

## General Terms and Conditions for the Supply of Goods

### 1. General

- 1.1 These conditions shall apply to business entities in terms of §§ 14, 310 para. 1 of the German Civil Code, public legal entities and public separate properties (Customer).
- 1.2 The supply of goods or services by Hybrid Port Energy is subject to these conditions. General terms and conditions of the Customer do not apply unless agreed in writing by both parties. Any order acceptance by Hybrid Port Energy does not imply the acceptance of general terms and conditions of the Customer even if Hybrid Port Energy does not explicitly reject their application.
- 1.3 Unless agreed otherwise, the contract shall be concluded by written confirmation of Hybrid Port Energy.
- 1.4 Hybrid Port Energy reserves any property and intellectual property rights in all drawings, samples, estimate of costs and other material or immaterial information including electronic data; such information shall not be disclosed to third parties and shall be returned without undue delay upon request or in case a contract is not awarded to Hybrid Port Energy.

### 2. Prices and Payments

- 2.1 Any offers are subject to confirmation unless the offer is expressly identified as being binding. Technical data, building specifications, performance characteristics etc. shall only be binding if they form part of a binding offer or if they are explicitly identified as being binding.
- 2.2 All prices are quoted net ex works including loading, but excluding packaging, carriage, unloading and installation. Respective statutory VAT to be added.
- 2.3 Unless agreed otherwise, the Customer shall pay the contract price to the account of Hybrid Port Energy without any deductions in installments as follows: 1/3 as advance payment upon receipt of order confirmation, 1/3 upon notification of Customer of readiness to dispatch main parts, and the remaining amount within one month after passing of risk (see Chapter 4). Drafts and checks will only be accepted after previous agreement and only on account of performance. Bank fees, discount charges, draft and other fees and costs incurred at payment as well as costs caused by payment in any other currency than Euro shall be for the account of the Customer.
- 2.4 The Customer's right to set off own claims are limited to cases where these rights of the Customer are undisputed or have become legally binding by court decision.

### 3. Delivery Dates and Delivery Periods, Force Majeure

- 3.1 Delivery dates and delivery periods are subject to the contractual agreement of the parties. The delivery period begins to run upon the occurrence of the later of either the receipt of the order confirmation by Hybrid Port Energy or clarification of all commercial and technical questions between the parties and fulfillment of all obligations of the Customer such as e.g. provision of all required public permits and certificates as well as other required documents or payment of agreed deposit.
- 3.2 If the delivery period is calculated in days, this shall mean business days in Germany, i.e. excluding Saturday, Sunday and public holidays.

- 3.3 Any agreed delivery dates or delivery periods are subject to orderly and timely delivery to Hybrid Port Energy by its sub-suppliers. Hybrid Port Energy shall notify the Customer of any anticipated delay as soon as possible.
- 3.4 Delivery dates and delivery periods are met, if - on or before expiry - the goods leave the premises of Hybrid Port Energy or notification of the readiness for dispatch is given. In case an acceptance of the goods is required, the date for acceptance by the Customer - except in case of a justified denial of acceptance - is material, alternatively the date of notification of the readiness for acceptance.
- 3.5 If the dispatch or acceptance is delayed for reasons the Customer is liable for, the Customer shall bear the cost resulting from such delay after one month following the notification of the readiness for dispatch or acceptance.
- 3.6 In case delivery dates or delivery periods are not met due to strikes or other events beyond the control of Hybrid Port Energy (force majeure), the delivery dates shall be postponed or the delivery periods shall be extended appropriately by the time the delivery is prevented due to such events. Hybrid Port Energy shall notify the Customer about the beginning and the end of such circumstances as soon as possible.
- 3.7 If a delivery date or a delivery period is exceeded by more than 180 business days due to events of force majeure, either of the parties shall be entitled to terminate the contract with regard to the goods and services that had not been effected yet. This shall also apply, if the delivery date or delivery period was initially postponed. In the event of termination, Hybrid Port Energy obligation to eventually reimburse advance payments does not include payment of interest. Any further claims of the Customer based on such delay are excluded.
- 3.8 The liability of Hybrid Port Energy for delays based on own fault is as per and subject to the terms in Chapter 9 of these general terms and conditions.

