

General Terms and Conditions of Purchase

of SMA Sunbelt Energy GmbH, Niestetal

Status: July 2020



I. General Provisions

1. These General Terms and Conditions of Purchase (hereinafter called "GTCP") shall apply to all contracts concluded by SMA Sunbelt Energy GmbH (hereinafter called "Sunbelt") with a supplier (hereinafter called "Supplier", together with Sunbelt also referred to as the "Parties" and each of them a "Party") concerning any deliveries or services offered to Sunbelt by the Supplier. They shall also apply to all future deliveries and services of the Supplier to Sunbelt, and to offers of Sunbelt 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. The provision of any parts, equipment, documentation, works or services can be collectively referred to as "Work" or "the Work".
3. General Terms and Conditions of the Supplier shall apply only to the extent Sunbelt expressly consented to such application in writing. This requirement of consent shall apply in any event, particularly in the event that Sunbelt accepts receipt of Supplier's deliveries while having knowledge of the Supplier's General Terms and Conditions. If Sunbelt 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 Sunbelt 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 regarding the scope, quality and all terms and condition for the work) shall take precedence over these GTCP insofar as regulations of the individual agreements differ from these GTCP. Additionally, these GTCP apply for all regulations not expressly regulated by the individual agreement next to the individual agreements. Unless proven otherwise, the written content of an agreement or Sunbelt'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 Contract

1. Orders shall be submitted in written form. Verbal agreements shall only be valid in so far as they have been confirmed in writing by Sunbelt.
2. Orders are to be confirmed in writing by the Supplier, quoting the Sunbelt order number, within three working days from the date of order, otherwise Sunbelt shall be entitled to withdraw from the order. If a supply relationship to which these GTCP apply already exists between Sunbelt and the Supplier (section I.1), and the Supplier does not formally confirm an order from Sunbelt within the aforementioned period, the Supplier's silence shall be deemed to be an acceptance of the order. In this case, Sunbelt 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 Sunbelt receives the Supplier's acknowledgement.

3. Any alterations, amendments or additions to the order shall only become a part of the agreement if Sunbelt accepts them in written form. Sunbelt may demand modifications to the item to be delivered after the conclusion of the contract.
4. If a given order requires the delivery of an initial sample, Sunbelt reserves its right to approve serial production. If the initial sample is rejected, Sunbelt 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 Sunbelt.

III. Delivery Dates

1. The delivery dates and periods agreed upon between Sunbelt and the Supplier are binding. For the purposes of establishing the timeliness of delivery or rectification, the relevant point in time is the date of receipt at the place of receipt designated by Sunbelt, and for deliveries involving installation, commissioning or rectification services, the relevant point in time shall be the date of acceptance as defined in the corresponding service contract.
2. If the latest delivery date can be defined by the concluded contract, as described in Section III.1., the Supplier shall enter into default (*Verzug*) at the end of this date without being subject to a reminder (*Mahnung*) from Sunbelt. Should it be discernible to the Supplier that delivery dates cannot be adhered to, the Supplier shall contact Sunbelt immediately in writing, without undue delay and shall propose a new date of delivery or period in mutual agreement with Sunbelt. Furthermore, the Supplier shall issue an acceleration plan at the Supplier's own expense.
3. In the event of default (*Verzug*), Sunbelt may, subject to a prior warning to the Supplier, demand for every calendar day 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. Notwithstanding the forgoing, the Supplier shall not be released from any of his contractual obligations.
4. 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*), Sunbelt 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.

