

SerEnergy A/S

GENERAL TERMS OF SALE AND DELIVERY Version 1st August 2020

1 GENERAL

1.1 Unless otherwise agreed in writing, the following terms and conditions of sale and delivery ("T&C") shall apply to all services and deliveries of products ("Products") from SerEnergy A/S ("Supplier") to the buyer ("Buyer").

1.2 All terms and conditions of purchase or other terms and conditions which the Buyer seeks to impose or incorporate are superseded by these T&C, even if the Supplier fails to object to said terms and conditions. The Supplier reserves the right to change these T&C at any time.

2 ORDERS

2.1 No final agreement of sale and delivery between the Supplier and the Buyer exists until the Supplier has confirmed in writing the Buyer's written or oral purchase order ("Supplier's Order Confirmation"). If any discrepancies occur in the Supplier's Order Confirmation, the Buyer shall immediately notify the Supplier hereof. Otherwise, the Supplier's Order Confirmation shall be deemed accepted by the Buyer.

2.2 Purchase orders confirmed by the Supplier cannot be cancelled or altered without the prior written consent of the Supplier, and the Buyer shall indemnify the Supplier for any loss in connection with any cancellation or alteration of confirmed purchase orders.

3 DELIVERY/PASSING OF RISK

3.1 Unless otherwise agreed in writing, delivery shall take place EXW (Incoterms 2010) . Delivery takes place according to the time of delivery agreed between the parties. The Supplier may make partial deliveries at the Supplier's sole discretion, all such deliveries shall be paid separately when due.

3.2 If the Supplier does not deliver the Products within 4 weeks after the agreed delivery dates, the Buyer is entitled to demand delivery within a final reasonable period which shall not be less than 2 weeks. If the Supplier does not deliver within such final period and this is not due to any circumstances for which the Buyer is responsible, the Buyer may – as its sole remedy - by notice in writing to the Supplier terminate the delayed part of the specific order, against reimbursement of the corresponding purchase price, to the extent already paid.

3.3 Except as set out above, the Supplier shall not incur any liability for any loss or damage resulting from any delay in delivery irrespective of the cause hereof unless the Supplier caused the delay by willful misconduct, gross negligence or fraud.

4 PRICES

4.1 All prices are quoted exclusive of any duties, insurance, VAT, transportation, taxes and any other costs which shall all, to the extent applicable, be carried and paid by the Buyer. The Buyer shall pay all invoices without any deductions or withholdings.

4.2 If by no fault of the Supplier or the Supplier's subcontractors, the Supplier is delayed in the delivery of the product, the Supplier shall be entitled to increase the price to reflect any actual costs incurred because of the delay. Furthermore, the Supplier is entitled to adjust the price due to any changes in indirect taxes, rates of duty, rates of exchange, etc.

5 PAYMENT

5.1 Unless otherwise agreed in writing, terms of payment shall be 100% prepaid. If the Buyer fails to make payment by the due date, interest at the rate of 2% per month shall be charged on the overdue amount from the due date. The Buyer shall pay the interest together with the overdue amount.

5.2 The Buyer shall not be entitled to withhold any payment in relation to any amount due to the Supplier.

5.3 The Supplier is entitled to suspend its performance and withhold any future deliveries until all debts due to the Supplier are settled in full.

5.4 The Supplier reserves all ownership of the Products until the Supplier has received payment in full.

6 USE OF THE PRODUCTS

6.1 The Buyer is responsible and liable for i) determining whether the Products are suitable for the Buyer's intended use, ii) correct storage, treatment, use and/or resale of Products for any purpose after the Supplier's delivery, iii) obtaining any necessary governmental registrations and approvals for the Buyer's production, marketing, sale, use and/or transportation of Products or of finished goods using or incorporating the Products, and (iv) compliance with all applicable laws, statutes and regulations of any relevant governmental or other authority related to the use of the Products.

