



General Terms and Conditions of Delivery of SMA Japan K.K.

Japan version – Japanese customers - updated in October 2017

I. General Provisions

1. These general terms and conditions of delivery (hereinafter referred to as "GTCD") apply to all sales, deliveries, and services of SMA Japan K.K. (hereinafter referred to as "SMA") to its Customers. The GTCD shall apply to all transactions between the parties without requiring any reference thereto.
2. The general terms of business of the Customer shall only apply in so far as SMA has expressly approved them in writing.
3. If, in individual cases, separate provisions, which diverge from these provisions, are agreed upon, in writing, for specific transactions, these GTCD shall be deemed as subordinate and supplementary to such separate provisions.
4. The Customer shall be granted the non-exclusive right to use the standard software with the features of performance stipulated in the relevant contract without altering its form. Passing on the software, the sale thereof or using it anywhere other than the location set out in the relevant contract, as well as the reproduction of the software beyond the scope of a security copy, shall only be admissible with the written consent of SMA. In the event of infringement, the Customer shall be obliged to compensate SMA for the damage suffered by the latter.
5. SMA shall be entitled to all the rights of the bidding documents. All documentation shall be immediately returned upon request by SMA in case the order is not placed. Trade and business secrets must be handled strictly confidential.
6. The prototypes, examples or samples and, in particular, the technical data and descriptions in the respective product information or advertising materials in relation to the sales of the products, as well as the documents provided in relation the sale of the products, are non-binding and are solely for informational purposes. They do not constitute any guarantee of quality or durability for the product to be supplied or services to be rendered by SMA.

II. Prices – Packing – Terms of Payment

1. The product to be sold, and the quantity, price, date of delivery, place of delivery and the other related matters for said product shall be agreed on between the parties in the individual agreement, which shall be governed and controlled by the GTCD. The individual agreement shall be formed when SMA accepts an order for the product (which shall be prepared in a format to be designated by SMA) received from the Customer by SMA. Unless otherwise agreed on between the parties, packaging costs shall be included in the price of the product.

2. All payments for the price of the product shall be made in Japanese yen, by the end of the month following the month the Customer receives the invoice.
3. If the Customer defaults with a payment or it is reasonably determined that the creditworthiness of the Customer has seriously been jeopardized, SMA shall be entitled to declare the residual debt of the Customer due immediately, demand advance payments or provisions of security or SMA may terminate the individual agreement following a reasonable advance notice without prejudice to the other provisions in the GTCD. In particular, the creditworthiness of the Customer into question means if the Customer stops payments, if insolvency proceedings have been instituted with relation to the Customer's assets or if a petition has been filed to institute insolvency proceedings and the insolvency proceedings are not instituted due to the insufficiency of assets.
4. The Customer may set off only those counterclaims that are undisputed, recognized by SMA or have been legally decided. The same shall apply to the assertion of rights of retention.

III. Delivery – Delivery deadlines – Delay

1. SMA shall be entitled to provide and invoice partial deliveries and partial services and to modify the materials of the products to be delivered without the consent of the Customer, provided that this does not alter the properties or functionality of the products.
2. Deadlines set for deliveries can only be observed by SMA if all provisions, documents, permits and licenses to be supplied by the Customer are received in due time and if the agreed payment terms, including advance payments and all other obligations required for the delivery are fulfilled. Otherwise, the delivery deadline will be extended by a reasonable period of time.
3. In case of labor disputes, measures by public authorities, natural disasters (including earthquakes, storms, and tsunami), force majeure or the occurrence of similar events that verifiably, adversely affect the supply availability of SMA, the delivery deadline shall be extended by a reasonable period of time.
4. If the promised service is not available, because SMA has not been supplied by its sub-suppliers, SMA shall be entitled to provide a service equivalent in quality and price. Should this also be impossible, SMA may terminate the individual agreement. In such a case, SMA shall notify the Customer of the non-availability without delay and promptly reimburse any payments already made by the Customer.

5. Claims for damages of the Customer due to delayed delivery or claims for damages in lieu of performance shall be excluded in all cases of delayed delivery, even upon expiration of a reasonable period of time set for delivery, unless there is compulsory liability in cases of wrongful intent, gross negligence or due to injury to life, body or health. The Customer can only terminate the contract if the delayed delivery is attributable to SMA pursuant to this Art. V. The above provisions shall not involve a change in the burden of proof to the detriment of the Customer.
6. At SMA's request, the Customer is obliged to declare, within a reasonable period of time, whether the Customer terminates the contract due to the delayed delivery or insists on the delivery to be carried out

IV. Passing of the Risk

1. The risk of loss shall pass to the Customer where the product is delivered to the Customer unless otherwise agreed in the individual agreement.
2. The shipping method is at the discretion of SMA.

