

GENERAL TERMS AND CONDITION OF SUPPLY NERI MOTORI SRL 2/2016

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1) **DEFINITIONS**

1.1) In this document, the words shall have the following meanings:

- a) **GCS:** these Neri Motori General Terms and Conditions of Supply;
- b) **Client:** the company/business entity which intends to purchase or purchases a Neri Motori Product and not having its registered office in Italy;
- c) **Order Confirmation:** the communication by Neri Motori summarizing all the features agreed upon by the Parties with regards to specific Products supply;
- d) **Contract:** the purchase agreement between Neri Motori and a Client for supplying of Products;
- e) **Confidential Information:** the information regarding Products, know how, commercial and technical information from Neri Motori;
- f) **Neri Motori:** the company Neri Motori SRL, with its registered office in S. Giovanni in Persiceto (BO) at 6-8 A. Fleming street, VAT N. 00805751203;
- g) **Parties:** Neri Motori and a Client;
- h) **Products:** the products sold by Neri Motori.

2) **SCOPE OF APPLICATION AND EXECUTION OF THE CONTRACT**

- 2.1) These GCS apply to any Contract entered into between Neri Motori and a Client, regardless of whether said Contract refers to the GCS or not;
- 2.2) The Contract shall be deemed to have been entered into at the time the Client receives the relative Order Confirmation;
- 2.3) Should the Contract contain provisions that contrast with

these GCS, the latter shall prevail;
2.4) Any other terms or conditions, included the Client's general terms and conditions of purchase, at any time referred to or submitted by the Client and which contrast with these GCS or the Order Confirmation, shall be deemed void, and not part of the Contract, unless specifically accepted in writing by Neri Motori.

3) **PRICES AND METHODS OF PAYMENT**

- 3.1) Products price shall be the one stated in the Order Confirmation;
- 3.2) Prices are intended as being net of VAT, if applicable;
- 3.3) The prices do not include services and charges not expressly mentioned in the Order Confirmation;
- 3.4) The Client acknowledges that Products price is set according to raw materials' costs in effect at the Order Confirmation time, with reference to the London Metal Exchange – LME rate, and to the rate exchange between Euro and the raw material supplier's currency;
- 3.5) Should, in the period between the Order Confirmation and Neri Motori's order of raw materials, an increase of the raw materials costs higher than 5% (five percent) occur (due either to an increase of raw material quotations or to currencies rate fluctuation), then Neri Motori shall be entitled to increase the prices accordingly. Neri Motori shall inform the Client, by fax and / or e-mail, as to the new price of the Products;
- 3.6) Should the new price be higher than 25% (twenty-five percent) of the price stated in the Order Confirmation, then the Client shall have the right to withdraw from the Contract, informing Neri Motori, by means of fax and/or

THE CLIENT
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e-mail, within 5 (five) days from the receiving of the notice described in clause 3.5 above;

- 3.7) Payments shall be made within the terms stated in the Order Confirmation. Should the Order Confirmation not set out such terms, payment shall be made, in advance with respect to the Products delivery and in any case within and no later than 15 (fifteen) days from the date the Contract is entered into;
- 3.8) Payments shall be made as per the methods stated in the Order Confirmation. Should the Order Confirmation not set out such methods, payments shall be made by bank transfer to the bank current account indicated to the Client by Neri Motori. Payment is deemed to be made when the respective sum is at Neri Motori's disposal;
- 3.9) Client must carry out payments as contractually provided for, even when it does not, for whatever reason, provide to collect or take delivery of the Products in the place and at the time agreed;
- 3.10) In case of delay in payment, without the need for previous levy of execution, Client shall be held to pay Neri Motori interest on arrears, pursuant to Italian Legislative Decree n°. 231/2002 "*Bringing into effect directive 2000/35/CE related to the fight against late payment in commercial transactions*". The above-said interest shall be calculated from the due date of the term of each payment and for the entire period of delay;
- 3.11) Should payment delays exceed 10 (ten) days, Neri Motori, in addition to what is stated in clause 3.10 above, shall have the right to terminate the Contract with immediate effect, withholding any received sums as a compensation. Should said compensation not cover all the suffered damages, then Neri Motori should be entitled to demand further compensation.

