

## General Terms and Conditions of Purchase

### NILES-SIMMONS-HEGENSCHEIDT GmbH

#### 1. Applicability

- 1.1. These General Terms and Conditions of Purchase (“**GTCP**”) apply to any purchase order (“**Order**”) from NILES-SIMMONS-HEGENSCHEIDT GmbH (“**NSH**”) for goods (“**Goods**”) and services (“**Services**”) provided by any supplier (“**Contractor**”), unless NSH and the Contractor (both “**Party**” or “**Parties**”) have explicitly agreed otherwise in writing.
- 1.2. General terms and conditions of contract of the Contractor or third parties shall only apply if NSH has given its written consent for the specific Order. Reference to a letter (including an email) which contains such general terms and conditions of contract, or which refers to such ones shall not be deemed as written acceptance of such terms and conditions.

#### 2. Orders

- 2.1. An Order shall only be deemed to be effective if it is placed by NSH in writing (including by fax, email or an electronic ordering system). Orders placed verbally or by telephone shall only be binding on NSH if subsequently confirmed in writing (including by fax, email or an electronic ordering system).
- 2.2. Unless the Order explicitly contains a validity period, it shall be binding on NSH for a period of 10 working days from the date of the Order. The Order shall be considered as accepted by the Contractor if the order confirmation has been received by NSH within the validity period of the Order.
- 2.3. The Contractor warrants that it is duly aware of the extent, requirements and purpose of the Goods and Services to be performed by the Contractor and that it has satisfied itself as to the nature and extent of the risks assumed by it under the Order. The Contractor bears the procurement risk related to the Goods and Services, unless otherwise agreed in writing by the Parties (e.g. limitation to goods available on stock).

#### 3. Requirements and Free Issued Material

- 3.1. Requirements are drawings, patterns, models, calculations and layouts incl. tolerance levels (together referred to as “**Requirements**”). Free issued material of NSH are tools, semi-finished and finished products (together referred to as “**Free Issued Material**”). The Contractor is obliged to verify correctness and suitability of Requirements and Free Issued Material for the performance of the Goods and Services and to inform NSH without undue delay about any deficiencies or inaccuracies contained therein. If NSH instructs the Contractor by written notice to execute the Order in accordance with such Requirements and Free Issued Material, NSH bears the resulting risks.
- 3.2. Any tools, equipment and models which are manufactured by the Contractor for the purpose of the Order and paid additionally by NSH, shall become the sole property of NSH and considered to be Free Issued Material.
- 3.3. NSH, their affiliates and subcontractors, as the case may be, retain all tangible and intellectual property rights contained in Requirements and Free Issued Material. The Contractor shall properly store all Requirements and Free Issued Material at its own cost to prevent any damages thereto. For this purpose, the Contractor will mark all such Free Issued Material as property of NSH, to the extent not already marked accordingly by NSH. The Contractor is neither allowed to grant any third parties access to Requirements or Free Issued Material, nor entitled to use or copy it either by itself or by a third party without the written consent of NSH, except as required for the purpose of providing Goods and Services in accordance with the Order.



- 3.4. Upon request of NSH, Requirements and Free Issued Material shall be immediately returned. Any copies made by the Contractor shall be duly destroyed or deleted. This shall not apply to Requirements and Free Issued Material which are to be retained to complete outstanding works for the Goods and Services, due to laws or governmental authorities, or if deletion of electronic data is not completely possible due to their incorporation into automatic backup files of an electronic data protection system.
- 3.5. The Contractor is responsible for the required repair and maintenance of Free Issued Material at the cost of NSH. Nevertheless, should any costs occur due to defects of such goods previously manufactured by the Contractor or resulting from misuse by the Contractor, its personnel or subcontractors, the Contractor shall bear all such costs. The Contractor shall be liable for any loss or damage to Free Issued Goods, unless such loss or damage is not attributable to the Contractor. In case of any damages to Free Issued Goods, the Contractor shall immediately notify NSH.
- 3.6. Should the Contractor acquire the ownership of Free Issued Material due to processing, mixing or combining (further processing), it hereby assigns the co-ownership of the processed object in the same proportion as the value of this object to the Free Issued Material. The Contractor shall store the items jointly owned carefully and free of charge and, in particular, protect them from access by third parties and damages of any kind.
- 3.7. Any retention of title by the Contractor to any part of the Goods shall only apply to the extent it relates to the payment obligations of NSH for the respective Goods. In particular, extended retention of title and all monies clauses shall be prohibited.

