

## I. DEFINITIONS

**Component** means a single device (including software) supplied by Sunfire Fuel Cells which is part of the System.

**Defect** means a material non-conformance of the Product with the applicable specification which shall also be the case if the Product infringes upon or is encumbered with third party rights.

**Design Freeze** means the finalization of the functional specification by the parties.

**Factory Acceptance Test (FAT)** means the functional tests of the System carried out by Sunfire Fuel Cells at Sunfire Fuel Cells's premises in Neubrandenburg before shipment.

**Force Majeure** means the occurrence of an event or circumstance beyond the reasonable control of a Party including, but not limited to, labour disputes and any other circumstance, such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts or delays in deliveries by sub-contractors caused by any such circumstances.

**Intellectual Property Rights** means patent rights (including patent applications and disclosures), rights of priority, copyright rights and trade mark rights recognized in any jurisdiction.

**Products** means Systems or Components to be supplied by Sunfire Fuel Cells under the Purchase Order.

**Prototype** means Products which have not yet reached the stage of series production, which are designated by Sunfire Fuel Cells as a Prototype or a pilot installation and which are supplied by Sunfire Fuel Cells as experimental model for further development by Customer and/or Sunfire Fuel Cells.

**Purchase Order** means each order issued by Customer and confirmed in Writing by Sunfire Fuel Cells.

**Purchase Price** means the net price to be paid to Sunfire Fuel Cells by Customer for Products and Services under a Purchase Order, excluding packaging, transport costs and customs tariffs.

**RFV** means a request for variation as defined in Section 5.2 hereof.

**Services** means any performance of services by Sunfire Fuel Cells to install and commission the Systems and also includes the provision of deliverables, if expressly agreed upon between the parties.

**Site** means Customer's premises where the System is to be installed and commissioned by Sunfire Fuel Cells.

**Site Acceptance Test (SAT)** means the final acceptance test of the System carried out by Customer and Sunfire Fuel Cells at Customer's Site.

**System** means a combination of Components as described in more detail in the Product specification attached to the respective Purchase Order.

**Writing** means communication between Sunfire Fuel Cells and Customer by letter, fax or electronic mail signed by an authorized representative of such party having authority to bind the respective party.

## II. SCOPE OF APPLICATION

These General Terms and Conditions of Sale ("GTCs") shall apply to and govern all sales of Products, Prototypes and Services by Sunfire Fuel Cells GmbH ("Sunfire Fuel Cells") to Customer ("Customer"). Divergent, contrary, or additional terms requested by Customer shall not apply unless Sunfire Fuel Cells has given its consent thereto in Writing.

No modification, amendment or supplement of these GTCs or a Purchase Order will be binding upon the Parties except by mutual express written consent of subsequent date signed by an authorized representative or officer of each of the parties.

## III. GENERAL PROVISIONS

### 1. Quotation and orders

1.1 Unless otherwise specified in Writing, Sunfire Fuel Cells's quotations are subject to change and non-binding. No order submitted by Customer shall be deemed accepted by Sunfire Fuel Cells unless and until confirmed in Writing by Sunfire Fuel Cells. Sunfire Fuel Cells will specify in the quotation whether or not the Product to be supplied by Sunfire Fuel Cells constitutes a Prototype. Sunfire Fuel Cells may accept Purchase Orders within fourteen days of receipt (Acceptance Period) by an order confirmation in Writing, irrespective of any offer previously made by Sunfire Fuel Cells. By confirmation of the Purchase Order, the contract between Sunfire Fuel Cells and the customer is enacted at the conditions stated therein, unless the content of such order confirmation substantially deviates from the Purchase Order. Sunfire Fuel Cells may delay the order confirmation for up to four weeks, if Sunfire Fuel Cells has notified the Customer of an extended handling time before the expiry of the acceptance period.

1.2 All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference in Writing expressly included in the agreement.

1.3 Assembly, installation, usage and operating conditions and instructions provided by Sunfire Fuel Cells shall be deemed an essential part of the Purchase Order.

1.4 If Customer provides its technical requirements (*Lastenheft*) to Sunfire Fuel Cells, Sunfire Fuel Cells shall draft a functional specification (*Pflichtenheft*) based on the Product specification (*Spezifikation*) and submit the functional specification to Customer for approval. Once Customer approves of the functional specification it shall become a material part of the Purchase Order. Otherwise, the Product specification shall apply and become a material part of the Purchase Order.

