

General Terms of Delivery and Payment for the NETZSCH Group

I. Validity

1. These Terms and Conditions of Delivery and Payment shall apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB). We shall only recognize conflicting terms and conditions or terms and conditions of the Customer that deviate from our terms and conditions of delivery and payment if we expressly agree to their validity in writing.
2. These Terms and Conditions of Delivery and Payment shall also apply to all future business transactions with the Customer, insofar as these are legal transactions of a related nature.
3. Individual agreements made with the Customer in individual cases (including subsidiary agreements, supplements and amendments) shall in all cases take precedence over these terms of delivery and payment. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.
4. 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 no supplementary interpretation of the contract is the priority or possible, the contract shall be supplemented by a provision which comes closest to what the parties would have legally and commercially intended with the invalid provision.

II. Offer, Right to Alter

1. Our offers are subject to the provision that there are no obstacles to fulfillment on the basis of national or applicable international regulations of foreign trade law as well as no embargos (and/or other sanctions).
2. Our order confirmation defines the scope of delivery. Verbal side agreements, conditions, alterations or additions, whether made in person or by telephone, shall be valid only if we expressly confirm them in writing or text form.
3. Changes to the technical design of the ordered goods are permissible insofar as these are reasonable for the Customer and do not result in a significant change in function.
4. Documents pertaining to the offers, such as illustrations, drawings, and weight and measurement specifications, are approximations only and shall be considered as such unless expressly declared by us to be binding.
5. We reserve full ownership rights and intellectual property rights on cost estimates, drawings and other documents or materials, including samples, models and electronic documents which we provide to the Customer. These may not be made available to third parties either in their original form or in terms of their content. The Customer may use them only for the purposes set forth contractually. All drawings and other documents pertaining to offers which we provide to Customers shall be returned to us upon our request or, if the order is not placed with us, shall be returned to us immediately at the expense of the Customer; additionally, any existing (even electronic) copies are to be destroyed, as long as they are no longer needed by the Customer for the orderly course of business or per legal obligations to retain the information.

III. Price and Terms of Payment

1. All prices quoted are FCA and, with respect to domestic orders, are subject to value added tax at the applicable legal rate. For foreign transactions, we calculate value added tax as described in Clause VIII. The Customer 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.
2. If, after acceptance of an order, there is a significant increase in the costs of production upon which our price quotation to the Customer was based at conclusion of the contract, 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 Customer'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 within two (2) weeks to the Customer's written request to limit the price adjustment to a maximum of twenty percent (20%), then the Customer shall be entitled to rescind the contract (we have a right to withdraw from the contract as well, pursuant to [Clause XIII. 2.](#)).

3. Unless a separate agreement has been expressly made to the contrary, all payments shall be made via transfer, without any deductions, as follows:

- 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.

Timeliness of the payment is assessed using the date of receipt.

Checks shall be accepted as a valid form of payment only after they have been formally honored.

4. Overdue accounts shall be subject to interest charges at a rate of nine (9) percentage points above the base rate, but no less than twelve percent (12%) p.a. Interest shall be due and payable immediately. We reserve the right to claim additional damages.
5. The withholding of payments due to any counterclaims of the Customer is not permitted, nor is the offsetting of such counterclaims; this does not apply if these counterclaims are due and enforceable, legally established or ready for decision.
6. If the financial situation of the customer deteriorates to such an extent that the fulfillment of our claim appears to be at risk, we may demand payment immediately. In the case of orders that have not yet been executed, we are entitled to demand advance payment or corresponding securities, to withhold our performance until then and to withdraw from the contract after the unsuccessful expiry of a reasonable period for payment or the provision of securities.
7. Partial shipments shall be invoiced separately. The above terms shall be applicable thereto.

IV. Reservation of Title

1. We hereby reserve the right of ownership of all machines and articles delivered. Ownership shall be transferred to the Customer only after payment has been received in full. In the case of goods obtained from us by the Customer in the regular course of business, we retain ownership until all of our claims against the Customer 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.
2. The Customer is entitled to resell, within the scope of the regular course of business, the Products delivered. In the event of resale, the Customer 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 Customer 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 Customer fulfills all payment obligations in accordance with the terms laid out herein. We may demand that the Customer 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 Customer against the end-user or third-party Customer shall be deemed to have been assigned to us in an amount equal to the delivery price agreed upon between the Customer and us.
3. All processing and finishing of Products subject to retention of title are always carried out for us as manufacturer as defined in § 950 of the German Civil Code (Bürgerliches Gesetzbuch), but without any resulting obligation on our part. The processed 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.
4. Should our Products be attached to or inseparably combined with other movable goods to form a new unit and such unit becomes the principal article, then we shall be deemed to have acquired from the Customer proportionate ownership, to the extent that the principal article is the property of the Customer. For goods resulting from such processing, attachment or combination, the same provisions that govern the Products subject to this reservation of title apply.
5. The Customer 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 Customer 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.

