§ 1 Scope

1. These General Terms and Conditions (GTCs) apply exclusively to all future contracts between Nidec SYS GmbH ("we/us") and our customer regarding goods deliveries and services that we perform for the customer. We hereby explicitly exclude the applicability of conflicting or deviation conditions of the customer. These shall not become part of the contract unless we explicitly agreed to their applicability in text form in an individual case before conclusion of the contract. This applies even if we provide the delivery without reservations in the knowledge of conflicting or deviating conditions of the customer.

2. Our GTCs apply only to entrepreneurs, legal entities under public law, and special funds under public law in the sense of § 310 (1) BGB [German Civil Code].

3. The provisions of these GTCs shall not apply where we have explicitly agreed otherwise with the customer in text form. In that case, these provisions shall take precedence over the GTCs in this respect.

§ 2 Offer and conclusion of contract

1. Our offers are non-binding requests to the customer to submit bids, unless they are explicitly described as a "binding offer." The customer shall be bound to the bid for four weeks. The contract shall not take effect until we declare our acceptance in the order confirmation in text form, or until we provide the performance.
2. Images, descriptions, dimensions, and quantity information shall be binding only where this was agreed with the customer in text form in advance. The quality of the performance to be provided by us shall be based exclusively on the contractual materials provided in text form. We reserve the right to make changes to the execution and material where these are not fundamental in nature and do not restrict the contractual purpose of the delivery for the customer.
3. All confidential documents and information provided by us in the context of the contract conclusion and order execution (e.g. samples, images, drawings, descriptions, plans) that are indicated as such shall remain our property (including all copyright, industrial property, trademark, patent, or other intellectual property rights embodied therein that are not transferred to the customer). These documents and information shall not be (1.) reproduced or (2.) made accessible to third parties without our explicit permission. These documents and information (as well as any copies thereof) shall be returned to us upon our request, or else proof of their destruction provided to us where there is no requirement that they be stored by the customer or where they are not needed by the customer for the execution of the contract.
4. If the customer changes the contractually agreed scope of the performance to be provided by us, the customer shall express this change request to us bindingly in writing. We shall review the request and provide the customer with an offer to implement it, together with information about any additional costs and delays in the order execution (Change Offer). If and to the extent that we accept the change order, the customer shall bear the agreed additional costs and our execution period shall be extended accordingly. We reserve the right

to charge a fee for creating the Change Offer and to invoice the customer for the resulting work, particularly for creating the Change Offer. Any appropriate delay in the contract execution resulting from the review and creation of the Change Offer shall extend the execution period accordingly. For any resulting delays that deviate from our offer, we shall be responsible only within the scope of general liability according to § 9.

§ 3 Quantity and dimension information, duty to cooperate

1. The customer shall be responsible for determining and reviewing all quantities, dimensions, weights, and characteristics, and for comparing these with our non-binding offers and the order confirmation. If deviations from the customer's information or from the order confirmation are determined to be necessary at a later point, § 2 (4) shall apply correspondingly.
2. The customer shall appoint a technically competent contact partner who shall be available for communications with us regarding the respective order, who is authorized to make necessary decisions to execute the order or can bring about such decisions without delay.
3. The customer shall establish all conditions to enable proper execution of the order. In particular, the customer shall ensure that all necessary contributions on its part or on the part of its vicarious agents are provided in a timely manner, within the necessary scope, and free of charge for us.
4. Where execution of the order requires a change or expansion of the customer's software, the customer shall provide a responsible, qualified employer from its own company for as long as necessary to perform the change, free of charge for us.
5. Where a machine belonging to the customer or a third party must be operated in order to execute the order, the customer or third party shall provide a responsible, qualified operator from its own company for this as long as necessary, free of charge for us.
6. The customer shall provide us with any customer-specific documents necessary for execution as well as all necessary or helpful internal company information, even without special request.
7. The customer shall be liable for delays or errors in the order execution where these result from performance data that the customer could recognize and has submitted, or from false or incomplete information or other circumstances for which the customer is responsible.

