

**General Terms and Conditions of Online-Order Center**  
**for French customers**  
**Status: June 2019**



**I. General Provisions**

1. These General Terms and Conditions of Sale (hereinafter referred to as "General Terms") shall apply to all transactions made through orders placed via the online shop (hereinafter referred to as "Online Shop"), available on the website [www.sma-shop.fr](http://www.sma-shop.fr). The website and the Online Shop are operated by SMA France S.A.S (hereinafter referred to as "SMA" or "we").
2. Transactions in the Online Shop are limited 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.
3. To the extent that software, service and/or warranty contracts are offered in the Online Shop, additional or conditions other than these General Terms shall apply when these additional or other conditions are displayed and expressly included during the ordering process.
4. Our 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.
5. In accordance with article L.441-1 of the French Commercial Code, these General Terms are communicated to any customer who requests it.
6. These General Terms shall apply without any restriction or reserve to all transactions in the Online Shop, 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 we have explicitly consented to their applicability. This requirement of explicit consent shall also apply when we unconditionally perform the delivery to the customer despite being aware of the customer's general terms and conditions.
7. In case of doubt, for the interpretation of trading terms the Incoterms® as applicable at that time shall be binding. Currently, the Incoterms® 2010 are applicable.
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. Order process and contract conclusion**

1. The presentation of goods and services in the Online Shop is for information purposes only and does not constitute a binding offer by SMA. A contract shall only be deemed concluded between the customer and us if and when the customer places a binding order in relation to a good or service presented in the Online Shop (as specified under Section II.2) and we accept such offer (as specified in Section II.4).
2. The customer places a binding order by selecting the button "Order Now", and accepting these General Terms. The order refers to the goods and services which have been added to the shopping cart. Before selecting the button "Order Now", the customer shall have an overview of the order including notably information related to invoicing, applicable incoterms, delivery via, delivery destination and partial delivery as the case may be.
3. After placing an order, the customer receives a confirmation of order receipt via e-mail to the e-mail address provided by the customer (indicated in the Online Shop as invoice recipient). The confirmation of order receipt shall not represent an acceptance of the order by SMA or qualify as contract SMA.
4. The acceptance of the order by SMA is deemed effected through a separate order confirmation via e-mail which shall include additional information if need be

(such as costs for transport, insurance, packaging). For the order of a service and warranty contract, the contract between the customer and SMA is concluded through the order confirmation provided that the later includes the exact scope, specifications and conditions of the relevant.

**III. Information on goods in the Online Shop**

1. The product information provided in the Online Shop and all information provided by SMA regarding the scope of deliveries and services (including, but not limited to technical data) (hereinafter referred to as "Documentation") are as accurate as possible. In case of omission or mistake, SMA shall not be held liable. All photographs of the products are provided for information purposes and are non-binding. SMA shall not be liable for them. Unless expressly agreed otherwise, the Documentation neither constitutes agreement on quality nor guaranteed quality characteristics, but rather descriptions or indicators of performance. Unless agreed otherwise in writing, SMA retains all rights in and to the Documentation and the offer documents, including copies thereof. The customer is not entitled to reproduce, disseminate, issue, process or re-design Documentation provided by SMA.
2. The suggestions in the Online-Shop how to compose a product portfolio to a kit/bundle are only non-binding suggestions for the customer which may not be complete, accurate or suitable, including with respect to the technical functionalities displayed in connection with the suggestion. We explicitly point out that the display of a portfolio is not meant as advice or recommendation. It shall be customer's sole responsibility to assess whether the suggestions are suitable and usable for his purposes. In this respect, we recommend to obtain external professional advice.

**IV. Provision of goods and services, terms of delivery, default**

1. Delivery is made in accordance with the Incoterms® clause applicable to the customer pursuant to the ordering process (currently FCA or CIP). If, pursuant to the applicable Incoterms® clause, the customer has to provide the means of transport or the freight carrier, any delays have to be communicated to us in due time and any costs resulting from such delay shall be borne by the customer.
2. Software shall be provided in the manner indicated in the Online Shop or during the ordering process.
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 us 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. Our delivery obligations are subject to the condition of full and punctual supply to us by our own suppliers and are also subject to the condition that necessary export approvals are granted and other documents required for export are obtained.
5. 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. Penalties clause in customer's documents are unenforceable against SMA. For the rest, the limitation of liability stated in Section X 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, we

will refund the customer any amount paid in advance. No further claims towards us apply.

6. We shall be entitled to make partial deliveries in particular pursuant to the agreed terms of delivery if the customer has made a corresponding selection during the ordering process or if this has been agreed otherwise between the customer and us. Even if partial deliveries were not agreed upon, we are entitled to make partial deliveries.

7. If the customer is in default of acceptance, we are entitled to damages resulting therefrom, including reimbursement of additional expenses (e.g. costs for storage/warehousing). As a lump-sum reimbursement for additional expenses, we 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. We reserve 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 our further monetary claims.

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.

#### V. Prices, invoicing, terms of payment

1. The prices stated in the Online Shop 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 in the Online Shop shall not comprise transport, packaging and insurance costs even if CIP is selected. These costs are calculated separately and invoiced to the customer.**

2. The invoice shall be issued by electronic transfer via e-mail in a common format (e.g. PDF file) to the e-mail address indicated in the Online Shop by the customer as invoice recipient.

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

4. Any amount unpaid by the due date and shown on the invoice shall lawfully result, 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.

5. 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.

6. The customer is not entitled to set-off or to hold back due payments.

#### VI. 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, 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.

#### VII. Withdrawal period

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

#### VIII. 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 that 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 us 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 us, 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 we have a co-ownership interest pursuant to section VIII.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 our prior written consent. Upon our request, the customer is obliged to notify its buyers about the assignment made to us and to give us the information and documentation which we require for collection of the claim(s). We are entitled to notify the buyers about the assignment ourselves.

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, we are 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 realise 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 VI.

## IX. Warranties

1. The goods delivered by SMA benefit from a 6-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. Our warranty is excluded in case of the use of products in medical applications, in railway traffic, 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 us 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 us in writing in due time, the delivered goods are deemed fully accepted.

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

5. We are entitled to make our remedial action subject to the condition that the customer pays the remuneration that is due.

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

7. Our obligation to remedy the defects shall neither include the disassembly of the defective good nor the reassembly unless we have explicitly assumed an obligation to assemble in the underlying contract.

8. Customer's warranty rights shall lapse if the customer, without our 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.

## X. Limitation of liability, disclaimer, indemnity

1. Our 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 we be liable for (i) any form of negligence to the extent permitted by law by us or by any of our employees, executives or affiliates; (ii) indirect damage, consequential damage and/or loss of profits or unrealised savings; and (iii) any acts and omissions on the part of auxiliary persons of us 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 SMA in connection with the use of the goods other than for the ordinary and designated use.**

## XI. 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.

## XII. 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 last 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.

## XIII. Data Protection

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 ordering process, 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 under conditions specified in the SMA Privacy Policy and 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.

## XIV. 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.

## XV. Miscellaneous, choice of law, place of jurisdiction

1. The failure of any of us 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 to 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.

2. Neither the contractual agreement nor any rights or obligations thereunder shall be assigned by any party, including, but not limited, 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 us as security to its financing sources (or common agent or representative of such financing sources).

3. 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.

4. 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) does not apply.

5. 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.