

Terms and Conditions of Sale

1. TERMS AND CONDITIONS APPLICABLE

These Terms and Conditions of Sale (these “Terms”) apply to all sales of goods and services (collectively, “Products”) sold or provided by NETZSCH Pumps USA and/or its affiliates (collectively, the “Company”) to any purchaser (the “Buyer”). Buyer’s order for Products is an offer to purchase until accepted by the Company in an acknowledgment (each, an “Acknowledgment”), at which point it becomes a binding agreement between the parties (each, an “Order”). The Company’s acceptance of any order for Products is expressly conditioned on Buyer’s agreement to these Terms. The Company does not accept and hereby expressly rejects all other terms and conditions, including any terms and conditions contained in or incorporated by reference by any Buyer-issued document, in each case that purports to modify or supplement these Terms as they govern the Products and/or the relationship between Company and Buyer, and none of those terms and conditions will be deemed part of any Order. These Terms may be amended by the Company from time to time, and any such amendment will be effective with respect to all Orders when posted to the Company’s website at <https://www.netzschusa.com/static/forms/terms-conditions.pdf>.

2. DELIVERY

- 2.1. Shipping dates given by the Company are approximate. The Company, subject to Buyer providing all necessary information regarding the Order, will use commercially reasonable efforts to meet the scheduled date shown on the Acknowledgment, but cannot be held responsible for a failure to do so for causes beyond its reasonable control. In no event shall the Company be liable to the Buyer or any other person for any loss, liability or damage from the Company’s failure to deliver any Products within the time specified in the Order.
- 2.2. If Buyer requests a delay in shipment, or if any delay is caused by lack of shipping instructions, the Company will store all affected Products at Buyer’s risk and expense, and will invoice the Buyer the full contract price of the Products on or after the date on which the same are ready for shipment. If manufacture is delayed by Buyer, (a) Buyer shall pay the Company an amount equal to the contract price for the affected Products multiplied by the percent of completion of the Products as of the date notice of such delay is received by the Company, and (b) the Company reserves the right to adjust

the contract price for any increased cost of production and/or performance of the Products resulting from such delay. In the event of a Product shortage, the Company may allocate its available Products among its customers in any manner the Company considers equitable.

- 2.3. Unless otherwise specified in the Acknowledgment or the Order to which it refers, the Company will arrange for shipping of all Products by common carrier and will charge Buyer a fee for shipping and handling. All liability and risk of loss will transfer to Buyer upon delivery of the Products to the common carrier. If Buyer arranges for shipping, the Company may charge a handling fee of up to 10% of the quoted cost of the Company-arranged shipment.

3. PAYMENT TERMS; PRICE POLICY

- 3.1. Payment Terms. Except as otherwise provided by these Terms, payment terms are cash net 30 days. If the Company deems it appropriate by reason of the financial condition of Buyer or otherwise, the Company may require full or partial payment in advance. For larger orders the Company requires that Buyer make a down payment. Progress payments may also be required. The Company may charge a processing fee for payments by credit card.
- 3.2. Adjustments. 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 labor shortages, disruptions in shipping or transportation, trade policies, tariffs, duties, or related measures.
- 3.3. Packing. The Company reserves the right to charge for packing.
- 3.4. Minimum Billing. Shall be \$100.00 net plus transportation costs and any packaging charges.
- 3.5. Taxes. Buyer shall be responsible for the payment or disposition of any 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 will

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provide its reasonable cooperation with any Buyer attempt to have any such taxes released or reduced. None of the prices or fees established by this Agreement or any Order include any applicable sales, use, excise or similar taxes. Buyer assumes responsibility for all such taxes.

- 3.6. Late Payments. Amounts past due are subject to a service charge of 1.5% per month (or portion of a month) or the maximum contract rate permitted by law. The Buyer shall pay or reimburse the Company for any fees and expenses (including legal fees and court costs) associated with the collection of delinquent accounts.

4. RISK OF LOSS

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

5. SECURITY INTEREST

To secure the payment of all amounts owing by Buyer to the Company for Products delivered to but not fully paid for by Buyer, Buyer grants to the Company a first priority purchase money security interest in such Products until the entire price is paid by cash in full. Buyer agrees to do all acts necessary to perfect and maintain such security right in the Company. 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. Buyer acknowledges and agrees that the Company has the irrevocable power and right to execute, deliver, and file, manually or electronically, all documents or instruments necessary or appropriate to perfect, continue, amend, and enforce the above security interest.

6. CHANGES

Buyer, with the Company's written consent, may request changes in the Products covered by an Order, which the Company will make commercially reasonable efforts to accommodate. In the event of any such change, 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.

7. CANCELLATION

Buyer may cancel an Order only with the Company's written consent and on payment to the Company of cancellation charges taking into account, among other things, anticipated profits, expenses incurred and commitments already made by the Company.

8. RETURN OF GOODS

Buyer may return Products only with the Company's written consent and on payment to the Company of a restocking charge determined by the Company. 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.

9. PRODUCT LIABILITY

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 Buyer. 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 attorneys' fees and court costs) (collectively, "Losses") arising out of or in any way related to 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 under an Order, 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 to the extent such infringement results from (a) the design or manufacture of such Products to Buyer's specifications, or (b) use of the Products in conjunction with products and/or services not provided or specified by the Company.

