I. General Provisions

1. These General Terms of Sale (hereinafter “GTCs”) shall apply to all offers, deliveries and services of SMA Solar Technology America LLC (including its parent, subsidiary, and affiliated companies, hereinafter “SMA”) to any customer located in the United States (hereinafter the “Customer”) (“SMA” and “Customer” are collectively the “Parties”) and shall govern all transactions related to SMA’s sale of products to Customer. SMA shall have the final say in the interpretation of these GTCs; SMA shall be deemed to have accepted any contract terms contrary to these GTCs.

2. The Customer is granted the non-exclusive right to use the software in object code form only installed on or licensed with any product sold hereunder. Sublicensing, selling or using the software for any purpose other than the reverse engineering for the purpose of deriving source code, or modification of the software (other than duplication for backing up purposes) and testing the software as installed hereunder, is not permitted under these GTCs. If the software is installed hereunder and is to remain the property of SMA and the Customer (any of which, hereinafter a “Contract”), unless otherwise expressly agreed in writing by SMA, the Customer shall be solely responsible for any infringement of the software. If the software is to remain the property of SMA, the Customer shall be obligated to compensate SMA for the damages suffered by the latter. All property interest in and to the software shall remain with SMA, and in no event shall the Customer have any rights to the software or the limited license granted herein.

3. SMA shall be entitled to all the rights in and to any bidding or tendering documents and the contents provided by SMA to the Customer. The Customer shall acquire no right in or to such documents. All such documents shall be immediately returned by the Customer upon SMA’s request. All such documents shall be considered as the exclusive property of SMA, and the Customer shall not disclose to any third party such information or use it for any purpose other than in connection with an order, without the prior written consent of SMA, which may be withheld at SMA’s sole discretion and/or at SMA’s discretion.

4. Any documents, prototypes, examples or samples, technical data and descriptions in the respective product information or advertising materials included in any offer are non-binding and are solely for informational purposes. They do not constitute any guarantee of quality or durability in relation to any products supplied or services performed by SMA.

II. Prices - Packaging - Terms of Payment – Delivery

1. Prices per CIP Incoterms® 2020. Prices per CIP Incoterms® 2020 include the costs of transportation and insurance to the named destination. Whether SMA or the customer pays for the transportation and insurance depends on the provisions of the order confirmation, and the customer will be informed of the order prices prior to delivery.

2. Cancellation in whole or part of any confirmed customer order shall NOT be attempted, permitted, or accepted by SMA, unless the conditions stated in the order are met. If the order is cancelled directly by SMA, written within seven (7) days of receipt of the order, otherwise, the order(s) will be deemed to be accepted by the Customer. The Customer may not refuse acceptance of delivery due to material damages (including cosmetic damage or variations in color or texture), and SMA shall not be responsible for any damage for defects which occur after delivery in the Customer’s possession. The Customer may not refuse acceptance of delivery due to material damages (including cosmetic damage or variations in color or texture), and SMA shall not be responsible for any damage for defects which occur after delivery in the Customer’s possession.

3. SMA shall be entitled to demand prompt and unconditional payment of any amounts paid by the Customer, other than those delivered or shipped hereunder. If any payment made by the Customer is returned for any reason, SMA, or a third party appointed by it, shall be entitled to demand and receive additional or further amounts owed to SMA, plus all fees, taxes and other costs incurred in connection with maintaining and/or enforcing such priority and security interest. To the extent permitted by law, the Customer waives the requirement of being provided with a copy of any financing or verification statement or renewal thereof. This security interest shall apply regardless of whether any product is in inventory or becomes a fixture.

4. All costs and expenses incurred by SMA in enforcing these provisions, including legal fees, shall be in a substantial indemnity basis for the Customer’s account.

V. Acceptance – Limited Warranty

1. The Customer shall inspect all goods and products purchased from SMA immediately on delivery to ensure that there is no transport damage and the products are complete and free from deficiencies. The Customer shall undertake all reasonable and timely efforts to inspect the products at SMA’s expense. The Customer shall inspect the products at SMA’s expense and any damage or deficiency found shall be reported in writing, within seven (7) days of receipt of the products; otherwise, the products shall be deemed to be delivered in good condition and SMA shall not have any obligation to correct such defects or damages.

2. Goods purchased from SMA are warranted to be free from manufacturing and material defects for a period of five years from the date of delivery. The Customer shall promptly return the products, SMA, or a third party appointed by it, shall be entitled to demand and receive additional or further amounts owed to SMA, plus all fees, taxes and other costs incurred in connection with the maintenance and/or enforcement of such security interest.

3. The warranties expressly set forth above and herein are the exclusive warranties made by SMA with respect to the products. SMA DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS AND OBLIGATIONS OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO CERTAINTY, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, and for any other agreement between the Parties or (b) circumstances arise or become known to SMA.

4. All warranted defective products reported to SMA within the applicable limitation period and which SMA accepts shall, at the discretion of SMA, be repaired or replaced in accordance with the terms and conditions of this GTC.

5. No state or federal authority has made any determination with respect to any product provided by SMA, or without such a determination from the state where the products are located, the warranty period for such products shall be limited to the applicable period in the Tariff ("F"I) program or contract. Accordingly, SMA makes no warranty whatsoever that any product will satisfy such domestic content requirements, unless otherwise expressly agreed in writing by an authorized representative.

VI. Other Compensation Claims

1. SMA'S LIABILITY WITH RESPECT TO ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF OR CONNECTED WITH ANY CONTRACT OR THESE GENERAL TERMS OF SALE OR THE PERFORMANCE OF ANY OF ITS OBLIGATIONS THEREUNDER SHALL BE LIMITED TO THE PURCHASE PRICE ACTUALLY PAID BY THE CUSTOMER FOR THE PRODUCT GIVING RISE TO THE CLAIM. In any case, such liability shall cease upon the expiration of the warranty period specified in the Limited Liability Warranty in effect at the time of purchase.

2. IN NO EVENT SHALL SMA BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR OTHER SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUE OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF DATA OR RECORDS, WHETHER OR NOT SMA WAS INFORMED OR AWARE OF THE POSSIBILITY OF SUCH LOSS OR THE REMEDY FAILS OF ESSENTIAL PURPOSE.

3. SMA products may NOT be used in the medical or in aviation applications or nuclear facility without SMA’s prior written consent.

VII. Other Conditions

1. These GTC and all contracts incorporating them shall be governed and construed in accordance with the laws of the State of California and the applicable federal laws of the United States, excluding their rules of procedure and interpretation. SMA reserves the right to unilaterally change the terms and conditions of these GTCs from time to time, without prior notice to the Customer.

2. These GTC, together with the appropriate contract documents, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements. No oral or written representation by SMA shall be valid without prior written consent from SMA.

3. The invalidity or unenforceability of any provision of these GTC or any Contract shall not impair the validity or enforceability of the remaining provisions.

4. Any dispute under these GTC shall be subject to non-binding mediation followed by binding arbitration under Judicial Arbitration & Mediation Service (“JAMS”) rules for Small Commercial Disputes, by the JAMS, at its office in Los Angeles, CA or at such other location as it shall select to conduct the arbitration, and shall be governed by the laws of the State of California. The award shall be binding and evidence of the parties’ agreement and submitted to a court of competent jurisdiction for enforcement. The party prevailing at trial shall be entitled to recover its costs and expenses incurred in the arbitration.

5. The Customer shall comply with the applicable laws and regulations and any other agreements that have been in effect at any time.

6. SMA reserves the right to not provide services in countries with a high risk of safety or to provide them only under certain limited conditions. Please refer to the general terms of delivery and the Limited Warranty for more details.