

General Terms and Conditions for Customers

Of SMA Solar India Pvt Ltd.



Status: February 2019

I. General Provisions

1. These General Terms and Conditions of Sale (hereinafter referred to as "General Terms") shall apply to all offers, deliveries and services (hereinafter referred to as "Deliveries") of SMA Solar India Private Limited (hereinafter referred to as "SMA") to its customers (hereinafter referred to as "Customer"). These General Terms shall apply exclusively to business customers (B2B). The Customer hereby confirms to qualify as business customer, i.e. to enter into a transaction in exercise of his/her/its trade, business or profession and not in his/her capacity as ordinary consumer.
2. These General Terms shall apply exclusively and shall also apply to all future transactions between the parties to the contract without requiring any reference thereto again. Any deviating, contrary or supplementary general terms and conditions of the Customer shall only become an integral part of the contract if and to the extent that SMA has explicitly consented to their applicability. This requirement of explicit consent shall also apply when SMA unconditionally performs the Delivery to the Customer despite being aware of the Customer's general terms and conditions.
3. If, in individual cases for certain Deliveries, particularly service and warranty agreements, specific provisions which deviate from these General Terms are agreed upon in writing, these General Terms shall be deemed as subordinate and supplementary.
4. In case of doubt, for the interpretation of trading terms the Incoterms® as applicable at that time shall be binding. Currently, the Incoterms® 2010 are applicable.
5. Products provided by SMA are not suitable for use in medical areas, in railway traffic or aviation. In case of doubt, the Customer shall consult with SMA prior to any use.

II. Intellectual Property, Standard Software, Use of Trademarks

1. Unless otherwise agreed in writing, all rights in and to offer documents, including copies of offer documents, shall remain with SMA. The Customer is not entitled to reproduce, distribute, (publicly) display, modify or otherwise change the documents from SMA.
2. SMA shall be entitled to any and all work products and intellectual property rights which come into existence in connection with the manufacturing or other business process, and shall have the exclusive ownership to work products and intellectual property rights. SMA may demand the return or handover of work products at any time.
3. If standard software is provided, additional terms shall apply.
4. 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 goods and services, terms of delivery, default

1. Delivery is made in accordance with the Incoterms® clause FCA (Mumbai, India), if no other Incoterm has been agreed on in writing. If FCA has been agreed, the Customer has to provide the means of transport or the freight carrier and the Customer is responsible for timely provision. Any delays have to be communicated to SMA in due time. Any costs resulting from such delay shall be borne by the Customer.
2. SMA is entitled to make partial deliveries even if partial deliveries were not agreed upon.
3. Delivery periods and delivery dates refer to the date of handover to the forwarding agent, freight carrier or any other third party commissioned to provide transport services. Any delivery periods and dates targeted by SMA shall only be deemed approximations irrespective of any provided fixed period or a fixed date, as the case may be. For purposes of any delivery, the Customer shall provide all required cooperation, in particular the provision of approvals and releases. Otherwise, the delivery period is deemed extended by an appropriate period of time.
4. Agreed delivery periods are subject to 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 required for the Deliveries to be made. In case of delay, the delivery period will be extended accordingly plus an appropriate period of time to re-start the performance of the delayed Delivery.
5. SMA's delivery obligations are subject to the condition of full and punctual supply to SMA by SMA's own suppliers and are also subject to the condition that necessary export approvals are granted and other documents required for export are obtained. Any delays in delivery and performance due to force majeure and due to events which substantially impede or prevent delivery, including but not limited to war, terrorist attacks, import and export restrictions, strike, lock-out or orders by the authorities, even if they relate to SMA's own supplier or sub-supplier, shall prolong the agreed delivery periods by the duration of the delay in delivery and performance, plus a reasonable start-up time. If possible, SMA will inform the Customer about the start, end and expected duration of the aforementioned circumstances.
6. Subject to Section X, any liability for any inability of any Delivery or delays of any Delivery to the Customer shall be excluded to the fullest extent permitted by law. To the extent that any circumstances make Delivery for SMA significantly more difficult or render it legally or practically impossible and the impediments are not only of short, temporary nature, SMA is entitled to withdraw from or terminate the contract by written notice.

