General Terms of Delivery of SMA Solar Technology AG

I. General provisions
1. These general terms and conditions (hereinafter referred to as GTCD) shall apply to all offers, deliveries, and services referred to as deliveries) of SMA Solar Technology AG (hereinafter referred to as SMA) to its Customers. They shall also apply to all future transactions between the parties without express consent.
2. The General Terms of Business of the Customer shall only apply in so far as SMA has expressly approved them in writing.
3. If, in individual cases, separate provisions, which diverge from these provisions, are agreed upon, in writing, for special specific deliveries, these GTCD shall be deemed to have been supplemented by such separate provisions.
4. The Customer shall be granted the non-exclusive right to use the standard software with the features of performance stipulated in the contract without altering its form. Passing on the software, the sale thereof or using it elsewhere, as well as the reproduction of the software beyond the scope of a security copy, shall only be admissible with the written consent of SMA. In the event of unfulfilled payment, the Customer shall be obliged to compensate SMA for the damages suffered by the latter.
5. SMA shall be entitled to all the rights of the bidding documents. All documentation shall be immediately returned upon request by SMA in case the order is not placed.
6. Trade and business secrets must be handled strictly confidential.
7. The Customer has been informed about the limitations of liability, the technical data and descriptions in the respective product information or advertising materials included in the offer are binding solely for informational purposes. They do not constitute any guarantee of quality or durability for the goods to be supplied or services to be rendered by SMA.

II. Prices - Packaging - Terms of Payment
1. Prices are quoted ex works and excluding packing, and additionally, if required by the law, plus statutory value-added tax at the prevailing rate.
2. All payments shall be made in EUROs, within 30 days upon issuance of the invoice and at no charge to SMA's paying office.
3. If the period of payment is not fixed in the contract, the requirement on the part of the Customer, after entering into the agreement, circumstances should become known that calls its creditworthiness into question, SMA shall be entitled to declare the residual debt due immediately, demand advance payments or provisions of security or withdraw from the contract following a reasonable extension without prejudice to other provisions of law.
4. The Customer may not refuse acceptance of deliveries due to immaterial defects. Article 377 of the HGB applies, providing that the defects, which are obvious or first become evident during a proper inspection, have been distinctly notified at the time of delivery. In the case of delayed delivery, the items are to be handed over to the Purchaser. Concealed damage must be disclosed, in writing, at the latest eight days after delivery.
5. The period of limitation of the deficiency claims is 12 months, calculated from the day the risk is passed. This shall not apply in cases of loss of life, personal injuries or damage to health, nor in cases arising from intentional or gross negligent breach of duty by SMA as well as malicious concealment of a defect.
6. The period of limitation for services where a defect becomes apparent within the limitation period shall, at the discretion of SMA, be repaired, replaced or provided again free of charge, provided that the removed defect had already existed at the time of the risk passed. In case of software faults, the instructions for the avoidance of the consequences of the fault shall be deemed as adequate subsequent fulfillment.

III. Delivery - Delivery deadlines - Delivery default
1. SMA shall be entitled to provide and invoice partial deliveries and partial services and to modify the materials of the products to be delivered without the consent of the Customer, provided that this does not alter the properties or functionality of the products.
2. Deliveries set for deliveries can only be observed if all provisions, documents, permits and releases to be supplied by the Customer are received in due time and if the agreed payment terms, including advance payments and all other obligations required for the delivery are fulfilled. Otherwise, the delivery deadline will be extended by a reasonable period of time.
3. The delivery deadline shall be considered observed if the delivery item is dispatched or the consignments will be insured against normal transport risks by SMA at the expense of the Customer.
4. In case of labor disputes, measures by public authorities, force majeure or the occurrence of similar events that evidently interfere with the supply availability of SMA, the delivery deadline shall be extended by a reasonable period of time.
5. The promised service is not available, because SMA has not been supplied by its sub-suppliers, SMA shall be entitled to provide a service equivalent in quality and price. Should this also be impossible, SMA may rescind the contract. In such a case, SMA shall notify the Customer of the necessary actions immediately. This also applies to claims arising from faulty contract conclusion.

IV. Defects of Quality
1. The Customer may not refuse acceptance of the delivered items in case the order is not placed due to concealed damage. Concealed damage must be disclosed, in writing, at the latest eight days after delivery.
2. The Customer is withdrawing from the contract due to the delayed delivery or insists on the adequate subsequent fulfillment.
3. The Customer is entitled to claim the expenses incurred from the Customer.
4. The Customer shall pay any claims exceeding the scope of the statutory provisions governing claims based on defects. Rights of recourse (hereinafter referred to as SMA) to its Customers. They shall also apply to all future transactions beyond the existing accounts payable of SMA. The statutory value-added tax at the prevailing rate.
5. In the event of violations of obligations by the Customer, in particular default on payment, SMA shall, following the fruitless passing of an appropriate period for performance specified to the Customer, be entitled to withdraw from the contract with no further notice and total retention of payment, as well as to enter the premises of the Customer for this specific purpose and to deduct the goods from the Customer’s accounts payable or its related accounts receivable in consequence by this withdrawal.
6. SMA shall be entitled to release the existing securities on request of the Customer, once the realistic value of the security exceeds the accounts receivable to be secured by more than 15%.