### 4. Passing of Risk, Acceptance

- 4.1 The risk of the goods shall pass to the Customer when the goods are handed over to the freight carrier or at the latest when the goods leave the premises of Hybrid Port Energy. This does also apply to any partial deliveries or in cases where Hybrid Port Energy has taken over additional services, such as delivery, setting up or installation of the goods. If an acceptance of the goods is required, risk passes upon acceptance. Acceptance shall be effected on the agreed date, alternatively following notification of Hybrid Port Energy of the readiness for acceptance. The Customer is not entitled to refuse acceptance of the goods by reason of minor defects or non-conformities.
- 4.2 If the dispatch or acceptance of the goods is delayed due to reasons Hybrid Port Energy is not responsible for, the risk of the goods shall pass to the Customer upon notification of the readiness for dispatch or acceptance. Upon Customer's request Hybrid Port Energy shall take out insurance. Any insurance premiums are for Customer's account.
- 4.3 If despite notification of the readiness for dispatch or acceptance the goods are not collected or accepted by Customer Hybrid Port Energy shall be entitled to store the goods at its discretion for the account and risk of the Customer and Hybrid Port Energy may invoice the goods as delivered.

4.4 Hybrid Port Energy shall be entitled to partial deliveries as far as such partial deliveries are acceptable to the Customer.

## 5. Retention of Title

5.1 Hybrid Port Energy reserves title to the goods until receipt of full and final payment under the respective contract.

5.2 For the period of such retention of title and until full and final payment to Hybrid Port Energy the Customer shall insure the goods against damage and loss for its own account. The terms of such insurance shall provide for assignment of the benefits and rights under the insurance to Hybrid Port Energy. Upon request of Hybrid Port Energy the Customer shall provide a copy of the insurance certificate and adequate evidence for the payment of the insurance premium.

5.3 The Customer shall be entitled to resell the goods in the course of its usual business operations. Herewith, the Customer assigns to Hybrid Port Energy its rights out of such resale as security for any payment obligations vis-à-vis Hybrid Port Energy and Hybrid Port Energy accepts such assignment. The assignment is limited to the amount of the existing payment obligations. Upon request of Hybrid Port Energy, the Customer shall disclose the assignment to its buyers. The Customer shall be entitled to collect payment for the resale of the goods on behalf of Hybrid Port Energy. The right of Hybrid Port Energy to collect payment of the goods resold by Customer is explicitly reserved. Upon request of Hybrid Port Energy the Customer shall provide Hybrid Port Energy with all necessary information and shall hand over all documents required for such collection of payment.

5.4 Any processing of the goods to which Hybrid Port Energy has reserved the title or combination of such goods with other goods shall be for the benefit of Hybrid Port Energy. Hybrid Port Energy shall become joint owner of the resulting goods in proportion to the value of the goods.

5.5 Insofar as the value of the abovementioned securities exceed the secured claims by more than ten (10) percent, Hybrid Port Energy will release securities of its choice and in the exceeding amount upon the Customer's request.

5.6 In case of a breach of contract by the Customer, particularly in case of late or delayed payment, Hybrid Port Energy, following a reminder, shall be entitled to take back the goods and the Customer shall be obliged to immediately return and hand over the goods to Hybrid Port Energy. For purpose of taking repossession of the goods Hybrid Port Energy shall be entitled to enter the premises of the Customer. The enforcement of Hybrid Port Energy rights in regard of the retention of title to the goods or the attachment of the goods do not require a prior termination of this contract.

5.7 The Customer shall not be entitled to pledge or to transfer the goods by way of security. The Customer shall immediately notify Hybrid Port Energy of any seizure or any other disposition by a third party in regard of the goods.

## 6. Warranty

6.1 Hybrid Port Energy warrants the goods against defects in the quality of material and workmanship in accordance with the provisions of this chapter 6 by exclusion of any further claims, notwithstanding the provisions of Chapter 9.

6.2 Technical specifications, in particular details with regard to performance characteristics, shall not be deemed guaranteed by Hybrid Port Energy unless expressly agreed so in writing by Hybrid Port Energy.

