

## General Terms of Delivery and Payment

### I. Validity

All offers, contracts, agreements and deliveries are exclusively subject to our Terms of Delivery and Payment printed below. Any modifications made to these terms by the customer that have not been expressly accepted by us in writing shall not be binding, even if we have not expressly rejected them.

To the extent that individual provisions of the contract or of these Terms of Delivery and Payment should prove to be invalid, this shall not affect the remaining provisions. If required, a provision shall be added which approximates as closely as possible the legal commercial intention of the invalid provision.

### II. Offer, Documents, Right to Alter

The scope of the delivery is subject to our written order confirmation. Verbal side agreements, conditions, alterations or additions, whether made in person or by telephone, shall be valid only upon our written confirmation.

Documents related to the offers, such as illustrations, drawings, weight and measurement specifications, are approximations only and shall be considered as such unless expressly declared by us to be binding. We retain ownership of and copyright on cost estimates, drawings and other documents. These may not be made available to third parties. All drawings and other documents relating to offers shall be returned to us upon request or, if the order is not placed with us, shall be returned to us immediately at the expense of the other party.

Alterations to the technical design of the Product ordered are permissible, to the extent that they are reasonably acceptable to the Purchaser and do not materially change the function of such Product.

### Prices and Terms of Payment

All prices quoted are ex works and, with respect to domestic orders, are subject to value-added-tax at the applicable legal rate. The Purchaser shall be invoiced separately for insurance, packaging and customs duties. We may, at our option, invoice such amounts at actual cost or at a flat rate.

If, after acceptance of an order, there is a significant increase in the costs of production upon which our price quotation to the Purchaser was based, we shall be entitled to a reasonable adjustment of our sales price. For the purposes of sentence 1 hereof, a significant increase in the costs of production shall include, but not be limited to, if our suppliers increase the price for the Products or their component parts, if customs duties or other costs of importation increase or, if there is a significant change in the exchange rate to our detriment as compared to that on the date of the order. A price adjustment hereunder shall be reasonable if it is within the scope of the actual increase in costs. Upon the Purchaser's request, we will furnish proof of the increased costs. If a price adjustment results in a cost increase of more than twenty percent (20%) and we do not respond with two (2) weeks to the Purchaser's written request to limit the price adjustment to a maximum of twenty percent (20%), then the Purchaser shall be entitled to rescind the contract.

Unless stated to the contrary, all payments shall be made to our payments office in cash, without any deductions, subject to the following conditions:

- a) for domestic shipments, one-third (1/3) shall be due upon receipt of written order confirmation, with the remaining balance due net cash fifteen (15) days after receipt of the invoice, but at the latest thirty (30) days after delivery;
- b) for foreign shipments, one-third (1/3) shall be due upon placement of the order, with the balance due in the form of a letter of credit. Checks shall be accepted as a valid form of payment only after they have been formally honored.

No other payment terms shall be binding unless expressly outlined in a separate written agreement.

Overdue accounts shall be subject to interest charges at a rate of eight percent (8%) above the base rate, but no less than twelve percent (12%). Interest shall be due and payable immediately. We reserve the right to claim additional damages, just as the Purchaser's has the right to prove that we have not suffered any damages or that the damages suffered are substantially lower than the amounts set forth above. The Purchaser shall receive notice of the effective date for interest calculation purposes.

The Purchaser shall have no right to withhold payment on the basis of a counterclaim, nor to deduct charges related to such counterclaim. The foregoing shall not apply to counterclaims that are uncontested, determined to be legally valid or awaiting judgment.

Should the financial circumstances of the Purchaser deteriorate to the extent that there appears to be a risk of non-payment, we shall be entitled to demand immediate payment. For orders not yet executed, we shall be entitled to demand prepayment or provision of commensurate security.

Partial shipments shall be invoiced separately. The above terms shall be applicable thereto.

### IV. Reservation of Title

We hereby reserve the right of ownership of all machines and articles delivered. Ownership shall be transferred to the Purchaser only after payment has been received in full. In the case of goods obtained from us by the Purchaser in the regular course of business, we retain ownership until all of our claims against the Purchaser arising from such business relationship have been paid in full. This shall also apply where one or all of our claims have been consolidated into one current account and the balance has been drawn and accepted.

