

# General Terms and Conditions of Purchase

## of SMA Solar Technology AG, Niestetal

Status: August 2019



### I. General Provisions

1. These General Terms and Conditions of Purchase (hereinafter called "GTCP") shall apply to all contracts concluded by SMA Solar Technology AG (hereinafter called "SMA") with a supplier (hereinafter called "Supplier", together with SMA also referred to as the "Parties" and each of them a "Party") concerning any deliveries or services offered to SMA by the Supplier. They shall also apply to all future deliveries and services of the Supplier to SMA, and to offers of SMA to the Supplier, even if the application of these GTCP is not agreed upon expressly, and provided that such application is not expressly ruled out individually in each case.

2. General Terms and Conditions of the Supplier shall apply only to the extent SMA expressly consented to such application in writing. This requirement of consent shall apply in any event, particularly in the event that SMA accepts receipt of Supplier's deliveries while having knowledge of the Supplier's General Terms and Conditions. If SMA consents to the Supplier's General Terms and Conditions, and individual provisions of such General Terms and Conditions conflicting with these GTCP, the provisions of these GTCP shall take precedence over the corresponding provisions of the conflicting Supplier's General Terms and Conditions. If applicable Supplier's General Terms and Conditions contain provisions disadvantageous to SMA compared to the otherwise applicable statutory provision, these GTCP shall be deemed conflicting, resulting in the application of the statutory provision(s) in such case. In any event, individual agreements made with the Supplier in each case (including side agreements, supplements and amendments) shall take precedence over these GTCP. Unless proven otherwise, the written content of an agreement or SMA's written acceptance shall be deemed decisive with respect to the interpretation of such agreements. If, in an individual order, individual provisions deviating from these GTCP are agreed upon, these GTCP shall apply supplementary to such provisions.

### II. Conclusion of a Contract

1. Orders by SMA shall be placed in writing. For this purpose of ordering, orders placed using the SAP order form shall also be deemed to meet this written form requirement.

2. SMA may demand that the Supplier uses its supplier portal for the regular handling of the resulting business processes.

3. The Supplier shall confirm orders in writing, quoting the SMA order number, within three business days of receipt. In this respect, use of the supplier portal shall be deemed to meet the written form requirement. If a supply relationship to which these GTCP already exists between SMA and the Supplier (section I.1), and the Supplier does not formally confirm an order from SMA within the aforementioned period, the Supplier's silence shall be deemed to be an acceptance of the order. In this case, SMA may revoke the order free of charge at any time before the aforementioned time limit for acceptance expires, or earlier, as the case may be, before SMA receives the Supplier's acknowledgement.

4. SMA may demand changes to the delivered item, the scheduled delivery dates or the quantities even after entering into a contract to the extent that the Supplier can reasonably be expected to accept such changes under applicable statutory law. The effects in this respect, particularly any increase or reduction in costs, shall be appropriately provided for by mutual amendment to the existing contract. If the Supplier renders additional and/or increased services, these shall be reimbursed by SMA only if this has been agreed upon in writing before such service is carried out.

5. If a given order requires the delivery of an initial sample, SMA reserves its right to approve serial production. If the initial sample is rejected, SMA shall bear the cost of further sampling documents and further components only if and to the extent such initial sample was rejected predominantly for a reason attributable to SMA.

### III. Scheduled Delivery Dates, Default, Discontinuation

1. The scheduled delivery dates and periods agreed upon between the Parties shall be binding. If the latest delivery date can be derived from the circumstances that lead to the contract, the Supplier shall enter into default (*Verzug*) at the end of this date without this being subject to a reminder (*Mahnung*) from SMA. The Supplier shall inform SMA in writing, or by email, without undue delay, of any delivery difficulties arising and shall propose a new date of delivery or period in mutual agreement with SMA. If SMA has demanded that the supplier portal shall be used, the Supplier shall send the above notification to SMA via the supplier portal. For the avoidance of doubt, fulfillment of this notification obligation does not prevent the Supplier from entering into default (*Verzug*).

