

## SHIV MACHINE TOOLS

### GENERAL TERMS AND CONDITIONS OF SALE OF GOODS FOR ALL CUSTOMERS IN INDIA THROUGH ANY OR ALL BRANCHES / REPRESENTATIVES OF SHIV MACHINE TOOLS OR SHIMATO

#### 1. DEFINITION OF TERMS

- (a) **SELLERS:** mean the Shiv Machine Tools, also referred to as SMT, which term shall include their assigns. Where any sale is by SMT, acting as agents for a disclosed principal, the term "Sellers" shall mean SMT in their capacity only as such agent.
- (b) **BUYERS:** mean the other party to the contract, his/their, heirs, legal representatives and permitted assigns.
- (c) **PRODUCTS:** mean the items of Machine Tools and Accessories for Machine Tools, Cutting Tools, Power tools, Air compressors , Electric Motors, Instruments, Inspection equipments, spares, any engineering item and other materials sold by SMT, in their capacity as manufacturers, Traders or agents.

#### 2. GENERAL

- (a) Buyers will be entitled only to supply of goods expressly specified in the contract and nothing else.
- (b) All quotations are subject to prior sales and are subject to confirmation at the time "Buyers" order is received and to the goods referred to in the quotations being available then.
- (c) An Order placed by a Buyer, shall not become a contract until it has been accepted in writing by Sellers, notwithstanding receipt by Sellers of amount if any, as Security Deposit or otherwise.
- (d) Any additions or alterations to contract terms shall bind parties only if agreed to in writing by SMT.
- (e) The Laws of India will apply to the offer made by SMT and the contract arising there from.
- (f) The Contract is entered into at Chennai, Tamilnadu and the transactions are subject to the jurisdiction of courts relevant to this place only.
- (g) In the event of any clash between the provisions of these General conditions of sale and the Buyers conditions of Purchase if any, the former shall prevail.
- (h) Any addition or alteration to any Purchase Order received by SMT shall be subject to confirmation by SMT.
- (i) The specifications offered in the catalogues are for reference only and in an effort for constant improvement the specifications are likely to change, might change / have a difference in the actual machine when supplied, No replacement will be given due to any such reasons.
- (j) Machines when supplied may have some rust (due to non use / dryness of oil / grease etc. / shipping / transportation / loading / unloading / acceptable scratches marks in the machine and this should not be treated as damages in the machine/s.
- (k) Certain technical, technological, manufacturing, production process, procedures, programs etc followed are as per International / Specific country of manufacturing standards and cannot be compared or referred to technical, technological, manufacturing, production process, procedures, programs etc used in India.
- (l) If buyers do not pay dues for the contracted goods within expiry of time stipulated for such payment, or if Buyers cancel the contract or any portion thereof, or do not arrange to remove the goods when they are ready or do not abide by contract terms, SMT will be entitled, without prejudice to all other rights including right for damages as follows:
  - i. To rescind the contract / order either in its entirety or in respect of any lot of the goods that may be undelivered and to treat advance, if any paid by the Buyers as forfeited or:
  - ii. To resell the goods or any lot thereof in India or abroad at SMT's option, either by private contractor by Public Auction and to recover from Buyers the contract

price and all other dues less the net proceeds of such resale remaining after deducting there from:  
-Storage Insurance and other charges incurred.  
-A reselling commission of 5% on such resale value.

- iii. Without reselling the goods, to recover from Buyer's contract price and other dues and damages.
- (m) High seas sale transactions can or will be offered only if the buyer has valid Import export code (IE CODE).
- (n) In case the buyer fails to provide the documentation required for High seas sale on time as per the rules and regulations, the transaction will be converted into a normal taxable transaction and the taxes will be to the buyer's account.

