

# **GENERAL TERMS AND CONDITIONS GUARANTEE CONDITIONS**

General terms and conditions and guarantee conditions  
of IMS-Solar B.V. as of 01-02-2024

## 1. Applicability

- a. These general terms and conditions apply to and form an integral part of all offers, deliveries, arrangements, agreements, performances and other obligations insofar as not expressly agreed otherwise in writing between parties, which are directly or indirectly related to the work and other business operations of the private limited liability company IMS-Solar B.V., with its registered office in Alkmaar, registered in the commercial register of the Chamber of Commerce under number 83888772, hereinafter referred to as: 'IMS-Solar'. The client of IMS-Solar is referred to as the 'Purchaser'.
- b. Amendments of or addendums to our general terms and conditions will only be binding if these have been expressly confirmed in writing by IMS-Solar.
- c. If a (part of a) provision of these general terms and conditions might not be applicable, this will not affect the applicability of the other provisions. Any general terms and conditions of the Purchaser will only apply if this has been expressly agreed to in writing by parties. In the event of conflict between the present terms and conditions and any terms and conditions of the Purchaser, the terms and conditions of IMS-Solar will prevail at all times.
- d. By giving assignments to IMS-Solar and/or concluding an agreement with IMS-Solar, the Purchaser waives its general or other terms and conditions, acknowledges accepting these general terms and conditions and acknowledges fully agreeing to the contents thereof.
- e. The Purchaser who has entered into agreements with IMS-Solar before, whereby these general terms and conditions applied, will be deemed to tacitly agree to the applicability of these general terms and conditions to future agreements with IMS-Solar.

## 2. Offers and orders

- a. All tenders and offers of IMS-Solar are without obligation and have a validity period of 14 days, unless stated otherwise. After acceptance, IMS-Solar will still be entitled to withdraw the tender and/or offer. The withdrawal after acceptance by IMS-Solar will only be possible within fourteen days after acceptance by the Purchaser.
- b. At the time that IMS-Solar has confirmed in writing or by email to accept the offer or the assignment, the agreement will come into effect, albeit subject to timely and correct delivery by IMS-Solar's suppliers. Sending an invoice or delivery of the goods to the Purchaser will also constitute such a confirmation of acceptance.
- c. Verbal arrangements or promises by employees of IMS-Solar will only be binding if these employees have authorisation for this or if this arrangement has been verbally confirmed by IMS-Solar. It is the responsibility of the Purchaser to ascertain that there is authorisation or confirmation.
- d. The consequences of compliance with statutory regulations or decisions of authorities, which have come into effect after the day of the tender or offer, will be at the expense of the Purchaser

## 3. Price and possible price adjustments

- a. All agreed prices are excluding turnover tax, import and export duties and other levies imposed by Dutch or foreign authorities, unless stated otherwise.
- b. IMS-Solar will not be obliged to perform the agreement in exchange for the price set out in the tender/offer if this price is based on an apparent printing or clerical error.
- c. IMS-Solar retains the right to increase the agreed prices after the agreement has come into effect in the event that unexpected cost factors give cause for this. This includes in any event, but not exclusively, levies imposed by authorities, including import levies.
- d. All prices are set out in Euro, unless expressly agreed otherwise. Any exchange loss due to changes of exchange rates of the Purchaser will be entirely at the Purchaser's expense.

- e. All agreed prices are excluding any transport or packaging costs, unless expressly agreed otherwise.
- f. Unless expressly stated or agreed otherwise, statements and specifications with regard to measurements, quality, capacities, performance or results in images, drawings, models, catalogues and advertising material are indicative only and are not binding for IMS-Solar.
- g. In the event of a combined quotation IMS-Solar will never be obliged to deliver a part of the deliveries included in the tender/offer in exchange for a corresponding part of the stated price.

