

# General Terms and conditions of Kiwa PI Berlin AG

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## I. Validity of the General Terms and Conditions (GTC)

- 1) These GTC shall apply to Kiwa PI Berlin AG and any affiliated companies pursuant to section 15 of the German Stock Corporation Act (AktG) (hereinafter referred to as Kiwa PI Berlin AG).
- 2) Kiwa PI Berlin AG's GTC shall only apply with respect to contractors within the meaning of section 310 paragraph 1 of the German Civil Code (BGB).
- 3) All goods supplied and services rendered by Kiwa PI Berlin AG shall be subject to:
  - a) countersigned quotations;
  - b) upon delivery of test objects; or
  - c) upon order confirmation in writing, electronically or verbally in conjunction with the following GTC.
- 4) Regardless of whether they were expressly objected, contracting parties' terms and conditions that deviate from the GTC shall not be binding.
- 5) The above shall also apply if performance of the services is affected without reservation in the knowledge that the contracting party's terms and conditions deviate from or conflict with these GTC.
- 6) These terms and conditions shall be considered to be accepted by the contracting party at the latest upon acceptance of Kiwa PI Berlin AG's performance of the services.

## II. Documentation

- 1) The contracting party shall ensure that any images, drawings, calculations, technical information and other documentation that it transmits to Kiwa PI Berlin AG are free from third-party rights (in particular copyrights, and patent, brand and registered design rights).
- 2) The contracting party shall indemnify Kiwa PI Berlin AG against any liability for claims made by third parties and bear any damages incurred as a result thereof.

## III. Quotations, scope of performance

- 1) Pending quotations shall be subject to change.
- 2) The extent of obligations owed by the service provider shall be based exclusively on Kiwa PI Berlin AG's order confirmation or the contract.

## IV. Completion of the contract and default

- 1) Deadlines for completing the contract shall only be binding if agreed in writing.
- 2) The contracting party shall fulfil any obligations that must be met before the contract can be performed, properly and in due time.

## V. Force majeure

- 1) If an act of force majeure prevents Kiwa PI Berlin AG from rendering services or supplying goods on time, Kiwa PI Berlin AG shall not be liable for any damages incurred as a result thereof for the duration of the disturbance or delay.
- 2) Kiwa PI Berlin AG shall be entitled to terminate the contract if the circumstances warranting the act of force majeure continue for longer than three months. In this case, the contracting party shall not be entitled to claim for damages. Kiwa PI Berlin AG shall be remunerated for any expenses incurred up until this point.

## VI. Pricing and terms of payment

- 1) Unless otherwise agreed, the agreed price shall not include VAT (calculated at the rate valid on the invoicing date), and shall be payable within ten working days of the billing date without deductions. In the event of delayed payment, the invoiced amount shall be subject to interest at 8 percentage points above the current base interest rate. This shall not affect any higher compensation claims arising from the default.

- 2) Agreed prices shall not include transport costs, i.e. costs for packaging, transport insurance and importation (customs duties).
- 3) Kiwa PI Berlin AG shall be entitled to charge the contracting party for transport costs. Transport insurance shall only be provided at the contracting party's request.
- 4) Travel expenses, including overnight costs and *per diem* rates, shall be charged to the contracting party in addition to the agreed prices upon proof of expenditure. Travel expenses shall be based on economy class flights and 3\* hotels. *Per diem* rates shall be based on the flat rates stipulated by German tax law at the time.
- 5) Should Kiwa PI Berlin AG receive information about the contracting party's illiquidity (e.g. failure to pay due and overdue payments, registered insolvency), it shall be entitled to refuse further performance until counter-performance is affected.
- 6) The contracting party may only offset debts against counterclaims which are uncontested by Kiwa PI Berlin AG or legally established counterclaims.
- 7) The contracting party shall only be entitled to exercise rights of retention if counterclaims are based on the same contract.