§ 4 Prices, payment conditions

1. Our prices are "ex works (EXW), excluding any shipping and packaging; these costs shall be invoiced separately.
2. Statutory value added tax is not included in our prices; where applicable, it is indicated separately on the invoice in the appropriate statutory amount.
3. Any discounts must be agreed explicitly in text form.
4. The purchase price for machines shall be paid (in full) as follows: 1/3 as an advance payment as soon as our order confirmation and an advance payment invoice are received by the customer; 1/3 as soon as

we inform the customer that the goods are ready to ship and a corresponding additional advance payment invoice has been received by the customer; and the remainder within 30 days of the transfer of risk and receipt of an invoice by the customer.

5. The price for replacement parts, maintenance and service, or other services is due (in full) within 30 days of the invoice date and receipt of the invoice.
6. The statutory rules apply to the occurrence and consequences of payment default.

§ 5 Delivery deadlines, time periods, partial deliveries and liability for delays

1. Delivery deadlines and time periods require our explicit confirmation or an explicit agreement that they are “binding”; otherwise, this is considered non-binding information. Time periods shall begin with the contract conclusion. For purchase contracts, they are met when readiness to ship is announced ex works; for work contracts, they are met when acceptance readiness is announced. For services, the time period is met with the start of the activity unless otherwise agreed. Compliance with a delivery date or a specified time frame for our delivery or service additionally requires timely performance of all the customer’s cooperation duties as well as timely provision of all documents and permits to be furnished by the customer. Furthermore, all technical questions must be successfully clarified in order for our services to be fulfilled in a timely manner. We shall notify the customer of this before the contract conclusion, during offer preparation.

   Any changes in execution requested by the customer after conclusion of the contract (cf. § 2 (4)) shall extend the delivery periods and deadlines accordingly.

   Unforeseen events for which we are not responsible (particularly force majeure, e.g. a strike, natural disaster, pandemic, war, etc.) shall extend the agreed delivery periods and deadlines by the length of the delay, plus reasonable start-up time. This also applies in the case of non-timely self-delivery by our suppliers where we have concluded a congruent hedging transaction and we could not foresee the delivery delay.

   The customer shall be informed of any such circumstances without delay. If the delay lasts longer than three months, the customer shall be entitled, after setting an appropriate grace period, to withdraw from the contract to the extent that this has not yet been fulfilled. We have the same right, although setting a grace period is not required in this case.

   Furthermore, unless we have established a binding delivery deadline with the customer, we shall only be considered in default if the customer issues us a warning in text form. If we are unable to meet a delivery deadline, the customer must set an appropriate grace period for us before withdrawing from the contract.

2. If, pursuant to the above paragraph, we are released from our performance duty or if the performance deadline or agreed completion date is postponed, the customer cannot assert any damage compensation claims.

3. Unless otherwise contractually agreed, partial deliveries by us are permissible, as are (partial) deliveries before the end of the agreed delivery period or the agreed delivery deadline.
4. In any case, we reserve the right to claim the defense of non-performance of the contract by the customer and any other retention rights.
5. Call-off orders established with the customer, unless otherwise agreed, shall be processed by the customer through call-offs within twelve months at most. If this does not occur, we are entitled to pass on to the customer any price increases that take place in the meantime.
6. If the customer is in default of acceptance or culpably violates its cooperation duty, we are entitled to request compensation for any damage we incur in this regard, including any additional costs. We reserve the right to assert further claims and rights. The risk of accidental destruction or accidental deterioration of the goods shall be transferred to the customer at the time when the customer comes into default of acceptance or debtor's default.
7. We shall be liable for damage caused by a delay, including where the underlying contract is a fixed transaction or where a delivery delay on our part entitles the customer to assert that its interest in further contract fulfillment no longer applies, according to the provisions of § 9.
8. We do not accept any contractual-penalty or flat-rate delay compensation rules of the customer; therefore these are not considered part of the contract unless they have been negotiated in the individual case for the individual case. Statutory default claims remain unaffected hereby.