4) DELIVERY TIME

- 4.1) The delivery time is as stated in the Order Confirmation. Said time is calculated from the date that the Contract is entered into, or from the date of receipt of the documentation to be provided by the Client for the carrying out of the Contract itself;
- 4.2) The delivery time is determined on the basis of the time estimated to be necessary for completing the supply and may be extended by Neri Motori, if necessary;
- 4.3) The Client agrees to waive any claims for damages and agrees not to cancel the Contract in the case of delays of

less than 60 (sixty) days from the term stated in the Order Confirmation or the one recalculated pursuant to Clause 4.7 below. With regards to one-off items / customized products (i.e. products manufactured upon specific Client's request that differ from standard Products) the term stated in this clause is equal to 120 (one hundred and twenty) days;

- 4.4) In case of delay in delivery, for reasons attributable to Neri Motori, exceeding the terms stated in previous Clause 4.3, the Client may demand, with previous levy of execution in writing, a compensation for damages suffered, up to the maximum amount of 5% (five percent) of price of Products delivered late. Except in case of fraud or gross negligence, the payment of the amounts stated in this clause excludes any further responsibility for damages and/or claim in connection with delayed deliveries;
- 4.5) Once the Products are ready for collection, Neri Motori shall inform, by fax and/or e-mail, the Client;
- 4.6) In case of delayed collection of the Products on the part of the Client, for reasons not attributable to Neri Motori, delivery shall be deemed to have taken place within 8 (eight) days from the notification as per clause 4.5 above, with the following consequences:
 - i. Should the terms of payment provide for partial or full payments subsequent to the time of delivery, Neri Motori shall be entitled to request immediate payments of all sums due, forfeiting Client terms;
 - ii. Neri Motori shall be entitled to deliver the Products to the Client, on the charge of the latter, and to request compensation for any further damages suffered;
 - iii. In no case shall Neri Motori be considered liable in the case of Product deterioration or in the case of the occurrence of impossibility of performance due to causes not attributable to Neri Motori;
- 4.7) Should the Client, during the carrying out of the Contract, request that integrations or modifications be made to the list of the ordered Products, Neri Motori shall have the right to extend the delivery time of the entire supply.

5) PACKAGING

- 5.1) The Products shall be packed and made ready for delivery with the ordinary care and techniques required by their nature, with the protection necessary for normal transport conditions;

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- 5.2) Any special packaging or additional services must be specifically requested by the Client with the costs for the same being exclusively on the charge of the latter.
- 6) DELIVERY TERMS**
- 6.1) The delivery terms are those indicated in the Order Confirmation.
- 7) RIGHT TO WITHDRAW**
- 7.1) The Client may exercise its right to withdraw, communicating such withdrawal within 3 (three) working days from the date of receipt of the Order Confirmation, by means of registered letter with return receipt. The above-mentioned communication may also be sent, by telegram, fax and/or email, providing that it is confirmed by registered letter with return receipt within the following 48 (forty-eight) hours;
- 7.2) Should the Client exercise its right of withdraw according to clause 7.1 above, Neri Motori shall be entitled to an indemnification equal to 30% (thirty percent) of the Contract value.
- 8) RETENTION OF TITLE**
- 8.1) Should the Contract provide for partial or total payments subsequent to the delivery of the Products, Neri Motori shall maintain exclusive ownership of the Products until such time as full payment has been made;
- 8.2) Therefore, until full payment has been made the Client shall simply be the depository of the Products, with the resulting obligation to conserve the same in perfect conditions;
- 8.3) Should the Client transfer ownership or possession of the products to third parties before the full payment of their price has been made, the retention of title shall be transferred onto the price earned by the Client from their re-sale.
- 9) RIGHT TO SUSPEND PERFORMANCE**
- 9.1) Should the Client fail to make payment within the terms agreed, Neri Motori shall be entitled to refuse to deliver the Products until such time as they have been paid for in full. For the purpose of this Clause 9.1, Products mean even products that can be ascribed to other Contracts between the Parties;
- 9.2) In addition, Neri Motori shall be entitled to refuse to deliver Products where the Client's asset-related or financial position poses evident risk in terms of receipt of payment.
- 10) WARRANTY – REPORTING DEFECTS AND NON-CONFORMITIES**
- 10.1) Neri Motori guarantees its products pursuant to Neri Motori General Warranty Terms and Conditions 2/2016, enclosed with these GCS.
- 11) FORCE MAJEURE**
- 11.1) Neri Motori shall NOT be responsible for failure to comply with any of its obligations should this be due to reasons of force majeure. Examples of events which constitute circumstances of force majeure include wars, earthquakes, civil unrests, fires, floods, interruptions in power supplies, strikes and serious difficulties in obtaining supplies;
- 11.2) If the cause of force majeure persists for a period exceeding 6 (six) months, the Client shall be entitled to terminate the Contract.
- 12) CONFIDENTIALITY**
- 12.1) The Client acknowledges the importance and significant industrial and commercial value of Confidential Information which it may directly or indirectly learn of, or come into possession of, and it hereby undertakes, also on behalf of its employees and collaborators, not to divulge or use said information, except as necessary for purposes related to the Contract;
- 12.2) The Client, even after the termination of the Contract, for any reason whatsoever, undertakes:
- To conserve the above-mentioned information with extreme care and confidentiality and to return it upon Neri Motori first request;
 - Not to reproduce, copy, transmit or disclose it to third parties, unless expressly authorised to do so in writing by Neri Motori;
 - Not to request any patents by taking advantage of Confidential Information;
 - Not to produce or have produced or supply to third parties, either directly or indirectly, products that make use of the aforesaid Confidential Information;
 - To guarantee that any person that cooperates with the

