

## **GENERAL SALES AND DELIVERY TERMS AND CONDITIONS**

of StarPower Europe AG (hereinafter referred to as: SUPPLIER) with its registered office in 6593 Cadenazzo-ai Cioss, 11 – Switzerland filed with the Trade Register of Canton Ticino on 14.05.2014 under number CH 501.2.018.852-8.

### **Article 1 – General**

1.1 These General Terms and Conditions (hereinafter: Terms and Conditions) apply to all quotes, orders and/or agreements between SUPPLIER and the Customer, relating to sale and delivery of products and/or performance of services and the execution of these. Deviations from or changes to these Terms and Conditions must be confirmed in writing by SUPPLIER and apply only to the quote/order/agreement. If deliveries are subject to obligations relating to foreign trade and payments or to any other form of restrictions (i.e., Laws on Foreign Trade and Payments, Dual Use Regulations, War Arms Control Laws, (U.S.) export control laws/embargo laws or similar regulations), the Customer shall have sole responsibility for complying with all provisions and stipulations. Any required authorization will be obtained by the Customer.

1.2 As used below, "Customer" refers to any (legal) person to and for whom SUPPLIER supplies products and/or performs services, including his/its representatives, authorised agents, assignees, and heirs.

1.3 The general terms and conditions of business of customers shall not apply, even if the customers expressly request such in their orders.

1.4 If SUPPLIER has agreed in writing to the applicability of one or more deviating terms and conditions, these Terms and Conditions shall remain in full force for the rest.

### **Article 2 – Orders**

2.1 Any purchase order that the Customer wishes to place with the SUPPLIER shall be submitted by e-mail or telefax.

2.2 SUPPLIER is only bound vis-à-vis the Customer with regard to an order placed with SUPPLIER if and as soon as that order is confirmed in writing by SUPPLIER or if SUPPLIER has started executing that order. With regard to the aforementioned confirmation, SUPPLIER will send its written confirmation to customer within 15 days after receipt of the order for standard items. For non-standard items, SUPPLIER expressly reserves the right to determine the delivery date at a later time.

2.3 After an order has been placed, changes in the execution of the order desired by the Customer must be brought to SUPPLIER's attention by the Customer in writing and in a timely manner. Any change in the execution thereof made orally or by telephone, are not accepted.

2.4 Changes in an order placed by the Customer, of whatever nature, which entail increased costs than what could be counted on with regard to the price quotation originally provided by SUPPLIER are at the Customer's expense. If such changes result in decreased costs, the Customer may not derive any right whatsoever from this with regard to lowering the purchase price. SUPPLIER may, however, at its own decision approve that these changes will result in payment of a lower purchase price.

2.5 Changes made may result in SUPPLIER exceeding the delivery time indicated before the changes. This may not be invoked to SUPPLIER's detriment.

### **Article 3 – Quotes and price quotations**

3.1 All of SUPPLIER's quotes are without obligation unless the quote expressly states otherwise.

3.2 Descriptions and prices in quotes are made under reservation and represent only approximations. The Customer may not derive any right whatsoever from any possible mistake in a quote.

3.3 SUPPLIER's quotes are given based on information and specifications provided by the Customer. Quotes are based on production and delivery within normal timeframes and under normal circumstances.

3.4 Any figures, measurements, statements, descriptions, illustrations, photographs, drawings, or any other matters contained in the StarPower Europe's brochures, catalogues, price lists, or advertising literature, or any samples provided to Buyer by SUPPLIER are not guaranteed to be accurate and are intended merely to represent a general description or depiction of the Products and shall not form part of any agreement between the SUPPLIER and the Buyer, unless specified in writing.

### **Article 4 – Prices**

4.1 The price stated in the relevant price lists or offers shall be applicable. The prices are ex Works China (Incoterm 2020) and do not include transport costs, and VAT if not otherwise agreed upon. VAT is shown and calculated separately.

4.2 SUPPLIER is entitled to change the agreed price if changed market prices and/or price increases by suppliers or other developments, such as changes in raw material, material and labour costs, government measures, currency exchange rates, taxes, duties, levies etc., provide reason to do so. SUPPLIER shall however inform the Customer of any price increase as soon as possible in writing.

### **Article 5 –Delivery**

5.1 Notwithstanding Article 2.2, the delivery date shall be determined by SUPPLIER and the Customer jointly. If SUPPLIER states a delivery timeframe, this shall only represent an approximation and shall not constitute a guarantee.

5.2 SUPPLIER shall not be in default by only exceeding the delivery timeframe. If a delay occurs, for whatever reason, the delivery time shall be extended by the length of that delay.

