

Netzsch Australia Pty Ltd, Conditions of Sale

1 Application of Conditions

- 1.1 These Conditions of Sale ("**Conditions**") apply to all quotations, offers and purchase orders made or accepted by Netzsch Australia Pty Ltd (ABN 28 153 727 809) of Unit 1, 14 Thomas Hanlon Court, Yatala, Qld 4207 ("**Company**") and to deliveries of all goods manufactured or supplied by the Company ("**Goods**") to any person, firm or company which enters into an agreement with the Company ("**Customer**").
- 1.2 So far as applicable, these Conditions also apply to the provision of any services including advice accompanying the supply of, or provided in relation to, Goods ("**Services**") and, where the context allows, any reference to the supply of Goods includes the provision of such Services.
- 1.3 These Conditions (which can only be waived or varied in writing by the Company) will prevail over all conditions of the Customer to the extent of any inconsistency.

2 Definitions

- 2.1 In these Conditions:

"**ACL**" means *Australian Consumer Law* as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;

"**Analysis Software**" means the Software programs for the analysis and graphic description of the measurement results and corresponding material;

"**Confidential Information**" means any proprietary or confidential documents, knowledge and information, prices, specifications, business and trade secrets, formulas and know-how, prices, production method, samples, models, drawings, data standard sheets, manuscripts and other technical and business documentation supplied or made known to the Customer, or other information in any form concerning the Company and its related entities worldwide;

"**Consequential Loss**" means any:

- (i) loss of profits;
- (ii) loss of revenue;
- (iii) loss of production;
- (iv) loss or denial of opportunity;
- (v) loss of or damage to goodwill;
- (vi) loss of business reputation, future reputation or publicity;
- (vii) loss of use;
- (viii) loss of interest;
- (ix) losses arising from claims by third parties;

- (x) loss of or damage to credit rating;
- (xi) loss of anticipated savings; and
- (xii) loss of contract,

whether direct, indirect or consequential;

"**Force Majeure Event**" means any cause whatsoever that is beyond the Company's control including but not limited to delays caused by suppliers, epidemic, pandemic, disease or public health alert, Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident;

"**GST**" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax;

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

"**Intellectual Property**" means all intellectual property rights of the Company and its related bodies corporate (including, without limitation, all copyright, designs, trade marks and patents) of any nature in any samples, cost estimates, sketches, inventions, designs, works, discoveries, trade secrets, know-how, computer software, control software and analytical software tools, Confidential Information (including in electronic form) and subject matter other than works, any application or right to apply for registration of such rights;

"**Licence Level**" means the permitted level of usage of the Software licensed to the Customer pursuant to the relevant Order Confirmation;

"**Loss**" means any losses, liabilities, damages, costs, charges or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct or indirect (including Consequential Loss), fines and penalties;

"**Measuring Software**" means the Software programs for implementing measurements and saving measurement data and corresponding material;

"**NETZSCH Operating Instructions**" means the operating and maintenance instructions manual available on request from at.au@netzsch.com;

"**NETZSCH SaaS Conditions**" means the "SaaS License Conditions" (Rev. 12/15/2025) or the most current version of the NETZSCH Group's Software-as-a-Service terms provided to the Customer.

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"PPSA" means the Personal Property Securities Act 2009 (Cth);

"SaaS Services" means any web-based software solutions offered by the Company or the NETZSCH Group as Software-as-a-Service, including but not limited to **Proteus® Now Quantify**.

"Security Interest" shall have the meaning as defined under the PPSA; and

"Site" means:

- (i) for Proteus Software, the Customer facility which the corresponding measuring instrument is physically located; or
- (ii) for Advanced Software, a specific Customer facility which the package of Advanced Software is installed.

