



**General Terms and Conditions**  
**of SMA Altenso GmbH**  
**for German Customers**  
Status: November 2022



## 1. General provisions

- 1.1 These General Terms and Conditions (hereinafter referred to as “**General Terms**”) shall apply to all legal relationships between SMA Altenso Energy GmbH (hereinafter referred to as “**SMA Altenso**”) and its customers (hereinafter referred to as “**Customer**”) concerning the sale and delivery of products and works (“**Supplies**”) and the provision of services (“**Services**”) by SMA Altenso to the Customer. These General Terms apply exclusively to entrepreneurs within the meaning of Article 14 of the BGB (German Civil Code). Entrepreneur in this sense is any natural person or legal entity or a partnership with legal capacity, which acts in the exercise of its commercial or independent professional activity when concluding a legal transaction.
- 1.2 These General Terms shall be incorporated by reference into any of SMA Altenso’s offers, which when ordered by the Customer and confirmed in writing by SMA Altenso, shall constitute a contract between the parties (the “**Contract**”). They shall be integral part of the legal relationships between SMA Altenso and the Customer including, in particular, Contracts. These General Terms shall apply exclusively and shall apply to all future transactions between the parties without requiring any reference thereto again.
- 1.3 Any deviating, contrary or supplementary general terms and conditions of the Customer shall only be legally binding if and to the extent that SMA Altenso has explicitly consented to their applicability in writing.
- 1.4 If, in individual cases for certain Supplies or Services, specific provisions which deviate from these General Terms are agreed upon in writing between SMA Altenso and the Customer, these General Terms shall be deemed as subordinate and supplementary.
- 1.5 No agreements or legal declarations between the parties shall be effective unless agreed in writing; Contracts are deemed to be formed upon SMA Altenso’s written confirmation of the Customer’s order. Verbal agreements shall only be valid in so far as they have been confirmed in writing by SMA Altenso.
- 1.6 In case of doubt, for the interpretation of trading terms the Incoterms® as applicable at that time shall be binding. Currently, the Incoterms® 2020 are applicable.

## 2. Confidentiality and intellectual property ownership

- 2.1 Any tools, patterns, samples, models, profiles, documentation, drawings, standard specification sheets, printing templates and materials provided by SMA Altenso shall remain the intellectual property of SMA Altenso. They, as well as any materials derived there from, shall be treated as confidential and not be made available to any third party nor used for any other purpose than those contractually agreed except with the prior written consent of SMA Altenso. Such materials shall be protected against unauthorized access or use. Subject to any further rights, SMA Altenso may demand that such materials be returned if the Customer breaches these duties.
- 2.2 If software is included in the scope of delivery, the Customer is hereby granted a non-exclusive and non-transferable right to use the software delivered including its documentation. Use, duplication, revision, translation of the software and transformation from the object code into source code for other purposes shall be forbidden.
- 2.3 The contents of the SMA Altenso offer will remain the intellectual property of SMA Altenso. The offer is intended exclusively for the persons and organization specified on it. The Customer is not allowed to disclose to any third party, directly or indirectly, any information regarding the SMA Altenso offer or its attachments, including without limitation, information regarding operations,

procedures, methods, accounting, technical data or any other information. This shall not apply for information which is already publicly available.

- 2.4 The documents, prototypes, examples or samples and, in particular, the technical data and descriptions in the respective product information or advertising materials included in the offer are non-binding and are solely for informational purposes. They do not constitute any guarantee or warranty of quality or durability for the goods to be supplied or services to be rendered by SMA Altenso.