### **3. PRICE**

- (a) The Price of SMT's products indicated in the quotations accompanying these Terms and Conditions of sale, is payable in Chennai.
- (b) Any payment received as advance earnest money or security deposit along with the order from Buyers, is accepted by SMT without any liability to pay interest and is liable to be forfeited without prejudice to Seller's other rights in case Buyers cancel the order or portion thereof or do not abide by the terms of contract.
- (c) Contract price does not include Excise, Octroi, or other Duties, taxes on Sale/ Purchase, assessments levies, additional expenses occasioned by causes beyond Seller's control including statutory impositions or by force majeure. All such amounts (or all sellers' option, a deposit towards the same) shall be paid by the buyers, on Demand.
- (d) Buyers registered under the Central Sale Tax Act are advised to send Sales Tax declaration form "C" or "D" in Duplicate, complete in all respects and duly signed by the Buyer along with their Purchase Order, in order to charge the concessional rates applicable in SMT's Invoices at the time of supply. In the absence of the declaration forms as above mentioned, SMT will charge Tax at full rates only. In case of non-supply of C form or any other form to be supplied by the buyer to SMT and due to which if SMT has to pay any penalty, tax difference or additional taxes to the department, the same will be collected from the buyer by SMT on demand notice with interest.
- (e) Prices quoted by SMT are based on their current costs of production/ Purchase. Unless it is specifically agreed to otherwise, the prices are subject to amendment up to the time of delivery and any order received by SMT is therefore accepted on the clear understanding that the buyers agree to pay on demand, price enhancement, if any, as aforesaid.
- (f) If any amount collected by Sellers from Buyers as or towards tax or other levies on sale is paid by Sellers to Government, any subsequent claim of refund of such taxes or levies can be re-paid to buyers, only on actual receipt of refund of the amount by the seller from the Government or such of its delegated agencies.
- (g) The standard price validity is to a maximum of 15 days unless specified in the quotation or given by SMT in writing.
- (h) F.O.R DESTINATION / FREE DELIVERY TERMS : Where SMT / SHIMATO / their representatives' give the offer of F.O.R Destination / Free door delivery to the customer, this means that the machine/s will / would be loaded on the vehicle/s and the freight paid. No other charges or amounts will be paid by SMT / SHIMATO / or their representatives'. SMT will not be responsible for any damages during transportation and NO COMPENSATION will be offered. The buyer will have to insure the goods and claim with the insurance company. SMT will offer the spares, service personnel and any other item as may be required for the damaged machine or part at extra cost only.

Octroi / Entry tax / Check post related issues etc are only to buyer's account and SMT / SHIMATO / their representatives' will no way take responsibility or pay any related charges even in case of the offer being F.O.R Destination. In case of any delays in taking delivery of the machines from Check post / Octroi / entry taxes etc and if there are any additional transportation or halting charges due to any reasons will be to buyer's account only.

#### **4. PAYMENT**

- (a) Unless it is specifically agreed to otherwise in writing by SMT, standard terms of Payment stipulated by the sellers are as follows: “ 1/3 value of the order as advance with the order and the balance 2/3 against proforma invoice before the ordered item leaves SMT's works/ warehouse in Chennai, Manufacturer's factory in India, China or elsewhere by Demand Draft payable at Chennai”. These terms of payment shall be strict and shall not vary, irrespective of whether the products are subject to inspection and approval by the Buyer either prior to dispatch from SMT or on receipt by the Buyer.
- (b) The Time of payment is the essence of the contract. The balance payment in the case of any despatches must be cleared by Buyers within 15 days of date of proforma invoice, failing which interest at the prevailing rates for over drafts, will be payable by buyer on demand, on all outstandings from the date of default. In other cases such interest shall be charged to Buyers from the day the goods are kept ready, awaiting Payment or Buyer's inspection or Buyer's dispatch instructions, with payment in full.
- (c) All Bank charges, Demurrages/ wharf ages on account of delay in retirement of dispatch documents, or delay in taking delivery of goods, should be borne by Buyers.
- (d) Incase of High seas sale transactions the payment terms will be 40% advance and balance 60% within 10 days of our issue of proforma for payment. Any Delay in payments if any will result in delay of shipments and resultant demurrages, container holding charges, additional port charges, warehousing charges, re-loading, loading and transportation charges at actual will be charged to the buyer's account.

#### **5. INSPECTION**

Unless otherwise instructed in writing by Buyers and accepted by SMT, inspection of SMT's staff as per test certificate issued by SMT/ its Principals will be binding on Buyers. Inspection by buyers, if necessary, will be done at SMT's works/ warehouse only and the acceptance of SMT's products by the Buyer's representative after such inspection will be final and conclusive.

#### **6. DELIVERY:**

Deliveries indicated in our quotations are subject to prior sale and confirmation by SMT. SMT's observance of Delivery commitments is conditional upon the strict fulfillment of the contractual obligations of the Buyers, particularly the conditions of payment terms and only when all the details of order places have been technically and commercially cleared fully to the satisfaction of SMT.

- (a) SMT will Endeavour to keep to the delivery schedule which is based on current sourcing programme but will accept no liability for failure to do so. Delay in the delivery shall not render the contract voidable at the instance of the Buyer. In no case shall buyer be entitled to withhold the balance payment or reject goods on account of delay in delivery.
- (b) SMT shall have the option of delivering the goods contracted in one lot or several lots, and when despatches are affected in several lots, bills will be made out by SMT representing the proportionate process of each lot and this will not be disputed by Buyers. Buyers will not cancel the contract or claim any compensation whether by way of liquidated damages or as penalty for delay in delivery or refuse to accept delivery of goods on the ground of delay, if any, in delivery. In any event SMT shall not be liable for any consequential damages.
- (c) If delivery of any product is delayed because of the late receipt of imported items the consequential delay in delivery shall be ignored by the Buyers and the Prices ruling at the time of dispatch after receipt of the imported items will be accepted.
- (d) In case the buyer fails to take delivery of the machine on time either from India / Overseas i.e. if the machines are ready in Manufacturer's factory in India / overseas or at our Warehouse anywhere in India, all additional charges such as bank interest, warehouse charges, loading, unloading charges, foreign currency fluctuations, additional changes in duties, taxes or any other levies etc will be to the buyer's account. This will be decided only at the discretion of SMT / SHIMATO.