2. In the event of default (*Verzug*), SMA may, subject to a prior warning to the Supplier, demand for every business day (Monday-Friday) of default (*Verzug*) a contractual penalty at the rate of 0.25 %, but at most 5 %, of the respective order value. The right to assert additional damages or any other claims (in particular extra freight charges, extra production costs [additional set-up costs, overtime supplements etc.], cover purchases) shall remain unaffected. If a contractual penalty is paid, it shall be deducted from any default-related claim.

3. If the Supplier fails to render the due service or fails to do so in compliance with the contract, or otherwise enters into default (*Verzug*), SMA may, after expiry of a reasonable grace period, rescind the contract or terminate the contract for cause, insofar and to the extent that the Supplier is responsible for the failure to meet the scheduled delivery date and demand damages in accordance with the statutory provisions. Such compensation shall also include the extra costs arising in the event that a replacement is procured from a third party.

4. SMA may terminate the contract for cause or rescind the contract, particularly if the Supplier has discontinued its services, or if the Supplier has committed a not-insignificant breach of contract and has failed to remedy it within 30 days despite a warning and/or reminder by SMA. Furthermore, in any event in which due regard has been given to all circumstances of the particular case and to the interests of both Parties, and in which SMA cannot be reasonably expected to continue the contractual relationship, a right to terminate for cause shall lie with SMA.

### IV. Prices, Payment Terms, Set-off and Retention

1. Prices shall be specified in each order. The prices shall be net prices. The respective value-added tax shall be added to the prices. The prices contractually agreed and correspondingly indicated within the order shall be fixed prices, unless otherwise stipulated in the order, and shall include any resulting one-off production and inspection costs as well as packaging and delivery in accordance with the contractually agreed Incoterms®, as amended from time to time, but shall exclude transport insurance.

2. Payment shall be made net within ninety (90) calendar days. The due date shall commence as soon as the delivery of the goods or services has been made in full and, in particular, free of defects, and - if necessary - an acceptance inspection has been carried out and the invoice issued in accordance with section V.6 has been received by SMA. The date of the aforementioned event occurring as last shall be decisive for the due date.

3. A payment shall be considered being made by the time a transfer instruction is handed over to the bank, or by the time, a cheque is dispatched.

4. SMA shall be entitled to set off all claims against any of Supplier's claims. The Supplier shall be entitled to set off only undisputed or legally established claims.

5. The Supplier shall be permitted to assign claims against SMA to third parties only with SMA's prior written consent. This shall not apply to pecuniary claims as defined in Section 354a HGB (German Commercial Code).

6. Rights and obligations not covered by section IV.5 may be transferred to third parties only with the prior written consent of the other Party. However, SMA shall be entitled to transfer all rights and obligations to companies affiliated with SMA within the meaning of Section 15 AktG (German Stock Corporation Act) without the Supplier's consent. In particular, SMA shall be entitled to assign all warranty rights to companies affiliated with SMA within the meaning of Section 15 AktG (German Stock Corporation Act) without the Supplier's consent.

### V. Shipment, Packaging, Invoice

1. The contractually agreed and current version of the Incoterms® shall apply to the shipment of the goods.

2. Place of performance for delivery and performance shall be in accordance with the agreed Incoterms®. Unless otherwise agreed, the place of performance shall be the SMA Niestetal branch office, Sonnenallee 1, 34266 Niestetal, Germany.

3. Each delivery of goods shall have attached a delivery note displaying the order number and the order item number, the ordered quantity, the agreed delivery date and the description of the goods as well as, if existent, the SMA material number and the serial number. Each packaging unit shall be marked with at least the SMA material number, the quantity contained and the Supplier's name. If agreed, the date of manufacture of the goods must also be shown. If goods are delivered from a third country (*Drittland*), the shipping documents must be sent to SMA for review prior dispatch. Following such review, SMA shall grant the Supplier its approval in order to initiate the shipment of the goods.

4. Deliveries for which SMA must bear the freight costs either in whole or in part, shall be transported at reasonable rates and methods, unless otherwise stipulated by the Supplier.

5. The Supplier shall ensure proper and safe packaging for reliable shipment of the goods. Packaging for electronic elements or components must be ESD-dissipative.

6. The invoice shall be sent to SMA including the delivery note details specified under this section V.3.

### VI. Export and Import Regulations

1. Delivery documents originating from an EU Member State outside the Federal Republic of Germany shall state the Supplier's EU VAT ID number.

