

### **1. Scope of application**

- a. Our deliveries of goods, services and offers by Nitto Kohki Europe GmbH (hereinafter referred to as "Nitto Kohki", "us" or "we") are solely subject to these General Terms and Conditions (hereinafter referred to as "Terms"). Nitto Kohki does not acknowledge any different terms and conditions by the contractual partner (hereinafter referred to as "Buyer" or "you"), unless agreed by us in writing. Consequently, we will not accept any Buyer's terms and conditions.
- b. These General Terms and Conditions are an integral part of all contractual relations between us and our Buyers concerning all deliveries and services. These Terms apply to all future business relations between us and our Buyers at all events even without expressly declared.

### **2. Offer, conclusion of contract**

- a. All our offers are subject to confirmation and without commitment, unless the offer was already confirmed by us.
- b. Orders are committed, if we confirm them in writing or if we execute them immediately after having received the order; in the latter case, the delivery note or the invoice will be considered as confirmation of the order. We consider every written or oral order as a binding commitment. In the event of calls on blanket orders, the entire quantity of goods ordered has to be acquired within the agreed time limit.
- c. Our Offers are based always on our current price lists. Any commitments of differing prices apply only to this specific order and not to future agreements.
- d. Working drawings, images, calculations, weights, measurements and other specifications are only specifications of the purchase when agreed expressly in writing.
- e. Our technical advice is provided to our best knowledge. We give no warranty for such advice unless the advice becomes part of the agreement.
- f. If we will become aware of facts or circumstances which indicate a serious decline of Buyer's solvency or credit-rating, e. g. by earlier deliveries of goods or services, we are entitled to demand a prepayment or a deposit of security for outstanding deliveries or services. If such a prepayment or security is not provided, we are entitled to withdraw from the contract. In this case any partial deliveries already made become due for immediate payment.

### **3. Prices, payment**

- a. Our prices stated in the confirmation of the order are in EURO including the current VAT at the time the invoice was issued.
- b. The prices apply to the goods and services listed in the order confirmation. Any additional service is listed separately and will be calculated separately.
- c. Unless confirmed different by our order confirmation, invoices are payable within 30 days from the date of invoice without any discount. The effective date of payment is our receipt of payment. Any delay of payment is subject to the German Civil Code.
- d. Setoff shall only be admissible with undisputed, legally effective or accepted counterclaims. The Buyer is entitled to withhold the payment only if his counterclaim is based on the same contractual relationship.
- e. First deliveries are subject to prepayment. We reserve the right to demand prepayment in other cases.

- f. Bills of exchange, checks or money orders will only be accepted if this is agreed by writing between us and the Buyer. The Buyer has to pay any charges and expenses concerning these modes of payment.
- g. Any discount is subject of a written agreement. Unilateral discounts are not allowed.

### **4. Terms of delivery, transfer of risks**

- a. Without any expressly written commitment by our management, all delivery deadlines are subject of estimation. The period allowed for delivery commences on the day on which all technical and administrative details of the order are clarified and the required documentation is provided. Such period will be extended day-by-day for each day the Buyer is in default with its contractual obligations.
- b. If we are unable to meet an agreed delivery deadline, the Buyer agrees to (i) a suitable prolongation of four (4) weeks at least and (ii) to declare in writing that it will not accept the delivery rendered after the prolonged date. If there incurs a financial loss to the Buyer due to delayed delivery, the right to receive a compensation of damages is limited to 5 % of the purchase price unless we acted by intent or gross negligence. Any further liability caused by delayed delivery or other delays is excluded.
- c. Partial deliveries are permitted principally unless they were excluded expressly in advance.
- d. We are not responsible for any delays in delivery and performance caused by force majeure (business interruption, strikes, lock-outs, infrastructural problems, etc.). As soon as we will become aware of information, we will inform the Buyer about the beginning and the end of the event of force majeure.
- e. We have the right to decide about all modalities of transportation. We also have that right concerning the modality of choosing packaging concerning transport and safety requirements.
- f. If shipment is postponed at the Buyer's request or caused by the Buyer's fault, the goods will be stored at the Buyer's expense and risk.
- g. We are not liable for delays caused by the freight forwarder and the consequences of such delays.
- h. Shipments by Nitto Kohki are subject to the current version of the INCOTERMS.

