

Special Terms & Conditions for the Construction of Support Structures for Solar Systems

Scope

1. The present Special Terms & Conditions for the Construction of Support Structures for Solar Systems will become integral components of all contractual agreements on the construction of PV mounting systems that are concluded between PUK-Solar GmbH & Co. KG (referred to hereinbelow as "PUK-Solar") on the one hand and enterprises, legal entities under public law or special funds under public law on the other (referred to hereinbelow as the "Client", whereby PUK-Solar and the Client will be jointly referred to hereinbelow as the "Contracting Parties").

2. In addition and secondary to these installation conditions, PUK-Solar's General Terms and Conditions (delivery and payment conditions) shall apply.

3. Any general terms & conditions of the Client or of third parties will not become integral components of the contractual agreements, except in those individual cases in which PUK-Solar has expressly consented thereto in writing. Even if the Client relies on a written communication that contains or makes mention of the general terms & conditions of the Client or of a third party, this shall not be construed to mean that the applicability of said general terms & conditions has been agreed to.

Offers and Underlying Documents

1. All offers made by PUK-Solar are non-binding and subject to change, unless they have been expressly designated as binding or set out a specific deadline for their acceptance.

2. Once concluded, the respective contractual agreement, along with the present Special Terms & Conditions for the Construction of Support Structures for Solar Systems, will be deemed to contain all the contractual arrangements agreed between the Contracting Parties with regard to the object of the agreement. Any oral undertakings made by PUK-Solar prior to the conclusion of a contractual agreement will not be legally binding and any oral arrangements made between the Contracting Parties will be superseded by the written contractual agreement – unless these undertakings/arrangements expressly provide that they are to survive with legally binding effect.

3. Any amendments of or addenda to the contractual agreements made, including the present Special Terms & Conditions for the Construction of Support Structures for Solar Systems, must be made in writing in order to be valid. Telecom transmission, particularly via fax or email, will suffice for purposes of satisfying this requirement as to the written form, provided a copy of the signed declaration is transmitted.

4. The information provided by Solar on the subject matter of the agreed service/deliverable (e.g. weights, measurements, functional/utility values, load-capacity data, tolerances, and technical data) as well as presentations thereof (e.g. diagrams and images) are to be regarded as approximations only, unless the ability to use the service/deliverable for the contractually intended purpose presupposes the strict accuracy of said information. They do not constitute guaranteed characteristics, but rather merely descriptions or designations of the service/deliverable involved. The following will be permissible so long as they do not impair the ability to use the service/deliverable for the contractually agreed purpose: deviations that are customary for the industry; deviations that are occasioned by legal requirements or that represent technical improvements; the substitution of assembly components with comparable components.

5. PUK-Solar reserves ownership or copyright in respect of all offers or cost proposals which it issues, as well as in respect of all drawings, images, calculations, brochures, catalogues, models, tools, and other documentation and auxiliary resources which it makes available to the Client. Unless PUK-Solar grants its express consent, the Client may not make accessible such items, or the contents thereof, to third parties, nor may it make them publicly known or use or reproduce them or allow third parties to do so. If PUK-Solar so requests, the Client must return these items to PUK-Solar in their entirety and destroy any copies made thereof, insofar as it no longer requires them for its regular business operations or insofar as negotiations have not resulted in the conclusion of a contractual agreement. A specific exception hereto is the storage of data provided by electronic means, so long as this is performed for normal data-backup purposes.

Prices

1. All prices apply within the framework of the contractually agreed scope of services and deliverables. Any supplemental or special services will be billed separately. It is understood that value-added tax at the legally mandated rate is to be added to all prices; in the case of export deliveries, the applicable customs duties plus any other charges and public levies are to be added also.

2. If more than four months intervene between the date on which the contractual agreement is concluded and the scheduled commencement date for PUK-Solar's rendering of services/deliverables, then PUK-Solar shall be entitled to make reasonable adjustments to its agreed remuneration so as to reflect any changes that its suppliers have made to their material prices during said intervening period.

Billing According to Time Required

1. Unless otherwise agreed in writing, PUK-Solar will be entitled to charge the Client for the following services on a time-worked basis (hourly rates), in addition to the contractually agreed remuneration:

- Excess time expended because the actual circumstances prevailing on the Client's construction site deviate from the contractually agreed parameters.
- Waiting times due to construction-site related factors.
- Travel times required for the departure and return of installation personnel from and to the site in the case of installation interruptions that are not the fault of PUK-Solar.

