

General Terms and Conditions of Delivery

for SMA France S.A.S.

Status: April 2023



I. General Provisions

1. These General Terms and Conditions of Delivery (hereinafter referred to as "General Terms") shall apply to all offers, deliveries and services (hereinafter referred to as "Deliveries") of SMA France S.A.S (hereinafter referred to as "SMA") to its customers (hereinafter referred to as "Customer"). These General Terms shall apply exclusively to business customers (B2B). The Customer hereby confirms to qualify as business customer, i.e. to enter into a transaction in exercise of his/her/its trade, business or profession and not in his/her capacity as ordinary consumer.
2. These General Terms shall constitute, pursuant to article L.441-1 of the French Commercial Code, the basis for commercial negotiation between SMA and the Customer.
3. In accordance with article L.441-1 of the French Commercial Code, these General Terms are communicated to any Customer who requests them.
4. These General Terms shall apply without any restriction or reserve to all Deliveries performed by SMA with same category's Customers, regardless of provisions provided in Customer's documents, in particular its general conditions of purchase. Any deviating, contrary or supplementary general terms and conditions of the Customer shall only become an integral part of the contract if and to the extent that SMA has explicitly consented to their applicability. This requirement of explicit consent shall also apply when SMA unconditionally performs the Delivery to the Customer despite being aware of the Customer's general terms and conditions.
5. If, in individual cases for certain Deliveries, particularly service and warranty agreements, specific provisions which deviate from these General Terms are agreed upon in writing, these General Terms shall be deemed as subordinate and supplementary.
6. In case of doubt, for the interpretation of trading terms the Incoterms® as applicable at that time shall be binding. Currently, the Incoterms® 2020 are applicable.
7. Any transfer of Customer's rights arising out of the contractual relationship by Customer shall only be effective with SMA's prior written consent.
8. Products provided by SMA are not suitable for use in medical areas, in railway traffic or aviation. In case of doubt, the Customer shall consult with SMA prior to any use.

II. Intellectual Property, Standard Software, Use of Trademarks

1. Unless otherwise agreed in writing, all rights in and to offer documents, including copies of offer documents, shall remain with SMA. The Customer is not entitled to reproduce, distribute, (publicly) display, modify or otherwise change the documents from SMA.
2. SMA shall be entitled to any and all work products and intellectual property rights which come into existence in connection with the manufacturing or other business process, and shall have the exclusive ownership to work products and intellectual property rights. SMA may demand the return or handover of work products at any time.
3. If standard software is provided, additional terms shall apply.
4. The Customer may only use SMA trademarks for advertising purposes with the prior written consent of SMA and in accordance with SMA's instructions, in the original design and only in connection with the presentation of the unchanged product. SMA may withdraw its consent at any time. The Customer shall be solely responsible for the presentation of its advertisements.

III. Provisions of goods and services, terms of delivery, default

1. Delivery is made in accordance with the Incoterms® clause FCA. Unless otherwise agreed, SMA shall select the means of transport or the freight carrier. If it has been agreed that the Customer has to provide the means of transport or the freight carrier, any delays have to be communicated to SMA in due time and any costs resulting from such delay shall be borne by the Customer.
2. SMA is entitled to make partial deliveries even if partial deliveries were not agreed upon.

3. Delivery periods and delivery dates refer to the date of handover to the forwarding agent, freight carrier or any other third party commissioned to provide transport services. Any delivery periods and dates targeted by SMA shall only be deemed approximations irrespective of any provided fixed period or a fixed date, as the case may be. For purposes of any delivery, the Customer shall provide all required cooperation, in particular the provision of approvals and releases. Otherwise, the delivery period is deemed extended by an appropriate period of time. SMA shall do its best to meet agreed delivery periods and dates.

4. Agreed delivery periods are subject to timely receipt of all assistance, documents, approvals, releases to be provided by Customer as well as compliance of Customer with the agreed payment terms, including advance payments, and with all other obligations required for the Deliveries to be made. In case of delay, the delivery period will be extended accordingly plus an appropriate period of time to re-start the performance of the delayed Delivery.

5. SMA's delivery obligations are subject to the condition of full and punctual supply to SMA by SMA's own suppliers and are also subject to the condition that necessary export approvals are granted and other documents required for export are obtained.

6. Unless otherwise agreed, delivery delays shall not confer to the Customer a right to withdraw from or to terminate the contract and shall not give rise to damages. Penalty clauses in Customer's documents are unenforceable against SMA. For the rest, the limitation of liability stated in Section IX shall apply. In the event of force majeure or other exceptional events for which SMA is not responsible which make delivery impossible or substantially more difficult, SMA is entitled to restrict or suspend the delivery for the duration of such obstacle or to withdraw from or terminate the contract by written notice. In such withdrawal or termination case, SMA will refund the Customer any amount paid in advance. No further claims towards SMA apply.

