

# General Terms and Conditions of Purchase of SMA Solar Technology Canada Inc.



## I. General Provisions

1. These General Terms and Conditions of Purchase (hereinafter referred to as the "GTCP") shall apply to all deliveries and/or services purchased by SMA Solar Technology Canada Inc. (hereinafter referred to as "SMA") from you (hereinafter referred to as "Supplier"), (SMA and Supplier collectively are also hereinafter referred to collectively as the "Parties" and individually as a "Party"). The GTCP shall also apply to all future deliveries of goods and services by the Supplier to SMA, and to offers of SMA to the Supplier, even if these GTCP are not specifically referenced in any agreement, order or order confirmation.
2. Any terms of the Supplier whether included in an invoice, order confirmation or any other document shall only apply in so far as SMA has consented to the inclusion of those terms in writing and signed by an authorized representative of SMA. In the event of conflict with any documents of Supplier or terms and conditions of Supplier that SMA has agreed to be bound in writing and signed by an authorized representative of SMA, the terms of the GTCP will take precedence.
3. In the event the Parties execute a separate agreement for Supplier's provision of goods and services to SMA, the terms of the GTCP shall apply even if the GTCP is not referenced. The GTCP and the separate agreement shall be interpreted as if the terms appear together and shall be interpreted in a way that renders them compatible, not contradictory to the extent possible. In the event the provisions of the separate agreement conflict with the GTCP, the terms of the separate agreement shall take precedence over these GTCP unless a contrary intent is stated. If the Supplier identifies and notifies SMA in writing within ten (10) days of the order date of any conflict, inconsistency or ambiguity among any of the documents comprising or relating to the Parties' agreement or among any of the requirements or provisions thereof, SMA shall determine in writing the proper resolution of such conflict, inconsistency or ambiguity, and both Parties shall be bound by that determination.
4. Acceptance of the goods or services by SMA shall not be deemed to be agreement to Supplier's terms or a waiver of SMA's right to full performance.

## II. Orders and Order Confirmations

1. All purchases of goods and services from Supplier by SMA shall be made pursuant to an order or by an SAP order form issued by SMA to the Supplier.
2. If requested by SMA, Supplier will use SMA's supplier portal.
3. Supplier shall confirm or reject all orders in writing within three (3) business days from the date Supplier receives SMA's order, and the confirmation shall reference SMA's order number. Alternatively, Supplier may also use SMA's supplier portal if requested by SMA to confirm or reject orders. The Supplier shall not reject an order that conforms to the GTCP. The confirmation shall not modify the order in any way. Any attempt to modify the order shall be deemed to be acceptance of the order without modification. Failure of Supplier to confirm an order within three (3) business days shall be deemed to be an acceptance of the order by Supplier.
4. SMA may cancel any order within ten (10) business days of receipt of the Supplier's order confirmation without liability. After ten (10) business days from receipt of Supplier's order confirmation, SMA may request modifications to the order, including quantity, delivery date, place of delivery at any time. If the modifications are acceptable to Supplier, the Parties shall execute a modification of the order.
5. If SMA orders an initial sample, SMA reserves the right to approve serial production. If SMA rejects the initial sample, Supplier shall provide SMA all documentation reasonably requested by SMA related to the sample. Supplier shall remedy the sample and submit the samples to SMA for approval. If SMA rejects the sample a second time, SMA may cancel the order without liability or SMA can request the Supplier to repeat the procedure outlined herein.

