I. General Provisions

1. These General Terms of Sale (hereinafter “GTC’s”) shall apply to all offers, deliveries, and performances by SMA Solar Technology AG and its affiliated companies, SMA Sun Electric GmbH (including subsidiary and affiliated companies, hereinafter “SMA”) to any customer located in the United States, unless the Customer (hereafter the “Customer”) pursues any order, invoice or other claims against SMA, which is not consistent with these General Terms of Sale (hereinafter, hereinafter a “Contract”). Unless otherwise expressly agreed by the parties in writing, these General Terms of Sale shall also apply to any additional contracts entered into between the parties.

2. The Customer shall be granted the non-exclusive right to use any software referenced in the Contract. Sublicensing, selling or using the software in any other manner, as well as making any back-up copies (other than duplication for backup purposed) shall only be permitted with the written consent of SMA. If the Customer shall compensate SMA for the damages suffered by the latter. If any property in and to the software shall remain with SMA, and in no case shall the Customer obtain any rights to the software or any limited license granted.

3. SMA shall be entitled to all the rights in and to any bidding or tendering documents and the data generated by SMA to the Customer. The Customer shall acquire no right in or to such documents. All such documents shall be immediately returned by the Customer upon SMA’s request if an order is not placed.

4. All information regarding but not limited to business secrets that SMA provides to the Customer, or that comes into the possession of the Customer, shall be deemed to be confidential and not be sold in any way by the Customer. It 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, which may in its sole discretion, allow the disclosure.

5. Any documents, prototypes, examples or samples, technical data and descriptions that shall not be responsible for any penalties or remedial action in affected by any non-binding and are solely for informational purposes. They do not constitute any guarantee of quality or durability in relation to any products to be supplied or services rendered.

II. Prices - Packaging - Terms of Payment

1. Prices are quoted CIP Incoterms® 2010. The CIP Incoterms® 2010 destination will be the shipping point, unless agreed otherwise in writing. In addition, any costs based on a standard index; a time will pass before the Customer shall pay any delivery fees or other costs incurred by SMA for the damages suffered by the latter. Whether SMA agrees or not, the Customer shall compensate SMA for the damages suffered by the latter. If any property in and to the software shall remain with SMA, and in no case shall the Customer obtain any rights to the software or any limited license granted.

2. Payment for the delivery of its obligations hereunder and under any Contract, now or hereinafter arising, the Customer grants to SMA a security interest in all products purchased hereunder, all accessions, accessories, substitutions and replacements thereof. In the event of default, the Customer shall pay the amount due at the cost and expense of the Customer.

3. As security for the performance of its obligations hereunder and under any Contract, the Customer agrees that SMA may register a financing statement with regard to such security interest against the Customer pursuant to Article 9 of the Uniform Commercial Code, or other such applicable legislation in the relevant jurisdiction. The Customer shall take all actions that SMA requests to perform, to obtain and to maintain SMA’s first priority of that security interest, and the Customer shall promptly reimburse, all fees, taxes and other costs incurred in connection with maintaining and perfecting such security interest and security interest. 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 default is or becomes a future default.

4. All costs and expenses incurred by SMA in enforcing these provisions, including legal and court fees, shall be for the Customer’s account.

V. Acceptance – Limited Warranty

1. The Customer shall inspect all goods and products purchased from SMA immediately on delivery to ensure that there is no transport and damage and the products are complete and correct from defects. SMA shall be entitled to inspect the products returned to SMA, in writing, within 7 days of receipt of the products. Otherwise, delivery will be deemed to have been accepted by the Customer. Notwithstanding the above, 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 damages to the Customer which occur during transportation, regardless of the default of the Customer. Otherwise, the Customer waives the warranty period specified in the Limited Factory Warranty in effect at the time of delivery.

2. Goods purchased from SMA are warranted to be free from manufacturing and material defects as set forth in SMA’s applicable Limited Factory Warranty. This warranty shall not apply to immaterial defects, normal wear and tear, and damage caused after the transfer of risk, or damage caused by the Customer’s negligence, or any other cause relating to the use of the products, including, without limitation, the products, tools, faulty construction work, overload, lightning, modifications, improper maintenance, and external influences acting upon the equipment or the Customer.

3. The warranties expressly set forth above and herein are the exclusive warranties made by SMA with respect to the products. SMA DISCLAIMS ALL OTHER WARRANTIES, GUARANTEES AND OBLIGATIONS OF ANY KIND, EXCEPT TO THE EXTENT PERMITTED BY LAW, WHETHER STATUTORY OR OTHERWISE, INCLUDING FOR GREATER CERTAINTY ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

4. All warranted defective products reported to SMA within the applicable period of limitation set forth by SMA shall be at SMA’s discretion replaced with new panel or repaired in accordance with SMA’s Limited Factory Warranty.

5. No state or federal agency has made any determination with respect to any panel or equipment provided as to whether the panel or equipment satisfies the minimum requirements of any Feed-in-Tariff (“FIT”) program or contract. Accordingly, SMA is not making any warranty whatsoever that SMA’s products will qualify for any FIT program or contract or qualify for any other state or federal government incentive or program.

6. The warranties expressly set forth above and herein are the exclusive warranties made by SMA with respect to the products. SMA DISCLAIMS ALL OTHER WARRANTIES, GUARANTEES AND OBLIGATIONS OF ANY KIND, EXCEPT TO THE EXTENT PERMITTED BY LAW, WHETHER STATUTORY OR OTHERWISE, INCLUDING FOR GREATER CERTAINTY ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

VII. Other Conditions

1. SMA’s LIABILITY WITH RESPECT TO ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR UNDER OTHER LEGISLATION, FOR ANY DAMAGES OR LOSSES 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 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. NO EVENT SHALL SMA BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR OTHER SIMILAR DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, DAMAGE TO EQUIPMENT, OR ANTICIPATING SAVINGS, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF DATA OR THE CUMULATIVE EFFECTS OF ANY ONE OR MORE OF THE FOREGOING. SMA DISCLAIMS THE POSSIBILITIES OF SUCH LOSS OR THE REMEDY FAILS ITS ESSENTIAL PURPOSE.

3. SMA products may NOT BE used in the medical or in aviation applications without SMA’s prior written consent.

VIII. Other Conditions

1. These GTC for SMA and all Contracts incorporating them shall be governed and construed in accordance with the laws of the State of California, and the applicable federal laws of regulations of the United States, excluding its conflicts of law provisions.

2. These GTC, together with the Contract, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between the parties, whether written or oral, with respect to the subject matter hereof. In the event of a conflict between these GTC and the Contract, the Contract shall control.

3. The invalidity or unenforceability of any provision of these GTC or any Contract shall not impair the validity or enforceability of any of the other provisions.

4. Any dispute under these GTC shall be mediated by binding arbitration under Judicial Arbitration & Mediation Service (“JAMS”) rules for non-commercial disputes, if any, in the state of California. The party shall be entitled to submit to the court of competent jurisdiction to obtain preliminary or temporary relief or for other purposes.

5. Customer shall comply with U.S. federal law in export of items purchased hereunder.

6. SMA reserves the right not to provide services in countries with a high safety risk or to require a security deposit in order to provide them only under certain limited conditions. Please refer to the general terms of delivery and the Limited Factory Warranty for more details.