

## General Terms and Conditions for Deliveries and Services

meteocontrol North America, Inc.

Buffalo Grove, IL / U.S.A.

(April 1, 2017)

### 1. General

- 1.1 All product deliveries and services of meteocontrol North America, Inc. are subject to these General Terms and Conditions ("T&C"). In the event of a conflict, separate written agreements take precedence over these T&Cs.
- 1.2 Terms and conditions of the customer are not part of this contract unless meteocontrol North America, Inc. agrees to their validity in writing.
- 1.3 "meteocontrol" and "Company" means meteocontrol North America, Inc.

### 2. Formation of contract

- 2.1 Offers, price lists, technical information, cost estimates and other information from meteocontrol are not binding. As it relates to pricing, no price is final until signed Purchase Order is submitted by Customer. All Company information is subject to change at any time without notice.
- 2.2 Customer shall not, without prior express written consent from meteocontrol, disclose, reproduce, copy, or provide any cost estimates, diagrams, illustration, or any other information provided to customer by meteocontrol to third parties. Nor shall customer use information provided by meteocontrol in a manner that is not authorized by meteocontrol. If a purchase or service order is not concluded by customer with meteocontrol, customer shall promptly return such information to meteocontrol. meteocontrol reserves all rights to copyrights and its trade secret protected information in addition to all its further proprietary rights, cost estimates, diagrams, illustrations, etc.
- 2.3 A contract is concluded when written order confirmation from meteocontrol is sent to customer or when meteocontrol ships the order. A written order confirmation or shipment that deviates from the original order is considered a new order which will be deemed accepted by customer either implicitly by acceptance of the product or expressly by written confirmation from customer to meteocontrol.

- 2.4 The order confirmation from meteocontrol specifies the scope of its shipments and services.

Any changes to the scope of the shipment and services and/or any resulting price and delivery date changes are to be immediately confirmed in writing by all parties to the contract. The original contract shall control the obligations of both the customer and meteocontrol until the parties have executed a written agreement on the changes.

### 3. Prices and payment terms

- 3.1 All prices listed are net prices in US dollars plus the applicable sales tax. If customer requests additional packaging all additional costs will be billed separately.
- 3.2 All taxes, custom duties, fees as well as import or export duties incurred in conjunction with the shipment are borne by the customer, unless specifically consented to, in writing, by meteocontrol and said terms and price are noted in the purchase order and signed by Customer. Minimum order amount is \$100.00 product value. Minimum shipping and handling charge per shipment is \$25.00. Thereafter 5% handling fee will be added to incurred shipping charges.
- 3.3 Shipment is made EXW meteocontrol's Buffalo Grove, IL office (Incoterms 2010). Any variation from this standard shall be governed by Section 3.2 above.
- 3.4 If there is a delay of more than 120 days occurs, between the time a customer concludes/executes a contract and requests shipment of products or provision of services; meteocontrol has the right to a price adjustment if costs have changed in the intervening period, and the customer bears responsibility for the delay. This shall not apply if customer has paid for the products or services within net 30 days.
- 3.5 Prepayment for orders are generally required for new customers but may be waived by meteocontrol on a case by case basis. Payment of invoices is due and to be paid in full within 30 days of the invoice date. If customer stops payment or if customer shall

become bankrupt or insolvent, unpaid invoices are immediately due to be paid.

- 3.6 For orders with a net order sum greater than \$50,000, an amount equal to 30% of the total order plus proportionate sales tax is to be paid at the time the order is placed.
- 3.7 For international deliveries, meteocontrol reserves the right to require proof of payment via letter of credit or other security mechanism other reasonable means of securing payment.
- 3.8 Upon late payment, meteocontrol may charge interest on the outstanding balance at a rate of 12% p.a. or the maximum legal rate, whichever is greater. meteocontrol may also request customer to return the delivered product(s) and may refuse further delivery. The payment obligations of the customer remain intact. meteocontrol reserves the right to claim additional damages.
- 3.9 Payment for services is invoiced in accordance with the published meteocontrol price list at the time the purchase order is signed by the Customer subject to Section 3.4 and any other pertinent sections of this agreement.
- 3.10 If Customer and meteocontrol have entered into a Partner Contract, such contract's provisions will apply to any Internet-based services, and the Partner Contract provisions will prevail in the event of any inconsistencies between the Contract and these terms.