- 6.2 If the Supplier becomes aware that the Buyer's use of the Products – in the sole discretion of the Supplier – is contrary to precautions and other information provided by the Supplier or otherwise potentially hazardous, unsafe or contrary to applicable laws and regulations, the Supplier may – in addition to any other available remedies - immediately discontinue delivery of the Products.
- 6.3 As to any advice or assistance provided by the Supplier to the Buyer, the Supplier makes no warranty, express or implied, as to its accuracy or completeness, or the results to be obtained from such advice or assistance.
- 7 SPECIFICATIONS AND COMPLAINTS
- 7.1 At the time of delivery and subject to clause 6 above, the Products will comply in all material respects with the Supplier's specifications for the Products applicable from time to time.
- 7.2 Immediately upon receipt of delivery, the Buyer shall examine the Products in order to make sure that the delivered Products are free from any visual external defects or shortcomings in quantity, and make sure that the Products comply with the specifications for the Products.
- 7.3 Any complaints as to any visual external defect, non-conformity or shortcomings in quantity shall be made in writing to the Supplier immediately after delivery. In the absence of any such notice, the Buyer shall be deemed to have accepted the delivery. Any complaints as to latent defects or non-conformity of the delivered Products shall be made in writing to the Supplier immediately after the Buyer's discovery of the defect or non-conformity.
- 7.4 If delivered Products are proven to be defective or non-conforming, the Buyer is, as its sole remedy, entitled to demand replacement Products that conform with the applicable specifications for the Products in all material respects.
- 8 LIMITED WARRANTIES
- 8.1 Unless otherwise expressly agreed to or stated in any of the Supplier's warranty terms, the Supplier solely warrants that (i) the Supplier has the title to the Products, (ii) the Products are free from any third party liens or encumbrances, and (iii) to the best of the Supplier's knowledge, the Products sold do not infringe third party intellectual property rights at the time of delivery.
- 8.2 EXCEPT AS STATED IN CLAUSE 8.1 ABOVE, THE SUPPLIER PROVIDES NO ADDITIONAL WARRANTIES, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, THE SUPPLIER HAS MADE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.
- 9 LIMITATION OF LIABILITY
- 9.1 In addition to the limitations set out elsewhere in these T&C, the Supplier's liability with respect to the delivered Products is further limited as outlined below in this clause 9.
- 9.2 The Supplier's liability for defects and non-conformity of the delivered Products is limited to defects, which appear within one year after the date of delivery of the Products.
- 9.3 Notwithstanding anything to the contrary in these T&C, the Supplier's liability for direct damage resulting from the Supplier's breach of an essential contractual obligation shall be limited to the lesser of (i) 100% of the invoice value for products giving rise to such claim or (ii) a maximum sum of DKK 1.000.000,00, irrespective of the nature of the claim, whether in contract, product liability, tort, warranty or otherwise.
- 9.4 In any event, the Supplier shall not be liable for any loss of time, loss of revenue or profits (projected or actual), loss of cost savings, loss of goodwill, brand value or reputation, or any loss resulting from the Buyer incurring any costs or expenses related to a recall not ordered by a governmental authority or due to safety reasons. In addition, the Supplier shall not be liable for any indirect, punitive, incidental or consequential loss or damage, irrespective of whether such loss or damage was foreseeable or in contemplation of the parties, and whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty, indemnity, product liability or otherwise.
- 9.5 The limitation of the Supplier's liability shall not apply where the Supplier has acted fraudulently, or in the event of the Supplier's willful misconduct or gross negligence. Further, to the extent that the limitation of the Supplier's liability is prohibited by applicable law, in particular according to mandatory liability under product liability acts, the liability shall only be limited to the extent legally permitted under the applicable law.
- 9.6 As far as the Supplier's liability is excluded or limited, this shall also apply to the personal liability of the Supplier's staff, employees, associates, agents, subcontractors and other persons assigned by the Supplier to perform its obligations.
- 10 BUYER'S INDEMNIFICATION
- 10.1 The Buyer shall indemnify and hold the Supplier harmless from and against any third party claim resulting from the Buyer's acts or omissions under these T&C, as well as claims resulting from, or associated with, the use of the Products or the Buyer's use or application of any information or advice disclosed or provided by or on behalf of the Supplier.

