

General Conditions of Supply for Individual Parts and Spare Parts



1. RECOGNITION OF THE CONDITIONS OF SUPPLY

The supply of any parts, including movable parts to be manufactured by NETSTAL Maschinen AG ("Supplier"), is always based exclusively on the present General Conditions of Supply described hereafter. To be effective, any and all agreements between the ordering party ("Customer") and the Supplier outside the present General Conditions of Supply require the written confirmation of the Supplier. If any individual clauses of the present General Conditions of Supply are rendered invalid by other explicit written agreements between Supplier and Customer, the validity of the remaining conditions shall be unaffected. Other provisions, in particular any general terms of business of the Customer, shall be invalid irrespective of whether or not they were expressly rejected by the Supplier. The present Conditions of Supply shall also be valid if the Supplier renders a service unreservedly in spite of being aware of other terms of business.

2. QUOTATIONS

- 2.1 The quotations of the Supplier shall be valid for 30 (thirty) days from the date of issue, whereby an intermediate sale remains reserved. Advisory services of the Supplier prior to the placing of an order shall be remunerated at the usual rates. The Supplier reserves its property and copyrights in its cost estimates, drawings, illustrations, samples, weight and dimension information as well as other documents, including those in electronic form. All such information may only be made available to thirds with the Supplier's formal approval.
- 2.2 Technical descriptions as well as all weight and dimension information of the quotation are only approximate and only binding on the supplier insofar as this has been expressly declared by the Supplier.

3. SCOPE OF SUPPLY

- 3.1 Of relevance to the scope of supply is the Supplier's written Acknowledgement of Order exclusively. This applies also to any protective devices.
- 3.2 The Supplier is entitled to effect part-deliveries provided that their acceptance can reasonably be expected from the Customer. This in particular when the delivery of the remaining ordered goods is guaranteed and the Customer does not incur a substantial extra effort or substantial additional costs as a result of the part-deliveries (unless the Supplier declares its readiness to bear such extra costs). Every part-delivery may be invoiced separately.

4. PRICES

- 4.1 Unless agreed otherwise, the prices are "ex works" Näfels (EXW Incoterms 2010) or from another address stated by the Supplier. A possibly payable Value Added Tax (VAT) shall be calculated on the basis of the legal rate applicable at the time and shall be paid by the Customer.
- 4.2 Whether local or export transactions are concerned, the packaging will be charged separately and become the property of the Customer. Insurance, if applicable, will also be charged separately.
- 4.3 The Supplier can charge the Customer with extra costs arising from the latter's requests for modifications. This also if the Supplier agreed to such requests for modification, provided that beforehand he drew the Customer's attention to the fact that extra costs would arise or that the Customer had to reasonably expect such extra costs to arise.

5. PAYMENTS

- 5.1 Unless agreed otherwise, payments shall be made net to the account of the Supplier immediately after delivery of the goods and receipt of the invoice. The invoice shall be deemed to have been received on the third day at the latest from the date it was posted by the Supplier.
- 5.2 Date of payment shall always be the day on which the amount in question is in fact available to the Supplier.
- 5.3 In case of delayed payment the Supplier shall be entitled, without prior reminder, to charge interest on arrears at the rate of at least four percentage points above the then applicable 3-months CHF LIBOR. Claims for further damages remain reserved.

6. COMPENSATION AND LIEN

The Customer has a right of withholding payments or of compensating with counterclaims only to the extent that its counterclaims are undisputed or found to be valid in law. The Customer exercising a lien is also excluded insofar as the counterclaims are not based on the same contractual relationship.

7. RESERVATION OF PROPERTY

- 7.1 The Supplier shall remain the owner of its entire supplies until payment has been received in full as per contract. The Customer undertakes to cooperate in measures required for the protection of the Supplier's property. By signing the contract, in particular, the Customer authorizes the Supplier to register the reservation of property or apply for registration of the reservation of property at the cost of the Customer, in public registers, books or such items in compliance with the laws of the country concerned and to attend to all formalities in this context.
- 7.2 For the duration of the reservation of property the Customer shall service and maintain the supplied goods at its costs and insure them against theft, breakage, fire, water and other risks, with the Supplier being the beneficiary. Furthermore, the Customer shall take all measures ensuring that the Supplier's property rights are neither impaired nor cancelled.