#### **4. Delivery and service periods**

- 4.1 The delivery and service periods agreed upon are estimates. meteocontrol may extend such periods by giving Customer written notice of the extension and taking all reasonable measures to mitigate any adverse effect caused by said extension.
  - 4.1.1 If meteocontrol's extension of the delivery date is reasonably expected to exceed thirty (30) days, Customer may, if meteocontrol is the sole cause of the delay, in its sole discretion take any of the following actions: (a) arrange for expedited transportation service for the affected ordered products at meteocontrol's expense as reasonably necessary to accommodate Customer's obligations to third parties with respect to such affected ordered products; (b) submit a revised Purchase Order for affected ordered products, which revised Purchase Order shall be subject to the provisions of [Section 3](#); or (c) terminate the Purchase Order with respect to the affected ordered products without liability to Customer,

and upon such termination, Customer's purchase obligation under this Agreement shall be reduced by the volume of affected ordered product as if such ordered products were actually purchased.

- 4.2 If the customer rejects delivery of conforming products ordered or if the customer refuses to cooperate in any other way that causes delay, meteocontrol is entitled to recover all costs associated with such delay. If the customer rejects conforming products or does not fulfill other contractual obligations, customer bears any and all risk of loss.
- 4.3 No liability shall result from the delay in performance or non-performance caused by a Force Majeure Event; *provided* that: (a) the party affected by such event, as soon as reasonably practical after obtaining knowledge of the occurrence of the claimed event, gives the other party prompt oral notice, followed by a written notice, fully describing the particulars of the occurrence; (b) the suspension of performance is of no greater scope and of no longer duration than is required by the event; and (c) the party affected by such event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. If the party affected by such event suspends performance of its obligations under this Agreement for three (3) months or more after the occurrence of such event, the other party may, in its sole discretion and on written notice to the affected party, terminate this Agreement without further liability.

Each party bears its own additional expenses that arise due to delivery or acceptance delays due to Force Majeure events or that arise due to withdrawal from contract because of Force Majeure events.

- 4.4 meteocontrol reserves the right to carry out partial shipments in order to mitigate potential damages for both parties.

#### **5. Customer obligations**

- 5.1 meteocontrol shall not be required to deliver within the service period agreed upon if the customer pays late, doesn't pay the full amount owed or doesn't fulfill the following obligations:
  - 5.1.1 The customer has a duty to inform meteocontrol of any relevant laws, ordinances, or regulations which may affect product or service delivery and to obtain all necessary authorizations for installation or connection to the grid in a timely fashion.

5.1.2 The customer must make all its technical documents, calculations and other information which meteocontrol needs for the preparation of its estimate and the execution of the order available. The customer is responsible for ensuring the foregoing is complete and correct.

## 6. Software licenses

6.1 meteocontrol grants the customer the non-exclusive right to use the delivered software and related documentation exclusively for the operation of the designated hardware. The right to use is restricted to the time period agreed upon. The customer is not authorized to, or to enable others to, copy (except as expressly permitted by the end user license agreement, "EULA"), decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the software in whole or in part. The software and the documentation may only be copied for archiving purposes or for purposes expressly allowed in writing by meteocontrol; all copies must contain the same copyright notice as the originals.

6.2 The foregoing license and restrictions also apply to changes or additions to software or documentation. If the customer allows a third party to use meteocontrol's products or services, but only as permitted under its license, customer shall impose the same rights and restrictions on the third party.

6.3 Third parties may receive meteocontrol's software exclusively in machine readable form (object code) and without source code.