In such an event, SMA will refund the Customer any amount paid in advance. No further claims towards SMA shall apply. In the case of impediments of short, temporary nature, the delivery periods shall be extended or the delivery dates shall be postponed by the period during which the impediments exist. To the extent that the Customer cannot be reasonably expected to perform the contract, the Customer may withdraw from the contract by written notice to SMA. Notwithstanding any other provision of the GTC, in no event shall SMA's liability in case of inability to Deliver or delays in any Delivery exceed 0.5% of the value of the products not delivered for each full week of delay, but in total to maximum 5% of the value of that part of the entire delivery which cannot be used in time or according to contract due to delay. Any additional claim for damages based on default shall be excluded.

7. If the Customer is in default of acceptance, SMA is entitled to damages resulting therefrom, including reimbursement of additional expenses (e.g. costs for storage/warehousing). As a lump-sum reimbursement for additional expenses, SMA will charge a lump-sum amount of 0.5% of the invoice amount for each full week which passed after the date on which the default of acceptance commenced, however not more than 5% of the invoice amount which are genuine pre-estimated damages agreed between the parties. SMA reserves the proof of higher damages and all further rights under statutory law, particularly the right to withdraw from the contract. The amount of the lump-sum compensation shall be credited to all further monetary claims of SMA.

8. SMA reserves the right to provide services at its reasonable discretion in countries with high security risks if such a risk has occurred after conclusion of the contract. In this context, the standards of City/Country Security Assessment Rating (CSAR), risk management IJET® or similar institutions that provide risk estimates for certain regions shall apply. In such a case, SMA is entitled to withdraw from or terminate the contract.

9. The Customer agrees to SMA's cancellation policy as follows: (i) any request for cancellation or modification of the purchase order shall be subject to SMA's express acceptance in writing; (ii) if SMA accepts Customer's request for cancellation or modification of purchase order, SMA shall have the discretion to charge the Customer a cancellation fee which equals to 15% of the invoice amount; (iii) the cancellation fee is not meant to be punitive, but for SMA to recover various out-of-pocket costs including administrative and raw material cost; and (iv) cancellations or modifications of the purchase order shall not be allowed if SMA has commenced the production or preparation of products for such purchase order. The Customer may postpone the request delivery date only once for the purchase order for products and by no more than 14 calendar days, provided that seller has not commenced the production for such purchase order.

IV. Prices, invoicing, terms of payment

1. The prices stated are net amounts and do not include Goods and Service Tax or other taxes, customs duties or other levies payable under applicable laws. Any taxes, levies and customs duties shall always be borne by the Customer and increase the final price unless another agreement, including in the form of Incoterms®, has been concluded. **The price stated shall not comprise transport, packaging and insurance costs, even if Incoterm® clause CIP is agreed. These costs are calculated separately and invoiced to the Customer.** The Customer agrees that the prices quoted in the order are not fixed prices and any escalation in such prices shall be binding on Customer, notwithstanding anything that may be mentioned in terms of acceptance of order.
2. All payments have to be made in INR within 30 days from the invoice date, unless agreed otherwise.
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.
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 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. The Customer is not entitled to set-off or to hold back due payments.

V. Transfer of risk, place of performance

1. In the case of the sale of goods, the risk shall pass to the Customer no later than upon handover of the goods to the forwarder, freight carrier or to another third party commissioned for carrying out shipment, according to Incoterms® clause FCA, unless explicitly agreed otherwise.
2. If shipment or handover is delayed due to a circumstance for which the Customer is responsible, the risk shall pass to the Customer from the day on which the delivery item is ready for shipment and SMA has notified the Customer thereof.
3. The place of performance for all obligations from the contractual relationship is SMA's registered office, except as otherwise specified.
4. SMA may choose the distribution channel, unless another agreement has been made in writing.