## 4. Delivery and Delayed Delivery

- 4.1. The dates for delivery of Goods and provision of Services as included in the Order shall be binding on the Contractor. Unless otherwise agreed, time periods shall commence on the issue date of the Order.
- 4.2. The Contractor shall be obliged to inform us without delay, if – for whatever reason – agreed delivery dates possibly may not be achieved. Required acceleration measures to minimize the delay shall be performed by the Contractor at its own cost.
- 4.3. The Contractor shall be in delay without formal reminder if agreed performance dates are not fulfilled. If the Contractor fails to provide the Goods and Services within by the agreed due dates or is in default, the rights of NSH – in particular with respect to withdrawal from the Order and claims for damages – shall be in accordance with the law. The provisions contained in paragraph 4.4 shall remain unaffected.
- 4.4. If the Contractor is in delay, NSH is entitled to claim a contractual penalty of 0.5 % of the net price of the delayed Goods and Services for each week of delay, however, not exceeding 5 % of the total net price of delayed Goods and Services. In addition, NSH is entitled, in accordance with the law, to claim further damages for delay which exceed the amount of the penalty and to require fulfilment of the Order by the Contractor. The right to request compensation of further losses or damages from the Contractor, e.g. due to defects, remains unaffected. If the delayed Goods and Services are accepted by NSH, the right to demand the contractual penalty shall be exercised no later than at the time of final payment.
- 4.5. NSH is not obliged to accept any delivery made by the Contractor prior to the agreed delivery date(s).

## 5. Delivery, Packing and Transfer of Risk

- 5.1. All Goods shall be delivered DDP (Incoterms 2020) to the place named in the Order, unless otherwise explicitly agreed therein. If a separate place of final destination has been included in the Order, this place shall be deemed to be the place of performance applicable for any rectification work.
- 5.2. Any required packing costs shall be included in the prices, however, other agreements expressly reserved, in which case the packing shall be calculated on prime cost. The Contractor shall select the type of delivery and packing to make sure that the Goods are protect from damages and that the delivery will be completed by



the agreed delivery date. Environmentally friendly packaging materials are preferred. If NSH is obliged to bear the freight cost according to the Order, the Contractor is responsible for selecting the most economically mode of transportation and delivery.

- 5.3. The transfer of risk for loss and damage to the Goods to NSH shall occur at the place of delivery in accordance with the agreed Incoterms.
- 5.4. The statutory regulations shall apply with respect to default of acceptance by NSH. However, the Contractor remains obliged to explicitly offer its performance, even if a specified time has been agreed for an action or contribution by NSH (e.g. for the provision of material). Should NSH be in default of acceptance, the Contractor may demand compensation of reasonable additional cost under the law.
- 5.5. Partial deliveries are only permitted, if explicitly agreed. In case of an Order on call, NSH shall only be obliged to accept the total quantity if this has explicitly been provided for in the Order. Otherwise, there shall be no obligation to take over or pay for any quantities of Goods and Services which have not been called on during the recall period.
- 5.6. Notifications of dispatch shall only be sent by the Contractor if separately agreed or requested by NSH.