2. With reference to the SMA article number, the Supplier shall provide information on the country of origin, weight (gross/net), customs tariff number (HS code) and the dual-use characteristic of the goods.

3. In case of goods originating in the EU, the Supplier shall, at the beginning of every calendar year, provide SMA with an up-to-date long-term supplier's declaration in accordance with the implementing regulation (EU) 2015/2447 of the Commission of 24<sup>th</sup> of November 2015, unsolicited and free of charge as well as upon SMA's special request. If the Supplier is unable to issue a long-term supplier's declaration, the Supplier shall provide an *IHK* (German Chamber of Commerce and Industry) long-term declaration for the non-preferential origin or another proof document regarding the origin of the goods at the beginning of every calendar year. Such document shall be either sent in electronic form by email or made in writing.

### VII. Acceptance of the Service

SMA shall be entitled to refuse acceptance of goods which are delivered prior to the specified dates or be entitled to return such goods at the Supplier's expenses and risk or store these goods at third parties at the Supplier's expenses, provided that this would not be disproportionate in a particular case. The same shall apply in the event of an excess or incorrect delivery with regard to the excess or incorrect part delivered.

### VIII. Retention of Title by the Supplier, Retention of Title in the Case of Parts Supplied by SMA

1. Any retention of title by the Supplier shall apply only to the extent that it relates to SMA's payment obligation for the respective products to which the Supplier retains title. In particular, any extended or prolonged retention of title (*erweiterter oder verlängerter Eigentumsvorbehalt*) shall be inapplicable.

2. SMA shall retain any property rights, copyrights as well as comparable or derived usufruct rights regarding all documents and auxiliary resources made available to the Supplier by SMA for the fulfillment of an order, such as in particular drawings, illustrations, drafts, calculations, descriptions, plans, models, samples, technical specifications, data carriers, other written documents, tools, parts and materials. Such documents and auxiliary resources shall be used exclusively for the contractual service

and shall be fully returned to SMA (including any copies or records made, if applicable) after the execution of the order. Products manufactured according to documents and tools of SMA may neither be used by the Supplier itself nor offered or delivered to any third parties.

3. Technical documents, written material, drawings, diagrams, charts, graphs, photographs, layout templates and other documentation, whether on data carriers, in printed form or as material for print preparation or printing, produced by the Supplier in the course of the execution of the order, as well as all samples, tools, materials and other operating resources ("Auxiliary Resources") shall be produced on behalf of SMA. The Supplier shall grant SMA direct title to the Auxiliary Resources in such way that the Supplier assigns the Auxiliary Resources to SMA and SMA shall establish indirect possession (*mittelbaren Besitz*) of the Auxiliary Resources. Furthermore, SMA shall receive all other property rights, rights of use and exploitation in all aforementioned copyrightable works, to the extent permitted by law. No separate remuneration shall be owed by SMA for the assignment of the aforementioned rights; this shall be fully included in the prices stated in the applicable order.

4. Any processing, mixing or combining of items provided by SMA by the Supplier shall be carried out on behalf of SMA. It is agreed that, in the ratio of the value of the items supplied by SMA to the value of the total product, SMA shall become co-owner (*Miteigentümer*) of the products manufactured using the items supplied. These products shall be kept by the Supplier on behalf of SMA until the time these products are handed over to SMA.

#### IX. Protective Provisions

1. The services to be rendered by the Supplier shall include all services necessary for the production of the goods or rendering the services. The Supplier undertakes, particularly with regard to the delivery of goods, to produce all goods in a professional and appropriate manner, flawlessly in terms of quality, in compliance with all applicable rules and specifications and in accordance with the latest state of the art technology, relevant standards, laws, provisions and safety requirements relevant to the intended purpose and place of use, as being valid and in force at the respective time of delivery of the goods or other performance to SMA, as well as in accordance with the regulations and guidelines of public authorities, employers' liability insurance associations and trade associations and in accordance with all agreements made. The Supplier shall be solely responsible for the appropriate and diligent fulfillment of each order. This obligation of the Supplier shall not be affected by any approval of documents, descriptions or instructions or any other information provided by SMA.