## III. Scheduled Delivery Dates, Default, Discontinuation

1. The scheduled delivery dates set forth in the order and confirmed by Supplier in the order confirmation are binding unless modified by the Parties in writing. Should the Supplier believe that it will not meet the delivery date(s), the Supplier will notify SMA immediately in writing with an explanation of the reasons for the delay, steps Supplier will undertake to expedite delivery at Supplier's cost, and new proposed delivery dates. SMA may agree to the new delivery date, cancel the order or request that the Supplier will expedite delivery of the goods at Supplier's costs.
2. If SMA has requested Supplier to use the supplier portal, the Supplier shall send the notification required in III.1 to SMA via the supplier portal.
3. SMA is not required to provide Supplier notice in the event Supplier has failed to meet the delivery date. In the event the Supplier is delayed in the provisioning of goods and services, Supplier will pay to SMA liquidated damages of 0.25 % for each day of delay. The parties agree that it would be extremely difficult to determine precisely the amount of actual damages that would be suffered by SMA due to the failure of Supplier to timely deliver the goods and/or services insofar as the delay may impact SMA's reputation or require SMA to provide non-monetary concessions to its own customer, and the Parties further stipulate that the foregoing agreed upon sum is not a penalty, but rather a reasonable measure of damages, based upon the Parties' experience and given the nature of the losses that may result from delay. Notwithstanding the foregoing, the right to assert additional damages or any other claims (in particular extra freight charges, extra production costs, additional set-up costs, overtime supplements etc., cost to cover shall be in addition to the liquidated damages. This provision shall apply in the event of concurrent delay or delay caused by a third-party. In the event the liquidated damages clause set forth herein is found to be a penalty, the Parties agree that the liquidated damages provision shall not apply, and SMA may avail itself of all remedies available to it under law.
4. Should the Supplier breach any of the provisions of the GTCP, SMA may cancel any or all outstanding order(s) or terminate this GTCP at any time and without liability to Supplier, if the Supplier does not remedy breach within ten (10) working days of the date of the written notice from SMA to the Supplier. The remedies for Supplier's breach are cumulative and shall also include the extra costs arising in the event that a replacement is procured from a third party.
5. SMA may, in addition, terminate or rescind the GTCP or order(s) without liability, if the Supplier has stopped performance of its services ordered by SMA upon notice to Supplier, and the Supplier has failed to recommence performance within five (5) days of receipt of SMA's notice. In addition, SMA may terminate the GTCP and/or cancel all orders, if the Supplier has failed to make payments in the ordinary course of business or the Supplier has filed a petition for insolvency or if involuntary insolvency proceedings are instituted against it or credit has been refused due to insufficiency of assets.
6. SMA may, at its option, terminate or rescind the GTCP or order(s) in whole or in part, for its convenience by written notice stating the extent and effective date of such termination. Upon receipt of such notice, Supplier shall, to the extent directed by SMA, immediately: (i) stop work under the order and place no further order hereunder; (ii) terminate work under outstanding orders which relate to work terminated by such notice, (iii) immediately cause any of its suppliers or subcontractors to cease such work, and; (iv) protect property in Supplier's possession in which SMA has or may acquire an interest. To the extent Supplier has incurred expenses directly arising from the termination under this Section III. 6, the Supplier will submit to SMA its expenses no later than twenty (20) days from the effective date of termination. Supplier agrees to allow SMA the right to audit its books, records, and documents relating to its termination claim. If the Parties cannot agree within ninety (90) days upon compensation for termination under this Section, and so long as Supplier is not otherwise in breach or violation of an order, SMA's liability to Supplier will be limited to payment of the unpaid balance for the goods and/or services that Supplier has actually and properly delivered and completed prior to the date of termination plus actual direct costs resulting from the termination (not including unearned overhead and anticipated profits) and for which SMA has accepted. Supplier shall not be paid for any work or services performed after receipt of notice of termination, or for any costs incurred by Supplier, Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. Supplier will, if directed by SMA, transfer title to and make delivery of any such goods and/or services in process, or inventory not retained or sold with SMA's written consent
7. The right of termination shall be in addition to all rights and remedies available to SMA under law.

## IV. Price, Payment Terms, Set-off and Retention

1. Price will be specified in each order. All prices shall be inclusive of GST and HST if applicable. GST and HST shall be itemized as a separate line item on the invoice. The prices shall be fixed prices and shall include freight, packing, transport in accordance with the contractually agreed Incoterms®, as amended from time to time, but shall exclude transport insurance. Supplier is not entitled to additional and/or increased compensation, unless SMA has agreed in writing.
2. Payment is due ninety (90) days from receipt of an undisputed invoice. Supplier shall not invoice SMA prior to the occurrence of all of the following: a) all goods have been delivered and/or all services have been performed in accordance with the GTCP; b) the goods and/or services are free from defects and SMA has accepted all goods and/or services, if applicable and c) the invoice has been properly issued in accordance with section V.5.
3. A payment shall be deemed made at the time SMA provides transfer instruction to the bank or at the time, a check is released by SMA.
4. SMA shall be entitled to set off all claims against any payment due to Supplier. Supplier shall be entitled to set off only undisputed charges or if the claim has been adjudged in favor of Supplier in accordance with the dispute resolution provision of Section XVI. 2 and said judgment is final and not subject to appeal.

