

National Machinery LLC
TERMS AND CONDITIONS OF SALE

FXT, Microformers, Other New Machines and OEM REBUILDS

I. ACCEPTANCE – This writing shall not create a binding contract unless and until the BUYER accepts the offer from National Machinery LLC (the “SELLER”). BUYER may accept either by issuing a purchase order incorporating SELLER’s offer by reference or by accepting any of the goods described herein. SELLER hereby objects to any terms proposed in BUYER’s acceptance of SELLER’s offer which add to, vary from, or conflict with the terms of SELLER’s offer. Such proposed terms shall be void and the terms of this offer shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may be modified only by a written instrument signed by the authorized representatives of both parties. If SELLER has issued this writing in response to an offer, and if this writing states additional or different terms from those contained in the offer, then the issuance of this writing by SELLER shall constitute an acceptance of the offer subject to the express condition that the BUYER assent to these additional and/or different terms and acknowledge that this writing constitutes the entire agreement between BUYER and SELLER with respect to the subject matter hereof and the subject matter of the offer, and BUYER shall be deemed to have so assented and acknowledged, unless BUYER notifies SELLER to the contrary in writing within ten (10) days of receipt of this writing.

II. VALIDITY, PRICES AND TERMS OF PAYMENT -

Unless stated otherwise in our quotation:

- Quotation price is firm only upon verification from SELLER and may be subject to change.
- Payment terms are as set forth in our quotation.
- Payment is in U.S. Dollars
- Delivery terms are Ex Factory, SELLER’s plant in Tiffin, Ohio, USA, and exclude packing, storage, freight, insurance charges, testing and inspection fees, sales, use occupation, license, excise and other taxes in respect of manufacture, sale or delivery, and export and import duties. All of these will be paid by the BUYER unless, in the case of sales tax, a proper exemption certificate is furnished. BUYER assumes all responsibility for risk, loss or damage while goods are in transit.
- BUYER shall pay all freight charges, including customs duty, for BUYER-owned goods coming to SELLER’s plant.
- For all sales outside the continental United States, Canada, Japan and the European Economic Community, the import license and BUYER’s confirmed and irrevocable letter of credit confirmed by an acceptable U.S. bank for the remaining payments shall accompany the amount due when order is placed.
- All orders are subject to credit approval. If, during the period of performance of an order, the financial condition of BUYER is determined by SELLER not to justify the terms of payment specified, SELLER has the right to renegotiate full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this order.
- No discounts are offered. Discount and collection charges will be for the BUYER’s account.
- A service charge of 1% per month (12% per annum) will be added to all delinquent accounts.

III. DELIVERY AND DELAYS – Delivery is as stated in quote. Delivery period begins upon receipt of firm purchase order and required down payment and for rebuild orders the arrival of the machine at SELLER’s plant. All delivery dates are estimates only and SELLER reserves the right to, and may, revise delivery dates during production period. SELLER shall not be liable to BUYER for any loss or damage, direct or consequential, caused by delay in delivery.

It shall not be deemed a default hereunder and neither BUYER nor SELLER shall be liable for a failure to perform arising from causes or events beyond their reasonable control. In the event of any such delays, the date of delivery shall be extended for a period equal to the length of such delay. Claims for shortages, defects or shipping errors shall be deemed waived unless made in writing within thirty (30) days after receipt of the goods at initial shipping destination.

BUYER shall pay SELLER for all handling, transportation and storage costs in the event delivery is delayed at the request of the BUYER.

IV. RETURNS AND CANCELLATIONS –SELLER will not accept any parts for credit without a written return authorization nor will it accept any repair parts for credit if not purchased within the last ninety (90) days. BUYER may not return merchandise which has been altered or defaced in any way.

Once an order is accepted, it can only be cancelled upon request by the BUYER and with SELLER’s written confirmation upon terms which will indemnify SELLER against all loss. In the event of cancellation, the terms of cancellation charges will be 85% of the sales price of the order. Any deposit, down payments, and progress payments will be applied against the amount due to SELLER. All amounts due shall be paid within thirty (30) days after invoice to BUYER subject to a late charge equal to 1% per month (12% per annum). BUYER shall pay to SELLER all reasonable costs of collection, including reasonable attorney’s fees, incurred by SELLER in collecting any amounts owing by BUYER hereunder.

V. DEFAULT - In the event of any default by BUYER, SELLER may exercise any and all legal rights and remedies provided by law, including but not limited to charging BUYER 85% of the sales price of the order plus any additional costs incurred by SELLER. BUYER shall pay to SELLER all reasonable costs of collection, including reasonable attorney’s fees, incurred by SELLER in collecting any amounts owing by BUYER hereunder.

VI. PATENTS – SELLER agrees to defend any and all claims and any and all such actions against BUYER and to indemnify and hold BUYER harmless against all costs, damages and expenses arising from any infringement or alleged infringement of patents or trademarks on SELLER’s goods, provided that SELLER shall not be obligated to defend BUYER to the extent that any costs, damages or expenses arise from changes or modifications made by BUYER to SELLER’S goods.

BUYER agrees to indemnify and hold SELLER harmless against any loss, cost, liability or expense resulting from infringement or alleged infringement of patents or trademarks in connection with goods manufactured by SELLER in accordance with BUYER’s specifications or any modification of SELLER’S goods by BUYER.