2. The Supplier undertakes to comply with the statutory provisions of the destinations country to which the goods are delivered by the Supplier, as well as the current German statutory provisions, in particular with all product-related legal provisions regarding safety and the environment, as amended at the respective time of delivery of the goods or other performance to SMA. In particular, this shall include the provisions for classification, labelling, packaging, notification obligations, substance restrictions and the provisions regarding the distribution, delivery, import, export and use of the goods as well as the provisions regarding the use of chemicals in accordance with the REACH Regulation (Regulation (EU) No. 1907/2006 of 18th of December 2006) as amended from time to time. The Supplier warrants to provide SMA with all information to be transmitted in accordance with the REACH Regulation. In particular, the Supplier shall immediately provide SMA with all information required by SMA to fulfill its obligations under Art. 33 REACH Regulation. The information shall be sent by email to the contact address given by SMA: [Changenotification@SMA.de](mailto:Changenotification@SMA.de).

3. The Supplier undertakes not to use any significant quantities of hazardous substances in the production and handling of the goods. In this respect, the Supplier shall comply with the legal requirements and the material requirements of the SMA Standard 01501 Restrictions on Hazardous Substance as amended from time to time. The respective applicable version is available at the following URL: <https://www.sma.de/partner/lieferanten.html>.

4. The Parties expressly intend to avoid the use, or product use, of minerals from conflict zones according to the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act as amended in 2010. The Supplier warrants that its products sold to SMA under this contract shall not contain any materials from conflict zones obtained in the Democratic Republic of Congo or in any of its neighboring countries. Furthermore, the Supplier agrees to periodically carry out measures to verify the original source of the tin, tantalum, tungsten or gold used in any of the products sold under these GTCP. The Supplier shall provide SMA with an annual confirmation of non-use of materials from conflict zones.

#### X. Warranty for Defects in Quality or Title, Liability

1. Unless otherwise agreed below, liability and warranty shall be governed by the statutory provisions. Deviating from this, however, the warranty period shall be 30 months unless the statutory warranty period provides for a longer period in each case.

2. The Supplier warrants that, in the case of deliveries of goods by the Supplier, the goods delivered shall have the agreed quality, comply with the specification, be suitable for the purposes known to the Supplier and be free of defects and third-party rights, in particular patents, copyrights and rights of use or claims by authors for appropriate remuneration within the meaning of the *Urheberrechtsgesetz* (German Copyright Act), and shall not be subject to any official or judicial restrictions or conditions. Other product specifications, user requirements specifications or functional specifications, data sheets or other product agreements shall be deemed to be equivalent to a specification with regard to the agreed quality.

3. If services are provided by the Supplier, the Supplier warrants the proper and careful rendering of the services to be provided in accordance with the respective order. If it becomes apparent that the service was not performed as agreed, in particular that the service does not comply with the order and the aforementioned specifications, SMA may set the Supplier a deadline for subsequent performance (*Nacherfüllung*) free of charge. After repeated unsuccessful performance of the service or after the unsuccessful expiry of a grace period (if applicable), SMA may, at its sole discretion, withdraw from the order, reduce the contractual remuneration or remedy the defect on its own and demand reimbursement of the necessary expenses incurred. In addition, SMA may claim damages instead of performance as well as compensation for other damages and expenses incurred by SMA due to the Supplier's breach of obligations (*Pflichtverletzung*).

4. The warranty period shall not commence before performance has been accepted (*Leistungsabnahme*) (if applicable) and shall not end before all defects notified to the Supplier prior to

expiry of the warranty period have been eliminated. With respect to replacement of defective parts, or in respect of parts repaired without being exchanged, the warranty period shall begin anew after installation of such parts.

5. SMA shall inspect deliveries of goods from the Supplier upon receipt to the extent that this is feasible in the ordinary course of business, but at least with respect to deviations of identity or quantity, transport damage and other easily visible defects. The obligation to give notice of defects in accordance with Section 377 HGB (German Commercial Code) shall be deemed having been fulfilled if the Supplier is notified within ten (10) working days of receipt of the delivery, or, in the case of hidden defects, within the same period after their detection.