10. LIMITED WARRANTY

- 10.1. The Company warrants that at the time of shipment the Products will be free from material defect in material or workmanship. All claims for breach of the foregoing warranty must be made by Buyer in writing within one (1) year after the date of shipment of such Products (the "Warranty Period"). The 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 the defective Product, or, if the Company in its sole discretion determines that repair or replacement is impracticable, return of the

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purchase price paid for such Product upon return of the defective product to the Company. The Company shall have no liability or obligation with respect to any warranty claim not made within the Warranty Period.

codes or standards, except as particularly specified and agreed upon for compliance in writing as part of an Order. The Company prices do not include the cost of any related inspections, permits and inspection fees.

- 10.2. The return of Products under this warranty must be authorized by the Company and transportation prepaid by Buyer. The Company has no liability for any repairs made outside the Company's factory without the Company's prior written consent.
 - 10.3. The warranty set forth in this Section 10 will not be applicable unless the affected Product has been maintained and operated under normal conditions and in accordance with the specifications provided, and for the application(s) identified, in the Order. In no event will the Company be responsible for damage resulting from misuse, abuse, or improper storage or handling of any Product.
 - 10.4. Notwithstanding anything to the contrary contained in these Terms or any Order, 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.
11. EXCLUSIONS TO WARRANTY
 - 11.1. THE WARRANTY SET FORTH IN SECTION 10 IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, EACH OF WHICH IS HEREBY DISCLAIMED BY THE COMPANY. WITHOUT LIMITING THE FOREGOING, THE COMPANY DISCLAIMS ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
 - 11.2. Elastomeric Products, Stators, Rotors, Lobes, Wearplates, Liners, Screws / Spindels (pumping elements), Mechanical Seals, Shaft Seals, shaft sleeves, Hoses, Rollers, Joint Parts, Cutting blades, Knives, Shear Plates, Bearings, Bushings, Gears and other wearing parts are excluded from the foregoing warranty and are provided "as is, where is".
 - 11.3. The Company makes no promises or representation that its Products will conform to any federal, state or local laws, ordinances, regulations,
12. NO CONSEQUENTIAL DAMAGES

The Company shall in no event be liable to Buyer or any other person, whether by way of indemnification or contribution or otherwise, for any incidental, special, consequential, exemplary or other indirect loss, cost, expense, liability or damage, including loss of business, loss of profit or loss of goodwill, in connection with or arising out of any these Terms, any Order or the supply or use of any Product, breach of warranty, delays in delivery or other breach of contract, or from any other cause whatsoever, including the negligence or misconduct of the Company or its agents or employees. In no event will the Company's liability with respect to any Order or the supply or use of any unit of Product exceed the amount actually paid by Buyer with respect to such unit of Product.
 13. 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 supplied it. The other party may not use any such materials or information except with respect to the Products purchased and sold under an Order. The Buyer shall not provide to the Company any information or materials that are subject to export controls without the prior written consent of the Company. 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.
 14. GENERAL
 - 14.1. Applicable Law: Venue. These Terms, each Order and all rights and duties of the Company and Buyer will be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of law principles. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to these Terms or any Order. Any dispute arising out of or in connection with an Order or the relationship of Company and Buyer shall be adjudicated exclusively in the state courts for Chester County, Pennsylvania or the federal courts for the Eastern District of Pennsylvania, and all parties consent to personal jurisdiction and venue

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in those courts. In addition to all other remedies provided by law, the party prevailing in the dispute will be entitled to an award of its costs including reasonable attorney’s fees.

- 14.2. Assignment. 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.
- 14.3. Parties Bound. The Order and these Terms shall be binding on and inure to the benefit of the Company and Buyer and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.
- 14.4. Integrated Agreement; No Waiver. The Order and these Terms 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 under these Terms 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.
- 14.5. Interpretation. In these Terms, (a) any words or phrases defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural, (b) any use of the masculine, feminine or neuter will be deemed to include a reference to each of the other genders, (c) the words “includes” or “including” will be construed as followed by the words “without limitation,” and (d) references to section numbers are to sections of to this Agreement unless the context otherwise requires.
- 14.6. Construction of Agreement. This Agreement has been negotiated by the parties and its provisions will not be presumptively construed for or against either party. The headings and subheadings in this Agreement are for convenience and ease of reference only. They have no legal significance and do not limit any other clause.
- 14.7. Force Majeure. In no event will the Company be liable for any failure or delay in performance due in whole or in part to any cause beyond the Company’s reasonable control, including national or general strike, fire, riot, act of God, act of a public enemy, floods, acts of terrorism, transportation

delays, embargoes, pandemic, epidemic, public health emergency, governmental order, inability to obtain necessary materials or equipment for a reasonable price or within a reasonable time period. or other similar events.

- 14.8. Severability. If one or more of the provisions contained in these Terms 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 of these Terms and these Terms will be construed as if the invalid, illegal, or unenforceable provision had never been contained in these Terms.
- 14.9. Counterparts; Electronic Signatures and Electronic Transmittal. Orders (a) may be executed in two or more counterparts, each of which is deemed an original, but all of which together will constitute one and the same instrument, and (b) may be executed by electronic signature. Either party may also sign by hand and transmit its signed counterpart in its entirety to the other party by electronic mail.