§ 6 Delivery and transfer of risk

1. Unless otherwise agreed, deliveries shall be "ex works." Even if we bear the costs of delivery or provide delivery ourselves, risk shall be transferred to the customer at the time when the delivery item is handed over to the transport person. If shipment is delayed for reasons within the customer's sphere of influence, risk shall be transferred as soon as the customer is notified of readiness to ship.
2. Unless otherwise agreed, we shall determine the type of packaging and shipping. Where the customer requests this in text form when submitting the offer, we shall obtain transport insurance at the customer's expense to cover delivery risks.
3. For work performance and other contracts where acceptance (SAT/FAT) has been agreed, risk shall be transferred to the customer at the time of acceptance. Acceptance must take place on the acceptance date, or alternatively without delay after our notification of readiness for acceptance. The customer cannot refuse to provide acceptance where an insignificant defect exists. We are entitled to set the acceptance date with 5 business days' notice. Where applicable, the customer shall provide the necessary materials and machine operator, etc., for the acceptance and shall deliver these at least one business day in advance. If the customer is not present for the acceptance or fails to deliver the necessary materials and persons in a timely manner, the performance is considered to be accepted.

§ 7 Reservation of title

1. The goods shall remain our property (Reserved Goods) until all of our claims arising from the business relationship with the customer have been fulfilled. In the event of a breach of contract by the customer, especially in the case of payment default, we are entitled to take the goods back; this is considered a withdrawal from the contract.
2. The goods shall be labeled as our property. This label shall not be removed, and shall be maintained or restored, if necessary, as long as our reservation of title is in effect. In the case of pledging or other third-party interference with or access to our property, the customer shall clearly and without delay object to the access and document this, and shall notify us of this without delay by email, fax, or telephone (with immediate confirmation in text form) so that we can consider defensive measures. The customer shall provide us with appropriate support in the defense, particularly by sharing all known and useful information without delay, and, where the customer is responsible for the access, compensating us for reasonable legal costs.
3. The customer shall resell the Reserved Goods only in the proper course of business; the customer hereby assigns to us all resulting claims that the customer accrues from its customer or third parties due to the resale up to our final invoice amount (plus VAT), regardless of whether the Reserved Goods were resold without or after further processing. The customer remains entitled to collect such claims even after their assignment to us. Our authorization to revoke this and to collect the claim ourselves remains unaffected hereby. However, we agree not to do so initially, and not to disclose the assignment to the customer, as long as the customer fulfills its payment duties, is not in default of payment, and where no request has been made to initiate insolvency proceedings and payment has not been suspended. However, if this is the case, we can request that the customer informs us without delay of the assigned claims and debtors, provide all information required for the collection, hand over the associated documents, and notify the debtors (third parties) of the assignment. The customer does not have a retention right in this regard.
4. Any processing, mixing or transformation of the goods by the customer shall always take place on our behalf. If the goods are inseparably mixed or processed with other items that do not belong to us, we shall obtain co-ownership of the new item according to the value of the goods (final invoice amount plus VAT) in proportion to the other processed items at the time of processing. For the rest, the item created through processing is subject to the same provisions as for the Reserved Goods. If the combination or mixing occurs in such a way that the customer's item is considered the main item, it is hereby agreed that the customer shall transfer proportionate co-ownership to us. The customer shall preserve the resulting sole ownership or co-ownership for us free of charge.
5. To secure our claims, the customer shall also assign to us any claims that the customer accrues from a third party as a result of combining the goods with real estate.

6. We hereby agree, at the customer's request, to release the securities to which we are entitled where the realizable value of our security exceeds the claims to be secured by more than 20%; we are free to choose which securities shall be released.

§ 8 Liability for defects

1. For new goods, we shall provide a warranty and shall be liable pursuant to the statutory provisions and applicable legislation unless otherwise established below.
2. Defects that arise from the following causes and that are not our responsibility because there was no breach of duty are not considered defects, and shall not establish defect liability claims:

   Unsuitable or improper use by the customer or third parties, particularly: excessive use, improper storage, incorrect installation and/or startup, natural wear and tear, faulty or negligent handling, unsuitable operating resources, replacement materials, defective construction work, failure to observe the operating instructions (especially failure to observe the recommended oil change intervals), and unsuitable usage conditions, especially including unfavorable chemical, physical, electromagnetic, electrochemical or electrical influences, weather-related or natural influences, or too-high or too-low ambient temperatures.

