

General Terms of Purchase of SMA Solar Technology America LLC

- GTP Edition March 2018 -

I. General Provisions

1. These General Terms of Purchase shall apply to all purchases by SMA Solar Technology America LLC, (hereinafter referred to as "SMA") from the supplier (hereinafter referred to as the "Supplier").
2. Any terms of the Supplier whether on an invoice, order confirmation or any other document shall only apply in so far as SMA has consented to the inclusion of those terms in writing and signed by SMA.
3. In the event of conflict with a purchase order, the terms of the purchase order will take precedence over these General Terms of Purchase.
4. Acceptance of the goods by SMA shall not be deemed to be agreement to Supplier's terms.

II. Orders – Confirmation of Order

1. All purchases of goods and services from Supplier shall be made by means of a purchase order issued by SMA to the Supplier.
2. Orders are to be confirmed in writing by the Supplier within five (5) working days from the date of purchase order. SMA may cancel any purchase order with ten (10) working days of receipt of the Supplier's order confirmation without liability or at any time if the order confirmation does not reference the purchase order number.
3. SMA may request modifications to the purchase order, including quantity, delivery date, place of delivery at any time, so 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 the Supplier believe that it will not meet the delivery dates, the Supplier will notify SMA immediately in writing with an explanation of the reasons for the delay and with new proposed delivery dates. SMA may agree to the new delivery date, cancel the order or request that the Supplier will expedite delivery of the goods at Supplier's costs.
2. Should the Supplier fail to perform under or breach the General Terms of Purchase, SMA may cancel any or all outstanding purchase order(s) or terminate this General Terms of Purchase at any time without liability if the Supplier does not remedy the failure or breach on ten (10) working days' written notice from SMA to the Supplier. SMA may offset any amounts due to SMA from any payment due to Supplier.
3. Should SMA fail to pay the Supplier any amount owed to the Supplier in accordance with the General Terms of Purchase, the Supplier may cancel any or all outstanding purchase order(s) or terminate this General Terms of Purchase at any time without liability if SMA does not remedy the failure to pay on ten (10) working days' written notice from the Supplier to SMA. The written notice to SMA must detail the amount not paid by SMA including the order number and invoice details.
4. SMA can terminate the General Terms of Purchase or cancel all purchase orders, if the Supplier has failed to make payments in the ordinary course of business or the Supplier has filed a petition for insolvency or if involuntary insolvency proceedings are instituted against it or credit has been refused due to insufficiency of assets.
5. The right of termination shall be in addition to all rights and remedies available to SMA and the Supplier under the applicable law.

IV. Prices – Other Conditions

1. The prices quoted in the purchase order are fixed prices including freight, packing, transport insurance and tax. In this clause, (a) "tax" means a goods and services tax, or a similar value added tax, levied or imposed under the any applicable law.
2. Supplier is not entitled to additional and/or increased compensation, unless SMA has agreed in writing.
3. Upon request by SMA, the Supplier will collect all packing material of the delivered goods from the receiving point and to dispose of it at its own expense.

V. Delivery – Invoice

1. The delivery of the goods shall be 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. In addition, the purchase order will designate the appropriate Incoterms, which shall take precedence over V. 1.
2. The invoice shall be sent to the accounts payable department of SMA together with the details reasonably requested by SMA including the information required in the delivery note as set forth in V. 1.

VI. Payment

1. All invoices must be paid within ninety (90) days of the Delivery Date.
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 determine the date of when the payment by SMA was made.

VII. Protective Provisions

The Supplier will comply with the accepted engineering standards and, in particular, with the regulations and guidelines issued by the legislator, regulatory authorities, and the National Electrical Codes (where relevant to the goods and services acquired under this General Terms of Purchase) with regard to execution, the prevention of accidents and protection of the environment.

VIII. Defects of Quality

1. Except as set out below, the liability for defects of the goods and service shall be solely the Supplier's responsibility.
2. In case of a serial defect, SMA shall be entitled to refuse acceptance of the rest of the delivery and to assert the 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 60 months after acceptance of the goods by SMA or its end user, whichever occurs last. The warranty period shall be extended for the time during which the goods or service cannot be used owing to its defect.
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.
5. In the case of a material defect or deficiency in title, SMA is entitled to demand supplementary performance, to reduce the purchase price, or to demand compensation or reimbursement of expenses arising out of or in connection with the material defect or deficiency in title.
6. 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 itself 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 it notifies SMA in writing that the negotiations have come to an end or if the outcome of the inspection is sent to SMA.

IX. Liability

1. The Supplier shall be liable for all damages arising from the delivery of defective or nonconforming products.
2. The Supplier shall indemnify SMA from claims including product liability in so far as the Supplier is responsible for causing the damage.
3. Title of goods including material purchased to make the goods shall pass to SMA upon payment.
The goods and materials shall be stored separately by the Supplier free of charge; they shall be marked and managed by the Supplier; and they may only be used for SMA. Unless stated otherwise on the purchase order, the Supplier shall bear the risk of loss of the goods and materials until the goods are delivered to SMA at the place designated by SMA on the purchase order.

X. Secrecy and Protection of Confidence

The Supplier undertakes to treat the order and the work ensuing from it, including all necessary documents, apparatus and production equipment and facilities etc. in confidence and not to disclose such information or documentation to third parties or use the information for any other purpose other than to fulfill its obligations under the General Terms of Purchase. Press releases, other publications and advertising with orders placed shall only be permitted with the prior written consent by SMA.

XI. Other Conditions

1. The place of performance for deliveries and services shall be the place indicated on the purchase order.
2. The exclusive place of jurisdiction for all disputes arising from or out of or in connection with General Terms of Purchase shall be Sacramento, California. SMA is also entitled to commence legal action in a court of competent jurisdiction at the legal business domicile of the Supplier or at a competent court on the basis of domestic or foreign law.
3. The General Terms of Purchase shall be governed by and construed in accordance with the laws of California excluding its conflicts of laws provision. The application of the UN convention on contracts for the international sale of merchandise (UN-CISG) is expressly excluded.
4. Should a provision of the General Terms of Purchase be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of the General Terms of Purchase shall not be affected or impaired thereby.
5. Each party shall store the data of the other party (including any personal information of the personnel of that other party) in accordance with the applicable data protection laws in the jurisdiction where the person whose data is collected resides).
6. These General Terms of Purchase and the purchase order referencing the General Terms of Purchase 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.