For the avoidance of doubt, Sunfire Fuel Cells shall only be liable for any non-conformance of a Product to the applicable specification as set forth in Article 7 hereof and no further guarantee or other liability is hereby assumed by Sunfire Fuel Cells.

### 2. Prices and Payment

2.1 Unless otherwise agreed in the Purchase Order, the Purchase Price does not include Value Added Tax, sales tax or any other taxes and duties applicable in Germany or any other country, which are payable by Customer in addition to the Purchase Price.



2.2 Payments shall be due according to the agreed payment schedule or, in absence of such payment schedule, according to the date specified in the invoice. Payments shall be made without any discount. Payment shall not be deemed to have been effected before Sunfire Fuel Cells's account has been irrevocably credited for the amount due.

2.3 If Sunfire Fuel Cells does not receive payment from Customer when such payment is due, Sunfire Fuel Cells is entitled to charge interest at an annual rate of 9 percentage points above the ECB base rate as applicable throughout the period of delay. Any further rights and remedies of Sunfire Fuel Cells provided by these GTCs or under the applicable governing law shall remain unaffected.

2.4 In case of late payment or if Sunfire Fuel Cells has reason to believe that Customer will become delinquent in payment, Sunfire Fuel Cells may, after having notified Customer in Writing, suspend the performance of the Purchase Order until he received payment. If Customer has not paid the amount due within three months, Sunfire Fuel Cells shall be entitled to terminate the Purchase Order by notice in Writing to Customer and, in addition to the interest according to this Section 2, to claim compensation for the loss he incurs. Such compensation shall not exceed the Purchase Price.

2.5 Place of performance for the payment by Customer is Neubrandenburg, Germany.

### 3. Drawings and technical information

3.1 All drawings and technical documents relating to the Products submitted by one Party to the other, prior or subsequent to the formation of the Purchase Order, shall remain the property of the submitting Party and shall not, without the consent of the other Party, be used for any other purpose than that for which they were provided. They may not, without the prior written consent of the submitting Party, otherwise be used, disclosed, copied, reproduced, transmitted or communicated to a third Party.

3.2 Upon mutual agreement with Customer, Sunfire Fuel Cells shall, in due time before the date of the Site Acceptance Test, provide free of charge information and drawings which are necessary to permit the Customer to install, commission, operate and maintain the System ( other than Prototypes). Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. Sunfire Fuel Cells shall not be obliged to provide manufacturing drawings for the Components.

### 4. Local laws and regulations

4.1 Customer undertakes to solicit on Customer's own expense and at the appropriate time all permits from the respective governing authorities of its country that are necessary to fulfil the Purchase Order. Such obligation includes, but is not limited to, permissions as are necessary for the import of Products and for any necessary activity of Sunfire Fuel Cells's personnel and any suppliers as well as for the storage and the use of dangerous materials.

4.2 Products are designed to comply with statutory regulations of the European Union. At latest by issuing the Purchase Order, Customer will inform Sunfire Fuel Cells in Writing of all existing statutory and other regulations to be observed with respect to Customer's local authorities. If changes in law occur between the date of the confirmed Purchase Order and the Design Freeze, Sunfire Fuel Cells shall carry out such variation work necessary to comply with such changes in law. Customer shall bear the extra costs and other consequences resulting from such changes, including variation work.

### 5. Variations

5.1 Sunfire Fuel Cells reserves the right to modify the Products to comply with applicable statutory regulations at any time.

5.2 Customer is entitled to request variations to the scope, design and construction of the Product until the Design Freeze of the System ("RFV"). RFV shall be submitted to Sunfire Fuel Cells in Writing and shall contain an exact description of the variation.

5.3 As soon as possible after receipt of such RFV, Sunfire Fuel Cells shall notify Customer in Writing whether and how the variation can be carried out, stating the resulting alteration to the Purchase Price, the time of delivery or, if provided in the Purchase Order, acceptance and other terms of the Purchase Order. Sunfire Fuel Cells shall also give such notice to Customer when variations are required due to changes in laws, regulations and rules referred to in Section 4. Save as provided in Section 4, Sunfire Fuel Cells shall not be obliged to carry out variations requested by Customer until both Parties have agreed on how such variations will affect the Purchase Price, the time for delivery or –if provided for in the Purchase Order – time for Factory Acceptance Test and Site Acceptance Test and other terms of the Purchase Order.

