

# **CNC Europe BVBA General Terms and Conditions v1.8**

## **PREAMBLE**

1. These General Terms and Conditions shall apply when the parties agree in writing or otherwise thereto, even if these General Terms and Conditions are not referenced expressly during on-going business relations. Any delivery of goods and services by CNC EUROPE BVBA as the **Seller/Supplier** to the **Purchaser/Customer**, shall be subject to this Terms and Conditions set forth herein to the extent no other agreements have been explicitly made. Even when a written order is accepted, no deviating terms and conditions of purchase from the purchaser shall become part of the contract. Any modifications of, or deviations from them must be agreed in writing by the Supplier.

## **DEFINITIONS**

2. In these General Terms and Conditions, the following terms shall have the meanings hereunder assigned to them:

- "**Contract**": the agreement between the parties concerning supply of the Product and all appendices, including agreed amendments and additions in writing to the said documents;
- "**Gross Negligence**": an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such an act or omission;
- "**In Writing**": communication by document signed by both parties or by letter, fax, electronic mail and by such other means as are agreed by the parties;
- "**the Product**": the object(s) to be supplied under the Contract, including software, technology, services and documentation.

## **PRODUCT INFORMATION**

3. All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference expressly included in the Contract. The Supplier has the right according to customary trade practices to make constitutive changes to the agreement due to technical advancements or modernizations of the sold product. They also reserve the right to minor deviations common to the trade, such as color, weight, etc.

## **DRAWINGS AND TECHNICAL INFORMATION**

4. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or after the formation of the Contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any

other purpose than that for which they were provided. They may not without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts neither shall he be obliged to provide the PLC or other programs or access codes for internal memories of the equipment.

5. The Supplier shall, no later than at the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to install, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each.

## **ACCEPTANCE TESTS**

6. Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. All additional equipment, tooling, clamping, measuring or other devices used for acceptance test has to be provided by the purchaser, unless otherwise agreed. All additional equipment supplied during the testing by the supplier stay property of the supplier.

If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with standard manufacturer's procedures or with general practice in the appropriate branch of industry concerned in the country of manufacture.

7. The Supplier shall notify the Purchaser in writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests and supply the needed equipment. If the Purchaser is not represented or the test equipment is not delivered in time, the test report shall be sent like it is to the Purchaser following schedule and shall be accepted by the Purchaser as being accurate and accepted.

8. If the acceptance tests show the Product not to be in accordance with the Contract, the Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

9. The Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

## **DELIVERY, PASSING OF RISK**

10. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formation of the Contract. If no trade term has been specifically agreed, the delivery shall be EX-Works (EXW) at the place named by the Supplier, whereby the Purchaser is responsible for freight/transportation charges. Packaging, freight, insurance and value-added taxes are not included. Supplier deliver COD or cash in advance if not otherwise agreed. With the acceptance of our shipment and/or making any payment, the Purchaser irrevocably accepts the validity of our general terms and conditions.

11. Packaging can be invoiced at 0.5% of the net invoice amount, with a minimum fee of € 6.00 unless otherwise agreed.

12. Partial delivery shall be permitted, unless otherwise agreed. Partial shipments shall be paid for individually according to our payment terms. If the Purchaser does not meet the payment obligation for a partial shipment, Supplier may at our option discontinue the remaining shipments.

13. The Purchaser takes over liability as soon as the product leaves our warehouse. If, in the case of delivery by the Supplier, he undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier. If the products are picked up by the Purchaser, liability will be transferred to the Purchaser with the ready-for-delivery notice. The Purchaser bears all cost and liability for shipments/transportation. Unless otherwise agreed, Supplier shall determine the shipping method and route and reserves the right to arrange transportation insurance at the Purchaser's expense, unless expressly stipulated otherwise by the Purchaser. In this case, Supplier assume liability for transportation damages (in particular damages due to breakage, transportation, fire and water) above the risk liability time limit stated above.

14. Purchaser shall inspect the condition of the shipment and look for any damages immediately upon receipt. Any damages shall be reported to the appropriate party (receiving railway station, post office, or shipper) and confirmed by those entities, and the Purchaser shall notify us immediately. If insurance benefits are reduced due to the Purchaser's inadequate assistance during damage verification and the claim process, Supplier have the right to charge such benefit reductions to the Purchaser.

15. If the ordered items are ready for shipment and shipment or delivery is delayed for reasons outside supplier's responsibility, Purchaser will accept liability with the receipt of the ready-for-shipment notice. The same applies for blanket orders, if Purchaser does not call the orders at the specified time.

## TIME FOR DELIVERY, DELAY

16. If the parties have specified a period within which delivery shall take place, instead or beside of specifying a date for delivery, such period prevails on a specified date, and shall start to run as soon as the order has been confirmed by CNC EUROPE BVBA in writing and all agreed preconditions to be fulfilled by the Purchaser have been satisfied. The contents of Supplier's order confirmation shall be a component part of our agreement, unless the Purchaser objects immediately after receipt of our order confirmation. If no response is given by the Supplier to orders received that contain or reference deviating terms and conditions, this may not be interpreted as acceptance of such terms and conditions.

17. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason and, if possible, the time when delivery can be expected. If the Supplier fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

18. If delay in delivery is caused by any of the circumstances mentioned in Clause 57, by an act or omission on the part of the Purchaser, including suspension under Clauses 26 and 60, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

19. If the Product is not delivered at the time for delivery, the Purchaser shall be entitled to liquidate damages from the date on which delivery should have taken place, taking in consideration a period of grace of 10% of the contractual delivery time.

The liquidated damages shall be payable at a rate of 0.3 per cent of the purchase price for each week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price.

If only part of the Product is delayed the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties. The liquidated damages shall become due at the Purchaser's demand in writing but not before delivery has been completed or the Contract is terminated under Clause 20.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim in writing for such damages within three

months after the time when delivery should have taken place.

20. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 19 and if the Product is still not delivered, the Purchaser could in writing demand delivery within a final reasonable period which shall not be less than four weeks.

If the Supplier does not deliver within such final period and this is not due to any circumstances which are attributable to the Purchaser, then the Purchaser may by notice in writing to the Supplier terminate the Contract.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Supplier's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 19, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

The Purchaser shall also have the right to terminate the Contract by notice in writing to the Supplier, if it is clear from the circumstances that there will occur a delay in delivery which, under Clause 19, would entitle the Purchaser to maximum liquidated damages. In case of termination for this reason, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 20.

21. Liquidated damages under Clause 19 and termination of the Contract with limited compensation under Clause 20 shall be the only remedies available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of Gross Negligence.

22. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Supplier in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the time for delivery, he shall nevertheless pay any part of the purchase price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

23. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 57, the Supplier may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason which is not attributable to the Supplier, the

Purchaser cancels/terminates the contract, or the Purchaser fails to accept delivery within such period, the Supplier may himself, by notice in writing terminate the Contract in whole or in part. The Supplier shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default, including any consequential and indirect loss. The compensation shall not exceed the purchase price.

## **CURRENCY AND PAYMENT**

24. Payment shall be made within maximum 5 days after the date of invoice or within 5 days after signing the contract if not other timeframe is indicated.

Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the Contract and two third when the Supplier notifies the Purchaser that the Product is ready for delivery. Early payment shall not result in the granting of any reduction in the price by CNC Europe BVBA. Delay of payment will cause extension of delivery time, depending of the production capacity of the supplier and eventual not equal to the delayed time of reception of payment.

When at the delivery date, the currency-exchange rate is different than at the contract signing date and the rate is changing more than +- 3%, then the sales price can be revised on request by one of both parties. If the expenses (e.g., for materials, supplied parts and wages) should increase in the time between ordering and delivery, Supplier is authorized to adjust the agreed upon prices according to the cost increase. Such increase, however, shall in no event result in an increased profit for the supplier.

25. Whatever the means of payment used, payment shall not be deemed to have been effectively been done before the Supplier's account has been irrevocably credited for the amount due.

26. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to negligence interest from the day on which payment was due and to compensation for all recovery costs. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be minimum 4 per cent of the amount for which interest for late payment becomes due. In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Supplier may, after having notified the Purchaser in Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

27. Should the Purchaser be in default in making a payment due under the contract or other contracts, or not

respecting the contract, the Seller shall have the right to withhold deliveries due to the Purchaser under the contract and under other contracts made between them until such payment is received by the Seller and withhold any amount paid in advance as compensation, until payment of the damage agreed, without compromising the right to claim for further damages.

28. If delivery on demand, blank orders or in partial quantities has been agreed, and Purchaser does not call or pay the products or partial quantities within the agreed time, the supplier has the right to withdraw from the agreement and ask for compensations for damages.

29. Cancellation of a contract by the Purchaser without mutual agreed reason, none payment or assumption that Purchaser will not being able to pay, gives the right to the seller to withhold any delivery from any contract till all has been cleared out, all receivables has been received or the assumed bad financial situation has been cleared out. Advanced payments can never be reclaimed. The Purchaser shall not be entitled to any contractual remedies because of delay in delivery caused by the exercise of the aforesaid withholding right.

30. If the Purchaser has not paid the amount due within one month after due date, the Supplier shall be entitled to terminate the Contract by notice in writing to the Purchaser and, in addition to the interest and compensation for recovery costs according to this Clause, to claim compensation for the losses he incurs. Such compensation for losses shall not exceed the agreed purchase price.

31. The Purchaser shall not withhold payment or offset payment obligations due to a counterclaim that is not recognized by the supplier or not legally effected. If the Purchaser is legally entitled to withhold payment, this right shall be limited to the disputed amount.

32. Should the Purchaser or the Supplier become insolvent, go into liquidation, have a receiver appointed or be declared bankrupt, or otherwise is found to be in such a financial position that it may reasonably be assumed that he will not be able to fulfill his obligations, the other party shall have the right to cancel the contract if the first party has not within ten (10) days after giving notice furnished a satisfactory guarantee for his fulfilment of the contract.