   If the customer or a third party improperly carries out changes or repairs, we shall not be liable for these or for the resulting consequences.

3. The customer shall notify us of any defects and shall describe the defect as precisely and in as much detail as possible, including suitable information and documents for the defect analysis. The customer shall appoint an employee as a contact partner to handle this. Following our initial expert assessment, we shall make a decision about further measures. For new goods, where a material defect exists, the customer is initially limited to requesting supplementary performance; we reserve the right to choose the type of supplementary performance.
4. In the case of defects, the customer shall present the goods for supplementary performance at our choice of the place of performance or the current place of use. We shall bear the necessary costs of the supplementary performance. We shall not bear any costs for removal or installation of the goods into other items.
5. As a rule, our investigation of a reported defect shall not constitute acknowledgement of the reported defect, and therefore shall not extend the warranty period. Parts replaced in the course of the supplementary performance shall become our property if we declare this. Otherwise, the customer shall remain responsible for the replaced parts and their disposal.
6. Following a repeated failure of supplementary performance, the customer can choose either to reduce the price or to withdraw from the contract and request damage compensation according to the statutory provisions. Our liability for this may be limited as defined in § 9.

7. We are entitled to refuse to provide supplementary performance if it involves unreasonable costs for us. In place of supplementary performance, the customer can then request a reduction of the agreed price or rescission of the contract. Where costs are increased because the customer has taken the goods to a place other than the place of performance after the delivery, the customer shall bear these additional costs.
8. If we perform services in the context of new developments (for instance providing materials, engineering or other services), the customer must give us adequate opportunity, before the new development is put into use and/or marketed, to test and approve it (e.g. after a previous test run on our testing machines or through other verification methods). If the customer does not allow us to perform any testing, we shall only be responsible and liable for defects and damage according to § 9, unless these fall within our area of responsibility and could not have been identified even during a test before their use and/or marketing.
9. If it is determined that a complaint was unjustified and the customer could have recognized this, particularly if the complaint was based on the processing of incorrect material or on operator error, we are entitled to appropriately invoice the resulting complaint processing costs to the customer.
10. We do not provide any warranty for used goods unless we are liable for intent, fraud, a breach of an explicitly provided guarantee, or according to § 9.
11. The limitation period for defect claims is 12 months, starting from the transfer of risk. The statutory limitation period in the event of delivery recourse pursuant to §§ 445a, 445b, 478 BGB and in cases as per §§ 438 (1) No. 2, 634a (1) No. 2 BGB remains unaffected hereby. The same also applies to our liability for damage compensation due to a warranty as defined in § 9.
12. Defect claims by the customer always require the customer to have properly fulfilled its duties of inspection and complaint (where applicable) pursuant to § 377 HGB [German Commercial Code]. In particular, complaints must be made to us in a timely manner and in text form.
13. If proper use of the goods results in an infringement of industrial property rights or copyrights in Germany, we shall at our own expense either obtain the right for the customer to continue their use, or modify the goods in a reasonable way for the customer such that the infringement no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, both the customer and we are entitled to withdraw from the contract.

§ 9 Liability

1. We shall be liable according to the statutory provisions where the customer asserts damage compensation claims based on intent or gross negligence by us, our representatives, or our vicarious agents. Where no intentional breach of contract exists, the damage compensation liability shall be limited to the foreseeable, typically occurring scope of damage.

