

**GENERAL TERMS AND CONDITIONS (GTCs) for business customers of  
Schmetz Asia Pte. Ltd., 18, Boon Lay Way #10-101, Trade Hub 21, 609966  
Singapore**

- (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 or services for a commercial or self-employed commercial activity. These general terms and conditions do not apply to consumers.
- (2) The following general terms and conditions apply to the supply of goods as well as other services such as paid consulting.

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**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 as well as to other services such as paid consulting.
- (2) Our relationship with the customer is governed exclusively by these general terms and conditions. They 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) Acceptance of our services and deliveries by the customer is considered as acknowledgement of the validity of these general terms and conditions.

**§ 2 Conclusion of contract**

- (1) Unless otherwise agreed, 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.

**§ 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 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 on 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. The commencement of the delivery period and compliance with delivery dates presupposes that the customer provides any cooperation required of it in a timely and proper manner, that it makes available all documents to be provided and makes any agreed advance payments.
- (5) We will not be in default or be liable in the event of force majeure or other exceptional circumstances beyond our control (for instance, 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). Customers and us should use reasonable endeavours to mitigate the effect of the force majeure event on the performance of our obligations (for instance, 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). If the force majeure event persists, we retain the right to withdraw from the contract by giving 2 weeks written notice to you.

- (6) If we are contractually obliged to provide advance performance, we may refuse the performance incumbent upon us 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.

#### **§ 4 Prices, costs**

- (1) Our prices for supplies of goods are net prices and when the invoice is issued, Goods and Services Tax (or its equivalent) will be added at its respective statutory rate (where applicable). Unless otherwise agreed in writing, the terms of delivery are always subject to the Free Carrier Rules (FCA) (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, Goods and Services Tax (or its equivalent) will be added at its respective statutory rate (where applicable).
- (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 work or 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 work and 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 without express agreement from us.
- (3) If the registered place of business of the customer is outside Singapore 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 or savings bank licensed in the customer's registered place of business, in accordance with the currently applicable Uniform Customs and Practice for Documentary Credits (UCP 500) of the International Chamber of Commerce (ICC). 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.
- (4) If the customer is in default of payment from the 16th or 31st day after receipt of the invoice, it must compensate us for the damage caused by the delay, in particular interest at 5 percentage points above the base rate.
- (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 legally established claims can be offset against our claims for remuneration. The same applies to the exercise of a right of retention. The customer will otherwise only be entitled to exercise a right of retention if it is based on the same contractual relationship.
- (10) The assignment of claims against us by the customer requires our prior consent, which will only be refused for good cause.

#### **§ 6 Retention of title**

- (1) We reserve the title to supplied goods until full payment of all our present and future claims arising from the concluded contract and an ongoing business relationship (secured claims).
- (2) The reserved goods may neither be pledged to third parties nor transferred by way of security before full payment of the secured claims. The customer must inform us immediately in writing if and to the extent that the 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 (for instance, in accordance with the statutory provisions) and/or demand the return of the reserved goods. 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, we may only assert these rights if we have previously unsuccessfully set the customer a reasonable deadline for payment, or if setting such a deadline is unnecessary according to statutory provisions.
- (4) The customer is entitled to resell and/or process the reserved goods in the ordinary course of business. In this case the following provisions will apply additionally.
1. The retention of title extends 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 obligations of the customer mentioned in the above Section A. § 6 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, minimally 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.

## **§ 7 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 work or 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 solely 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 work or 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.

## **§ 8 Liability for defects and general liability**

- (1) The limitation period for claims due to defects in our supplies and services will be in accordance with the Limitation Act (Cap. 163).
- (2) 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 chosen type of subsequent performance under statutory regulations.
  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.
  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 (for instance, 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 because 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 the costs incurred.

**(3)** In the case of the supply of goods:

The customer's claims for defects, in particular the claims for subsequent performance, withdrawal from the contract, reduction in price and compensation for damages, presuppose that the customer has inspected and reported defects. If a defect is revealed during the inspection or later, these must be reported to us immediately in text form (e.g. letter, fax, e-mail). The report will be considered immediate if it is made within 10 days of the discovery of the defect, with timely dispatch of the report being sufficient to comply with the deadline. Irrespective of this obligation to inspect and report defects, the customer must report obvious defects (including incorrect and short delivery) in text form (e.g. letter, fax, e-mail) within ten days of delivery, in which case timely dispatch of the report is sufficient to meet the deadline. If the customer neglects the proper inspection and/or reporting of defects, our liability for the unreported defect will be excluded. This will not apply if we have fraudulently concealed the defect.

**(4)** The customer can only demand compensation:

1. for damage resulting

- from an intentional or grossly negligent breach of duty on our part or
- from an intentional or grossly negligent breach by one of our legal representatives, executives or vicarious agents

of obligations that are not essential to the contract (cardinal obligations) and are not main or secondary obligations in connection with defects in our deliveries or services.

2. from damage resulting from the intentional or negligent breach of essential contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executive employees or vicarious agents. Essential contractual obligations (cardinal obligations) within the meaning of the above subsections (4) 1. and 2. are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the customer can normally rely.

3. Furthermore, we will be liable for damage due to the negligent or intentional breach of obligations in the case of deficiencies in our supplies or services (subsequent performance or secondary obligations) and

4. for any damage that falls within the scope of a warranty (commitment) or a guarantee of quality or durability expressly given by us.

**(5)** In the event of a simple negligent breach of an essential contractual

obligation, the amount of liability will be limited to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract, provided that due care was exercised.

**(6)** The limitation period for claims for damages by the customer in the event of a simple negligent breach of a material contractual obligation will be in accordance with the Limitation Act (Cap. 163).

**(7)** Claims for damages against us arising from mandatory statutory liability are not affected by the above provisions of this § 8 and exist to the extent permitted by law within the statutory time limits.

**(8)** The customer's rights in the event that claims are asserted against the customer or its own customers in a supply chain will remain unaffected in accordance with the Limitation Act (Cap. 163).

The limitation period for the customer's claims against us is set out in the Limitation Act (Cap. 163).

**(9)** 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.

**§ 9 Industrial 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 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 infringes 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 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.

**§ 10 Miscellaneous provisions - dispute resolution, applicable law, severability clause**

**(1)** 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.

**(2)** The contractual and other legal relationships with our customers are governed by Singapore law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

**(3)** Any dispute arising out of, or in connection with these terms of use, including any question regarding the existence, validity or termination of the contract between the customer and us, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre

for the time being in force, which rules are deemed to be incorporated in this clause. The seat of the arbitration shall be in Singapore. The Tribunal shall consist of three arbitrators. The language of the arbitration shall be English.

## **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 by the customer. 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**