

# NETZSCH Instruments North America, LLC, 129 Middlesex Turnpike, Burlington, MA 01803

## 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 Instruments North America, LLC (the "Company") to any 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. Amounts past due are subject to a service charge of 1-1/2% per month (or fraction thereof) or maximum contract rate permitted by law. 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 associated with the collection of delinquent accounts will be the responsibility of the Buyer.

## 3. PRICE POLICY

Prices shall be subject to adjustment to those in effect at time of shipment, in accordance with the Producer Price Index, other general purpose machinery manufacturing, as published by the U.S. Department of Commerce.

## 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 acknowledgement issued by the Company ("Acknowledgment"), 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 Acknowledgment or the Order to which it refers, all shipments made pursuant to the Order shall be made F.O.B. Burlington, MA or nearest stocking point. Customer can arrange for their

own shipments, If customer does not arrange its own shipment, NETZSCH will make the arrangements and reserves the right to charge a 10% shipping/handling fee. In the event that any other method of shipment shall be specified, the price shall be adjusted to reflect any increase or decrease in the price to the extent that the cost of shipment is or will be included therein.

## 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

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, 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 common 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 is paid by cash in full. 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 state 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. 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

Shall be \$50.00 net plus transportation costs and any packaging charges.

## 14. 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 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. 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 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 earlier of (i) the date of installation and commissioning of the Products by the Company, or (ii) six (6) weeks after the Products are handed over to a common carrier for shipment to Buyer (the "Warranty Period"). The Company further warrants that services performed by the Company and spare and replacement parts installed or delivered by Company will be free from any material defect in material or workmanship for a period of ninety (90) days from (i) the date of performance with respect to services, and (ii) from the earlier of the date of installation or the date the spare or replacement part is handed over to a common carrier for shipment to Buyer.

Company's exclusive obligation under the foregoing warranties, and Buyer's exclusive remedy with respect to same, shall be limited to: (i) for field-serviceable repairs, parts, labor and travel to repair or replace any defective Product, (ii) for return to factory/depot repairs, parts, labor and the cost of return shipping, or (iii) in the event that the Company in its sole discretion determines that such repair or replacement is impracticable, return of the purchase price paid for such Product or service. The Company shall have no liability with respect to any warranty claim not made within the specified warranty periods.

The return of all Products submitted under this warranty must be authorized by the Company and transportation prepaid by the shipper.

The foregoing warranties apply only to Products within the country of original delivery. Products transferred outside the country of the original delivery, either by Company at the direction of the Buyer or by the Buyer's actions subsequent to

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delivery, may be subject to additional charges prior to warranty repair or replacement of such instruments, based on the actual location of such Products and our warranty and/or service surcharges for such location(s).

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 NON-INFRINGEMENT, TITLE, 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 OR EXEMPLARY 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.

#### EXCLUSIONS AND LIMITATIONS TO WARRANTY

The following items are not covered under the foregoing warranty, and are provided "as is, where is":

- (i) Consumables such as e.g., crucibles;
- (ii) Heating elements, thermocouples, graphite and ceramics of instruments operating at highest temperatures (>2000"());
- (iii) Third party manufactured items, including, without limitation, personal computers, components and accessories (each shall be subject only to the warranty (if any) provided by the original manufacturer);
- (iv) Used refurbished or previously owned instruments. A one-year guarantee plan may be purchased and is recommended by the Company for used instruments. Demonstration units, however, are covered under the foregoing warranty; and
- (v) Instruments or accessories which are identified on applicable price lists, quotations, or special promotional materials for which the warranty may be further limited. Included within this category are items which are sold at specially reduced prices with reduced warranty protection (in some cases, extended warranty protection may be available for purchase).

The foregoing warranties exclude, and Company shall have no liability for any loss, damage, or defects resulting from: reactions between sample material and the Products, transportation to the Buyer's facility, improper or inadequate maintenance by the Buyer, Buyer-supplied software or interfacing, unauthorized modification or misuse, operation outside of the environmental specifications for the Products, and /or improper site preparation or maintenance. Products moved to an alternate Buyer site will continue to be covered by the

forgoing warranties, provided the de-installation and reinstallation of the Products are conducted by a Company service engineer. Costs and expenses related to the de-installation and reinstallation shall be the responsibility of the Buyer. The Company has no liability for any repairs made outside the Company's factory, unless with its prior written consent.

Except in the case of an authorized distributor, authorized in writing by the Company to extend the warranty to distributor's customers, the foregoing warranties apply only to the Buyer as the original purchaser from the Company and may not be assigned, sold or otherwise transferred to any third party.

#### 17. 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.

#### 18. APPLICABLE LAW; JURISDICTION

This contract and all rights and duties of the Company and the Buyer will be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict 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 state courts for Middlesex County, Massachusetts or the federal courts of Massachusetts, and all parties consent to personal jurisdiction and venue therein.

#### 19. 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.

#### 20. 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.

#### 21. 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.

#### 22. 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.

#### 23. GOVERNMENT RESTRICTED RIGHTS.

The Products constitute a "Commercial Item", consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are defined in the U.S. Code of Federal Regulations. Consistent with such provisions, to the extent that the Products are licensed to United States Government end users, any license shall be limited to only those rights granted to all other end users, according to the terms and conditions contained in this contract.

#### 24. ATTORNEY 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 attorney's fees, plus any shipping costs incidental to repairing the immediate incident of the breach and court expenses.