5. Sunbelt 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 Sunbelt. 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 Sunbelt cannot be reasonably expected to continue the contractual relationship, a right to terminate for cause shall lie with Sunbelt.
6. In case of force majeure, which poses a long-term obstacle to performance, Sunbelt is entitled to wholly or partly withdraw from the contractual relationship or postpone the receipt of products until such time as the obstacle to delivery acceptance is removed, without Sunbelt defaulting. Force majeure are events unforeseeable at the time of conclusion of the contract or such events which, even if they were foreseeable, lie outside the scope of influence of Sunbelt, and whose effects on the fulfillment of the contractual obligations cannot be prevented by reasonable measures of Sunbelt. Force majeure is present in cases such as, but not limited to, operational disruptions of any kind, strikes, lawful lockouts, shortage of labor, energy or raw materials, including lack of fuel, mobilization, war, blockade, export and import ban, fire, traffic block, epidemic or pandemic. Sunbelt must notify the Supplier without delay and report the circumstances to him, which cause force majeure. The Supplier is not entitled to claim for damages of any type due to delay of acceptance or withdrawal based on force majeure.

IV. Delivery or Performance of the Product

1. Unless otherwise agreed in written form, in the event the Contract is a pure purchase contract, deliveries shall be made DDP Kassel, Germany (INCOTERMS® 2020).
2. All deliveries from the Supplier to Sunbelt shall fulfill at least, but shall not be limited to, the following points:
 - to deliver the product in good conditions; and
 - free from any security interest or encumbrance thereon in favor of any third party except as otherwise agreed upon between the parties in writing; and
 - in unused condition.
3. The packaging of the goods shall be compliant for land and sea transport, also called seaworthy packaging. The costs for packaging the goods compliant for the sea transport shall be borne by the Supplier at all times. Shall the product does not need special packaging the Supplier can deliver the products as standard delivery, but only after consulting Sunbelt.
4. In so far it has not been otherwise requested, the Supplier shall provide, latest at the time of the order confirmation, unrequested, all manuals, data sheets, certifications as well as all relevant documentation requested by Sunbelt or at least make the information available through the website of the supplier.
5. Insofar as the Supplier is required to provide material testing, test records or quality control documents or any other documentation, such shall be a part of the requirements of the completeness of the delivery or performance.
6. Should the delivery contain goods which - according to international regulations - are classified as dangerous goods, the Supplier will inform Sunbelt hereof in a form agreed upon between Supplier and Sunbelt, but in no case later than the date of order confirmation.

V. Prices and Invoice

1. The prices quoted in the order are fixed prices including freight, packing and delivery as well as any resulting one-off production and inspection costs, in accordance with the contractually agreed Incoterms® 2020, as amended from time to time, but shall exclude transport insurance.
2. The quoted prices contain any indirect taxes including but not limited to property, license, sales, use, value added or similar taxes or duties applicable to the transaction or related work.
3. Additional and/or increased performances shall only be remunerated if this was agreed upon in writing before the performance of the service.
4. The order number as well as the amount of each individual item shall be detailed in invoices. Insofar as any such details are omitted, invoices shall not be payable.
5. Copies of invoices shall be marked as duplicates.
6. Invoices shall be sent to the contact person defined in the purchase order.

VI. Payments

1. If not otherwise agreed in written form, payments shall be effected 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, including the necessary operating and maintenance instructions, and - if necessary - an acceptance inspection has been carried out and the invoice issued in accordance with section V.6 has been received by Sunbelt. The date of the aforementioned event occurring as last shall be decisive for the due date.
2. The date of the receipt of the invoice shall be deemed to be the date of the receipt stamp on the invoice. The credit periods shall, however, not begin before the receipt of the goods at the delivery place agreed upon.
3. The date when the order of remittance is handed over at the bank or the date when the check is sent shall be decisive for the timeliness of the payment by Sunbelt.
4. A discount shall be allowed if Sunbelt sets off or withholds any payments to a reasonable extent on account of any deficiency. The period for payment shall commence after the complete rectification of any deficiency.
5. The payment shall be deemed overdue only if Sunbelt fails to pay in response to a payment demand note by Supplier received after payment becomes due and given that there are no disputes between Supplier and Sunbelt for any order, which suspends the payment period and status of limitation until the dispute is resolved.
6. Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with the Contract.
7. Sunbelt shall hand over tax receipts of withholding tax paid to Supplier within four weeks after payment of an invoice subjected to any withholding tax.
8. Sunbelt 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.
9. The Supplier shall be permitted to assign claims against Sunbelt to third parties only with Sunbelt's prior written consent. This shall not apply to pecuniary claims as defined in Section 354a HGB (German Commercial Code).
10. Rights and obligations not covered by section VI.9 may be transferred to third parties only with the prior written consent of the other Party.