VI. Defects of Quality
1. The Customer may refuse acceptance of deliveries due to immaterial defects. Article 377 of the HGB applies, providing that the defects, which are obvious or first become evident during a proper inspection, have been distinctly notified at the time of delivery. In the case of delayed delivery, the items are to be handed over to the Purchaser. Concealed damage must be disclosed, in writing, at the latest eight days after delivery.
2. The period of limitation of the deficiency claims is 12 months, calculated from the day the risk is passed. This shall not apply in cases of loss of life, personal injuries or damage to health, nor in cases arising from intentional or gross negligent breach of duty by SMA as well as malicious concealment of a defect.
3. The period of limitation for services where a defect becomes apparent within the limitation period shall, at the discretion of SMA, be repaired, replaced or provided again free of charge, provided that the removed defect had already existed at the time of the risk passed. In case of software faults, the instructions for the avoidance of the consequences of the fault shall be deemed as adequate subsequent fulfillment.
4. If the defective performance is unsuccessful, the Customer shall be entitled to withdraw from the contract or reduce the remuneration, in a reasonable manner, irrespective of any claims for damages of the Customer that may have accurred.
5. There shall be no claims based on a defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the risk of loss due to faulty or negligent handling, the use of unsuitable equipment, faulty construction work, overload, lightning, among other things, external influences, as well as defects attributable to modifications or repair work and improper maintenance that have not been properly carried out according to the operating manual.
6. In case of notification of defects, the Customer may withhold payments only to a reasonable extent to the extent taking into account the defect incurred. If the deficiency claim was made wrongly, as is entitled to claim the expenses incurred from the Customer.
7. The Customer shall pay any claims exceeding the scope of the statutory provisions governing claims based on defects. Rights of recourse (hereinafter referred to as SMA) to its Customers. They shall also apply to all future transactions beyond the existing accounts payable of SMA. The statutory value-added tax at the prevailing rate.
8. In the event of violations of obligations by the Customer, in particular default on payment, SMA shall, following the fruitless passing of an appropriate period for performance specified to the Customer, be entitled to withdraw from the contract with no further notice and total retention of payment, as well as to enter the premises of the Customer for this specific purpose and to deduct the goods from the Customer’s accounts payable or its related accounts receivable in consequence by this withdrawal.

VII. Other Compensation Claims
1. Any claims for damages and reimbursement of expenses the Customer may have, regardless of legal ground, including breach of duties arising from the contractual obligation and tort, shall be excluded. This also applies to claims arising from faulty contract conclusion.
2. The Customer shall not apply to damages arising from the law on product liability or in cases of intent or gross negligence on part of SMA or its agents, nor to damages due to loss of life, personal injury or impairment of health or malicious concealment of a defect or due to the breach of essential contractual obligations. Compensation for a material breach of contract shall, however, be limited to the foreseeable damage in standard contracts, except in the case of liability for wrongful intent or gross negligence or due to injury to life, body or health.
3. Material contractual obligations are those the fulfillment of which allows for the proper execution of the contract in the first place and the adherence to which the contractual partner can continuously trust.
4. SMA products may not be used in the medical sector or in aviation without the prior written consent.
5. The liability exemptions and limitations for SMA shall also apply to the personal liability of the employees, representatives and agents of SMA.
6. The period of limitation for the compensation claims that the Customer is entitled to in accordance with section VII depends on the period of limitation valid for deficiency claims pursuant to section VI, sub-item 2. This does not apply in cases of Article VII, number 2, sentence 1. The statutory limitations provisions shall apply to deficiency claims in accordance with the German product liability act. Article 479 of the German Civil Code remains unaffected.
7. The above provisions shall not involve a change in the burden of proof to the Customer.
8. SMA shall be entitled to release the existing securities on request of the Customer.

VIII. Other Conditions
1. German law applies to all legal relationships between SMA and the Customer stemming from this contractual relationship. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) uniform law is excluded.
2. The Customer has been informed about the provisions of the German Civil Code (BGB) and the object held for SMA in custody by the Customer free of charge is a reserved item in accordance with this provision. In the event of the reserved goods being sold or used for the fulfillment of any contract, then the Customer shall now assign the purchase-money claims or the remuneration claims arising from this to SMA, regardless of whether the reserved goods are passed onto one or several purchasers or not or after processing,alone or together with objects of outside sources. Incidental claims in connection with the reserved goods, particularly insurance claims, shall also be transferred to SMA in the same manner. The Customer waives any claims against others in this connection.
3. The Customer shall notify SMA immediately in case of levies of execution, seizures or other measures affecting the objects which are part of the contract.
4. In the event of violations of obligations by the Customer, in particular default on payment, SMA shall, following the fruitless passing of an appropriate period for performance specified to the Customer, be entitled to withdraw from the contract with no further notice and total retention of payment, as well as to enter the premises of the Customer for this specific purpose and to deduct the goods from the Customer’s accounts payable or its related accounts receivable in consequence by this withdrawal.