

General terms and conditions Solarpraxis Engineering GmbH

Standard terms and conditions for engineering services for use in business dealings with companies (valid from 1 January 2014)

1. Scope, documents, and scope of services to be rendered

1.1 These terms and conditions for services shall apply to all contracts between Solarpraxis Engineering GmbH ("Solarpraxis") and its clients in connection with consulting jobs, expert's reports, engineering services, and similar services, unless expressly agreed upon differently in writing or required differently by mandatory statutory provisions.

1.2 Subject matter of the contract is the agreed-upon consulting service, engineering service, or similar service, but not however a specific resulting outcome of the performance by Solarpraxis. The performance of Solarpraxis is completed with the rendering of the services, regardless of whether or when any conclusions or recommendations detailed in the expert's reports or services are implemented by the client or not.

1.3 Solarpraxis documents that are part of any potential contract offer, such as for example illustrations, technical drawings, cost estimates, specifications of dimensions and weights, are only approximately definitive, unless expressly referred to as binding. Solarpraxis reserves rights of ownership and copyright for these documents. These documents must not be made accessible to third parties and must only be utilized within the context of the contract. If a contract is not awarded, technical drawings and other documents including any generated copies are to be returned to Solarpraxis without delay.

1.4 The scope of the goods and services to be provided is detailed in the written order confirmation from Solarpraxis; the contract will only comprise the goods and services contained therein. Changes to the execution that result in technical improvements without any increase in price are permissible.

2. Pricing

In the absence of any statement to the contrary, prices stated in the order confirmation are net prices and do not include the statutory turnover tax, customs duties, or charges of a similar nature. If the price is calculated to include charges or fees and if these should increase after the conclusion of the agreement, Solarpraxis shall be entitled to charge the added costs to the client. All other agreed-upon stipulations remain in effect.

3. Payment and transfer of ownership

3.1 Payments are to be made without any deductions in accordance with the agreed-upon terms of payment. In the absence of terms of payment, payment of the agreed-upon price is due immediately upon receipt of the invoice and shall be paid without deduction. The time to be considered relevant in judging the timeliness of payment is the time when the funds are credited to the Solarpraxis account.

3.2 Title and property in the object of performance only pass to the client once all payments have been received by Solarpraxis.

3.3 Withholding of payments by the client on account of asserted counterclaims and any offsetting against such is only permissible if Solarpraxis has recognized such claims or if such claims have been declared legally enforceable.

3.4 If the client is in arrears with payments, Solarpraxis may postpone the fulfillment of its own obligation until the overdue payments have been received. In all cases of delayed payments by the client, Solarpraxis shall be entitled to demand interest on arrears at the statutory rate. The assertion of claims for further damages remains unaffected.

3.5 In the event that reasonable doubt arises with regard to the client's solvency or willingness to pay, in particular because of non-compliance with an obligation to pay or because of a subsequent deterioration of the client's economic condition, Solarpraxis shall be entitled to demand advance payments or the furnishing of security. If the client does not comply with this request after an adequate grace period has been set, Solarpraxis shall be entitled to terminate the agreement with good cause and with immediate effect.

3.6 All taxes, fees, and other charges arising in connection with the services outside the Federal Republic of Germany shall be borne by the client. If any taxes, fees, or other charges related to the discharge of this delivery are charged to Solarpraxis by the public authorities of the client, then the client shall indemnify Solarpraxis.

4. Time of performance

4.1 Solarpraxis shall to the best of its abilities attempt to meet all announced performance times, whereby the deadlines – unless expressly stated differently – are only non-binding estimated values. A binding completion date for the rendering of services must be expressly agreed-upon in writing.

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4.2 Meeting any existing performance deadlines requires the timely receipt of all documents to be made available by the client, in particular of all plans and technical drawings, as well as fulfillment of the agreed-upon payment terms and the compliance with all other obligations. If these prerequisites are not met, the time of performance shall be extended by a commensurate degree.

4.3 Labour disputes, in particular strikes and lockouts as well as unforeseen circumstances that are outside of the realm of influence of Solarpraxis, such as war, civil unrest, or delays of official permits, shall extend the time of performance by a reasonable degree. The above-mentioned circumstances are outside of Solarpraxis' scope of liability even if they occur during an already existing delay.

4.4 In the event that any performance deadlines are missed for reasons that are within the scope of Solarpraxis' responsibility, and if the delayed performance has demonstrably caused losses for the client, then any further claims relating to the delay are subject to the stipulations of clause 9.

5. Provisions by the client

5.1 The client shall make available to Solarpraxis all information that Solarpraxis may reasonably require for the performance of its obligations. Upon completion of the services, Solarpraxis shall return to the client a collection of all documents created during the course of the commission for archiving purposes.