## 3. Delivery

### Terms of delivery, delivery date

- 3.1 Supplies are delivered in accordance with the Incoterms® as agreed in the Contract.
- 3.2 The delivery date is agreed upon in writing in the Contract. The delivery period starts on the date of the confirmation of the order by SMA Altenso, but not before all order-related information were provided by the Customer.
- 3.3 After consulting the Customer and if it is reasonable for the Customer, SMA Altenso shall be entitled to make partial deliveries and render partial services.
- 3.4 Delivery dates mean (i) with regard to Supplies the date on which the delivery of Supplies shall take place in accordance with the chosen Incoterms® and (ii) with regard to Services the date the Service shall be provided. Any delivery periods and dates targeted by SMA Altenso shall only be deemed approximations irrespective of any provided fixed period or a fixed date, as the case may be. For purposes of any Supplies or Services, the Customer shall provide all required cooperation, in particular the provision of approvals and releases and fulfil all obligations required for the Supplies to be delivered and Services to be provided. Otherwise, the delivery period is deemed extended by an appropriate period of time.
- 3.5 Agreed delivery dates and periods are subject to (i) full and punctual time supply to SMA Altenso by SMA Altenso’s own suppliers and/or (ii) timely receipt of all assistance, documents, approvals, releases to be provided by Customer as well as compliance of Customer with the agreed payment terms, including advance payments, and with all other obligations of Customer required for the Supplies to be delivered and the Services to be provided.
- 3.6 SMA Altenso shall not be liable for impossibility or delays of Supplies and Services caused by force majeure (Section 13) or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, strikes, lawful lockouts, shortage of labour, energy or raw materials, including lack of fuel, mobilization, war, blockade, export and import ban, fire, traffic blocks) for which SMA Altenso is not responsible. If the events referred to in sentence 1 make SMA’ Altenso’s delivery considerably more difficult or impossible and the hindrance is not only of a temporary nature, SMA Altenso shall be entitled to terminate the Contract. In the event of hindrances of a temporary nature, the delivery periods shall be extended or the delivery dates postponed by the period of the hindrance plus a reasonable start-up period. If the Customer cannot reasonably be expected to perform the contract as a result of the delay, he may withdraw from the contract by written declaration to SMA Altenso.
- 3.7 Otherwise, the following shall apply to the liability of SMA Altenso for damages due to delay in delivery
  - a) SMA Altenso shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a firm deal within the meaning of Article 286 Para. 2 No. 4 of the BGB or Article 376 of the HGB (German

Commercial Code). SMA Altenso shall also be liable in accordance with the statutory provisions if, as a result of a delay in delivery for which SMA Altenso is responsible, the Customer is entitled to assert that its interest in the agreed performance of the contract has ceased to exist. In both cases, however, SMA Altenso's liability shall be limited in accordance with Section 3.7. c);

b) SMA Altenso shall also be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which SMA Altenso is responsible. If the delay in delivery is due to a grossly negligent breach of contract for which SMA Altenso is responsible, SMA Altenso's liability shall be limited to the foreseeable, typically occurring damage;

c) SMA Altenso shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which SMA Altenso is responsible is due to the culpable breach of an essential contractual obligation. In the event of an ordinary negligent breach, however, SMA Altenso's liability shall be limited to the foreseeable, typically occurring damage and liability for indirect damage, including loss of profit and loss of benefits, shall be excluded;

d) Otherwise, SMA Altenso shall be liable in accordance with the provisions in Section 11.

#### **Export control and foreign trade laws and regulations**

3.8. The Customer must upon SMA Altenso's request provide information on and comply with all applicable export control, customs and foreign trade laws and regulations.

3.9. SMA Altenso's obligation to fulfil this agreement is subject to the absence of impediments deriving from national or international laws and regulations on exportation or from embargo measures, customs requirements and clearances or other sanctions. SMA Altenso will be entitled to demand the Customer to sign an end use declaration in accordance with the applicable export control regulations. If any impediments arise during the execution of the works as a result of applicable laws or regulations, SMA Altenso will reserve the right to immediately suspend the supply by giving the Customer a written notice, until the necessary license or any other government authorization is obtained.

#### **4. Prices, Price adjustment in case of Exchange Rate changes**

4.1. All quoted prices are net-prices in EUR if not otherwise agreed upon. Value added tax, sales tax as well as other taxes and duties are not included in the prices and shall be borne by the Customer. The price includes packing, transportation and insurances until the place of delivery according to the INCOTERMS® clause agreed in the Contract.