5.3 Unless otherwise agreed in writing and not contrary to the provisions in Article 7 of these Terms and Conditions, products shall be considered delivered to the Customer in a legal sense from the time that these are put at the disposal of Customer at the place as agreed upon (Incoterms 2020).

5.4 SUPPLIER shall inform the Customer of the date of dispatch. The Customer is obliged to take receipt of the products on the date announced. If this obligation is not met, SUPPLIER may store the products in (or have them stored). The Customer shall be responsible for the costs associated with such storage.

5.5 SUPPLIER is entitled to deliver products in parts. Each partial delivery, including the delivery of products for a combined order, may be invoiced separately. In such a case, payment must be made in accordance with Article 6 of these Terms and Conditions.

### **Article 6 – Payment**

6.1 The Customer must pay SUPPLIER within thirty (30) days after the invoice date, unless otherwise agreed in writing.

6.2 Payment shall be considered to be on time when the amount due has been credited to the account designated by SUPPLIER with value date on or before the due date. Customer is in default of payment, without further reminder, if the payment has not been received within 30 days of the invoice date. From that moment, SUPPLIER will be entitled to charge default interests of 8% above the respective base interest rate, to accelerate maturity to undue or deferred payments and to hold all further deliveries immediately.

6.3 All judicial and extra judicial costs which SUPPLIER incurs as a result of the Customer not meeting his/its payment obligations shall be borne by the Customer and shall be calculated in accordance with the rules of the Swiss Law.

6.4 Payment by the Customer must be made solely in the currency in which the agreed prices have been stated, unless otherwise agreed in writing. The Customer bears any currency risk, or any costs arisen from payment in a wrong currency.

### **Article 7 – Retention of ownership**

7.1 Notwithstanding any delivery and the transfer of the risk, the delivered products remain the property of SUPPLIER until the Customer has completely met all his/its payment obligations under the agreement in question.

7.2 As long as full payment has not occurred, the Customer is not entitled to pledge the products to third parties, other than in connection with his/its normal business operations, or otherwise encumber them or fully or partly dispose of them to third parties. The Customer undertakes to cooperate – upon SUPPLIER's first request – in a pledge on behalf of SUPPLIER regarding payment obligations towards the Customer, that arise or will arise from the resale of products by the Customer.

7.3 The Customer does not have any right of retention with regard to any storage costs incurred by him/it, nor is the Customer entitled to set these costs off against what he/it owes to SUPPLIER. The Customer undertakes to treat and keep the products, which have been delivered under retention of ownership, with due care and in a way that they can be identified and recognised as the property of SUPPLIER.

7.4 If the Customer remains in default after a written demand by SUPPLIER with respect to any payment obligation in respect of products already delivered, SUPPLIER shall be entitled to remove the products delivered (or have them removed) from the Customer or his/its holders. The Customer hereby irrevocably grants permission to SUPPLIER to enter the places where the items are located. The Customer shall be responsible for the costs associated with such retrieval of the products.

7.5 The conditions as laid down in article 7.1 until 7.5 leave other rights of SUPPLIER unimpeded.

### **Article 8 – Claims**

8.1 Immediately after receiving the delivered products, the Customer is obliged to examine whether the products are in accordance with the agreement. This examination must be carried out before the products are applied by, or on behalf of, the customer. If, in the Customer's judgement, the delivered products are not in accordance with the agreement, the Customer must make a written objection, stating reasons, within thirty (30) days after receipt of the products. Any non-obvious defect must be notified in writing upon discovery without delay, but at the latest 14 days from discovery. If the Customer fails to notify the defect discovered in writing within this period, the Product/services provided shall be deemed to be accepted as free of defect.

The Customer shall allow SUPPLIER a reasonable examination of any notified defects and shall, without separate request, make available to SUPPLIER, free of charge, parts, all necessary technical information, in particular all test/process/load protocols and test reports. If the Customer fails to do so, any defect of the objects delivered shall be deemed as not notified and the objects delivered shall be deemed to be accepted as free of defect. If the Customer alters the Product in whatever way, which has not previously been approved by SUPPLIER or if the Customer performs any repair work without SUPPLIER's prior approval, the Customer shall lose its claims based on defects.

Notwithstanding the foregoing, SUPPLIER shall not in any case accept objections, which are made after a period of six (6) months, after SUPPLIER has sent the products.

8.2 If, with due observance of the provisions of Article 12.1, SUPPLIER determines that the objection is well founded, SUPPLIER shall only be required to repair at no cost or replace the (parts of the) products to which the objections relate, or to compensate the Customer, such as SUPPLIER's option.