7. If the Customer is in default of acceptance, SMA is entitled to damages resulting therefrom, including reimbursement of additional expenses (e.g. costs for storage/warehousing). As a lump-sum reimbursement for additional expenses, SMA will charge a lump-sum amount of 0.5% of the invoice amount for each full week which passed after the date on which the default of acceptance commenced, however not more than 5% of the invoice amount. SMA reserves the proof of higher damages and all further rights under statutory law, particularly the right to withdraw from the contract. The amount of the lump-sum compensation shall be credited to all further monetary claims of SMA.

8. SMA reserves the right to provide services at its reasonable discretion in countries with high security risks if such a risk has occurred after conclusion of the contract. In this context, the standards of City/Country Security Assessment Rating (CSAR), risk management IJET® or similar institutions that provide risk estimates for certain regions shall apply. In such a case, SMA is entitled to withdraw from or terminate the contract.

IV. Prices, invoicing, terms of payment

1. The prices stated are net amounts and do not include value-added tax or other taxes, customs duties or other levies payable under applicable laws. Any taxes, levies and customs duties shall always be borne by the Customer and increase the final price unless another agreement, including in the form of Incoterms®, has been concluded. **The price stated shall not comprise transport, packaging and insurance costs even if CIP is agreed. These costs are calculated separately and invoiced to the Customer.**

2. All payments have to be made in EURO within 30 days from the invoice date, unless agreed otherwise.

3. Any amount unpaid by the due date and shown on the invoice shall lawfully result in the application of penalties in an amount equal to the rate applied by the European Central Bank in its most recent financing operation plus 10 points, from the day following the due date. These penalties shall be automatically due, without any prior formal notice. In addition, in case of delayed payment, a fixed sum of EUR 40 as

compensation for recovery costs shall be due, automatically and without any prior formal notice. The right to claim additional damages in the event of default remains reserved.

4. If the Customer is in default or if, after conclusion of the contract, facts and reasonable doubts become known that question the Customer's creditworthiness, SMA is entitled to declare the entire outstanding amounts immediately payable, to request prepayments or the provision of securities or, after the expiry of an appropriate grace period, to withdraw from the contract, notwithstanding any other rights.

5. The Customer is not entitled to set-off or to hold back due payments.

V. Transfer of risk

1. In the case of the sale of goods, the risk shall pass to the Customer no later than upon handover of the goods to the forwarder, freight carrier or to another third party commissioned for carrying out shipment, according to Incoterms® clause FCA, unless explicitly agreed otherwise.

2. If shipment or handover is delayed due to a circumstance for which the Customer is responsible, the risk shall pass to the Customer from the day on which the delivery item is ready for shipment and SMA has notified the Customer thereof.

VI. Withdrawal period

As the Customer is a professional, there is no need to apply the right of withdrawal provided by the French Consumer Code.

VII. Retention of title

1. SMA shall retain, and the Customer hereby agrees that SMA retains, title to the goods delivered (goods subject to retention of title) until full payment of its price by the Customer, in principal and accessories, even in case of any granting of payment terms. Any clause to the contrary, in particular inserted in the general conditions of purchase, is deemed unwritten, in accordance with Article L.624-16 of the French Commercial Code. Prior to the transfer of title to the Customer, any pledge or assignment as security of the goods is prohibited. For goods delivered outside France and to the extent possible, SMA may register its retention of title with all competent authorities or offices and take any other action necessary or advisable to retain title to the goods delivered. In such case and upon request by SMA, the Customer shall be required to assist SMA to effect such retention of title [at the Customer's own costs]. SMA may use the rights hold under this retention of title clause, for any claims, on all goods in the Customer's possession, the latter being assumed to be the unpaid ones, and SMA may require immediate return of the goods concerned as compensation for all unpaid invoices, without prejudice to its rights to withdrawal from or termination of pending contracts.

2. Any machining or processing work carried out in relation to the goods subject to reservation of title is performed for the benefit of SMA without any obligations for SMA arising from such work. In the case of processing together with third-party goods that do not belong to SMA, SMA shall be entitled to a co-ownership interest in the new goods based on the ratio of the invoice value of the goods subject to reservation of title relative to the other goods at the date of processing. The same shall apply if the Customer obtains sole ownership. The new goods, which are stored by the Customer for SMA free of charge, shall be considered goods subject to reservation of title within the meaning of this clause.

3. The Customer is entitled to resell the goods subject to reservation of title in the normal course of business subject to reservation of title.