5.4 If any project-milestone of the Purchase Order is delayed due to any disagreements between the Parties on the consequences of a RFV, Customer shall pay any part of the Purchase Price which would have become due if such project-milestone had not been delayed.

### 6. Delivery

6.1 A delivery date shall be treated as being approximate and Sunfire Fuel Cells shall not be liable for any delay in delivery, provided that it uses commercially reasonable efforts to meet the delivery date.

6.2 Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Purchase Order. If no trade term has been specifically agreed, the delivery shall be Free Carrier (FCA as to INCOTERMS 2010), Sunfire Fuel Cells's premises in Germany at 17033 Neubrandenburg, Lindenstraße 45. If, in the case of delivery FCA, Sunfire Fuel Cells, at the request of Customer, undertakes to send the Component to its destination, the risk of loss will pass not later than when the Equipment is handed over to the first carrier. Partial delivery is permitted.

6.3 If Sunfire Fuel Cells anticipates that he will not be able to deliver the Components at the time for delivery, he shall notify without undue delay the Customer thereof in Writing, stating the reason and, if possible, the time when delivery can be expected.

6.4 If delay in delivery is caused by a circumstance of Force Majeure, by an act or omission attributable to Customer or any other circumstances attributable to Customer, Sunfire Fuel Cells shall be entitled to extend the time for delivery by a period having regard to all circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

6.5 If the Component is not delivered at the time for delivery and Sunfire Fuel Cells is responsible for the delay, Customer shall be entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of 0.5 per cent of the Purchase Price of the respective Component for each commenced week of delay. Liquidated damages shall not exceed 7.5 per cent of the Purchase Price of the respective Component. The liquidated damages shall become due at Customer's demand in Writing, but not before delivery has been completed or the Purchase Order is terminated under Section 6.6.

6.6 If the delay in delivery is such that Customer is entitled to maximum liquidated damages under Section 6.5 and if the Component is still not delivered, Customer may in Writing demand delivery within a final reasonable period which shall not be less than one week. If Sunfire Fuel Cells does not deliver within such final period due to reasons attributable to Sunfire Fuel Cells, then



Customer may terminate the Purchase Order in Writing by notice to Sunfire Fuel Cells in respect to such delayed Component. If Customer terminates the Purchase Order he shall be entitled to compensation for the loss as a result of Sunfire Fuel Cells's delay. The total compensation, including the liquidated damages under Section 6.5 shall not exceed 15 per cent of the Purchase Price which is attributable to the delayed Component in respect of which the Purchase Order is terminated. Liquidated damages under Section 6.5 and termination of the Purchase Order with limited compensation under Section 6.6 shall be the only remedies available to Customer in case of delay. All other claims against Sunfire Fuel Cells based on such delay shall be excluded, except in case of gross negligence and willful misconduct on the part of Sunfire Fuel Cells.

6.7 Customer shall inspect the Components upon arrival for any visible deviations regarding quality and quantity of the Components and shall notify Sunfire Fuel Cells in Writing of any such deviations without undue delay, but at least within 5 business days from arrival. If Customer fails to notify Sunfire Fuel Cells as aforesaid, the Components shall be deemed accepted.

6.8 The risk of loss or damage to the Product shall pass to Customer in accordance with the agreed trade term (INCOTERMS 2010).

## 7. Liability for defects

7.1 Prototypes: Due to their nature as experimental models which are intended to be further developed by Customer and/or Sunfire Fuel Cells, Sunfire Fuel Cells assumes only limited liability for defects of Prototypes. Sunfire Fuel Cells warrants, that the Prototypes will be fit for the agreed upon test or development purposes provided, however, that such warranty shall not include any specific performance characteristics other than the operational capability per se and the failure to meet specific performance characteristics shall not be deemed a defect. In case of a defect, Sunfire Fuel Cells shall remedy such defects at its own expense by repair or replacement. Save as stipulated in this Section 7.1, Sunfire Fuel Cells shall not be liable for defects of Prototypes.

7.2 Apart from Section 7.1, Sunfire Fuel Cells shall remedy any defect or non-conformity of the Products and Services ("defects") resulting from faulty design, materials or workmanship. Sunfire Fuel Cells shall only be liable for defects which appear under the conditions of operation provided for in the Purchase Order and under proper use of the Products which Customer is obliged to demonstrate to Sunfire Fuel Cells's reasonable satisfaction.