"Software" means either or both, as the context requires, the Measuring Software and the Analysis Software including, the totality of the information provided concerning such Software, the computer programs in object code, the contents of files, the Software documentation, any Updates or Upgrades and any other material in any format about or concerning such Software supplied under the Contract;

"Taxable Supply" and "Tax Invoice" have the same meaning as in the GST Act;

"Update" means an update of an existing version within a given generation of the Software;

"Upgrade" means an upgrade to a new generation of the Software.

3 Orders

- 3.1 A brochure or catalogue of the Company does not constitute an offer, but merely an invitation to treat.
- 3.2 An order submitted or placed by a prospective customer ("**Order**") shall not be binding on the Company unless and until the Company has given written acknowledgement of its acceptance on terms which include these Conditions ("**Order Confirmation**"). The Company reserves the right not to accept an Order, including where the prospective customer has exceeded its credit limit or has on an earlier occasion breached these Conditions. If Goods are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.
- 3.3 Each supply which the Company makes in response to an Order Confirmation will be regarded as a separate contract for sale which is subject to these Conditions, including Annexure A ("**Contract**").

3.4 Unless previously withdrawn, all quotations by the Company are binding and valid for 14 days from the date of the quotation or such other period as stated in that quotation.

3.5 If the Customer places the Order subject to finance, the Company will not be obliged to procure or supply the Goods until the Customer has provided written evidence to the Company's reasonable satisfaction that such finance will be provided to the Customer.

4 Description and Use of Goods

4.1 Any information published by the Company which explains or describes the Goods, including photographs, designs, technical specifications, data relative to dimensions and weights, is indicative only and the Company is not responsible for any inaccuracies contained therein.

4.2 The Company reserves its right to change the Goods at any time without notice. Where the Company changes or discontinues Goods which are subject to a Contract, the Company will inform the Customer and provide the Customer with revised or updated Goods which have the same or equal functionality and performance as stated in the Order Confirmation.

- 4.3 The Customer must use the Goods at all times:
- (a) in accordance with any instructions or user manuals provided by the Company;
 - (b) in an operating environment that meets any requirements specified by the Company, and is otherwise appropriate for the Goods; and
 - (c) in a manner that complies with all applicable laws and regulations.

5 Specification

5.1 Goods are supplied in accordance with any specification in force at the time concluding the agreement between the Company and the Customer ("**Specification**"). Any Specifications as shown on the Order Confirmation are deemed to be checked and accepted by the Customer. Any additions and alterations made to a Specification by the Company at the request of the Customer shall be subject to an additional charge as specified by the Company.

5.2 The Customer is solely responsible, and must itself examine and test the Goods at its cost, to ensure they are fit or suitable for the Customer's purposes. Subject to the ACL, the Company accepts no liability for the fitness or suitability of the Goods for the Customer's particular purposes.