## 7. Portal business

7.1 Via the saferSun and Virtual Control Room Internet portals - abbreviated DSC (Data Service Center) – meteocontrol offers technical solutions which facilitate the measurement and meter data from energy generation systems that are administered and the expected energy yield (target state) as compared with the measured energy yields (actual state) using Internet-supported services. When there is a corresponding contractual or usage relationship, a failure notice is sent upon detection of any deviation. The automatic transmission via SMS or fax of up to four failure notices per month is included in the agree upon payment for services unless otherwise indicated. The costs for any further failure notices shall be invoiced by meteocontrol to Customer at the then current

listed price or per the terms of the specific agreement.

7.2 meteocontrol is entitled at any time to carry out technical changes to the DSC and, to the extent necessary, to restrict or temporarily (i.e., for a maximum of 24 hours) discontinue the operation of the DSC for execution of changes. meteocontrol will aim to maintain usability for the customer at the time of the changes to the software used during execution of changes (backwards compatibility). meteocontrol will aim to avoid executing changes to the system at times of high utilization (end of month, Monday mornings).

7.3 The customer warrants to meteocontrol that the image data (e.g., photos of the system) or other data used by the customer and consequently by meteocontrol, do not infringe upon copyright or ancillary copyrights, industrial property rights (e.g., brands, patents, usage and design patents), other rights (e.g., right to one's own image, name usage rights or personal privacy laws).

7.4 The customer is responsible for the correctness of measurement values. Values which were transmitted to the DSC are displayed by the DSC. The DSC carries out a plausibility test within an error detection context. This test can be adapted and expanded by customers who own the respective user rights.

7.5 The customer agrees that meteocontrol is permitted to save, process and use the measurement data of the system in anonymous form, provided this is necessary for meteocontrol purposes; namely consultation, advertising, market research, or for design of its services, and further provided that meteocontrol take all reasonable measures to ensure the privacy of customer's data.

7.6 The customer is entitled to control over and ownership of the measurement data.

## 8. Warranty and liability

8.1 The limited warranty period is 24 months from date of delivery.

The limited warranty applies exclusively to the hardware and software version delivered by meteocontrol at the time of delivery. Defects that are due to subsequent interference by the customer or defects that are caused by the customer's operating system or third-party products are not covered by the limited

- warranty. Only those defects which can be proven to be caused by or due to meteocontrol's products and/or software and where the deviations from the specifications are reproducible are covered. Where a defect does not occur in the software version most recently provided to the customer and where usage of such (via an upgrade or patch, etc.) is reasonable for the customer, it is not considered a defect.
- 8.2 Customer shall accept a tender of the goods by meteocontrol which substantially conforms to the description of the goods. Customer shall be deemed to have accepted a product and customer's right to cancel, reject or claim any damages for breach of warranty or breach of meteocontrol's obligation under this contract shall cease, unless customer gives seller notice in writing of seller's breach:
- 8.2.1 In the case of defects discoverable through inspection, including incorrect deliveries and missing items, immediately in writing following the discovery;
- 8.2.2 In the case of defects not discoverable through inspection, immediately after discovery. The customer bears the burden of proof regarding observability of any defects.
- 8.2.3 In the case of non-conforming goods, customer shall immediately notify meteocontrol whether or not customer will continue to accept similarly non-conforming goods and acceptance of any non-conforming goods shall constitute a waiver by customer of specification requirements for said goods. Customer's acceptance of goods tendered under this contract shall be final and irrevocable.
- 8.2.4 Notices of defects to meteocontrol must take place via registered letter, fax transmission or via email and shall provide specific details of the defects, error codes, etc. so that meteocontrol may conduct its investigation.
- 8.2.5 In case of a damaged or incomplete shipment, the customer must immediately register a complaint with the parcel service / forwarding agent upon receipt of the product. If the notice is given untimely or improperly the warranty does not apply.
- 8.3 meteocontrol is entitled to decide to remove defects at no cost to customer by either eliminating them or by delivery of replacement product(s). If said actions cure any defect, any additional claims by the customer are excluded.
- 8.4 Repaired or replaced parts do not initiate a new warranty period.
- 8.5 Customer is responsible for the maintenance, backup, and storage of Customer's data.
- 8.6 Despite continual monitoring, due to new occurring computer viruses, no guarantee can be provided for products delivered. meteocontrol shall inspect the software and use its best efforts to monitor and ensure the software remains free from viruses using standard security programs. However, customer agrees that it will also monitor the software and notify meteocontrol of any viruses which may go undetected otherwise.
- 8.7 meteocontrol guarantees that contractual usage or application of products delivered will not be restricted or prohibited by third-party property rights.
- 8.8 Third Party Claims. meteocontrol shall indemnify, defend, and hold Customer, its subsidiaries and affiliates (including parent companies), and its and their officers, directors, members, agents, contractors and employees, and its and their respective heirs, successors and assignees harmless from and against any claims, actions, causes of action, suits, demands, debts, costs, damages, or expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or resulting from (a) any claims of infringement of any patent, copyright, trademark, or trade secret or unfair competition rights of any third party based on any meteocontrol Product, or (b) any claims that any meteocontrol Hardware caused any bodily injury or death or any damage to or loss of property. In addition, with respect to any claim described in subsection (a) in connection with a meteocontrol Product, meteocontrol will either (i) procure for Customer and Participating End-users the right to continue using such meteocontrol Product in accordance with the terms of this Agreement or (ii) modify or replace such meteocontrol Product so that it avoids the alleged infringement or misappropriation without material changes to the functionality of such meteocontrol Product.
- 8.9 meteocontrol is liable only for gross or willful negligence. meteocontrol's liability is limited to foreseeable damages and shall in no event exceed the total cost of the net order of the products on which the claim is based.