## 6. Documentation

- 6.1. The order confirmation shall be submitted latest within 10 working days from receipt of the Order and shall contain as a minimum the following information:
  - number und date of the Order;
  - unit prices und total price;
  - NSH Order item numbers, article description and article numbers of NSH, quantity and quantity unit (not required, if the Order is accepted in total);
  - delivery date(s) of the Goods at the respective place of delivery;
  - terms of delivery and payment (if deviating from the Order).
- 6.2. Delivery notes, packing lists and customs invoices (if relevant) shall be attached to each delivery in duplicate original. The documents shall contain:
  - number und date of the Order;
  - NSH Order item numbers;
  - quantity and quantity unit, gross weight, net weight and, if relevant, calculated weight;
  - article description and article numbers of NSH;
  - customs tariff code;
  - remaining quantities, provided partial deliveries are permitted.
- 6.3. Commercial invoices shall be sent in hard copy or electronically to the email address set forth in the Order and shall, in addition to the information under paragraph 6.2, contain the terms of delivery and payment.
- 6.4. Should one or several of the required information as set forth above be missing or should the documents otherwise not comply with legal requirements, NSH is allowed to reject such documents.
- 6.5. All technical descriptions and calculations, installation and operation manuals as well as other agreed documents, which are related to the Goods and Services, shall be submitted to NSH upon delivery of the Goods. This applies equally to required export documents according to paragraph 10, provided it has been agreed that the Goods and Services are intended to be distributed abroad, also as part of the machine to be manufactured by NSH, as the case may be. Should any or all of these documents not be provided, this shall constitute a defect of the Goods and Services and NSH shall be entitled to assert rights and remedies for defects pursuant to paragraph 9.



## 7. Prices and Terms of Payment

- 7.1. All prices shall be fixed prices unless the Contractor generally reduces its pricing level or as otherwise agreed by the Parties. The applicable value added tax shall be indicated separately. The total price shall be inclusive of value added tax.
- 7.2. The total price shall include all works and services of the Contractor required for the completion of Goods and Services as well as all related costs, such as for proper packing, transportation, insurance for transport and third-party liability, installation and commissioning at the customer's site, documentation and test certificates.
- 7.3. Every delivery performed shall be invoiced separately. All delays due to incorrect, incomplete or delayed invoices or deliveries do not affect the cash discount provided for under paragraph 7.5.
- 7.4. Payments and partial payments shall not be deemed to be an approval or acceptance by NSH of any Goods or Services performed by the Contractor. All rights and remedies available under paragraph 9 remain unaffected.
- 7.5. Unless otherwise agreed, all payments shall be released upon fulfilment of all requirements of the respective payment milestone and receipt of a proper invoice according to paragraph 6.3 within 30 days less cash discount of 3 %, or within 90 days net. Bank transfers shall be deemed to be effected in due time if the remittance order has been submitted to the bank of NSH before expiration of the payment due date.
- 7.6. NSH shall only be liable to pay interest on late payment in accordance with statutory provision upon being in default of payment.

## 8. Assignment, Rights of Set-off and Liens

- 8.1. The Contractor is not entitled to assign any rights or obligations under the Order to any third party. This shall not apply to monetary claims.
- 8.2. NSH is entitled to enforce its rights of set-off and liens as well as defence of lack of performance of the contract pursuant to legal regulations. NSH is specifically allowed to retain reasonable amounts otherwise being due as long as any rights or remedies are available to NSH due to incomplete or deficient performance of Goods or Services by the Contractor.
- 8.3. The Contractor is entitled to enforce its rights of set-off and liens only in case of claims established as final and absolute or in case of undisputed counter claims.