6 Netzsch Proteus and Advanced Software

6.1 Upon receipt of the appropriate Software payment by the Customer, the Company grants to the

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- Customer a non-exclusive, non-transferable right to use the Software at the specified Site for its own business purposes in accordance with the following licence use rights as they are identified in the Order Confirmation:
- (a) Node-locked licences. If the Customer is licensed Software on a node-locked basis, the Customer may install and use one instance of the Software on a single computer only at the Customer's Site(s) for the Customer's internal business purposes only in accordance with the Licence Level. A node-locked licence is limited to use by a single user on a single computer. The Customer may not install the Software on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another computer is prohibited.
 - (b) Site Licences. The Customer has the right to install and use the Analysis Software on any number of computers within the specified Customer Site. For the Proteus Software, this applies only if the individual user stations access the same measuring instrument's data. The Measuring Software may be used only as individual user station software. That is, the Measuring Software may only be used at a user station that is the property of the Customer and is connected to the measuring instrument.
- 6.2 The Software user Licence is granted for only a single Site. For installation or use of the Software at multiple sites, and / or on different measuring instruments of the same type, the procurement by the Customer of additional licences is required. The Customer may duplicate the Software within the scope of application execution, in accordance with the technical specifications. The Customer may also generate any necessary backup copies of the Software provided those copies are only used for the purposes of data protection. Duplication of the Software user manual and of the other documents (accompanying texts, included images etc.) is not permitted. The Software may only be used in the operating system environment approved by the Company and on the recommended hardware.
- 6.3 The rights to process the Software is restricted to the attainment or restoration of the contractual functionality of the Software. This comprises the Software installation, creation of an archival backup copy, the download of the Software and its processes. These licence rights do not permit any other kind of usage. Except as permitted by law, the Customer has no right to translate, process, decompile, reverse-engineer or disassemble the Software.
- 6.4 The Customer must not change or delete any copyright notations, logos and/ or any proprietary marks of the Company on the Software.
- 6.5 The Customer must not sublicense, rent or otherwise use the Software on an application service provider basis without the express consent of the Company.
- 6.6 **Software-as-a-Service (SaaS)**
- a) Where the Customer acquires SaaS Services (such as Proteus® Now Quantify), the use of those services is governed primarily by the NETZSCH SaaS Conditions, which can be accessed and downloaded at: <https://analyzing-testing.netzsch.com/Resources/Persistent/2/4/6/5/2465cc4d8465c4ecaad97deecae7a32a3533d061/NETZSCH%20SaaS%20licens e%20conditions%20December%202025.pdf>.
 - b) The NETZSCH SaaS Conditions are incorporated into these Conditions by reference. In the event of any inconsistency between these Conditions and the NETZSCH SaaS Conditions regarding the use of SaaS, the NETZSCH SaaS Conditions shall prevail.
 - c) **Subject to the ACL**, the Customer acknowledges that SaaS Services are provided on a subscription or "per-upload" basis as specified in the Order and are governed by the laws of the Federal Republic of Germany as set out in the SaaS Conditions, provided that such choice of law does not deprive the Customer of protections under the Australian Consumer Law.
- 7 Prices and Payment**
- 7.1 The prices of the Goods are the prices which have been notified in writing by the Company to the Customer ("**Prices**"). If, after an Order Confirmation, the costs of production of the Goods significantly increases ("**Significant Increase of Costs**"), the Company may make a reasonable adjustment to the Price ("**Price Adjustment**"). For the purposes of this clause 7.1, a Significant Increase of Costs includes, but is not limited to the Company's suppliers increasing the price for the Goods or their component parts, increases to customs duties or other costs of importation or, if there is a significant change in the exchange rate to the Company's detriment as compared to that on the date of the Order Confirmation. A Price Adjustment is considered reasonable where it is within the scope of the actual increase in costs. If requested by the Customer, the Company will provide evidence of the Significant Increase of Costs. If a Price Adjustment results in a Significant Increase of Costs of more than twenty percent (20%) of the original Price in the Order Confirmation and the Company does not, within two (2) weeks of receiving a request from the Customer to limit the Price Adjustment to a maximum of twenty percent (20%), respond to such request, or the Customer is not satisfied with

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the Company's response, then the Customer may by written notification to the Company cancel the Order.

7.2 Unless otherwise specified by the Company in writing, prices for Goods and delivery are quoted:

- (a) for delivery in Australia, delivery duty paid (DDP) (INCOTERMS 2022);
- (b) for delivery to New Zealand, delivery at place (DAP) (INCOTERMS 2022).

7.3 Unless otherwise agreed by the Company in writing, payment is due via electronic transfer, without any deductions, as follows:

- (a) for domestic deliveries, 30 days after receipt of the invoice, but at the latest 60 days after delivery;
- (b) for overseas shipments, 30% is due upon placement of the Order, with the balance due 30 days after date of invoice but at the latest 60 days after delivery. Timeliness of the payment is assessed using the date of receipt.