#### 4. Payment

- a. All payments must be made prior to the delivery of the goods, unless agreed otherwise.
- b. The Purchaser must within five working days make complaints regarding shortcomings in the invoice **apparent in writing** to IMS-Solar.
- c. In the event that a business contact does not within the mutually agreed period fulfil its payment obligations, IMS-Solar will have the right without further demand to charge the statutory commercial interest (Section 119a Book 6 of the Civil Code) from the due date. This will be until the date of payment in full and without prejudice to the other rights accruing to IMS-Solar.
- d. The cost ensuing from the non-fulfilment, late or improper fulfilment of the obligations on the part of the Purchaser on the basis of the agreement will be at the Purchaser's expense. These costs include the costs of the demand, termination, collection and bailiff. The Purchaser will also be responsible and liable for the costs of the counsel/lawyer of IMS-Solar and all other extrajudicial and judicial costs. IMS-Solar will be entitled to fix these costs at 15% of the owed principal sum.
- e. The payments made by the Purchaser will serve for the payment of all interest and costs owed and thereafter for payment of the due and payable invoices whereby the invoices outstanding the longest will be paid first, even if the Purchaser indicates that the payment relates to a later invoice.

- f. At the time that the Purchaser remains in default of payment, as well as in the event of insolvency, application for moratorium, cessation or liquidation of the enterprise of the Purchaser, everything that IMS-Solar can claim from the Purchaser will be immediately due and payable. This arrangement also applies if IMS-Solar is in default of any obligation vested in IMS-Solar vis-à-vis the Purchaser.
- g. IMS-Solar is always entitled, which will be at its discretion, before delivering or continuing with the delivery or execution of the assignment, to require such security for the fulfilment of the Purchaser's payment obligations as IMS-Solar deems sufficient. This provision also applies if credit has been stipulated. The refusal by the Purchaser to provide the required security will give IMS-Solar the right to suspend further performance of the agreement or to terminate the agreement, without prejudice to the right of IMS-Solar to compensation of damage, expenses and lost profits.

#### 5. Delivery and risk, liability

- a. The delivery address and date and time included in the accepted tender or offer or agreed by email apply as the starting point for the delivery. The delivery date will be recorded by IMS-Solar as an estimate and is not binding. If no delivery location is set out in the accepted tender or offer or set out in any other manner in writing by IMS-Solar, the delivery will take place 'ex warehouse'.
- b. Any exceeding of the agreed period for delivery will not give the Purchaser the right to suspend its obligations on the basis of the agreement.
- c. Any exceeding of the delivery periods within which delivery will take place will not result in liability on the part of IMS-Solar concerning the direct or indirect consequences of late delivery.
- d. IMS-Solar has the right to deliver the goods to be delivered by it in parts, unless agreed otherwise.

- e. The Purchaser must take delivery of the goods, which the Purchaser has ordered (delivery on a call-off basis) within five working days after confirmation of the assignment. If the Purchaser does not, does not in a timely manner or does not at the agreed location, take delivery of the goods, for any reason whatsoever, the Purchaser will be in default by operation of law. In this situation IMS-Solar will have the right to transport and store the goods from the location where and the time at which the delivery must take place, at the expense and risk of the Purchaser, to and at a location to be determined by IMS-Solar. In that case the Purchaser will be responsible for the lost profit and all costs incurred by IMS-Solar concerning this, whereby this payment will be at least 20% of the total net invoice amount, without prejudice to the right to claim compensation for the excess.
- f. If the Purchaser has not taken receipt of the goods within two months after the possibility of delivery, IMS-Solar will be entitled to terminate the agreement without judicial intervention and to sell or collect the delivered goods. The Purchaser will be responsible and liable for all costs and lost profit incurred.
- g. The Purchaser will be responsible for the risk of loss, damage or deterioration, wholly or partly, of the goods to be delivered from the agreed delivery date and time.
- h. Any costs related to the (subsequent) delivery of goods, such as the costs of transport, insurance, packaging, hoisting, loading and unloading costs and for obtaining the required documents and permits will be at the expense and risk of the Purchaser.
- i. IMS-Solar will at all times only be liable for direct material damage, which the Purchaser suffers and which are the result of a shortcoming to be attributed to IMS-Solar. Direct material damage will under no circumstances include: consequential loss or damage, trading loss, loss of production, loss of turnover or lost profits or decrease in value or loss of products, as well as amounts that would have been included in the implementation costs if the delivery had been properly executed from the outset.
- j. The liability on the part of IMS-Solar is in all cases limited to the level of the tender amount, unless IMS-Solar is insured for the damage concerned, in which case the liability will be limited to the amount that the insurer pays in a particular case.
- k. Every legal claim of the Purchaser will lapse by the expiry of one year after the Purchaser has objected with regard to a defect and/or damage to IMS-Solar.

