

**GENERAL TERMS AND CONDITIONS (GTCs) for business customers of  
Schmetz India Pvt. Ltd., E-205/206/218 Vashi Infotech Park, Above Vashi Railway Station, 400703, New  
Mumbai , India**

- (1) The following general terms and conditions apply only to customers which are a business, i.e. to customers who order or obtain the goods, work or services for a commercial or self-employed commercial activity. These general terms and conditions do not apply to retail consumers.
- (2) The following general terms and conditions apply to the supply of goods as well as to other services such as paid consulting.

**A. General terms and conditions**

**§ 1 Scope of application**

- (1) These general terms and conditions apply to all our areas of operation. The following general terms and conditions apply to the supply of goods and to other services such as paid consulting.
- (2) Our business transactions with the customer is governed exclusively by these general terms and conditions notwithstanding any conflicting terms and conditions of business or terms and conditions of purchase of the customer. They shall also apply to all future transactions, as well as to all business contacts with the customer, such as the initiation of contractual negotiations or the initiation of a contract, even if they are not expressly agreed upon or referred to again. The application of the customer's general ordering or purchasing conditions is expressly rejected.
- (3) If, in individual cases, contractual relationships are also established with persons or companies who are not themselves intended to become contracting parties, the limitations of liability in these general terms and conditions will also apply to them, provided that these general terms and conditions were included in the establishment of the contractual relationship with the third parties. This is particularly the case if the third parties were aware or already had knowledge of these general terms and conditions when the contractual relationship was established.
- (4) Availing of our goods and services by the customer is considered as acknowledgement and acceptance of the applicability and validity of these general terms and conditions.

**§ 2 Conclusion of contract**

- (1) Unless otherwise agreed in writing, our offers are subject to confirmation and are non-binding.
- (2) We are not bound by an order until it has been confirmed by us in writing in the form of an order confirmation, or until we intimate the customer in writing that we have commenced with the execution of the order.
- (3) In the absence of any written agreement to the contrary, pre-contractual quotations, cost estimates, drawings, information sheets, information in catalogues and any other information or description are non-binding.

**§ 3 Scope of supply and performance, performance deadlines**

- (1) Our written offer or our order confirmation is definitive in respect of the scope of our supply or service. Additional agreements and amendments require our written confirmation. If our offer or order confirmation is based on information provided by the customer (data, figures, illustrations, drawings, system requirements, etc.), our offer will only be binding if this information is correct. If it becomes apparent after conclusion of the contract that the order cannot be carried out according to the customer's specifications, we will be entitled to withdraw from the contract if and to the extent that the customer is not prepared to accept any alternative solution proposed by us and to assume any additional costs which may actually arise.
- (2) For all supplies and services we will be entitled to make partial deliveries or partial performance to a reasonable extent. We will have the right to use subcontractors to fulfil our contractual obligations.
- (3) If we become aware of a risk of the customer's inability to meet its obligations we will be entitled to supply goods and services only against advance payment or security. Our right to withdraw from individual contracts already concluded remains unaffected if and insofar as the customer fails to make an advance payment or provide security within a reasonable extension period.
- (4) The delivery and performance period is agreed individually and stated in the order confirmation. The delivery period will be regarded as having been met if the goods have been dispatched by the end of the period or if notification has been given that the goods are ready for dispatch. Timely compliance with the delivery period and delivery dates is conditional upon the customer providing any cooperation required of it in a timely and proper manner; customer making available all documents required to be provided and making any agreed advance payments.
- (5) We will not be in default for meeting the delivery period and/or delivery dates in the event of force majeure or other circumstances beyond our control. In this case, even if we are already in default, we will still have the right to withdraw from the contract. In addition, we will not be in default in the event of delays in delivery if these are caused by incorrect or late delivery by our suppliers for which we are not responsible. In the event of hindrances of a temporary nature, the delivery or performance deadlines will be extended or the delivery or performance dates postponed by the period of the hindrance plus a reasonable start-up period.
- (6) If we are contractually obliged to provide advance performance, we may refuse commencing the performance if, after conclusion of the contract, it becomes apparent that our claim to remuneration may be jeopardised by the customer's inability to make such payment. This is particularly the case if the payment to which we are entitled is at risk due to the customer's poor financial circumstances or if other obstacles to payment are threatened, e.g. export or import bans, war, the insolvency of suppliers or absence of the required

employees due to illness or any other valid reason determined by us.

