

General terms and conditions for the sale of products to business customers (B2B GTC)

1. Applicability

(1) These General Terms and Conditions apply to all sales of photovoltaic modules, other goods and services (hereinafter referred to as „product“) by AVANCIS GmbH (hereinafter referred to as „AVANCIS“) to companies, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB) (hereinafter referred to as „BUYER“).

(2) Deviating terms and conditions of the BUYER shall not form part of the contract, even if AVANCIS does not expressly object to them. (3) Deviations from these General Terms and Conditions shall only be effective if AVANCIS confirms them in writing.

2. Conclusions of the contract

(1) Offers from AVANCIS are non-binding and subject to change unless they are expressly designated as binding.

(2) The BUYER's order shall be deemed to be a binding offer of a contract, unless expressly stated otherwise. AVANCIS is entitled to accept this offer of contract within fifteen (15) working days of its receipt by us unless a different deadline is specified for acceptance. Acceptance can be declared either in writing by order confirmation or by delivery of the goods to the BUYER.

3. Prices, terms of payment

(1) The prices are ex works (EXW Incoterms® 2020) excluding VAT, unless otherwise agreed in an individual contract.

(2) Invoice amounts shall be paid within seven (7) calendar days without any deduction, unless otherwise agreed in an individual contract.

(3) To the extent the BUYER fails to make a full payment in due time, the outstanding amount shall bear an interest of 8 % per annum above the current base interest rate as regularly published by the German Federal Bank (Bundesbank) until the date payment is fully made. AVANCIS is not obliged to serve a dunning notice; the Seller's right to higher interest and other legal rights resulting from the BUYER's default shall remain unaffected.

4. Delivery

(1) Unless otherwise agreed in writing, we shall deliver and supply exclusively ex works (EXW Incoterms® 2020) to the address specified in the order confirmation.

(2) Deadlines and schedules for deliveries and services promised by AVANCIS shall always only be approximate unless a fixed deadline or a fixed date has been expressly promised or agreed.

5. Retention of title

(1) Products supplied by AVANCIS shall remain the property of AVANCIS until they have been paid in full. In the period from the date of delivery of the products up to the date of full payment, the BUYER holds the products only as bailee for the Seller.

(2) AVANCIS permits the BUYER to resell the delivered products prior to full payment in the ordinary course of business under retention of title until the BUYER's customers have paid for the purchased products in full. AVANCIS reserves the right to immediately withdraw this permission if the BUYER is in default with any of its obligations.

6. Warranty

(1) For the sale of new manufactured products, the warranty period is one year from delivery, unless the law stipulates otherwise, or no deviating warranty period is agreed in writing. For the sales of used products, the warranty is excluded, unless otherwise agreed in an individual contract.

(2) The product has the agreed properties if it corresponds to the product description, specification, or data sheet. Regarding the delivery of photovoltaic modules, AVANCIS is entitled to deliver photovoltaic modules with higher nominal power than agreed upon contract conclusion.

(3) The BUYER shall immediately check the products for completeness, quantity, and quality deviations in accordance with Section 377 (1) of the German Commercial Code (Handelsgesetzbuch, HGB) and send AVANCIS any complaints in text form to sales@avancis.de without delay, no later than 10 working days after receipt of the goods by the BUYER. If the BUYER fails to properly fulfil its obligations to examine and report defects in accordance with Section 377 (1) HGB, subsequent complaints regarding completeness, quantity and/or quality deviations are excluded.

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(4) In the event of a defective delivery, AVANCIS shall be entitled, at its discretion, to remedy the defects or deliver defect-free products.

(5) The following provisions apply to the SKALA Passive modules (dummy):

- The AVANCIS warranty conditions do not apply to these modules;
- Warranty claims are excluded for passive modules provided free of charge;
- Warranty claims are excluded for all used passive modules;
- The 12-month warranty claims can only be asserted for the passive modules provided for a fee as new goods if the passive modules were used as intended; if the dummy modules are used for purposes other than those intended or contrary to prior agreements, the warranty claims are excluded;
- The warranty for new goods is 12 months from delivery of the goods;
- The passive modules are offered without any certificates and abZ (National technical approval), unless otherwise agreed in an individual contract.

7. Compensation for damages

(1) The return of custom-made products is excluded.

(2) If the BUYER withdraws from the purchase contract or is in default of acceptance or payment, AVANCIS shall be entitled to demand damages of 25 % of the purchase price due to non-fulfilment, unless the BUYER's can prove that minor damage or no damage has occurred. AVANCIS is entitled to demand higher damages if AVANCIS has demonstrably incurred a higher loss (including storage, packaging, and administration costs, etc.). In the case of custom-made products, the amount of the compensation is 90 % of the purchase price.

(3) The amount of compensation for damages due to delay or impossibility of delivery by AVANCIS as well as the amount of compensation for wasted expenditure is limited to a total of 10 % of the purchase price.

8. Limitation of liability

(1) AVANCIS shall only be liable in accordance with the statutory provisions if the BUYER asserts claims for damages.

(2) The BUYER is responsible for checking the technical conformity and the necessary certification for the import and use of the products. AVANCIS shall only be liable in accordance with applicable statutory provisions.

(3) AVANCIS shall be liable in particular:

- Without restriction under the German Product Liability Code (Produkthaftungsgesetz);
- In accordance with the statutory provisions for damage to life, limb and health caused by culpable breach of duty by AVANCIS, its legal representatives or its vicarious agents;
- In accordance with the statutory provisions for other damages resulting from intentional or grossly negligent breaches of contract by AVANCIS, its legal representatives or its vicarious agents.

(4) Other claims for damages on the part of the BUYER, regardless of the legal basis, are excluded.

9. Assignment/transference of rights

(1) AVANCIS shall at all times be entitled to assign its rights and obligations under the Contract to a company with which it is associated as per the definition of Art. 15 of the German Stock Corporation Act (Aktiengesetz).

(2) AVANCIS shall also be entitled to transfer its rights and obligations under the contract to a third party at any time, provided that the third party is able to perform the contractually owed services in the same way as AVANCIS.

(3) Without the explicit written consent of AVANCIS, the BUYER is not entitled to assign its rights and obligations under the Contract to a third party.

10. Applicable law and jurisdiction

(1) The contract is exclusively subject to the law of the Federal Republic of Germany to the exclusion of the application of private international law (IPR) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) and comparable international agreements.

(2) The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Leipzig.