## 6. Force majeure

- a. In this matter, force majeure is taken to mean all facts or circumstances not attributable to an intentional act or gross negligence on the part of IMS-Solar that results in the fulfilment of obligations under the agreement becoming disproportionately more burdensome for IMS-Solar than could reasonably have been foreseen by IMS-Solar at the time the agreement was entered into. Force majeure will therefore include, without limiting force majeure within the meaning of these terms and conditions, failure to receive or late receipt from IMS-Solar's suppliers of the goods required for the fulfilment of the obligations vested in IMS-Solar, business interruptions, industrial actions, illness of irreplaceable employees, obstructive government measures, war or threat of war, wilful damage, riots, sabotage, power failure, flooding, earthquake, storm, fire and traffic hold-up, as a result of which the business operations of IMS-Solar or its suppliers is prevented or made disproportionately difficult.
- b. IMS-Solar also has the right to rely on force majeure, if the circumstance that prevents (further) fulfilment, occurs after IMS-Solar ought to have fulfilled the obligation.
- c. If the performance of the agreement is prevented by force majeure, IMS-Solar will be entitled, without judicial intervention, either to claim that the agreement is adjusted to the circumstances, or to terminate the agreement wholly or partly, which will be at its discretion, without IMS-Solar being obliged to pay any compensation or guarantee.

- d. During force majeure the delivery period and other periods vested in IMS-Solar will be suspended. If the period during which fulfilment of the obligations vested in IMS-Solar is not possible due to force majeure lasts longer than three months, the Purchaser will be entitled to terminate the agreement without any obligation to pay compensation in that case. This termination must take place by means of a statement in writing to IMS-Solar.
  - e. If at the occurrence of the force majeure IMS-Solar has already fulfilled its obligations partially, or can only fulfil its obligations partially, IMS-Solar will be entitled to separately invoice for what it has already delivered or for the deliverable part. The Purchaser will be obliged to pay this invoice as if there is a separate agreement. However, this will not apply when the part already delivered or deliverable part does not have any independent value.
- d. If the Purchaser does not fulfil its obligations vis-à-vis IMS-Solar, or there is well-founded fear that the Purchaser will not do this, IMS-Solar will be entitled to collect, or let collect, the goods delivered subject to the retention of title from the Purchaser or from third parties who hold the goods for the Purchaser. The Purchase must provide IMS-Solar with full cooperation for this purpose, in the absence of which the Purchaser will incur vis-à-vis IMS-Solar a financial penalty of 15% of the amount owed by the Purchaser for each day – including a part of a day – during which the Purchaser remains in default vis-à-vis IMS-Solar, without prejudice to the obligation to surrender.
  - e. The Purchaser undertakes vis-à-vis IMS-Solar in the event that third parties wish to establish or enforce rights on the goods on which IMS-Solar's retention of title is vested, to immediately inform IMS-Solar of this and to inform the third parties with regard to the retention of title on the part of IMS-Solar.

## 7. Retention of title

- a. All goods delivered by IMS-Solar remain its property until the Purchaser has fulfilled all the following obligations ensuing from all agreements concluded with IMS-Solar:
  - The consideration(s) with regard to the delivered or to be delivered item/goods itself/themselves;
  - the consideration(s) with regard to the services provided by IMS-Solar pursuant to the agreement(s);
  - Any claims due to the non-performance by the Purchaser of such an agreement (such agreements).
- b. The goods delivered by IMS-Solar that, pursuant to the first subclause are subject to retention of title, can only be used, sold on and/or supplied on in the context of the usual business operations. The Purchaser will not be entitled to pledge the goods or to establish any other limited right thereon.
- c. The Purchaser will be obliged to manage with due care the materials the ownership of which has not yet been transferred.