4.2. When quoted prices are in a currency other than EUR, the party, at which expense the change in the EUR exchange rate between EUR and the agreed currency will be equal or more than 2 %, shall be entitled to demand an adjustment of the prices. For the determination of the change in the EUR exchange rate, the EUR exchange rate at the date of SMA Altenso's last quotation shall be compared to the EUR exchange rate at the date of conclusion of the Contract only. The aforementioned demand for an adjustment shall not be higher or lower than the percentage change in the EUR exchange rate. The EUR exchange rate shall be determined in application of the EUR foreign exchange reference rate set by the European Central Bank ("ECB") at the aforementioned dates of SMA Altenso's last quotation respectively of the conclusion of the Contract. The foreign exchange reference rate set by the ECB is accessible on the ECB homepage [www.ecb.europa.eu/](http://www.ecb.europa.eu/). Claims arising under this section shall become time-barred three months after the date of conclusion of the Contract.

4.3. All costs and expenses for activities of SMA Altenso or any third party with regard to inspections, tests, approvals, acceptance procedures of the Supplies

and the like, which are not explicitly agreed upon in the Contract, are not included in the quoted prices and must be borne by the Customer.

#### **5. Terms of payment**

5.1. All payments have to be made within 30 days from the invoice date, unless agreed otherwise. The invoicing shall take place at the full discretion of SMA Altenso either prior or after the delivery of the Supplies or the provision of the Services.

5.2. The SMA Altenso invoices are due for payment net of any deductions as set out in in the Contract. Payments in cash are not accepted.

5.3. If the Customer does not make payments when due, the outstanding amounts are subject to interest of 5% p. a. from the due date. The right to claim additional damages in the event of default remains reserved; the current default interest rate for remuneration claims pursuant to Article 288 Para. 2 of the BGB is 9 (nine) percentage points above the base interest rate.

5.4. If the Customer is in default or if, after conclusion of the Contract, facts and reasonable doubts become known that question the Customer's creditworthiness, SMA Altenso is entitled to declare the entire outstanding amounts immediately payable, to request prepayments or the provision of securities or, after the expiry of an appropriate grace period, to withdraw from the Contract, notwithstanding any other rights.

5.5. The Customer may set off only those counterclaims that are undisputed, recognized by SMA Altenso or have been legally decided. The same shall apply to the assertion of rights of retention.

#### **6. Transfer of risk**

6.1. Subject to Sections 6.2 and 6.3 below, the risk shall pass according to the INCOTERMS® clause specified in the Contract.

6.2. If delivery as defined in the relevant Incoterms® clause is delayed because of reasons caused by the Customer, the risk shall pass to the Customer from the day on which SMA Altenso would be ready for delivery. SMA Altenso has the right to store goods at Customer's expense and risk and to make sure to preserve them. SMA Altenso is furthermore entitled to invoice goods as "delivered".

6.3. For Supplies including installation in SMA Altenso's scope, the transfer of risk occurs at the day of taking over in the Customer's own works or, if so agreed, after a successful trial run.

#### **7. Acceptance**

7.1. The Customer shall examine the Supplies promptly upon receipt and notify SMA Altenso in writing of any defects (in the sense of Article 8.1) within 7 days of receipt of the Supplies. In addition, the Customer shall immediately notify SMA Altenso in writing of later detected hidden defects. The Supplies shall be deemed to have been accepted in the event that the Customer fails to conduct an examination and/or to give notice of any defects in accordance with this Section 7.1.

7.2. The Customer's rights in relation to defects in Supplies shall be determined in accordance with Section 8.

#### **8. Warranty; third party products**

##### **Warranty**

8.1. SMA Altenso warrants to the Customer that at the time of their delivery, the Supplies (except for third party products, see Section 8.7) correspond to the specifications agreed upon in the Contract. Minor deviations from the agreed specifications do not qualify as defects. Any further warranty are excluded, unless expressly agreed otherwise in the Contract.