8. PASSAGE OF RISK

Unless agreed otherwise, the risk passes onto the Customer when the subject-matter of the delivery has left the Supplier's works, and this also in case of part-deliveries or if the Supplier has exceptionally assumed the responsibility for other services such as e.g. bearing of the costs of despatch, delivery and assembly. The risk passes on to the Customer also if the Customer is in arrears with reception.

9. NOTIFICATION OF DEFECTS

- 9.1 The Customer's rights in case of defects as per clause 13 hereafter are subject to the Customer examining the delivered goods on receipt and reporting any defects correctly. Complaints shall be made in writing and specify the nature of the defect. Complaints about incomplete delivery and other identifiable deficiencies shall be reported to the Supplier in writing and immediately, but at the latest within five working days from receipt of a consignment. Hidden deficiencies shall also be reported immediately, but within five days at the latest from their detection. Receipt of the subject-matter of the delivery shall not be refused due to unimportant deficiencies. Claims based on belatedly reported deficiencies are excluded.
- 9.2 If an acceptance is agreed, the following shall apply in deviation from clause 9.1 above: The Customer is obliged to accept delivery as per contract provided that acceptance is not excluded on account of the condition of the goods. The Customer may not refuse acceptance because of minor defects, in particular defects which do not impair the functionality of the goods to a major extent. Acceptance shall also be deemed to have taken place if, although obliged to do so, the Customer fails to accept the goods within a reasonable period specified by the Supplier. Unless the Supplier has specified another period, five working days shall be deemed to be reasonable.
- 9.3 If, in deviation from clause 4.1, the Supplier has at the Customer's request commissioned a third („Forwarder“) for the delivery of the goods, the Customer shall record any detectable transport damage in the presence of the Forwarder and obtain the Forwarder's written confirmation. If a transport damage was not detectable on the surface at the time of delivery, the Customer shall report it to the Forwarder in writing immediately upon detection, but within seven days from delivery at the latest. The Customer shall inform the Supplier of the recorded transport damage and of the report to the Forwarder immediately and in writing. Any claims based on improperly recorded or belatedly reported transport damage are excluded.
- 9.4 The costs of examination of the subject-matter of the delivery shall be borne by the Customer.

10. DELIVERY TIME

- 10.1 Unless a firm and binding delivery time was agreed in the individual case, the delivery times stated in the quotation are not binding. Prerequisite for

an agreed and binding delivery time to be complied with by the Supplier is that all commercial and technical questions between the contractual parties are fully and finally clarified at the time the delivery time is agreed upon and that the Customer has met all its obligations in good time. If this is not the case or if changes to the goods to be supplied are subsequently agreed upon, the delivery time shall be reasonably extended. This does not apply insofar as the Supplier alone is responsible for the delay. Where supplies without binding delivery time are concerned, the Supplier shall not be in arrears before the unsuccessful expiry of a reasonable delivery time specified by the Customer. The Customer shall not specify the expiry of such a period for an earlier date than four weeks from the original, not binding delivery time.