4. The Customer's receivables arising from the resale of the goods subject to reservation of title are transferred to SMA in advance. They serve as a security to the same extent as the goods subject to reservation of title. If the goods subject to reservation of title are sold by the buyer together with other ones not supplied by SMA, the assignment of the receivables from resale shall only apply to the amount of the resale value for the respective goods subject to reservation of title. In the event of the disposal of goods in which SMA has a co-ownership interest pursuant to section VII.2, the assignment of the claim relates to the amount of this co-ownership interest.

5. The Customer is authorized to collect claims arising from resale until SMA's revocation which is admissible at any time. SMA may, without prejudice, collect these

claims itself. The Customer may only assign the claims – including the sale of receivables to factoring banks – subject to SMA's prior written consent. Upon SMA's request, the Customer is obliged to notify its buyers about the assignment made to SMA and to give SMA the information and documentation which SMA requires for collection of the claim(s). SMA is entitled to notify the buyers about the assignment itself.

6. In the case of pledges, seizure or other dispositions or interferences from third parties, the Customer shall notify SMA without undue delay.

7. In case of Customer's breach of obligation including, but not limited to, payment default, SMA is entitled, after unsuccessful expiry of an appropriate period for performance granted to Customer, to withdraw from the contract and to take back the goods subject to reservation of title as well as, for this purpose, to enter the Customer's premises and to realize the goods in order to offset the proceeds against the existing liabilities due to SMA. Payments made shall be acquired by SMA as a penalty clause.

8. This clause does not prevent the transfer of risk pursuant to section V.

VIII. Warranties

1. The goods delivered by SMA benefit from a 12-month contractual warranty, as from the date of shipment, covering the non-conformity of the goods to the order and any hidden defect, resulting from a defect of material, design or manufacturing affecting the delivered goods and rendering them unfit for use.

2. SMA's warranty is excluded in case of the use of products in medical applications, in railway traffic or aviation or similar use. In the case of resale, the Customer has to explicitly mention such lack of suitability and to impose on the buyer a corresponding obligation applying in the case of a further resale so that each buyer of products is informed about this specific circumstance.

3. It shall be the Customer's responsibility to check the delivered goods and notify SMA in writing about any defects or false or incomplete deliveries without undue delay, however not later than three (3) working days after handover or, in the case of hidden defects, within ten (10) working days from the date of obtaining knowledge of the defects or the date on which the defects would have been discovered through the exercise of reasonable investigations. If the Customer does not notify SMA in writing in due time, the delivered goods are deemed fully accepted.

4. SMA shall be entitled to remedy the defects of the delivered goods, in its own discretion, by repairing the delivered goods or by delivering non-defective goods. If SMA fails to remedy the defect, SMA shall, at its option, either reduce the purchase price or withdraw from the contract.

5. SMA is entitled to make its remedial action subject to the condition that the Customer pays the remuneration that is due.

6. The Customer has to provide SMA with appropriate time to remedy the defects and, in particular, has to handover, or to make accessible to SMA, the defective goods for the purpose of performing a review. In case of a replacement delivery, the Customer has to return to SMA the defective goods in accordance with SMA's instructions.

7. SMA's obligation to remedy the defects shall neither include the disassembly of the defective good nor the reassembly unless SMA has explicitly assumed an obligation to assemble in the underlying contract.

8. Customer's warranty rights shall lapse if the Customer, without SMA's consent, modifies the delivery item or has it modified and, in doing so, makes remediation of the defects impossible or unreasonably more difficult. In any case, the Customer has to bear the additional costs for remediation of the defects arising from such modification.

9. Warranties are excluded in case of misuse, negligence or lack of maintenance from the Customer, normal wear of the goods or force majeure.

IX. Limitation of liability, disclaimer, indemnity

1. SMA's liability in connection with or arising out of the contractual relationship with the Customer, regardless of the ground (contract or tort or otherwise) shall be limited to a maximum amount of the total amount actually paid for by the Customer. In no event shall SMA be liable for (i) any form of negligence (to the extent permitted by law) by SMA or by any of SMA's employees, executives or affiliates; (ii) indirect

damage, consequential damage and/or loss of profits or unrealized savings; and (iii) any acts and omissions on the part of auxiliary persons of SMA or the supplier, be this contractual or non-contractual.

2. Any liability for damages that results from the use of the goods other than for the ordinary and designated use is excluded. Upon SMA's request, the Customer shall indemnify SMA from any third-party claims that are asserted against the SMA in connection with the use of the goods other than for the ordinary and designated use.

X. Hardship

These General Terms expressly exclude the hardship regime provided in article 1195 of the French Civil Code. SMA and the Customer shall assume their obligations even if the contractual balance is upset by circumstances that were unforeseeable at the time of the conclusion of the contract, even if their execution would be excessively expensive and bear all the economic and financial consequences.