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Client itself, in any form, including thus partners, employees, professionals, consultants, sub-contractors and all those who directly or indirectly may learn of the above-mentioned information, shall respect the obligations deriving from this clause.

13) WRITTEN FORM

13.1) Any modification or exception to these GCS or to a Contract must be approved of in writing by the Parties.

14) GOVERNING LAW

14.1) These GCS and each Contract entered between the Parties shall be governed by Italian law and shall be interpreted on the basis of the same. The United Nations Convention 1980 on Contracts for the International Sale of Goods shall not apply to this Agreement.

15) NOTICES AND COMMUNICATIONS

15.1) All notices and other communications required or imposed in accordance to these GCS and/or to a Contract entered between the Parties shall be deemed validly made to the address and fax numbers set forth in this document.

16) ARBITRATION CLAUSE – SETTLEMENT OF DISPUTE

- 16.1) Any disputes arising from, or in connection with these GCS or with each Contract entered into between the Parties (including those related to its validity, interpretation, carrying out and non-fulfillment) shall be settled by arbitration in accordance with the Rules of the Milan Chamber of Arbitration;
- 16.2) The dispute shall be settled by a single arbitrator to be appointed according to the above-mentioned Rules;
- 16.3) The place of arbitration shall be Milan (Italy);

- 16.4) The language of arbitration shall be Italian;
- 16.5) “The Rule of Costs Following the Event”: Arbitration costs, including arbitrator fees, shall be settled by the parties according to Art. 91 of the Italian Code of Civil Procedure.
- 16.6) It is, however, granted only in favour of Neri Motori, the unconditional right to start legal proceedings, as plaintiff, before the national judicial court within the competent place of jurisdiction where Client has its legal seat.

According to artt. 1341 and 1342 of the Italian Civil Code the Client declares to have expressly acknowledged and accepted the following clauses:

Art. 2): “Scope of application and execution of the contract” (Clauses 2.1 – 2.2 – 2.3 – 2.4);

Art. 3): “Prices and methods of payment” (Clauses 3.6 – 3.9 – 3.11);

Art.): “Delivery Time” (Clauses 4.2 – 4.3 – 4.4 – 4.6);

Art. 7): “Right to withdraw” (Clause 7.2);

Art. 8): “Retention of Title” (Clauses 8.1- 8.2 – 8.3);

Art. 9): “Right to Suspend Performance” (Clauses 9.1 – 9.2);

Art. 11): “Force Majeure” (Clauses 11.1 – 11.2);

Art. 14): “Governing Law”;

Art. 16): “Arbitration Clause – Settlement of Dispute” (Clauses 16.1 – 16.2 – 16.3 – 16.4 – 16.5 – 16.6).

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**ANNEX TO
NERI MOTORI SRL GENERAL TERMS AND CONDITIONS OF SUPPLY 2/2016
GENERAL WARRANTY TERMS AND CONDITIONS 2/2016**

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1. WHO IS ENTITLED TO WARRANTY

- 1.1 This warranty is in favour of official Neri Motori's Clients only;
- 1.2 This warranty does NOT create any right in favour of any party other than official Neri Motori's Clients.

2. WHAT THE WARRANTY COVERS

- 2.1 Neri Motori warrants the Client that the product is free from defects of material and from manufacturing defects and that the product conforms to the specifications set out in the technical data sheet provided on Neri Motori's website and in its catalogues;
- 2.2 Neri Motori also warrants the Client that products delivered comply with the requirements, description and quality stated in the contracts.