(together "**Payment Dates**")

7.4 If the Customer defaults in the payment of any money due to the Company pursuant to these Conditions on the Payment Dates, then in addition to any other rights which may be conferred upon the Company by law or equity, the Company will be entitled to be paid interest by the Customer on such money at the rate of 12% per annum from the date of such default until full payment to the Company.

7.5 If payment is not made in accordance with clause 7.3, or if at any time the credit standing of the Customer, in the opinion of the Company, is at risk or has been impaired, the Company may refuse delivery of any Goods ordered until alternative arrangements as to payment or credit in terms satisfactory to the Company have been agreed.

7.6 If GST is imposed on a Taxable Supply made by the Company to the Customer under or in connection with these Conditions, the Price of the Taxable Supply shall be equal to the GST-exclusive consideration that the Customer must pay to the Company for the Taxable Supply under these Conditions increased by an amount (the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to the Company issuing a Tax Invoice to the Customer, payable at the same time and in the same manner as the consideration to which it relates.

7.7 The Customer may not withhold or set off any payment or make deductions from any amount owing to the Company without the Company's prior written consent.

7.8 Delay in Delivery and Liquidated Damages

- a) **Qualifying Cause of Delay:** If the Company is delayed in meeting a delivery or completion date, it shall not be liable for any liquidated damages or penalties if the cause of the delay is a Qualifying Cause of Delay. For the purpose of this clause, a "Qualifying Cause of Delay" includes, but is not limited to, a Force Majeure Event, acts or omissions of the Customer (including failure to provide site access or technical data), or any other cause beyond the Company's reasonable control.
- b) **Extension of Time (EOT):** In the event of a Qualifying Cause of Delay, the Company shall be entitled to an extension of time for delivery or completion equivalent to the period of the delay plus a reasonable start-up period. No liquidated damages shall accrue during this extended period.
- c) **Fault-Based Liability:** The Company shall only be liable for liquidated damages where a delay is solely and directly attributable to the fault of the Company. Subject to the ACL and Clause 10, the Customer must provide evidence that actual damage has been incurred as a result of such delay.
- d) **Calculation and Cap:** Where the Company is liable under Clause 7.8(c), the Customer may demand compensation in the amount of 0.5% of the value of the delayed part of the Goods for each full week of delay. The total compensation payable under this clause is strictly capped at a maximum of 5% of the value of that delayed part of the Goods.
- e) **Exclusive Remedy:** To the extent permitted by law and the ACL, the liquidated damages set out in this Clause 7.8 shall be the Customer's sole and exclusive remedy for any loss or damage resulting from a delay in delivery, and all further claims for damages resulting from such delay are expressly excluded.

8 Cancellation

8.1 Subject to clause 7.1, a notice of cancellation or variation of an Order must be submitted by the Customer in writing and is only effective upon the written approval by the Company, whereby such approval can be withheld by the Company in its discretion.

8.2 When a Customer gives written notice of cancellation or variation and the Company approves such a request in accordance with clause 8.1, without prejudice to its other rights, the Company reserves the right to charge for all Goods and Services it has performed and shall need to perform in fulfilling the Order or, if the work is substantially complete or the Goods were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for the full amount set out in the applicable Order Confirmation in addition to any other costs the Company incurs on the Customer's behalf.

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8.3 When an Order is cancelled in accordance with this clause 8, the Company may charge the Customer for each cancelled Order a fee comprising storage costs, loss of value of the Goods and interest at the rate set out in clause 7.4, as well as seek reimbursement from the Customer for any costs which the Company is charged by third parties as a result of the Order being cancelled.

9 Delivery

9.1 Stated delivery times are no more than an estimate by the Company and shall not be binding upon the Company. The Company will not be liable for any Loss resulting partly or wholly from late delivery.

10 Packaging

10.1 Whether or not expressly stated by the Company as being included in the Price of the Goods, packaging cannot be returned by the Customer to the Company.

11 Passing of Risk and Title

11.1 Unless otherwise agreed by the Company in writing, risk in the Goods shall pass to the Customer when the Goods are delivered.

