

# General Terms and Conditions of Sales & Warranty, SME Group

Unless otherwise agreed to in writing prior to the shipment date, the products and services (Products) sold or provided by a company within the SME Group are sold subject to the following conditions:

**0.** SME Group (SME) consists of the following companies: SME S.p.A. – Società Unipersonale (Italy), SME Shanghai (China), SME North America, Schwarzmüller Inverter | S.M.E. Deutschland GmbH (Germany, herein SMI)

**1.** Subject to approval and continuance of approval of credit by SME, terms of payment are (30) thirty day's net from date of invoice (no cash discount). If SME is unable to approve credit to the Buyer, or if at any time, SME in its discretion determines the Buyer to be or have become such as not to justify the continuance of such credit terms, terms of payment shall be or become C.O.D., advance payment, or a combination of these terms, all as SME may then, or thereafter from time to time, elect and specify even irrevocably from Buyer's Purchase Order (PO). All payments shall be made in EUR. The title to the goods shall pass to the Buyer only when the goods have been paid for in full.

**2.** SME shall not be deemed to have accepted an order until a written confirmation of the order by SME is sent to the prospective Buyer via email, telex or letter.

**3.** SME's products are delivered Ex Works (Incoterms 2010) from either SME Italy, SME Germany or Slovakia site. Transport Insurances will only be effected at the express wish and cost of the Buyer. Method and route of shipment are at the discretion of SME unless the Buyer supplies explicit instructions in writing, and in which case additional cost may be applied.

**4.** SME reserves the right to adjust accepted or quoted prices for non-delivered Products in the event of alterations in Currency Exchange rates, variations in raw-material costs or similar conditions over which SME has no or limited control. Prices are subject to correction for error. Prices do not include duty, V.A.T., sales, excise, municipal, state, or any other taxes. All quotations and confirmations are subject to correction for stenographic or clerical error.

**5.** Std. and/or special (e.g. for Export) Product Packing is not included in the price, and will not be credited if returned.

**6.** From the moment of delivery (ref. Incoterms 2010), the Buyer shall bear all risks for the goods, and SME shall not be responsible for damages incurred during transportation.

**7.** SME retains the property rights and copyrights to any trademark, name of Products, logo, domain name, drawings, designs, patents, photos and quotations, advertising materials; which may not be used by the Buyer or forwarded to a third party without the prior written consent of SME.

**8.** SME reserves the right to make, without notice to Buyer, alterations to Products that do not materially affect agreed specifications or the Product's form, fit or function. A PO is accepted on the basis that SME's Products are used or incorporated in civilian systems of finished or semi-finished larger Products within the country specified on the order. The Buyer is advised that Products may be subject to Export Control (as per USA regulations). Products as received from SME are not to be exported, unless otherwise agreed to in writing.

**9.** Time of delivery is stated approximately. SME may make deliveries in installments. SME does not undertake any responsibility for delays as a consequence of strikes, lockouts, labor disturbances or the like, extraordinary measures on the part of the government, hindrances to transportation, transport difficulties, delayed or defective delivery of materials ordered in due time, failing supply of electricity and similar obstacles to production, fire or workshop accidents at own plant or at sub-suppliers, or other conditions over which SME reasonable can be said to have no control. Furthermore, SME shall be under no liability whatsoever to the Buyer for consequential losses or damages of any kind whatsoever arising out of delays in or failure to make delivery of the goods or any part thereof whatever the reason for the delay may be.

**10.** SME warrants that Products are free from defects in material and workmanship for a period as stated here:

- a) SME / SMI Series Inverters: 24 months from date of manufacturing or 5,000/10,000 hours of use whichever is reached first;
- b) SME Motors: 24 months from date of manufacturing.
- c) Accessories: 6-months from date of shipment.