## V. Shipment, Packaging, Invoice

1. The order shall set forth the place of delivery and the applicable Incoterms® for the delivery of goods. Title to goods shall transfer upon delivery.
2. For each delivery of goods, Supplier shall affix to the outside of the container, a delivery note which contains the order number and the order item number, the ordered quantity, the agreed delivery date and the description of the goods as well as, if available, the SMA material number and the serial number. The outside of the packaging unit shall include SMA material number, the quantity contained and the Supplier's name. If agreed, the date of manufacture of the goods must also be shown. If goods are delivered from a country other than Supplier's or SMA's country, the shipping documents must be sent to SMA for review prior dispatch. Following such review, SMA shall grant the Supplier the approval to initiate the shipment of the goods.
3. Deliveries for which SMA must bear the freight costs either in whole or in part, shall be transported at reasonable rates and methods.
4. The Supplier shall ensure the proper and safe packaging of the goods. Packaging for electronic elements or components must be ESD-dissipative.

5. The invoice shall be sent to SMA accounts payable department at vendor@sma-america.com together with details reasonably requested by SMA including the delivery note details specified under this section V.2.
6. Upon request by SMA, the Supplier will collect all packing material of the delivered goods from the receiving point and to dispose of it at its own expense and in accordance with applicable law.

#### **VI. Compliance with Law and Export and Import Regulations**

1. Each Party shall perform its obligations in accordance with all applicable federal, state, and local laws, regulations, ordinances and codes, including the export and foreign controls, the Foreign Corrupt Practices Act, the U.S. Export Administration Act, and the requirements of the FCC, EPA, and OSHA, all as may be amended from time to time. The Supplier shall be responsible for taking appropriate steps to obtain necessary export and import licenses, if any, related to the export and import of Good(s) and to pay all fees, customs, levies and duties. The Supplier shall provide SMA with copies of relevant export, import and clearance licenses. If either Party is charged with the failure to comply with any law, the Party charged shall promptly notify the other Party of such charges in writing. Each Party warrants and represents that its execution, delivery, and performance of this GTCP or the relevant order(s) shall not constitute (i) a violation of any judgment, order, or decree; or (ii) a material default under any material contract by which it or any of its material assets are bound.
2. With reference to the SMA article number, the Supplier shall provide information on the country of origin, weight (gross/net), customs tariff number (HS code), and the dual-use characteristic of the goods.

#### **VII. Acceptance of the Goods**

1. SMA may reject goods delivered prior to the specified dates or deliveries in excess or less than the quantity ordered and may return such goods at the Supplier's expenses and risk of loss or store these goods at the Supplier's expenses.
2. SMA may in, addition, reject goods that are not delivered in accordance with this GTCP or are defective.

#### **VIII. Retention of Title by the Supplier, Retention of Title in the Case of Parts Supplied by SMA**

1. SMA shall retain any and all intellectual property rights including copyrights, patents, trademarks, know-how and trade secrets in all documents and resources made available to the Supplier by SMA for the fulfillment of an order, including but not limited to drawings, illustrations, drafts, calculations, descriptions, plans, models, samples, technical specifications, data carriers, other written documents, tools, parts and materials. Such documents and resources shall be used exclusively to fulfill Supplier's contractual obligations under the GTCP and shall be returned to SMA (including any copies or records made, if applicable) after the execution of the order. Products manufactured according to documents and tools of SMA may not be used by the Supplier for itself or offered, used or delivered to any third parties.
2. Technical documents, written material, drawings, diagrams, charts, graphs, photographs, layout templates and other documentation, whether electronic, on data carriers, in printed form or as material for print preparation or printing, created by the Supplier in the course of the execution of the order, as well as all samples, tools, materials and other resources ("Auxiliary Resources") shall be owned by SMA. The Supplier shall grant SMA all title and interest to the Auxiliary Resources. Furthermore, SMA shall receive all intellectual property rights, rights of use and exploitation in all aforementioned copyrightable works, to the extent permitted by law. No separate remuneration shall be owed by SMA for the assignment of the aforementioned rights; this shall be fully included in the prices stated in the applicable order.
3. In the event Supplier uses or incorporates or combines Technical documents, written material, drawings, diagrams, charts, graphs, photographs, layout templates and other documentation, whether electronic, on data carriers, in printed form or as material for print preparation or printing, samples, tools, materials and other resources provided by SMA (SMA Provided Auxiliary Resources), Supplier shall only use the SMA Provided Auxiliary Resource for SMA and no other party.