7.3 Sunfire Fuel Cells shall not be liable for defects

a) arising out of materials provided or a design specified by Customer,

b) caused by circumstances which arise after the risk has passed to the Customer, e.g. defects due to improper use, use of media not allowed under the applicable specification, faulty maintenance or faulty repair by Customer or to alterations of the Product carried out by Customer without Sunfire Fuel Cells's consent in Writing.

7.4 Sunfire Fuel Cells's liability shall be limited to defects in the Products and Services which appear within a period of one year from delivery, or, if the Purchase Order provides for a Site Acceptance Test, from earliest occurrence of one of the events referred to in Section 16.4 hereunder, if a defect was already existent at the time of delivery or at the time mentioned above. For deliveries to retailer the duration of the period mentioned above will be extended to 2 (two) years.

7.5 Customer shall without undue delay notify Sunfire Fuel Cells in Writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period stated in Section 7.4. The notice shall contain a description of the defect. If Customer fails to notify Sunfire Fuel Cells in Writing

of a defect within the period stated before, he shall lose his right to have the defect remedied. Where the defect is such that it may cause damage, Customer shall immediately inform Sunfire Fuel Cells in Writing. Customer shall bear the risk of damage to the Products resulting from its failure so to notify. Customer shall take reasonable measures to minimize damage and shall in this respect comply with instructions of Sunfire Fuel Cells.

7.6 On receipt of the notice as stated under Section 7.5, Sunfire Fuel Cells shall at its own cost remedy the defect within reasonable time. After consultation with Sunfire Fuel Cells, Customer shall give reasonable time and opportunity to carry out all repairs and replacements. Otherwise, Sunfire Fuel Cells shall be released from liability and all consequences arising therefrom. If Sunfire Fuel Cells fails to remedy the defect in time, Customer may or may have a third party remedy the defect and claim reimbursement of the necessary expenses from Sunfire Fuel Cells, provided, however, that the foregoing shall only apply in exceptional cases of danger to operational safety or to avoid irreparable harm or excessive damages. Such expenses shall include the costs for dismantling and re-installation subject to the following conditions: (i) reimbursement of expenses is limited to necessary and reasonable costs only, (ii) Customer's right to receive an advance payment is excluded, (iii) if the costs of repair or replacement, including the dismantling and re-installation costs, would be unreasonable in relation to the Purchase Price of the affected Product and the significance of the defect, Sunfire Fuel Cells may reject repair or replacement and the reimbursement of the expenses.

Remedial work shall be carried out at the Site, unless Sunfire Fuel Cells deems it more appropriate, having regard to the interests of both parties, that the defective Product is returned to Sunfire Fuel Cells. If the defect can be remedied by replacement or repair of a defective Component and if dismantling and re-installation do not require special knowledge, Sunfire Fuel Cells may demand that the defective Component is sent to him. In such case, Sunfire Fuel Cells shall have fulfilled its obligations in respect of the defect when it has delivered a duly repaired or a new Component to Customer.

7.7 Customer shall at its own expense provide access to the Products and arrange for any intervention in equipment other than the Products to the extent this is necessary to remedy the defect.

7.8 Unless otherwise agreed, Customer shall bear any additional costs incurred by Sunfire Fuel Cells caused by the Products being located in a place other than the Site. Defective Components which have been replaced shall be made available to Sunfire Fuel Cells and shall be Sunfire Fuel Cells's property. If no defect is found for which Sunfire Fuel Cells is liable, Sunfire Fuel Cells shall be entitled to compensation for the costs he incurs as a result of such notice.

7.9 If the use of the Products supplied by Sunfire Fuel Cells constitutes an infringement of third Parties' patent rights, Sunfire Fuel Cells may, at its option, transfer the appropriate rights to use to Customer or modify the Product in such a way that third Parties' patent rights are not affected.

7.10 If Sunfire Fuel Cells does not remedy the defect, Customer may by notice in Writing fix a final reasonable period for fulfillment of Sunfire Fuel Cells's obligation to remedy the defect. If Sunfire Fuel Cells fails to fulfil its obligations within such final period, Customer may or may have a third party undertake necessary repair work at the risk and expense of Sunfire Fuel Cells. Where successful repair work has been undertaken by Customer or a third party, reimbursement by Sunfire Fuel Cells of reasonable costs incurred by Customer shall be in full settlement of Sunfire Fuel Cells's liability for the said defect.

