



General Terms of Sale of SMA Solar Technology
America LLC

GTC Edition May 2018

I. General Provisions

1. These General Terms of Sale (hereinafter "GTCs") shall apply to all offers, deliveries and services by SMA Solar Technology America LLC. (including its parent, subsidiary and affiliated companies, hereinafter "SMA") to any customer located in the United States (hereinafter the "Customer") pursuant to any order, invoice or other purchase document between SMA and the Customer (any of which, hereinafter a "Contract"). Unless otherwise expressly agreed by the parties in writing, these GTCs shall govern over the other terms of any Contract.
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 the reproduction, reverse engineering or other modification of the software (other than duplication for backing up purposes) shall only be permitted with the written consent of SMA. In the event of infringement, the Customer shall be obliged to compensate SMA for the damages suffered by the latter. All property interest in and to the software shall remain with SMA, and in no case shall the Customer obtain any right, title or interest in or to the software except for the limited license granted herein.
3. SMA shall be entitled to all the rights in and to any bidding or tendering documents and the contents provided 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 business information, including but not limited to trade secrets that SMA provides to the Customer, or that comes into the possession of the Customer, shall be deemed to be proprietary and confidential and shall vest solely in SMA. The Customer 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 SMA may in its sole discretion withhold.
5. Any documents, prototypes, examples or samples, technical data and descriptions in the respective product information or advertising materials included in any Contract are 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 to be rendered by SMA.

II. Prices - Packaging - Terms of Payment

1. Prices are quoted CIP Incoterms® 2010. The CIP Incoterms® 2010 destination will be the Customer's premises; the delivery, passage of title, and passage of risk of loss occurs at the SMA premises, or those of SMA's contracted manufacturers or third party logistic providers, if any. Prices per CIP Incoterms® 2010 include the costs of transportation and insurance to the named destination. Whether SMA or the customer pays for the transportation and insurance depends on the provisions of the contract, and the details of the order placed.
2. Cancellation in whole or part of any confirmed customer order shall **NOT** be attempted, permitted, or accepted, except by a mutual agreement in writing.
3. Unless otherwise directed by SMA in writing, all payments shall be made in US dollars, and shall be due thirty (30) days from the date of Supplier's invoice. Any amount due hereunder shall, if past due, shall accrue interest thereon at the lower of 1.5% per month for each month or portion thereof that the amount remains unpaid or the maximum interest rate permitted by applicable law.
4. If (a) the Customer defaults on any payments owing to SMA, whether under any Contract or any other agreement or (b) circumstances arise or become known to SMA that, in SMA's opinion, call the Customer's creditworthiness into question, including but not limited to insolvency proceedings instituted involving the Customer or the Customer's assets, SMA shall be entitled, in its discretion and without prejudice to any other remedies available hereunder or at law, to any or all of the following remedies: to declare any amounts outstanding to then be immediately due and payable; demand and receive additional or other reasonable security; and terminate the Contract if the Customer fails to pay the amount due after a reasonable period of notice.
5. The Customer shall not be entitled to any set off or deduction of any amount payable.

III. Delivery and Passage of Risk - Delivery deadlines - Delivery Delay - Delivery Default

1. Delivery of all products shall be CIP Incoterms® 2010. The CIP Incoterms® 2010 destination will be the Customer's premises; the delivery, and passage of risk of loss occurs at the SMA premises, or those of its contracted manufacturers, or third party logistics providers. Accordingly, all risk of loss passes to the Customer when the shipment is first made available to the Customer. If requested by the Customer, products will be made available to a carrier selected by Customer, at the Customer's sole expense.
2. SMA shall be entitled to provide and invoice partial deliveries and services from time to time and shall be entitled to modify the materials used in the manufacture of the products without prior notice to the Customer, provided this does not materially alter the properties or functionality of the products.
3. Deadlines for any delivery are estimates only. However, SMA will use reasonable commercial efforts to meet any such deadline, **provided that** 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 estimate will be extended by a reasonable period of time equal to the length of the delay.
4. In the case of a force majeure, including but not limited to acts of God, war, riot, insurrection, labor disputes, measures by public authorities, severe weather or the occurrence of similar events beyond the reasonable control and foreseeability of SMA, SMA shall not be responsible for the performance of any obligation affected by such force majeure for so long as it is in effect. The time for performance will be extended by a period of time equal to the length of the force majeure. If the force majeure event prevents SMA's performance of its obligation for a period of 6 months or more, SMA shall be entitled in its sole discretion to terminate the Contract by refunding any amount of the price for such Contract paid by the Customer, other than those relating to costs incurred by SMA which cannot be mitigated.
5. If the goods ordered in the Contract are not available because there is a lack of supply with SMA's suppliers, SMA shall be entitled to replace such good with an alternate or substitute good of similar quality and price. If no such replacement is available, SMA may rescind the Contract, upon prior notification to the Customer of the non-availability of the product or good in question, in conjunction with the immediate reimbursement to the Customer of any payments already made in relation to such product or good.
6. In the event of project delays, the Customer may request a postponement of the delivery date. If SMA postpones delivery at the Customer's request, the original confirmed delivery date will remain unchanged, and any equipment will be deemed to have been made available to the Customer. The Customer will be responsible for the storage of equipment. All costs incurred by SMA due to equipment held in storage after the confirmed delivery date shall be billed directly to the Customer. A proposal for such costs can be provided upon request.