VII. Shipment, Transfer of Risk, Packaging and Dispatch

1. The contractually agreed and current version of the Incoterms® 2020 shall apply to the shipment of the goods. This includes transfer of risk and risk of accidental loss and damage. For deliveries involving installation, commissioning or services, the transfer of risk occurs on acceptance on site.
2. Place of performance for delivery and performance shall be in accordance with the agreed Incoterms® 2020. The place of performance shall be stipulated in the order. For deliveries involving installation, commissioning or services, the transfer of risk occurs on acceptance and for deliveries not involving installation or commissioning, the transfer of risk shall be upon receipt by Sunbelt at the designated place of receipt.
3. The risk of accidental loss and damage to the Works shall transfer in accordance with the applicable law and at the latest upon delivery of the Work or any portion thereof.
4. A delivery note shall be attached to each consignment indicating the order number, project name, date, order item number, the description of the goods, the Supplier's name and, if available, with the Supplier's material number. If goods are delivered from a third country (*Drittland*), the shipping documents must be sent to Sunbelt for review prior dispatch. Following such review, Sunbelt shall grant the Supplier its approval in order to initiate the shipment of the goods.
5. Supplier may provide partial deliveries of Work, unless the acceptance of partial Work cannot be reasonably expected from Sunbelt taking into consideration the interests of both Supplier and Sunbelt.
6. Any supplementary costs arising from non-conformity with the transport requirements shall be borne by the Supplier. Where the price is quoted free to the recipient, Sunbelt may also determine the method of transportation. Any supplementary costs arising from the need to meet the delivery deadline by way of expedited delivery shall be borne by the Supplier.
7. 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 existing, the Sunbelt material number and the serial number. Each packaging unit shall be marked with at least the Sunbelt material number, the quantity contained and the Supplier's name. If agreed, the date of manufacture of the goods must also be shown.
8. Deliveries for which Sunbelt 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.
9. The Supplier shall ensure proper and safe packaging for reliable shipment of the goods. Packaging for electronic elements or components must be ESD-dissipative.
10. The invoice shall be sent to Sunbelt including the delivery note details specified under this section VII.4.

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

1. Any retention of title by the Supplier shall apply only to the extent that it relates to Sunbelt'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. Sunbelt 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 Sunbelt 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 Sunbelt (including any copies or records made, if applicable) after the execution of the order. Products manufactured according to documents and tools of Sunbelt 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 Sunbelt. The Supplier shall grant Sunbelt direct title to the Auxiliary Resources in such way that the Supplier assigns the Auxiliary Resources to Sunbelt and Sunbelt shall establish indirect possession (*mittelbaren Besitz*) of the Auxiliary Resources. Furthermore, Sunbelt 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 Sunbelt 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 Sunbelt by the Supplier shall be carried out on behalf of Sunbelt. It is agreed that, in the ratio of the value of the items supplied by Sunbelt to the value of the total product, Sunbelt shall become co-owner (*Miteigentümer*) of the products manufactured using the items supplied. These products shall be kept by the Supplier on behalf of Sunbelt until the time these products are handed over to Sunbelt.

IX. Protective Provisions for Goods

1. If the transport is performed by a carrier commissioned by Sunbelt, the Supplier will inform the carrier of the necessary data concerning dangerous goods in accordance with legal requirements. If Sunbelt informs the Supplier that following the initial transport a different mode of transport is scheduled, the Supplier will also follow the relevant legal requirements concerning dangerous goods.
2. If the transport performed by the Supplier, he 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 Sunbelt, 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. In this case, 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 Sunbelt.