2. The remuneration due to PUK-Solar for services/deliverables rendered pursuant to the foregoing paragraph 1 will be computed using hourly rates (hourly fees) on the basis of the actual time expended. Unless otherwise agreed in writing, the hourly rates will amount to EUR 49/hour for site managers, EUR 39/hour for installation supervisors and EUR 36/hour for installation personnel.

Payment

1. Unless a payment plan has been agreed in writing, the contractually agreed remuneration shall fall due and be payable in the following percentage installments:

- 10% upon conclusion of contract;
- 20% once installation work begins;
- 10% each time 25% of the material provided by PUK-Solar for its performance has been made available;
- 20% once the modules have been fully mounted;
- 10% after formal acceptance (final payment).

2. Unless otherwise agreed in writing, all invoice amounts shall fall due and be payable immediately without any deduction whatsoever. A given payment's timeliness will be determined based on the time of its receipt by PUK-Solar. If the Client defaults on a payment, all claims on the part of PUK-Solar – including any claims that have been deferred – shall fall due and be payable immediately.

3. When it comes to such claims, the Client may not offset counterclaims of its own or assert a right to withhold payment, unless the counterclaims involved are undisputed or have been finally and conclusively established by a court of law.

4. PUK-Solar will be entitled to have the Client lodge a payment bond upon demand in the form of a perpetual surety bond which contains a waiver of the respective defenses of pleading failure to object to court decisions and to offset claims as well as the defense of pleading failure to pursue remedies in court pursuant to Articles 770 and 771 of the German Civil Code (Bürgerliches Gesetzbuch, BGB). However, the waiver of the legal defense of failure to offset claims must not encompass any counterclaims of the Client that are undisputed or that have been finally and conclusively established by a court of law. Any disputes arising in connection with the surety bond will be governed exclusively by the laws of the Federal Republic of Germany. Any disputes arising in connection with the surety bond must furthermore be pursued in Berlin, Germany.

Applicability of Part B of the German Contracting Rules for Award of Construction Contracts (VOB/B) and of German Civil Code (BGB) (Verdingungsordnung für Bauleistungen (VOB/B) and Bürgerliches Gesetzbuch (BGB))

The contractual relationship shall be governed by the following provisions, in keeping with the order of precedence shown below:

1. The provisions contained in the contractual agreement concluded between PUK-Solar and the Client;
2. The present Special Terms & Conditions for the Construction of Support Structures for Solar Systems;
3. The provisions of Part B of the Contracting Rules for Award of Construction Contracts (Verdingungsordnung für Bauleistungen Teil B (VOB/B)); as well as
4. The statutory provisions governing contracts for works and services (Werkvertragsrecht), as set out in Articles 631 to 650 of the German Civil Code (Bürgerliches Gesetzbuch, BGB).

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Reservation of Title

1. Unless agreed otherwise, PUK-Solar reserves title to all the materials it provides for its performance until such time as all the claims of PUK-Solar that arise under the contractual agreement concluded with the Client have been satisfied in full. Until such time, any and all further processing of the materials provided may only occur in the name and for the account of PUK-Solar, such that PUK-Solar will acquire direct ownership of the newly created item, or – if the processing involves materials provided by multiple owners or the value of the finished item exceeds the value of the materials provided by PUK-Solar – a (fractional) co-ownership share in the newly created item as per the ratio between the value of the material provided by PUK-Solar and the value of the newly created item. As a precaution for the eventuality that no such acquisition of title by PUK-Solar should occur, the Client hereby transfers its future ownership or co-ownership (as per the aforementioned ratio) in the newly created item to PUK-Solar in advance as a surety. If the material provided by PUK-Solar is combined or irretrievably commingled with other items so as to form a new, unitary item, such that any of these other items becomes the principal item, then the Client, insofar as it is the owner of the principal item, shall transfer a pro-rata ownership share in the unitary item to PUK-Solar in line with the ratio specified in Sentence 2.

2. As a surety, the Client hereby assigns in advance to PUK-Solar any and all claims that may take the stead of the materials made available by PUK-Solar or that it may have in respect of the materials provided by PUK-Solar (e.g. insurance claims or claims for rot in the event of loss or destruction). PUK-Solar hereby grants the Client a revocable authorization to collect the claims assigned to PUK-Solar in the Client's own name. PUK-Solar will be entitled to revoke this collection authorization only in the event that a claim is to be liquidated/realized.