7.11 Where the defect has not been successfully remedied as stipulated in Section 7.10, Customer may exercise the following rights:





a) If the defect is insignificant, Customer's right is limited to reduction of the Purchase Price. A defect will be deemed insignificant if the devaluation of the affected Product does not exceed 15% of the Purchase Price. Otherwise, the right to a reduction of the Purchase Price is excluded; or

b) Customer may terminate the Purchase Order by notice in Writing to Sunfire Fuel Cells in respect of such part of the Products as cannot in consequence of the defect be used as intended by the Parties. Article 8 shall apply.

7.12 Save as stipulated in Section 7.1 to 7.11, Sunfire Fuel Cells shall not be liable for losses arising from the defect, including loss of production, loss of profit and other indirect loss. Article 8 shall apply.

## **8. Liability for damages and reimbursement of expenses**

8.1 Sunfire Fuel Cells shall only be liable for damages and reimbursement expenses due to a culpable breach of its contractual duties. In case of slight negligence Sunfire Fuel Cells shall only be liable for a breach its essential obligations from the Purchase Order. In any other case, Sunfire Fuel Cells's liability for slight negligence is excluded.

8.2 If Sunfire Fuel Cells is liable according to section 8.1 or in case of liability without fault, Sunfire Fuel Cells shall only be liable for typical and foreseeable damages. In this case the reimbursement of useless expenditures by the Customer shall be excluded.

8.3 In case of default Sunfire Fuel Cells shall only be liable for damages up to 15% of the net order value of the Product or Service that was delayed.

8.4 Customer is solely responsible for the intended use of the Products or Services provided by Sunfire Fuel Cells. Unless Sunfire Fuel Cells has confirmed a specific property of the Products or their fitness for an intended use in Writing, Sunfire Fuel Cells shall not be liable for technical advice provided to Customer related to Customer's intended use.

8.5 The exclusion of liability in Sections 8.1 - 8.4 shall also apply for the benefit of Sunfire Fuel Cells's executive bodies, legal representatives, senior and non-management employees and other vicarious agents.

8.6 All claims for damages and reimbursement against Sunfire Fuel Cells shall become time-barred twelve months after the passing of the risk, in the case of tortious liability from the date of knowledge or grossly negligent ignorance of the circumstances giving rise to the claim or of the person who is liable for compensation. The foregoing does not apply in cases of intent and in the cases mentioned in section 8.7.

8.7 The provisions of Sections 8.1 - 8.6 and 7.4 shall not apply in the event of strict liability, in cases of injury to life, body or health, in the absence of warranted properties or if a defect was fraudulently concealed.

8.8 The special provisions under Chapter IV. remain unaffected and take precedence over this Article 8.

## **9. Intellectual Property Rights**

Sunfire Fuel Cells grants to Customer a non-exclusive, royalty-free right to use, solely with the Product supplied by Sunfire Fuel Cells, all Intellectual Property Rights owned by Sunfire Fuel Cells that are incorporated or embodied in the Product or necessary to its normal operation.

Nothing in these GTCs is intended to grant any rights to Customer under any trade secret, know how or other Sunfire Fuel Cells's confidential information except as expressly set forth herein. Any grant of such rights is subject to a separate agreement in Writing between Sunfire Fuel Cells and Customer.

## **10. Software**

10.1 If so agreed in the Purchase Order, Sunfire Fuel Cells provides Customer with the required software which shall be considered a part of the Product. Sunfire Fuel Cells grants to Customer a non-assignable, non-transferable, non-exclusive, royalty-free right to use any software and related documentation provided under the Purchase Order. This grant shall be limited to the use with the Product for which the software was provided. Customer may make a single archive copy of this software, provided that any copy must contain the same copyright notice and proprietary markings as the original software. Use of Sunfire Fuel Cells's software on any products other than for which it was provided, any other material breach of the Purchase Order, or any breach of copyright law with regard to Customer's use of the software shall automatically terminate this license.

10.2 If the Product is supplied with software that Sunfire Fuel Cells has licensed from a software vendor, whether such software is in the form of firmware, an operating system, application software, programming tools, special purpose computer code, or otherwise ("Third-Party Software"), Customer's use of such Third-Party Software will be subject to the license terms and conditions agreed upon between Sunfire Fuel Cells and such Third Party and Customer agrees to comply with such (sub-) license terms and conditions.