The Purchaser is entitled to resell, within the scope of the regular course of business, the Products delivered. In the event of resale, the Purchaser now assigns to us all claims against the end-user or third parties and all associated ancillary rights, which arise as a result of the resale, regardless of whether the Products subject to this reservation of title are sold to such third parties in their original form or after further processing or finishing. The Purchaser shall be authorized to collect such claims even after the assignment. Our right to collect such claims directly shall remain unaffected by the foregoing. We shall not make use of such right so long as the Purchaser fulfills all payment obligations in accordance with the terms laid out herein. We may demand that the Purchaser provide us with details of the claims assigned hereunder, the names of the respective debtors, all information required for collection of such claims, as well as any related documentation and that the respective debtors be notified of such assignment. If the Products are resold along with goods not belonging to us, the claims of the Purchaser against the end-user or third-party purchaser shall be deemed to have been assigned to us in an amount equal to the delivery price agreed upon between the Purchaser and us.

All processing and finishing of the Products subject to this reservation of title shall be carried out on our behalf as manufacturer within the meaning of § 950 of the German Civil Code (Bürgerliches Gesetzbuch), without any corresponding obligation on our part. The processed Products are subject to this reservation of title within the meaning of these terms. If the Products subject to this reservation of title are processed or inseparably combined with goods not belonging to us, we shall be deemed to have acquired co-ownership of the resulting goods in the ratio of the invoice value of the Products subject to this reservation of title to the invoice value of the other goods used at the time of processing and combination. The resulting rights of co-ownership shall be deemed to be Products subject to this reservation of title within the meaning of these terms.

Should our Products be attached to or inseparably combined with other movable goods to form a new

unit and such unit becomes the principale article, then we shall be deemed to have acquired from the Purchaser proportionate ownership, to the extent that the principale article is the property of the Purchaser. For goods resulting from such processing, attachment or combination, the same provisions that govern the Products subject to this reservation of title apply.

The Purchaser may request that we, at our option, release a portion of the security, to the extent that the realizable value of such security exceeds the claims secured by more than ten percent (10%). The Purchaser shall be entitled to such release if the appraised value of the security is equal to one-hundred-fifty percent (150%) of the claims secured therewith.

The Purchaser shall be obligated to properly maintain all machines and other articles still under our ownership, to care for them with businesslike diligence and to identify them as our property with clearly visible markings.

As long as our reservation of title remains in effect, the Purchaser shall be prohibited from making any disposition of the Products, which deviates from the above provisions, without our prior approval. Should the machines and other articles subject to this reservation of title be attached by third parties or otherwise become subject to third-party claims, the Purchaser shall be obligated to inform us accordingly in the fastest possible manner, if possible by telephone or telefax. The Purchaser shall be required to submit to us a certified copy of the attachment proceedings as well as an affidavit identifying the attached articles.

If the Purchaser is in breach of contract, in particular, in default of payment, we shall be entitled to repossess the Products. Any repossession of the Products on our part shall not be considered a rescission of the contract unless expressly declared so by us in writing. The costs of the repossession shall be borne by the Purchaser. We shall be entitled to dispose of any repossessed Products, with the proceeds from the disposition to be applied to the Purchaser's debt after deduction of a reasonable amount for expenses related to such disposition.

For export sales in countries, in which the above-stated reservation of title is not legally binding, we reserve the right to secure our ownership in accordance with the applicable legal provisions of the receiving country. The Purchaser shall be required to assist us in this regard to the extent necessary.

### V. Delivery and Delivery Time

Domestic shipments shall be made ex works. This shall also apply to foreign shipments, to the extent not otherwise agreed.

The Purchaser shall be required to provide us in due time with the official name and address of the place of delivery; we shall assume no responsibility for incorrect deliveries resulting from false information. Scheduled delivery periods and delivery dates are subject to our receipt of complete and punctual deliveries from our suppliers.

Unless otherwise agreed, the delivery period shall commence either on the date of final technical clarification of the contract or the date on which all documents required for processing the order have been received and the deposit paid; the latter of these two dates shall be determinative.

Delivery periods shall be extended by such time period as the Purchaser may be in default with respect to essential contractual obligations, in particular, fulfillment of its payment obligations.