meteocontrol shall not be responsible or liable to customer or to any third party for any lost profits, or incidental, consequential, indirect, special or contingent damages for any breach of warranty or other breach of seller's obligations under this contract.

8.10 For provision of its services, meteocontrol uses, among others, data and information that are retained from third parties without assurance of specific properties and quality characteristics. meteocontrol is not liable for the quality of the third party content relied upon by meteocontrol. meteocontrol utilizes data from various measurement networks whose data quality and availability cannot be controlled by meteocontrol. Data provision may be interrupted due to meteorological interference, maintenance work and other non-foreseeable causes. Data transmission is via the Internet. Numerous servers and providers are involved in this process; meteocontrol has no influence upon this. For this reason, data availability cannot be guaranteed. Weather data supply takes place solely within the framework of the business operation of the ordering customer. Usage of data for other commercial purposes or forwarding of data to third parties is prohibited and requires a special written agreement.

## 9. Retention of title

9.1 Until meteocontrol is paid in full, meteocontrol shall retain, and customer hereby grants, a security interest in the products, subject to any superior or first secured interest, and all proceeds thereof to secure performance of customer's obligations hereunder, until such time as meteocontrol has been paid in full. Customer authorizes meteocontrol to file financing statements in such regard and, upon meteocontrol's request, customer shall take such further action and cooperate with meteocontrol in all necessary steps for the registration and perfection of meteocontrol's first priority security interest.

## 10. Confidentiality

10.1 Except as set forth in this section or as the Parties may otherwise agree in writing, each Party (the "receiving Party") shall keep strictly confidential all Confidential Information of the other Party (the "disclosing Party").

10.2 Any reference to this existing business relationship in information or advertising material requires prior express written permission from meteocontrol.

10.3 The Parties recognize that no remedy at law may be adequate to compensate a Party for a breach by the other Party of this Section 10. Therefore, the Parties agree that, in the event of a breach or threatened breach of these terms by a Party, the non-breaching Party may seek temporary and permanent injunctive relief against the breaching Party, in addition to all other remedies to which the non-breaching Party is otherwise entitled, and this Section in no way limits such other remedies. Such temporary or permanent injunctive relief may be granted without the non-breaching Party posting bond, which each Party does hereby waive.

## 11. Place of performance, place of jurisdiction, applicable law, contractual language, partial invalidity and written form

11.1 This Contract is deemed to be made in the State of Delaware and shall be governed by, subject to and construed in accordance with the laws of the State of Delaware, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Customer hereby irrevocably agrees that all actions, suits or proceedings between the parties hereto with respect to this contract shall be litigated in the state or federal courts located in Delaware.

11.2 All changes and supplements to the contract must be in written form to be valid.