



General Terms and Conditions

Solar Data Systems, Inc. 12.2020

1. General

1. These General Terms and Conditions (“GTC”) apply to all deliveries made by and services rendered by Solar Data Systems, Inc., a Connecticut corporation (“SDSI”). These GTC apply to all sales of goods by SDSI, regardless of whether SDSI is the manufacturer of such goods or is acting as a reseller of goods manufactured by a third party. These GTC apply to all services provided by SDSI in connection with these sales, unless a separate service agreement has been made between SDSI and the customer.

2. These GTC prevail over any conflicting terms and conditions in any purchase order, acknowledgement form or other instrument submitted by the customer in connection with any order, and any such additional or different term or condition shall be deemed objected to by SDSI without need of any further or additional notice of objection and such additional or different terms shall not in any way be binding upon SDSI.

3. These GTC (in the version applicable at the time when the respective order is placed) apply to all business relations between the customer and SDSI without SDSI having to refer to the GTC again in each individual case.

4. The brochures and documents available for download from the SDSI website are for informational purposes only. Offers, price lists, catalogs, technical documentation (e.g. drawings, plans, calculations, references to standards), other product descriptions or documents and other information provided by SDSI either electronically or otherwise are non-binding and subject to change without notice.

2. Customer Orders

1. The customer shall order goods in accordance with these GTC. Orders for the purchase of goods must be submitted to SDSI by email, mail or fax. Each order shall specify the product/services and quantity. All Sales Orders shall identify the applicable quote, if a quote has been provided. All orders shall be subject to acceptance by SDSI. Packing slips or invoices issued by SDSI in connection with an order constitute acceptance in the absence of a written order confirmation.
3. The written order confirmation from SDSI shall control as to the scope of the delivery and services.
4. The customer may not cancel or change any order without SDSI's prior written consent. Until SDSI agrees to the changes requested by customer, both parties shall abide by the original order.

3. Prices and Terms of Payment

1. All prices are listed in United States Dollar (USD) and do not include the cost of packaging, shipping, insurance or any required federal, state or local sales or other taxes, duties, export or custom charges, VAT charges, brokerage or other fees. Any additional costs for packaging and special packaging requested by the customer will be invoiced separately. The customer shall be solely responsible for the disposal of any packaging.
2. Unless otherwise agreed, delivery is to be made in accordance with Incoterms 2010 EXW - Ex Works: Bethel, Connecticut, USA
3. If the contract includes the carriage of goods, the risks of accidental loss and/or of deterioration and the risk of delay are transferred to the customer when the goods are dispatched or handed over to the representative of the shipping company or at the place of dispatch. If the contract includes the carriage of goods or any applicable minimum order quantity is not fulfilled, the customer also bears the transport costs ex warehouse and the costs of any transport insurance requested by the customer.
4. All taxes, custom duties, fees as well as import and export levies incurred in conjunction with the shipment are borne by the customer.
5. Invoices must be paid by personal or business checks, major credit cards, wire transfers or bank ACH payments. All purchases that are not prepaid or charged to a credit card prior to shipment must be paid in full within thirty (30) days of the invoice date.

6. Any amounts not paid when due shall be subject to interest charges in the amount of 1% per month (12%) annually, payable monthly. In addition, SDSI may demand the return of the delivered goods, and to cancel or suspend any further deliveries or services. SDSI reserves the right to claim higher damages due to delay. SDSI may revoke credit terms without notice in the case of late payment.
7. SDSI reserves the right to require payment in advance of shipping or cash on delivery for orders from new customers or from customers who have had delinquent payments in the past. SDSI reserves the right, even in on-going business relationship, to require advance payment for a delivery in whole or in part at any time. SDSI will notify the customer of such payment requirement with the order confirmation.
8. The customer shall have no right of setoff or withholding, and no deduction of amount due from the customer to SDSI shall be made without SDSI's prior express written approval.
9. If SDSI concludes, in its reasonable discretion, that SDSI's right to receive payment is at risk due to a lack of ability to perform (e.g. in the event of non-payment by the customer, as well as filing or opening a bankruptcy or insolvency proceedings over the assets of the customer), outstanding invoices shall be due and payable immediately. Furthermore, SDSI is then entitled to refuse service or to cancel the contract.
10. Customers with invoices that remain outstanding for more than thirty-five (35) days after the invoice date are subject to have their monitoring services suspended, if applicable, until SDSI receives payment in full.

