# General Terms & Conditions of Sale
# Thomson Neff Industries GmbH

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**General Provisions**

1. These General Terms and Conditions of Sale (GTCS) shall apply to all contractual relationships of Thomson Neff Industries GmbH (hereinafter referred to as: Supplier) with its customers (hereinafter referred to as: Purchaser). The GTCS shall apply only if the Purchaser is an entrepreneur (*Unternehmer*) (within the meaning of Section 14 of the German Civil Code, BGB), a legal person constituted under public law (*juristische Person des öffentlichen Rechts*) or a public sector funding company (*öffentlich-rechtliches Sondervermögen*).
2. In particular, the GTCS shall apply to contracts for the sale and/or supply of movable items (hereinafter referred to as: Goods), irrespective of whether the Supplier produces the Goods itself or sources these from suppliers (Sections 433 and 651 of the German Civil Code). The GTCS, as amended from time to time, shall also apply as a framework agreement to future contracts with the same Purchaser for the sale and/or delivery of movable items, without any requirement on the part of the Supplier to make additional future reference to the GTCS in each individual case.
3. These GTCS shall be exclusively applicable. Any general terms and conditions of the Purchaser that depart from, conflict with or supplement the GTCS shall form part of the contract only if and to the extent that the Supplier has expressly consented to the validity of such. This requirement of consent shall apply in all cases, including, without limitation, in cases where the Supplier unconditionally carries out a delivery to the Purchaser in the knowledge of the Purchaser's general terms and conditions.

**II. Conclusion of the Contract**

1. Offers of the Supplier shall be subject to change and shall not constitute binding offers.
2. The placing of an order for the Goods by the Purchaser shall be deemed a binding contractual offer. Unless the order stipulates otherwise, the Supplier shall be entitled to accept such contractual offer within four weeks of such offer being received by it.
3. Acceptance can be declared either in writing (e.g. by confirmation of the order) or by delivery of the Goods to the Purchaser.

**III. Prices and Payment Conditions**

1. The prices shall be on an ex-warehouse basis and shall exclude packaging and applicable sales tax (*Umsatzsteuer*).
2. If the Supplier has undertaken to carry out the installation or assembly, and unless agreed otherwise, the Purchaser shall, in addition to the agreed fee, bear all necessary ancillary costs, including, without limitation, travel expenses, costs for the transport of tools and of personal luggage of persons appointed by the Supplier as well as allowances (*Auslösungen*).
3. Any custom duties, fees, taxes and other public charges shall be borne by the Purchaser. The Supplier shall not accept the return of any transport or other packaging subject to the German Packaging Ordinance (*Verpackungsverordnung*); these shall become the property of the Purchaser.
4. Payments must be made free Supplier's payment office.
5. Invoices shall be payable in full within 30 days. The Purchaser shall be in default of payment upon expiry of such payment period. Interest shall be payable on the purchase price for the duration of the default at a rate of 8 percent above the base rate (*Basiszinssatz*), subject to a minimum of 12 percent p.a. The Supplier reserves the right to assert claims in respect of default losses in excess of such interest. This shall be without prejudice to the Supplier's right to claim commercial default interest (*kaufmännischer Fälligkeitszins*) from business persons (*Kaufleute*) (Section 353 of the German Commercial Code, HGB).
6. The Purchaser shall have a right to offset against claims (*Aufrechnung*) only if its counterclaim has been established by a final and binding decision or is undisputed. The same shall apply to the right of retention, the valid exercise of which shall further require that the counterclaim of the Purchaser must arise under the same contractual relationship.