6.3 Any defects in the goods for which Hybrid Port Energy is responsible shall be remedied by Hybrid Port Energy at Hybrid Port Energy' choice either by – if necessary repeated – repair or by delivery of new parts. The number of repeated remedying trials to be accepted by the Customer shall depend on the circumstances of each respective case and the principles of good faith. Upon discovery of any defects in the goods, the Customer shall immediately notify Hybrid Port Energy thereof in writing without undue delay. Upon request of Hybrid Port Energy, the title to replaced parts shall be transferred to Hybrid Port Energy. The Customer's right to rescind from the contract or to reduce the contract price in case the abovementioned remedial action fails remains unaffected.

6.4 In case defects have to be remedied abroad, Hybrid Port Energy' liability to bear the cost and expenses for remedial actions shall be limited to the cost and expenses that would have been incurred, if such remedial actions had been performed at the premises of Hybrid Port Energy. Any additional cost and expenses for air or express freight shall be for the Customer's account.

6.5 The warranty period for the goods shall be individually agreed by the parties. Unless agreed otherwise, Hybrid Port Energy shall warrant the goods for twelve (12) months from the passing of risk as per Chapter 4 above. In case of death, physical injury or harm to health as well as damages caused by gross negligence or intention the statutory limitation periods do apply (§ 309 No. 7a, b of the German Civil Code).

6.6 Hybrid Port Energy warrants any remedial work or replaced parts to the extent it warrants the original goods provided that the remedial actions have been performed or arranged by Hybrid Port Energy. The warranty period for such remedial work or replaced parts is six (6) months from the completion of the remedial work or the delivery of new parts, but in any case not exceeding an overall warranty period of eighteen (18) months, beginning with the initial handing over of the goods to the Customer or the freight carrier or acceptance of the goods respectively.

6.7 For the performance of any necessary remedial actions, the Customer shall allow for the required time and opportunity for such remedial actions and shall on its own account provide for support by its employees, machines and facilities and shall perform supporting work. Any additional cost and expenses for overtime work shall be for the Customer's account.

6.8 Hybrid Port Energy shall not be liable to remedy defects originating from normal wear and tear, defects caused by inadequate storage, use or exposure, chemical or electrical influences or other circumstances occurring after passing of risk to the Customer and for which Hybrid Port Energy is not liable for.

6.9 Warranty rights of the Customer are excluded, if

- a) the erection, installation or commissioning of the goods by the Customer or a third party has not been performed in accordance with the instructions of Hybrid Port Energy or for other reasons has been performed inappropriately;
- b) the Customer or a third party do not follow the instructions of Hybrid Port Energy for the handling, maintenance and inspection of the goods;

- c) the Customer or any third party make any changes to or perform any repairs of the goods without the prior written consent or authorization of Hybrid Port Energy;
- d) spare parts not provided or authorized by Hybrid Port Energy are used;
- e) defects in the goods are caused by materials or parts delivered by the Customer or following construction prescriptions or instructions provided by the Customer.

## 7. Right of Cancellation of Customer

7.1 The Customer shall only be entitled to cancel this contract by notice in writing, if

- a) the performance of the obligations of Hybrid Port Energy under this contract definitely have become impossible. In case of partial impossibility, the Customer shall only be entitled to cancellation of the entire contract, if the Customer can prove that the partial delivery is of no interest to the Customer. Otherwise, the Customer shall be obliged to pay the respective contract price for the partial delivery. In case the impossibility occurs during Customer's delay in accepting the goods or the impossibility is caused by the sole or predominant default of the Customer, the Customer shall remain bound by its obligations under the contract;
- b) Hybrid Port Energy does not meet the contractual delivery dates or periods, the Customer has set a reasonable additional time limit in writing and this additional time limit was exceeded by Hybrid Port Energy for other reasons than stipulated in Chapter 3.6. The Customer shall bear the burden of proof for the exceeding of the contractual delivery dates and periods and the exceeding of the additional time limit;
- c) the Customer in writing has set a reasonable time limit for remedying a defect Hybrid Port Energy is liable for in accordance with Chapter 6 and such time limit is exceeded effectless for reasons for that Hybrid Port Energy is responsible for.