## 8. Termination

- a. With the exception of in the event that IMS-Solar has applied for moratorium or has been declared insolvent, the Purchaser will only be permitted to claim the termination of the concluded agreement through the court with competent jurisdiction, unless expressly determined otherwise in these terms and conditions or agreed otherwise.
- b. The provisions of the Vienna Sales Convention expressly do not apply, nor does any future international regulation concerning the purchase of movable property the effect of which can be excluded by parties.

## 9. Guarantee

- a.** IMS-Solar provides the following guarantee for the goods delivered by it:
- 20 years for aluminium profiles, with the exception of coating;
  - 10 years for coating;
  - 10 years for assembly materials and small materials.
- b.** The guarantee period commences at the time of the delivery. The guarantee only covers defects that are apparently due to poor properties of the delivered good(s).
- c.** The guarantee, as referred to under a of this article, does not apply:
- If the defects are the result of the usual wear and tear, improper operation or treatment, misuse, use contrary to the instructions given by IMS-Solar, negligence, accident, failure to comply with maintenance instructions and the usual maintenance care, mechanical damage, changes or additions made by the Purchaser or third parties, changed conditions in the environment and/or use, in the event of deterioration as a result of (aggressive) liquids, vapours or other agents, electrical, electrolytic, corrosive or other environmental influences, incorrect information provided to IMS-Solar and/or operation of the underlying construction;
  - If the delivered goods are not affixed by a professional party with professional equipment;
  - The delivered goods are not selected or insufficiently selected by the Purchaser and/or aligned with the type of roof or subsoil;
  - If the Purchaser has not demonstrably and in the correct manner used the IMS-Solar.Pro.Tool referred to in article 10;
  - If there have been acts in conflict with the installation manual made available by IMS-Solar to the Purchaser;
  - If the Purchaser has not or has not completely fulfilled its payment obligations vis-à-vis IMS-Solar.
- d.** It is at all times the responsibility of the Purchaser to demonstrate that defects are not the result of the causes set out in article 9 under c.
- e.** The Purchaser will be obliged within 14 days after the defects are noticed or reasonably could have been noticed to inform IMS-Solar in writing of those defects.
- f.** The repair of defects that fall under the guarantee will not result in any extension of the original guarantee period.
- g.** If the delivered goods do not comply with the agreement and IMS-Solar is liable for this, IMS-Solar will have the right, at its discretion, to ensure supplement, repair or replacement of the delivered goods free of charge or to compensate the Purchaser for the value of the defective delivered goods in accordance with the agreed sale price concerning this. The costs of disassembly and reassembly, dispatch and/or transport costs will not be reimbursed by IMS-Solar and are therefore at the Purchaser's expense.
- h.** If IMS-Solar opts for replacement or compensation as referred to under g of this article, IMS-Solar will have the right to claim the return of the defective delivered goods insofar as such return is (still) possible.
- i.** Only if IMS-Solar has been given notice of default with due regard to the provisions of article 9 under e in a timely manner and IMS-Solar does not comply with the provisions of article 9 under g, will the Purchaser have the right to terminate the agreement wholly or partly.
- j.** The Purchaser will be obliged to provide IMS-Solar, if IMS-Solar wishes this, with the opportunity to verify the merits of the guarantee claim, and if IMS-Solar wishes this, by an expert to be appointed by IMS-Solar, in the absence of which any right to guarantee and any liability on the part of IMS-Solar will lapse.
- k.** In the event of the guarantee a diminishing payment due to the diminishing utility of the delivered goods, materials and/or parts used must be taken into consideration. The payment on the basis of the guarantee obligation will reduce in this context from one year after the commencement of the guarantee period annually by 5% of the purchase price. In the event of required repair or replacement under the guarantee, the Purchaser will accordingly be obliged to supplement the payment of the guarantee obligation by IMS-Solar up to 100% of the purchase price.

- i.** The repair of the defects that fall under the guarantee will be done by IMS-Solar within a reasonable period. This reasonable period amounts at least to one calendar month after the time at which IMS-Solar has been informed in writing of the defects, as referred to in article 9 under e. The repair of the defects that fall under the guarantee does not give any claim to any form of compensation.

