

# NEW TECH MACHINERY GENERAL TERMS AND CONDITIONS OF SALE

## 1. Applicability

These terms and conditions ("Terms") are the only terms that govern the sale of goods or performance of services by Mazzella New Tech Corporation ("Seller") to or on behalf of the buyer ("Buyer"). Notwithstanding anything herein to the contrary, if a contract signed by both parties exists covering the sale of goods or performance of services covered hereby, the terms and conditions of that contract will prevail to the extent inconsistent with these Terms. Any quotation or confirmation of order accompanying these Terms, or into which these Terms are incorporated by reference (collectively, the "Agreement"), comprises the entire agreement between the parties and supersedes all prior or contemporaneous understandings, representations, warranties, and communications, written or oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer submitted its order or such terms. Fulfillment of Buyer's order does not constitute acceptance of Buyer's terms and conditions and does not serve to modify or amend these Terms. Under no circumstances may Buyer cancel any order except with the agreement of Seller at its sole discretion; restocking charges will apply.

## 2. Delivery and Shipping Terms

Goods or services will be delivered or performed within lead time after receipt of Buyer's order. Seller is not liable for any delays, loss or damage in transit. Unless otherwise agreed in writing, Seller shall deliver goods FCA (Incoterms 2020) Seller's facility (the "FCA Point") using Seller's standard methods for packaging. Buyer shall take delivery of the goods promptly after receiving notice that the goods have been delivered to the FCA Point. Buyer shall be responsible for loading, if applicable. Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for goods shipped, whether such shipment is in whole or partial fulfillment of Buyer's order. If for any reason Buyer fails to accept delivery of goods on the delivery date or if Seller is unable to deliver goods on the designated delivery date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the goods shall pass to Buyer; (ii) the goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the goods until Buyer picks them up and Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

## 3. Title and Risk of Loss

Title and risk of loss passes to Buyer upon delivery of the goods at the FCA Point. As security for payment of the Price, Buyer grants to Seller a purchase money security interest in and to all right, title and interest of Buyer in, to and under the goods, wherever located, whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

## 4. Inspection and Rejection of Nonconforming Goods

(a) Buyer should perform a thorough visual inspection of the shipment before accepting from the carrier. Buyer will be deemed to have accepted the goods unless it notifies Seller promptly thereafter in writing of any Nonconforming Goods and furnishes such documentation and other information as reasonably required by Seller. "Nonconforming Goods" means only: (i) goods shipped are different than identified in Buyer's order; (ii) the goods' label or packaging incorrectly identifies its contents; or (iii) the goods are clearly damaged or defective (other than damage caused during transit which is Buyer's responsibility to make a claim against the carrier).

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion and as Buyer's exclusive remedy for the delivery of Nonconforming Goods, (i) replace such Nonconforming Goods with conforming goods or (ii) credit or refund the Price for Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Nonconforming Goods from Buyer, ship to Buyer the replaced goods to the FCA Point. Except as provided in this Sub-section (b), Buyer has no right to return goods purchased under the Agreement.

## 5. Price

Buyer shall purchase the goods or services from Seller at the prices (the "Price") set forth in Seller's quoted price or published price list in force as of the date that Seller accepts Buyer's order or as otherwise agreed by the parties. Seller's price list is subject to change at any time. All Prices are exclusive of sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by a governmental entity on amounts payable by Buyer. Buyer is responsible for all such charges, costs and taxes, but Buyer is not responsible for taxes imposed on or with respect to Seller's income, revenues, receipts, personnel or real or personal property or other assets.

## 6. Payment Terms

Buyer shall pay all invoiced amounts to Seller in advance, prior to shipment of goods or performance of services, provided that in its sole discretion Seller may extend credit to Buyer by written notice, or payment terms may be established by mutual written agreement between the parties. The extension of credit to Buyer (including per written agreement) shall be subject to change by Seller at any time. Unless the parties otherwise agree, Buyer shall make all payments by check, in U.S. dollars. Buyer shall pay interest on late payments at the lesser of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for costs incurred in collecting late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller is entitled to suspend the delivery of any goods or services if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due by reason of any set-off of a claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

## 7. Limited Warranty

Seller's limited warranty for the goods is set forth on Exhibit A to these Terms. It is also available on Seller's website at [www.newtechmachinery.com](http://www.newtechmachinery.com)

## 8. Limitation of Liability

(a) IN NO EVENT WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO NONCONFORMANCE OR DEFECT IN GOODS OR SERVICES OR ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO SELLER FOR THE GOODS SOLD OR SERVICES PERFORMED.

(c) The limitation of liability set forth in Section 8(b) will not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

## 9. Compliance with Law

Buyer shall comply with all applicable laws, regulations and ordinances and maintain in effect all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the goods under the Agreement or any resale of the goods by Buyer. Buyer assumes all responsibility for shipments of goods requiring any government import clearance. Seller may terminate the Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on goods.