#### **IX. Protective Provisions**

1. The goods and/or services provided by the Supplier shall include all services and materials necessary for the production of the goods or performance of the services whether or not included on an order. The Supplier undertakes, particularly with regard to the delivery of goods, to produce all goods in compliance with all applicable rules and specifications and in accordance with the latest state of the art technology, relevant standards including the National Electrical Codes, laws, provisions and safety requirements relevant to the intended purpose and place of use, valid and in force at the respective time of delivery of the goods or the date services are performed for SMA. The Supplier shall be solely responsible for the appropriate and diligent fulfillment of each order. The Supplier shall not be relieved of any obligations to provide goods or perform services in accordance with the GTCP or the order by SMA's testing, inspections or approvals. Acceptance of deviations in one instance shall not constitute a waiver of SMA's right to require strict compliance with the GTCP.
2. The Supplier undertakes to comply with the laws of the country to which the goods are delivered by the Supplier, as well as all current product-related legal requirements regarding safety and the environment in force at the respective time of delivery of the goods or other performance to SMA. In particular, this shall include the provisions for classification, labelling, packaging, notification obligations, substance restrictions and the provisions regarding the distribution, delivery, import, export and use of the goods as well as the statutes or regulations regarding the use of chemicals. Supplier shall provide SMA with all reasonably requested information regarding the goods and services including information required by regulatory authorities. The information shall be sent by email to the contact address given by SMA: Changenotification@SMA.de.
3. The Supplier undertakes not to use any significant quantities of Hazardous Materials in the production and handling of the goods. In this respect, the Supplier shall comply with the legal requirements and the material requirements of the SMA Standard 01501 Restrictions on Hazardous Substance as amended from time to time. The respective applicable version is available at the following URL: <https://www.sma.de/partner/lieferanten.html>. Furthermore, Supplier is responsible for any Release of Hazardous Materials caused in whole or in part, directly or indirectly by Supplier. "Hazardous Materials" means any material, chemical, substance, waste, pollutant, contaminant, compound, mixture, or constituent thereof, in any form or amount, including petroleum (including crude oil or any fraction thereof) and petroleum products, natural gas liquids, asbestos and asbestos containing materials, naturally occurring radioactive materials, brine, and drilling mud, regulated or which can give rise to liability under any applicable environmental law. "Release" means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, or migrating in, into or through the environment, or in, into, from or through any building or structure.
4. Supplier should not use or sell products to SMA which use minerals from conflict zones according to the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act as amended in 2010. The Supplier warrants and represents that the goods sold to SMA under this GTCP shall not contain any materials from conflict zones including but not limited to the Democratic Republic of Congo or in any of its neighboring countries. Furthermore, the Supplier agrees to periodically carry out measures to verify the original source of the tin, tantalum, tungsten or gold used in any of the products sold under these GTCP. The Supplier shall provide SMA with an annual confirmation of non-use of materials from conflict zones.
5. The Supplier acknowledges that SMA has obligations to comply with Modern Slavery Laws, and Supplier represents and warrants to SMA, the Supplier has no knowledge of any Modern Slavery Offences that have occurred or are currently occurring within its organisation or supply chain; and takes and will continue to take reasonable steps to identify the risk of, and prevent the occurrence of, Modern Slavery Offences within its organisation or supply chains.
6. In accordance with the Foreign Corrupt Practices Act of 1977 (15 U.S.C. § 78dd-1, et seq.) and all relevant and applicable Laws (including Anti-Corruption Laws), the Supplier agrees and warrants that it will not make, offer, promise or authorise any payment, loan, gift, donation or other giving of money or things of value, directly or indirectly, whether through the Supplier, its Related Bodies Corporate, affiliates, partners, officers, employees, agents or representatives, whether in cash or kind, and whether pursuant to a written agreement, to or for the use of any government official, any political party or official or any candidate for political office, for the purpose of influencing or inducing any official act or decision in order to further the activities contemplated by this Agreement, including obtaining or retaining any government approval or funding related to such activities.
7. The Supplier acknowledges that in entering into this Agreement, SMA has relied upon the Supplier's representation and warranty to strictly comply with all Anti-Corruption Laws and the Supplier agrees that if it violates any Anti-Corruption Laws, SMA may immediately upon notice terminate this Agreement.