- 8.2. In case of material defects or defects of title, the statutory legal provisions shall apply, unless otherwise set forth in the following. In any case, the statutory provisions of Article 478, 445a and 445b of the BGB remain unaffected.
- 8.3. SMA Altenso shall only be held liable for (i) any defects of third party products according to applicable law and under the provisions of Section 8.7 and/or (ii) defects for which the Customer is responsible due to its own fault or that result from normal wear and tear, improper assembly, use of the Supplies in an improper manner or in violation of the Contract or applicable laws and utilisation of the Supplies contrary to their purpose, utilisation of materials or products of the Customer or third parties, servicing by the Customer or third parties without SMA Altenso's consent, absence of maintenance and/or improper modification or repair of the Supplies by the Customer or a third party without SMA Altenso's consent, overloads, natural disasters, environmental damage or other circumstances beyond SMA Altenso's control.
- 8.4. The Customer's sole claim and remedy in case of defective Supplies (except to the extent of liability for third party products, see Section 8.3 (i) and 8.7) shall be to demand elimination of the defects within a reasonable time (at SMA Altenso's option: repair or replacement). If elimination of the defects is unreasonably burdensome to SMA Altenso, the Customer may withdraw from the Contract (rescission). In the event that the elimination of the defects fails twice (Article 440 of the BGB), the Customer may at its option request either (i) further elimination of the defects within a reasonable time, (ii) a commensurate reduction in the price for the deficient Supplies or (iii) withdrawal from the Contract (rescission). Customer is not entitled to substitute performance.
- 8.5. In the event that a "warranty request or claim" is not covered by the warranty according to Sections 8.1- 8.6, the Customer shall bear all costs occurred by SMA Altenso in connection with the assertion of the respective request or claim.
- 8.6. In deviation from Article 438 Para. 1 No. 3 of the BGB, the general limitation period for warranty claims is 12 month from the date of delivery. In deviation from Article 634a para. 1 no. 1 of the BGB, the same shall apply to work products from the day of acceptance. If the assembly of the relevant Supplies is performed by SMA Altenso, commencing after completion of such assembly, but in any case shall expire no later than 14 months after delivery of the relevant Supplies. In the event that any Supplies are replaced or repaired by SMA Altenso, the relevant 12-month period shall commence upon delivery of the original Supplies. This shall not apply to claims for damages arising from intentional or grossly negligent breaches of duty and the cases mentioned in Section 11.2. Claims arising out of the recourse against suppliers in the case of final delivery to a consumer (Article 478 of the BGB) shall also always become statute-barred in accordance with the statutory provisions.

#### **Third party products**

- 8.7. Notwithstanding the above, SMA Altenso only assumes any warranty and/or liability for third party products, i.e. components or products that were produced and/or delivered by third parties to SMA Altenso and are part of the Supplies to the extent mandatory by applicable law. For third party products, the Customer shall address the respective warranty claims directly to the third party. For this purpose, SMA Altenso assigns to the Customer to the delivery date all defect remedies and rights to which it is entitled vis-à-vis the third party and which concern the Supply. At the same time, SMA Altenso assigns to the Customer any (future) claims arising from the exercise of these remedies and rights.

#### **9. Services**

- 9.1. The object and scope of the Services shall be specified exhaustively in the relevant individual Contract.
- 9.2. The Customer shall examine the Services promptly after they have been provided and notify SMA Altenso of any complaints in writing immediately and

under no circumstances within more than 7 days from the provision of the Services. In the event that the Customer fails to make such a notification, the Services shall be deemed to have been accepted.

- 9.3. Unless expressly agreed otherwise, SMA Altenso shall be liable to the Customer only for performing the Services with due care and consequently does not assume any liability for specific results and/or provide any warranties with regard to the Services.
- 9.4. In the event that SMA Altenso's liability as to specific results is expressly agreed in the Contract and/or SMA Altenso explicitly provides warranties with regard to the Services in the Contract, Section 8 shall apply *mutatis mutandis*.