## 10. Termination

In addition to any remedies set forth herein, Seller may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

## **11. Confidential Information**

All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation hereof. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) obtained by Seller on a non-confidential basis from a third party who was not under an obligation of confidentiality.

## **12. Force Majeure**

Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond Seller's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. If, due to any such circumstances, shortages should occur in Seller's supply of any specific goods, Seller may allocate deliveries to its customers as it determines in its sole discretion.

## **13. Amendment and Modification**

These Terms may only be amended or modified in a writing that specifically states that it amends these Terms and is signed by each party.

## **14. Waiver**

No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **15. Assignment**

Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without Seller's prior written consent. Any purported assignment or delegation in violation hereof is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement.

## **16. Relationship of the Parties**

The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has authority to contract for or bind the other party in any manner whatsoever.

## **17. No Third-Party Beneficiaries**

The Agreement is for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

## **18. Governing Law**

All matters arising out of or relating to the Agreement are governed by and construed in accordance with the laws of Colorado without giving effect to any choice or conflict of law provision or rule (whether of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of Colorado. The United Nations Convention on the International Sale of Goods does not apply to any matter arising out of or relating to the Agreement.

## **19. Submission to Jurisdiction**

Any suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States or the courts of Colorado, in each case located in Denver, Colorado, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

## **20. Notices**

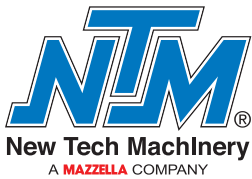
Each notice, request, consent, claim, demand, waiver and other communication hereunder (each, a "Notice") must be in writing and addressed to the parties at the addresses set forth on the face of the order, quotation or confirmation of sale accompanying these Terms or to such other address that the receiving party may designate in writing. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

## **21. Severability**

If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **22. Survival**

Provisions of these Terms that by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement including, but not limited to, the following: Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.



## NEW TECH MACHINERY CORP. LIMITED THREE-YEAR PARTS WARRANTY ROLLFORMING EQUIPMENT

On the conditions and to the extent contained herein, Mazzella New Tech Corporation warrants to the original purchaser of its machine that its machines are free from defects in material, workmanship and design when operated under normal operating conditions and in accordance with its operating instructions, for a period of three years from date of purchase. During such period, at NTM's option and expense, NTM will replace or repair any part or assembly of the machine, which in NTM's sole opinion is defective, or will refund the purchase price thereof.

All warranty claims must be in writing. Written permission must be obtained from NTM or NTM's authorized agent for any warranty returns. All returns require NTM's prior shipment authorization and a complete explanation of the defect and the operating conditions occurring when the defect was detected.

### **This warranty EXCLUDES the following:**

- Any NTM travel, on-site labor or other expenses – which shall be for the account of the purchaser – unless authorized in writing by NTM in its sole discretion prior to any travel to purchaser's location is undertaken
- All freight charges, customs, duties, taxes, VAT (if applicable), and any associated charges including UPS, FedEx, etc. required to get warranted parts to and from their destination.
- Labor costs incurred by purchaser during the warranty period, unless authorized in writing by NTM in its sole discretion prior to any work by or on behalf of purchaser is performed.
- Claims for material used or processed by purchaser or NTM at any time, including material processed by NTM while making warranty repairs.
- Components not manufactured by NTM, including but not limited to the trailers on which NTM's machines are mounted. These items are subject to warranties by their respective manufacturers.
- Liability for incidental or consequential damages in accordance with this or any other warranties excluded to the extent exclusion is permitted by law.

NTM reserves the right to make changes and improvements to their machines at any time without notice. NTM shall not be obligated to incorporate such changes or improvements in machines previously sold or supplied to any purchaser, nor be obligated to replace previously sold machines with machines incorporating such changes or improvements.

EXCEPT AS EXPRESSLY STATED HEREIN, NTM DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO ITS PRODUCTS. Purchaser's sole remedies and NTM's sole obligations hereunder shall be limited exclusively to the right of replacement, repair or refund as provided herein.

Written or oral representations made by NTM employees or agents, before or after sale of the machine, are not to be considered warranties or additional obligations unless they are in writing and signed by an officer or authorized employee of NTM. The repair or replacement of any machine, part, or component of any machine in accordance with this LIMITED WARRANTY shall not extend the term of this warranty beyond the original term as set forth herein.

This warranty gives the purchaser specific legal rights. You may also have additional rights which vary by location.

The sale and purchase of this machine warranted herein and all other terms and conditions of sale, including the provisions of this LIMITED WARRANTY, shall be governed by the laws of the State of Colorado, U.S.A.