#### **§ 4 Prices, costs**

- (1) Our prices for supplies of goods do not include any taxes or levies. Goods and Services Tax (GST) or any other statutory levy or cess will be added to the invoice at its respective statutory rate. Unless otherwise agreed in writing, the terms of delivery for domestic sales (i.e. within India) are always ex-works place of business of Schmetz India Pvt. Ltd., E-205/206/218 Vashi Infotech Park, Above Vashi Railway Station, 400703, New Mumbai, India. In case of sales outside India, the terms of delivery are FCA Schmetz India Pvt. Ltd., E-205/206/218 Vashi Infotech Park, Above Vashi Railway Station, 400703, New Mumbai, India (Incoterms 2020). Notwithstanding the provisions of this incoterm concerning the conclusion of transport and insurance contracts, we undertake to organise the transport by determining the means of transport, the transport route and, if we consider it necessary, transport insurance, without being responsible for choosing the fastest and cheapest option. The customer will bear the costs and risks for transport and insurance in accordance with FCA provisions in Incoterms 2020. The prices can be taken from our offer or our order confirmation or - if no prices are stated in the offer or in the order confirmation - from our currently valid price list.
- (2) For services, the prices refer to the implementation of the service at the agreed place of performance. When the invoice is issued, GST or any other statutory levy will be added to the invoice at its respective statutory rate.
- (3) If a performance period of more than four months has been agreed between the time of confirmation of the order and the performance of the service, we will have the right to a corresponding extent to pass on to the customer any increases in costs which have occurred to us in the meantime due to price increases. The same will apply if a performance period of less than four months has been agreed, but the performance can only be rendered by us later than four months after confirmation of the order for reasons for which the customer is responsible.
- (4) In the case of services to be performed by us the remuneration - even in the case of a previously submitted cost estimate - is always based on a time fee according to the time actually spent, unless flat-rate remuneration has been agreed. The units of time recording and the current hourly rates can be taken from our offer or our order confirmation or, if no hourly rates are stated in the offer or order confirmation, from our currently valid price list.

#### **§ 5 Terms of payment**

- (1) Unless otherwise contractually agreed, our invoices relating to the supply of goods are payable without deduction within 30 days of the invoice date. Invoice amounts relating to services are payable within 15 days of the invoice date without deduction. If we provide our supplies or services in part deliveries, we will have the right to demand a corresponding part of the remuneration for each part delivery.
- (2) The customer is not entitled to make deductions from any invoice without our express agreement except for deduction of income-tax at source, if mandated statutorily under the Income-tax Act.
- (3) If the registered place of business of the customer is outside India

and the contractual agreement with the customer does not provide for delivery against advance payment, we will be entitled, even without a special agreement, to make our performance dependent on the provision of a documentary letter of credit in the amount of the gross performance price from a bank in India. If we do not demand the provision of such a documentary letter of credit and unless otherwise contractually agreed, our claim will become due upon receipt of the delivery or upon complete performance of our service. If we provide our supplies or services in part deliveries, we will in any case be entitled to demand a corresponding part of the remuneration for each part delivery and, if necessary, to demand a documentary letter of credit for each part delivery/performance.

- (4) If the customer is in default of payment and/or fails to make payment within the time limit specified in Section A, §5 No. 1, interest shall be levied on the outstanding amount at the rate of 15% points above the State Bank of India base lending rate from the 16th day (for services) or 31st day (for goods), as the case may be, in order to compensate us for the delay in payment.
- (5) Payment by bill of exchange or accepted bill is only permitted by express agreement, and even then is only valid on account of payment. If additional costs are incurred as a result, these are to be borne by the customer.
- (6) Payments are to be made exclusively by the customer. Payment by third parties is inadmissible and will not have the effect of fulfilment of the customer's obligations.
- (7) Cash payments are generally not accepted by us.
- (8) If we have agreed on instalment payments, the following will apply: if the customer is more than two weeks in arrears with an instalment, either in whole or in part, the entire outstanding balance will become due for immediate payment.
- (9) Only undisputed, or agreed legally established claims (where there is no further recourse to appeal) can be offset against our claims for remuneration. The same applies to the exercise of a right of retention.
- (10) The assignment of claims against us by the customer requires our prior written consent, which will only be refused for good cause.

