



## General Terms and Conditions of Sale and Delivery of SolydEra GmbH (“SolydEra”)

### I. Applicability

The following General Terms and Conditions of Sale and Delivery (hereinafter: “**Terms of Sale**”) are deemed an integral part of any purchase contract made between SolydEra and the Buyer for supply and delivery of SolydEra commercial products for resale purpose to end customers. Upon placing an order, Buyer acknowledges the sole binding application of these Terms of Sale. Should Buyer use conflicting, deviating or amending terms and conditions, their application in relation to SolydEra is excluded even if they have not been expressly contradicted by SolydEra itself.

### II. Incoterms

Unless otherwise stated in SolydEra order confirmation, supply and delivery of products to the Buyer shall take place on basis “free carrier” (FCA) as per ICC Incoterms 2020.

### III. Offer and conclusion of contract

1. Offers by SolydEra are non-binding and are only to be understood as a request for the fulfillment of an order. A contract shall not be concluded until SolydEra has provided a written confirmation of order, which is matching with the Buyer's order, and the contract is defined solely by the content of the confirmation of order and/or these Terms of Sale. Oral agreements and/or commitments require written confirmation by SolydEra to become valid.
2. Confirmations of order by SolydEra that deviate in material content from the original order are deemed to have been accepted if they have not been contradicted within 3 (three) working days upon the receipt of the confirmation of order by Buyer.

### IV. Prices, Terms of Payment, Offset and Withholding

1. All orders of the Buyer are based on the prices applicable on the date of the acceptance of order, provided no other agreement has been made by the parties. If, as agreed, a period of more than three months lies between the conclusion of the contract and the delivery of SolydEra, the Buyer is obliged, upon written request by SolydEra, to negotiate with SolydEra in good faith (= inter alia fair, expeditious and constructive) on an adjustment of the prices and discount rates. In the event of such a request, SolydEra is obliged to provide the Buyer in good time, i.e. usually with a lead time of 5 (five) working days, prior to the negotiation, with information from which the need for an adjustment and its amount shall result. If SolydEra and the Buyer do not reach an agreement during the negotiations and one party declares in writing that the negotiations have failed, SolydEra is entitled to withdraw from the contract within a period of 2 (two) weeks, without any responsibilities whatsoever towards the Buyer.
2. All SolydEra prices are denominated in EUR and are net of the applicable VAT.
3. For deliveries outside of the EU, Buyer undertakes to provide proof of an equivalent export notice to SolydEra within 20 working days after the date of invoice. If this proof is not provided, SolydEra is entitled to charge VAT afterwards. For deliveries within the EU, Buyer undertakes to confirm to SolydEra by way of an entry certificate (*Gelangensbestätigung*) complying with the requirements



of Sec. 17b para. 2 No. 2 German VAT Execution Regulation (*Umsatzsteuer-Durchführungsverordnung* [UStDV]) that the contract products have entered the other territory of the European Community. If this proof is not provided and SolydEra cannot obtain it by other means in accordance with legal requirements, SolydEra is entitled to charge VAT to Buyer afterwards.

4. Each invoice is due for payment without deductions within 14 days of receipt by Buyer, provided nothing to the contrary is determined in SolydEra's confirmation of order. Default shall occur automatically upon failure to pay upon expiration of this deadline.
5. Payments by Buyer shall only be deemed to have been made once SolydEra has received this payment.
6. If Buyer gets in default of payment, SolydEra is entitled to demand interests in the statutory amount. The right to assert the lump-sum compensation for damages according to Sec. 288 para. 5 German Civil Code and the assertion of possibly arisen further default damages shall remain unaffected.
7. The Buyer is only entitled to offset claims and to withhold payment if the counterclaims have been finally decided by a court of law, are undisputed or are in direct mutual relationship to the purchase price claims from which they are being offset (e.g. damage-compensation claims).
8. If SolydEra, after conclusion of the contract, becomes aware of the risk of a lack of ability to make payment on the part of Buyer, SolydEra shall be entitled to execute outstanding deliveries only against prepayment or another payment guarantee. If the prepayments or other payment guarantees are not provided even upon the expiration of a reasonable period of grace, SolydEra may cease deliveries until the prepayments and/or the payment bonds are provided or may rescind individual from all affected contracts in full or in part. In such case SolydEra shall remain entitled to assert further rights and claim damages.

#### **V. Delivery dates /Reservation of self delivery / Force majeure and hardship / Delay in Delivery**

1. The delivery period is based on the agreements made between the parties. Any delivery dates and delivery periods stated in orders of the Buyer are only binding if they have been confirmed by SolydEra at least in text form. Negotiated delivery periods commence upon the date of the confirmation of contract or the declaration of acceptance, as the case may be. In the event of additional orders placed thereafter, the subsequent increase in quantity of an existing order, or mutual agreement by the parties the delivery periods shall be extended accordingly.
2. SolydEra being able to meet a delivery date requires that all business and technical questions between the parties have been clarified and the Buyer has met all requirements of public-authority directives and/or permits and/or has made a down payment. If not, the delivery period will be deemed to extend for a reasonable period. The delivery period is deemed to have been observed if the delivery item will be ready for shipment at SolydEra's premises on the agreed date or within the agreed time frame. If the Buyer or a third party appointed by it to take over the products for shipment is not present upon the agreed delivery date and time, SolydEra will have the right to store the item at the cost of the Buyer.