#### **VII. Retention of ownership**

- 1) Kiwa PI Berlin AG reserves the right of ownership of all contractual performance until the contracting party has fulfilled all of its outstanding claims arising from the business relationship.
- 2) If the contracting party breaches its duties, in particular through a delay in payment, Kiwa PI Berlin AG shall be entitled – upon expiry of a reasonable period of grace – to withdraw from the contract and return any documentation provided.

#### **VIII. Liability for material defects**

- 1) Kiwa PI Berlin AG shall only be liable for special features of the performance of the services as contracted if such features were agreed in writing.
- 2) Kiwa PI Berlin AG shall remedy or replace defected goods or deficient performance at its discretion.
- 3) The limitation period for claims for defects shall expire one year after the contract has been performed. This shall not apply if defects were concealed fraudulently or in the event of injury to life, limb or health.
- 4) The contracting party is required to inspect goods for defects and services for deficiencies without delay and report them within two weeks of receipt. Claims for defects made after the above-mentioned point in time shall be invalid. Contracting parties must notify Kiwa PI Berlin AG of any "hidden" defects in writing within two weeks of becoming aware thereof.
- 5) Such defects shall only be considered to be reported if the deviation between the actual and the agreed condition is described in a comprehensible manner.

#### **IX. Industrial property rights**

- 1) Kiwa PI Berlin AG shall not accept any liability if performance of the contract encroaches on third-party industrial property rights.

#### **X. Limitation on liability**

- 1) Liability for breaches of duties committed by Kiwa PI Berlin AG, or its representatives and contractual assistant agents, shall be limited to wilful or negligent breaches of duties unless defects were concealed fraudulently or a warranty was granted.
- 2) Liability for gross negligence shall be limited to foreseeable damages typical for this type of contract. The contracting party shall not be entitled to make any further or other claims, particularly as a result of consequential damages. This shall not apply in the event of injury to life, limb or health.
- 3) Liability shall be limited to the relevant contract value, capped at the business liability insurance sum for financial loss (500,000.00 EUR per insured event and year). If increased liability is desired, the contracting party must inform Kiwa PI Berlin AG of this in writing so that the insurance sum can be adjusted accordingly.
- 4) If the object of the contract is to perform work and services related to crystalline solar modules (c-Si), liability shall be capped at €0.15 /Wp or, if related to other solar modules, in particular thin-film solar modules, at €0.15 /Wp.
- 5) Any test objects (e.g. modules) provided to Kiwa PI Berlin AG by the contracting party must be returned. Kiwa PI Berlin AG shall not be liable for compensation if modules are damaged or destroyed with no external forces, or only external forces caused by slight negligence, being involved.

- 6) The obligation to return shall be deemed to be fulfilled if 90% of the modules are returned.
- 7) Kiwa PI Berlin AG shall only be liable for compensation if evidence is provided of the extent of damage claimed. By way of precaution, Kiwa PI Berlin AG hereby rejects any generalised compensation provisions, regardless of the contracting party's legal grounds.
- 8) Production yield losses are consequential damages for which Kiwa PI Berlin AG shall not be held liable by its contracting parties.

#### **XI. Take-back**

- 1) The contracting party shall be obliged to take back test modules and any other objects provided.
- 2) If the contracting party fails to meet its obligations to take back goods despite having been provided with a deadline, Kiwa PI Berlin AG shall be entitled to sell the modules/objects, or store or destroy them at the contracting party's expense.

#### **XII. Provisions for consultancy services**

- 1) If consultancy services are provided, they shall be subject to the additional General Terms and Conditions in this paragraph:
  - a) Kiwa PI Berlin AG organizes its activities independently and is not bound to any particular location or working hours (except with respect to operational matters).
  - b) Kiwa PI Berlin AG is entitled to turn down additional orders placed by the contracting party without specifying a reason.
  - c) Kiwa PI Berlin AG may perform services itself or through specialist third parties.
  - d) Kiwa PI Berlin AG may work on behalf of other customers, even if they are in competition to the customer.
- 2) Kiwa PI Berlin AG shall provide consultancy services in compliance with generally recognized industry standards, but shall not be responsible if the project goal is not achieved. Services and intermediate stages shall therefore not be subject to acceptance.