6. The Customer 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.
7. As long as our reservation of title remains in effect, the Customer 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 Customer shall be obligated to inform us accordingly in the fastest possible manner, if possible by telephone or telefax or e-mail, and to immediately notify the third party about our retention of title. The Customer shall be required to submit to us a certified copy of the attachment proceedings as well as an affidavit identifying the attached articles.
8. If the Customer is in breach of contract, in particular, in default of payment, we shall be entitled to withdraw from the contract and to repossess the Products. The costs of the repossession shall be borne by the Customer. We shall be entitled to dispose of any repossessed Products, with the proceeds from the disposition to be applied to the Customer's debt after deduction of a reasonable amount for expenses related to such disposition.
9. 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 Customer shall be required to assist us in this regard to the extent necessary.

V. Delivery and Delivery Time

1. Domestic shipments shall be made FCA. This shall also apply to foreign shipments, to the extent not otherwise agreed.
2. The Customer shall be required to provide us in a timely manner with the official name and address of the place of delivery; we assume no responsibility for any incorrect delivery information or for any resulting delays.
3. Unless otherwise agreed, any stated information on determined delivery periods shall be non-binding. Binding and non-binding delivery periods and delivery dates are subject to the provision that we ourselves are supplied correctly and on time.
4. 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 decisive. We reserve the right to plead non-performance of the contract.
5. Delivery periods shall be extended by such time period as the Customer may be in default with respect to essential contractual obligations, in particular, fulfillment of its payment obligations.
6. 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 plus a reasonable start-up period. 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, administrative orders or market related problems with acquisition of materials and goods, any strike or other labor dispute, riot, war, act of terrorism, any natural disaster, epidemic, pandemic (including COVID-19 and any recurrence or worsening thereof and any governmental action taken in connection with same), fire, explosion, act of government or governmental agency or instrumentality, or other contingency beyond the our reasonable control, not caused by the fault or negligence of the Party affected, could not have been overcome with the exercise of reasonable diligence, and which in any such case interferes with, or prevents, the fulfillment by us. We shall inform the Customer as quickly as possible of commencement and cessation of such events. The Customer shall have the right to demand our declaration as to whether we choose to withdraw from the contract pursuant to [Clause XIII. 1.](#) or to deliver within a reasonable period of time. If we do not provide such declaration promptly, the Customer shall have the right to withdraw from the contract.
7. 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.

General Terms of Delivery and Payment for the NETZSCH Group

8. To a reasonable extent, we shall be entitled to make partial shipments and, when necessary, supplemental shipments.
9. If we are in default and the Customer suffers damage as a result, he shall be entitled to demand a lump-sum compensation for the delay. For each full week of delay, this shall amount to 0.5% in total but not more than 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay. The burden of proof of a damage is with the Customer. Further claim for damages resulting from delay are excluded.

VI. Transfer of Risk

1. The risk of accidental loss and accidental deterioration shall pass to the Purchaser when the goods are handed over to the post office, the forwarding agent or the carrier, but at the latest when the goods leave the factory premises (FCA).
2. Only upon special request of the Customer and at its expense shall the shipment be insured against breakage, transport and fire damage.
3. With reference to our reservation of title, the Customer shall ensure that the delivery is insured, since we shall take the full value of the delivery as a basis when asserting our reservation of title and any damage to the delivery item that may have occurred in the meantime shall be repaired at the customer's expense.
4. Any returns of Product shall always be carried out at the expense and risk of the Customer unless we are obligated to take back the Product pursuant to [Clause XIII](#) below.

VII. Delay in Acceptance of Delivery

1. For the duration of the delay in acceptance of delivery, we shall be entitled to store the delivered Products at the expense of the Customer. Further, we shall be entitled to have the Products stored with a transport agent. The Customer shall be responsible for all costs related to such storage over the entire duration of the delay in acceptance of delivery.
2. If, at the end of a reasonable extension of time granted the Customer, acceptance is refused or the Customer declares in advance that it absolutely will not accept delivery of the goods, we shall be entitled to rescind the contract and 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 Customer is entitled to prove that no damages were actually incurred or that the damages incurred were substantially less than the fixed amount claimed.