#### **7. LIABILITY**

Liabilities/ risks will pass to the buyers immediately upon dispatch/ delivery of goods from SMT works/ warehouse.

## **8. SHORTAGE**

Wherever packing cases are received in damaged condition and damages to the product are suspected, the Buyers shall insist upon the Carriers to give open delivery and obtain necessary certificates of damage and lodge complaint with Carriers/Insurance companies and claim the damages direct, under advice to Sellers. SMT's responsibility ceases after the products leave their works or when handed over to Transport Carriers at the dispatching station against RR/GC Note and SMT will not therefore be responsible for any loss, damage, breakages, etc., in transit. Shortages, if any noticed in consignments received without any external damage to any containers or cases and where leakages or pilferages are not possible, shall be notified by Buyers to SMT in writing within 7 (Seven) days from the day of arrival of goods at destination ; in default there of SMT shall not be liable for any shortages.

## **9. INSURANCE**

Unless otherwise mutually agreed to in advance in writing by SMT, SMT will dispatch its products uninsured to Buyers at Carriers risk. If Carriers do not accept transit risk, the risk will be that of Buyers. SMT's responsibility ceases as the consignment is handed over in good condition to the Railways or the Transport Carriers and a receipt is obtained for it. SMT will not be responsible after entrusting the consignment to the Carriers for any loss, damage, breakage, etc., during transit. SMT will advice the buyers by telex, telegram or letter about the dispatch particulars of the goods for necessary insurance coverage by the Buyers or the consignees at their end and the entire process of claim will have to be handled by the Buyers. Even if the Insurance is arranged by SMT at the request of Buyers, the entire process of claim with the underwriter will have to be initiated and processed by the Buyers. SMT will accept no responsibility in these matters.

## **10. GUARANTEE**

- (a) All products sold by SMT are guaranteed for a period of twelve calendar months from the date of dispatch of the goods by them and the sellers will be responsible for any defect that may develop under proper use, if proved to arising from faulty materials, design, or workmanship and the Sellers undertake to remedy such defects at their own cost. If it becomes necessary to replace or renew any defective part, such replacement, renewal shall be made without any extra cost to the Buyers. The Guarantee however does not cover or extend to:
1. Damages and defects caused during transit from Seller's works to Buyer's place or during internal shifts at the Buyer's place or from the buyer's place to any other place.
  2. If the products are put to any use other than those for which they are intended.
  3. If the products are used by unauthorized persons which term shall include the Buyer or his workmen or other person or representatives whether in the regular employment of the Buyer or not, who are not trained or competent to operate or use the products.
  4. If the products are not used by the Buyer or his authorized men with sufficient care and caution.
  5. If the products have been resold by the buyers.
  6. Natural wear and tear.
  7. Damages and defects arising out or natural wear and tear of any or all parts of the guaranteed items, or any damage due to use of lubricants not prescribed by the makers, or ineffective or insufficient care and maintenance taken by the Buyer in the course of operation of the equipments supplied.
  8. Damages and defects caused by external circumstances like Acts of Gods, faulty power supply, etc.,
- (b) The above guarantee by SMT will be (inclusive of any service obligations offered) valid subject to the terms of payment being punctually compiled with the Buyers.
- (c) Guarantee, given by SMT does not, in any case extends to consequential damages, suffered by a buyer and does not cover bought out parts or accessories fitted or supplied with SMT's products.

## **11. CANCELLATION**

No order embodying cancellation or penalty clause can be accepted by SMT. In the event of cancellation of an order after payment of advance by the Buyers, SMT reserves the right to forfeit the advance.

## 12. FORCE MAJEURE

SMT shall not be liable for damages or for any delay in performance, due to circumstances beyond its control, including, without limiting or affecting the generality of the foregoing, any priority system established by the Government of India, fire, floods, storms, earthquake, explosions and other acts of God, strikes, lockouts at works in India or abroad, labour disturbances, go-slow tactics, work-to-rule, lay-off, civil strike, insurrection, restriction on power supply, shortage of materials, war hostilities, acts of public enemy, riots, sabotage, lack of transportation, stoppage of railways or other carriers or accidents during transit in and or on high seas, or by capture, seizure, detention or blockade or other consequences of war and failure of performance of sub-contractors and /or suppliers. Failure of SMT to perform, for reasons aforesaid, shall not be grounds for cancellation of orders, but the delivery date shall be extended suitably. SMT shall not be liable for loss of use or any damage direct, indirect or consequential, resulting from delivery delays, arising from causes explained herein above.