## 10. Use of IMS-Solar.Pro.Tool

- a.** Prior to the assembly of the delivered goods the Purchaser, or the party that executes the assembly, must use the "IMS-Solar.Pro.Tool" software tool, made available by IMS-Solar, in the correct manner. The assembly of the delivered goods must take place in conformity with the project report generated with the IMS-Solar.Pro.Tool (hereinafter referred to as: 'Project Report').
- b.** A Project Report is based on the values entered by the Purchaser in the IMS-Solar.Pro.Tool and serves as an aid for the benefit of the Purchaser. No rights can be derived from a Project Report.
- c.** It is possible that specific information ensuing from a Project Report is not completely correct, for example (but not exclusively) due to the fact that standard values are assumed. The Purchaser must at all times check whether all values are correctly filled in and represented. IMS-Solar will not be obliged to check and verify the values stated by the Purchaser.
- d.** MS-Solar will not be liable for shortcomings and/or damage resulting from incorrect, imprecise or incomplete input by the Purchaser, information that is submitted by the Purchaser through the IMS-Solar.Pro.Tool and/or improper use of the IMS-Solar.Pro.Tool.
- e.** Every roof and substrate has individual characteristics which must be taken into consideration. This also includes obstacles in the immediate vicinity, such as high buildings or trees, cliffs and/or mountains. For this reason all calculations and values must be checked and approved by an expert (for example a structural engineer) prior to every installation.
- f.** Prior to the installation the Purchaser must ensure that the existing roof construction is suitable to carry the extra burden. The dimensioning software in the IMS-Solar.Pro.Tool does not take into account or replace structural calculations for the building and/or roof concerned.
- g.** The attachment systems for PV (photovoltaic) panels can be exposed to wind and snow conditions. This will result in an additional pressure load. It is the responsibility of the Purchaser to (let) make a calculation in order to be able to determine whether the additional pressure load can be borne.
- h.** A Project Report is additional to the installation manual, which represents the correct assembly manner of the system of IMS-Solar. The Purchaser must at all times act in conformity with the provisions of the installation manual and the Project Report. In addition, the applicable legislation and regulations must be observed at all times.

## 11. Privacy and data protection

- a.** By concluding the agreement the Purchaser agrees to the recording and saving by IMS-Solar of the Purchaser's data. The required personal data are depending on the parties involved but will contain at least the following data:
  - a) Name details of the Purchaser;
  - b) Address details of the Purchaser;
  - c) Contact details such as telephone number and/or email address;
  - d) Other data such as IBAN, Ch. of Comm. number and VAT data.
- b.** IMS-Solar uses the personal data of the Purchaser for the administrative records of the agreement and this personal data will not be shared with other parties unless this is necessary for administrative purposes and/or becomes required by law. IMS-Solar uses secured connections on its registered websites and email communication to safeguard the security of the personal data of the Purchaser.
- c.** IMS-Solar saves the personal data of the Purchaser for administrative purposes during the agreement and for as long as this is necessary for administrative records or required by law.

- d. The Purchaser will be entitled to request the Purchaser's personal data and can at all times request the removal of the data from the system of IMS-Solar, unless an ongoing agreement applies or the saving of the data is prescribed by law.

## **12. Applicable law and disputes**

- a. The law of the Netherlands applies to the agreement and all agreements ensuing therefrom.
- b. All disputes – including those that are only regarded by one of the parties as such – will be made pending at the court with competent jurisdiction of the Noord-Holland Court, location Alkmaar, all this with the exception of in the event of taking precautionary measures and the measures to keep these in effect.
- c. If, due to statutory provisions, IMS-Solar would not be entitled to submit the dispute to the court with competent jurisdiction, as referred to in this article, IMS-Solar will be free to submit the dispute to the court that would have jurisdiction to hear and determine the claim without the provision in this article.





Rudolf Dieselweg 14  
5928 RA Venlo  
The Netherlands  
+31(0)850 446 941  
[info@ims-solar.com](mailto:info@ims-solar.com)  
[www.ims-solar.com](http://www.ims-solar.com)