I. General Provisions

1. These general terms and conditions (hereinafter “GTCs”) shall apply to all offers, deliveries and services by SMA Australia Pty. Ltd. (including its parent, subsidiary and affiliated companies, hereinafter “SMA”) to any customer located in Australia or New Zealand (hereinafter “Customer”), unless otherwise agreed in writing or in the order, provided that the purchase document between SMA and the Customer (any of which, hereinafter a “Contract”) includes all the materials used and/or the parties in writing that these GTCs shall govern over the terms of any other Contract.

2. The Customer shall be granted the non-exclusive right to use any software referenced in the Contract, including the reproduction or copying of the software in any form or manner, as well as the reproduction, reverse engineering or other modification of the software (other than for the purpose of backing up purposes) shall only be permitted with the written consent of SMA. In the event of infringement, the Customer shall be obliged to compensate SMA for the damages suffered by the latter. All property interest in and to the software shall be retained by SMA, and the Customer shall not, in any way or manner, sell, sublicense or transfer in any way or manner the software, or any part thereof, to third parties without SMA’s prior consent in writing.

3. SMA shall be entitled to all the rights in and to any bidding or tendering documents and the contents provided by SMA to the Customer. The Customer shall acquire no right in or to such documents. If an order is not placed, all such documents shall be immediately returned by the Customer upon SMA’s request.

4. All business information, including but not limited to trade secrets that SMA provides to the Customer, be it for the possession of the Customer or the Customer’s employees, shall be treated as proprietary and confidential and shall be returned solely and in its solace discretion.

5. SMA reserves the right to amend and make changes to the above-mentioned agreements, including fees on a substantial indemnity basis, be subject to the Customer’s account, and may institute a lawful debt of the Customer to SMA.

II. Prices & Terms of Payment

1. Prices are quoted CIF arrival port, Australia base per INCOTERMS 2010 or those of its contracted manufacturers or third party logistic providers, if any, and exclude shipping, handling, risk of loss insurance, and applicable taxes.

2. Customer’s request for contract confirmation shall not be held unless and until the Customer’s agreed payment terms have been paid in full.

3. If the Customer breaches the Contract, SMA may rescind the Contract, upon prior notification to the Customer of the non-availability of the product or good in question, in conjunction with the immediate reimbursement to costs incurred by SMA which cannot be mitigated.

4. If an event prevents SMA’s performance of its obligation for a period of 6 months or more, permitted, or accepted, except by a mutual agreement in writing.

5. Goods purchased from SMA are warranted to be free from manufacturing and material defects as set forth in SMA’s applicable Limited Factory Warranty. This warranty shall not apply to immaterial defects, normal wear and tear, damage caused after the transfer of risk, or damage caused by the use of unsuitable equipment or tools, faulty construction work, overload, lightning, modifications, improper maintenance, and external influences such as extreme weather or negligence.

6. Any processing or manufacturing of the supplied products while title retention rights remain in SMA shall not impair the validity or enforceability of any of the other provisions.

7. All costs and expenses incurred by SMA in enforcing these provisions, including legal fees on a substantial indemnity basis, shall be for the Customer’s account, and SMA may institute a lawful debt of the Customer to SMA.

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

1. These GTC, together with the appropriate Contract documents, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements. No oral agreements shall be binding on either party.

1. SMA’S LIABILITY WITH RESPECT TO ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL THEORY, FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR CONNECTED WITH ANY CONTRACT OR THESE GENERAL TERMS & CONDITIONS OR THE PERFORMANCE OF ANY OF THEM OR THE PURCHASE PRICE ACTUALLY PAID BY THE CUSTOMER FOR THE PURCHASE PRICE ACTUALLY PAID BY THE CUSTOMER FOR THE PRODUCT GOODS RISING TO THE CLAIM. In any case, all such liability shall cease upon the expiration of the warranty period specified in the Limited Factory Warranty in effect at the time of purchase, including any negotiated extensions under the Australian Consumer Law. Accordingly, SMA makes no warranty whatsoever that any product will satisfy the customer’s specific requirements, unless otherwise expressly made in writing in the relevant Contract.

IV. Retention of title

1. The parties shall not sell, or transfer in any way or manner, the products or goods purchased from SMA, or any part thereof, to third parties without SMA’s prior written consent.

VII. Other Compensation Claims

1. SMA’S LIABILITY WITH RESPECT TO ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL THEORY, FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR CONNECTED WITH ANY CONTRACT OR THESE GENERAL TERMS & CONDITIONS OR THE PERFORMANCE OF ANY OF THEM OR THE PURCHASE PRICE ACTUALLY PAID BY THE CUSTOMER FOR THE PURCHASE PRICE ACTUALLY PAID BY THE CUSTOMER FOR THE PRODUCT GOODS RISING TO THE CLAIM. In any case, all such liability shall cease upon the expiration of the warranty period specified in the Limited Factory Warranty in effect at the time of purchase, including any negotiated extensions under the Australian Consumer Law. Accordingly, SMA makes no warranty whatsoever that any product will satisfy the customer’s specific requirements, unless otherwise expressly made in writing in the relevant Contract.

VI. Other Compensation Claims

1. SMA’s liability with respect to all claims of any kind, whether in contract, tort (including negligence) or other legal theory, for all losses or damages arising out of or connected with any contract or these general terms & conditions or the performance of any of them or the purchase price actually paid by the customer for the purchase price actually paid by the customer for the product goods rising to the claim. In any case, all such liability shall cease upon the expiration of the warranty period specified in the Limited Factory Warranty in effect at the time of purchase, including any negotiated extensions under the Australian Consumer Law. Accordingly, SMA makes no warranty whatsoever that any product will satisfy the customer’s specific requirements, unless otherwise expressly made in writing in the relevant Contract.
binding arbitration under Rules 5 through 18 inclusive, of the Institute of Arbitrators Australia (ACN 008 651 232) for Small Commercial Disputes, by their Sydney, NSW offices, in lieu of trial. No party shall resort to court except to record and enforce any arbitral award.

5. Customer shall comply with Australian federal law in any re-export of items purchased hereunder.

6. SMA reserves the right to not provide services in countries with a high safety risk or to provide them only under certain limited conditions. Please refer to the general terms of delivery and the Limited Factory Warranty for more details.