6. In case of a defect in quality or title, SMA shall be entitled to demand subsequent performance (*Nacherfüllung*), to withdraw from the contract, to reduce the price, or to claim damages or compensation for futile expenses under the conditions of Section 437 BGB (German Civil Code).

7. All costs incurred as a result of the elimination of defects, including consequential costs arising from third-party claims, shall be borne by the Supplier or be reimbursed to SMA. In particular, this applies to costs for removal and installation, (return) transport including all ancillary costs, error analysis, expense compensation, additional costs for covering purchase, material, scrapping, etc. as well as claims for damages by third parties. The following section XI applies to details of the handling of complaints as well as to the allocation of costs for reworking.

8. The Supplier shall promptly notify SMA in writing if the manufacture of the goods or the rendering of the service ordered is excluded or restricted by third-party property rights. Furthermore, in the event of a breach of contractual obligations, in particular in the event of a breach of third-party property rights, the Supplier shall indemnify SMA against claims for damages by third parties. Should it become necessary for SMA to conduct legal disputes in order to defend against third-party claims, the Supplier shall reimburse SMA for the resulting costs incurred by SMA.

9. The limitation period for material defect claims shall be suspended if the parties negotiate the existence or scope of warranty claims or whilst the Supplier itself is examining the existence of a defect. The suspension shall be terminated if the Supplier refuses in writing to continue remedying the respective defect, or if the Supplier informs SMA in writing that the negotiations have ended or if the result of the examination is sent to SMA.

#### XI. Handling of Complaints / Rectification Work

1. The provisions set out in this section XI are intended to establish a basis for efficient and cost-optimized handling of complaints, i.e. cases where individual goods do not correspond to the agreed required qualities and for which the Supplier (including its sub-suppliers) is responsible, and for the causation-based allocation of costs. The provisions made under section XII shall apply to serial defects. In all other respects, the requirements of a quality management agreement in this regard shall apply predominantly to the extent it has been agreed with the Supplier.

2. In the case of defective goods or parts thereof, these goods or parts shall, at SMA's sole discretion, be returned to the Supplier or be rectified at the respective location of the goods. In the case of returns to the Supplier and replacement deliveries received thereon, the costs shall be borne by the Supplier. Goods which are the subject of a complaint must be repaired by the Supplier within two (2) weeks, including the transport times, or a replacement delivery must be made, unless being disproportionately in an individual case. The delivery of replacement or repaired products shall be delivered to SMA under the reference of the complaint. The Supplier shall inform SMA within five (5) business days of the delivery date of a replacement or repaired products, unless this period proves to be disproportionately short in an individual case. In such case, a reasonable period for notification of performance shall apply instead. The periods under this section shall commence with the reception date of the complaint by the Supplier.

3. Notwithstanding this, SMA's own ability to deliver shall, whenever possible, be ensured by the Supplier by means of partial deliveries of goods, subsequent improvements at SMA's premises or other suitable measures. This means that in the event that SMA cannot reasonably be expected to wait for two (2) weeks in order to maintain its own ability to deliver and avoid its own delay in delivery regarding SMA's customers as well as in other urgent cases, and the Supplier is not in a position to or does not promptly promise measures to secure its ability to deliver, SMA shall be entitled to carry out such measures on its own or have such measures carried out by third parties at the Supplier's expense. "Measures" shall also be understood to include the complete elimination of defects in goods and any resulting damage. Furthermore, this shall also apply in other cases if a reasonable period set by SMA for subsequent performance (*Nacherfüllung*) has unsuccessfully expired.

4. Complaints shall be charged by SMA with a processing fee of EUR 100.00 each. The processing fee will be charged per complaint, unless this proves to be disproportionately in an individual case. In the event of a defect that has occurred at the location of a SMA customer, an additional service fee of EUR 200.00 each can be charged by SMA, provided that this proves not to be disproportionate in an individual case. With the dispatch of the claimed goods, the Supplier shall debit the creditor account at the same time. In this respect, the moving average price from SAP shall be taken as baseline for debiting defective parts.

5. In the event of a justified rejection of a complaint, the debit note will be withdrawn. Lump sums unduly charged will be refunded to the Supplier.

6. All costs incurred in connection with the determination and examination of defects may be claimed by SMA by way of a damage claim (*Schadensersatz*) and be set off against outstanding payment claims.