4. Delivery and Service Lead Times

1. The estimated ship date shall be stated by SDSI upon order confirmation. All ship dates are approximate and SDSI shall not be responsible to customer or any other party for any delay in the shipment of goods. Delivery dates and delivery periods are deemed met if the goods have left the warehouse or if the customer has been informed that the goods are ready to be shipped.
2. In the event that SDSI incurs any additional shipping charges due to the customer's act or omission, customer shall be liable for payment of same.
3. SDSI shall not be liable for any failure or delay in performance of its obligations under these GTC if such failure or delay is on account of causes beyond its control, including:
 - (1) Force majeure, e.g. mobilization, war, terrorist acts, riot, fires, floods, inclement weather or other acts of God;
 - (2) similar events such as strikes, lock-outs, government intervention, malware or other attacks from third-parties to SDSI's IT infrastructures;

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(3) Obstacles due to US and other applicable national, EU or international regulations of foreign trade law or other unforeseeable extraordinary circumstances outside SDSI's control;

(4) Late or improper delivery to SDSI; – even if they occur at SDSI's suppliers or their respective subcontractors. In that event, SDSI is entitled to postpone delivery or service for the duration of the delay plus appropriate lead time. In addition, SDSI is also entitled to withdraw from the contract in whole or in part and SDSI will refund any payments already made by the customer. If the delay of service and delivery lasts more than three months, the customer is entitled to withdraw the unfulfilled portion of the order. In the event that the delivery period is extended or that SDSI is released from the obligation to deliver, the customer is not entitled to damages relating to such delay or cancellation.

SDSI shall use reasonable efforts to notify the customer of the occurrence of such event within a reasonable time after the occurrence.

4. SDSI reserves the right to carry out partial shipments.

5. Customer Responsibilities

1. The customer is required to inform SDSI of any relevant national laws, regulations, administrative regulations and any other relevant rules in a timely fashion and to obtain all necessary permits in time from the responsible authorities.

2. The customer is required to support SDSI in obtaining relevant information and to make all of their technical documents, calculations and other information that is required for execution of the order available to SDSI. The customer is solely responsible for ensuring this information is complete and correct.

3. If Products delivered do not correspond in quantity, type, or price to those itemized in the shipping invoice or documentation, the customer shall so notify SDSI within ten (10) days after receipt.

4. If the customer intends to export or transport the goods to a country or territory against which the United Nations, the European Union or the United States have imposed or enforced an embargo or other export or re-export restrictions or to use them for such a country or territory, the customer shall notify SDSI in writing and obtain its consent prior to exporting or transporting the goods. In the event that the delivered goods are resold by the customer, the customer shall ensure that these obligations are passed on to the end customer who receives the delivered goods. In the event customer fails to obtain SDSI's written consent prior to exporting or transporting the goods, SDSI is entitled to terminate the contract with immediate effect and the customer shall indemnify SDSI in full for any damages and expenses caused by customer's acts or omissions.

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4. In the event customer exports the goods, the customer is solely responsible for compliance with relevant national and international export regulations.

5. Deliveries to the customer are always subject to national or international regulations of foreign trade law, any embargo, or other legal prohibitions.

6. Return Policy

1. All product return requests are subject to those terms and conditions outlined in the SDSI's Manufacturer's Limited Warranty and Return and Replacement Policy.

7. Intellectual Property

1. SDSI reserves all rights to the plans, drawings, technical documents, and software (also software included with hardware). The customer acknowledges these rights. SDSI grants the customer a non-exclusive right to use the delivered software and accompanying documentation exclusively for the operation of the intended hardware. The use of the product - with which the software was sold - on more than one system is prohibited. The right of use is limited to the agreed period of time stated in the order confirmation; in the absence of such an order confirmation, the right of use is limited to the service life of the associated hardware.

2. The customer is not entitled to copy, reproduce, modify, complement, compile or recompile the software in whole or in part.

3. The provisions above also apply to any modifications or supplements made to the software or accompanying documentation.

4. If the delivered items are transferred, sold or resold to a third party by the customer, the customer is to impose the provisions and limitations above upon the third-party.

8. Limited Warranty

1. SDSI makes no warranties or representations to customer or any other person with respect to the goods except as set forth in SDSI's Manufacturer's Limited Warranty accompanying the goods ("Limited Warranty"), the terms of which are incorporated by reference. All sales to the customer will include and be subject to

SDSI's standard Limited Warranty, warranty disclaimers and limitations on liability in effect for the goods at the time of the shipment to customer, unless expressly otherwise agreed to in writing in a separate document signed by an authorized representative of SDSI and referencing these GTC and the Limited Warranty. SDSI reserves the right to change any of the terms of the Limited Warranty at any time, without notice and without liability to customer or any other person.

2. THE LIMITED WARRANTY REFERRED TO IN THIS SECTION IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, THAT SDSI MAKES WITH RESPECT TO THE GOODS. SDSI SPECIFICALLY DISCLAIMS ALL OTHER IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. Purchase Money Security Interest

1. SDSI reserves a purchase money security interest in all goods sold pursuant to these GTC and proceeds thereof until payment in full is made for all goods and services provided in connection with the order. The customer agrees to execute any financing statement requested by SDSI to perfect its security interest in the goods.