#### **XIII. Confidentiality and intellectual property**

- 1) The contracting parties agree to treat all provided information of a technical or business nature with confidentiality during, as well as after termination of, work performed.
- 2) This shall not apply to information that demonstrably:
  - a) is or became common knowledge through no fault of the receiver;
  - b) was known before it was received;
  - c) becomes known after being disclosed by a third party entitled to disclose this information;
  - d) has been exempted from these obligations in writing; or
  - e) had to be disclosed pursuant to applicable law or an order from court of competent jurisdiction (in which case the receiving party – if obliged to disclose this information – must notify the disclosing party in writing and without delay of its duty to disclose the information).
- 3) Unless otherwise agreed in writing by the parties, the obligation of confidentiality shall be valid for five years.
- 4) The contracting party shall only become the owner of the contractually agreed performance outcomes and associated rights of use upon full payment of the agreed purchase price.
- 5) The right to use performance outcomes shall be limited to internal purposes only. These outcomes may only be disclosed to third parties following written approval from Kiwa PI Berlin AG, or to those legally bound to maintain confidentiality.
- 6) Unless otherwise agreed at the time the order was placed or unless required to fulfil the purpose of the contract, written approval must be obtained from Kiwa PI Berlin AG before information is processed, passed on, sublicensed, published, distributed and/or reproduced on electronic data carriers.
- 7) Kiwa PI Berlin AG shall be entitled to use contractual relationships as a reference both online and offline, stating the name of the customer and the project.
- 8) Without prior written consent from Kiwa PI Berlin AG, the contracting party may not use the trademark-protected name PI Berlin or the associated logo in online or offline presentations, publications, marketing material, on websites or in any other way.

- 9) The contracting party must obtain prior approval before making any publications related to Kiwa PI Berlin AG. Such publications may only contain objective information about Kiwa PI Berlin AG facts and conclusive results.

#### **XIV. Termination**

- 1) The right to ordinary termination of the contract shall be excluded. However, the right to terminate with cause shall remain unaffected.
- 2) In the event that the contract is terminated with cause, Kiwa PI Berlin AG shall within four weeks provide the contracting party with the results of the inspection and/or consultation obtained up until the point the notice was issued, but not before payment of the pro rata remuneration.
- 3) The contracting party agrees to remunerate Kiwa PI Berlin AG for any costs, works and services incurred before expiry of the contractual period of notice.

#### **XV. Final provisions**

- 1) The law of the Federal Republic of Germany shall apply exclusively.
- 2) The contracting parties shall endeavour to settle any disagreements amicably and swiftly (within a maximum of 30 days).
- 3) If the contracting parties are unable to come to an agreement, the place of jurisdiction for disputes between companies headquartered in Germany shall be Berlin.
- 4) If the dispute concerns a company that is not headquartered in Germany, Kiwa PI Berlin AG shall be free to institute legal proceedings at the contracting party's principal place of business or at the competent court in Berlin. The official language in court shall be the national language.
- 5) Berlin shall be the exclusive place of jurisdiction for any complaints made against Kiwa PI Berlin AG.
- 6) Should individual or several provisions of a contract or of the GTC be or become fully or partially invalid, this shall not affect the validity of the remaining provisions. The same shall apply in the event of a contractual gap.
- 7) The contracting parties shall endeavour to replace any fully or partially invalid provision with a legally permissible provision that will achieve the economic result that should have been achieved by the invalid provision.
- 8) The assignment of rights or transfer of duties arising from a contract requires prior written approval.
- 9) Any warranties, supplements, changes and amendments to contracts must be made in writing; the written form requirement can only be waived in writing in individual cases.