## 13. OWNERSHIP

The property in the goods shall vest in the Buyers on the appropriation of the goods to the Buyer's purchase order duly accepted by sellers, and the Buyers are informed of the same. Until the goods are fully paid for, the Buyers agree that the goods shall be subject to a charge, or hypothecation in favour of SMT by way of security for their outstanding contract dues if any, and no creditor of the buyer will be entitled to take them in execution nor will the assignee, receiver or liquidator of the Buyers have any claim over them except subject to the said paramount charge in favour of SMT for their outstanding contract dues. In case of default in payment of the sellers dues or any part or installment thereof, SMT will have the right to enter upon the premises where the contract goods, are lying or installed and take physical possession of the contracted goods from the Buyers without prejudice, to SMT's other right and remedies under the contract and Buyers hereby agree to give Sellers the necessary lease and license for the same in addition to the reimbursement of expenditure incurred by SMT in this regard. SMT will have right of resale at the risk of Buyers in the event of undue delay in payment schedule or issue of dispatch/delivery instructions for the goods by the Buyers or his assigned nominees.

## 14. STORAGE

In the event of non availability of transport for the dispatch of item ordered by Buyers, the Buyers shall either arrange for storage of the goods at his own cost or make alternative arrangements for the carriage there of within fourteen days of the intimation given by SMT of the non-availability of transport. Subject to the availability of storage space, SMT may at the cost and risk of the Buyers, store the ordered items in its godown on payments by the buyers of the storage charge at actual of the product ordered by Buyers up to 30 (Ninety) days from the date the product is kept ready for inspection or despatch and such storage charges shall be paid by the Buyer before taking delivery of the product. Where the Buyers fail to take Delivery of the product within 30 (Ninety) Days from the date of intimation about the readiness of the product for any reason, SMT shall be entitled to forfeit the advance if any, paid at time of placement of order and SMT shall have right to sell the product at Buyer's risk and cost as per clause No.16 noted below, and appropriate the proceeds against the dues of the buyer to SMT.

## 15. ERECTION

SMT offers the services of its technicians, at its standard rates applicable at that period of time, for a period of one year from the date of dispatch of its products for erection and demonstration, upon Buyer's express request. Also the Foundation and Electrification up to the machine and any other requisite preparatory work should be completed by the Buyer and the same should be communicated to SMT in writing. Separate Charges for Engineers, technicians per day charges and travelling, boarding / lodging charges will be applicable as per our standard charges as mentioned below.

1. Travelling cost, boarding and lodging cost to be at Buyer's account

### 2. Further charges for MACHINE TOOLS DIVISION INCLUDING SHIMATO DIRECT

Local Service Charges will be at Rs. 2000 nett per installation and Rs. 500 per day for other charges.

Local means at all places where the office of SMT is based and within 100 kms distance from the respective offices.

(per day)	Per Engineer cost (per day)	Other charges
Outstation (between 100 ~ 200 kms from office)	- 2500	1500
Outstation (above 200 kms from office)	- 2500	1500

Maximum time allotted to the buyer will be 3 days per engineer only for above price and in case of any extension, can be done so by SMT only at its discretion.

**3. Further charges for SHEET METAL DIVISION AND CNC MACHINES DIVISION**

Local service charges for installation and commissioning will be at Rs. 25,000/- nett and Rs. 500/- per day per engineer. Local means at all places where the office of SMT is based and within 100 kms distance from the respective offices.

Outstation (between 100 ~ 200 kms from office) will be at Rs. 25,000 nett and Rs. 1,500/- per day per engineer.

Outstation (above 200 kms from office) will be at Rs. 25,000 nett and Rs. 2,500/- per day per engineer.

Maximum time allotted to the buyer will be 3 days per engineer only for above price and in case of any extension, can be done so by SMT only at its discretion.

**16. ALTERATION**

Telegraphic and telephone alterations in relation to quantities or specifications shall not be valid or binding on SMT, unless and until a written confirmation thereof is received by SMT within one week of the date of telephonic or telegraphic alteration made by the Buyer and SMT's acceptance thereof is obtained.

**17. JURISDICTION**

All or any dispute arising between the parties in or in relation to this offer or the order placed by the buyer shall be instituted only in Courts or Tribunals of competent Jurisdiction situation in Chennai, Tamilnadu.

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