#### **X. Warranty for Defects in Quality or Title, Liability**

1. The warranty period shall be the earlier of 60 months from acceptance of the goods and/or services or 65 months from delivery, unless the statutory warranty period provides for a longer period.
2. The Supplier warrants and represents that, in the case of deliveries of goods by the Supplier, the goods delivered shall have the agreed quality, comply with the specification, be fit for the intended purposes, be merchantable, compliant with law and regulations, and be free of defects and free from third-party claims of infringement or misappropriation of intellectual property rights, including but not limited to patents, copyrights, know how, trade secrets and trademarks and shall not be subject to any official or judicial restrictions or conditions. Other product specifications, user requirements specifications or functional specifications, data sheets, marketing materials or other product documentation shall be deemed to be equivalent to a specification with regard to the agreed quality. The Supplier shall repair or replace the goods (with functional equivalents) at SMA's option, and the goods and the replacement goods shall conform to the warranty set forth in this section.
3. If services are provided by the Supplier, the Supplier warrants the proper and careful performance of the services, which shall be performed in accordance with the highest professional and industry standards and which shall be performed in accordance with the respective order and specifications, if applicable. If the services are not performed as agreed, in particular that the services do not comply with the order and the aforementioned specifications and standards, the Supplier shall reperform the services promptly after SMA has notified Supplier free of charge. If the Supplier is unable to reperform the service after more than two attempts or after the expiry of a grace period (if applicable), SMA may, at its sole discretion, cancel the order, reduce the contractual remuneration or remedy the defect on its own or by a third party and receive reimbursement of all expenses incurred by SMA. In addition, SMA may claim damages instead of performance and compensation for other damages and expenses incurred by SMA due to the Supplier's breach of obligations including liquidated damages and damages paid to SMA customer as result of Supplier's breach.
4. Notwithstanding the foregoing, the warranty period shall not end before all defects, which the Supplier has notice of prior to expiry of the warranty period, have been remedied to SMA's reasonable satisfaction. With respect to replacement of defective parts, or in respect of parts repaired, the warranty period shall restart after installation or repair of such parts.

5. SMA may inspect deliveries of goods from the Supplier upon delivery to SMA's site to the extent that this is feasible in the ordinary course of business. The inspection may identify deviations in the goods ordered or quantity, transport damage and other easily visible defects. The Supplier shall repair or replace at SMA's option any defects identified during inspection within ten (10) business days of receipt of the notice from SMA.
6. All costs and damages incurred as a result of the Supplier's breach of this Section X, including consequential loss arising from third-party claims, shall be borne by the Supplier, and Supplier shall reimburse SMA for expenses incurred by SMA and damages paid by SMA arising from Supplier's breach of this Section X including but not limited to costs for removal and installation, (return) transport including all ancillary costs, error analysis, expense compensation, additional costs for covering purchase, material, scrapping, etc. as well as claims for damages by third parties. The following section XI sets for the process for handling of complaints as well as to the allocation of costs for rework.
7. The Supplier agrees to indemnify, defend, and hold harmless SMA and its affiliates and their respective officers, directors, employees, agents, successors, and assigns, from any and all damages and losses from claims arising from, in connection with, or based on allegations of any of the following: (i) the Supplier's breach of any of its representations, warranties, covenants, obligations, or responsibilities set forth in the GTCP; (ii) the negligence or intentional misconduct of the Supplier or any of its officers, directors, or employees; (iii) any claims, statements, or representations made by the Supplier concerning the quality, performance, or other characteristics of the Product(s) or Services; (iv) the Supplier's breach of any applicable law; (v) any claim of misappropriation and infringement of intellectual property rights including patent, copyright, trademark, trade secrets and know-how; (vi) the filing of a lien, or other encumbrance, on all or part of the project by Supplier or its sub-suppliers; (vii) Supplier's failure to provide insurance as required herein.
8. The limitation period for warranty claims shall be tolled during the period of time the Supplier is remedying the non-compliance and/or during the Parties' negotiation of a resolution to a warranty claim if any. The statute of limitation shall recommence as of the date Supplier unconditionally refuses in writing to continue remedying the respective defect or if the Supplier informs SMA in writing that the negotiations have ended, or the Supplier has remedied the breach.