3. The Supplier shall be liable for any expenses and/or damages incurred by Sunbelt due to any breach of the obligations under this section, unless Supplier is not responsible for such breach.
4. 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 Sunbelt. 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 Sunbelt with all information to be transmitted in accordance with the REACH Regulation. In particular, the Supplier shall immediately provide Sunbelt with all information required by Sunbelt to fulfill its obligations under Art. 33 REACH Regulation. The information shall be sent by email to the contact address given by Sunbelt: SunbeltSupplyChain@SMA.de.
5. 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>.
6. 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 Sunbelt 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 Sunbelt with a confirmation of non-use of materials from conflict zones.
7. Should the delivery contain goods which – according to international regulations – are classified as dangerous goods, the Supplier will inform Sunbelt hereof in a form agreed upon between Supplier and Sunbelt, but in no case later than the date of order confirmation.

X. Protective Provisions for engineering service

1. The Supplier undertakes to comply with the accepted engineering standards and, in particular, with the regulations and guidelines issued by the legislator, regulatory authorities, employers' liability insurance associations and the association of German electrical engineers with regard to execution, the prevention of accidents and protection of the environment.
2. In particular, the Supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, the Supplier will take responsibility for the health and safety of its employees.

3. Supplier shall comply with all health and safety laws and regulations in force at the work area, as well as with the health and safety laws, regulations and requirements valid in the European Union.
4. The Supplier shall provide reasonable support to the Sunbelt in the assessment of the existence of any such health or safety risks and what protective and preventive measures should be taken.
5. The Supplier shall provide the necessary organizational instructions and take measures, particularly with regard to the following security: packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e. g. AEO, C-TPAT). The Supplier shall protect the goods and services provided to Sunbelt or provided to third parties designated by Sunbelt against unauthorized access and manipulation. The Supplier shall only deploy reliable and qualified personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.
6. In addition to other rights and remedies Sunbelt may have, Sunbelt may terminate the contract and/or any purchase order issued thereunder in case of breach of these obligations by the Supplier. However, provided that Supplier's breach of contract is capable of remedy, Sunbelt's right to terminate is subject to the proviso that such breach has not been remedied by the Supplier within a reasonable grace period set by Sunbelt.

XI. Export, Import and Foreign Trade Data 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 Sunbelt 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. Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). Supplier shall advise Sunbelt in writing within two weeks of receipt of the order - and in case of any changes without undue delay - of any information and data required by Sunbelt to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation:
 - all applicable export list numbers, including the Export Control Classification Number according to the U. S. Commerce Control List (ECCN); and
 - the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
 - the country of origin (non-preferential origin); and - upon request of Sunbelt - Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).
4. In case of goods originating in the EU, the Supplier shall, at the beginning of every calendar year, provide Sunbelt with an up-to-date long-term supplier's declaration in accordance with the implementing regulation (EU) 2015/2447 of the Commission of 24th of November 2015, unsolicited and free of charge as well as upon Sunbelt'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.

5. The Supplier shall be liable for any expenses and/or damages incurred by Sunbelt due to any breach of the obligations according to sub-item 3, unless Supplier is not responsible for such breach.
6. Sunbelt's obligation to fulfill the agreement is subject to the provision that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

XII. Inspection upon receipt, Acceptance of the Service

1. Sunbelt 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 fifteen (15) working days of receipt of the delivery, or, in the case of hidden defects, within the same period after their detection.
2. In this regard Sunbelt shall have no other duties to the Supplier other than the duties of inspection and notification above.
3. All costs and expenses for activities of Sunbelt or any third party with regard to inspections, tests, approvals, acceptance procedures and the like shall be borne by the Supplier.
4. Sunbelt 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.

