



## General Terms of Delivery of SMA Australia PTY Ltd

Edition September 2023

### I. General Provisions

1. These General Terms and Conditions of Delivery (hereinafter "GTC," "GTCs" or "General Terms") shall apply to all offers, sales, deliveries of products and services by SMA Australia Pty. Ltd. (hereinafter "SMA") to customers located in Australia or New Zealand (hereinafter the "Customer"). "SMA" and "Customer" are collectively the "Parties" and singularly as the "Party".
2. These GTCs shall apply to all future transactions between the Parties for the purchase of products and services by the Customer from SMA even if the General Terms are not expressly referenced. Any order, invoice, or other purchase document for the provision of products and services by SMA to the Customer are hereinafter referred to as "Contract". Unless otherwise expressly agreed by the Parties in writing, these GTCs shall prevail over the other terms of any Contract. SMA shall not be deemed to have accepted any terms and conditions of the Customer even if SMA unconditionally starts performance and SMA is aware of the Customer's terms and conditions.
3. Notwithstanding the foregoing, the Parties may agree in writing for certain deliveries, particularly service and warranty agreements, to specify provisions, which deviate from these General Terms. In such case, those specific provisions agreed to in writing and signed by the authorized representatives of the Parties will take precedence over these General Terms in the case of conflict, and those specific provisions shall be deemed to be supplementary to the General Terms.

### II. Intellectual Property, Standard Software, Use of Trademarks

1. SMA shall have exclusive ownership of all the rights in and title to any bidding or tender documents provided by SMA to the Customer. All such documents shall be immediately returned by the Customer upon SMA's request if an order is not placed. The Customer is not entitled to reproduce, distribute, (publicly) display, modify or otherwise change the documents from SMA.
2. All business information, including trade secrets that SMA provides to the Customer or that comes into the Customer's possession arising from these GTCs shall be deemed to be proprietary and confidential and shall vest solely in SMA. The Customer shall not disclose such information to any third party or use it for any purpose other than in connection with an order, without the prior written consent of SMA in SMA's sole discretion.
3. Any documents, prototypes, examples or samples, technical data and descriptions in the respective product information or advertising materials included in any offer are non-binding and are solely for informational purposes. They do not constitute any guarantee of quality or durability in relation to any products supplied or services performed by SMA.
4. SMA shall own all rights, title and interest in intellectual property rights including patents, copyrights, trade secrets, trademarks and knowhow in existence or which come into existence thereafter in connection with the products sold and documentation and all work products provided by SMA to Customer including software, technical specifications, manuals, manufacturing or other business process. SMA may demand the return of such documentation at any time.
5. The Customer is granted a non-exclusive and revocable license to use the software and documentation provided pursuant to the GTC in object code form only installed on or licensed with the product sold to Customer hereunder for internal purposes only in the operation and maintenance of the products. Sublicensing, selling or using the software in any other manner, as well as the reproduction, reverse engineering, disassembly, decompiling, deriving source code, modifying or copying of the software (other than for back up or archival purposes) shall only be permitted with the written consent of SMA. In the event of infringement arising from Customer's breach of this subsection 5, the Customer shall indemnify, defend, and hold SMA harmless for the damages suffered. All property interest in and to the software and documentation shall remain with SMA, and in no event shall the Customer obtain any right, title, or interest in or to the software or documentation except for the limited license granted herein.
6. The Customer may only use SMA trademarks for advertising purposes with the prior written consent of SMA and in accordance with SMA's instructions, in the original design and only in connection with the presentation of the unchanged product. SMA may withdraw its consent at any time. The Customer shall be solely responsible for the presentation of its advertisements.