#### **§ 6 Passing of Risk**

In the absence of an agreement to the contrary, risk will pass upon delivery of the goods (on the terms stated in Section A § 4 No. 1). Accordingly, with delivery, the risk to the accidental destruction or deterioration of the delivered goods shall pass to the customer. In case of services which require acceptance, risk shall pass on acceptance as provided in Section A § 11 No. 1.

#### **§ 7 Retention of title**

- (1) Notwithstanding passing of risk upon delivery, we shall retain title to the supplied goods until full payment of all our present and future claims ("reserved goods") arising from the concluded contract and an ongoing business relationship ("secured claims").
- (2) The reserved goods shall not be hypothecated, charged or pledged to third parties nor transferred by way of security or otherwise before full payment of the secured claims. The customer must inform us immediately in writing if and to the extent that the reserved goods belonging to us are attached by third parties.

- (3) If the customer acts in breach of contract, in particular if the purchase price due is not paid, we will be entitled to withdraw from the contract and/or demand the return of the reserved goods, in addition to any other right available to us under the law. The demand for the return of the goods does not at the same time include a declaration of withdrawal; on the contrary, we will be entitled to demand only the return of the goods and to reserve the right to withdraw from the contract. If the customer does not pay the due purchase price together with interest thereon as specified in Section A § 5 No. 4 despite written notice from us, we may assert these rights and take recourse to any other right available to us contractually or under law.
- (4) The customer is not entitled to resell and/or process the reserved goods in the ordinary course of business without our prior written consent. In case we give written consent, the following provisions will apply additionally.
1. Our retention of title shall extend to the full value of the products resulting from the processing, mixing or combination of our goods, in which case we will be considered the manufacturer. If, in the event of processing, mixing or combining of our goods with goods of third parties, the latter's right of ownership remains effective, we will acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects the same applies to the resulting product as to the reserved goods.
  2. The customer hereby assigns to us by way of security, all claims against third parties arising from the resale of the goods or products, either in full or to the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The restrictions /obligations of the customer mentioned in the above Section A. § 7 No. 2. will also apply in relation to the assigned claims.
  3. In addition to us, the customer remains authorised to collect the claim. We undertake not to collect the claim as long as the customer fulfils its payment obligations to us, is not in default of payment, no application for the opening of insolvency proceedings has been made and there is no other lack of ability to pay. If this is the case, however, we can demand that the customer informs us of the assigned claims and their debtors, provides all the information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
  4. If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the customer's request.
- (5) The customer must treat the reserved goods with care. At our request, the customer must sufficiently insure the reserved goods at its own expense against fire, water and theft at their replacement value. If maintenance and inspection work becomes necessary, the customer must carry it out in good time at its own expense.
- (6) If the validity of this reservation of title is dependent on its registration, e.g. in public registers in the customer's country, we will be entitled and authorised by the customer to effect this registration at the customer's expense. The customer is obliged to provide all cooperation services necessary for this registration free of charge.

#### § 8 Obligations of the customer to cooperate

- (1) The customer must support us and our employees to a reasonable, customary extent. If we have to provide project-related services by our employees at the customer's company, support at our request may also include the provision of work rooms and workstations with PCs and telephones, the costs of which will be borne by the customer.
- (2) Materials, information and data that we require to perform our services must be made available to us by the customer. Data and data carriers must be technically free of defects. If special legal or operational safety regulations apply at the customer's premises, the customer must inform us of this before we provide our service.
- (3) Instructions from the customer to our employees regarding the concrete form of the performance of services are excluded, unless instructions are necessary in connection with safety requirements and operating regulations in the customer's company. Instructions on individual questions regarding services to be provided by us are not to be given to the employees entrusted with the task by us, but to the contact persons named by us for the project. We always decide independently on the necessary measures within the scope of our performance obligations.
- (4) Concrete further obligations to cooperate may result from the annexes to our order confirmation or our offer.