5.2 In the event that certain services are to be provided at the client's location, the client shall make available to Solarpraxis any required infrastructure, duty stations, and operating resources as well as unhindered admittance and access, including to construction sites, in order to allow Solarpraxis the unhindered performance of its services. If required, the client shall make available to Solarpraxis a central document management system. Solarpraxis shall comply with any instructions received from the client regarding safety regulations and occupational safety on constructions sites.

5.3 No remuneration for the services provided by the client is agreed upon.

6. Rendering and completion of services by Solarpraxis

6.1 Unless agreed upon differently, all goods and services are EXW Berlin (INCOTERMS 2010).

6.2 The project language for Solarpraxis services is German. All documents and drawings shall be delivered in the German language. Translations into other languages are to be agreed upon in writing for each respective case.

6.3 Solarpraxis and the client each shall name contact persons for conducting each commission, who are authorized to issue binding statements. At regular intervals, Solarpraxis and the client shall conduct discussions in order to optimize their cooperation and to coordinate resource requirements as early as possible.

6.4 Solarpraxis shall put only qualified and specialized personnel (employees as well as freelance personnel of Solarpraxis) in charge of providing the services. Unless stipulated differently in writing, the client is not entitled to demand that the services be provided by particular individuals or employees.

6.5 In the absence of any different agreements, the regular daily deployment time of personnel shall be eight hours. Upon request by the client, Solarpraxis will – for a limited time period – make available additional personnel or offer longer daily deployment times, in order to meet the interests of the client to a satisfactory degree. In this case, the particular conditions and additional remuneration shall be stipulated separately.

6.6 Solarpraxis may call upon qualified subcontractors for the rendering of the services. In this case Solarpraxis shall ensure that only qualified personnel are deployed. The deployment of subcontractors does not affect the responsibilities of Solarpraxis.

7. Scope of services to be rendered; regulations and statutes

7.1 If additional costs arise for Solarpraxis due to incorrect or incomplete information or as a result of hindered access or other circumstances, for which Solarpraxis does not bear any responsibility, Solarpraxis shall be entitled to reimbursement of these additional expenses and possibly to a corresponding adjustment of the time schedule for rendering the affected services of the respective commission.

7.2 If the client submits a change of services to be rendered, Solarpraxis shall within 7 days submit an offer for the implementation of the desired changes of services to be rendered. If Solarpraxis submits a change in rendered services, it shall already at the time of the submission of the change in rendered services list the changes to the existing contractual agreement that would be necessary in case of the implementation of the changes. The agreed-upon cost rates for calculating the added costs associated with a change in rendered services shall be stipulated by mutual agreement in accordance with the compensation provided herein. The client shall provide a decision in writing on whether to proceed or not within 5 days from the receipt of an offer or a change in rendered services.

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7.3 Solarpraxis ensures that its services are in compliance with all relevant laws, rules, regulations, and standards at the time of the respective commission. In the event that changes are implemented after the order placement, Solarpraxis and the client shall come to a mutual agreement about necessary changes to the affected services.

7.4 In as far as changes of the abovementioned nature affect the time schedule of the commission, the time schedule shall be adapted in a mutually agreeable manner. If necessary, Solarpraxis shall present possible accelerating measures along with any added expenses required to implement them.

8. Liability for defects

8.1 Solarpraxis warrants that it will render its services in accordance with the accepted state of technology at the time of order placement and that it will render these services with the due care and diligence of a professional engineering services firm in the field of "renewable energy".

8.2 Apparent defects must be reported to Solarpraxis by the client in writing immediately, but no later than within two weeks after receipt of the services; hidden defects must be reported immediately after their discovery. If the client fails to submit this written notice, all claims related to these defects are excluded.

8.3 Defective services shall be reworked within a reasonable time period at Solarpraxis' expense. If the client does not provide the necessary time and opportunity to perform the rectification of defects, Solarpraxis shall be exempted from liability for any consequences arising from this.

8.4 In the event that the rectification of defects fails, the client may demand – allowing for exceptional special cases considered by the laws – a reduction of the fee or at their choice a rescission of contract. In all other cases a right to reduction of fee is excluded.

8.5 Liability for defects is limited to claims that are asserted within 18 months of the rendering of the respective services. With respect to reworked or replaced goods and services, liability shall be limited to defects for which a complaint has been filed in writing within 24 months of the start of the original time limit. Upon expiration of the abovementioned time limits all claims of the client will fall under the statute of limitations. Claims for damages are subject to the statutory time limits.

9. Joint and several liability

9.1 Claims for damages by the client that are based upon ordinary negligent violations of the contractual, pre-contractual, post-contractual, or statutory obligations of Solarpraxis are excluded regardless of the legal basis or the nature or extent of the arisen damages. In the event of culpable fundamental violation of contractual obligations, Solarpraxis shall be liable even in case of ordinary negligence, however liability shall be limited to the damage reasonably foreseeable for the particular contract.