- 10.2 The Supplier shall not be in arrears if its own suppliers fail to deliver correctly or punctually for reasons outside the Supplier's powers.
- 10.3 The delivery time is deemed to be met if, by the time of its expiry, the goods have left the Supplier's works or if, in case of agreed collection by the Customer or delayed acceptance on the part of the Customer, readiness for despatch is reported by the Supplier.
- 10.4 If despatch is delayed at the Customer's request or if the latter is in arrears with acceptance, the costs incurred due to storage or in case of storage at the Supplier's works at least 1% of the invoice amount, shall be charged to the Customer for each started month of storage, unless the Customer submits proof of a lower damage. After specification of a reasonable additional period of time and unsuccessful expiry thereof, however, the Supplier is entitled to dispose of the goods otherwise.
- 10.5 If the Supplier is in arrears and this causes damage to the Customer, the latter shall be entitled to demand a lump-sum compensation for delayed delivery to cover all its claims based on the delayed delivery. For each full week of delay this lump sum shall amount to 0.5%, but in total not more than 5% of the value of that part of the entire supply which was delivered with a delay. The compensation for delayed delivery does not become due if the delay does not exceed ten working days. Proof of a lower damage remains reserved.
- 10.6 If the Customer grants the Supplier in substantial arrears a reasonable period in which to perform – taking the exceptions provided by the law into account – and if this period of respite is exceeded by more than an unimportant length, the Customer may withdraw from the contract within the framework of the provisions of the law. The Customer undertakes to notify the Supplier in writing within 30 (thirty) days from the end of the respite that it shall exercise this right.

11. ACTS OF GOD

- 11.1 If the Supplier is restricted in the fulfilment of its contractual obligations due to Acts of God such as mobilization, war, terrorism, riots, natural catastrophes, fire or other unforeseeable situations or circumstances outside its powers such as e.g. strikes or lockouts, operational interferences, lack of transport equipment, difficulties in the procurement of raw materials or inadequate supplies from its subcontractors, then the agreed delivery times are extended in each case by the duration of the restriction plus a reasonable restarting period, but by maximum three months. The Supplier shall not be answerable for the described circumstances, either, if they occur within an already existing delay. The Supplier shall notify the Customer of the beginning and foreseeable end of such circumstances at the earliest opportunity.
- 11.2 If the restriction lasts for three months or longer, both parties may withdraw from the contract.

12. ASSEMBLY / INSTALLATION

Assembly/installation is not included in the price and shall only be carried out by the Supplier if separately agreed upon, and then only at the Supplier's assembly/installation conditions and against separate reimbursement.

13. RIGHTS ON THE BASIS OF DEFECTS

- 13.1 The following applies subject to clauses 9.1 and 9.2 in case of defects / deficiencies of the delivered goods, whereby further claims on the part of the Customer are excluded, with the exception of claims for damages according to clause 14:

- 13.2 The statute of limitations for rights on the basis of defects runs for twelve months from delivery or acceptance, if an acceptance was contractually agreed, and if an acknowledgment of order does not provide otherwise.
- 13.3 This restriction does not apply, however, if (i) a defect was fraudulently concealed, or (ii) a warranty was granted for the properties of the goods in question (in this respect a statute of limitations resulting from the warranty shall apply if appropriate). In case of claims for damages this limitation will also not apply in the following cases: (i) injury of life, body or health, (ii) deliberate action and (iii) gross negligence on the part of organs or executive employees of the Supplier. This restriction does not apply, either, for deficiencies of a building structure or for goods delivered which, based on their customary application, were used for a building structure and caused the deficiency thereof.
- 13.4 In case of deficient delivered goods, the Supplier shall ensure subsequent fulfilment by either elimination of the deficiency (subsequent improvement) or delivery of goods free of defects (subsequent delivery), at its option. Subsequent fulfilment is provided without recognition of a legal obligation. In the case of subsequent improvement the remaining part of the original statute of limitations starts to run on the date the subsequently improved goods are returned to the Customer. The same applies to subsequent delivery.
- 13.5 In case of an unsuccessful attempt at subsequent fulfilment the Customer may withdraw from the contract. The right of reducing the sales price is excluded. Claims for damages exist according to clause 14.
- 13.6 After agreement with the Supplier, the Customer shall grant the Supplier the necessary time and opportunity for subsequent fulfilment and enable it unrestricted access to the delivered goods; otherwise the Supplier shall be released from the liability for resulting consequences.
- 13.7 Costs in the context of subsequent fulfilment such as e.g. despatch, travelling, transport and material shall not be reimbursed to the Customer insofar as they are increased because the delivered goods were brought to another than the agreed place of delivery. The Supplier may invoice the Customer correspondingly increased costs. Not reimbursed, either, are the costs of disassembly and assembly. The Customer may only claim the reimbursement of these costs within the framework of damages according to clause 14.
- 13.8 For the purpose of subsequent fulfilment the Customer shall provide the Supplier with existing tools and lifting equipment as well as fitters and auxiliary labour at no charge.
- 13.9 The Customer shall bear the reasonable costs of an intervention based on an unjustified claim for rights from deficiencies (e.g. if the product was not defective). The same applies if, erroneously, the Supplier grants rights from deficiencies without being obliged to do so.
- 13.10 No rights from deficiencies exist in particular in the following cases: Unsuitable or improper use, faulty assembly/installation or commissioning by the Customer or thirds, natural wear, faulty or negligent treatment, improper service and maintenance, unsuitable consumables, deficient construction work, unsuitable building subsoil, chemical, electrochemical or electrical influences - insofar as the Supplier is not responsible for them. No rights from deficiencies exist for wear parts.
- 13.11 If the Customer or a third subsequently corrects the delivered goods improperly, the Supplier shall not be liable for the consequences. The same applies if the delivered goods are modified without the prior approval of the Supplier.
- 13.12 Warranties, in particular promised properties, are only binding upon the Supplier to the extent to which they are (i) contained in a quotation or an acknowledgment of order, (ii) explicitly stated to be a „guaranteed“ or „firmly promised“ properties, and (iii) expressly defined as the Supplier's obligations resulting from such a warranty.
- 13.13 If the use of the delivered goods leads to an infringement of industrial protective rights or copyrights in Switzerland, the Supplier shall at his option and costs provide the Customer with an adequate right of further use for the agreed or prerequisite application, or else modify or exchange the delivered goods in such a manner that the Customer can be reasonably expected to accept, so that the violation of the protective right does no longer exist.
- 13.14 If this is not possible or cannot be reasonably expected from the Supplier, the Customer is entitled to withdraw from the contract. Subject to the mentioned prerequisites being met, the Supplier shall also be entitled to withdraw from the contract.
- 13.15 If goods are delivered on the basis of drawings, models or other information of the Customer, the Supplier shall not be liable for an

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infringement of industrial protective rights or copyrights. In this case the Customer shall hold the Supplier harmless from any claims of thirds.

- 13.16 Subject to the claims for damages according to clause 14, the Supplier's obligations according to clause 13.11 are final for the case of infringement of protective rights or copyrights. The obligations exist only if
- the Customer notifies the Supplier immediately and in writing of any claims for infringements of protective rights or copyrights;
 - the Customer reasonably supports the Supplier in the defence of the raised claims or enables the Supplier to implement the modification measures – as described above;
 - the Customer does not admit or recognize towards thirds the existence of an infringement of the law;
 - all defence measures including out-of-court settlements are reserved to the Supplier at the latter's discretion;
 - the infringement of the protective right is based on an instruction of the Customer; and
 - the infringement of the protective right was caused by the fact that the Customer or a third commissioned by him modified the delivered goods unauthorized or used them together with products that were not provided by the Supplier or not recommended by the Supplier for common use, or used the delivered goods in a manner not intended by the Supplier.

14. LIABILITY

- 14.1 All cases of contract violation and their legal consequences as well as all claims of the Customer - irrespective of the title under which they are raised - are finally ruled in the present provisions. Excluded are in particular all not expressly stated claims for damages, reduction, cancellation of the contract or withdrawal from the contract. In no case are there any claims of the Customer for the compensation of damages which did not occur on the actual goods delivered, such as loss of production, losses of use, loss of order, loss of profit as well as any other direct and indirect damages. The liability is in any case limited to the order value of the delivery consignment in question. The period of limitation in case of claims for damages on the grounds of defects follows clause 13.2.
- 14.2 The afore-mentioned restrictions of liability apply to all claims for damages irrespective of their legal title, with the exception of claims for damages by the Customer based on (i) the product liability law, (ii) fraudulently concealed defects, (iii) promised properties (applicable in this respect, if appropriate, are the liability rules and period of limitation, respectively), (iv) the injury of life, body or health, or (v) unlawful intent or gross negligence on the part of the Supplier. The restrictions of liability, however, also apply to unlawful intent or gross negligence of auxiliary persons.
- 14.3 The above restrictions of liability apply also to claims for damages of the Customer against organs, executive employees, employees or other persons commissioned by the Supplier.

