

TERMS AND CONDITIONS OF SALE AND / OR REPAIR

1. TERMS AND CONDITIONS APPLICABLE

The terms and conditions set forth herein shall apply to all sales of goods and services ("Products") made or provided by NETZSCH Canada, Incorporated or its affiliates (collectively, the "Company") to any end user purchaser (the "Buyer"). The Company's acceptance of any order for Products (each, an "Order") is expressly made conditional upon assent to the terms and conditions set forth herein. The Company does not accept and hereby expressly rejects all terms and conditions contained in any document issued by Buyer which purport to pertain to the Products and/or the relationship between Company and Buyer, which terms and conditions are in addition to or inconsistent with the terms and conditions set forth herein, and such terms and conditions shall not become part of any Order.

2. TERMS

Except as otherwise provided herein, terms are cash net 30 days after each progress payment invoice. Amounts past due are subject to interest at a rate of 18% per annum, calculated daily on the basis of a 365 day year, as the case may be, and payable monthly. Interest accrues on overdue interest in the same manner. If the Company deems that by reason of the financial condition of the Buyer or otherwise the continuance or production or shipment in the terms specified herein is not justified, the Company may require full or partial payment in advance. For larger orders a down payment will be required depending on the extent of the order. Progress payments may also be required. Legal fees and other costs associated with the collection of delinquent accounts will be the responsibility of the Buyer.

3. PRICE POLICY

The Company may adjust the prices set forth in the Order to those in effect at time of shipment to reflect any change in the cost of production and/or performance of the Products for reasons beyond the Company's reasonable control including by reason of the direct or indirect effects of material or labour shortages, disruptions in shipping or transportation, trade policies, tariffs, duties, or related measures. Further, the Company reserves the right to adjust the price to account for changes in the Canada-U.S. currency foreign exchange rate.

4. PACKING

The Company reserves the right to charge for packing.

5. DELIVERY

Shipping dates given by the Company are approximate and are based on prompt receipt of all necessary information regarding the Order. The Company will use commercially reasonable efforts to meet the scheduled date shown on the Order Confirmation issued by the Company ("Confirmation"), but cannot be held responsible for a failure to do so for causes beyond its reasonable control and in no event shall it be liable for any loss or damage from the failure to deliver within the time specified herein.

In the event of any delay requested by the Buyer or any delay caused by lack of shipping instructions, the Company will store all items ordered at the Buyer's risk and expense, and will invoice the Buyer for the full contract price of the Product on or after the date on which the same is ready for delivery. If manufacture is delayed by the Buyer, payment shall be made on the percent of completion and the contract price.

6. METHOD OF SHIPMENT

Unless otherwise specified in the Confirmation or the Order to which it refers, the Company will arrange for shipping of all Products by carrier and will charge Buyer a shipping and handling fee. All carriers will be deemed to be agents of Buyer. All liability and risk of loss will transfer to Buyer upon delivery of the Products to the carrier. If Customer arranges for shipping, the Company reserves the right to charge up to a 10% handling fee based on the quoted cost of a Company-arranged shipment.

7. CHANGES

The Buyer may with the written consent of the Company make changes in the Products covered by an Order. In the event of any such change, the Buyer shall pay to the Company the reasonable costs and other expenses incurred by the Company for such change for all work rendered to effect such change, plus the Company's usual profit thereon.

8. CANCELLATION

As per cancellation conditions in offer, the Buyer may cancel an Order only upon written consent and upon payment to the Company of cancellation charges which shall take into account, among other things, anticipated profits, expenses incurred and commitments already made by the Company.

9. REGULATORY LAWS AND / OR STANDARDS

The Company makes no promises or representation that its Products will conform to any federal, provincial, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of the contract between Buyer and the Company. The Company prices do not include the cost of any related inspections, permits and inspection fees.

10. RISK OF LOSS

Notwithstanding title to or ownership of the Products, risk of loss shall pass to the Buyer as soon as the Products have been handed over to a carrier.

11. SECURITY INTEREST

Title and ownership of the Products are and shall remain vested in the Company, notwithstanding delivery or possession, until the entire price and all other amounts due in connection with the Products are paid by cash in full. As security for payment and its other obligations hereunder, the Buyer grants the Company a security interest in and to all Products shipped hereunder and all proceeds derived therefrom. Buyer agrees to do all acts necessary to perfect and maintain such security right and title in the Company. The Buyer must maintain, at its own expense, insurance in an amount equal to the sale price against loss or damage of any Product covered by an Order and agrees to furnish the Company with satisfactory proof of this coverage.

12. TAXES

Buyer shall be responsible for the payment or disposition of any sales use, excise or commodity taxes imposed as a result of an Order, whether such taxes are imposed or levied at the time of the transaction or at any subsequent time. "Taxes" shall include any penalty or interest on such tax obligation. The Company agrees to cooperate fully with Buyer in any attempt by Buyer to have any such taxes released or reduced. The prices do not include any applicable sales, use, excise or similar taxes. The Buyer assumes responsibility for all such taxes.