VIII. Tax Exemption Certificate

In cases where transport responsibility lies with the Customer for deliveries of Product to EU countries outside of Germany, the Customer is obligated to promptly provide us with all documentation required by current German legislation (e.g., confirmation of arrival, carrier's receipt for VAT purchases, or CMR bills of lading) in properly completed form. If the Customer does not fulfill this obligation on time, we reserve the right to subsequently invoice the Customer for German sales tax as per the applicable tax rate. The same is true for tax-free intra-Community deliveries to which German law does not apply, insofar as local legislation mandates such documentation, as well as for deliveries to third-party countries for which the Customer is responsible for the export documentation.

IX. Installation, Assembly

1. 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".
2. Should there be a delay in installation or commissioning on-site, through no fault of ours, the Customer shall bear all costs of the delay and the costs of any future travel required as a result of the delay.
3. 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".
4. The Customer shall, in all cases, follow the instructions for installation and operation found in the NETZSCH Operating Instructions.

X. Recycling

1. In order to conserve resources, packaging and (electrical) waste equipment should be recycled and not disposed of as unsorted (household) waste.

2. Packaging: In accordance with § 15 of the German Packaging Act (VerpackG), we undertake to take back all clean and completely empty packaging free of charge. The place of return is the NETZSCH shipping address. We recommend that you keep our high-quality special packaging to ensure safe shipment in the event of service or repair.
3. Old electrical equipment: In accordance with § 19 of the German Electrical and Electronic Equipment Act (ElektroG), we undertake to take back old electrical equipment free of charge. The place of return is the NETZSCH shipping address.

XI. Claims Due to Defects

1. Warranty rights of the Customer presuppose that the Customer has duly complied with its obligations to inspect the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB).
2. All claims due to a defect shall become statute-barred within one year from delivery of the item. If and insofar as systems are to be installed by us, the warranty period shall commence from the day of commissioning. However, if the installation or commissioning is not carried out through no fault of our own, the period pursuant to sentence 1 above shall apply. The warranty period shall be extended by the duration of any rectification work.
3. If the customer demands subsequent performance due to a defect, we may choose between replacement delivery or rectification of the defect. The right of the customer to reduce the purchase price or to withdraw from the contract in the event of failure of the subsequent performance remains unaffected.
4. After consultation with us, the customer shall give us the necessary time and opportunity to carry out all repairs and replacement deliveries that we deem necessary in our reasonable discretion, otherwise we shall be released from our liability for defects.
5. We shall have title to all parts replaced or taken back pursuant to our warranty obligations. The warranty provisions set forth herein shall apply to all replaced new parts.
6. Claims by the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, are excluded insofar as the expenses increase because the goods delivered by us have subsequently been taken to a location other than the Customer's branch office, unless the transfer is in accordance with their intended use.
7. The Customer's right of recourse against us shall only exist insofar as the purchaser has not made any agreements with its Customer which go beyond the legally mandatory claims for defects. Furthermore, paragraph 6 shall apply accordingly to the scope of the Customer's right of recourse against us.
8. If the Customer or a third party carries out improper repairs, we shall not be liable for the resulting consequences. The same applies to changes made to the delivery item without our consent. Furthermore, the Customer may not demand reimbursement of expenses in the event of unlawful self-performance of the rectification of defects.
9. We shall not be liable on the basis of public statements made by us, the manufacturer or its agents if we were not aware of the statement and did not have to be aware of it, if the statement had already been corrected at the time of the purchase decision or if, in this respect, the Customer cannot prove that the statements influenced its purchase decision.
10. No warranty shall be accepted for unsuitable or improper use or use not in compliance with instructions, incorrect installation or commissioning by the Customer or third parties, ordinary wear and tear, incorrect or negligent handling, excessive stress, improper means of operation, substituted materials, wear and tear, shortcomings in the construction work arranged by the Customer, unsuitable building site, chemical, electrochemical or electrical effects. The first sentence shall also apply insofar as the NETZSCH Operating Instructions were not followed during installation or operation.
11. We shall also not be liable for defects which only insignificantly reduce the value or the suitability of the item. An insignificant defect shall be deemed to exist in particular if the defect disappears within a short period of time or can be remedied by the Customer himself at a very insignificant cost.
12. Claims for damages and reimbursement of expenses shall remain unaffected by this, unless excluded under [Clause XIV](#).