3. Insofar as the Client acts in a contractually breaching manner – particularly insofar as it defaults on paying the claim for remuneration – PUK-Solar shall be entitled to retrieve the materials it has made available, provided PUK-Solar has first given the Client a reasonable grace period in which to perform. Insofar as PUK-Solar retrieves the materials it has made available, this shall constitute a rescission of the contractual agreement. The transport costs associated with the retrieval shall be borne by the Client. If PUK-Solar attaches the materials it has made available, this shall also constitute contractual rescission. PUK-Solar shall be entitled to turn the materials it has retrieved into liquid proceeds. The proceeds from the liquidation will be offset against those sums which the Client owes to PUK-Solar, once PUK-Solar has deducted a reasonable amount for the costs of the liquidation.

4. If the material provided by PUK-Solar is attached by a third party or in case of other interventions by a third party, the Client must alert the third party to the ownership status of PUK-Solar and must promptly notify PUK-Solar in writing so that the latter can enforce its ownership rights. Insofar as the third party is unable to reimburse PUK-Solar for the court costs or out-of-court costs incurred in this context, the Client shall be liable for said costs.

Force Majeure

Insofar as PUK-Solar is unable to meet binding performance deadlines for reasons that are not its fault (e.g. disruptions affecting operations, transport or deliveries; war; terrorism; damage due to fire; non-foreseeable shortages of labor, energy, resources or auxiliary supplies; strikes or lock-outs; directives from the public authorities), PUK-Solar must promptly notify the Client and must concomitantly specify the expected new performance date. If it proves impossible to render performance by the new performance date as well, PUK-Solar shall be entitled to rescind all or part of the contractual agreement, while promptly reimbursing any consideration already rendered by the Client up to that point. A non-availability of performance within the meaning of this clause will also be deemed given in the event a supplier fails to procure its own supplies after having concluded a congruent covering transaction, provided neither PUK-Solar or its suppliers are at fault or PUK-Solar is not responsible for the procurement in an individual case.

Setup of the Construction Site by the Client

The Client shall ensure that the construction site is set up with the proper facilities, including a construction site toilet, a construction site fence, lighting (insofar as required), water, electrical power and security & surveillance for the construction site. The creation of access roads and earthworks – insofar as they are required – will also be the Client's responsibility.

Materials Made Available by the Client

The Client will be responsible for ensuring the serviceability of any solar modules or other materials it may provide for purposes of executing the project. If PUK-Solar accepts delivery of solar modules from third parties on the Client's behalf, then PUK-Solar will visually inspect the same for any apparent damage. Insofar as the Client has the obligation to inspect and report defects vis-à-vis its suppliers under Article 377 of the German Commercial Code (Handelsgesetzbuch, HGB), PUK-Solar will not assume this obligation on the Client's behalf.

Technical Modifications

PUK-Solar reserves the right to make any required or purposeful modifications to the technical plans, to the manner of execution or to the planned construction materials, provided said modifications do not impair the functionality and serviceability of the service/deliverable, have been communicated to the Client in advance, make allowance for the Client's legitimate interests, and do not pose an unreasonable burden for the Client. The amount of the contractually agreed remuneration will not be affected thereby.

Interim Payments

In the event of a work interruption lasting more than 12 business days for which PUK-Solar is not at fault, PUK-Solar shall be entitled to demand reasonable interim payments for services/deliverables it has already rendered (e.g. for materials excluding installation, installation of mounting systems without solar-module overlays, individual solar panels).

Liability

The liability of PUK-Solar GmbH & Co. KG for those solar modules and other materials, tools, and equipment that are made available by third parties will be in keeping with Article 690 of the German Civil Code (Bürgerliches Gesetzbuch, BGB).

Claims based on consequences and damages caused by soil changes due to subsidence are also excluded.

Place of Jurisdiction; Applicable Law

The place of jurisdiction is Berlin, Germany. However, PUK-Solar is also entitled to bring legal action at the registered seat of the Client or at the place of performance. German law shall govern exclusively.

Miscellaneous

Insofar as the respective contractual agreement or these Special Terms and Conditions for the Construction of Support Structures for Solar Systems have remained silent on any given matter, these omissions will be deemed filled by those valid provisions which the Contracting Parties would have agreed – in keeping with the economic objectives of the contractual agreement and the intent of these Special Terms and Conditions for the Construction of Support Structures for Solar Systems – had they been aware of the matter not having been provided for.

Valid as of: March 2018