XI. Force Majeure

1. Are considered as force majeure, events beyond the control of the parties, that they could not reasonably be expected to provide, and that they could not reasonably avoid or overcome, to the extent that their occurrence renders the performance of the obligations completely impossible. Are notably assimilated to cases of force majeure, releasing SMA from its obligation to deliver within the agreed delivery periods: total or partial strikes of SMA employees or usual carriers, fire, flood, war, production stoppages due to unforeseen breakdowns, the impossibility of being supplied with raw material, epidemics, thaw barriers, roadblocks, strike or supply disruption for a cause not attributable to SMA.

2. In such circumstances, SMA will notify the Customer in writing, in particular by fax or e-mail, within 24 hours of the date of occurrence of the event. The contract between SMA and the Customer then being automatically suspended without indemnity, from the date of occurrence of the event.

3. If the event lasts for more than sixty (60) days from the date of its occurrence, the contract may be terminated by the most diligent party, without neither party can claim damages. This termination shall take effect on the date of first presentation of the registered letter with acknowledgment of receipt.

XII. Data Protection

1. The Customer is informed that the following personal data are collected and processed by SMA as controller: Customer's name (when it allows the identification of its owner natural person), last name and first name of the contact(s), electronic address(es) of the Customer and the contact(s). This information is essential for the orders' processing, the completion of the sale between SMA and the Customer (performance of the contract) and compliance with legal provisions relating to billing between professionals. Their absence makes it impossible for the Customer to order. These data are processed by SMA's internal services authorized for the following purposes:

- Order, returns and billing management;
- Management of commercial relationship;
- Delivery;
- Products traceability;
- Improvement and customization of the services offered by SMA to the Customer;
- Development of trade statistics;
- Management of unpaid bills and litigation;
- Compliance with legal and regulatory obligations.

They are not at any time intended to be sold, given or rented to third parties, except legal or judicial obligation to do so. The Customer is, however informed that this information is transmitted to the carrier in charge of the delivery.

2. These data are hosted in Europe. These data are kept by SMA for the duration of the commercial relationship and during 12 years following the last order.

3. In accordance with the Loi Informatique et Libertés (French Data Protection Act) and the Règlement Général sur la Protection des Données (General Data Protection Regulation), SMA undertakes to take every precaution, in view of the nature of the data and the risks presented by the processing, to preserve the security of the Customer's personal data and, in particular, to prevent its personal data from being distorted, damaged, or access by unauthorized third parties.

4. In accordance with the Data Protection Act and the General Data Protection Regulation, the Customer and/or the person concerned has the right to limit the processing, the right to access, rectify, delete and portability of his/her data. To exercise this right, the Customer and/or the person concerned shall write to: "donnees@sma-france.com" by indicating his/her name, first name, address and the Customer's references. The mail must be signed and specify for address to which the reply must be sent. A reply shall be sent to the Customer and/or to the person concerned within one (1) month of receiving the request. Finally, the Customer and/or the person concerned is informed of his/her right to apply to the competent administrative authority if he/she considers that his/her rights have not been respected.

XIII. Confidentiality

All information of any kind communicated by SMA is confidential. The Customer shall take all necessary measures to ensure that none of this information can be communicated to third parties and to return documents to SMA at first request.

XIV. Miscellaneous, choice of law, place of jurisdiction

1. These General Terms have been executed in duplicate equally authentic originals in French and in English. In the event of divergence between the English and French text of these General Terms and Conditions, the French text shall prevail.

2. The failure of any of SMA or the Customer to enforce any of the provisions of the General Terms or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights or in any way affect the validity of the contract and the General Terms, respectively. The waiver of any breach of agreement by any party hereto shall not operate to be construed as a waiver of any other prior or subsequent breach.

3. Neither the contractual agreement nor any rights or obligations thereunder shall be assigned by any party, including, but not limited to, pursuant to a transfer of assets or divestiture, without the prior written consent of the other party. The foregoing shall not apply to any rights and claims assigned by SMA as security to its financing sources (or common agent or representative of such financing sources).

4. If any provision of the contract including these General Terms is held to be invalid or unenforceable for any reason it shall be revised rather than rendered void, if possible, in order to achieve the intent of the parties to the fullest extent possible. In any event, all other provisions of the contract including these General Terms shall be deemed valid and enforceable to the fullest extent possible.

5. All legal relationships between SMA and the Customer in connection with this contractual relationship shall be governed by the laws of France. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Principles of Conflict of Laws do not apply.

6. Any disputes arising out of or in connection with the contractual relationship shall be submitted to the jurisdiction of the competent courts of the City of Lyon. SMA may, however, take action before the competent court in application of the standard rules of competence, especially for an interim or emergency injunction.