#### **XI. Handling of Complaints / Rectification Work**

1. The provisions set out in this section XI are intended to establish a basis for the efficient and cost-effective handling of claims, i.e. cases where individual goods do not correspond to the agreed required qualities and for which the Supplier (including its sub-suppliers) is responsible. Section XII shall also apply to serial defects. In the event the Parties have entered into a quality management agreement, that agreement shall apply to the goods and service ordered under this GTCP.
2. In the case of defective goods or parts, these goods or parts shall, at SMA's sole discretion, be returned to the Supplier or be repaired or replaced at the location where the goods are located. In case the goods are returned to the Supplier, the cost to ship the goods to the Supplier and returned to SMA at the location designated by SMA, shall be borne by the Supplier. Goods, which are do not conform to Section X must be repaired or replaced by the Supplier within two (2) weeks from notification by SMA of a breach of warranty, including the transport times. The delivery of a replacement or repaired goods shall be reference of the claim number provided by SMA when SMA has notified Supplier of a defect. The Supplier shall inform SMA in writing within five (5) business days of the delivery date of a replacement or repaired good, unless SMA agrees otherwise in writing. This period to repair or replace goods or parts shall commence upon the receipt of Supplier of SMA's notice of breach under Section X.
3. Notwithstanding the foregoing, SMA may request partial deliveries of goods, repairs at SMA's premises or other suitable measures. In the event that SMA cannot reasonably wait two (2) weeks in order to maintain its own delivery schedule and to avoid delays or for other compelling reason, and the Supplier is not in a position to or does not promptly promise measures to guarantee delivery within this shortened time period in SMA's discretion, SMA shall be entitled to carry out such measures on its own or have such measures carried out by third parties at the Supplier's expense. "Measures" shall also be understood to include the complete elimination of defects in goods as soon as possible.
4. SMA may charge all warranty repairs a processing fee of \$125.00 per warranty claim. In the event the defective goods are at the location of an SMA customer, an additional service fee of \$250.00 will be charged to Supplier in SMA's discretion.
5. In the event the goods are not defective, Supplier shall receive a credit of the processing and service fee set forth herein.
6. All costs incurred in connection with the determination and examination of defects may be claimed by SMA by way of a damage claim and be set off against outstanding payment claims.

#### **XII. Serial Defects**

1. In the event of a Serial Defect in accordance with section XII.2, SMA shall be entitled to reject delivery of any order, whether or not the goods have been delivered. In the event of a Serial Defect, the Supplier shall replace or repair all goods, regardless of whether the goods have exhibited the Serial Defect and to reimburse SMA for all costs associated with the Serial Defect including the cost to SMA to detect and troubleshoot the Serial Defect. The warranty period for replaced parts or goods or the repaired goods shall restart and shall continue for the full warranty period.
2. "Serial Defect" means more than five percent (5%) of the delivered goods and services are defective as to the same component or have a comparable cause. A Serial Defect shall also be deemed to exist, even if more than five percent (5%) of the delivered goods have not exhibited a defect as to the same component or have a comparable cause, if SMA has a reasonable belief that more than five (5%) of the goods will have a Serial Defect on the basis of a detected defect in production, the use of materials and/or the respective product design.
3. The limitation period shall be suspended by the notification of the first defect for all goods of the same type delivered and shall restart once the Supplier has complied with its obligations under this Section.

#### **XIII. Insurance**

1. Without limiting Supplier's liability, the Supplier will maintain, at its own expense and for the duration of the contractual relationship, sufficient business, product and environmental liability insurance to cover the statutory and contractual liability risk, with the following coverage amounts per insured event and in the annual aggregate, for damages:
  - Commercial General Liability, with limits of at least \$1 million per occurrence and \$3 million in the aggregate for bodily injury and property damage and including contractual liability, premises/operations, completed operations, personal and advertising injury liability.
  - Products liability with limits of at least \$3 million in the aggregate.
  - Business automobile liability (owned, leased, non-owned, hired, and employee non-owned vehicles), of at least \$1 million combined single limit each occurrence for bodily injury and property damage.
  - Workers' Compensation Insurance with statutory limits, as required by the state in which the work is to be performed, and employer's Liability Insurance of not less than \$1 million per occurrence
  - Professional Liability or Errors & Omissions Liability with limits of at least \$1 million per occurrence including coverage for errors & omissions liability. Network security and privacy limits are \$3 million in the aggregate.

Within thirty (30) days of the first order confirmation, Supplier shall provide to SMA a certificate of insurance evidencing that Supplier has obtained the required minimum insurance and has added SMA and its affiliates and their respective directors, officers, managers, representatives, agents and employees, as additional insureds with respect to the insurance required in herein. The insurance shall not be cancelled or materially changed until at least thirty (30) days prior written notice has been given to SMA. Any material changes to the insurance, shall nevertheless comply with this Section XIII. The insurer shall be at a minimum A+ rated.