#### **10. Retention of title, co-ownership**

- 10.1. To the extent possible under applicable laws, SMA Altenso shall retain, and the Customer hereby agrees that SMA Altenso retains, title to the goods delivered (goods subject to retention of title) until any claims out of or in connection with the Contract are fulfilled. Prior to the transfer of title to the Customer, any pledge or assignment as security of the goods is prohibited.
- 10.2. Any machining or processing work carried out in relation to the goods subject to reservation of title is performed for the benefit of SMA Altenso without any obligations for SMA Altenso arising from such work. In the case of processing together with third-party goods that do not belong to SMA Altenso, SMA Altenso shall be entitled to a co-ownership interest in the new goods based on the ratio of the invoice value of the goods subject to reservation of title relative to the other goods at the date of processing. The same shall apply if the Customer obtains sole ownership within the meaning of Article 947 par. 2 of the BGB. The new goods, which are stored by the Customer for SMA Altenso free of charge, shall be considered goods subject to reservation of title within the meaning of this section.
- 10.3. The Customer is entitled to resell the goods subject to reservation of title in the normal course of business subject to reservation of title.
- 10.4. The Customer's receivables arising from the resale of the goods subject to reservation of title are transferred to SMA Altenso in advance. They serve as a security to the same extent as the goods subject to reservation of title. If the goods subject to reservation of title are sold by the buyer together with other ones not supplied by SMA Altenso, the assignment of the receivables from resale shall only apply to the amount of the resale value for the respective goods subject to reservation of title. In the event of the disposal of goods in which SMA Altenso has a co-ownership interest pursuant to Section 10.2, the assignment of the claim relates to the amount of this co-ownership interest.
- 10.5. The Customer is authorised to collect claims arising from resale until SMA Altenso's revocation which is admissible at any time. SMA Altenso will only make use of its right of revocation if the Customer does not meet his payment obligations towards SMA Altenso, an application for the opening of insolvency proceedings has been filed or another significant lack of solvency appears. The Customer may only assign the claims – including the sale of receivables to factoring banks – subject to SMA Altenso's prior written consent. Upon SMA Altenso's request, the Customer is obliged to notify its buyers about the assignment made to SMA Altenso and to give SMA Altenso the information and documentation which SMA Altenso requires for collection of the claim(s). SMA Altenso is entitled to notify the buyers about the assignment itself.
- 10.6. In the case of pledges, seizure or other dispositions or interferences from third parties, the Customer shall notify SMA Altenso without undue delay.
- 10.7. In case of Customer's breach of obligation including, but not limited to, payment default, SMA Altenso is entitled, after unsuccessful expiry of an appropriate period for performance granted to Customer, to withdraw from the Contract and to take back the goods subject to reservation of title as well as, for this purpose, to enter the Customer's premises and to realise the goods in order to offset the proceeds against the existing liabilities due to SMA Altenso.

- 10.8. If the realisable value of the securities exceeds SMA Altenso's claims by more than 10%, SMA Altenso release securities of its choice upon the Customer's request.
- 10.9. If the existing provisions conflict with applicable laws in the country of destination, the statutory provisions regarding reservation of title apply that come closest to the foregoing.

## 11. Liability

- 11.1. SMA shall only be liable for damages - for whatever legal reason - in the event of intent or gross negligence. However, SMA shall also be liable for simple negligence in the event of damages arising from the breach of an essential contractual obligation (i.e. an obligation, whose fulfilment is essential for the proper execution of the contract and on whose observance the contracting party regularly relies on and may rely on), whereby in this case SMA's liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 11.2. The limitations of liability in accordance with Section 11.1 of these General Terms shall not apply:
- a) in cases of injury to life, limb or health,
  - b) if and to the extent that SMA fraudulently concealed a defect,
  - c) if and to the extent that SMA has assumed a guarantee for the quality of the goods, or
  - d) for claims of the Customer according to the Product Liability Act.
- 11.3. **Any liability for damages that results from the use of the goods other than for the ordinary and designated use is excluded. Upon SMA's request, the Customer shall indemnify SMA from any third-party claims that are asserted against the Customer in connection with the use of the goods other than for the ordinary and designated use.**
- 11.4. Section 3.7 shall take precedence over the provisions of this Section 11 for SMA's liability due to delayed delivery.

## 12. Engineering / site supervision and commissioning

- 12.1. Without limiting the foregoing, the following provisions shall apply with regard to engineering, site supervision and commissioning:

### Engineering (applicable for ordered engineering packages)

- 12.2. Despite the utmost care in the preparation of the configuration and design of the plant, SMA Altenso does not take any guarantee of the accuracy of estimates regarding energy yield and fuel consumption due to the nature of climate fluctuations, interannual and long-term changes, the development of load profiles, grid stability and generator operation modes as well as the uncertainty of measurements and calculations. SMA Altenso is therefore not liable for any direct, incidental, consequential, indirect or punitive damages arising or alleged to have arisen out of use of the provided energy yield calculations.
- 12.3. SMA Altenso will respect and comply with the generally-acknowledged rules of technology for engineering services.
- 12.4. The calculations and the plans prepared by SMA Altenso may be subject to change and adjustments, to be implemented based on the additional information provided by the Customer (i.e. geologic surveys). Changes and adjustments must be reasonable for the Customer and must be subject to good reason.
- 12.5. SMA Altenso has an insurance coverage for Professional Indemnity. A copy of the insurance certificate can be provided upon request to the Customer.
- 12.6. SMA Altenso shall not be entitled to represent the Customer legally.
- 12.7. SMA Altenso is responsible for the entire coordination of the contracted engineering services within SMA Altenso and potential sub companies.