#### § 9 Warranty and Liability for defects and general liability

- (1) **Product warranty:** Except as may otherwise be specified in any written agreement, we warrant that goods supplied by us will be free from defects in materials and workmanship for a period of twelve (12) months from the date of delivery/shipment to the customer ("warranty period"). During the warranty period, our liability is limited to repairing or replacing any goods found to be defective. We will have no liability to accept a return unless : (i) the customer notifies us in writing specifying details of the defect; and (ii) returns the goods to us (at the customer's cost) within the warranty period. At our option, the returned goods may be repaired or replaced. If we are unable to detect a defect, the customer will be liable to pay for the cost and expenses incurred in evaluation, testing and re-shipment to the buyer. The replaced or repaired goods shall remain under warranty for the balance of the warranty period remaining from the date of original delivery /shipment of the goods.
- (2) **Limitations:** Our sole obligation is to repair or replace the goods (at our option) during the warranty period. Other than the foregoing, we shall have no any other obligation or liability to the customer. The warranty shall not apply to any sample, prototype or test item or to goods improperly installed or improperly transported by the customer or any other third party not authorized by us or goods subjected to abuse, neglect, misuse or misapplication or repaired or altered by the customer or operated by the customer in a manner not authorized by us. The warranty will also not apply to any defect (including latent defect) observed or notified to us after the warranty period. No agreement extending, expanding or supplementing this warranty shall be binding on us unless in writing by an authorized representative. **THE WARRANTY CONTAINED HEREIN ABOVE IS THE SOLE AND EXCLUSIVE WARRANTY. IN NO EVENT WILL WE BE LIABLE FOR ANY OTHER WARRANTY, WHETHER IMPLIED BY LAW OR OTHERWISE, INCLUDING**

**WARRANTIES OF MERCANTABILITY, FITNESS FOR PARTICULAR PURPOSE, FAILURE OF ESSENTIAL PURPOSE ETC. CLAIMS FOR DAMAGES (IRRESPECTIVE OF THEIR LEGAL GROUND), ARE ALSO EXCLUDED AND IN NO EVENT WILL WE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR WHERE THERE IS A FAILURE OF ANY ESSENTIAL PURPOSE.**

- (3) After expiry of the warranty period, we may also refuse subsequent performance without the customer having any claims against us for reduction of the purchase price, withdrawal from the contract or compensation.
- (4) Claims by the customer for subsequent performance due to defects in the service or goods to be provided by us are subject to the following provisions:
1. If the supplied goods are defective, we may initially choose whether to provide subsequent performance by eliminating the defect (rectification of defects) or by supplying a defect-free item (replacement delivery). This is without prejudice to the right to refuse the subsequent performance.
  2. We are entitled to make the supplementary performance dependent on payment by the customer of the due purchase price. However, the customer will be entitled to retain a part of the purchase price which is reasonable in relation to the defect, if agreed by us in writing.
  3. The customer must give us the time and opportunity necessary for the supplementary performance owed, in particular to hand over the goods complained of for inspection purposes. In the event of a replacement delivery, the customer must return the defective item to us in accordance with the statutory provisions.
  4. We will be entitled to carry out the rectification of defects on the customer's premises.
  5. We will bear the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, provided that a defect actually exists
  6. In the case of the supply of goods, the following also applies:  
  
If the customer has installed the defective goods into or attached to another product in accordance with their type and intended use, we will reimburse the customer for the necessary expenses for the removal of the defective goods and the installation or attachment of the repaired or delivered defect-free product.
  7. The customer will bear the expenses for rectification of defects or subsequent delivery that arise if the purchased goods have, after delivery, been taken to a location other than the customer's registered office or business location.
  8. If the customer's request for the rectification of defects turns out to be unjustified, we can require the customer to reimburse us for all the costs incurred, including evaluation, testing, transportation etc.
- (5) Other than warranty claims made during the warranty period, we are not responsible or liable to the customer for any damages (whether contractual or in tort or otherwise) except for for damage directly resulting from an intentional or grossly negligent breach of

duty on our part. **IN NO EVENT WILL WE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES.**

- (6) If third parties are commissioned or involved in the initiation or settlement of the contractual relationship between the parties, the above-mentioned warranty and liability limitations will also apply to such third parties.