## 9. Warranties

- 9.1. If the Goods or Services are found to be defective (including but not limited to misdeliveries, short deliveries, material defects, defects of title, deficient installation, insufficient manuals for installation or operation), or if the Contractor violates any other legal or contractual obligations, the rights and remedies shall be in accordance with statutory provisions, unless otherwise stipulated below.
- 9.2. The Contractor warrants that the Goods and Services shall be in accordance with all agreed technical specifications and that all technical parameters, which have been agreed within the Order, will be met. Unless a specific agreement on the legal and factual nature of the Goods has been made by the Parties, the Goods shall be in accordance with the technical requirements set forth in applicable technical standards, including but not limited to EN, DIN, VDE, VdW or VDMA standards. Notwithstanding the above, the Goods and Services shall always be in accordance with best industry practice and state of the art.
- 9.3. The obligations of NSH regarding inspection of Goods and Services and notification of defects shall be as set forth in §§ 377, 381 HGB, subject to the following: the obligation to inspect Goods regarding defects is limited to visible defects which are identifiable by visual inspection during the receiving inspection, or by verification



of Goods and related shipping documents, or by random sampling performed by the quality control inspection (including transport damages, misdeliveries and short deliveries). Notwithstanding the above, the obligation to inspect Goods received shall be limited to the ordinary extent for such kind of Goods. If a formal acceptance of the Goods and Services has been agreed, NSH is not obliged to perform a receiving inspection. The obligation of NSH to notify defects which have been identified later remains unaffected. The notification of defect shall be deemed to be given promptly by NSH if the notification has been submitted to the Contractor within 5 working days from identification of the defect.

- 9.4. Acceptance or approval of samples or specimens by NSH shall not constitute in any way a waiver of any rights or remedies, except NSH had explicitly instructed the Contractor to perform Goods and Services in a specific way under NSH's liability, although the Contractor had previously in particular emphasised the consequences of such possible wrong instruction (see paragraph 3.1 above).
- 9.5. If the Contractor fails to remedy the defect – at the option of NSH by repair or replacement of the deficient Goods – within a reasonable period as instructed by NSH, the defect may be rectified by NSH either by itself or by another contractor at the sole cost of the Contractor, whereas NSH shall be entitled to request prepayment of a reasonable portion of such cost from the Contractor. Provided the rectification of the defects has ultimately failed or is unreasonable for NSH (for instance due to urgency related to incorporation of the Goods into a machine being manufactured by NSH, hazards to operational safety or threatening occurrence of excessive damages), NSH may immediately take adequate steps without granting the Contractor time for rectification. Nevertheless, NSH will inform the Contractor regarding such circumstances without undue delay, if possible, before taking any action.
- 9.6. The Contractor shall bear all its cost for rectification of defects as well as required all costs for de- and re-installation, packing, transportation, customs duties and fees. The expenses required for evaluation of the defect shall be for the Contractor's account, even if there is no defect. NSH shall be liable for all other costs resulting from unjustified requests for rectification of possible defects.
- 9.7. The warranty period for Goods and Services shall be 36 months, starting with handover of Goods and Services, or, provided acceptance has been agreed explicitly, upon acceptance of Goods and Services.
- 9.8. The written notification of a defect (as well via email or telefax) received by the Contractor shall interrupt the warranty period until the Contractor declares the successful rectification of the defect or denies continuing the negotiation by the Parties regarding the remedies. For repaired and replaced parts of the Goods the contractual warranty period shall commence again. This shall not apply if NSH ought to have known that the Contractor was not obliged to perform the repair or replacement works but offered such work on ex gratia basis only.
- 9.9. In addition, NSH is entitled in accordance with the applicable law to reduce the Order price, withdraw from the Order including reverse transaction and request compensation of damages and additional cost.