10.3 Software source codes are not provided to Customer. Sunfire Fuel Cells reserves the right to exclusively translate, decompile, process or otherwise modify the software, including the right to create derivatives thereof. Sunfire Fuel Cells disclaims any liability for any damages resulting from unauthorized use, process or modification of the Software.

## **11. Retention of title**

11.1 The Products shall remain the property of Sunfire Fuel Cells until paid for it in full. Customer shall at Sunfire Fuel Cells's request assist in taking any measures necessary to protect Sunfire Fuel Cells's title to the Products. The retention of title shall not affect the passing of risk under Section 6.

11.2 Until transfer of title, Customer shall handle the Products with due care and to have the Products insured for account of Sunfire Fuel Cells against theft, breakage, fire and water damage. Customer shall notify Sunfire Fuel Cells immediately in Writing, if the Products are impounded, or exposed to other interventions of third parties. Customer shall be liable for any damages resulting from culpable breach of Customer's obligations under this Section 11.2.

## **12. Force Majeure**

12.1 Either Party shall be entitled to suspend performance of his obligations under a Purchase Order to the extent that such performance is impeded or made unreasonably onerous by Force Majeure.

12.2 The Party claiming to be effected by Force Majeure shall notify the other Party in Writing without delay on the intervention and on the cessation of such circumstance. If a Party fails to give such notice, the other shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice. If Force Majeure prevents Customer from fulfilling his obligations, he shall compensate Sunfire Fuel Cells for expenses incurred in securing and protecting the Products.

12.3 Regardless of what might otherwise follow from these GTCs, either Party shall be entitled to terminate the Purchase Order by notice in Writing to the other Party if the other Party is prevented in the performance of the Purchase Order under this Section 11 for more than six months.



#### **IV. SPECIAL PROVISIONS FOR THE SUPPLY OF SYSTEMS**

##### **13. Factory Acceptance Tests and Site Acceptance Tests**

13.1 If agreed under a Purchase Order for a System, Sunfire Fuel Cells shall carry out a FAT at Sunfire Fuel Cells's premises in Neubrandenburg and a SAT at the Site. Each FAT and SAT shall be carried out during regular working hours and according to the test conditions specified in the Purchase Order.

13.2 Sunfire Fuel Cells shall notify Customer in Writing of the date of the FAT in sufficient time to permit Customer to be represented at the Factory Acceptance Test. If Customer is not represented, the test report shall be sent to Customer and shall be deemed accepted as true and accurate.

13.3 If the Factory Acceptance Test shows the System not to be in accordance with the Purchase Order, Sunfire Fuel Cells shall within reasonable time remedy any deficiencies in order to ensure that the System complies with the Purchase Order. New tests shall then be carried out at Customer's request, unless the deficiency was insignificant.

13.4 Sunfire Fuel Cells shall bear all costs for Factory Acceptance Tests. Customer shall however bear all travelling and lodging expenses for his representatives in connection with such tests. After successful completion of the Factory Acceptance Test, Customer shall issue a certificate acknowledging such successful completion within fourteen days.

##### **14. Preparatory work and working conditions for SAT**

14.1 Customer shall in good time undertake preparatory work to ensure that the conditions necessary for installation of the System at the Site and for its correct operation are fulfilled. This shall not apply to such preparatory work which according to the Purchase Order shall be performed by Sunfire Fuel Cells.

14.2 Customer shall ensure that

a) Sunfire Fuel Cells's personnel is able to start carrying out the Services in accordance with the agreed time schedule and to work during regular working hours. Provided that Customer has been given notice in Writing in reasonable time, Services may be performed outside regular working hours to the extent deemed necessary by Sunfire Fuel Cells.

b) Customer, in good time before the installation starts, has informed Sunfire Fuel Cells in Writing of all relevant safety regulations in force at the Site. Services shall not be performed in unhealthy or dangerous surroundings. All necessary safety and precautionary measures shall have been taken before Services are started and shall be maintained.

c) Customer has made available to Sunfire Fuel Cells free of charge at proper time on Site all necessary Customer staff, lifting devices, materials and supplies (e.g. electricity, water, lubricants, fuel, gas etc.) as well as the measuring and testing instruments of Customer available on the Site. Sunfire Fuel Cells shall specify in Writing its requirements concerning such materials and supplies at the latest one month before the agreed start of the installation.

d) Customer has made available to Sunfire Fuel Cells free of charge sufficient offices on Site, equipped with telephone and access to the Internet.