#### **RETENTION OF TITLE OR OWNERSHIP**

33. The Product shall remain the property of the Supplier until paid for in full and until all our claims in connection with all the transactions with the Purchaser have been settled (Conditional Product), to the extent that such retention of title is valid under the relevant law of supplier's country, which governs

the contract. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product. The retention of title shall not affect the passing of risk under Clause 10 till 15.

34. In the event of Purchaser's default in payment, supplier has the right to take back the Conditional Products and Buyer must grant the supplier unconditional free access to be able to take back the goods. Such action does not present a withdrawal from the sales agreement. The pick-up costs will be paid by Purchaser. In case of no access granted on demand, and/or no release of the goods at non-payment, or in case of passing 30 days over the payment due date without paying, the purchaser will pay supplementary 1% penalty per day of the total value of the goods without limit in time or amount.

35. The Purchaser will never be the owner of the delivered technology, unless otherwise stated in written, but will be the owner of the equipment.

36. The Purchaser may sell the ordered item in the regular course of its business, only if the Purchaser is not in default and has not stopped payments. In case of default or stopped payment, resale is prohibited. The Buyer shall notify the supplier promptly about any liens or other attachments to our rights by third parties.

#### **LIABILITY FOR DEFECTS**

37. Pursuant to the provisions of Clauses 29 and 52, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

38. The Supplier shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Purchaser.

39. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

40. The Supplier shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent In Writing. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

41. The Supplier's liability shall be limited to defects which appear within a period of one year from delivery. If the use of the Product exceeds that which is agreed, this period shall be reduced proportionately.

42. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those

applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 41 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used because of the defect.

43. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 41 or the extended period(s) under Clause 28, where applicable.

The notice shall contain a description of the defect.

If the Purchaser fails to notify the Supplier in writing of a defect within the time limits set forth in the first paragraph of this Clause, he shall lose his right to have the defect remedied.

Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier in Writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimize damage and shall in that respect comply with instructions of the Supplier.

44. On receipt of the notice under Clause 43 the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 37 and 52. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Repair shall be carried out at the place where the Product is located unless the Supplier deems it more appropriate that the Product is sent to him or a destination specified by him.

If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Supplier may demand that the defective part is sent to him or a destination specified by him. In such case the Supplier shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Purchaser.

45. The Purchaser shall at his own expense provide access to the Product any time and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.

46. Unless otherwise agreed, necessary transport of the Product or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport.

47. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being in a place other than the destination stated at the formation of the Contract for the

Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.

48. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.

49. If the Purchaser has given such notice as mentioned in Clause 43 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs because of the notice.

50. If the Supplier does not fulfil his obligations under Clause 44, the Purchaser may by notice in writing fix a final reasonable period for completion of the Supplier's obligations, which shall not be less than one week.

If the Supplier fails to fulfil his obligations within such final period, the Purchaser may himself undertake or employ a third party to undertake necessary repair work at the risk and expense of the Supplier. For every intervention, reparation or modification to the product by a third party or by the purchaser, is needed a written confirmation or agreement of the supplier. In case modifications, works, interventions or reparations has been done on the product without written agreement of the supplier, results in voiding the warranty.

Where successful repair work has been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

51. Where the Product has not been successfully repaired, as stipulated under Clause 50,

a) the Purchaser shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 10 per cent of the purchase price, or

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Purchaser may terminate the Contract by notice in writing to the Supplier in respect of such part of the Product as cannot in consequence of the defect be used as intended by the parties. The Purchaser shall then be entitled to compensation for his loss, costs and damages up to a maximum of 10 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

52. Notwithstanding the provisions of Clauses 37 and 50 the Supplier shall not be liable for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 41 or from the end of any other liability period agreed upon by the parties. For Products resold as is and components that are purchases from other suppliers, supplier's warranty is strictly limited to the terms granted by its

suppliers.

53. Save as stipulated in Clauses 37 and 51, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of Gross Negligence.

#### **ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

54. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part. If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.

55. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing. The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product. The liability between the Supplier and the Purchaser shall however be settled in accordance with Clause 63.

56. The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of Gross Negligence.

#### **FORCE MAJEURE**

57. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of

the Contract.

58. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

59. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under clause 57 for more than six months.

#### **ANTICIPATED NON-PERFORMANCE**

60. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party is not going to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof In Writing.

#### **CONSEQUENTIAL LOSSES**

61. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever. In case stated in the contract, then the total amount is limited to 10 % of the value of the part of the delivered equipment causing this.

#### **RETURNING DELIVERED GOODS**

62. The products agreed by the Supplier to be returned, must arrive within 14 days after shipment to the purchaser. A restocking fee in the minimum amount of 10% of the invoice total will apply.

#### **DISPUTES RESOLUTIONS**

63. All disputes arising out of or in connection with the Contract shall be first tried to solve in an amical way, if not possible it shall be finally settled under the Rules of the Commercial Court from the supplier's country or on mutual agreement from the parties, it shall be settled under the rules of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules.