

# General Terms and Conditions

As of: 03.11.2021

## 1. Scope and application

- 1.1 The following General Terms and Conditions (GTC) apply exclusively to business transactions with Innovenergy GmbH. Deviations require to be in written form. Individual agreements concluded with clients or distribution partners take precedence over these GTC. Conflicting conditions of clients or distribution partners are not recognized.
- 1.2 Innovenergy GmbH reserves the right to change these GTC at any time. All changes shall become effective with the publication of the new GTC on the website. The relevant point in time for the applicability of the valid GTC is the date of submission of the binding order to Innovenergy GmbH when purchasing a product.

## 2. Special tasks and duties of the distribution partners

- 2.1 If applicable, the distribution partner shall sell and deliver the products to the end customers in its own name, for its own account and at its own risk. The sales partner is not entitled to act in the name of or as a representative of Innovenergy GmbH towards end customers or other third parties nor to conclude any transactions and contracts for Innovenergy GmbH.

## 3. Ordering, delivery, handing over of the products & services

- 3.1 The scope and execution of the delivery shall be electronically recorded in Innovenergy GmbH's merchandise management system after the order has been placed and transmitted to the client or distribution partner. Any discrepancies between the content of the client's or distribution partner's order and the recorded delivery data shall be notified by the client or distribution partner to Innovenergy GmbH immediately. Delivery shall in any case be subject to the availability or availability of the products from manufacturers and suppliers.
- 3.2 The delivery dates stated by Innovenergy GmbH are to be regarded as indicative only, unless otherwise expressly guaranteed in writing. The specification of a delivery date is made to the best of our knowledge, but without guarantee. This applies in particular in the event of delays in delivery, e.g. as a result of supply problems at manufacturers and suppliers. Should a delivery be delayed beyond a delivery date explicitly guaranteed in writing by Innovenergy GmbH, the client can put Innovenergy GmbH in default after the expiry of an additional period of at least two months to be set by him in writing and withdraw from the respective order in writing after the deadline has expired unused. Any liability is – as far as legally permissible – expressly excluded. In any case, liability shall be limited to the value of the order.
- 3.3 Partial deliveries are allowed. Unavoidable events such as force majeure, strikes, etc. entitle Innovenergy GmbH to postpone delivery or, if necessary, to withdraw from the contract.
- 3.4 Innovenergy GmbH chooses the means of transport and the type of dispatch.

#### **4. Quotations and prices**

- 4.1 All offers are non-binding. The current prices are published in the webshop or in indicative price lists, subject to price changes and errors. Innovenergy GmbH reserves the right to adjust prices at any time.
- 4.2 The prices of the products and services of Innovenergy GmbH are net prices in Swiss francs (CHF), exclusive of value added tax and ex Innovenergy GmbH warehouse. Additional costs, e.g. expenses for packaging and shipping/delivery (freight/transport) are not included in the prices and shall be borne by the customer or the sales partner as well as the value added tax. We reserve the right of subsequent charging for value added tax not charged.
- 4.3 The prices of the products as well as additional costs are basically calculated at the time of the electronic recording of the order by Innovenergy GmbH. With the binding order, the customer or the sales partner declares that he agrees with the total price for the ordered products. After the binding order, the price can no longer be adjusted. The products are charged on the basis of the prices offered at the time the binding order is placed.

#### **5. Acceptance and examination (DOA)**

- 5.1 The customer shall inspect the goods immediately after delivery or collection. Obvious defects must be reported immediately, i.e. within five working days. In the case of deliveries with transport damage, the customer must also immediately record a damage report, which he is obliged to have signed by the carrier.
- 5.2 Hidden defects must be reported immediately after discovery.
- 5.3 Defects according to Clauses 5.1 and 5.2 must be notified in writing. Late notices of defects and notices of defects not formulated in writing shall result in the expiry of the warranty set out in Clause 5.4.
- 5.4 In the event of a warranty claim, Innovenergy GmbH is entitled, at its discretion,
- to deliver a replacement of the rejected goods,
  - to refund the purchase price
  - or to refund the reduced value of the goods while maintaining the purchase contract.

In the event of untimely notification, any warranty and any other claim of the customer or the sales partner shall expire, unless the damage or defect was not recognisable during the required initial inspection.

## **6. Transfer of benefit and risk**

- 6.1 The risk shall pass to the Customer or the Distributor when the goods are handed over to the carrier or the Swiss Post or when the products are collected by the Customer or the Distributor.

