser against damage from fire, water and theft at their replacement value at his/her own expense. At the same time, the Contractor shall hereby assign all damages claims arising from this insurance to the Purchaser, who hereby accepts these. The Contractor shall be obliged to carry out any maintenance, inspection, servicing and repair work that may be necessary for our tools

punctually and at his/her own expense. He/She must immediately notify the Purchaser of any relevant incidents.

- 11.3 Subject to further rights, the Purchaser can request their return if the Contractor infringes these obligations. They must be returned to the Purchaser when the order has been processed or any relevant request has been made; no right of retention can be used to oppose this right of return.
- 11.4 The Contractor shall not make information obtained from the Purchaser accessible to third parties if this information is not generally known or is otherwise known to him/her through proper channels.

## **12. Industrial property rights**

- 12.1 The Contractor shall guarantee that no rights of third parties within the Federal Republic of Germany are infringed in connection with his/her delivery.
- 12.2 If the Purchaser is claimed against by a third party, the Contractor shall be obliged to exempt him/her from these claims on first written request; the Purchaser shall not be entitled to come to any agreements with the third party, and particularly to conclude a settlement, without the agreement of the Contractor.
- 12.3 The duty of the Contractor to exempt shall cover all of the expenses that the Purchaser necessarily incurs as a result of or in connection with use by a third party, including the costs of prosecution/legal action.

## **13. Assignment of claim**

The assignment of claims shall be permissible only with the written consent of the Purchaser.

## **14. Place of jurisdiction, applicable law**

- 14.1 Place of jurisdiction shall be Munich.
- 14.2 The law of the Federal Republic of Germany, including the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be applicable to this contract and the legal relationship between the parties.