## 10. Export Control and Customs Duties

- 10.1. The Contractor is obliged to inform NSH in writing in due time before the delivery date regarding any required export license for the Goods under the applicable German, European or American export control laws or such other relevant laws of the country of origin of the Goods. The Contractor is responsible to submit to NSH specifically the following information:
  - the export list number in accordance with Annex AL to the German Foreign Trade Regulations or comparable item numbers of relevant export lists;
  - the Export Control Classification Number according to the U.S. Commerce Control List (ECCN);
  - China Compulsory Certification (CCC) Certificates;
  - the statistical item number of goods (HS-/KN-Code);
  - the country of origin (trade origin/non-preferential origin);



- information, if and to what percentage goods and materials originating from America have been incorporated into the Goods.
- 10.2. Upon request of NSH the Contractor shall provide further information and data which are required by NSH for the import and, in case of re-sale, for the export of the Goods.
- 10.3. The Contractor is obliged to notify NSH immediately regarding any change affecting the required licenses or approvals of Goods due to technical modifications, changes in laws or authority approvals.
- 10.4. If the Contractor does not comply with its obligations set forth in paragraph 10, the Contractor shall be liable for all resulting costs, claims, losses and damages of NSH (including additional foreign import fees and duties). This shall not apply, if the Contractor is not responsible for such breach of obligations.

## 11. Manufacturer's Liability

- 11.1. The Contractor shall defend and indemnify NSH from all claims, costs, losses and damages of third parties due to a damage inherent in the product which arises out of Contractor's sphere of control and for which the Contractor would be equally liable in a direct external relationship.
- 11.2. The Contractor's indemnification obligation set forth herein shall include compensation of additional expenses in accordance with §§ 683, 670 BGB, which result from claims of third parties including costs that are required for a product recall campaign performed by NSH. If reasonably possible, the Contractor will be informed about the content and extent of an intended product recall campaign duly in advance including being given the opportunity to provide an own official opinion. NSH reserves all further rights available at law under such circumstances.
- 11.3. The Contractor is obliged to conclude and maintain a product liability insurance with sufficient coverage and insured sums for damages to persons and property.

## 12. Intellectual Property Rights

- 12.1. The Contractor shall, to the extent permitted by law and required for the utilisation of the Goods and Services according to the contractual purpose, grant NSH a royalty-free, non-exclusive, irrevocable and unlimited license and right of use and exploitation for all Goods.
- 12.2. The Contractor warrants that the Goods and Services will not infringe any intellectual property rights of third parties within the European Union or in countries where the Goods are manufactured. Provided the Contractor knows the final destination of the Goods, the Contractor's warranty shall be extended to this country.
- 12.3. The Contractor shall defend and indemnify NSH from any claims, costs, losses and damages of third parties for infringement of intellectual property rights upon first written request. The Contractor may prove that such alleged infringement was not caused by the Contractor and that such damages are not reasonable. NSH is not entitled to settle any such dispute with a third party without the consent of the Contractor.
- 12.4. The obligation to indemnify NSH includes all expenses which reasonably arise out of or in connection with the claim of the third party, unless the Contractor can demonstrate that the infringement of intellectual property rights did not result from an act or omission for which the Contractor is responsible. The Contractor shall not be deemed responsible if the infringement results from Requirements or Free Issued Material of NSH, provided the Contractor is neither aware nor should be aware of any violation of third-party intellectual property rights (see paragraph 3.1 above). In such case, NSH will defend and indemnify the Contractor accordingly.
- 12.5. NSH retains all rights additionally available under the law regarding defects of title of delivered Goods.
- 12.6. Contractor's liability hereunder shall expire 3 years from the transfer of risk of the Goods.



## 13. Confidentiality and Data Security

- 13.1. The Contractor shall treat the conditions of the Order and all information, which it received for the purpose of the Order, confidential and use such confidential information only for the execution of required works under the Order. This shall not apply to publicly available information. The Contractor shall, upon request of NSH, after completion of Goods and Services either return or destroy all confidential information.
- 13.2. The Contractor shall not publish any information regarding this business relationship or publicly exhibit the Goods produced for NSH without the prior written consent of NSH.
- 13.3. The Contractor shall limit the access to confidential information to such employees, affiliates, agents and suppliers, who need to know such specific information for the performance of Goods and Services, provided such they have been bound by confidentiality and restricted use obligations at least as stringent as set forth in this paragraph 13.
- 13.4. The confidentiality obligations shall survive any termination of the Order.

