

Terms and Conditions of Purchase for the NETZSCH Group (Germany)

I. Scope

1. The conditions of purchase below shall be exclusively applicable to orders. The Supplier's terms and conditions deviating from or supplementing our purchase conditions shall be non-binding on the Purchaser even if the Purchaser fails to object or if the Supplier states that it is only willing to supply under its terms and conditions. Even if supplies or services are accepted without express objection, this shall not be deemed acknowledgement of, or consent to, Supplier's terms and conditions. If the Supplier is not in agreement with the above handling, it must immediately point this out in a special letter. We reserve the right to rescind the contract in such case.
2. Deviations from these conditions shall require the express written consent of the Purchaser. Confirmation or execution of the order without any objections shall be deemed acknowledgement of these Terms and Conditions of Purchase.
3. These Terms and Conditions of Purchase shall apply to Erich NETZSCH GmbH & Co. Holding KG as well as its direct and indirect German subsidiaries, particularly NETZSCH Mohnpumpen GmbH, Selb/Waldkraiburg, NETZSCH-Feinmahltechnik GmbH, Selb, NETZSCH-Gerätebau GmbH, Selb, NETZSCH-CONDUX Mahltechnik GmbH, Hanau, NETZSCH Oilfield Products GmbH, Selb, NETZSCH Werbe- und Service-GmbH, Selb and RPV Vermögensverwaltungs-GmbH, Selb.

II. Conclusion of Contract, Amendments

1. Enquiries and offers shall always be free of charge for and non-binding on the Purchaser, otherwise relevant notification must be made prior to preparation.
2. Orders shall require written form. Oral agreements shall only be binding if they are confirmed in writing by the Purchaser. The order placed in writing shall be solely definitive relating to the scope and type of delivery. The Purchaser must be issued with an order confirmation without delay subsequent to receipt of such order.
3. If changes are necessary, notably in the manner of composing the processed material or in the execution of the design compared with former similar supplies and services or compared with the placed order, they must be notified to the Purchaser prior to commencement of fabrication or, in the case of amendments to be subsequently carried out, prior to their execution. They shall require written confirmation. The Purchaser shall not be obligated to examine supplies and services for similarity subsequent to receipt.

III. Delivery, Delivery Documentation and Passage of Risk

1. Deliveries shall be effected at the Supplier's costs, free of expenses, to the stipulated shipping address unless otherwise expressly agreed. Unless otherwise requested by the Purchaser, the Supplier must issue the forwarding advice and delivery note as well as the invoices in duplicate and send them separately from the goods on the day of despatch. The forwarding advice, delivery note and invoice must contain our reference number, the departmental comment and the item code/material number. If this information is missing, the Purchaser shall not be responsible for delays in processing and settlement.
2. The risk shall only pass to the Purchaser at acceptance at the shipping address.

IV. Delivery Dates, Delay in Delivery

1. The agreed delivery dates shall be binding. Receipt of the goods at the stipulated shipping address shall be definitive for determining whether or not the delivery date has been observed. Information on delivery times without a delivery date shall not be expedient for the Purchaser because they fail to constitute a scheduling basis. The Purchaser shall therefore request information on the exact delivery date.
2. The delivery period shall only be reasonably extended if the Supplier is obstructed in the performance of its obligations due to *force majeure*. As soon as the Supplier can see that it will be unable to comply with the agreed delivery period or the agreed delivery date, it must inform the Purchaser in writing without delay of the grounds and the anticipated duration of the delay. If the Supplier is in breach of its duty to furnish information, it must compensate the Purchaser for the resulting losses incurred. In all other respects, the Purchaser shall reserve all rights concerning the delay.
3. In the event of a delay in delivery, the Purchaser may rescind the contract after fruitless lapse of an additional period. There shall be no requirement to set a deadline if the Supplier seriously and conclusively refuses performance, if compliance with the delivery period is material for us (business to be settled on a fixed date) or if - weighing up mutual interests - other circumstances are shown to exist that justify immediate rescission. In addition, the Purchaser may request compensa-

tion if the Supplier fails to provide verification to the former that it is not responsible for overrun of the delivery period. The Purchaser may keep partial deliveries and in all other respects rescind the contract. No waiver of possible compensation claims shall be deemed in the assumption of delayed delivery or performance.

V. Fixed Compensation

In the event of delay on the part of the Purchaser, for each week of too-late delivery, the Purchaser shall be entitled to lump-sum compensation in the amount of 1 per cent of the purchase price per week, at the maximum 5 per cent of the total price. The Supplier shall be free to prove that no losses were incurred or not incurred in that amount. Further-reaching claims of the Purchaser on grounds of the delay in delivery shall remain unaffected, in particular, the assertion of a compensation claim shall not be ruled out by the lump-sum compensation if the compensation claims exceeds the amount of the lump-sum compensation. The lump-sum compensation will be set off against a possible compensation claim. The Purchaser may then also request the lump-sum compensation if it fails to expressly reserve the right to it when accepting the goods.

VI. Title

1. The Supplier shall be obligated to transfer title in the contractual goods to the Purchaser at handover, at the latest upon payment of the relevant delivery. Any extension or enlargement of possible reservation of title declared by the Supplier shall be contrary to the contract and shall obligate the Supplier to compensation.
2. The Purchaser shall always exclusively undertake to finish and process the delivered goods for itself, if applicable, also in the event of a reservation of title on the part of the Supplier.