3. WHAT THE WARRANTY DOES NOT COVER

- 3.1 This warranty does not cover any product malfunction or problem caused by or derives from any act, omission, fact or event which is NOT attributable to Neri Motori's responsibility or liability;
- 3.2 The present warranty does not cover parts of products subject to wear and consumption material provided;
- 3.3 The present warranty shall immediately lapse in case of:
- a) Repair services not carried out by Neri Motori's authorized personnel, except as provided in clause 5.2;
 - b) Damaging, disassembly, non appropriate and/or bad and/or wrongful use, maintenance and/or wardship of products, failure to comply with the prescriptions set out in the technical data sheet published on Neri Motori's website or catalogues;
 - c) Use of non -original spare parts;
- 3.4 Neri Motori shall not be responsible for any direct or indirect damages to persons, things or animals related

to, or in connection with, an inaccurate use of products, wrongful assistance or repairs carried out by non authorized technical personnel;

- 3.5 Neri Motori shall not be responsible for any accident or damages occurred to the Client or third party during the uploading or downloading, assembling or installing procedures;
- 3.6 Except in case of fraud or gross negligence, in no way Neri Motori shall be required to pay compensation for direct or indirect damages of any kind;
- 3.7 The maximum amount Neri Motori will pay for as compensation for damages is equal to the 50% (fifty percent) of the value of the order the product belongs to.

4. DURATION AND CONDITIONS FOR REPORTING DEFECTS

- 4.1 Neri Motori warrants its products for **12 (twelve) months** from the delivery date;
- 4.2 The Client must carefully inspect the products and carry out a test for the so-called main data plate features (in other words the main technical features) within the shortest possible time, and in any case, the Client must report any lack of conformity to Neri Motori in writing, by fax with a subsequent confirmation by registered letter with acknowledge of receipt, by and no later than 8 (eight) days from the receipt of products, or from discovery of defects, in case of hidden flaws;
- 4.3 The report must always be in writing and must always contain:
- a) The product serial number and model, year of manufacture and date of purchase;
 - b) The product data on the product identification plate (CE plate);
 - c) The total number of working hours of the product;

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- d) The type of defect or lack of conformity;
- e) Digital pictures of the product.
- 4.4 In the event that defects or lacks of conformity are not reported in compliance with the terms set out in this warranty certificate, the Client shall lose its warranty rights.
- 4.5 The products shall be deemed non-conform only after Neri Motori has ascertained and confirmed the existence of flaws or lack of conformity.

5. REMEDIES

- 5.1 The warranty shall provide for:
 - a) Repair of products acknowledged as faulty or non-conforming;
 - b) Replacement of products acknowledged as faulty or non-conforming, should repair is not possible, or for any other reasons Neri Motori does not consider it as appropriate;
- 5.2 Should the products are sent to the Client for replacement according to clause 5.1 lett. b), the Client is allowed to carry out said replacement through its technicians, notwithstanding the provision set forth in clause 3.3 lett. a);
- 5.3 Neri Motori shall not be liable for any other charges or services other than the ones set out in the previous clause 5.1;
- 5.4 The products to be repaired according to clause 5.1 lett. a) shall be returned to Neri Motori at the Client's charge; the delivery of repaired products is always intended to be Ex Works – Incoterms 2010 – CCI-Neri Motori premises;
- 5.5 The products replaced must be returned to Neri Motori, at the Client's charges, within 30 (thirty) days from the request for replacement. Failing to respect the above said term, Neri Motori shall be entitled to request payment for products replaced;
- 5.6 This warranty describes any and all remedies and warranty rights of the Client in case of defect or lack of conformity of the product. Except where inconsistent with the client's statutory rights, any other remedies or warranty rights are expressly excluded.

6. FORCE MAJEURE

- 6.1 Neri Motori shall NOT be responsible for failure to comply with any of its obligations should this be due

to reasons of force majeure. Examples of events which constitute circumstances of force majeure include wars, earthquakes, civil unrests, fires, floods, interruptions in power supplies, strikes and serious difficulties in obtaining supplies.

7. GOVERNING LAW

- 7.1 These General Warranty Terms and Conditions shall be governed by Italian law and shall be interpreted on the basis of the same.

8. SETTLEMENT OF DISPUTE

- 8.1 Any disputes arising from, or in connection with, These General Warranty Terms and Conditions (including those related to its validity, interpretation, carrying out and non-fulfillment) shall be exclusively submitted to the Italian jurisdiction – Bologna Court.

According to artt. 1341 and 1342 of the Italian Civil Code the Client declares to have expressly acknowledged and accepted the following clauses:
 Art. 3): "What the warranty does not cover" (Clauses 3.1 – 3.3 – 3.4 – 3.5 – 3.6 – 3.7);
 Art. 4): "Duration and conditions for reporting defects" (Clauses 4.1 – 4.2 – 4.3 – 4.4 – 4.5);
 Art. 5): "Remedies" (Clauses 5.1 – 5.3 – 5.4 – 5.5 – 5.6);
 Art. 6): "force majeure"
 Art. 7) "Governing law";
 Art. 8): "Settlement of dispute".

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