

General Terms of Purchase of SMA Solar India Private Limited

- GTP Edition March 2019 -



[Note to Client: Since these terms will be applicable between SMA India and suppliers in India, these terms are being modified in light of laws of India being applicable to these terms]

I. General Provisions

1. These General Terms of Purchase shall apply to all business relationships between SMA Solar India Private Limited, (hereinafter referred to as 'SMA') and the supplier (hereinafter referred to as the 'Supplier').
2. The General Terms of Business of the Supplier shall only apply in so far as SMA has consented to the conclusion of each contract in writing.
3. In the event that separate provisions, which diverge from these provisions, are agreed upon in writing for a specific order, these General Terms of Purchase shall be deemed as subordinate and supplementary.
4. The effectiveness of other conditions cannot be derived from the acceptance of the goods.

II. Orders – Confirmation of Order

1. Orders shall be required in writing. Verbal agreements shall only be valid in so far as they have been confirmed in writing by SMA.
2. Orders are to be confirmed in writing by the Supplier within five working days from the date of order, stating our order number; otherwise SMA shall be entitled to withdraw from the order.
3. SMA may demand modifications to the delivery item even after the conclusion of the contract, as long as these modifications are acceptable to the Supplier.

III. Delivery Dates – Withdrawal

1. The delivery dates and periods agreed upon between SMA and the Supplier are binding. Should it be discernible to the Supplier that delivery dates cannot be adhered to, the Supplier shall get in touch with SMA immediately and explain the reasons and give new delivery dates. In this case, the Supplier undertakes to ensure that delivery is effected as quickly as possible at his own expense.
2. Time is of the essence. Time of delivery/performance as mentioned in the Order shall be the essence of the Order and no variations shall be permitted except with prior authorization in writing from SMA.
3. Should the Supplier fail to render the service due or not perform it as stipulated in the contract, SMA shall be entitled to withdraw from the contract and purchase such cancelled quantities from open market at the prevailing market price at the risk and cost of the Supplier after expiry of an unsuccessful extension of the original term not exceeding 30 business days, or, in so far as the Supplier is responsible for the non-observation of the delivery deadline, to accept delayed deliveries at price reduced by a sum/ percentage (%) mentioned in the Purchase Order for every week of delay or part thereof which are genuine pre-estimated damages agreed between the parties.. This shall also include the additional expenses that arise for procuring substitutes from third parties.
4. SMA can terminate the contract for an important reason or rescind the contract, in particular, when the Supplier has stopped his payments not only temporarily or the Supplier has filed a petition for insolvency or if insolvency proceedings are instituted with relation to his assets or have been refused due to insufficiency of assets.
5. Should a contractual penalty be agreed upon in individual agreements or by a framework buying contract in case of a delay in delivery, the right of SMA pursuant to section III, sub-item 3, to rescind or to claim damages for delay shall remain unaffected.

IV. Prices – Other Conditions

1. The prices quoted in the order are fixed prices including freight, packing and transport insurance and no escalation in such prices shall be binding on SMA, notwithstanding anything that may be mentioned in Supplier's terms of acceptance of Order.
2. Additional and/or increased performances shall only be remunerated if this was agreed upon in writing before the performance of the service.
3. Upon request by SMA, the Supplier undertakes to collect all packing material of the delivered goods from the receiving point and to dispose of it at his own expense.

V. Dispatch – Invoice

1. The dispatch of the goods shall be effected at the expense and risk of the Supplier. A delivery note shall be attached to each consignment indicating the order number, date, order item number, the description of the goods with the SMA material number and, if available, the serial number.
2. The invoice shall be sent to the accounts payable department of SMA together with the details set forth in paragraph 1.

VI. Payment

1. Payment shall be effected with 3% cash discount within 14 days, 2% cash discount within 30 days or within 60 days net, calculated from the date of the complete and orderly receipt of the goods with all stipulated documents, including the necessary operating and maintenance instructions. In case of any conflicts or inconsistency between the provisions of this Article and the corresponding provisions under the purchase order, the latter shall prevail.
2. The date of the receipt of the invoice shall be deemed to be the date of the receipt stamp on the invoice. The credit periods shall, however, not commence before the receipt of the goods at the delivery place agreed upon.
3. The date when the order of remittance is handed over at the bank or the date when the check is sent shall be decisive for the timeliness of the payment by SMA.

VII. Protective Provisions

The Supplier undertakes to comply with the accepted engineering standards and, in particular, with the applicable laws regulations and guidelines issued by the legislator, regulatory authorities and employers' liability insurance with regard to execution, the prevention of accidents and protection of the environment.

VIII. Defects of Quality

1. Except as ruled otherwise below, the liability for defects of the Supplier shall be in accordance with the applicable laws in India.