#### **Article 11 – Return of delivered products.**

11.1 Products sent by SUPPLIER to the Customer may only be returned to SUPPLIER after written permission from SUPPLIER and under conditions to be set by SUPPLIER.

11.2 The Customer shall bear the costs of returning the products sent by SUPPLIER to the Customer, except for the costs of returning products as to which it has been established for SUPPLIER that these products contain mistakes and/or defects falling under the guarantee or for which SUPPLIER is liable.

#### **Article 12 – Standard Warranty**

12.1 The products shall be covered by SUPPLIER'S Standard Warranty terms and provisions stated in point 12.2.

12.2 The data code of each module will be considered as beginning of the warrant period that will extend for the next 24 months from the date indicated on the data code.

#### **Article 13 – Liability**

13.1 SUPPLIER's liability is limited to performance of the guarantee obligations described in Article 12 of these Terms and Conditions. Any more extensive or other liability for incorrect performance or other breaches of contract by SUPPLIER or for damage to the Customer or third parties, on whatever basis (except in the case of intentional acts or gross negligence), is expressly excluded.

#### **Article 14 – Intellectual and industrial property rights**

14.1 SUPPLIER retains all intellectual and industrial property rights with respect to quotes made by it, as well as with respect to drawings, software, descriptions, models, and the like produced or provided by it, as well as with respect to all information contained in or forming the basis for these.

14.2 The Customer guarantees that the items referred to in Article 14.1 shall not be reproduced, disclosed, stored, or otherwise used, except as necessary to execute the agreement and with SUPPLIER's written permission.

14.3 All designations, logos, labels, and the like, whether protected by intellectual or industrial property rights or not, which are found on, in or at the products delivered by SUPPLIER, may not be changed by the Customer, removed from the products, copied, or used for other products, except with SUPPLIER's permission.

#### **Article 15 – Provision of security**

15.1 If there is reason for SUPPLIER to suspect that the Customer will not be able to perform his obligations under the agreement, then the Customer shall be obliged at SUPPLIER's first request to provide sufficient security for the performance of all his/its obligations in respect of the agreements performed or still to be performed in whole or in part by SUPPLIER, in a manner to be indicated by SUPPLIER.

#### **Article 16 – Suspension, rescission, force majeure**

16.1 If the Customer in any way commits a breach of contract vis-à-vis SUPPLIER in respect of the performance of any obligation, as well as in the event of a request for suspension of payments, (temporary) suspension of payments, bankruptcy/involuntary liquidation petition, declaration or claim, bankruptcy/involuntary liquidation, liquidation or cessation of (part of) the business of the Other Party, SUPPLIER shall, without prejudice to the other rights which it has and without any obligation to pay compensation, be entitled, without a notice of default or judicial intervention: - to suspend the execution of the agreement until payment of all that which the Customer owes to SUPPLIER has been sufficiently secured; and/or - to suspend all of its own potential payment obligations; and/or - to rescind in whole or in part every agreement with the Customer; all of this without prejudice to the Customer's obligation to pay for products already delivered and/or services already performed, and without affecting SUPPLIER's other rights, including its rights to compensation.

16.2 In the event SUPPLIER is impeded from executing the agreement due to force majeure, SUPPLIER shall be entitled to suspend the execution of the agreement without judicial intervention or to rescind the agreement in whole or in part, without being obliged to pay any compensation.

16.3 There is an instance of force majeure in the case of a circumstance beyond SUPPLIER's control which results in performance of the agreement being permanently or temporarily impeded, as well as, insofar as not already included in this, the case of war, threat of war, civil war, riots, strikes, fire, and every other disruption in the business of SUPPLIER or its suppliers. There is also an instance of force majeure if a supplier from whom SUPPLIER purchases products with respect to the execution of the agreement with the Customer remains in default as to timely and/or proper delivery.

#### **Article 17 – Transfer of rights and obligations**

17.1 The Customer may not transfer his/its rights and/or obligations ensuing from any agreement with SUPPLIER to third parties or allow these to serve as security for third party claims, without SUPPLIER's written permission.

#### **Article 18 – Applicable law, competent court**

18.1 Swiss law governs these Terms and Conditions, as well as the legal relationships between SUPPLIER and the Customer.

18.2 Insofar as the law does not mandatory provide otherwise, the District Court in Zürich shall have exclusive jurisdiction in the first instance to hear disputes which may arise in connection with (the execution of) any agreement between SUPPLIER and the Customer, as well as disputes concerning (any and all articles of) these Terms and Conditions, also with regard to obtaining provisional relief.

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