13. MINIMUM BILLING

Minimum billing shall be \$100.00 net, plus transportation costs and any packaging charges.

14. PRODUCT LIABILITY

The Buyer acknowledges that the Company has no control over, and is not responsible for, the manner in which the Products will be used or otherwise dealt with by the Buyer. The Buyer therefore agrees to assume all responsibility for, and shall indemnify, defend and hold the Company harmless from and against, any and all losses, liabilities, actions, claims, demands and expenses (including without limitation attorneys' fees and court costs) (collectively, "Losses") arising out of or in any way connected with the installation, maintenance, use or operation of the Products, or the design, construction or composition of any item or items made or handled by the Products supplied hereunder, including any such Losses based in whole or in part on the default or negligence of the Company. Buyer shall further indemnify the Company with respect to any Losses arising from or relating to any actual or alleged infringement of Products manufactured to Buyer's specifications.

15. RETURN OF GOODS

Written permission from the Company must be obtained before returning any Products. Elastomeric products, products made to order, products not normally stocked or products for which there is no current demand will not be accepted as a return.

16. LIMITED WARRANTY

The Company warrants that at the time of shipment the Products will be free from any material defect in material or workmanship. All claims for breach of the foregoing warranty must be made by the Buyer in writing within one (1) year after the date of shipment of such Products (the "Warranty Period"). Company's exclusive obligation under the foregoing warranty, and Buyer's exclusive remedy with respect to same, shall be limited to repair or replacement of any defective Product, or, if the Company in its sole discretion determines that such repair or replacement is impracticable, return of the purchase price paid for such Product. The Company shall have no liability with respect to any warranty claim not made within the Warranty Period. The return of all Products submitted under this warranty must be authorized by the Company and transportation prepaid by the shipper. The Company has no liability for any repairs made outside the Company's factory, unless with its prior written consent. The warranty set forth in this Section will not be applicable unless the affected Product has been maintained and operated under normal conditions and in accordance with the Company's specifications provided, and for the application(s) identified in writing, with the Order and / or the Products. In no event, will the Company be responsible for damage resulting from misuse, abuse, or improper storage or handling of any Product. Notwithstanding anything to the contrary contained herein, the warranty on purchased items, assemblies or accessories which are provided or installed as a separable component shall not extend beyond the warranty made by the manufacturer of the component. THE FOREGOING WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, EACH OF WHICH IS HEREBY DISCLAIMED BY THE COMPANY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF NONINFRINGEMENT, TITLE, QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL THE COMPANY HAVE ANY LIABILITY TO BUYER OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL EXEMPLARY, SPECIAL OR PUNITIVE LOSS, COST, EXPENSE, LIABILITY OR DAMAGE, WHETHER DIRECT OR INDIRECT, IN CONNECTION WITH OR ARISING OUT OF ANY ORDER OR THE SUPPLY OR USE OF ANY PRODUCT. IN NO EVENT WILL THE COMPANY'S LIABILITY WITH RESPECT TO ANY ORDER OR THE SUPPLY OR USE OF ANY PRODUCT EXCEED THE AMOUNT ACTUALLY PAID BY THE BUYER WITH RESPECT TO SUCH PRODUCT.

17. EXCLUSIONS TO WARRANTY

Grinding Media, Ceramic Parts, Elastomeric Products, Stators, Rotors, Screws, Liners, Mechanical Seals, Shaft Seals, Joint Parts and other wearing parts are excluded from the foregoing warranty and are provided "as is, where is".

18. PROPRIETARY RIGHTS

Any and all models, drawings, sketches, parts and other information supplied by one party to the other shall remain the property of the party who shall have supplied it. The other party may not use any material or information except with respect to the Products dealt with herein. The Products are offered for sale and are sold by the Company subject in every case to the condition that such sale does not convey any license, expressly or by implication to manufacture duplicate or otherwise copy or reproduce any of the Products or any part thereof.

19. APPLICABLE LAW; JURISDICTION

This contract and all rights and duties of the Company and the Buyer will be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to their conflicts of law principles. Any dispute arising out of or in connection with this order or the relationship of Company and Buyer shall be adjudicated exclusively in the courts of competent jurisdiction sitting in Ontario, and all parties consent to personal jurisdiction and venue therein.

20. BUYERS DELEGATION

Buyer may not assign or delegate any of its rights or obligations under any Order without the prior written consent of the Company. Any attempted assignment or delegation in violation of this paragraph will be null and void.

21. PARTIES BOUND

This contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this contract.

22. INTEGRATED AGREEMENT; NO WAIVER

The terms of this contract are intended by the parties as a final expression of their agreement with respect to such terms and also as a complete and exclusive statement of such terms. No failure by Company to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

23. SEVERABILITY

In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

24. LEGAL FEES AND EXPENSES

In addition to all other remedies provided by law, the party aggrieved by any breach where settlement is made through negotiation, or the prevailing party in any litigation resulting from the breach, will be entitled to reasonable legal fees, plus any shipping costs incidental to repairing the immediate incident of the breach and court expenses.