VI. Acceptance

If the object of the contract is a work product, acceptance shall take place upon completion of the work. The work product shall be deemed accepted if the Customer has not submitted a written refusal to accept the works within 14 days, which includes the reasonable and comprehensive reasons for the refusal.

VII. Retention of title

1. To the extent possible under applicable laws, SMA shall retain, and the Customer hereby agrees that SMA retains, title to the goods delivered (goods subject to retention of title) until any claims including price of the goods and any interest charges that may have accrued to SMA from the business relationship are fulfilled. Prior to the transfer of title to the Customer, any pledge or assignment as security of the goods is prohibited. In addition, where necessary, SMA may register its retention of title with all competent authorities or offices and take any other action necessary or advisable to retain title to the goods delivered. Upon request by SMA, the Customer shall be required to assist SMA to effect such retention of title at the Customer's own costs.
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 without any obligations for SMA arising from such work. In the case of processing together with third-party goods that do not belong to SMA, SMA 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. The new goods, which are stored by the Customer for SMA free of charge, shall be considered goods subject to reservation of title within the meaning of this clause.
3. The Customer is entitled to resell the goods subject to reservation of title in the normal course of business.
4. The Customer's receivables arising from the resale of the goods subject to reservation of title are transferred to SMA 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, 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 has a co-ownership interest pursuant to section VII.2, the assignment of the claim relates to the amount of this co-ownership interest.
5. The Customer is authorised to collect claims arising from resale until SMA's revocation, which is admissible at any time. SMA will only make use of its right of revocation if the Customer breaches any of his obligation including his payment obligations towards SMA, 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's prior written consent. Upon SMA's request, the Customer is obliged to notify its buyers about the assignment made to SMA and to give SMA the information and documentation which SMA requires for collection of the claim(s). SMA is entitled to notify the buyers about the assignment itself.
6. In the case of pledges, seizure or other dispositions or interferences from third parties, the Customer shall notify SMA without undue delay.
7. In case of Customer's breach of obligation including, but not limited to, payment default, SMA 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.
8. If the realisable value of the securities exceeds SMA's claims by more than 10%, SMA may release securities of its choice upon the Customer's request.
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.

VIII. Performance bond

In the event of a delivery abroad, for the purpose of securing the payment claims, SMA is entitled to request from Customer the provision of an unlimited, directly enforceable performance bond subject to Indian law that is issued by a credit institution admitted in India.

IX. Warranties

1. In case of material defects or defects of title, the statutory legal provisions shall apply, unless otherwise set forth in the following.
2. **SMA's warranty is excluded in case of the use of products in medical applications, in railway traffic or aviation or similar use. In the case of resale, the Customer has to explicitly mention such lack of suitability and to impose on the buyer a corresponding obligation applying in the case of a further resale so that each buyer of products is informed about this specific circumstance.**
3. It shall be the Customer's responsibility to check the delivered goods and notify SMA in writing about any defects or false or incomplete deliveries without undue delay, however not later than ten (10) working days after handover or, in the case of hidden defects, within ten (10) working days from the date of obtaining knowledge of the defects or the date on which the defects would have been discovered through the exercise of reasonable investigations. If the Customer does not notify SMA in writing in due time, the delivered goods are deemed fully accepted.
4. SMA shall be entitled to remedy the defects of the delivered goods, in its own discretion, by repairing the delivered goods or by delivering non-defective goods. If SMA fails to remedy the defect, SMA shall, at its option, either reduce the purchase price or withdraw from the contract. This is Customer's exclusive remedy for breach of warranty. This warranty is in lieu of all other warranties, written or oral, statutory, expressed or implied, including any warranty of merchantability or fitness for a particular purpose or non-infringement of third-party intellectual property rights, unless a specific performance warranty may have been issued in writing by SMA to Customer.
5. SMA is entitled to make its remedial action subject to the condition that the Customer pays the remuneration that is due.
6. The Customer has to provide SMA with appropriate time to remedy the defects and, in particular, has to handover, or to make accessible to SMA, the defective goods for the purpose of performing a review. In case

of a replacement delivery, the Customer has to return to SMA the defective goods in accordance with the statutory legal provisions, unless SMA waives its rights in this respect in writing.

