

## SMAC TERMS AND CONDITIONS

### 1) APPLICABILITY OF SMAC TERMS AND CONDITIONS

Unless special agreements and written, every order will automatically result in the customer's adherence to our Terms and Conditions (T's & C's), defined below, which prevail over any purchase conditions (including those printed or written on the order of the purchaser), unless otherwise formal and we expressly agreed. Any other document issued by SMAC including flyers, catalogs, data sheets has only indicative value.

### 2) UNILATERAL MODIFICATION OF THE PROPERTY TO BE DELIVERED

Information, pictures, drawings and prices in the catalogs, flyers, prices and data sheets are not binding SMAC, which reserves the right to make any changes, including layout, shape, size or material of the goods.

### 3) ORDERS

Any order is valid and the contract of sale is deemed filed when its explicit emanates from SMAC as an acknowledgment. SMAC is not bound by the commitments that could be taken by its officers, agents or employees, in the form of written confirmation of SMAC.

Minimum order amount is fixed to 250 € excluding taxes.

### 4) DELIVERY

Delivery times indicated on any document from SMAC, including quotations, offers and order acknowledgments are, unless waived in writing, only indicative. Delays in delivery may, in no circumstances, give rise to penalties, damages or canceled orders and SMAC not be held responsible for any hardship that it has not been reported by the customer.

### 5) SUSPENSION OF DUTY

SMAC obligations are automatically suspended and without formality and responsibility clear, in case of occurrence of any event occurring after the conclusion of the contract and by preventing the execution under normal conditions by SMAC. In any case, SMAC is not responsible for the consequences of the use by the customer of its products with a defect or an execution error of the order, any discrepancies to be reported in that period. If the buyer is a professional of the same quality, it is expressly agreed that SMAC will be exonerated of all guaranteed due to hidden defects of the thing sold.

### 6) FORMULATION AND OBSOLESCENCE

Rubber and material formulations developed and owned by SMAC will remain its entire property and will not be divulged by SMAC.

SMAC will make its best endeavor to keep the formulation unchanged but cannot be taken responsible in the case of obsolescence of components. SMAC reserves the right to charge the customer for any obsolescence issue.

### 7) INTELLECTUAL PROPERTY

SMAC remains solely the owner of its know-how, including the ideas, drawing and concepts proposed, used or developed within the framework of a technical proposal and/or Services that are the object of an order and its previous Intellectual Property Rights which SMAC could use in the aforementioned frameworks.

These conditions apply with the exception of the specific contractual provisions that may bind SMAC and its customer within the framework of services covered by a specific order or a collaboration contract.

### 8) TOOLS

Tools are paid at 50% at order and the balance is due at their realization or at the model part acceptance date.

In the case of supply of tools by the customer, it is responsible for the perfect concordance of tools with plans and specifications. SMAC can verify it and may reserve the right to charge the cost to the customer. If SMAC deems necessary to make tool changes for the proper execution of the project, cost incurred shall be borne by the customer.

When instructed by the customer to make tools, SMAC manufactures them in agreement with the requirements of its manufacturing techniques. The making and the replacement or rehabilitation costs after wear will be paid by the customer regardless of parts supply.

SMAC tool prices, by whether or not made by it, does not include the SMAC tool development and intellectual property, that is to say the contribution of its know-how or its study and development knowledge. Tools remain on deposit in SMAC after execution of the order and the customer can take possession after written agreement on the SMAC intellectual property operating conditions and after payment of all invoices which are due to any capacity whatsoever. Tools remain stored, free of charge, at SMAC for 8 years maximum or 5000 parts maximum, the first of these conditions arriving, unless otherwise specified.

Apart from the normal wear, tools are kept in working order by SMAC. Tooling lifetime is 8 years or 5,000 pieces, the first of these conditions arriving.

After this period, and on SMAC's decision, after written request without any effect within two months, SMAC reserves the right to either proceed with the destruction of the equipment, without the customer able to claim compensation, or to retain the tooling upon payment of storage fees by the customer. SMAC cannot be liable for any costs of replacement, repair or rehabilitation of tools beyond the supply of quantities or expected life above.

## **9) TRANSPORTATION AND ACCEPTATION**

Products are sold FCA LA GARDE following INCOTERMS unless otherwise expressed. SMAC responsibility is strictly limited to non-conforming goods replacement, excluding any damages.

All shipments must be accepted or rejected within thirty (30) days of receipt by the Purchaser at the Purchaser premises.

If the Products are not rejected within this period then the Purchaser will be deemed to have accepted them by default.

## **10) QUANTITY**

Unless otherwise expressly specified in writing and contractually agreed, the tolerance on delivered quantities is +/- 5%.

## **11) PRICE**

Price charged will be the price in effect at the time of the disposition of the goods. All prices are unless otherwise stated, NETS, excluding all duties and taxes, for unpackaged goods leaving SMAC LA GARDE (FCA). All duties and taxes are extra charged to the Customer.

## **12) PAYMENT**

Invoices payment shall be by Article L441-6 from French Commercial Code accepted and domiciled, unless otherwise indicated on the special-order form and confirmed by us. SMAC reserves the right to require payment in advance or cash at the time of delivery. The payment is considered made when SMAC has the full funds availability. Drafts, bills of exchange or promissory notes must be received 10 days later than date of receipt of our invoices.

Failure to pay by the deadline, a penalty of 1.5 times the legal interest rate will be applied. Failure to pay at maturity instigates payment deadlines later after a simple notice without effect. Collection costs that SMAC would potentially be involved shall be borne by the customer.

## **13) RETENTION OF PROPERTY**

SMAC retains ownership of the goods until payment of the full price in principal and accessories. Non-payment of an installment may cause the claim to the property. The delivery of a promissory note, draft or a check is not payment. At the date of delivery, the buyer assumes responsibility for the damage that such property may suffer or cause, for any reason whatsoever.

Any termination, waiver clauses to the contrary are deemed to be invalid and not enforceable when the buyer did not expressly notify prior to delivery. In case of non-compliance by the customer of a payment deadlines, SMAC, without losing any of its rights, may demand, by registered letter with acknowledgment of receipt, the restitution of the customer's expense until executed by mail to all of its commitments.

## **14) LIMITATION OF LIABILITY:**

Notwithstanding anything in these terms and conditions to the contrary, in no event shall the cumulative liability of SMAC arising out of the sale of products by SMAC to buyer under any purchase order exceed the amount paid by buyer to SMAC for the products under such purchase order. SMAC shall have no liability for any damage arising from buyer's (i) use of a

product in a manner for which it was not intended or (ii) incorporation of a product into an end product for which it was not designed or authorized for use. In no event shall either party be liable to the other for any indirect, special or consequential damages in connection with the sale of products by SMAC to buyer.

#### **15) WARRANTY:**

Seller warrants and guarantees to Buyer, its successors and assigns that the goods and services covered by this Contract will: (a) conform to the applicable specifications, drawings and other descriptions; (b) are sufficient and suitable for Buyer's intended purpose; (c) be merchantable; (d) be of good material and workmanship; and (e) be free from defect.

Seller's responsibility under this warranty shall include without limitation, all parts, labor and transportation cost in the event the goods must be returned to Seller for repair or replacement.

The foregoing warranties will be considered warranties of future performance that continue for the longer of (a) the period provided by applicable law, or (b) twelve (12) months following delivery of the goods.

#### **16) DISPUTES**

In the event of a dispute regarding a provision or its regulations, the Tribunal de Commerce of Toulon has exclusive jurisdiction, regardless of the conditions of sale and method of payment accepted, even in cases of appeal or of multiple defendants.

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