3. SolydEra's delivery obligations for delivery of products, for which it procures raw materials and/or supplier parts from suppliers, is subject to the timely and correct delivery by such suppliers to SolydEra.
4. Disruptions in the production and/or transport of the products due to the Corona virus and/or other epidemics or other events of force majeure (e.g. war, acts of terrorism, natural disasters, strikes, lockouts, occupations of factories and facilities, local government measures, shortages of energy, materials or raw materials, damage caused by fire and explosion, transportation and operational problems, sovereign acts, whether lawful or unlawful), for which SolydEra is not responsible and which temporarily make it impossible or considerably more difficult for SolydEra to fulfil its delivery obligation, shall release SolydEra for their duration from its duty to make timely delivery of products. The negotiated period shall be extended by the duration of the incident; Buyer shall be informed in an appropriate manner of the occurrence and end of the disruption. SolydEra is not obliged to procure replacement products from third parties. Where the end of the problem is not foreseeable or the problem continues for more than 6 (six) months, each party is entitled to rescind the contract with respect to the scope of delivery affected by the problem.
5. In the event of delay in delivery, i.e. the failure to meet a binding delivery date, SolydEra will only be liable to the limited extent of those damages which could have been foreseeable and are typically foreseeable in contracts of the type. This limitation will not apply if the delay in delivery is due to grossly negligent actions or intentional breach of contract by SolydEra.
6. If the shipping or acceptance upon delivery of the supplied product is delayed for reasons for which the Buyer is at fault, the Buyer will be charged any costs incurred due to this delay.

## **VI. Defect Warranty Claims**

1. The products are to be inspected by Buyer immediately after their delivery to Buyer, insofar as this is feasible in the normal course of business. Buyer shall notify the carrier of any externally visible loss or damage to the products upon delivery. Other obvious defects of the products which would have been recognisable in an immediate inspection shall be deemed to have been approved by Buyer if SolydEra does not receive a written notice of defects stating the invoice or order number within 7 (seven) days of delivery.

Products which have a hidden defect shall be deemed to be approved if we do not receive a written notice of defects from buyer within seven days after the time at which the defect became apparent.

2. The products supplied by SolydEra are already free of material defects if they correspond to a quality agreed (e.g. Specifications) between SolydEra and the Buyer at the time of transfer of risk. The agreed quality of the products is measured solely by the specific agreements on properties, features and performance characteristics of the products made in writing between SolydEra and the Buyer which are set down in writing in the product descriptions or product designations ("Quality Agreement"), insofar as a Quality Agreement does not expressly refer to non-binding contents (e.g. average figures). SolydEra shall not assume any warranty for the suitability of its products for a certain purpose of application intended by Buyer. Buyer alone is responsible for the decision whether products complying with the Quality Agreement are suitable for a certain purpose and for the nature of their use.



3. Information in catalogues, price lists and other informational material provided to Buyer by SolydEra, as well as product-descriptive information, are not to be understood in any event as guarantees for a particular quality or durability of the products; such guarantees of quality or durability must be expressly agreed in writing.
4. In the case of each notice of a defect, SolydEra shall be entitled to a right to inspect and test the products in question. Buyer shall grant SolydEra the necessary time and opportunity to do so. SolydEra may also demand that the buyer sends the products in question to SolydEra at our expense.
5. Our warranty obligation for defects consists of our choice of either removing the defect or sending a replacement product (Supplementary Performance). Only in urgent cases, e.g. to ensure safety of Buyer's business site or to avoid disproportionately greater damages, is the Buyer allowed to remove defects itself or through third parties after prior consultation with SolydEra and to subsequently charge SolydEra for the expenses. Any replaced parts must be returned to SolydEra's premises in all events.
6. The costs of transport, travel, labour and materials necessary for the purpose of Supplementary Performance shall be borne by SolydEra. Where the notice of a defect proves to be unjustified and Buyer disregarded the corresponding indications when submitting the notice of defects in an intentional or grossly negligent manner, buyer shall be obliged to compensation to SolydEra for all of the costs and damages incurred in this context (for instance, travel and shipping costs).
7. Should the Supplementary Performance fail, i.e. if it is impossible, if it cannot be reasonably expected by (?) Buyer, if it is unreasonably delayed, or if SolydEra refuse Supplementary Performance under Sec. 439 para. 4 German Civil Code, Buyer, at its choice and pursuant to the legal provisions, may rescind the contract or, reduce the purchase price and/or demand damages pursuant to clause VII or compensation for his expenses.