**IV. Delivery Times; Failure to Deliver and to Take Delivery**

1. Times set for deliveries can only be observed if all documents to be supplied by the Purchaser, necessary permits and clearances, especially concerning plans, are received in time, and if agreed terms of payment and other obligations are fulfilled by the Purchaser. If these conditions are not fulfilled in time, the Supplier shall be entitled to extend the times by a reasonable degree; this shall not apply where the Supplier is responsible for the delay.
2. If the failure to observe the times is due to *force majeure* such as mobilization, war, civil unrest or similar events, e.g. strike or lockout, the Supplier shall be entitled to extend the times by a reasonable degree.
3. If the Supplier delays in making delivery, and the Purchaser can prove that it has suffered a loss resulting therefrom, the Purchaser may claim compensation of 0.5 % of the price for every completed week of delay in respect of the undelivered part of the delivery, but no more than a total of 5 %. The Purchaser's claims for damages due to delayed delivery as well as claims for damages in lieu of performance (*Schadensersatz statt der Leistung*) exceeding the limits set forth in the preceding sentence shall be excluded in all cases of delayed delivery, even after expiry of a deadline imposed on the Supplier to make delivery. This shall not apply in the cases set forth in Art. XI No. 2.
4. At the Supplier's request, the Purchaser shall declare within a period of two weeks whether the Purchaser is rescinding the contract due to the delayed delivery. If the Purchaser fails to make such declaration within this period, its right to rescission shall be lost.
5. If dispatch or handover is delayed at the Purchaser's request by more than one month after notice of the readiness for dispatch was issued, the Purchaser may, for every commenced week after the one-month-period, be charged storage costs of 1 % of the price of the items to be delivered, but no more than a total of 100 %. The parties to the contract reserve the right to prove that higher or lower storage costs have been incurred; the fixed-sum storage cost is to be applied against any more extensive monetary claims.
6. Where a contractual right to return the Goods has been agreed upon, the Purchaser shall bear the packaging and dispatch costs. The risk of deterioration and possible destruction shall be borne by the Purchaser up until receipt of the returned Goods.

**V. Delivery, Transfer of Risk**

1. The delivery shall take place on an ex warehouse basis; this shall also constitute the place of performance (*Erfüllungsort*). At the request and expense of the Purchaser, the Goods may be dispatched to a different location (sale by delivery, *Versendungskauf*). Unless agreed otherwise, the Supplier shall be entitled to determine the type of delivery (including, without limitation, the transport company, method of delivery, packaging) itself.
2. The risk of accidental destruction and accidental deterioration of the Goods as well as the risk of delays shall, also in the case of freight-free delivery, pass to the Purchaser as follows:
   a) In the case of a sale by delivery, the risk shall pass upon the Goods being passed to the carrier, freight forwarder or any other person or organization appointed for the delivery of the Goods. At the request and expense of the Purchaser, the delivery shall be insured by the Supplier against the standard risks of transportation;
   b) In the case of deliveries involving installation or assembly, on the day of being placed into operation or, where agreed, after a fault-free trial run.
   c) Where a requirement of inspection and acceptance (*Abnahme*) of the Goods by the Purchaser has been agreed upon, the passing of risk shall take place upon such inspection and acceptance. Without prejudice to the foregoing, the statutory rules governing work contracts requiring a specific result (*Werkvertragsrecht*) shall apply accordingly; Art. VI No. 6 shall remain unaffected.
3. The risk shall pass to the Purchaser if the dispatch, the handover, the start or performance of the installation or assembly, the placing into operation or the trial run is delayed due to reasons for which the Purchaser is responsible, or if the Purchaser has failed to take delivery for any other reason.
4. The Purchaser may not refuse a delivery on the basis of minor defects. Delivery in installments shall be permissible insofar as this is reasonable for the Purchaser.

**VI. Inspection and Acceptance**

If the Supplier demands an inspection and acceptance of the delivery, the Purchaser shall carry out such inspection and acceptance within a period of two weeks after delivery. Should this fail to occur, the inspection and acceptance shall be deemed to have taken place unless the Purchaser reports precisely defined defects or errors in writing within such period; the date by which such deadline must be met shall be the date on which the defect/error report is received by the Supplier. The inspection and acceptance shall also be deemed to have taken place if the delivery has been put into use, after completion of an agreed test phase, if any.

**VII. Retention of Title**

1. The Supplier reserves the right to retain title in the sold Goods up until full payment on all current and future claims of the Supplier arising under the purchase contract and an ongoing business relationship (secured claims).
2. Prior to full payment on the secured claims, the Goods subject to the retention of title may not be pledged to third parties, nor may title therein be transferred for the purpose of security. The Purchaser shall be obliged to notify the Supplier in writing and without delay if and to the extent that third parties gain access to the Goods belonging to the Supplier.
3. The Purchaser shall be authorized to resell and/or process the Goods that are subject to the retention of title, in the ordinary course of business. In such case, the following additional provisions shall apply.
   a) The retention of title shall extend to products created as a result of the processing, mixing or combining of the Goods of the Supplier, to the extent of their full value; in such case, the Supplier shall be deemed the producer.
   b) If, in the case of processing, mixing or combing with goods of third parties, the proprietary right of a third party continues to exist, the Supplier shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In all other cases, the rules applicable to the delivered Goods subject to the retention of title shall also apply to the product created.
   c) For the purpose of security, the Purchaser hereby fully assigns to the Supplier all claims arising against third parties in connection with the resale of the Goods or of the product in the case of (a) and/or in the case of (b) above in the amount of the Supplier's co-ownership share. The Supplier hereby accepts such assignment. The Purchaser's obligations set forth in subsection 2 shall also apply with regards to the assigned claims.
   d) The Purchaser shall, in addition to the Supplier, remain authorized to enforce the third-party claim. The Supplier undertakes to refrain from enforcing the third-party claim to the extent that the Purchaser continues to meet its payment obligations towards Supplier and does not default on payment; that no application for the initiation of insolvency proceedings has been filed in respect