7. SMA's obligation to remedy the defects shall neither include the disassembly of the defective good nor the reassembly unless SMA has explicitly assumed an obligation to assemble in the underlying contract.
8. Customer's warranty rights shall lapse if the Customer or any third party commissioned by the Customer, without SMA's consent, modifies the delivery item or has it modified and, in doing so, makes remediation of the defects impossible or unreasonably more difficult. In any case, the Customer has to bear the additional costs for remediation of the defects arising from such modification. Defects shall also not be classified as defects in quality and the Customer's warranty rights shall expire in case of (i) natural wear and tear; (ii) unsuitable or improper use; (iii) defective installation, bad civil works or start-up by the customer or third parties; (iv) improper storage; (v) ignorance of the relevant user manuals; (vi) use of unsuitable replacement materials and parts; (vii) chemical, electro-chemical, electro-magnetic, electrical or comparable influences; or (viii) lack of or improper maintenance by the customer or third parties.
9. The general statute of limitations for warranty claims is one year from the delivery date.
10. Customer's claims for damages or reimbursement of frustrated expenses in case of defects shall only be available in accordance with the provisions of Section X and are excluded otherwise. Section IX.9 shall remain unaffected which means that, if the requirements of this section are met, claims for damages resulting from defects shall also expire within one year.

X. Limitation of liability, disclaimer, indemnity

1. SMA's liability in connection with or arising out of the contractual relationship with the Customer, regardless of the ground (contract or tort or otherwise) shall be limited to the fullest extent permitted by law and notwithstanding anything it shall in no event exceed the price of the products delivered to the Customer. Any additional claim for damages based on default shall be excluded. In no event shall SMA be liable for (i) any form of negligence (including gross negligence to the extent permitted by law) by SMA or by any of SMA's employees, executives or affiliates; (ii) indirect damage, consequential damage and/or loss of profits or unrealised savings; and (iii) any acts and omissions on the part of auxiliary persons of SMA or the supplier, be this contractual or non-contractual.
2. **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 SMA in connection with the use of the goods other than for the ordinary and designated use.**

XI. Miscellaneous, choice of law, place of jurisdiction

1. The failure of any 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.
2. Neither the contractual agreement nor any rights or obligations thereunder shall be assigned by the Customer, without the prior written consent of SMA.
3. Nothing contained in these General Terms shall be deemed to constitute either Party as the agent or representative of the other Party, as joint venture partners for any purpose. Neither Party will have authority to speak for, represent or obligate the other party in any way without prior written authority from the other party. For the sake of clarity, these terms are on a principal-to-principal basis.
4. Customer acknowledges and agrees that SMA is entitled to assign, novate or sub-contract the whole or any part of its obligations/rights without the prior consent of the Customer.
5. If any provision of the contract including these General Terms is held to be invalid or unenforceable for any reason it shall be revised rather than rendered void, if possible, in order to achieve the intent of the parties to the fullest extent possible. In any event, all other provisions of the contract including these General Terms shall be deemed valid and enforceable to the fullest extent possible.
6. All legal relationships between SMA and the Customer in connection with this contractual relationship shall be governed by, and construed in accordance with, the substantive laws of India. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
7. Any dispute, claim or controversy arising out of or relating to these General Terms including the determination of the scope or applicability of this General Terms to arbitrate, shall be determined by arbitration in India, before a sole arbitrator mutually appointed by SMA and the Customer and the arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The seat and the venue of such arbitration shall be Mumbai. All proceedings of such arbitration, including, without limitation, any awards, shall be in the English language. The award shall be final and binding on the parties to the dispute.