### III. Provisions of Products and Services, Terms of Delivery, Delivery Default

1. Deliveries of residential, commercial and off-grid products will be CIP arrival port, Australia per INCOTERMS 2020. For products deliverable from the local SMA Australia warehouse, the delivery terms shall be FCA Sydney warehouse or DAP place of destination indicated on the purchase order per INCOTERMS 2020.) unless the Parties agree in writing to the contrary. If requested by the Customer, products will be made available to a carrier selected by Customer, at the Customer's sole expense. Except as otherwise stated herein, deliveries will be CIP place of delivery indicated on the quote.
2. SMA shall be entitled to provide and invoice for partial deliveries and services from time to time and shall be entitled to modify the materials used in the manufacture of the products without prior notice to the Customer; provided this does not materially alter the properties or functionality of the products.
3. Deadlines for any delivery are estimates only. Any liability for the inability to deliver products or services to the Customer is hereby disclaimed to the fullest extent permitted by law. Furthermore, SMA's delivery are conditioned upon the full and timely supply of SMA's suppliers to SMA and are also subject to the condition that necessary export and import approvals are granted and other documents required for export and import are obtained. SMA will use commercially reasonable efforts to meet any such deadline, provided that all provisions, payments including any advanced payments, documents, approvals, permits and releases to be supplied by the Customer are timely received, and all other obligations required for the delivery are fulfilled. Otherwise, the delivery estimate will be extended by a reasonable period of time equal to the length of the delay. To the extent that any circumstances make delivery of products and services by SMA significantly more difficult or render it legally or practically impossible, SMA is entitled to withdraw from or terminate the Contract upon written notice. In such an event, SMA will refund to the Customer any amount paid in advance, and the Customer shall not be able

to assert any claims against SMA for non-performance or delivery.

4. In the case of force majeure, including but not limited to acts of God, declared and undeclared war, riot, insurrection, strikes, labor disputes, epidemics, pandemics measures by public authorities, transportation disruptions, severe weather or the occurrence of similar events beyond the reasonable control of SMA, SMA shall not be responsible for the performance of any obligation affected by such force majeure. The time for performance will be extended by a period of time equal to the length of the force majeure. If the force majeure event prevents SMA's performance of its obligation for a period of six (6) months or more, SMA shall be entitled in its sole discretion to terminate the Contract.
5. If the products ordered under the GTCs are not available because there is a lack of supply by SMA's suppliers, SMA shall be entitled to replace such products with an alternate or substitute products of similar quality and price. If no such replacement is available on commercially reasonable terms, SMA may rescind the Contract, upon prior notification to the Customer of the non-availability of the product or components in question, in conjunction with the prompt refund to the Customer of any payments already made to SMA in relation to such products.
6. In the event of project delays, the Customer may request a postponement of the delivery date. If SMA postpones delivery at the Customer's request, the product(s) shall be deemed to have been delivered by the delivery date, and the product(s) will be deemed to have been made available to the Customer. All costs incurred by SMA due to Customer's postponement including storage costs shall be billed directly to the Customer. A proposal for such costs will be provided upon request.
7. SMA reserves the right to not provide services in countries with high security risks or in the event there has been a material change in risk rating of the country where services are to be performed according to the standards of City/Country Security Assessment Rating (CSAR), risk management IJET® or similar institutions that provide risk estimates for certain regions. In such a case, SMA may cancel or terminate the Contract. Please refer to the Limited Factory Warranty for more details.

### IV. Prices, Invoicing, Terms of Payment

1. The prices stated do not include transportation, packaging, and insurance costs. These costs are calculated and invoiced separately. The prices stated are net amounts and do not include taxes, customs duties, or other levies payable under applicable laws. Customer shall be liable for and shall indemnify SMA for, any taxes, levies, and customs duties that may be imposed on any transfer of the product(s) and performance of services pursuant to this GTC. If required by applicable law, SMA shall, in accordance with applicable law, calculate and remit any sales or similar taxes that are required to be paid currently in force as a result of the transfer of the product and performance of services to Customer, and Customer shall promptly reimburse SMA therefor. If SMA receives notice that any taxes are due, SMA shall promptly forward such notice to Customer to pay.
2. Except as otherwise stated, cancellation in whole or part of any confirmed customer order is NOT permitted unless mutually agreed to by the Parties in writing.
3. Unless otherwise agreed to by the Parties in writing, all payments shall be made in U.S. dollars and shall be due thirty (30) days from the date of SMA's invoice. Any amount which is past due shall accrue interest at one and a half percent (1.5%) per month until the amount is paid in full or the maximum interest rate permitted by applicable law, whichever is lower. SMA will apply payments in its sole discretion to any unpaid invoice regardless of whether or not the Customer indicates that the payment should be applied to a specific invoice.
4. If (a) the Customer defaults on any payments owing to SMA, whether under the GTCs or any other agreement between the Parties or (b) circumstances arise or become known to SMA that, in SMA's opinion, call the Customer's creditworthiness into question, including but not limited to insolvency proceedings instituted involving the Customer or the Customer's assets, SMA shall be entitled, in its sole discretion and without prejudice to any other remedies available hereunder or at law, to any or all of the following remedies: to declare any amounts outstanding to then be immediately due and payable; demand and receive additional or other reasonable security; and terminate the GTCs. In addition, SMA shall be entitled to suspend performance of any of its obligations until the Customer has fully paid SMA all amounts currently due and owing under any order.
5. The Customer shall not be entitled to any set off or deduction of any amount payable.
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### V. Retention of title