The delivery period shall be reasonably extended – even in the case of default – in the event of force majeure and all unforeseeable events, over which we have no control, occurring after entering into the contract; such extension effective for the duration of the period that performance is hindered. This shall also apply if such circumstances affect our suppliers or their suppliers. The above-circumstances shall include, but not be limited to, governmental action relating to currency and trade policy,

strikes and lockouts, administrative orders or market-related problems with acquisition of materials and goods. We shall inform the Purchaser as quickly as possible of commencement and cessation of such events. The Purchaser shall have the right to require us to provide a declaration, stating whether we wish to rescind the contract or make delivery within a reasonable period of time. If we do not provide such declaration without delay, the Purchaser shall have the right to rescind the contract.

The delivery period shall be deemed to have been met if, at the end of the delivery period, the Products ordered have been shipped from the factory or notification has been given that they are ready for shipment.

To a reasonable extent, we shall be entitled to make partial shipments and, when necessary, supplemental shipments.

#### **VI. Transfer of Risk**

Risk of loss is transferred to the Purchaser with clearance of the shipment for delivery and notification to the Purchaser of its readiness for shipment. This shall also apply if the shipment is delayed due to circumstances beyond our control. If notification of readiness for shipment is not received by the Purchaser, risk of loss is transferred when the Products are handed over to the postal authorities, the transport agent or carrier, but no later than such time as the goods leave the factory grounds. Only upon special request of the Purchaser and at its expense shall the shipment be insured against breakage, transport and fire damage.

The Purchaser shall be responsible for insuring each shipment and shall notify the insurer of our reservation of title, because in the event that we enforce such reservation, we shall claim the full value of the shipment and any damage to the Product during shipment shall be repaired at the expense of the Purchaser.

Any returns of Product shall always be carried out at the expense and risk of the Purchaser.

#### **VIII. Delay in Acceptance of Delivery**

For the duration of the delay in acceptance of delivery, we shall be entitled to store the shipped Products at the expense of the Purchaser. Further, we shall be entitled to have the Products stored with a transport agent. The Purchaser shall be responsible for all costs related to such storage over the entire duration of the delay in acceptance of delivery.

If, at the end of a reasonable extension of time granted the Purchaser, acceptance is refused or the Purchaser declares in advance that it absolutely will not accept delivery of the goods, we shall be entitled to rescind the contract or to demand compensation. As compensation, we shall be entitled to demand a fixed amount of twenty-five percent (25%) of the agreed purchase price. We also reserve the right to claim higher damages, just as the Purchaser is entitled to prove that no damages were actually incurred or that the damages incurred were substantially less than the fixed amount claimed.

#### **VIII. Installation**

We recommend that the machines and instruments be installed by our experienced service engineers. For such installations, in addition to travel expenses and freight charges for tools, we calculate costs at the rates set out in our "Brochure Concerning Services Performed by our Engineers and Assembly Personnel".

Should there be a delay in installation or commissioning on-site, through no fault of ours, the Purchaser shall bear all costs of the delay and the costs of any future travel required as a result of the delay.

Installation and commissioning shall otherwise be governed by the terms agreed upon in accordance with our "Brochure Concerning Services Performed by our Engineers and Assembly Personnel".

The Purchaser shall, in all cases, follow the instructions for installation and operation found in the NETZSCH Operating Instructions.

#### **IX. Claims Due to Defects**

The Purchaser shall inspect the Products for completeness, defects and qualities immediately upon receipt. The Purchaser shall provide us with written notice of errors in quantity shipped and obvious defects immediately, or within seven (7) business days after receipt of the Products at the latest. Concealed defects shall be reported to us in writing within the same notice period, commencing on the date of discovery. The warranty shall not apply to defects not reported within this notice period.

On the basis of public statements made through us, the manufacturer or its agents, we shall accept no liability, if we were not aware of the statements and had no reason to be aware of them, if the statements had already been rectified at the time of the decision to purchase or to the extent that the Purchaser is unable to prove that the statements influenced its decision to purchase.

No liability shall be accepted – except in the event that we are at fault – for unsuitable or improper use or use not in compliance with instructions, incorrect installation or commissioning by the Purchaser or third parties, ordinary wear and tear, incorrect or negligent handling, improper means of operation, substituted materials, wear and tear, defective construction, unsuitable building site, chemical, electrochemical or electrical effects. The first sentence shall also apply in so far as the NETZSCH Operating Instructions were not followed during installation or operation. We shall also accept no liability for defects, which only insignificantly reduce the value or suitability of the product. An insignificant defect shall be deemed to exist in particular, if the defect soon disappears or corrects itself or if it can be corrected by the Purchaser with minimal effort.