## 14. Guarantees, Bonds

- 14.1. If an advance payment has been agreed, the Contractor is obliged, upon request of NSH, to provide a directly enforceable bank guarantee or insurance bond in the amount of the total down payment including VAT.
- 14.2. In addition, NSH may request a directly enforceable performance bank guarantee or insurance bond from the Contractor in the amount of 5 % of the total Order price including VAT. NSH shall return the guarantee or bond immediately upon handover or, if agreed for such Order, upon acceptance of the Goods and Services.
- 14.3. NSH is entitled to retain an amount of 5 % of the final total Order price including VAT from the final payment for the period from handover or acceptance of the Goods until expiration of the warranty period. NSH will release such amount at any time earlier upon receipt of a directly enforceable guarantee or insurance bond from the Contractor covering the same amount. NSH's right to retain certain amounts from payments due to defects remains unaffected.
- 14.4. Bank guarantees or insurance bonds issued under this paragraph 14 shall be provided by a reliable financial institution or insurance company with first-class credit rating, or as otherwise accepted by NSH, be drawable upon first written demand and include a waiver of the rights to object or set-off. The waiver of rights to set-off shall not be applicable if the counterclaim of the Contractor is undisputed or has been confirmed by final judgement.

## 15. Spare Parts

- 15.1. The Contractor shall be obliged to assure availability of spare parts of all Goods for a minimum period of 10 years from delivery of the Goods.
- 15.2. Should the Contractor intent to stop production of any spare parts of the Goods, the Contractor shall inform NSH regarding such decision without undue delay. The obligation regarding availability of spare parts pursuant to paragraph 15.1 remains unaffected.

## 16. Supplier Code of Conduct

- 16.1. The Contractor shall at any time during the period of the business relationship with NSH comply with all relevant laws and regulations regarding ethical business conduct. The Contractor specifically warrants:
  - to refrain from offering or providing, demanding or accepting any form of advantages in relation to officials during the course of business or while contacting officials which might violate applicable anti-corruption or anti-bribery laws;



- not to enter into any agreements or participate in any concerted practices with other companies which might be intended or lead to a restriction, distortion or prevention of fair competition according to applicable antitrust or competition laws;
- to comply with all applicable laws regarding general minimum wages, treatment of employees and occupational health and safety;
- to observe all applicable standards and regulations regarding protection of human rights and the environment;
- to bind all subcontractors under similar conditions.

16.2. The Contractor shall prove its compliance with the obligations set forth above upon request of NSH and defend and indemnify NSH from any claims, costs, losses and damages from third parties, including penalties and fines, which might be imposed on NSH due to a breach of the Contractor.

16.3. In case of any suspected breach of the foregoing obligations, the Contractor must immediately clarify the circumstances and inform NSH regarding any relevant measures that have been taken. Should the suspicion not be justified, the Contractor nevertheless shall inform NSH within reasonable time about general internal measures that have been implemented to avoid the occurrence of such related future infringements.

16.4. If the Contractor materially violates any relevant laws hereunder, breaches its warranties under paragraph 16.1 or in case of absolutely insufficient clarification of suspicions under paragraph 16.3, NSH may immediately terminate the Order or withdraw from the Order and request compensation of damages in accordance with the law.

## 17. Governing Law and Place of Jurisdiction

17.1. These GTCP and the contractual relationship between NSH and the Contractor shall be governed by the laws of Germany with the exclusion of the conflict of laws provisions.

17.2. Exclusive place of jurisdiction for all claims and disputes arising out of or in connection with the contractual relationship shall be Chemnitz, Germany. NSH shall be entitled to refer any dispute alternatively to the competent courts at the place of performance of the delivery obligations or at the seat of the Contractor. Mandatory legal provisions, specifically regarding exclusive jurisdictions, shall remain unaffected.

(Dated November 2022)