1. In this clause IV, (a) "PPS Act" means the *Personal Property Securities Act 2009* (Cth) ("PPSA AUS") or the *Personal Property Securities Act 1999* (NZ) ("PPSA NZ") to the extent applicable; (b) "PPS Law" means the PPS Act and each regulation made pursuant to it, in each case as amended from time to time; (c) "PPS Property" means the products and any other property supplied or otherwise provided by SMA to the Customer in connection with the Contract from time to time, together with any proceeds, accessions or replacements in respect of such property; and (d) otherwise undefined terms have the meaning given to them in the PPS Law.
2. Legal title shall not pass, and the delivered products shall remain the exclusive property of SMA until all obligations of the Customer arising from the GTCs have been performed, including full payment. Until then, the Customer shall not sell or transfer in any way or create any lien, pledge, grant a security interest in or over, or otherwise encumber the products ("Encumbrance"). If any Encumbrance is created, the Customer shall immediately notify SMA in writing of such Encumbrance and shall take all necessary steps to remove such Encumbrance.
3. Notwithstanding the foregoing, the Customer may sell the products supplied by SMA and purchased as inventory in the ordinary course of business, provided however, the Customer hereby assigns all claims it has against its customers, with respect to payment for such products, to SMA to the extent of the value of the Customer's outstanding obligations to SMA in relation to all such products, and Customer shall use its best efforts to collect such claims on behalf of SMA. To the extent there are outstanding obligations owed to SMA, the Customer shall hold any proceeds received in connection with such sale in trust for SMA and shall forthwith remit those proceeds to SMA upon receipt.
4. If the products to which title is retained by SMA are inseparably processed, commingled, integrated with or become an accession to third party goods not supplied by SMA, or become fixtures, SMA is entitled to a share of title in the resulting goods, products or fixtures equivalent to the invoiced value of the SMA supplied products.

5. If the Customer breaches the GTCs or fails to pay SMA any amount when due, the Customer shall return the products to SMA upon demand at the Customer's cost. If the Customer fails to promptly return the products, SMA, or a private receiver appointed by it, shall be entitled to enter upon the premises where the products are located and take possession of them at the cost and expense of the Customer.
6. As security for the payment and performance of its obligations hereunder and under any Contract, now or hereinafter arising, the Customer grants to SMA a security interest in all PPS Property. The Customer agrees that SMA may register such security interest against the Customer pursuant to the PPS Law or other such applicable legislation in the relevant jurisdiction. The Customer shall take all actions that SMA requests to ensure that the security interest is enforceable, perfected and otherwise effective, enable SMA to apply for any registration, complete any financing statement or give any notification, in connection with the security interest or enable SMA to exercise its rights in connection with the security interest, and the Customer shall pay or reimburse SMA for, all fees, taxes and other costs incurred in connection with maintaining and perfecting such priority and security interest where SMA takes such action following any breach by the Customer, under this or any other contract, include without limitation any breach of the Customer's obligation to make payments by a particular date.
7. To the extent permitted by law, the Customer waives the requirement of being provided with a copy of any financing or verification statement or renewal thereof. This security interest shall apply regardless of whether any product is or becomes a fixture. Without limiting any duty of confidentiality arising from the Contract or otherwise, neither SMA nor the Customer may, without the consent of the other party, disclose any information of the kind referred to in section 275(1) of the PPSA AUS or section 177(1) of the PPSA NZ, except where required by law. The Customer agrees not to authorize the disclosure of any information as contemplated by section 275(7)(c) of the PPSA AUS except with the consent of SMA. In relation to the PPSA AUS, SMA and the Customer agree that, to the extent the law permits, sections 142 and 143 are excluded and SMA need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA AUS notified to the Customer by SMA from time to time. In relation to the PPSA NZ, SMA and the Customer agree that, to the extent the law permits, sections 132 and 133 are excluded and SMA need not comply with sections 120(2), 129 and any other provision of the PPSA NZ notified to the Customer by SMA from time to time.
8. All costs and expenses incurred by SMA in enforcing these provisions, including legal fees on a substantial indemnity basis, shall be for the Customer's account.