Supplier on behalf of its insurers hereby waives the right of any recovery or subrogation against SMA, its affiliates and consultants, and their respective directors, officers, managers, representatives, agents and employees. All insurance policies required herein or in any way related to the goods provided by Supplier shall include clauses stating each insurer waives all rights of recovery, by subrogation or otherwise, against SMA and its affiliates and their respective directors, officers, managers, representatives, agents and employees. The insurance maintained by Supplier shall be primary with respect to the interest of SMA, and any other insurance or self-insurance maintained by SMA or its affiliates is in excess and shall not contribute to Supplier's insurance in all instances regardless of any like insurance that SMA or any of its affiliates may have.

#### **XIV. Duties to Inform, Notice of End of Life, Subcontractors**

1. All goods to be manufactured by the Supplier for SMA in accordance with SMA's requirements or specification shall constitute SMA-specific products (hereinafter called "SPECIFIC CONTRACTUAL PRODUCTS"). In regards to SPECIFIC CONTRACTUAL PRODUCTS, the Supplier shall notify SMA in advance in writing and within a reasonable period of time of any changes proposed, which are mechanical, effect functionality, are optical or involve changes to electrical data and properties of the goods, as well as any changes to the manufacturing process and any relocations of the production sites. Such changes may only be made by the Supplier with the express prior written consent (by email, fax or post) of SMA.
2. In the event of changes to goods, which are not SPECIFIC CONTRACTUAL PRODUCTS, the Supplier shall notify SMA timely of any technical changes or any relocation of the production sites/facilities and to provide SMA with any additional information reasonably requested. If applicable, the Supplier shall timely notify SMA in writing with no less than 180-days' notice of any applicable amendments or updates of

warranty terms, data sheets or other documents of the Supplier. Any such changes will not be effective for any pending order. Insofar as SMA does not object to such changes within a reasonable period of time, the changes shall be deemed accepted by SMA. Notifications shall be sent to the contact address given by SMA: [Changenotification@SMA.de](mailto:Changenotification@SMA.de).

3. If the Supplier makes changes to goods, the design, or manufacturing process, the Supplier shall bear all costs incurred by SMA in relation to new samples, qualifications, and testing.

4. The Supplier shall notify SMA in writing of its plans to end production of a given product one (1) year in advance of the planned end of production date. This notification shall also include the date of last order and the date the last delivery may be placed (date the order must be received by) by SMA. The quantity for the last order may not be limited. Notifications shall be sent to the contact address given by SMA: [Changenotification@SMA.de](mailto:Changenotification@SMA.de).

5. The Supplier shall not subcontract any services to be performed under the GTCP to any subcontractors, freelancers, sub-suppliers and other third parties (jointly "Authorized Representatives") without prior written authorization from SMA. Neither this GTCP nor any agreement with the Authorized Representative and Supplier will create any contractual relationship between any Authorized Representatives and SMA, nor any liability of SMA to any Authorized Representatives. Notwithstanding SMA's authorization, the Supplier shall fully be responsible for the performance of the Authorized Representatives and compliance of the services in accordance with the GTCP.

6. If the Supplier or an Authorized Representative renders services at SMA's production sites, the Supplier shall ensure that the "rules for contractors" presented by SMA are properly signed prior to the performance of the respective services and that these rules for contractors as well as any other provisions of the applicable works rules are fully observed and complied with by all relevant persons.

7. If agreed between the Parties, the Supplier shall, no later than on the day of the delivery, send all requested product-related written verifications (certificates, test reports, etc.) relating to the delivery as a PDF document by email to [certificates@sma.de](mailto:certificates@sma.de), and shall make reference to the applicable SMA order number and the delivery note.

## XV. Secrecy and Protection of Confidence

1. All information received and disclosed between the Parties in connection with the GTCP and any order shall be confidential. The party disclosing information is the "Disclosing Party" and the party receiving the information is the "Receiving Party." Receiving Party shall protect such information from disclosure, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in no event shall the Receiving Party use less than reasonable care. The obligation of confidentiality shall not apply to information that: (a) is already in the Receiving Party's possession at the time of disclosure established by the records of the Receiving Party; (b) is or later becomes publicly available through no fault of the Receiving Party; (c) is acquired from a third party having no obligations of confidentiality; (d) is independently developed by the Receiving Party established by the records of the Receiving Party; and (e) is required by regulation or regulation to be disclosed.