- 10.2 Should any third party raise a claim against one of the parties in relation to the Products, the party against whom the claim is raised shall immediately inform the other party of such claim.
- 11 **FORCE MAJEURE**
- 11.1 The Supplier shall not be liable for any non-performance if (i) the non-performance is due to circumstances beyond the Supplier's reasonable control, and (ii) the Supplier cannot reasonably be expected to have taken these circumstances into consideration at the time of the Supplier's Order Confirmation or have prevented the consequences thereof. Furthermore, the Supplier shall not be liable for any non-performance if the Supplier's sub-suppliers cannot perform due to circumstances described in this clause 11. Such circumstances include, but are not limited to, labor disputes, explosions, fire, natural disasters such as drought and flooding, government interventions, armed conflict, cyberattacks and restrictions imposed by foreign authorities such as imposition of sanctions or embargo and theft.
- 11.2 The Supplier shall notify the Buyer in writing of the cause of the non-performance and the expected duration of the circumstances.
- 12 **RESERVATIONS AND INFORMATION**
- 12.1 Any illustrations, specifications and data in the Supplier's datasheets and other material published by the Supplier are subject to alteration and the Supplier reserves the right to make changes without prior notice.
- 12.2 Any descriptive data found in any advertisement, catalogue, brochure, data sheet, website or the like are approximate only. They shall not be considered as any warranty or legal obligation of the Supplier unless specifically included in the Order Confirmation as such.
- 12.3 All illustrations, drawings and technical documentation relating to the products or its manufacture shall remain the property of the Supplier.
- 13 **RESTRICTIONS ON USE**
- 13.1 The Buyer may not modify or alter the Products or have the Products modified or altered on its behalf, without the prior written consent and approval of the Supplier, including but not limited to the fitting of any equipment, accessories or replacement parts not expressly approved for use with such product, or not fully equivalent in specifications and quality to equipment or replacement parts so approved by the Supplier.
- 14 **INTELLECTUAL PROPERTY**
- 14.1 The Supplier, or Supplier's licensors, shall retain full title and rights to all intellectual property rights related to the product(s) and services, including designs, trademarks and patents. Neither the sale of a product nor these T&C shall be construed as conferring any right or license to the Buyer except from what follows from the purchase of the individual product pursuant to applicable law. The Buyer must comply with any and all instructions from the Supplier in terms of use and placement of proprietary notices, etc.
- 15 **CONFIDENTIALITY**
- 15.1 The parties must ensure that any kind of know-how, trade secrets or other information of confidential nature of which a party has obtained knowledge as a consequence of any sale and delivery and which is not already party of the public domain shall remain confidential and may only be utilized by the receiving party to fulfil its obligations in accordance with these T&C and any Order Confirmation.
- 16 **ASSIGNMENT**
- 16.1 Neither party may assign any rights and obligations under these T&C in whole or in part without the prior written consent of the other party. However, the Supplier may assign the rights and obligations under these T&C to a present or future company belonging to the group of companies of which the Supplier is a part without the prior notice to and consent of the Buyer.
- 17 **SEVERABILITY**
- 17.1 If any of the provisions, or parts thereof, in these T&C are held to be invalid, illegal or unenforceable, such provisions, or parts thereof, shall be deemed not to form part of these T&C and shall not affect the remaining provisions. In the event of any material part of these T&C should be held invalid, illegal or unenforceable, the parties shall in good faith negotiate a solution by which the original intentions of the parties are honored to the largest extent legally possible.
- 18 **DISPUTES**
- 18.1 These T&C and the parties' related rights and obligations, including any disputes, shall be governed by, construed and settled in all respects in accordance with Danish law, without reference to any choice of law provisions thereof. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to these T&C and the parties' related rights and obligations.
- 18.2 Any disputes between the Supplier and the Buyer that cannot be settled amicably shall be finally settled by arbitration administered by the Danish Institute of Arbitration in accordance with its Rules of Procedure adopted and in force at the time when such proceedings are commenced.