## **VII. Liability (Damage Compensation)**

1. SolydEra's liability for breaches of major contractual duties ("cardinal duties") caused by slight negligence is limited in amount to the damage foreseeable and typical to the contract upon the conclusion of contract. Cardinal duties are those duties that procure a legal position for Buyer which the content and purpose of the contract are supposed to grant to him, as well as those duties whose performance make it possible that the contract is at all properly performed and upon whose observance Buyer regularly relies and may rely.
2. SolydEra is not liable for a slightly negligent breach of its obligations under the contract other than those stated in paragraph 1 of this clause VII. SolydEra shall in particular not be liable for damages caused by improper operation, treatment or servicing of the products, wrong information given to SolydEra by the Buyer, failure or inappropriate measures to secure data, non-observance of instructions for installation and commissioning of the products, use of improper operating materials, chemical, electro-chemical or electrical influences etc., where SolydEra is not at fault for these.
3. The statutory claims by Buyer to damages are not affected by the paragraphs 1 and 2 above; in particular, SolydEra is liable for intent and gross negligence in accordance with the statutory provisions of German law.



4. The aforesaid limitations of liability in paragraphs 1 and 2 do not apply in cases of mandatory statutory liability, culpable injury by SolydEra to life, body or health or for guarantees given by SolydEra or for the fraudulent concealment of defects.
5. In as far as SolydEra's liability is excluded or limited, this shall also apply for personal liability of its management, employees, colleagues, representatives or vicarious agents.
6. Buyer is obliged to provide SolydEra with evidence of any damage claimed. Any contractual penalties and/or lump-sum damages provided for in Buyer's terms and conditions shall not apply (cf. clause I of these Terms of Sale).

#### **VIII. Indemnity Obligation of Buyer**

When reselling the products, buyer shall indemnify SolydEra within their internal relationship for product liability claims or other claims by third parties, provided buyer is responsible for the (material) defect giving rise to the liability.

#### **IX. Retention of Title**

1. Up until all payments due from the Buyer to us on the basis of the contract concerning the delivered products (goods under reservation of title) have been received, such goods remain our property. In the event of breach of contract by the Buyer, e.g. default of payment, SolydEra will set out a reasonable period for remedy, and if the circumstance is not remedied in that time SolydEra will withdraw from the contract and the goods under reservation of title will be returned to SolydEra by the Buyer. Our acceptance of return of the goods in this case will represent withdrawal from the contract. If SolydEra places a lien on the goods under reservation of title, this will represent withdrawal from the contract. SolydEra is entitled to further exploit the product after its return and acceptance by SolydEra itself. Compensation obtained by SolydEra in the further exploitation of the product – minus a reasonable amount for costs of depreciation – will be offset from the payment due to SolydEra.
2. The Buyer is obligated to handle the product with care and to insure it at Buyer's own cost against fire, water and theft at the market value. If maintenance and inspection work is required, the Buyer must have this carried out at its own cost and within proper time periods.
3. The Buyer is entitled to re-sell the product in proper commerce and/or exploit it as long as the Buyer is not in default of payment. It may not be used as collateral in liens or securities. As security against payment, at this time the Buyer herewith assigns in full to us any claims it may derive in future arising from further sale of the product or based on other legal grounds involving it, in particular due to the product subject to retention of title being merged with real property or a building construction; SolydEra herewith accepts such assignment. SolydEra authorizes the Buyer, subject to revocation, to collect such claims assigned to us for its own account and in its own name. This authorization to collect claims may be revoked at any time, if the Buyer has not properly fulfilled its payment obligations. The Buyer may not further assign this claim, not even for purposes of claim collection through a factoring company, unless the factoring company is also subject to the same obligation to ensure compensation is directly owed to use for as long as we may have outstanding claims against the Buyer.



#### **X. Limitation Period**

1. All claims of Buyer due to defects of the products – on whatsoever legal basis – will expire 12 months after commissioning of the product. The statutory limitation periods shall apply instead for damage claims by Buyer due to injury to life, body or health culpably caused by SolydEra or our vicarious agents as well as for other damage caused by our gross negligence and intent.
2. The provisions of §§ 445a, 445b BGB remain unaffected by paragraph 1.

#### **XI. General Provisions / Applicable Law / Place of Jurisdiction**

1. Changes and amendments to contractual agreements between SolydEra and Buyer and/or these Terms of Sale and any side agreements shall require written form. This shall also apply for the modification of this written form requirement.
2. In order to comply with the written form required in these Terms of Sale, telecommunication transmission, in particular by fax or e-mail, is sufficient.
3. Buyer may not assign his claims against SolydEra - except for pecuniary claims - to third parties without written consent of us.
4. If a provision of the contractual agreements between SolydEra and Buyer and/or these Terms of Sale are fully or partially void or invalid, this shall not affect the validity of the remaining provisions. SolydEra and the Buyer undertake in this case to replace the void or invalid provision by a valid one that comes closest to the commercial intention of the void or invalid provision.
5. For all legal relationships between SolydEra and the Buyer, solely the laws of the Federal Republic of Germany will apply, with the exception of the CISG.
6. Sole and exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship this Agreement is Aachen, Germany. SolydEra, however, is entitled to sue buyer before any other court of statutory jurisdiction. \* \* \*