XIII. Warranty for Defects in Quality or Title, Liability

1. Except as ruled otherwise in paragraph XIII, warranty and liability for defects of the products/goods of the Supplier shall be governed by the statutory regulations, however, the warranty period shall be 30 months unless the statutory warranty period provides for a longer period in each case. The warranty period for defects in the case of a building and for defects of an object which has been used for a building in accordance with its customary usage and caused the defectiveness of that building is 60 months. The warranty period shall be extended for the time during which the delivered item cannot be used owing to its faultiness.
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, Sunbelt 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), Sunbelt 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, Sunbelt may claim damages instead of performance as well as compensation for other damages and expenses incurred by Sunbelt 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. Upon delivery to locations where Sunbelt is operating outside its premises, the warranty period begins with the acceptance by the end customer, in no case later than one year after transfer of risk. 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. In case of a defect in quality or title, Sunbelt 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). This provision also applies to deliveries subject to inspection by sample tests. The discretion of Sunbelt shall be exercised fairly and reasonably.
6. Any rectification may take place without a further deadline at the expense of the Supplier if delivery is after the original deadline.
7. The same shall apply if Sunbelt has a strong particular interest in immediate rectification in order to avoid any liability of its own for delay or for other reasons of urgency and it is not reasonable for Sunbelt to request the Supplier to rectify the deficiency within a reasonable time period. 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 Sunbelt. 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 XII. applies to details of the handling of complaints as well as to the allocation of costs for reworking.
8. The Supplier shall promptly notify Sunbelt 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 Sunbelt against claims for damages by third parties. Should it become necessary for Sunbelt to conduct

legal disputes in order to defend against third-party claims, the Supplier shall reimburse Sunbelt for the resulting costs incurred by Sunbelt.

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 Sunbelt in writing that the negotiations have ended or if the result of the examination is sent to Sunbelt.
10. In the case of increased deliveries, Sunbelt reserves the right to return the excess goods delivered at the expense of the Supplier.
11. The Supplier shall be liable for damage arising from the delivery of faulty products in accordance with statutory regulations.
12. The Supplier shall indemnify Sunbelt from claims from the statutory product liability in so far as he is responsible for causing the damage.
13. Provisions for the execution of the order shall remain the property of Sunbelt. They shall be stored separately by the Supplier free of charge, they shall be marked and managed by him and may only be used for the purpose of each contract. The Supplier shall be liable towards Sunbelt for all damage to the provisions.
14. If it is impossible for Supplier to carry out the Work for reasons for which it is solely responsible, Sunbelt shall be entitled to terminate the Contract with regard to that portion of the Work, which, owing to such impossibility, cannot be put to the intended use.
15. The limitations of liability set forth in these Conditions shall also apply for the benefit of Supplier's subcontractors, sub-suppliers, agents, advisors, directors and employees.

XIV. Handling of Complaints / Rectification Work

1. The provisions set out in this section XII. 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 XIII 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 Sunbelt'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 Sunbelt under the reference of the complaint. The Supplier shall inform Sunbelt 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, Sunbelt's own ability to deliver shall, whenever possible, be ensured by the Supplier by means of partial deliveries of goods, subsequent improvements at Sunbelt's premises or other suitable measures. This means that in the event that Sunbelt 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 Sunbelt'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, Sunbelt 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 Sunbelt for subsequent performance (*Nacherfüllung*) has unsuccessfully expired.
4. Complaints shall be charged by Sunbelt 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 Sunbelt customer, an additional service fee of EUR 200.00 each can be charged by Sunbelt, 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 Sunbelt by way of a damage claim (*Schadensersatz*) and be set off against outstanding payment claims.

XV. Serial Defects

1. In the event of a serial defect in accordance with section XIII.2, Sunbelt 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 Sunbelt 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 Sunbelt, the Supplier shall reimburse Sunbelt 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 Sunbelt 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 Sunbelt 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.

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

XVI. Insurance

1. Without limiting its liability and liability towards Sunbelt, 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), and for on-site services 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 Sunbelt 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.