14.3 If Sunfire Fuel Cells so requires, Customer shall give free of charge all necessary assistance required for the import and re-export of Sunfire Fuel Cells's equipment and tools, including assistance with customs formalities.

##### **15. Customer's default**

15.1 If Customer anticipates that he will be unable to fulfill in time his obligations necessary for carrying out the Services by Sunfire Fuel Cells, including to comply with the conditions specified in

Section 13, he shall without undue delay notify Sunfire Fuel Cells in Writing, stating the reason and, if possible, the time when he will be able to carry out his obligations.

15.2 Without prejudice to Sunfire Fuel Cells's rights under Section 15.3, if the Customer fails to fulfil, correctly and in time, his obligations necessary for performing the Services, including to comply with the conditions specified in this Section 15, the following shall apply:

a) Sunfire Fuel Cells may at his own discretion choose to carry out or employ a third Party to carry out Customer's obligations or otherwise take such measures as are appropriate under the circumstances in order to avoid or alleviate the effects of Customer's default.

b) Sunfire Fuel Cells may suspend, in whole or in part his performance of the Purchase Order. Sunfire Fuel Cells shall notify Customer in Writing of such suspension.

c) If Products have not yet been delivered, Sunfire Fuel Cells shall arrange for storage of the Products at Customer's risk and shall – upon Customer's request and at Customer's cost– insure the Product.

d) Customer shall pay any part of the Purchase Price which, but for the default, would have become due.

e) Customer shall reimburse Sunfire Fuel Cells for any costs which are reasonably incurred by Sunfire Fuel Cells as a result of measures under a), b) or c) of this Section 15.2.

15.3 If the Site Acceptance Test is prevented by Customer's default as referred to in Section 15.2 and this is not due to Force Majeure, Sunfire Fuel Cells may also by notice in Writing terminate the Purchase Order in whole or in part. Sunfire Fuel Cells shall then be entitled to compensation for the loss Sunfire Fuel Cells suffers by reason of Customer's default, including any consequential and indirect loss.

##### **16. Site Acceptance Test**

16.1 Upon completion of the Services a Site Acceptance Test shall be carried out to determine whether the System is as required for acceptance according to the Purchase Order. Sunfire Fuel Cells shall notify Customer in Writing that the System is ready for Site Acceptance Test specifying a date for such tests and giving Customer sufficient time to prepare for and be represented at the Site Acceptance Test.

16.2 If upon completion of the Site Acceptance Test Sunfire Fuel Cells has demonstrated that the System complies in all material respects with the specifications agreed in the Purchase Order, Customer shall accept the System and execute a certificate acknowledging successful completion of the Site Acceptance Test.

16.3 If the Site Acceptance Test demonstrates that the System does not meet the criteria set forth in the Purchase Order in all material respects, Sunfire Fuel Cells shall rectify such defect(s) after which the tests or such portion of them shall be repeated under the same conditions as aforesaid.

16.4 The System shall be deemed to have been accepted by Customer upon the occurrence of the earliest of the following: (i) successful completion of the Site Acceptance Test according to the Purchase Order, (ii) productive use of the System by Customer for more than 5 days, whether or not consecutive, (iii) expiration of the date of Site Acceptance Test for more than 30 calendar days for reasons attributable to Customer, including, but not limited to, Customer's non-compliance with Sections 14 or 15.



## **17. Sunfire Fuel Cells's delay in performing the Site Acceptance Test**

17.1 If Sunfire Fuel Cells anticipates that he will not be able to perform the Site Acceptance Test at the time for delivery, he shall notify without undue delay the Customer thereof in Writing, stating the reason and, if possible, the time when Site Acceptance Test can be expected.

17.2 Sunfire Fuel Cells shall be entitled to an extension of time for the Site Acceptance Test if the delay occurs

- a) as a result of variation work under Section 4 and 5,
- b) as a result of suspension of contract obligations under Section 15 and 12,
- c) as a result of Customer's delay in payment, or
- d) by an act or omission on Customer's part or any other circumstances attributable to Customer.