Should the Purchaser demand re-performance of the contract due to a defect, we shall have the option to replace the Product or to repair the defect. If re-performance of the contract fails, the right to reduce the purchase price or to rescind the contract remains unaffected.

All claims for compensation and reimbursement of expenses remain unaffected by the foregoing, to the extent they are not excluded by Clause XI.

The Purchaser shall, after communication with us, allow the required time and opportunity to undertake all repairs and replace any parts which we, in our reasonable discretion, consider necessary: otherwise we shall be released from liability for defects. The Purchaser shall have no right to have possible defects repaired by third parties at our expense without our approval or to claim any price reduction in respect thereof.

We shall have title to all parts replaced pursuant to our warranty obligations. The warranty provisions set forth herein shall apply to all replaced parts. All claims due to defects come under the statute of limitations within one year of delivery of the Product. If and to the extent that we are required to perform assembly or installation, the warranty period shall commence on the date the Product is put into operation. However, if installation or start-up does not occur, through no fault of our own, the warranty period shall remain as set forth in sentence 1 hereof. The warranty period shall be extended by the duration of any repair work that should be required.

#### **X. Seller's Right to Rescind the Contract**

In the event of force majeure or other unforeseen events beyond our control (Clause V.6), we are entitled to rescind the contract, insofar as these events considerably change the economic significance or substance of the respective contractual obligations or have a significant effect on our business or make it subsequently impossible to perform the contract as agreed. Should we make use of this right of rescission, the Purchaser shall be notified without delay as soon as the consequences of the event have been determined. The right of rescission shall

not be affected by an initial decision to notify the Purchaser of an extension of the delivery period or by an agreement between the parties to extend the delivery period.

We shall also have the right to rescind the contract if production costs increase by twenty percent (20%) or more after entering into the contract and the Purchaser has not agreed to accept a twenty percent (20%) price adjustment (Clause III.2) within two (2) weeks of notification. The same applies if, for reasons beyond our control, we are not supplied by our contractors (Clause V.1).

We shall also have the right to rescind the contract if the Purchaser is in default of payment and the Purchaser has misrepresented his credit-worthiness, has ceased payments or has provided an affidavit disclosing its assets and liabilities, or a petition for insolvency has been filed. Our legal rights remain unaffected should the Purchaser default in payment.

In the event the contract is rescinded or the delivered Products are repossessed, we are entitled to compensation for expenditures, use of Products delivered and reduction in value of the Products. At our option, the claim for compensation may be calculated according to actual costs or set at a fixed rate of fifteen percent (15%) of the purchase price. In the case of fixed-rate compensation, the Purchaser retains the right to prove that we are entitled to no compensation or to compensation only in a lesser amount.

#### **XI. General Limitation of Liability**

Claims for damages, irrespective of legal justification, are excluded unless the claim is established on the basis of intentional conduct or gross negligence on our part or the part of our agents or the claim for damages results from a breach of obligations fundamental to the contract. Nothing in the foregoing shall affect liability for damages resulting from injury to life, body or health, or liability pursuant to the relevant product liability legislation.

#### **XII. Court of Jurisdiction**

All claims arising from the contract shall be filed with the court having jurisdiction over the registered headquarters of our company. We shall also be entitled to file claims with the court having jurisdiction over the registered headquarters of the Purchaser.

#### **XIII. Applicable Law**

All contractual provisions shall be governed exclusively by the law of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

#### **XIV. General Terms**

Side agreements, conditions, alterations or supplements shall be valid only if agreed upon in writing. To the extent not otherwise provided for in these Terms of Delivery and Payment or the contract, the Purchaser shall not be entitled to assign to third parties any rights granted under the contract or these Terms of Delivery and Payment without our prior approval.

The German version of these Terms of Delivery and Payment are binding for the contract. The foregoing shall apply regardless of whether a translation of the Terms of Delivery and Payment into another language was used in addition to the German language version.

**Effective as of 1/2002**

NETZSCH-Gerätebau GmbH  
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