15. USE OF SOFTWARE

- 15.1 To the extent that the scope of supply includes software, the Customer is granted a non-exclusive, non-sublicensable right to use the supplied software including the pertaining documentation.
- 15.2 The supplied software is transferred to the Customer for use on the delivered goods intended for it. Any use of the software on more than one system is prohibited.
- 15.3 The Customer may only copy, revise, translate or convert the software from the object code to the source code to the extent admissible by the law. The Customer undertakes to abstain from removing or altering any information from the producer, in particular brands, references to copyrights or other protective rights, without the prior express approval of the Supplier.
- 15.4 All other rights in the software and documentations including copies thereof remain with the Supplier and software provider, respectively. Any lending, hiring or other temporary transfer of the software to thirds as well as sublicensing are not admissible.

16. DETERIORATION OF THE FINANCIAL SITUATION

- 16.1 If, after signing of the contract with the Customer, it is evident that the fulfilment of the contractual obligations is endangered due to the Customer's financial situation (in particular in case of discontinuation of payments, petitions for bankruptcy or proceedings before the magistrate, distraint or execution measures, lodging of bill or cheque protests and debit returns, and this also in relation with and to thirds), then the Supplier shall be entitled to withhold delivery until - at his option - advance payment of the sales price is made or reasonable security is provided. This applies also if justified doubts exist as regards the Customer's solvency and creditworthiness in view of outstanding payments.
- 16.2 The Supplier is entitled to fully or partly withdraw from the contract if proceedings in bankruptcy are applied for or opened concerning the property of the Customer.

17. CUSTOMER'S RIGHT OF GIVING NOTICE

If the subject-matter of delivery is a non-fungible, movable item to be produced, the Customer can only withdraw from the contract until completion of the work according to Article 377 if there is an important reason. In this case the Supplier shall be entitled to the agreed reimbursement. However, the Supplier shall have to make allowance for expenses saved due to the cancellation of the contract or gains made by other deployment of his labour force and production operation, or wiful abstention from earning.

18. COMPLIANCE WITH LEGAL REGULATIONS AND EXPORT

- 18.1 The Customer shall comply with all legal regulations and governmental requirements as well as all other applicable laws and particularly with the export provisions and laws of the country in which it becomes commercially active. The Customer shall in good time secure all necessary approvals and licences as well as all other required permits needed for the use or export of the subject-matter of delivery in accordance with all these applicable laws.
- 18.2 The Supplier is entitled to withhold its performance towards the Customer if the Customer would violate such applicable laws or if not all required approvals were to hand and these shortcomings are not traced to be the fault or responsibility of the Supplier.

19. ASSIGNMENT

Without the prior written approval of the Supplier, the Customer shall neither fully nor partly assign any of its rights and obligations in the context of the supplies. The Supplier is allowed to assign its rights and obligations in the context of the supplies, especially to companies within the same concern.

20. SUPPLEMENTARY CLAUSE

If individual provisions of the present General Conditions of Supply are or become ineffective, this shall not affect the effectiveness of the remaining provisions.

21. APPLICABLE LAW, PLACE OF JURISDICTION, PLACE OF FULFILMENT

All legal relations between Supplier and Customer are subject to Swiss Law exclusively, under exclusion of the UN Law of Purchase. Exclusive place of jurisdiction for all disputes arising from or in connection with a delivery is the domicile of the Supplier. The Supplier is entitled, however, to file action at the domicile of the Customer. Place of fulfilment for all obligations from or in connection with a delivery is the Supplier's works.