## **7. Terms of payment**

- 7.1 Unless otherwise agreed in writing, all invoices from Innovenergy GmbH are due for payment to the specified account seven days after the invoice date. After expiry of this period, the client is in default without reminder. Innovenergy GmbH may charge interest on late payments in the amount of 5%. All reminder and collection charges in the event of default of acceptance or payment shall be borne by the client, or the sales partner.
- 7.2 In case of default of payment by the client or the distribution partner, Innovenergy GmbH is entitled without special warning to stop all further deliveries to the client or distribution partner in whole or in part until its claims are settled or secured. All consequences resulting from such a suspension of delivery shall be borne exclusively by the client or the distribution partner.
- 7.3 If the client subsequently, even within a grace period set by Innovenergy GmbH, does not repay its debts, or does not ensure their fulfilment, Innovenergy GmbH is entitled to definitively refuse all further deliveries to the client or to the distribution partner and to claim damages.
- 7.4 All claims of Innovenergy GmbH, including those for which payment by instalments has been agreed, shall become due immediately if
- a) the client repeatedly fails to comply with terms of payment or
  - b) upon request of Innovenergy GmbH, does not immediately provide the necessary securities to dispel justified doubts of Innovenergy GmbH about its liquidity/ability to pay (e.g. in case of debt collection or other indications of payment difficulties of the client or the distribution partner).

The client has the obligation to notify Innovenergy GmbH if liquidity bottlenecks are foreseeable.

- 7.5 At the request of Innovenergy GmbH, the distribution partner assigns its claims against end customers arising from the resale of products delivered by Innovenergy GmbH to Innovenergy GmbH on behalf of payment if the latter is in default of payment (Art. 164 ff. OR).
- 7.6 The offsetting of counterclaims of the customer or the sales partner is excluded. Claims asserted by the client or by the sales partner arising from warranties or alleged defects shall not relieve the client of the obligation to pay until an amicable agreement has been reached or a final court decision has been made. Innovenergy GmbH reserves the right to deliver goods only against security, advance payment or cash on delivery, deviating from the above terms of payment. Advance payments shall not be subject to interest.

## **8. Retention of title**

- 8.1 Innovenergy GmbH remains the owner of the delivered products until the purchase price has been paid in full and in accordance with the contract. Innovenergy GmbH is entitled to enter the retention of title in the ownership register at the respective domicile of the client or the distribution partner in accordance with Art. 715 of the Swiss Civil Code. The client or the distribution partner undertakes, upon request of Innovenergy GmbH, to immediately give its written consent to the registration of a retention of title in all points essential for the registration (cf. Art. 4 Para. 4 of the Ordinance concerning the Registration of Retentions of Title).
- 8.2 As long as the purchase price has not been paid in full, the client or the distribution partner is obliged to maintain the products delivered by Innovenergy GmbH, to handle them with care and to insure them against all usual risks.

## **9. Return of products**

- 9.1 A return of products by the client or the distribution partner requires the prior consent of Innovenergy GmbH and is at the expense and risk of the client or the distribution partner. The products must be returned in their original packaging and accompanied by a justification, a copy of the invoice and a signed RMA form. Otherwise, we reserve the right to charge a processing fee of CHF 75. The assertion of the right of withdrawal or the return of products that have been customised according to the specifications of the customer or the sales partner is excluded.
- 9.2 The right of withdrawal must be asserted within 14 days.
- 9.3 The request is to be addressed to:  
Innovenergy GmbH · RMA Department  
Gemeindemattenstr. 20 · CH-3860 Meiringen  
Phone: +41 32 552 10 10 · eMail: info@innov.energy
- 9.4 Innovenergy GmbH reserves the right to return products with missing, defective or original packaging described or products that are no longer in perfect condition to the client or the distribution partner at their expense and risk.

## **10. Credit limits/obligation to provide information**

- 10.1 Innovenergy GmbH shall determine the credit limit.
- 10.2 In case of default of payment, indications of insolvency or other doubts about the creditworthiness of the client or the distribution partner, Innovenergy GmbH reserves the right to reduce the credit limit at any time or to demand immediate payment or adequate credit securities from the client or the distribution partner.
- 10.3 The distribution partner is obliged to inform Innovenergy GmbH immediately of any significant changes in his company, e.g. legal form, business address or changes in the management as well as any financial problems endangering the business existence.

## **11. Guarantee**

- 11.1 The responsibility for the selection, configuration, application and use of products as well as the results achieved with them lies with the sales partner or the purchaser of the products, i.e. the end customer. The client acknowledges that Innovenergy GmbH does not carry out any incoming inspections of the products delivered by manufacturers or suppliers.
- 11.2 Innovenergy GmbH's warranty for the products it delivers is determined in every aspect by the warranty provisions of the respective manufacturer/supplier. The only obligation of Innovenergy GmbH is to assign any warranty claims of its own against the manufacturer/supplier to the client or the distribution partner. The warranty claims expire in any case within two years from receipt of the product. The validity of a longer limitation period is excluded in any case, namely in cases of application of Art. 210 para. 2 OR.
- 11.3 The customer acknowledges that, based on the respective applicable warranty provisions, the warranty is generally limited to rectification or replacement of the defective/deficient products at the discretion of the respective manufacturer/supplier and, moreover, only applies if the products remain in Switzerland or the Principality of Liechtenstein, in Germany or in Austria.
- 11.4 Furthermore, the client acknowledges that in any case a defect is only given if it is reported to Innovenergy GmbH in writing and in detail immediately after discovery and includes a relevant and reproducible error. The warranty is excluded in particular for defects which are based on one of the following causes:
- a) Inadequate maintenance;
  - b) non-observance of the operating or installation instructions;
  - c) improper use of the products;
  - d) use of unauthorised parts and accessories;
  - e) natural wear and tear;
  - f) transport, improper handling or treatment;
  - g) modifications or attempted repairs;
  - h) external influences, especially force majeure (e.g. failure of the power supply or the air conditioning system, damage caused by natural elements) as well as other reasons for which neither Innovenergy GmbH nor the manufacturer/supplier are responsible.
- Repair services not covered by the manufacturer/supplier as well as additional costs caused by the client or the distribution partner will be charged to the client or the distribution partner.
- 11.5 In any case, the client or the distribution partner shall adhere to the procedures defined by Innovenergy GmbH or the respective manufacturer/supplier for the handling of any warranty claims.