11.2 Notwithstanding that risk passes to the Customer under clause 11.1, until full payment in cleared funds is received by the Company for all Goods supplied by it to the Customer, as well as all other amounts owing to the Company by the Customer under any Contract:

- (a) legal title and property in the Goods shall remain with the Company and does not pass to the Customer,
- (b) the Customer must store the Goods separately and in such a manner and maintain any labelling and packaging of the Company, so that the Goods are clearly and readily identifiable as the property of the Company,
- (c) the Customer must not sell, lease or otherwise deal with the Goods ,
- (d) in addition to any rights the Company may have under Chapter 4 of the PPSA, the Company may, at any time, demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Company, and for this purpose the Customer irrevocably licences the Company to enter such premises,

undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Company from and against all Loss suffered or incurred by the Company as a result of exercising its rights under this subclause,

- (e) the Customer acknowledges and warrants that the Company has a security interest (for the purposes of the PPSA) in the Goods and any proceeds and the Customer must do anything reasonably required by the Company to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by the Company which, unless the Company agrees in writing otherwise, is first priority.

11.3 Until such time as ownership in the Goods passes to the Customer, the Customer shall:

- (a) be in a fiduciary relationship with the Company;
- (b) keep, and provide the Company at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Goods; and
- (c) keep the Goods, at its own cost, insured against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.

11.4 The Company is entitled at any time while any debt remains outstanding by the Customer to notify the Customer of its intention to take possession of the Goods and for this purpose the Customer irrevocably authorises and licences the Company and its servants and agents to enter upon the land and buildings of the Customer with all necessary equipment to take possession of the Goods. The Company is not liable for damage or injury to any premises caused by the Company exercising its rights under this clause.

11.5 On receipt of notice from the Company or on the happening of any of the events set out in clause 11.6, the following applies:

- a) all amounts owed by the Customer to the Company become immediately due and payable;
- b) the Company may terminate any Contract with the Customer and/or withhold delivering further Goods and all invoices issued by the Company to the Customer become due and payable immediately; and
- c) the Customer must immediately deliver to the Company all Goods which are in the ownership of the Company.

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- 11.6 The Customer shall give immediate notice to the Company of:
- (a) the Customer becomes insolvent under administration as defined in Section 9 of the *Corporations Act 2001*;
 - (b) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the Customer or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets;
 - (c) the Customer resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;
 - (d) the Customer becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of itself;
 - (e) proceedings are commenced to make the Customer bankrupt or the Customer becomes bankrupt;
 - (f) an event analogous to any of those set out in clauses 11.6(a) to 11.6(e) occurs.
- 12 Personal Property Securities Act 2009**
- 12.1 The Customer acknowledges and agrees that it grants the Company a Security Interest in the Goods and their proceeds by virtue of the Company's retention of title pursuant to clause 11.
- 12.2 The Customer undertakes to:
- a) do all things necessary and provide the Company on request all information the Company requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
 - b) not to change its name in any form or other details on the PPSR without first notifying the Company.
- 12.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the Security Interest created by these Conditions.
- 12.4 To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA:
- (a) section 95 (notice of removal of accession);
 - (b) section 123(2) (notice of seizure);
 - (c) section 125 (obligation to dispose of or retain collateral);
 - (d) section 129(2) (notice of disposal by purchase);
 - (e) section 130 (notice of disposal);
 - (f) section 132(3)(d) (contents of statement of account after disposal);
 - (g) section 132(4) (statement of account if no disposal)
 - (h) section 135 (notice of retention);
 - (i) section 142 (redemption of collateral); and
 - (j) section 143 (reinstatement of security agreement).
- 12.5 The Customer appoints the Company as its attorney to sign in the Customer's name all documents which the Company considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.
- 12.6 The Customer will reimburse the Company for any fees payable by the Company in relation to the registration of the Security Interest created by these Conditions, including registration fees and maintenance fees.
- 12.7 These Conditions create a Security Interest in all Goods which the Company has supplied to the Customer and all Goods which the Company supplies to the Customer in the future. Initial registration of a financing statement by the Company in respect of the Customer under the PPSA covers Security Interests in Goods supplied now or subsequently under these Conditions.
- 12.8 Unless otherwise defined in these Conditions, the terms and expressions used in this clause 12 have the meanings given to them, or by virtue of, the PPSA.
- 13 Australian Consumer Law and Company Warranty**
- 13.1 The Company's obligations under Australian Consumer Law and its Warranties for its Goods and Services are set out in "Australian Consumer Law, Consumer Guarantees and Netzsch Warranties".