XII. Liability for defects of title

If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, we shall in principle procure the right to further use for the Customer at our expense or modify the delivery item in a manner reasonable for the Customer in such a way

that the infringement of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, we and the Customer may withdraw from the contract. We shall indemnify the Customer against undisputed or legally established claims of the owners of the property rights concerned. These rights shall only exist if

- the Customer informs us immediately of asserted infringements of industrial property rights or copyrights,
- the Customer supports us to a reasonable extent in the defense against the claims asserted or enables us to carry out the implementation of the modification measures,
- we reserve the right to take all defensive measures, including out-of-court settlements,
- the defect of title is not based on an instruction of the Customer and
- the infringement of rights has not been caused by the fact that the Customer has modified the delivery item without authorization or has used it in a manner not in accordance with the contract.

XIII. Right to Rescind the Contract

1. 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 and make it subsequently impossible to perform the contract as agreed or delay the execution by more than eight weeks. Should we make use of this right of rescission, the Customer 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 Customer of an extension of the delivery period or by an agreement between the parties to extend the delivery period.
2. 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 Customer 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, ([Clause V.3](#)).
3. We shall also be entitled to withdraw from the contract if the Customer is in default of payment and the Customer has provided incorrect information about the facts relating to its creditworthiness, has suspended its payments or has issued a statutory declaration in lieu of an oath, a significant deterioration in its assets has occurred which jeopardizes the performance of the contract or insolvency proceedings have been applied for in respect of its assets. Our other rights in the event of default in payment on the part of the Customer shall remain unaffected in all other respects.
4. In the event of a withdrawal and the taking back of delivered goods, we shall be entitled to compensation for expenses, transfers of use and reduction in value. At our discretion, we may calculate the compensation claims to which we are entitled either specifically or as a lump sum at 15% of the order price. In the case of a lump sum, the Customer shall be at liberty to prove that the compensation claims have not arisen or have arisen to a lesser extent.
5. Our statutory rights to rescind the contract shall remain unaffected.

XIV. General Limitation of Liability

1. If the delivery item cannot be used by the Customer in accordance with the contract as a result of culpably omitted or faulty suggestions or advice given by us before or after conclusion of the contract, or as a result of culpable breach of other contractual collateral obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of [Sections XI](#) and [XIV](#), 2 shall apply to the exclusion of any further claims of the Customer.
2. We shall only be liable - on whatever legal grounds - for damage that has not occurred to the delivery item itself in the following cases
 - a. in the case of intent,
 - b. in the event of gross negligence on the part of the owner/the organs or executive employees,
 - c. in the event of culpable injury to life, limb or health,
 - d. in the case of defects which he has fraudulently concealed,
 - e. within the scope of a guarantee promise,
 - f. in the case of defects in the delivery item,insofar as liability is assumed under the Product Liability Act for personal injury or property damage to privately used objects. In the event of culpable breach of material contractual obligations, we shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence, in the latter case limited to the reasonably foreseeable damage typical for the contract. Further claims are excluded.

General Terms of Delivery and Payment for the NETZSCH Group

XV. Use of software

Insofar as software is included in the scope of delivery, the Customer shall be granted a non-exclusive right to use the software supplied, including its documentation. It is provided for use on the delivery item intended for this purpose. The Customer may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. UrhG [German Copyright Act]). The Customer undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the Supplier's prior express consent. All other rights to the software and the documentation, including copies, shall remain with us or with the software supplier. The granting of sub-licences is not permitted.

XVI. Export Checks

1. The Customer undertakes to observe all German and European regulations as well as all other applicable national or international regulations on export control as well as embargos and other sanctions.
2. The Customer will notify us promptly in writing on their own initiative if they become aware of a transgression of the aforementioned obligations or have a corresponding suspicion.
3. If the Customer violates the aforementioned obligations, we are entitled to withdraw. The enforcement of any further demands, especially demands for damage compensation, remains unaffected.

XVII. Place of Performance, Place of Jurisdiction

1. The place of performance for all deliveries and services is at our registered office.
2. The court at our registered office shall have exclusive jurisdiction for all disputes arising from and in connection with this contract. We are also entitled to sue at any other legal place of jurisdiction.

XVIII. Applicable Law

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

XIX. General Terms

1. These General Terms of Delivery and Payment shall apply to Erich NETZSCH GmbH & Co. Holding KG as well as the NETZSCH Group including its direct and indirect subsidiaries.
2. Side agreements, reservations, amendments or supplements are only valid if they are agreed in writing.
3. Unless otherwise stipulated in these terms and conditions of delivery and payment or in the contract, the Customer is not entitled to transfer rights from the contract or these terms and conditions of delivery and payment to third parties without our consent.
4. The German version of these Terms and Conditions of Delivery and Payment shall be authoritative for the contract, unless another language is the contractual language. This shall also apply if a translation of the terms of delivery and payment into another language has been used in addition to the German-language terms.

Effective as of June 2022