9.2 For damages caused to anything not comprised in the object of performance, Solarpraxis cannot be held responsible – regardless of the particular legal basis, except:

9.2.1 in case of intent and gross negligence,

9.2.2 in case of culpable injury to life, body, or health,

9.2.3 in case of malicious silence regarding defects, or for defects that were guaranteed to be absent,

9.2.4 in case of defects of the object of performance, in as far as product liability laws stipulate liability for personal injury and property damage on privately used objects.

9.3 The limiting conditions of this clause 9 are also applicable for any claims put forward by the client in regard to expenditures. Any further-reaching claims for damages are excluded.

10. Confidentiality

10.1 Solarpraxis and the client undertake to treat all confidential information in a confidential manner as described in the following. "Confidential Information" as understood in the context of this commission are all technical, business, or other information that relate to technology, engineering know-how, chemical processes or substances, ideas or sketches, technical drawings, discoveries in material science, patent documents, experimental reports, samples, collaboration partners or clients or suppliers, marketing or branding strategies, plans or other business or company secrets of the respective other party that were directly or indirectly transmitted or made available by Solarpraxis to the client (and in reverse) in oral, written, graphical, or other manner. All Confidential Information must be treated in strict confidence by the receiving party and unconditionally must be kept secret from third parties. The receiving party also is not permitted to pass on any Confidential Information to third parties in amended form or to change, exploit, or further develop the Confidential Information for the receiving party's own scientific or commercial purposes.

10.2 The following types of information are not considered Confidential Information:
(a) information that demonstrably is made available to the receiving party by a third party without violation of this agreement, or

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(b) information that demonstrably already was known or accessible to the receiving party, or
(c) information that demonstrably at the time of receipt already was public knowledge or publicly accessible, and/or subsequently became publicly accessible without any violation of this agreement or any other obligation to maintain secrecy.

10.3 All of the Confidential Information made accessible to the receiving party in any shape or form shall remain the property of the respective other party. Unless agreed upon differently, the receiving party shall - upon request from the other party, but no later than one year after completion of the commission – return to the providing party without charge the entirety of the written Confidential Information including any generated copies as well as data carriers including the source program.

10.4 The receiving party may not infer any licensing or patent rights for itself from the receipt of the Confidential Information, unless this is agreed upon separately in writing. Any type of copyright compensation is considered paid and settled as part of the commission.

10.5 The obligation to maintain secrecy is in force during the term of the commission and for a period of two years afterwards.

11. Industrial property rights

11.1 If during the performance of the order Solarpraxis utilizes patents, utility models, or other industrial property rights, or in as far as industrial property rights are affected by the performance of the contract, then Solarpraxis assures the client of its rights to use and pass on these rights within the context of the project. Solarpraxis has the choice of either securing at its own expense a right of use for the client or of changing the services so that no property rights are infringed upon but the services still meet the agreed-upon specification.

11.2 If any secret or valuable technical discoveries, information, expertise ("Know-how"), or patentable inventions ("Inventions") are developed during the rendering of the services by Solarpraxis, all rights to the Know-how or the Inventions shall fall to the party that has made the Inventions or has obtained the Know-how. The respective other party is granted a free-of-charge, non-exclusive, and non-transferrable right of use for the purpose of this order.

11.3 If the scope of rendered services comprises software, the client shall be granted a nonexclusive right to use the supplied software including its documentation. The provided software is to be utilized on the products provided for that purpose. Using the software on more than one system is not permissible.

11.4 The client may revise or translate the software to the legally permitted degree and may convert from object code to source code. All other rights in the software remain the property of Solarpraxis or the respective software supplier. The granting of sublicenses is not permitted.

11.5 The client shall use the service provided by Solarpraxis exclusively for his own purposes. In as far as results of work performed by Solarpraxis are subject to copyright protection, Solarpraxis shall retain its authorship while the client shall be granted a non-exclusive and not-transferable right of use of these results.

12. Applicable law and place of jurisdiction

12.1 The legal relations of the parties are subject exclusively to the laws of the Federal Republic of Germany with the exclusion of private international law. Application of the UN Convention on Contracts (CISG) is also excluded.

12.2 Place of jurisdiction for all disputes is Berlin. Solarpraxis retains the right to also file suit in any location where the laws provide jurisdiction for the client.

13. Assignment of rights

Both the client and Solarpraxis can only assign their contractual rights to third parties by mutual consent. Assignment of Solarpraxis' claims for payment is permissible for financing purposes.

14. Other stipulations

14.1 In the event that binding law prohibits the application of individual stipulations, the validity of the remaining stipulations shall not be affected.

14.2 Solarpraxis hereby expressly objects to any general standard terms and conditions that may be forwarded by the client. Amendments or supplements to these stipulations and to possible other agreements between the parties require the written form to reach effectiveness.