2. The goods subject to the purchase money security interest may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The customer is obligated to inform SDSI immediately of any seizure of the product by any third party, an application of insolvency proceedings, and any event that may result in possible damages to or the destruction of the product. The customer is required to inform SDSI immediately of a change in ownership of the product or of a change of address.

3. In case the customer is in breach of these GTC SDSI is entitled to withdraw from the contract and to demand the return of the goods.

4. The customer is entitled to resell the goods and/or to installed them at the end customers. In this case the following applies:

a) The customer herewith assigns to SDSI all accounts receivable from a third-party which accrue through the resale to the extent of the invoice sum. SDSI accepts this assignment. The obligations of the customer referred to in paragraph 2 also apply in consideration of the assigned claim.

b) After the assignment, the customer is authorized to recover the outstanding account. SDSI agrees to refrain from enforcing its purchase money security interest as long as the customer fulfills its payment obligations to SDSI.

10. Indemnity for Infringement.

1. SDSI is obliged to render the delivery free of any intellectual property rights and copyrights of third-parties (“intellectual property rights”) solely in the country of the place of delivery. SDSI agrees to defend, indemnify and hold harmless the customer from and against any and all claims brought or alleged by a third party that the goods sold to the customer pursuant to these GTC infringe any U.S. patent, trademark or copyright, provided that the customer immediately informs SDSI in writing about claims asserted by third-parties, refuses to acknowledge an infringement, and SDSI is given complete control of the defense and settlement of the claim. The customer shall fully cooperate with SDSI, its insurance company, and its legal counsel in defense of such claims.
2. If the use or sale of any of the goods is enjoined as a result of a claim, SDSI shall, at its option, either obtain on behalf of the customer a right of use for the goods, substitute an equivalent product reasonably acceptable to customer, or modify the goods such that the intellectual property right is not infringed. If SDSI is not able to do so, SDSI shall refund the customer the original purchase price of the goods.
3. Notwithstanding anything else in these GTC to the contrary, the indemnity contained in this §10 shall not apply or cover any claims based, in whole or in part, upon any infringement or alleged infringement of any patent, trademark or copyright resulting from the alteration of any goods by the customer or any customer representative, or the combination of any goods with any other products.
3. In addition, the indemnity contained in this §10 shall not apply to claims to the extent the intellectual property rights infringement was caused by special standards stipulated by the customer, by use not foreseeable by SDSI or by the fact that the goods were used in conjunction with products not delivered by SDSI.
4. The indemnity contained in this §10 shall not cover any claims in which customer fails to provide SDSI with notice of the claim where such lack of notice prejudices the defense of the claim.
5. THIS §10 STATES THE ENTIRE OBLIGATION OF SDSI AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY INFRINGEMENT CLAIM FOR GOODS SOLD PURSUANT TO THESE GTC.

11. Statute of Limitations

Any action for breach of these GTC or any other claims arising out of these GTC or the sale of goods from SDSI to customer must be commenced within one year of the date of the written order confirmation as described in §2.

12 Limitation of Liability

IN NO EVENT SHALL SDSI BE LIABLE TO CUSTOMER IN TORT, CONTRACT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, RELIANCE, STATUTORY, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, LOSS OF REVENUES, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. THE LIABILITY OF SDSI, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER UNDER THESE GTC, SHALL NOT BE GREATER THAN THE ACTUAL PURCHASE PRICE OF THE GOODS WITH RESPECT TO WHICH THE CLAIM IS MADE.

13. Place of Performance, Jurisdiction and Applicable Law

1. These GTC shall be governed by the laws of the State of Connecticut without giving effect to conflict of laws principles and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG, 11 April 1980).
2. Any suit brought hereon shall be brought in the state or federal courts sitting in Fairfield County, Connecticut, the parties hereto hereby waiving any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have personal jurisdiction over it, and agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner specified by law.
3. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE GTC.

14. Data Protection

SDSI collects and uses data according to SDSI's Privacy Policy, the terms of which are incorporated by reference.

15. Contract Language, Partial Nullity and Written Form

1. If any provisions of these GTC are declared by any court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining provisions remains unaffected. If such invalidity or unenforceability is due to the court's determination that the provision's scope is excessively broad or restrictive under applicable law then in effect, then the parties jointly request that such provision be construed by modifying its scope so as to be enforceable to the fullest extent compatible with applicable law then in effect.
2. SDSI shall have the right to modify these GTC at any time and from time to time.
3. All notices from the customer relating to these GTC or any order are to be submitted in writing and sent to: Solar Data Systems Inc., 23 Francis J Clarke Circle, Ste 4A, Bethel, CT 06801, USA.