#### **§ 10 Industrial and intellectual property rights, tools, models and moulds**

- (1) If we manufacture according to drawings, models or samples or specifications of the customer, the customer must ensure that industrial and intellectual property rights of third parties are not infringed by this. Before placing an order with us, the customer is obliged to ascertain whether the products it has ordered infringe the property rights of third parties. In this respect, the customer must indemnify us against any claims by third parties, unless it is not responsible for the infringement of the property rights. If the customer is prohibited from manufacturing or supplying by a third party with reference to an industrial / intellectual property right belonging to it, we will be entitled, without examining the legal situation, to stop work and demand reimbursement of the costs incurred.
- (2) If we make tools, moulds, models or similar items for the purpose of providing the delivery or service, we will retain title to them. This will also apply if we demand partial remuneration from the customer for such production. If we invoice the customer for such items in full and the customer pays for the manufacture of such items in full, ownership will pass to the customer; we will retain possession of such items as long as we provide services to the customer with these items.

#### **§ 11 Miscellaneous provisions, Acceptance Place of performance, place of jurisdiction, applicable law, data processing, severability clause, termination etc.**

- (1) Acceptance of goods by the customer will be applicable only if it has been agreed to in writing by us, otherwise, it shall be deemed that the delivered goods have been accepted by the customer. Where there is an agreed written procedure for acceptance of goods, the same shall be followed and in such cases, as a deviation from Section A § 6, risk shall pass upon acceptance however, in no case shall acceptance be refused on the basis of defects which do not impair the capacity to function or which impacts only to an immaterial extent.
- (2) The place of performance shall be deemed to be at our place of business at E-205/206/218 Vashi Infotech Park, Above Vashi Railway Station, 400703, New Mumbai India. However, if the customer does not have a place of business in India or moves its place of business abroad, we alone are entitled to assert claims against the customer at its place of business outside India but customer can only make claims against us at the place specified in section A § 11 No. 2.
- (3) Any dispute arising out of or in connection with these general terms and conditions shall, if not amicably resolved, be finally decided through arbitration by a sole, neutral arbitrator mutually appointed by us and the customer and failing mutual agreement, solely by us. The seat of arbitration shall, at our option, be at Mumbai, India and

the courts in Mumbai (as the case may be) shall have exclusive jurisdiction for purposes of granting interim relief or dealing with any award passed by the sole arbitrator.

- (4) Without prejudice to any other contractual or legal right to terminate, we shall be entitled to terminate any contract or delivery by written notice if the customer becomes bankrupt or insolvent or goes into liquidation or there is a trustee, receiver, administrator appointed for the benefit of the creditors or if any act is done or event occurs which has a similar effect to the above.
- (5) If any provision in these general terms and conditions or a provision within the framework of other agreements is or becomes invalid, the validity of all other provisions or agreements will not be affected.
- (6) These terms and conditions and contracts concluded with reference to these terms and conditions shall be exclusively governed by the laws of India. The UN Convention on Contracts for the International Sale of Goods (to which India is not a signatory) shall not apply.

## **B. Special terms and conditions for the supply of goods**

### **§ 1 Scope of application**

The following special conditions for the supply of goods apply in addition to the general conditions under Section A. for all contracts with the customer for the supply of goods.

### **§ 2 Scope of services**

- (1) Transport insurance for goods to be shipped will only be taken out upon express request. The transport insurance is then taken out in the name and for the account of the customer.
- (2) Our obligations cover the transfer of ownership and surrender of the object of purchase. The assembly, installation or configuration of the object of purchase is not part of the obligation, unless this has been expressly agreed.

**Valid from: June 2020**