#### **VI. Inspection – Limited Warranty**

1. The Customer shall inspect all products purchased from SMA immediately upon delivery to ensure that there is no transport damage, and the products are complete and free from defects. Material defects, or incorrect/incomplete delivery must be reported to SMA in writing within seven (7) days of receipt of the products; otherwise, the products will be deemed to have been accepted by the Customer. Notwithstanding the foregoing, the Customer may not refuse acceptance of deliveries due to immaterial defects (including cosmetic damage or variations in color or texture), and SMA shall not be responsible for any damage or defects which occur after risk of loss has passed from SMA.
2. SMA warrants that the products purchased by Customer from SMA under these General Terms will comply with the manufacturer's specification subject to the conditions of SMA's applicable Limited Factory Warranty. If the products are covered under warranty, at the discretion of SMA, the defective products will be repaired or replaced in accordance with SMA's Limited Factory Warranty or SMA shall at its option either reduce the purchase price or terminate the Contract without liability all of which are the Customer's sole and exclusive remedy.
3. The warranties expressly set forth above and herein are the exclusive warranties made by SMA with respect to the products and services. SMA DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS AND OBLIGATIONS OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR INTENDED PURPOSE.
4. In the event the products do not conform to the manufacturer's specifications, the Customer shall notify SMA of any warranty claims within the warranty period stated in the applicable Limited Factory Warranty. After that warranty period has expired, SMA is not liable for any claim and the Customer is not entitled to, will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make any claim.
5. SMA shall have a reasonable period of time to remedy warranty claims. The Customer shall deliver or make accessible to SMA, the alleged defective goods. In case of a replacement delivery, the Customer shall return to SMA the alleged defective goods in accordance with SMA's instruction and the statutory legal provisions if any, unless SMA waives its rights.
6. SMA's obligation to remedy the defects does not include the disassembly of the alleged defective good nor the reassembly unless SMA has explicitly assumed an obligation to assemble in the Contract.
7. Customer's warranty is void if the Customer, without SMA's consent, modifies the products or has a third party or the Customer attempts to repair the product. Notwithstanding the foregoing, if SMA elects not to void the warranty, the Customer shall pay all costs for the analysis and remediation of the defects.
8. No municipal, provincial, or federal authority or network service provider has made any determination with respect to any product provided as to whether or not such product satisfies the domestic content requirements of any Feed-in-Tariff ("FIT") program or contract. Accordingly, SMA makes no warranty whatsoever that any product will satisfy such domestic content requirements, unless otherwise expressly made in writing and signed by an authorized representative.
9. Products provided by SMA are not suitable for use in medical applications, railway traffic or aviation applications or in nuclear facilities, and SMA therefore disclaims any warranty if the products are used in such applications or facilities. If the Customer resells the products, the Customer shall include this provision in its agreements and will require the buyer to also include this provision in its agreements if the buyer will resell products.
10. Any statutory duties of SMA and any corresponding statutory rights of the Customer, which may not lawfully be excluded or limited by contract, are not affected by these General Terms or the terms of the SMA Limited Factory Warranty.
11. (1) Despite any contrary provision of these General Terms, all claims arising under or in connection with the SMA Limited Factory Warranty are subject to German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). However, if the warranty claimant is a consumer as defined in Art. 6 of Regulation (EC) No 593/2008 and SMA has
  - (i) either pursued our commercial or professional activities in the country where the consumer has his habitual residence, or (ii) by any means, directed such activities to that country or to several countries including that country, and (iii) the SMA Limited Factory Warranty falls within the scope of such activities, then the choice of German law as stated in this paragraph does not have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law of the country where the consumer has his habitual residence.
  - (2) Kassel, Germany, is the exclusive place of jurisdiction for all disputes arising from or in connection with the SMA Limited Factory Warranty provided that the warranty claimant is a merchant, a legal entity under public or statutory law or special assets under public or statutory law.