Buyer's sole remedy against SME and SME's only obligation for breach of foregoing warranty, shall be, at SME's sole discretion to repair, replace (by means of a new and equivalent product) or refund such Products that on examination by SME are found to be defective due to faulty manufacture, design, and/or defective materials. Expenses in connection with dismantling and re-mounting shall not be paid by SME. If suspected defects occur within the above-mentioned period, that Product shall be forwarded to the address instructed by SME, insurance and freight prepaid by customer. A description of

the reason for returning the Product shall be enclosed. Products repaired or replaced under warranty will be returned to the Buyer, freight prepaid by SME. The warranty repairs are only offered provided that the terms of payment are observed and shall cease to be valid if the Product is repaired or altered without the consent of SME, or applied for purposes for which it is not designed, manufactured or installed or applied contrary to the instructions given by SME.

**11.** The warranty given in #10 is expressly in lieu of all other warranties expressed or implied on the part of SME. SME disclaims any warranty, express or implied, of merchantability or fitness for a particular purpose. SME neither assumes nor authorizes any other person, firm, or corporation to assume for it any other liability in connection with this sale. In no event, shall SME be held responsible for damage to person or property, consequential, exemplary or indirect loss, loss of profit, loss of production, losses on goods in store or the like which might arise out of breach of warranty, failure of the equipment delivered, or errors in software, irrespective of the cause (including faulty manufacture, tort or delay).

**12.** During the warranty period (see: #10), the Buyer is mandatorily obliged to send a written notice to SME by fax or email, at the latest by 8 (eight) days from the discovery of any circumstance under the warranty.

**13.** Without prejudice to the foregoing, SME's liability for claims (including, for avoidance of doubt, indemnities or liabilities, breach of covenants, damages, losses, et cetera) under this General Terms and Conditions, as well as under the POs, shall in the aggregate be limited to 10% of the aggregate annual sales price(s) of the specific Product's supply to which the claims are related to. Any Buyer's claims against SME are time-barred at the latest after expiration of one year. Furthermore, in case of third parties' claims, the Buyer's right of recourse is time-barred at the latest after expiration of one year from the invoice's date.

**14.** All figures appearing in SME catalogs, instructions, drawings, etc., as well as technical data and other information are approximate statements serving only as a guide to the Buyer, and do not form part of this contract, nor do they constitute this contract a sale by description. SME is not responsible for instructions or technical assistance given verbally. Written information in reply to direct request is given on the understanding that the request does not contain incomplete or misleading information.

**15.** SME is entitled (but never obliged) to defend a suit or proceeding brought against the Buyer as far as the same is based on a claim that any apparatus of SME' design furnished hereunder or any part thereof, constitutes an infringement, if notified promptly in writing and given authority, information, and assistance (at SME' expense) for the defense of the same and if such alleged infringement is not the result of the design or other special requirements specified by the Buyer or the result of the application or use to which such apparatus is put by the Buyer or others. In case such apparatus or part is in such suit held to infringe any such patent and the use thereof is enjoined, SME shall, at its expense either, at its option, (a) obtain for the Buyer the right to continue using such apparatus or part, or (b) replace same with non-infringing apparatus, or (c) modify the same so that it becomes non-infringing, or (d) refund the purchase price. The foregoing states the entire liability of SME to the Buyer for patent infringement.

**16.** Any PO may be canceled by the Buyer only, if the Product can be returned to SME's supplier for full credit. The Buyer shall be responsible for all expenses incurred by SME including freight. To the extent that goods covered by this agreement are manufactured by SME, the Buyer will be responsible for payment of reasonable charges based upon expenses already incurred, commitments made by SME, and normal profit margins.

**17.** All Buyer's general or specific terms and conditions are null and void, and however waived by the Buyer.

**18.** Any dispute arising between the parties hereto as to the construction of this General Terms and Conditions, or as to any matter arising out of or under this General Terms and Conditions and POs shall be resolved before the jurisdiction and according to the laws of the Country in which the specific SME Group company performing the sale is established. Any provisions on conflicts of laws and the application of the Vienna Convention for the International Sale of Goods are both excluded.

**19.** SME reserves the right to refer any dispute arising out of or under these General Terms and Conditions, as well as the PO of Products, to Italian jurisdiction (Court of Venice) or arbitration.

**20.** If SME decides that the dispute shall be referred to arbitration, the Parties agree to submit to the award to be made by an arbitration court appointed in accordance with the Rules of the International Chamber of Commerce and the language of such arbitration shall be English, unless otherwise agreed by Parties.