The extension shall be as necessary having regard to all circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

17.3 If the Site Acceptance Test is not completed for reasons attributable to Sunfire Fuel Cells at the agreed time, Customer shall be entitled to liquidated damages from the date on which Site Acceptance Test should have taken place. The liquidated damages shall be payable at a rate of 0.5 per cent of the Purchase Price for each commenced week of delay. Liquidated damages shall not exceed 7.5 per cent of the Purchase Price. The liquidated damages shall become due at Customer's demand in Writing, but not before Site Acceptance Test has been completed or the Purchase Order is terminated under Section 17.4.

17.4 If the delay is such that Customer is entitled to maximum liquidated damages under Section 17.3 and if the System is still not ready for the Site Acceptance Test, Customer may in Writing demand delivery within a final reasonable period. If Sunfire Fuel Cells does not complete the Site Acceptance Test within such final period due to reasons attributable to Sunfire Fuel Cells, then Customer may terminate the Purchase Order by written notice to Sunfire Fuel Cells. If Customer terminates the Purchase Order he shall be entitled to compensation for the loss as a result of Sunfire Fuel Cells's delay. The total compensation, including the liquidated damages under Section 17.3 shall not exceed 15 per cent of the Purchase Price which is attributable to the part of the System in respect of which the Purchase Order is terminated. Liquidated damages under Section 17.3 and termination of the Purchase Order with limited compensation under Section 17.4 shall be the only remedies available to Customer in case of delay. All other claims against Sunfire Fuel Cells based on such delay shall be excluded, except in case of gross negligence and willful misconduct on the part of Sunfire Fuel Cells.

## **V. MISCELLANEOUS**

### **18. Informational obligations, non-disclosure agreement and public relations**

18.1 In case that Prototypes are further developed by Customer, Customer shall inform Sunfire Fuel Cells of all findings obtained and shall provide to Sunfire Fuel Cells all data, measured values, test results etc. in an electronic format (E-Mail) at least once per calendar quarter.

18.2 Customer and Sunfire Fuel Cells agree to keep all information disclosed under this contract confidential and not to disclose it to unauthorized third parties (excluding persons and institutions etc., to whom the disclosure of the information is necessary to achieve the purpose of the contract) as long as such information has not

become generally known to the public or a waiver of confidentiality is signed by the disclosing party.

18.3. If Sunfire Fuel Cells is required to disclose trade or business secrets in order to achieve the purpose of the contract, Sunfire Fuel Cells may demand conclusion of a separate non-disclosure agreement (NDA) and may withhold performance and disclosure of the confidential information until the NDA is signed.

18.4. The conclusion of the contract as such is not subject of the non-disclosure agreement. Sunfire Fuel Cells is entitled to announce the fact of cooperation with the Customer and the matter of the cooperation, e.g. through press releases. The same applies also as FAT and SAT have been completed.

18.5 Customer agrees to undertake the organization of an open house event once or twice per year, during which Sunfire Fuel Cells and Customer will showcase the Products installed at the Customer for prospective Sunfire Fuel Cells customers and other interested third parties.

### **19. Governing Law / Disputes**

19.1 The Purchase Order including these GTCs shall be governed in all aspects by the Swiss substantive law, without regard to or application of conflicts of law rules or principles. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.

19.2 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the Parties who have authority to settle the same.

19.3 Any dispute, controversy or claim arising out of, or in relation to, this Agreement, including the validity, invalidity, breach, or termination thereof, shall be first resolved amicably by friendly negotiation between senior management members of both parties. If either party deems such friendly negotiation has failed, dispute resolution shall be made by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three (3). The seat of the arbitration shall be Zurich, Switzerland. The arbitral proceedings shall be conducted in English. Nothing in this Section 19 shall preclude either Party from seeking injunctive relief from a court of competent jurisdiction.

### **20. Entire agreement**

A Purchase Order and all exhibits hereto, including these GTCs, constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior or contemporaneous representations, discussions, negotiations and agreements, whether written or oral, relating to the subject matter hereof.

### **21. Severability**

If any provision of a Purchase Order including these GTCs is determined to be unlawful or unenforceable in any respect, such illegality or unenforceability will not affect any other provision of the Purchase Order. Any such unlawful or unenforceable provision shall be promptly replaced by a new provision mutually agreed between the Parties which reflects the business interests of the Parties upon conclusion of the Purchase Order.