2. In case of a serial defect, SMA shall be entitled to refuse acceptance of the rest of the delivery and to assert the statutory deficiency claims for the entire delivery. A serial defect shall be assumed if at least 10% of the delivered goods show signs of deficiency of the same kind during the warranty period.
3. The warranty period is 36 months after acceptance of the goods. The warranty period for defects in the case of a building and for defects of an object which has been used for a building in accordance with its customary usage and caused the defectiveness of that building is 60 months. The warranty period shall be extended for the time during which the delivered item cannot be used owing to its faultiness.
4. SMA shall inspect consignments after delivery by the Supplier, insofar this can be done in the regular course of business, at least for quantity variances and divergences in identity, transport damage as well as other obvious defects. The requirement to make a claim shall be deemed to have been raised if the determined deficiencies are notified to the Supplier within 10 working days after receipt of the consignment or, in the case of concealed defects, in the same period after ascertainment thereof.
5. Supplier warrants that goods and/or services supplied: (a) Shall be of the highest grade and quality unless otherwise specified; (b) shall conform to the specifications, drawings, samples or other descriptions contained in the Order or furnished or specified by SMA; (c) shall be performed in a workmanlike manner; (d) shall be fit and sufficient for the purpose intended; (e) shall not violate any third party intellectual property rights and shall be merchantable, of good material and workmanship and free from all the defects whether latent or patent; and (f) good title to the goods shall pass to SMA, free and clear of any encumbrance.
6. In the case of a defect or deficiency in title or breach of any warranty, SMA is entitled, to demand supplementary performance at the cost of the Supplier, to withdraw from the contract, to reduce the purchase price or seek refund of the price paid by SMA in respect of the said goods, or to demand compensation being a sum/ percentage (%) of the price mentioned in the Purchase Order for such defect or deficiency which are genuine pre-estimated damages agreed between the parties or reimbursement of futile expenditure. In the case of increased deliveries, SMA reserves the right to return the excess goods delivered at the expense of the Supplier.
7. The period of limitation of the deficiency claims shall be suspended if negotiations are taking place between the parties on the existence or extent of warranty claims or if the Supplier is inspecting the goods himself for the existence of a defect. The suspension shall end if the Supplier refuses to continue with the remedy of the defect in writing or if he notifies SMA in writing that the negotiations have come to an end or if the outcome of the inspection is sent to SMA.

IX. Taxes

The price quoted in the Order for supply of goods/services shall be exclusive of any applicable Goods and Services Tax, Customs duties, or any other indirect tax as may be imposed by the Government of India from time to time. The Supplier shall provide a proper invoice in the form and manner prescribed under GST Invoice Rules containing all the particulars mentioned therein. In the event that the Supplier fails to provide the invoice in the form and manner prescribed under rules, SMA shall not be liable to make any payment against such invoice. Notwithstanding anything contained anywhere in these terms, in the event that the input tax credit of the GST charged by Supplier is denied by the tax authorities to SMA, SMA shall be entitled to recover such amount from the Supplier by way of adjustment from the next invoice. In addition to the amount of GST, SMA shall also be entitled to recover interest at the applicable rate and penalty, in case any penalty is imposed by the tax authorities on SMA.

X. Liability

1. The Supplier shall be liable for damage arising from the delivery of faulty products in accordance with the terms and conditions of these terms and applicable laws.
2. The Supplier shall indemnify SMA from (i) claims from the statutory product liability in so far as he is responsible for causing the damage; or (ii) any alleged or actual, direct or contributory infringement or misappropriation of any intellectual property or other proprietary right arising from the purchase, use or sale of such goods or services; or (iii) any breach by Supplier of any term or condition contained in the Order; or (iv) violation of applicable laws; or (v) the acts, omissions, or willful misconduct of Supplier's employees and subcontractors, including their agents and representatives, and all other persons performing any services under the Order with the Supplier.
3. Provisions for the execution of the order shall remain the property of SMA. They shall be stored separately by the Supplier free of charge, they shall be marked and managed by him and may only be used for the purpose of each contract.
4. The Supplier shall be liable towards SMA for all damage to the provisions.
5. Risk of loss and/or damage to any goods furnished hereunder shall be upon the Supplier until the goods are physically delivered to SMA's facility specified on the face of the Order and accepted by SMA.

XI. Secrecy and Protection of Confidence

The Supplier undertakes to treat the order and the work ensuing from it, including all of the necessary documents, apparatus and production equipment and facilities etc. in confidence and not to make them accessible to third parties in a direct or indirect manner. Press releases, other publications and advertising with orders placed shall only be permitted with prior written consent by SMA.

XII. Other Conditions

1. The place of performance for deliveries and services shall be the place indicated on the purchase order.
2. Nothing contained in these 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.
3. These terms shall be subject to laws of India. Any and all disputes ("Disputes") arising out of or in relation to or in connection with these terms between the Parties or relating to the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be

referred for arbitration in Mumbai, India in accordance with the terms of Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator, who shall be appointed by SMA. The seat and venue of arbitration shall be Mumbai. The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction.

4. In so far as it is legally admissible, the place of jurisdiction for all disputes arising from the contractual relationship shall be

5. Even if individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected, unless holding onto the contract would constitute an undue hardship for one of the parties.