V. Reservation of Ownership

1. The delivered product shall remain property of SMA until all claims arising from the business relationship with the Customer (including the obligation of the Customer for payment of the price of the product) have been fulfilled.
2. Nevertheless, the Customer may resell the product in the ordinary course of business under retention of title.
3. In the event of attachment, confiscation or other injunctions or intervention by third parties to the product which the Customer possesses, the Customer shall notify SMA immediately.
4. In the event of violations of obligations by the Customer, in particular default on payment, SMA shall, following the fruitless passing of an appropriate period for performance specified to the Customer, be entitled to terminate the individual agreement and to take back retained product as well as to enter the premises of the Customer for this specific purpose and to deduct the value of the returned product from the existing accounts payable held by SMA against the Customer.

VI. Defects of Quality

1. The Customer shall, upon taking delivery of the product, inspect the same without delay. The Customer may not refuse acceptance of the delivered product due to immaterial defects. If the Customer discovers any defects therein or any deficiency in quantity in the aforesaid product inspection, it shall immediately dispatch a notice thereof to SMA (in no event may such notice be dispatched later than 8 days from the date of delivery of the product). As mentioned in Article 526 of the Commercial Code of Japan, (i) the Customer may not terminate the individual agreement, request to reduce the purchase price or seek compensation for damages on account of the defect or deficiency in quantity, unless such notice is timely given to SMA

pursuant to the foregoing provisions; (ii) the same shall apply where there is a defect in the product which is not immediately identifiable and the Customer identified such defect within 6 months from the date of delivery of the product.

2. The period of limitation of the warranty claims pursuant to the preceding paragraph shall be 12 months, calculated from the day the Customer identifies such defect. This shall not apply in cases of loss of life, personal injury or impairment of health, nor in cases arising from intentional or grossly negligent breach of duty by SMA as well as malicious concealment of a defect.
3. Where SMA is responsible for the defect pursuant to the above provisions, all parts or services shall, at the discretion of SMA, be repaired, replaced or provided again free of charge, provided that the reason for the defect had already existed at the time when the risk passed. In the case of software faults, the instructions for the avoidance of the consequences of the fault shall be deemed as adequate subsequent fulfilment.
4. There shall be no claims based on a defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk due to faulty or negligent handling, the use of unsuitable equipment, faulty construction work, overload, lightning, among other things, external influences, as well as defects attributable to modifications or repair work and improper maintenance that have not been properly carried out according to the operating manual.
5. If the deficiency claim was made wrongfully, SMA is entitled to claim the expenses incurred from the Customer.
6. The Customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including, in particular costs of transport and travel, labor and material, to the extent that expenses are increased because the subject-matter of the transaction was subsequently brought to another location than the Customer's site, unless doing so complies with the contractual use of the delivery.
7. SMA's is obligated to provide the warranty services for defective products within the limitation of those services as specified in paragraph 3 in this Article. When the Customer concludes an agreement with its purchaser, under which the warranty exceeds the SMA's warranty scope or the statutory scope, SMA shall not be obligated to provide such extended warranty services.
8. Furthermore, the provisions of Art. VII (Other Compensation Claims) shall apply in respect of claims of damages under this Art. VI. The warranty claims by the Customer against SMA and its vicarious agents, that go beyond or are different from those stipulated in this Art. VI, shall be excluded.

VII. Other Compensation Claims

1. To the extent permitted by applicable law, under the GTCD, (i) SMA shall be liable only for the direct, ordinary damage caused by SMA's gross negligence or willful misconduct, and (ii) in no event shall SMA be liable for any special, indirect or

consequential damages (including lost profits, such as those that could have been earned from selling electricity).

2. This shall not apply to damages due to injury to life, body, or health arising from the law on product liability (excluding economic/property damages) or in cases of intent or gross negligence on part of SMA, nor to (regardless of the cause of action) damages due to loss of life, personal injury or impairment of health or malicious concealment of a defect. Even in these cases, compensation shall, however, be limited to reasonably foreseeable damages.
3. SMA products may not be used in the medical sector or in aviation without the prior written consent of SMA.

VIII. Other Conditions

1. The laws of Japan shall apply to all legal relationships between SMA and the Customer in connection with the contractual relationship. The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be Tokyo. SMA shall also be entitled to start legal action at the legal business domicile of the Customer.
2. Even if individual provisions of the GTCD or individual agreement are or become ineffective, the remaining parts of the GTCD or individual agreement shall remain unaffected, unless holding onto the GTCD or individual agreement would constitute an undue hardship for one of the parties.
3. SMA will deal with the data of the Customer within the framework of the mutual business relations according to the Japanese Act on the Protection of Personal Information.