#### **VII. Limitation of Liability; Disclaimer of Damages**

1. SMA'S LIABILITY WITH RESPECT TO ALL CLAIMS OF ANY KIND, WHETHER

IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL THEORY, FOR ALL LOSSES OR DAMAGES ARISING OUT OF OR CONNECTED WITH ANY CONTRACT OR THESE GENERAL TERMS OF SALE OR THE PERFORMANCE OF ANY OF ITS OBLIGATIONS THEREUNDER SHALL BE LIMITED TO THE PURCHASE PRICE ACTUALLY PAID BY THE CUSTOMER FOR THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM. In any case, all such liability shall cease upon the expiration of the warranty period specified in the Limited Factory Warranty in effect at the time of purchase.

2. IN NO EVENT SHALL SMA BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR OTHER SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUE OR ANTICIPATING SAVINGS, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF DATA OR RECORDS, ANY LOSSES, DAMAGES OR COSTS ARISING UNDER THE CUSTOMER'S CONTRACT WITH A THIRD PARTY, WHETHER OR NOT SMA WAS INFORMED OR AWARE OF THE POSSIBILITY OF SUCH LOSS OR THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

#### **VIII. Other Conditions**

1. Except as otherwise expressly stated in the GTCs, these GTCs and all Contracts incorporating them shall be governed and construed in accordance with the laws of New South Wales, and the applicable federal laws of Australia, excluding their conflicts of law provisions. The provisions of the Convention on Contracts for the International Sale of Goods are hereby excluded.
2. These GTCs, together with the Contract, 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. The GTCs shall not be modified, amended or in any way altered except in writing signed by the authorized representative of each Party.
3. The failure of SMA 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.
4. Customer may not assign, delegate, or transfer the GTCs, or any of its rights or obligations thereunder, whether by contract, law or otherwise, to any other person or entity, without SMA's prior written consent. SMA may assign its rights and delegate its obligations under the GTCs upon written notice to the Customer.
5. The invalidity or unenforceability of any provision of these GTCs or any Contract shall not impair the validity or enforceability of any of the other provisions.
6. Any dispute under these GTCs shall be subject to non-binding mediation followed by binding arbitration under Rules 5 through 18 inclusive, of the Institute of Arbitrators Australia (ACN 008 651 232) for Small Commercial Disputes, by their Sydney, NSW offices, in lieu of trial. No Party shall resort to court except to record and enforce any arbitral award.
7. Customer shall comply with Australian federal law in any re-export of items purchased hereunder. Customer shall comply with Australian federal law in any re-export of items purchased hereunder.
8. In the event that after the date of this Contract there are changes to applicable laws or regulations or the interpretation thereof by any court of law or other governing body having jurisdiction subsequent to the date of these GTCs which cause SMA to incur costs or additional time to perform in providing goods and services under this Contract, the Customer agrees to pay such reasonable incremental costs incurred by SMA and to grant SMA additional time to perform to comply with such changes to applicable law.
9. Customer shall comply with following storage requirements: the products need to be stored according to the requirements or guidelines for electronical components. This includes but is not limited to any inventory or product needs to be stored in a clean, dry (without any possibility for condensation), non-flammable location and they need to be stored safely and stably according to the stacking terms of the SMA Safety regulations. The products may not be stored in the same room as chemicals or caustic materials. The products need to be protected against access by third parties and also vermin. Notwithstanding the foregoing, the products or inventory shall not be stored for longer than an aggregate of six (6) months.