#### XII. Serial Defects

1. In the event of a serial defect in accordance with section XII.2, SMA shall be entitled to refuse acceptance (*Abnahme*) of the delivery of the series outstanding to be delivered and, on account of defective delivery, assert its statutory rights concerning the entire delivery, provided that this would not be disproportionate in an individual case. In the event of a serial defect which SMA discovers only after delivery and acceptance (if applicable) of a product, in particular as a result of a serial defect becoming visible at a customer of SMA, the Supplier shall reimburse SMA for all costs arising out of the exchange of goods affected by the serial defect, regardless of whether the serial defect resulted in a defect at the respective customer, provided that this would not be disproportionate in the individual case. In particular, the reimbursement obligation includes the expenditure and costs for products that are defective due to the serial defect, as well as for any preventive replacement or other preventive measures undertaken.

The warranty period for replaced parts or repaired defects shall commence anew thereafter. Otherwise, the statutory provisions and the relevant rights of SMA with regard to defective delivery shall remain unaffected.

2. In principal, a serial defect shall be assumed if more than 5 % of the delivered goods and services are defective as to the same component or with respect to a comparable cause. A serial defect shall also be deemed to exist if a defect rate of 5 % has not yet been detected, but SMA can reasonably assume that more than 5 % of the goods of the same type will feature this defect on the basis of a detected defect in production, the use of materials and/or the respective product design. Depending on the cause of the serial defect, the reference quantity for the defect rate of 5 % shall either relate to the affected batch(es) if it is a limited production or material error, or to the total quantity of the delivered goods or services performed, if the type of production, the material or the design is fundamentally defective.

The limitation period shall be suspended by the notification of the first defect for all goods of the same type delivered.

### XIII. Insurance

1. Without limiting its liability and liability towards SMA, the Supplier undertakes to take out, at his own expense and for the duration of the contractual relationship, sufficient business, product and environmental liability insurance to cover the statutory and contractual liability risk, with the following coverage amounts per insured event and in the annual aggregate, for damages which the Supplier is obliged to compensate (even partially), irrespective of any further liability:

- business and product liability insurance, including extended product liability (in particular for removal and installation costs and for the replacement of individual parts) with an insured sum of at least EUR 3 million per claim for personal injury, property damage or financial loss and EUR 3 million in the annual aggregate
- environmental liability insurance with an insured sum of at least EUR 3 million per claim for personal injury, property damage and financial loss and EUR 3 million in the annual aggregate.

2. The Supplier shall prove to SMA at the time of the conclusion of the contract, and upon request at any time until performance of its services that the necessary insurance cover exists.

### XIV. Duties to Inform, Notice of End of Life, Subcontractors

1. All goods to be manufactured or adapted individually by the Supplier for SMA in accordance with SMA's requirements or specification shall constitute so-called SMA-specific products (hereinafter called "SPECIFIC CONTRACTUAL PRODUCTS"). In respect of SPECIFIC CONTRACTUAL PRODUCTS, the Supplier shall notify SMA in advance and in good time of any changes which, in particular, affect mechanical, optical or electrical data and properties of the goods, as well as any changes to the manufacturing procedures and any relocations of the production sites. Such changes may only be made by the Supplier with express prior written consent (by email, fax or post) of SMA.

2. In respect of changes to goods which are not SPECIFIC CONTRACTUAL PRODUCTS, the Supplier shall notify SMA timely of any technical changes or any relocation of the production sites/facilities. If applicable, the Supplier shall likewise notify SMA timely of any applicable amendments or updates of warranty terms, data sheets or other documents of the Supplier. Insofar as SMA does not object to such changes within a reasonable period, the changes shall be deemed accepted by SMA. Notifications shall be sent to the contact address given by SMA: [Changenotification@SMA.de](mailto:Changenotification@SMA.de).

3. If the Supplier applies changes to products or process, the Supplier shall bear all incurred costs at and by SMA in relation to new samplings.

4. The Supplier shall notify SMA in case its plans to end production of a given product one (1) year prior the envisioned date of ending a given production. This notification shall also include the date a last order and a last delivery may be placed (reception of order) by SMA. The quantity for the last order must not be limited. Notifications shall be sent to the contact address given by SMA: [Changenotification@SMA.de](mailto:Changenotification@SMA.de).