2. We shall be liable according to the statutory provisions where we, our representatives, or our vicarious agents culpably breach a significant contractual duty; however, even in this case, the damage compensation liability shall be limited to the foreseeable, typically occurring scope of damage. Significant contractual duties are those resulting from the nature of the respective contract, whose breach threatens the achievement of the contractual purpose.
3. Liability due to a culpable loss of life, bodily injury, or damage to health remains unaffected; the same also applies to binding liability pursuant to the Product Liability Act.
4. Unless otherwise established above, liability is excluded.
5. Further liability for damage compensation beyond what is established in the above paragraphs – regardless of the legal nature of the asserted claim – is hereby excluded. This applies particularly to damage compensation claims arising from fault at the time of contract conclusion (culpa in contrahendo), due to other breaches of duty, or due to tortious compensation claims for property damage pursuant to § 823 BGB. This limitation also applies where, instead of claiming damage compensation in place of performance, the customer requests compensation for futile expenses. Where our damage compensation liability is excluded or limited, the same also applies with regard to the personal damage compensation liability of our employees, representatives, and vicarious agents.
6. We further reserve the right to exercise all objections and pleas regarding any claims, particularly regarding the customer's or a third party's shared responsibility for causing the damage and/or for rectifying/processing the damage (duty to minimize damage).
7. If we are subject to a third-party claim arising from product liability, the customer shall indemnify us from third-party claims (including the costs of any necessary recall campaigns) and reimburse us for all damages and expenses where the customer is responsible for the cause of the liability case.

§ 10 Software, liability for data loss, and compatibility

1. Where we are obligated to provide damage compensation according to §§ 8 and 9 above, our liability for data loss shall be limited to the typical recovery cost that would have applied if all data, structures, and programs had been regularly and fully backed up.
2. If our software is included in our scope of performance, we shall grant the customer an ordinary, non-exclusive, non-transferrable but open-ended usage right to the software. The customer is not entitled to use the software in a manner other than what we intended, and particularly shall not further develop it or analyze (reverse engineer) it. The customer shall make copies only for the purpose of backing up data. Where our performance includes third-party software products, the customer hereby acknowledges the usage/licensing conditions of the software's copyright holder in advance for this software. We shall provide these to the customer upon request.
3. We are not responsible for malfunctions relating to the operating system environments and configurations installed by the customer unless the customer explicitly contracts us to provide installation in its environment and discloses all relevant

components to us, at the latest during the offer preparation. Our liability is also excluded in the case of other non-compatibility of the delivered software with the customer's hardware and/or software, unless we provided consulting services in this regard based on an agreement in text form. For integration requirements that become apparent to us only in retrospect, § 2 (4) applies accordingly. In every case, our liability is limited according to § 9.

§ 11 Liability for the customer's items, adjustment parts, defective goods

1. If we process the customer's items, the customer shall provide us with the necessary information and data as well as the specialized equipment and devices in a timely manner, free of charge for us.
2. Furthermore, we shall only be liable for damage to the customer's parts up to a maximum of the net order value that specifically applies to the customer's damaged part in each case, unless we can be accused of grossly negligent or intentional conduct. It is therefore recommended that the customer conclude separate insurance for valuable items.

§ 12 Assignment, offsetting, retention, subcontractors

1. Without our prior approval in text form, the customer is not entitled to assign or transfer to third parties any claims or rights asserted against us on the basis of the business relationship. The same applies to any claims and rights directly asserted against us as required by law.
2. The customer shall have offsetting rights only where its counterclaims are legally established, undisputed, or acknowledged by us.
3. The customer is entitled to exercise a retention right only where its counterclaim is based on the same contractual relationship.
4. Even without prior permission from the customer, we are entitled to subcontract the order or parts of the order to third parties.

§ 13 Place of performance, place of jurisdiction, applicable law

1. The place of performance and place of jurisdiction for disputes with merchants, legal entities under public law, or special funds under public law is our registered place of business. Moreover, we are also entitled to file a suit against the customer at the customer's registered place of business or the place of performance.
2. The laws of the Federal Republic of Germany apply, excluding the rules of international private law; the applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.
3. This English version of these General Terms and Conditions is a convenience translation only. In case of any differences and for the purpose of interpretation of the General Terms and Conditions the German version (which can be retrieved at: https://nidecsys.com/de/agb/) shall prevail and solely be binding.

Updated: June 2023