VII. WARRANTY -

- SELLER warrants that the goods supplied will be free from defects in material or workmanship.
- The duration of the warranty period is one (1) year commencing on machine shipment from SELLER's facility.
- BUYER agrees to notify SELLER in writing within forty-eight (48) hours of discovering a potential defect and such claim must be presented by BUYER to SELLER no later than six (6) months after discovery or the expiration of the warranty period, whichever comes first, or the claim is barred.
- The sole remedy for any defect shall be the repair or replacement (at SELLER's sole discretion) of any defective parts or components. Such parts or components will be delivered according to the SELLER's standard delivery terms for spare parts. Any associated necessary service shall be provided by the SELLER including travel and living expenses at no cost to the BUYER.

SELLER shall have no obligation to repair or replace defective goods if the goods are not in the plant of the original BUYER or if the goods become defective as a result of improper installation or failure to maintain the equipment as described in the Operator and Maintenance Manual or maintenance not made by SELLER, normal wear or as a result of removal, improper use, use in excess of or beyond rated capacities, alteration or misapplication of the goods. SELLER shall have no obligation for damage resulting from abuse, flood, fire or act of God.

SELLER shall also have no obligation to repair or replace goods if the nonconforming or defective goods have, in SELLER's opinion, been maltreated so as to cause further damage. If any part or any piece of the goods does not conform to specifications or is defective, but is capable of being repaired or replaced, the whole piece shall not be considered to be nonconforming or defective. SELLER hereby warrants only that it knows of no noncompliance with current OSHA, Machinery Directive 2006/42/EC, ANSI B11.7, and NEC regulations with regard to machinery manufactured by SELLER. Upon installation, if BUYER becomes aware of noncompliance with such regulations, BUYER shall so inform SELLER within ten (10) days. Failure to so notify SELLER shall constitute a waiver of this warranty and of BUYER's right hereunder. Upon such notification by BUYER, SELLER shall, at BUYER's expense, make necessary repairs or modifications to any equipment which SELLER determines not to have been in compliance with OSHA regulations at the time of sale. The sound level of the machine will meet existing standards as tested in SELLER's plant without tooling or accessories. SELLER cannot be responsible for sound produced by tooling or accessories over which SELLER has no control or responsibility.

For goods manufactured by others and installed by SELLER, including but not limited to conveyors, wire payoff units, wire drawing units, process monitors, main drive motors, electrostatic filters, main lubrication pumps/motors and die coolant pumps/motors, the original manufacturer's warranty passes through to the BUYER with no further warranty coverage offered by the SELLER.

SELLER is not responsible for losses or damages caused by consumable materials over which the SELLER has little or no control, including but not limited to lubricating fluids, greases, coolants, water, cleaning agents, compressed air or other gasses, rod/wire/preforms and their coatings, and tooling.

Except as expressly set forth herein, and except as to title, it is expressly agreed:

THAT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, NOR ANY AFFIRMATION OF FACT, OR PROMISE BY THE SELLER WITH REFERENCE TO THE GOODS WHICH EXTENDS BEYOND THE SPECIFICATIONS, IF ANY, MUTUALLY AGREED UPON BY THE SELLER AND THE BUYER. THE BUYER ACKNOWLEDGES THAT IT IS PURCHASING THE GOODS SOLELY ON THE BASIS OF THE COMMITMENTS OF SELLER EXPRESSLY SET FORTH HEREIN. NO PERSON IS AUTHORIZED TO CHANGE OR ADD TO ANY OF SELLER'S OBLIGATIONS UNDER THIS WARRANTY.

VIII. LIMITATION OF LIABILITY – In no event shall SELLER be liable for anticipated profits or for incidental or consequential, exemplary or punitive damages or recall of product produced by BUYER. SELLER's liability on any claim of any kind shall in no case exceed the price allocable to the goods or unit thereof which gives rise to the claim. SELLER shall not be liable for penalties of any description.

IX. INDEMNIFICATION – BUYER shall indemnify SELLER from and against all claims for loss or damage of any kind or for injury to any person or property (and any expenses, including attorney's fees resulting therefrom) arising out of, or in any way related to, design to the extent the goods were manufactured to the BUYER's design of the goods purchased hereunder (unless cause by a failure of the goods to conform to the warranty provided in Paragraph VII hereof), whether such claims are based on the negligence, breach of warranty or strict tort liability of SELLER or otherwise. Upon demand by SELLER, BUYER will assume the defense of any such claim.

X. TITLE – Title to the goods passes at delivery to the carrier at a particular place, according to the contract of sale (invoice date). Until BUYER has made full payment of the purchase price and any other obligations under this contract, SELLER reserves a security interest in all goods furnished hereunder. BUYER represents to SELLER that BUYER is solvent and able to pay the purchase price for the goods as such price becomes due and payable. All goods furnished hereunder, whether or not attached to realty, shall at all times remain personal property. BUYER agrees at any time upon SELLER's request to sign such documents and additional schedules as SELLER may request including without limitation, financing statements, security agreements and other documents required under the appropriate commercial code.

XI. STATUTE OF LIMITATIONS AND GENERAL – Notice given to SELLER and BUYER shall be given to the respective addresses set forth in the Proposal or Order Acknowledgment of which these Terms and Conditions are made a part. Any action resulting from any breach on the part of SELLER as to the goods delivered hereunder must be commenced within one (1) year after the cause of action arises. Waiver by SELLER of a breach by BUYER of any provision of this contract shall not be deemed a waiver of future compliance therewith and such provision as well as other provisions hereunder, shall remain in full force and effect. Each provision of this contract is severable and, in the event that any one or more thereof may be declared invalid, the remainder of this agreement shall nevertheless remain in full force and effect. The rights and duties of the parties hereto shall be determined by the laws of the State of Ohio, U.S.A. and to that end this agreement shall be construed and considered as a contract made and performed in the State of Ohio, U.S.A. The provisions of the UN Law on the International Sales of Goods are expressly excluded.