- 12.8. For the scope of the service provision, SMA Altenso ensures to the best of its knowledge the required qualification of the technicians and engineers.
- 12.9. The Customer will be fully liable for any polluting materials, archaeological findings, explosive ordnance and radioactive waste found in the site and in particular found in the soil or water. Therefore, the Customer will be exclusively liable for any reclamation procedure to be undertaken in the interested area.
- 12.10. The calculations and the plans prepared by SMA Altenso are processed using data provided by third parties or received from the Customer (i.e. data regarding the weather, water, climate, geology, etc.). SMA Altenso will not be held liable for the correctness, precision and completeness of said data.

### Site supervision and commissioning (applicable for ordered service packages)

- 12.11. By no means should SMA Altenso be held responsible for the application and attainment of the authorizations and permits necessary for the development and/or operation of the plant and for the respective connection line to the national grid or the attainment of the incentives to the production of electricity from renewable sources pursuant to applicable regulations.
- 12.12. The Customer will be fully liable for the presence of easements associated with public utility services (i.e. gas pipelines, power lines, waterworks, telephone lines and similar) and for obtaining the availability of and access to the area in which the plant will be constructed.
- 12.13. Notwithstanding the foregoing exclusions, the subject-matter of the supply will be defined and agreed with the Customer according to the Single European Authorization issued by competent authorities and based on any other documentation provided by the Customer.
- 12.14. If the preconditions for the site supervision and commissioning, as stipulated in the Contract, are not fulfilled by the Customer and the technicians authorised by SMA Altenso are therefore not in the position to execute the contracted supervision and commissioning work, SMA Altenso is entitled to charge the Customer a delaying fee at SMA Altenso's discretion.

## 13. Force majeure

- 13.1. Force majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below:
- war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
  - rebellion, terrorism, sabotage by persons other than the SMA Altenso's personnel, revolution, insurrection, military or usurped power, civil war;
  - epidemics or pandemics;
  - riot, commotion, disorder, strike or lockout by persons other than the SMA Altenso's personnel;
  - munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the SMA Altenso's use of such munitions, explosives;
  - natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity;
  - circumstances attributable to Swiss, German, US or otherwise applicable national European or international rules of foreign trade law or to other circumstances that render the performance of the Contract significantly more difficult or legally impossible for SMA Altenso; or
  - any other circumstances that render the performance of the Contract significantly more difficult or impossible for SMA Altenso such as, but not limited to, epidemics.
- 13.2. In case of force majeure, the contractual obligations of both parties are suspended for the duration of the incident and as regards their scope. The

periods for the compliance with the contractual obligations will be delayed accordingly. SMA Altenso is entitled to terminate the Contract at its sole discretion by written notice, shall a case of force majeure continue for more than three (3) consecutive months and if the cessation of this unforeseeable event remains uncertain.

- 13.3. The Customer has to be notified of the occurrence of any case of force majeure without undue delay.
- 13.4. The integrity of the structures and containers is not guaranteed in the event of force majeure.
- 13.5. The provisions of this Section 13 apply also by analogy in the event of high security risks according to the standards of City/Country Security Assessment Rating (CSAR), risk management IJET® or similar institutions that provide risk estimates for certain regions, unless SMA Altenso decides at its own discretion to deliver the Supplies and provide the Services nevertheless. However, SMA Altenso may amend and/or revoke such decision at any time and at its own discretion.