7.2 In case of Chapter 7.1.b) – c) the Customer shall only be entitled to cancel the contract, if Hybrid Port Energy did not properly perform its contractual obligations and this failure to comply with the contractual obligations constitutes a major non-conformity.

7.3 Otherwise Chapter 9.2 does apply.

## 8. Right of Cancellation of Hybrid Port Energy

8.1 Hybrid Port Energy shall be entitled to cancel the contract, in whole or in part, without setting of a time limit, if after having concluded the contract it becomes apparent that the performance of Customer's obligations under this contract are endangered because of lacking capacity, for example, if insolvency proceedings on the assets of the Customer have been commenced.

## 9. Liability

9.1 If the goods are not fit for the contractually foreseen purpose due to a fault of Hybrid Port Energy as a result of incorrect or failing consultancy, incorrect instructions for operation or maintenance or default of other contractual accessory obligations of Hybrid Port Energy, the provisions of Chapter 6 and 9 shall apply to the exclusion of any further claims of the Customer.

9.2 For damages other than damages to the goods, Hybrid Port Energy shall – for what ever legal reason – only be liable

- (a) in case of intention or gross negligence;
- (b) in case of culpable injury of life, physical injury or harm to health;
- (c) in case of defects that have been fraudulently concealed or the absence of which has been guaranteed by Hybrid Port Energy;
- (d) in case of breach of material contractual obligations;
- (e) in cases of product liability for physical injuries or damages to property according to the Product Liability Act (*Produkthaftungsgesetz*).

9.3 In case of a contract with a ship-owner or agent on goods that are deployed on ships as well as in case of performance of services on board of ships, Hybrid Port Energy shall not be liable for gross negligence with regard to the duty to exercise proper care or contractual accessory obligations of ordinary vicarious agents.

9.4 In cases of negligent breach of material contractual obligations as per Chapter 9.2.(d) above, Hybrid Port Energy' liability shall be limited to the typical and reasonably foreseeable damage.

9.5 In case of delay in delivery Hybrid Port Energy, after a grace period of one (1) week, is obliged to pay liquidated damages to the Customer in an amount equal to one (1) percent of the contract price of the delayed goods for each full week of delay, but in any case not exceeding five (5) percent of the contract price of the delayed goods. Any further claims of the Customer against Hybrid Port Energy due to delay in delivery are excluded.

9.6 Any further liability of Hybrid Port Energy towards the Customer is excluded.

## 10. Assignment of Rights and Obligations

The Customer shall not be entitled to any assignment of its contractual rights and obligations without prior written approval of Hybrid Port Energy.

## 11. Statute of Limitations

In the absence of any explicit deviating agreement of the parties, all claims of the Customer – based on whatever legal reason – are subject to a limitation period of twelve (12) months. Damage claims according to Chapter 9.2 a-e shall be subject to the statutory limitation periods.

## 12. Venue, Applicable Law, Severability Clause

12.1 The venue for all disputes arising out of or in connection with this contract shall be Hamburg, Germany. Hybrid Port Energy shall also be entitled to file any action at the place of business of the Customer. Any exclusive legal venues required by law shall remain unaffected.

12.2 This contract and the legal relationship between Hybrid Port Energy and the Customer shall be subject to the laws of the Federal Republic of Germany, exclusively. The application of the Convention on International Sales of Goods (CISG) is excluded.

12.3 If a provision of these general terms or any part thereof is invalid, the other provisions herein shall remain unaffected. The parties shall replace any invalid provision by a valid provision which corresponds as closely as possible to the original intention of the parties.

### **13. Passage on the German Minimum Wage Act (MiLoG)**

Furthermore, in the provision of services the Contractor shall meet all of the obligations incumbent upon him as required by the German Minimum Wage Act (MiLoG), specifically punctual and regular payment of remuneration to his employees working in Germany in an amount equivalent to or above the minimum wage pursuant to § 1 MiLoG (and the Transitional provision pursuant to § 24 MiLoG). In the event of Customer liability pursuant to § 13 MiLoG or the introduction of a procedure to impose fines pursuant to § 21 paragraph 2 MiLoG, the Contractor shall indemnify the Customer against all related costs (including reasonable legal fees and any fines imposed).