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14 Limitation of Liability

14.1 Subject always to the Company's liability under Australian Consumer Law and the extent that liability cannot be legally limited or excluded:

- (a) The Company's total aggregate liability arising out of or in connection with the Contract of which these Conditions form part, shall be limited to the price paid by the Customer for the Goods and Services under the Contract per event and in aggregate; and
- (b) The Company shall under no circumstances be liable for Consequential Loss whether or not such Consequential Loss was foreseeable.

15 Force Majeure

15.1 The Company shall not be liable for any Loss or damage caused by delay in the performance or non-performance of any of its obligations under a Contract occasioned by a Force Majeure Event. If a Force Majeure Event occurs, the Company may vary, cancel or suspend any Order Confirmation or Contract of which these Conditions form part without incurring any liability for any such Loss or damage.

15.2 Where delivery is delayed as a result of a Force Majeure Event, the agreed delivery times will be extended as appropriate. If delivery is impossible or unreasonable as a result of a Force Majeure Event, the Company will no longer be obliged to effect delivery. Where the delay in delivery caused by a Force Majeure Event exceeds eight (8) weeks, the Company and the Customer have the right to terminate the part of the Contract to which the delay relates.

16 Intellectual Property

16.1 The Company for and on behalf of itself, its related bodies corporate and licensors reserves ownership in any Intellectual Property, relating to the quotations, specifications, technical drawings, price lists, samples, models, tender documentation and Goods ("**Protected Items**"). Nothing in these Conditions operates or is intended to deny the Company or its related bodies corporate, or confer on the Customer, the Intellectual Property or any other intellectual property rights in the Protected Items.

16.2 The Customer must not use or make the Protected Items available to third parties without the prior written consent of the Company.

16.3 The Customer must only use the Protected Items and any associated Intellectual Property in accordance with the terms of the Contract.

16.4 If so requested by the Company, the Customer must return, at the expense of the Company, any Protected Items which the Company provides to

the Customer after receipt of an Order if the Company does not provide an Order Confirmation.

16.5 If the Customer becomes aware of any actual, threatened or suspected infringement of the Intellectual Property, the Customer must inform the Company promptly of the actual, threatened or suspected infringement.

16.6 The Customer shall indemnify the Company for and in respect of claims by any third party in relation to Goods where such claims arise from, or can be attributed to, the special requirements or specifications of the Customer.

17 Local Standards

17.1 Unless otherwise agreed under the Contract, the Company will apply for, and obtain all, necessary initial licences, permits or other authorisations required by the local law in relation to the use of the Goods ("**Registrations**") and will inform the Customer of the details of such Registrations. The Customer must provide any assistance (or to procure third parties to provide such assistance) which the Company requires or requests to enable the Company to obtain the Registrations. The Company will not be liable for any Loss suffered by the Customer or any third party resulting partly or wholly from the Customer's failure to comply with its obligations under this clause 17.1.

17.2 It is the responsibility of the Customer at its own costs to observe any applicable laws in Australia in regard to the use and storage of the Goods.

17.3 The Company is not obliged to perform any of its obligations under any contract of which these Conditions form part, including delivery, unless and until the Customer has complied with clause 17.1.