VII. Prices and Terms of Payment

1. The prices shall be binding, delivered at our premises and shall include packaging, transport and insurance costs. Payment deadlines at the Purchaser's choice - within 30 days after receipt of invoice with 3 per cent cash discount, within 60 days after receipt of invoice with 2 per cent cash discount or net after 90 days.
2. Payments shall be effected at the Purchaser's choice by sending a crossed cheque or by transfer to Supplier's bank or postal account. The post office or bank outgoing stamp shall be definitive for timely payment.
3. As soon as and if a claim of Supplier's is juxtaposed against a due counterclaim of Purchaser's, the Purchaser may carry out set off, taking account of the cash discounts pursuant to Clause 1. Such set-off shall bring about termination of the mutual claims in the amount of the set-off and, if applicable, of the cash amount.
4. We shall be entitled to rights of retention in the statutory amount.

VIII. Warranty

1. In accordance with our customary practice, we shall examine the incoming goods for defects. If a defect is revealed during such examination or if the goods are not in accordance with the ordered goods, we will notify thereof within two weeks of acceptance. To protect our rights, it shall suffice if we have sent the notification of defects within this deadline. If a defect is revealed later, e.g. during processing or usage, we shall notify thereof within a period of two weeks from discovery. To protect our rights, it shall suffice if we have sent the notification of defects to the Supplier within this deadline.
2. Claims due to defects shall become statute-barred three years after delivery unless a longer limitation period is applicable by virtue of law. If the goods have not been put in use by the Purchaser within the aforesaid warranty period, the Purchaser may still exercise its warranty rights within two months after having been put in use.
3. If the products supplied are defective, the Purchaser may demand subsequent performance or substitute delivery at its choice. If the Supplier fails to comply with the reasonable deadline he has been set or if subsequent remedy has failed or is unreasonable, the Purchaser shall be entitled to replace defective parts at Supplier's costs, remedy them, rescind the contract or reduce the purchase price. The Purchaser's claims for compensation and under the German Product Liability Act shall remain unaffected.
4. During subsequent performance carried out by the Supplier or during subsequent remedy carried out by the Purchaser pursuant to (3) second sentence, lapse of the warranty period shall be retarded.

IX. Assignment

Claims of the Supplier against the Purchaser may only be assigned with the consent of the Purchaser.

X. Liability

1. In cases of breach of contractual, statutory or regulatory provisions, the Supplier shall be responsible for intent and any kind of negligence, also in terms of its vicarious agents.
2. If the Supplier is responsible for product damage, it shall be obliged to release the Purchaser from compensation claims of third parties to the extent that the cause is in the Supplier's sphere of control and organisation and that it, itself, is liable vis-à-vis third parties.

XI. Industrial Property Rights

1. The Supplier shall be liable relating to non-infringement of industrial property rights through shipment and use of the purchased goods.
2. If this obligation is breached, the Purchaser shall be entitled to the statutory warranty rights. If the Purchaser asserts claims for compensation, the Supplier shall be obligated towards the Purchaser, notably to indemnify the latter from claims of third parties unless it proves that it is not responsible for the breach of duty.

XII. Delivery in Accordance with Information, Drawings and Models of the Purchaser

1. If the ordered goods are manufactured in accordance with information, drawings or models provided by the Purchaser, the following shall be applicable: The goods ordered by the Purchaser and the special facilities, matrices and the like used for their manufacture may only be used for the processing of our order and may not be delivered to third parties. This shall also be applicable if the Supplier has procured the special facilities, matrices and the like at its own costs or if the Purchaser has refused acceptance of the goods due to delayed or defective delivery or if the Purchaser refrains from further orders despite proper delivery. If improvements at the Supplier's originate in connection with execution of the orders, the Purchaser shall have a costless, non-exclusive right of use for commercial use of the object of improvement and any relevant property rights (Clause 1 shall also be applicable in this case). The right of disposition relating to contract-linked production facilities and tooling, notably concerning joint use, change or destruction, shall remain exclusively with the Purchaser. Models, patterns, drawings or technical documentation of any kind shall remain the property of the Purchaser and must be kept secret. They may only be used for the processing of our order and by wish of the Purchaser must be returned together with any copies made.
2. Material provided by the Purchaser shall remain the property of the Purchaser.

XIII. Place of Performance, Place of Jurisdiction, Applicable Law

1. The place of performance for all deliveries and services shall be at our registered seat, unless a different place to which the goods are to be delivered is agreed.
2. The court at our registered seat shall be solely competent for all disputes arising from and in connection with this contract. However, we shall also be entitled to file claim at any other legal place of jurisdiction.
3. The law of the Federal Republic of Germany shall be applicable. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be ruled out.

XIV. Miscellaneous

1. If one or more than one provision of these Terms and Conditions of Purchase should be or become invalid, this shall not affect the validity of the other provisions.
2. These Terms and Conditions of Purchase in their German version shall be definitive unless a different language is the contractual language. This shall also be applicable if a translation of the Terms and Conditions of Purchase into a different language was used in addition to the German-language conditions.

Effective as of March 1, 2011