XVII. Duties to Inform, Notice of End of Life, Subcontractors

1. All goods to be manufactured or adapted individually by the Supplier for Sunbelt in accordance with Sunbelt's requirements or specification shall constitute so-called Sunbelt-specific products (hereinafter called "SPECIFIC CONTRACTUAL PRODUCTS"). In respect of SPECIFIC CONTRACTUAL PRODUCTS, the Supplier shall notify Sunbelt 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) of Sunbelt.
2. In respect of changes to goods which are not SPECIFIC CONTRACTUAL PRODUCTS, the Supplier shall notify Sunbelt timely of any technical changes or any relocation of the production sites/facilities. If applicable, the Supplier shall likewise notify Sunbelt timely of any applicable amendments or updates of warranty terms, data sheets or other documents of the Supplier. Sunbelt needs to accept such changes in writing. Notifications shall be sent to the contact person given within the Sunbelt order.
3. If the Supplier applies changes to products or process, the Supplier shall bear all incurred costs at and by Sunbelt in relation to new samplings.
4. The Supplier shall notify Sunbelt 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 Sunbelt. The quantity for the last order must not be limited. Notifications shall be sent to the contact person given within the Sunbelt order.

5. Subcontracting 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 Sunbelt shall not take place without the prior written consent of Sunbelt and entitles the Sunbelt to cancel the contract in whole or in part and claim damages. If Sunbelt agrees the subcontracting of 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 Sunbelt by means of corresponding documentation and regular audits, and that Supplier's obligations in connection with the contractual relationship with Sunbelt 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 Sunbelt.
7. If the Supplier or an Authorized Representative renders services at Sunbelt's production sites, the Supplier shall ensure that the "rules for contractors" presented by Sunbelt 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, also making reference to the applicable Sunbelt order number and the delivery note.

XVIII. Confidentiality

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 Sunbelt's prior written consent.
3. Disclosure of information of any kind by Sunbelt 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 Sunbelt.
4. Supplier shall only be entitled to take photographs or videos or to otherwise record the Work with prior Sunbelt consent. In addition, only personnel of the Supplier which operates the plant shall be entitled to be present during the carrying out of the Work.
5. Supplier's confidentiality obligation shall survive the expiration or termination of a contract.

XIX. Dispute settlement and assignment of Claims

1. If any dispute arises in connection with this Contract, the responsible representatives of the parties shall attempt, in fair dealing and in good faith, to settle such dispute. If a party provides written notification to the other party that such attempt has failed, then each party shall promptly appoint in writing a senior representative duly authorized to resolve such dispute. Each party shall give notice of the appointment of such senior representative to the other party and such senior representatives shall try to reach an amicable settlement. If such senior representatives have not been appointed and/or are not able to reach an amicable settlement within a time period of 30 (thirty) days after the appointment of the first senior representative or such other time period as the parties may agree in writing, then either party may, by written notification to the other party, require that the dispute be submitted for resolution.
2. Nothing in this and the following paragraphs shall limit the right of the parties to seek relief intended to preserve the status quo or interim measures, such as preliminary injunctions, from any court of competent jurisdiction, the pre-arbitral referee and/or the arbitral tribunal.
3. Sunbelt shall be entitled to set off claims against the Supplier.
4. Any assignment of any claim is only allowed with the prior written approval of Sunbelt.
5. Neither Party shall be liable to the other Party for special, incidental, indirect, punitive, exemplary or consequential damages or other similar damages, including but not limited to loss of profits, revenue or anticipated savings, loss of use, loss of business or loss of data or records, whether or not a Party was informed or aware of the possibility of such loss or the remedy fails of its essential purpose.

