

1) APPLICABILITY OF SMAC TERMS AND CONDITIONS

The terms and conditions below apply to SMAC and its customer for all kind of good and service delivery.

Unless special agreements in written form and expressly accepted by SMAC, 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).

2) UNILATERAL MODIFICATION OF THE PROPERTY TO BE DELIVERED

Any other document issued by SMAC including flyers, catalogues, data sheets has only indicative value.

Information, pictures, drawings and prices in the catalogues, 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.

Any order which require the delivery goods or services which where not explicitly described in the proposal emitted by SMAC will be acknowledged with additional costs. These additional costs will be determined by SMAC based on the effective workload. A sample scale for usually encountered additional requirements is as follows:

- Fabrication and delivery of an exiting component with a new drawing version (change in drawing index): 300 €.
- Physical meeting with customer not planed in SMAC offer: minimum of 1500 €
- First article Inspection (FAI) document : 400 €
- Industrial validation File document: minimum of 2500 €
- Certificate of Conformity (COC): minimum of 85 €
- Individual photography of each component delivered: 10 €
- Cost of delivery: Actual cost with a minimum of 50 €

SMAC is not bound by the commitments that could be taken by its officers, agents or employees, except with written confirmation by SMAC management officer.

Minimum order amount is fixed to 250 € excluding taxes. Minimum delivery amount is fixed to 250 € excluding taxes. Order below these amounts will be rounded to this minimum value.

4) DELIVERY

Delivery times indicated on any document from SMAC, including quotations, offers and order acknowledgments are, unless waived in writing, only indicative.

Consequently, any reasonable delay in the delivery of the products may not give rise to the award of damages or to order cancelation

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) COMPLAINT PERIOD

Any complaint from the customer concerning the goods delivered or the associated documents should occur within a maximum period of thirty (30) calendar days running from the day of delivery.

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

7) 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 endeavour 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.

Properties and quality of the rubber formulation are given for the blending itself and not for the parts manufactured with this formulation.

8) 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.

We decline all reclamations and responsibility of drawing property in case of drawings provided to SMAC to manufacture parts.

9) TOOLS

In the case of supply of tools by the customer, he 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.

Unless otherwise specified, SMAC tools costs charged to the customer are only a participation, which 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. Thus, tools remain the property of SMAC.

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 the entire costs of the tool and 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.

10) TOLERANCES

Unless special agreements and written, rubber parts manufactured by SMAC follows tolerances given by the ISO 3302-1 Category 3 – Commercial.

11) TRANSPORTATION AND ACCEPTATION

Products are sold FCA LA GARDE following INCOTERMS unless otherwise expressed.

The risk of transport is borne entirely by the purchaser.

In the case of goods missing or deteriorated during transport, the buyer must make all necessary reservations on the order form upon receipt of the said goods. These reservations must also be confirmed in writing within five (5) days of delivery, by registered mail AR.

12) QUANTITY

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

13) 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.

SMAC reserves the right to modify its prices at any time. However, SMAC guarantees to invoice goods at the price shown on the acknowledgement document of the order received.

14) 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.

No discount will be granted for anticipated payment.

Order with an amount of 2000 € or less have to be paid in advance. These orders will not be taken into account before full payment.

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 3 (tree) times the legal interest rate will be applied. The legal interest rate shall be that in force on the date of delivery of the goods. Failure to pay at maturity instigates payment deadlines.

Collection costs that SMAC would potentially be involved shall be borne by the customer.

This penalty is calculated on the TTC amount of the remaining amount due, and runs from the due date of the price without any prior formal notice being required.

In addition to the payment of late payments, any sum, including the advance payment, not paid on its due date shall automatically result in the payment of a lump sum of forty (40) Euros due in respect of the recovery costs.

15) RETENTION OF PROPERTY

SMAC retains ownership of the goods until payment of the full price in principal and accessories. Non-payment 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 goods and documents delivered.

16) 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:

- use of a product in a manner for which it was not intended;
- incorporation of a product into an end product for which it was not designed or authorized for use;
- non-consequential non-material damage;
- resulting from total or partial non-performance, poor performance, or delay in the performance of contractual obligations, as well as non-conformity, lack of product performance, or of the service provided.

SMAC will in no case be responsible for the following losses, regardless of their origin: loss of revenue or sales, loss of business, loss of profits or contracts, expected loss of savings, data loss, lost work or management time, image damage, loss of luck, moral harm.

17) WARRANTY

Seller warrants and guarantees to Buyer, its successors and assigns that the goods and services covered by this Contract will:

- conform to the applicable specifications, drawings and other descriptions;
- be merchantable;
- be of good material and workmanship.

Seller's responsibility under this warranty shall include without limitation, all parts, labour 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:

- the period provided by applicable law, or
- twelve (12) months following delivery of the goods.

18) 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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