17.4 The Customer agrees that it releases, discharges and holds harmless the Company (including the Company's employees, officers and agents) with respect to all claims, actions, suits, demands, costs, penalties, damages and expenses (including legal expenses on a solicitor client basis) which the Company has or may have as a result of the Customer not having complied with its obligations under clause 17.1.

18 Assembly, installation and commissioning

18.1 Unless otherwise agreed in writing, the Company will install the Goods in the Customer's premises, carry out a complete configuration and parameterization and provide the Customer's operating personnel with operating instructions before the Goods are commissioned as referred to in the Order Confirmation.

18.2 Should there be a delay in assembly, installation or commissioning on-site, through no fault of the

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Company, the Customer bears all costs of such delay and the costs of any future travel of Company staff to the site required as a result of the delay.

19 Confidentiality

- 19.1 All Confidential Information is and will remain the exclusive property of the Company.
- 19.2 The Customer must not, except as required by law or by the Company directly or indirectly communicate any Confidential Information to any person without the prior written consent of the Company, and must at all times use its best endeavours to prevent the use or disclosure of any Confidential Information by third parties.
- 19.3 The Customer will impose the same obligation as set out under clause 18.2 on its employees and contractors who are involved in the performance of the Contract.

20 Privacy

The Customer acknowledges that the Customer's personal information as defined under the *Privacy Act 1988* ("Act") is likely to be disclosed to recipients located in Germany, being the location of the parent company of the Company and in some cases New Zealand, Fiji Islands or Papua New Guinea, depending on the location of the customer. The Customer expressly consents to the Company disclosing the Customer's personal information to third parties located outside Australia whereby a) the Company will not be accountable under the Act, b) the Customer will not be able to seek redress under the Act, c) the overseas recipient may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles, d) the Customer may not be able to seek redress in the overseas jurisdiction; and e) the overseas recipient may be subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority. Notwithstanding the above, the Company will handle personal information in accordance with the Australian Privacy Principles under the *Privacy Act 1988* (Cth) to the extent applicable.

21 Export Restrictions

- 21.1 The Customer must not deal:
- (c) with persons, organisations or agencies which are on the sanctions list of the European Union, the USA or Australia,
 - (d) any countries which are subject to an embargo;
 - (e) in respect of any transactions which involve nuclear, biological or chemical weapons or military applications.

- 21.2 The Customer must immediately notify the Company if the Customer becomes aware that the Customer has or may have breached clause 20.1. If the Customer breaches clause 20.1, the Company has the right to terminate any Contracts with the Customer and the Customer hereby indemnifies and holds harmless the Company from any Loss suffered arising from or connected with any breach by the Customer of clause 20.1.

22 Assignment

The agreement of which these Conditions form part is personal to the Customer and may only be assigned by the Customer with the prior written and informed consent of the Company.

23 Waiver

No neglect, delay or indulgence on the part of the Company in enforcing these Conditions shall prejudice the rights of the Company or be construed as a waiver of any such rights.

24 Severability

If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

25 Whole Agreement and Amendments

In relation to the subject matter of these Conditions, these Conditions supersede all oral and written communications by or on behalf of any of the parties. Any amendments to these Conditions or a Contract must be agreed by the parties in writing.

26 Data Use and Analytics

- 26.1 Customer grants the Company a non-exclusive, royalty-free licence to use data generated by the Goods or SaaS Services ("Machine Data") for the purpose of maintenance, error analysis, and the development/optimization of NETZSCH products and algorithms.
- 26.2 The Company shall ensure that such data is used in an anonymized or aggregated format and in compliance with the *Privacy Act 1988* (Cth).

27 Governing Law

The Conditions and any agreement of which they form part are governed by and must be construed in accordance with the laws which apply in the State of Queensland and the parties submit to the jurisdiction of that State. The United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply to these Conditions or any Contracts.