



General Terms of Delivery of SMA Solar Technology AG

GTD Edition June 2008

I. General provisions

1. These general terms and conditions (hereinafter referred to as GTCD) shall apply to all offers, deliveries and services (hereinafter 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 to the contract without requiring any reference thereto again.
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 specific special deliveries, these GTCD shall be deemed as subordinate and supplementary.
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 infringement, 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. Trade and business secrets must be handled strictly confidential.
6. The documents, prototypes, examples or samples and, in particular, the technical data and descriptions in the respective product information or advertising materials included in the offer are non-binding and are 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 Customer defaults or if after entering into the agreement, circumstances should become known that calls its credit worthiness into question, SMA shall be entitled to declare the residual debt of the Customer due immediately, demand advance payments or provisions of security or withdraw from the contract following a reasonable extension without prejudice to other provisions. In particular, SMA may call into question the creditworthiness of the Customer if the Customer stops payments, if insolvency proceedings have been instituted with relation to the Customer's assets or if a petition has been filed to institute insolvency proceedings and the insolvency proceedings are not instituted due to the insufficiency of assets.
4. The Customer may set off only those counterclaims that are undisputed, recognized by SMA or have been legally decided. The same shall apply to the assertion of rights of retention.

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. Deadlines 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 delivered item is dispatched or the Customer has been notified of the readiness for shipment in good time.
4. In case of labor disputes, measures by public authorities, force majeure or the occurrence of similar events that probably interfere with the supply availability of SMA, the delivery deadline shall be extended by a reasonable period of time.
5. If 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 non-availability without delay and immediately reimburse any payments already made by the Customer.
6. Claims for damages of the Customer due to delayed delivery or claims for damages in lieu of performance shall be excluded in all cases of delayed delivery, even upon expiration of a reasonable period of time set for delivery. This shall not apply if there is compulsory liability in cases of wrongful intent, gross negligence or due to injury to life, body or health. Except in the case of defects of quality, the Customer can only rescind the contract if SMA is responsible for the breach of duty. The above provisions shall not involve a change in the burden of proof to the detriment of the Customer.
7. At SMA's request, the Customer is obliged to declare, within a reasonable period of time, whether the Customer is withdrawing from the contract due to the delayed delivery or insists on the delivery to be carried out.

IV. Passing of the Risk

1. The risk shall pass to the Customer if the delivered item is dispatched or has been collected, even if delivery has been agreed to be free of transportation charges. If desired by the Customer, consignments will be insured against normal transport risks by SMA at the expense of the Customer.
2. The shipping method is at the discretion of SMA.

V. Retention of title

1. The delivered goods shall remain property of SMA until all claims arising from the business relationship have been fulfilled. Until then, the Customer shall be forbidden from pledging or transferring ownership by way of security.
2. The Customer is entitled to continue selling the goods in the ordinary course of business under retention of title. At this point he shall already assign all of his claims against his customers to SMA to the value of the claims by SMA. SMA shall accept this assignment. The Customer continues to be entitled to collect the assigned claim. This authority to collect shall lapse if the Customer gets into arrears or goes into financial collapse in any other manner.
3. Any processing or manufacturing of the retained good shall be carried out for SMA, without committing SMA to any obligations in any way. If the goods are processed with third party goods that do not belong to SMA, SMA is entitled to the resulting co-ownership share of the new goods in proportion to the invoiced value of the retained goods with the other goods at the time of processing. The same shall apply if the Customer acquires sole ownership pursuant to § 947 (2) of the German Civil Code. The new 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 without 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 assigned at the same time and to the same extent. SMA shall accept this assignment.

4. The Customer shall notify SMA immediately in case of levies of execution, seizures or other orders or interference by third parties.
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 and to take back retained goods as well as to enter the premises of the Customer for this specific purpose and to deduct the goods from the existing accounts payable of SMA.
6. SMA shall be obliged 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 20 %.

VI. Defects of Quality

1. 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 disclosed, in writing, at the latest eight days after the goods have been handed over to the Purchaser. Concealed damage must be disclosed, in writing, at the latest eight days after discovery.
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 injury or impairment of health, nor in cases arising from intentional or grossly negligent breach of duty by SMA as well as malicious concealment of a defect.
3. All parts or 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 reason for the defect had already existed at the time when the risk passed. In the case of software faults, the instructions for the avoidance of the consequences of the fault shall be deemed as adequate subsequent fulfillment.
4. If supplementary 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 it may have according to Art. VII.
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 transfer of risk 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 taking into account the defect occurred. If the deficiency claim was made wrongfully, SMA is entitled to claim the expenses incurred from the Customer.
7. The Customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including, in particular costs of transport and travel, labor and material, to the extent that expenses are increased because the subject-matter of the delivery was subsequently brought to another location than the Customer's branch office, unless doing so complies with the contractual use of the delivery.
8. The Customer's right of recourse against SMA according to Article 478 of the BGB (company rights of recourse) is limited to cases where the Customer has not concluded agreements with its Purchaser exceeding the scope of the statutory provisions governing claims based on defects.
9. Furthermore, the provisions of Art. VII (Miscellaneous Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Customer against SMA or its agents or any such claims exceeding the claims provided for in this Art. VI, based on a defect, shall be excluded.

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. This 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. 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.
3. SMA products may not be used in the medical sector or in aviation without the prior written consent.
4. The liability exemptions and limitations for SMA shall also apply to the personal liability of the employees, representatives and agents of SMA.
5. The period of limitation for the compensation claims that the Customer is entitled to in accordance with section VII shall depend 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.
6. The above provisions shall not involve a change in the burden of proof to the detriment of the Customer.

VIII. Other Conditions

1. German law applies to all legal relationships between SMA and the Customer stemming from this contractual relation. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) uniform law is excluded. The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be Kassel, Germany. SMA shall also be entitled to start legal action at the legal business domicile of the Customer.
2. 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.
3. We archive the data of our customers within the framework of our mutual business relations according to the German Data Protection Act.