XX. Indemnification

1. Supplier agrees to defend, indemnify and hold harmless Sunbelt, its subsidiaries and affiliates and its and their shareholders, directors, officers, employees, agents, successors and assignees, from and against any and all suits, claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs and expenses (including but not limited to reasonable attorneys' fees) asserted by third parties against Sunbelt arising out of or in any way connected with (i) any actual or alleged infringement, misappropriation or other violation by the products of any patent,

trademark, copyright, or other intellectual property right of any third party provided that the products have not been modified by or on behalf of Sunbelt in any manner without Supplier's written approval, (ii) actual or alleged breach of Supplier's covenants, representations, obligations, or warranties contained in this Contract; (iii) Supplier's failure to comply with any laws, rules or regulations in the jurisdiction applicable to products or to Supplier that are the obligation of Supplier under this Contract to comply with; (iv) the manufacturing or design of the products by or on behalf of Supplier as per the Warranty herein; (v) Supplier's breach or alleged breach of any contract between Supplier and any other third party directly affecting the Sunbelt; (vi) damage from injury to life, body or health due to Supplier's negligent breach; and/or (vii) any physical loss of or damage to property or assets due to Supplier's negligent breach.

2. Should any of the product delivered become, or in Supplier's opinion is likely to become, the subject of any claim of infringement, Supplier, at its option, shall have the obligation to do replace such product with a non-infringing substitute that exceeds the product's technical specifications and requirements of this Contract.
3. Sunbelt, its subsidiaries and affiliates and its and their shareholders, directors, officers, employees, agents, successors and assignees determines to seek indemnification hereunder (hereinafter the "INDEMNIFIED PARTY") with respect to the assertion of liability of the INDEMNIFIED PARTY to third parties ("Claim"), it shall give notice to the Supplier (hereinafter the "INDEMNIFYING PARTY") within thirty (30) days of the INDEMNIFIED PARTY's receipt of written notice of any such Claim. The notice shall set forth such information with respect thereto as is then reasonably available to the INDEMNIFIED PARTY. The rights of the INDEMNIFIED PARTY to be indemnified hereunder shall not be deemed forfeited by their failure to give notice unless the INDEMNIFYING PARTY is significantly prejudiced by such failure.
4. After receiving notice of any Claim, the INDEMNIFYING PARTY has the obligation and right to assume the defense of such Claim and retain legal counsel reasonably acceptable to the INDEMNIFIED PARTY for the defense of the INDEMNIFIED PARTY, with the INDEMNIFYING PARTY to bear all fees and costs of such defense. In the event the INDEMNIFYING PARTY assumes the defense of and retains legal counsel for the INDEMNIFIED PARTY, the INDEMNIFIED PARTY shall, to the extent consistent with its interests, reasonably cooperate with the INDEMNIFYING PARTY and its legal counsel in the defense of any Claim.
5. Notwithstanding the foregoing, and independent of counsel chosen and paid for by INDEMNIFYING PARTY, the INDEMNIFIED PARTY shall also have the right to employ separate and additional counsel of their sole choosing to defend against any Claim, but the fees, costs, and expenses of such counsel shall be at the expense of the INDEMNIFIED PARTY.
6. The INDEMNIFYING PARTY shall not, without the INDEMNIFIED PARTY's written consent (which consent shall not be unreasonably withheld), settle or compromise any Claim or consent to entry of any judgment related thereto, which settlement, compromise, or consent adversely affects the INDEMNIFIED PARTY.
7. During the term of this Contract, Supplier will have the right but not the obligation to defend its intellectual property rights in the products against

infringement or misappropriation by third parties. In addition, each Party agrees that it shall notify promptly the other Party upon learning of any unauthorized disclosure, use or application of any trademark, service mark, patent or other proprietary right of the other Party related to products.

XXI. Legal provisions

1. Insofar as the provisions of these Conditions of Purchase do not regulate certain matters, relevant statutory provisions shall apply.
2. In so far as it is legally admissible, the place of jurisdiction for all disputes arising from the contractual relationship shall be Kassel. Sunbelt is also entitled to start legal action at the court of jurisdiction at the legal business domicile of the Supplier or at a competent court on the basis of domestic or foreign law.
3. The laws of the Federal Republic of Germany shall apply for all legal relationships between Sunbelt and the Supplier arising from or in connection

with the contractual relationship excluding the UN convention on contracts for the international sale of goods (CISG).

4. 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.
5. 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>.