2. All information shall remain the property of the Disclosing Party. The information received shall be used only within the framework of this GTCP and shall only be made accessible to affiliates, employees (including employees of affiliates) who have a need to know the information and are themselves obligated to maintain confidentiality with provision at least as restrictive as this Section XV. Absent the prior written consent of the Disclosing Party, this information shall not be directly or indirectly exploited commercially, and the Receiving Party shall not apply for registration of intellectual property rights. The information shall not be disclosed by the Receiving Party to third parties. For the avoidance of doubt: third parties shall not include the receiving Party's affiliates. Affiliate(s) shall mean (i) the ultimate parent company as well as a (ii) corporation, company, or other entity more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled directly or indirectly by a Party or the ultimate parent company, but such corporation, company, or other entity shall be deemed to be an "Affiliate" only so long as such ownership or control exists; or (iii) an entity which does not have outstanding shares or securities, as may be the case in a partnership, joint venture, or unincorporated association, more than fifty percent (50%) of whose ownership, management, or control rights to make the decision for such entity is, now or hereafter, owned or controlled directly or indirectly by Party or that Party's ultimate parent company, but such entity shall be deemed to be an "Affiliate" so long as such ownership or control exists.

3. Press releases, other publications or advertising referring to the relationship between SMA and the Supplier, the execution of agreements, or orders placed shall be permitted only with SMA's prior written consent.

4. Disclosure of information of any kind by SMA does not give the Supplier any license rights, reproduction rights, usufruct rights or other rights of any kind whatsoever. All rights, in particular the right to apply for intellectual property rights or any other licenses or similar titles (e.g. patents), shall remain reserved to SMA.

## XVI. Other Provisions

1. These GTCP and all documents referenced herein shall be governed and construed in accordance with the substantive laws of the province of Ontario and the federal laws of Canada applicable therein without regards to the conflicts of law provisions.

2. For the purpose of all legal proceedings, this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement, except for matters that can be tried only before a Federal Court in which case jurisdiction and venue shall be in Ontario. The Parties to this Agreement each hereby attorn to the jurisdiction of the courts of the Province of Ontario and of the Federal Court in accordance with the foregoing and waive any objection to venue or any claim of inconvenient forum. SMA is also entitled to commence legal action in a court of competent jurisdiction at the legal business domicile of the Supplier or at a competent court on the basis of domestic or foreign law. The parties agree to waive a jury trial. During the pendency of any dispute between the Parties, the Supplier shall continue to perform its obligation under this GTCP and any order.

3. The Parties agree to comply with all provisions of the European General Data Protection Regulation (GDPR) and any other applicable data protection laws including but not limited to Canada Privacy Act. In particular, the Parties shall only collect, process and use personal data to the extent that they are permitted to do so as a result of the respective contractual relationship and to the extent necessary for rendering the respective service. Processing of the data beyond the aforementioned scope and processing of personal data at locations where the GDPR is not applicable shall be prohibited in each case and by any means.

4. The Supplier undertakes to comply with SMA's Business Partner Code of Conduct as amended from time to time. The respective applicable version is available at the following URL: <https://www.sma.de/fileadmin/content/global/Partner/Documents/supplier/SMA-Business-Partner-Code-of-Conduct.pdf>.

5. Supplier shall not as a consequence of its own act or omissions or its suppliers or subcontractors permit liens or encumbrances including security interests arising out of the furnishing or work or goods or services by Supplier or its suppliers or subcontractors. Supplier shall keep and maintain the site where work is performed by Supplier or its subcontractor's free and clear of all liens and encumbrances related Supplier's performance of services under this GTCP including, without limitation, all liens and encumbrances placed by suppliers or subcontractors of Supplier. At Supplier's sole cost and expense, Supplier shall immediately remove, release and extinguish any and all such liens or encumbrances that attached to any project or site arising out of Supplier's performance of service under the GTCP including its subcontractors and suppliers, and SMA shall have no liability therefor. In the event Supplier fails to remove or extinguish the lien or encumbrance within ten (10) days, at Supplier's sole cost and expense, SMA may seek the removal, release and extinguishment of any liens or encumbrances arising out of the furnishing or work or goods or services by Supplier or its suppliers or subcontractors.

6. The GTCP may not be assigned or delegated by Supplier without the prior written consent of SMA. SMA may assign and delegate these General Terms and Conditions of Purchase upon written notice without consent.

7. These GTCP, 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 agreements shall be binding on either party.

8. Invalidity or unenforceability of any provision of these GTCP shall not impair the validity or enforceability of any of the other provisions.