## **12. Liability**

- 12.1 Innovenergy GmbH shall only be liable for direct damage and only if the client proves that this was caused by gross negligence on the part of Innovenergy GmbH or the third parties commissioned by Innovenergy GmbH. Liability is limited to the price of the respective delivery/service.
- 12.2 Any further liability of Innovenergy GmbH, its auxiliary persons and third parties commissioned by Innovenergy GmbH for damages of any kind is excluded. In particular, the client shall in no case be entitled to claims for compensation for damages that have not occurred to the product itself, such as loss of production, loss of use or data, loss of orders, loss of profit and other indirect or consequential damages.
- 12.3 Innovenergy GmbH undertakes to assign to the client or distribution partner any liability claims recognised by the manufacturer or supplier.

## **13. Intellectual property rights**

- 13.1 If a third party asserts or should assert claims against the client or distribution partner, or their end customers, due to infringement of a patent, copyright or other industrial property rights by delivered products, the client shall inform Innovenergy GmbH in writing and without delay about such infringement notices or claims made. Innovenergy GmbH shall immediately forward these notices to the supplier or the manufacturer and request the latter to settle the matter. The client waives any warranty or liability claims against Innovenergy GmbH.

## **14. Re-export**

- 14.1 The products distributed by Innovenergy GmbH are subject to Swiss export regulations. The client undertakes to apply for a special export permit from the competent authority before any re-export of the products, if such a permit is required by law. This obligation is to be transferred to the respective acquirer with the obligation to pass on when selling or otherwise passing on the products.

## **15. Software**

- 15.1 The terms of use and warranty concerning the software products and documents delivered by Innovenergy GmbH are governed by the special provisions of the respective software manufacturer, which are contained in particular in the software licence agreement between the software manufacturer and the user/end customer.
- 15.2 The customer or distribution partner undertakes, in the event of resale or other transfer of the software products, to transfer to the respective purchaser the duties arising from the terms and conditions of use and warranty of the software manufacturer with the obligation to transfer.

## **16. Confidentiality**

- 16.1 The client undertakes to treat the Innovenergy GmbH price list as well as other confidential data and information of a commercial nature, e.g. discounts, dealer margins, bonuses etc., as confidential and to use them only for the purpose of the contractual relationship with Innovenergy GmbH.

## **17. Producer reporting, data protection**

- 17.1 The client acknowledges that Innovenergy GmbH processes client data such as sales prices and quantities as well as names and addresses of clients and transmits them to sales partners and manufacturers/suppliers under certain circumstances and with the client's consent also abroad.
- 17.2 With his order, the client gives Innovenergy GmbH his consent that Innovenergy GmbH is entitled to pass on information on payment processing to credit, trade and business information agencies for the purpose of checking payment behaviour and creditworthiness.
- 17.3 With regard to data protection, reference is made to the data protection declaration in the following link: <https://www.innov.energy/en/innovenergy/privacy-policy>

## **18. Use of the website or webshop of Innovenergy GmbH**

- 18.1 The client or sales partner may pass on data, which he has obtained through the use of the webshop, the website or the sales partner portal, to third parties only with the express written consent of Innovenergy GmbH and only if he complies with the usage regulations specified by Innovenergy GmbH.

## **19. Transmission**

- 19.1 Rights and/or obligations from individual contracts (deliveries, services) with Innovenergy GmbH can only be transferred to a third party by the client or the distribution partner with Innovenergy GmbH's prior written consent.

## **20. Severability clause**

- 20.1 any provision of these GTC is or becomes void or unenforceable for any reason, this shall not affect the validity of the remaining provisions. Unless otherwise agreed, the invalid provision shall be deemed to be replaced by a valid provision that takes into account as far as possible the economic purpose of the provision and the intention of the parties at the time of the conclusion of the contract. The same applies to any loopholes in these GTCs.

## **21. Applicable law and place of jurisdiction**

- 21.1 The individual contracts as well as the GTCs shall be governed exclusively by Swiss law, expressly excluding conflict of law and international treaty norms, in particular the United Nations Vienna Convention on Contracts for the International Sale of Goods.
- 21.2 The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationships is exclusively Meiringen/BE.