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of the Purchaser's assets; and that there are no other defects in the Purchaser's ability to meet its obligations. Should this be the case, however, the Supplier may demand that the Purchaser notify it of the assigned claims and the respective debtors, provide all other information required for enforcement purposes, supply related documentation, and notify the debtors (third parties) of the assignment.

e) In the event that the attainable value of the security should exceed the secured claims of the Supplier by more than 20%, the Supplier shall, upon request by the Purchaser, release securities as selected by the Supplier.

1. Deliveries for which a quality defect arises within the limitation period, irrespective of the hours of operation, shall, at the choice of the Supplier, be repaired, replaced or performed again free of charge provided that the cause of the defect already existed at the time when the risk passed.
2. Claims resulting from quality defects shall be subject to a limitation period of 12 months. This shall not apply where longer periods are prescribed by law pursuant to Sections 438 (1) No. 2 (buildings and items used for buildings), 479 (1) (right of recourse, *Rückgriffsanspruch*) and 634a (1) No. 2 (building defects) of the German Civil Code, as well as in cases of death, personal injury or damage to health, or where the Supplier intentionally or grossly negligently breaches its duty or willfully (*arglistig*) conceals a defect. The statutory provisions regarding suspension of expiration (*Ablaufhemmung*), suspension (*Hemmung*) and recommencement of limitation periods shall remain unaffected.
3. The Purchaser shall notify quality defects (including, without limitation, incorrect or insufficient deliveries) to the Supplier in writing and without delay. Such notice shall no longer be deemed "without delay" where it is not given within two weeks; this deadline shall be deemed to have been met if the notice is posted within this period.
4. The Supplier shall be entitled to make any owed remedy of specific performance (*Nacherfüllung*) conditional upon the payment of the due purchase price by the Purchaser. In such case, however, the Purchaser shall be entitled, pursuant to Art. III No. 6 sentence 2, to withhold a reasonable portion of the purchase price in relation to the defect. Unjustified notices of defects shall entitle the Supplier to have its expenses reimbursed by the Purchaser.
5. The Supplier shall first be given the opportunity to carry out specific performance within a reasonable period of time. If the specific performance is unsuccessful, the Purchaser shall be entitled to rescind the contract or to a reduction in the fee.
6. There shall be no claims resulting from defects in the case of minor deviations from the agreed nature and quality (*Beschaffenheit*), of only minor impairment of usefulness, or natural wear and tear or damage arising after the passing of risk as a result of faulty or negligent handling, excessive use, unsuitable equipment, defective workmanship, unsuitable foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. Likewise, claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties or to the consequences thereof shall also be excluded.
7. The Purchaser shall have no claim with respect to expenses incurred for the purpose of specific performance, including costs of travel and transport, labor and material, where expenses are increased because the items for delivery were subsequently brought to a location other than the Purchaser's premises, unless doing so is consistent with its intended use.
8. The Purchaser's rights of recourse against the Supplier pursuant to Section 478 of the German Civil Code (*Rückgriff des Unternehmers*) shall only exist insofar as the Purchaser has not made any agreements with its customer exceeding the scope of statutory rules governing claims arising from defects. Moreover, Art. VIII No. 7 shall apply accordingly to the scope of the Purchaser's right of recourse against the Supplier pursuant to Section 478 (2) of the German Civil Code.
9. Without prejudice to the above, the provisions of Art. XI (Other Claims for Damages) shall apply in respect of claims for damages. Any other claims of the Purchaser against the Supplier or its appointees (*Erfüllungsgehilfen*), or any such claims other than those set forth in this Art. VIII, resulting from a quality defect shall be excluded.