5. SMA shall be given written notice of the employment of any subcontractors, freelancers, sub-suppliers and other third parties (jointly "Authorized Representatives") that are not legal employees of the Supplier in connection with the rendering of services owed to SMA. In relation to such Authorized Representatives, the Supplier shall contractually ensure that all services will be carried out completely and properly, that the proper rendering of the services can be comprehensively monitored by SMA by means of corresponding documentation and regular audits, and that Supplier's obligations in connection with the contractual relationship with SMA also apply mutatis mutandis in relation to the Authorized Representatives.

6. Authorized Representatives shall be deemed to be agents (*Erfüllungsgehilfen*) of the Supplier. Defects, delays and default (*Verzug*), disruptions, misperformance or other deficiencies of the Authorized Representatives' deliveries or services, regardless of the cause of these deficiencies, shall not release the Supplier from its obligations in connection with the contract entered into with SMA.

7. If the Supplier or an Authorized Representative renders services at SMA's production sites, the Supplier shall ensure that the "rules for contractors" presented by SMA are properly signed prior to the performance of the respective services and that these rules for contractors as well as any other provisions of the applicable works rules (*Betriebsordnungen*) are fully observed and complied with by all relevant persons.

8. If so agreed between the Parties, the Supplier shall, no later than on the day of the delivery, send all requested product-related written verifications (certificates, test reports, etc.) relating to the delivery as a PDF document by email to [certificates@sma.de](mailto:certificates@sma.de), also making reference to the applicable SMA order number and the delivery note.

### XV. Secrecy and Protection of Confidence

1. The Parties undertake to treat confidentially all information received in connection with the order as long as and insofar as this information was not already known to the other Party beforehand or does not become known to the general public. All information shall remain the property of the disclosing Party. The information received shall be used only within the framework of this agreement and shall only be made accessible to employees (including employees of affiliates as defined by Sections 15 et seqq. AktG (German Stock Corporation Act) who need the information for attaining the purpose of the contract and are themselves obligated to maintain confidentiality. Moreover, without the prior written consent of the disclosing Party, this information shall not be directly or indirectly exploited commercially, and no property rights shall be applied for in this context. The information shall not be passed on by the receiving Party to third parties. For the avoidance of doubt: Third parties shall not include the receiving Party's affiliates, as defined by Sections 15 et seqq. AktG (German Stock Corporation Act), or employees of these affiliates.

2. Press releases, other publications or advertising referring to orders placed shall be permitted only with SMA's prior written consent.

3. Disclosure of information of any kind by SMA does not give the Supplier any license rights, reproduction rights, usufruct rights or other rights of any kind whatsoever. All rights, in particular the right to apply for intellectual property rights or any other licenses or similar titles (e.g. patents), shall remain reserved to SMA.

### XVI. Other Provisions

1. If the Supplier is a merchant (*Kaufmann*) as defined by the *Handelsgesetzbuch* (German Commercial Code), a legal entity under public law (*Juristische Person des Öffentlichen Rechts*) or a special asset under public law (*Öffentlich-Rechtliches Sondervermögen*), the place of jurisdiction for all disputes arising out of or in connection with the contractual relationship shall be Kassel, Germany. SMA shall be entitled to also bring any legal action at the place where the Supplier's registered office is located or before any other court that has jurisdiction under domestic or foreign law.

2. All legal relations between SMA and the Supplier arising out of or in connection with the contractual relationship shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any conflict of laws provisions.

3. The Parties agree to comply with all provisions of the *Bundesdatenschutzgesetz* (German Federal Data Protection Act), the European General Data Protection Regulation (GDPR) and any other provisions relating to data protection. In particular, the Parties shall only collect, process and use personal data to the extent that they are permitted to do so as a result of the respective contractual relationship and to the extent necessary for rendering the respective service. Processing of the data beyond the aforementioned scope and processing of personal data at locations where the GDPR is not applicable shall be prohibited in each case and by any means.

4. The Supplier undertakes to comply with SMA's Supplier Code of Conduct as amended from time to time. The respective applicable version is available at the following URL: <https://www.sma.de/partner/lieferanten.html>.

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