IV. Retention of title

1. Legal title shall not pass and the delivered products shall remain the exclusive property of SMA until all obligations of the Customer arising from the Contract have been performed, including full payment. Until then, the Customer shall not sell or transfer in any way or lien, pledge, grant a security interest in or otherwise encumber the products. If any such encumbrance is nonetheless created, the Customer shall notify SMA immediately of such encumbrance.

2. The Customer is entitled to sell the products supplied by SMA purchased as inventory in the ordinary course of business notwithstanding the above retention of title, **provided however**, that the Customer hereby assigns all claims it has against its customers with respect to payment for the products to SMA to the extent of the value of the obligations outstanding to SMA, and shall use its best efforts to collect such claims on behalf of SMA. To the extent there are outstanding obligations owed to SMA, the Customer shall hold any proceeds received in connection with such a sale in trust for SMA and shall forthwith remit those proceeds to SMA upon receipt.
3. Any processing or manufacturing of the supplied products while title retention rights apply shall be carried out for SMA without binding SMA to any additional obligations.
4. If the products to which title is retained are inseparably processed with third party goods that do not belong to SMA or become fixtures, SMA is entitled to the resulting co-ownership share of the new goods in proportion to the invoiced value of the supplied goods with the other goods at the time of processing.
5. If the Customer breaches the Contract or fails to pay SMA any amount when due, the Customer shall return the products to SMA upon demand. If the Customer fails to promptly return the products, SMA, or a private receiver appointed by it, shall be entitled to enter upon the premises where the products are located and take possession of them at the cost and expense of the Customer.
6. As security for the payment and performance 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 accessories, accessions, substitutions and replacements thereto and the proceeds derived from any of the foregoing. 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 perfect, to obtain and to maintain SMA's first priority of that security interest, and the Customer shall pay or reimburse SMA for, all fees, taxes and other costs incurred in connection with maintaining and perfecting such priority 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 product is or becomes a fixture.
7. All costs and expenses incurred by SMA in enforcing these provisions, including legal fees on a substantial indemnity basis, 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 damage and the products are complete and free from defects. Material defects, or incorrect/incomplete delivery must be reported 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 damage or defects which occur after risk has passed to the Customer.
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, damage caused after the transfer of risk, or damage related to or caused by the use of unsuitable equipment or tools, faulty construction work, overload, lightning, modifications, improper maintenance, and external influences such as extreme weather or negligence.
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, CONDITIONS AND OBLIGATIONS OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING FOR GREATER CERTAINTY, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
4. All warranted defective products reported to SMA within the applicable limitation period and which SMA accepts shall, at the discretion of SMA, be repaired or replaced in accordance with SMA's Limited Factory Warranty.
5. No state or federal authority has made any determination with respect to any product provided as to whether or not such product satisfies the domestic content requirements of any Feed-in-Tariff ("FIT") program or contract. Accordingly, SMA makes no warranty whatsoever that any product will satisfy such domestic content requirements, unless otherwise expressly made in writing in the relevant Contract.

VI. Other Compensation Claims

1. SMA'S LIABILITY WITH RESPECT TO ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL THEORY, FOR ALL LOSSES OR DAMAGES 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. IN NO EVENT SHALL SMA BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR OTHER SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE OR ANTICIPATING SAVINGS, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF DATA OR RECORDS, WHETHER OR NOT SMA WAS INFORMED OR AWARE OF THE POSSIBILITY OF SUCH LOSS OR THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
3. SMA products may **NOT** be used in the medical or in aviation applications without SMA's prior written consent.

VII. Other Conditions

1. These GTC 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 the United States, excluding their conflicts of law provisions.
2. These GTC, together with the appropriate Contract documents, 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.
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 subject to non-binding mediation followed by binding arbitration under Judicial Arbitration & Mediation Service ("JAMS") rules for Small Commercial Disputes, by their Sacramento, CA offices, in lieu of trial. No party shall resort to court except to record and enforce any arbitral award.
5. Customer shall comply with U.S. federal law in export of items purchased hereunder.
6. SMA reserves the right to not provide services in countries with a high safety risk or to provide them only under certain limited conditions. Please refer to the general terms of delivery and the Limited Factory Warranty for more details.