**IX. Industrial Property Rights and Copyright; Defects in Title**

1. Unless agreed otherwise, the Supplier shall perform its contractual services free from third-party industrial property rights and copyright (hereinafter referred to as: IP Rights) solely in the country of the place of destination. If a third party asserts justified claims against the Purchaser based on an infringement of IP Rights with respect to services that were performed by the Supplier and were used in accordance with the contract, the Supplier shall be liable to the Purchaser as follows within the time period set forth in Art. VIII No. 2:

   a) The Supplier shall, at its own selection and expense, either acquire a license to use the supplies in question, to modify them such that they no longer infringe the IP Right, or replace them. If it would be unreasonable for the Supplier to do this, the Purchaser may rescind the contract or reduce the fee in accordance with statutory rules.

   b) The Supplier's liability to pay damages shall be governed by Art. XI.

   c) The above obligations of the Supplier shall only apply if the Purchaser informs the Supplier of claims asserted by the third party without delay and in writing, does not acknowledge any infringement and leaves any defense measures and settlement negotiations to the discretion of the Supplier. If the Purchaser ceases to use the supplies for damage limitation purposes or for any other significant reasons, it shall be obliged to point out to the third party that no acknowledgement of infringement may be inferred from the fact that use has been discontinued.

2. Claims of the Purchaser shall be excluded if the Purchaser is itself responsible for the infringement of an IP Right.
3. Claims of the Purchaser shall also be excluded if the infringement of the IP Right is caused by specifications stipulated by the Purchaser, by a type of use not foreseeable by the Supplier or by the delivery being modified by the Purchaser or being used together with products not supplied by the Supplier.
4. The Supplier hereby fully reserves any proprietary rights and/or copyrights with regard to the use of cost estimates, drawings, manuals and other documents (hereinafter referred to as: "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply accordingly to Documents of the Purchaser; they may, however, be made accessible to those third parties to whom the Supplier has lawfully transferred the supplies.
5. The Purchaser shall have the non-exclusive right to use software supplied by the Supplier, provided that the software remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make two back-up copies without express agreement.
6. Without prejudice to the above, the provisions of Art. VIII No. 4, 5 and 9 shall, with regard to the Purchaser's claims pursuant to No. 1 a), apply accordingly in the event of an infringement of an IP Right.
7. Where any other defects in title occur, the provisions of Art. VIII shall apply accordingly.
8. Any other claims of the Purchaser against the Supplier or its appointees (*Erfüllungsgehilfen*), or any such claims other than those set forth in this Art. IX, resulting from a defect in title shall be excluded.

**X. Impossibility of Performance, Adjustment of the Contract**

1. To the extent that delivery is not possible, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of that part of the delivery which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence, death, personal injury or damage to health; this shall not result in a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to rescind the contract shall remain unaffected.
2. Where unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic basis or contents of the contractual performance or considerably affect the Supplier's business, the contract shall be reasonably adjusted having regard to the principles of good faith. Where doing so is economically unreasonable, the Supplier shall have the right to rescind the contract. If the Supplier intends to exercise its right of rescission, it shall notify the Purchaser thereof within three weeks of becoming aware of the event. If the Supplier fails to give such notice within this period, its right of rescission shall be lost.

**XI. Other Claims for Damages**

1. The liability of the Supplier for damages, irrespective of the legal basis of such liability, apply only in the event of intentional or grossly negligent conduct. In the event of basic negligence (*einfache Fahrlässigkeit*), the Supplier shall only be liable for damage resulting from death, personal injury or damage to health, or for damage resulting from the violation of a fundamental contractual obligation (*wesentliche Vertragspflicht*) (an obligation the fulfillment of which renders the proper performance of the contract possible in the first instance and the compliance with which a contractual partner typically does, and is entitled to, rely upon); in such case, however, the liability of the Supplier shall be limited to the reimbursement of foreseeable and typical damage.
2. The limitations of liability set forth in subsection 1 shall not apply in the event that the Supplier has willfully (*arglistig*) concealed a defect or has provided a guarantee as to the nature and quality of the Goods. The manufacturer's warranty shall not constitute the providing of a guarantee by the Supplier. Sentence 1 shall apply accordingly to claims of the Purchaser arising under the German Product Liability Act (*Produkthaftungsgesetz*).
3. To the extent that the Purchaser has valid claims for damages under this Art. XI, such claims shall become time-barred upon expiration of the limitation period applicable to quality defects pursuant to Art. VIII No. 2. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

**XII. Venue and Applicable Law**

1. If the Purchaser is a business person (*Kaufmann*), a legal person constituted under public law (*juristische Person des öffentlichen Rechts*) or a public sector funding company (*öffentlich-rechtliches Sondervermögen*), the sole venue for all disputes arising directly or indirectly out of or in connection with the contract shall be the Supplier's place of business. However, the Supplier may also bring an action at the general place of jurisdiction of the Purchaser.
2. Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The requirements and effects of the retention of title agreed above shall be governed by the law applicable at the place of the storage of the Goods insofar as the choice in favor of German law should be unlawful or invalid pursuant to the respective law.
3. In case of discrepancies of the interpretation of these GTCS the version in German language shall apply.

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