#### **14. Order cancellation / Contract termination**

- 14.1. SMA Altenso can terminate the Contract immediately by written notice to the Customer for valid reason, for instance (i) when the Customer has stopped payments, if applicable for two consecutive months or if it is in default of a considerable part of the payment after SMA Altenso has issued a written warning to the Customer, or (ii) when the Customer has made false statements about his creditworthiness or if there is a case of objective lack of creditworthiness and the payment claim by SMA Altenso appears to be endangered by this. In this case, the Contract termination occurs by written notice.
- 14.2. The Customer can terminate the Contract immediately by written notice to SMA Altenso for valid reason, for instance (i) when SMA Altenso is in material breach of its obligations under the Contract and either such breach is incapable of remedy, or SMA Altenso has failed to remedy that breach within a reasonable period of at least 30 days having received written notice requiring it to do so, or (ii) when SMA Altenso has made false statements about his creditworthiness or if there is a case of objective lack of creditworthiness and the performance demands of the Customer appears to be endangered by this..
- 14.3. Confirmed purchase orders (Contracts) are binding. In the event of any termination of an order (the Contract) by the Customer other than for valid reasons (see Section 14.1) or force majeure (see Section 13), SMA Altenso may at its discretion charge the following cancellation charges:
  - Ten percent (10%) of the price of the ordered Supplies and Services if terminated after SMA Altenso has confirmed in writing the order from Customer;
  - Seventy (70%) of the price of the ordered Supplies and Services if terminated after SMA Altenso has submitted a purchase order for any materials or services required from its suppliers;
  - One hundred percent (100%) of the price of the ordered Supplies and Services if terminated after SMA Altenso's notification of readiness to deliver the Supplies to Customer.Services not yet provided are deducted from the above charges.

- 14.4. If the agreed Supplies or Services are not available because SMA Altenso has not been supplied by its suppliers SMA Altenso shall be entitled to provide a supply or service equivalent in quality and price. Should this also be impossible, SMA Altenso may withdraw from the Contract in writing and with immediate effect. In such a case, SMA Altenso shall notify the Customer of the non-availability without delay and immediately reimburse any payments already made by the Customer.

#### **15. Governing law; jurisdiction**

- 15.1. The legal relationship between SMA Altenso and the Customer shall be governed by, and construed in accordance with, the substantive laws of the Federal Republic of Germany to the exclusion of conflict of law principles and the UN Convention of 11 April 1980 on the international sale of goods (Vienna Sales Convention, CISG).
- 15.2. Any disputes arising out of or in connection with the contractual relationship shall be submitted to the jurisdiction of the competent courts of the City of Kassel, Germany. SMA Altenso shall also be entitled to file actions before any other competent court.

#### **16. Final provisions**

- 16.1. The failure of any of SMA Altenso or the Customer to enforce any of the provisions of the General Terms or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights or in any way affect the validity of the Contract and the General Terms, respectively. The waiver of any breach of agreement by any party hereto shall not operate to be construed as a waiver of any other prior or subsequent breach.
- 16.2. Neither the Contract nor any rights or obligations thereunder shall be assigned by any party without the prior written consent of the other party, except that SMA Altenso shall be entitled to assign the Contract or parts thereof or any rights or obligations thereunder to (i) any of its affiliates, i.e. any entity (1) which is directly or indirectly controlling SMA Altenso, (2) which is under the same direct or indirect control as SMA Altenso, or (3) which is directly or indirectly controlled by SMA Altenso; for these purposes, a entity shall be treated as being controlled by another if that other entity has more than fifty percent (50%) of votes in such entity, or is able to direct its affairs and/or to control the composition of its board of directors or equivalent body) and/or (ii) any of its financing sources (or common agent or representative of such financing sources) and only when the assignment does not affect any legitimate interests of the Customer.
- 16.3. SMA Altenso may at any time use subcontractors for the fulfilment of its obligations under the Contract.
- 16.4. SMA Altenso acknowledges that it is subject to the applicable data protection laws (DSGVO) with regard to personal data that it receives from the Customer and/or that is processed by its. In the event that SMA Altenso processes personal data as a processor on behalf of the Customer as a controller, the parties will enter into a separate data processing agreement as required under the data protection laws applicable to that processing.
- 16.5. In the performance of these General Terms and the Contract the Customer undertakes to exercise all necessary controls to ensure compliance with the rules and principles of good faith, fair competition and business ethics.