### **5. Retention of title**

- a. We retain title to all deliveries until all claims held against the Buyer from the business relationship are settled (retention of title). The Buyer agrees to take out comprehensive insurance against external perils to cover any loss or damage to the goods until the goods are paid in full. The insured sum has at least to correspond to the amount of the respective outstanding debt. If the Buyer breaches one or more of its contractual duties, including but not limited to defaulting on the contractual payments, we are entitled to demand the withdrawal of the delivered goods and/or to cancel the contract without notice. In such cases, the customer is obliged to withdraw the delivered goods. A request for withdrawal of delivered goods does not include a notice of termination on the part of us unless this is expressly declared.
- b. The retention of title extends to the full value of any products that arise from processing, mixing or combining the delivered goods (extended retention of title). In this cases we are the "Manufacturer" (*Hersteller*) pursuant Sec. 950 BGB [*"Bürgerliches Gesetzbuch"*: German Civil Code]. If third parties retain title to

goods that are processed, mixed or combined with our goods to create a new product, we as the Manufacturer, obtain a joint title of the new product in relationship to the invoiced value of the goods processed, mixed or combined to make the new product.

In the event of reselling the goods or the products, the Buyer setoff to us all titles in full or in a partial proportion. We accept the setoff. In case of delay, we will be entitled to disclose the collateral assignment to the third-party and to assert the Buyer's claim of payment on our own behalf.

- c. The Buyer will inform us in writing without delay of any seizures, pledges, third-party interventions or other dispositions regarding the goods.
- d. Any breach of contract by the Buyer entitles us to terminate the contract and to demand the return of the goods.

## **6. Guarantees, warranty**

### **6.1. Return of products:**

Defective products may not be returned for a refund without our prior written approval. Unpaid shipments will not be accepted without prior written approval. We reserve the right to examine and repair the products returned at our own discretion.

### **6.2. Repair:**

Defective products have to be returned directly to us or to one of our authorized dealers. Accompanying documents, which clearly indicate the reason for the return, shall be enclosed with the shipment. Information has to be provided on the date of the purchase and on the date on which the final product was released into circulation enclosed with relevant records. If a repair is expected within the guarantee period, a clear notification is mandatory.

### **6.3. Guarantee period:**

The guarantee is granted for 24 months from the invoice date. Original equipment manufacturers are granted a guarantee period of 24 months after the final product is put into circulation provided evidence of this fact can be furnished beyond doubt. However, the guarantee is limited to a maximum of 30 months after the invoice is issued to the original equipment manufacturer. The guarantee for Power & Machine Tools, Delvo Electric Screwdrivers and the related products with Delvo brand is granted for 12 months from the invoice date.

### **6.4. Guarantee conditions:**

- a. A claim under guarantee will only arise if the product has been used properly in accordance with the recommended specifications and the instructions for use. Any use of the products beyond these recommended and prescribed conditions, which differ from model to model, will lead to the forfeiture of any claims under guarantee.
- b. A claim under guarantee cannot be granted in the event that the products have been used improperly or are damaged by external force, exposed to excessive physical strains or excessive voltage or that serial numbers are missing or modified.
- c. Parts subject to wear and tear are exempt from the guarantee on principle. Various parts subject wear and tear must be replaced after the stipulated hours of operation, which differ from model to model. Defects attributable to non-compliance with this maintenance requirement lead to the forfeiture of any claim under

guarantee.

- d. The date of the purchase of the original product continues to be decisive for the guarantee extended to repaired or replaced products.
- e. We refer expressly to the fact that the user is responsible for the proper use and storage of the products. Claims under the guarantee will be forfeited in the event that defects are caused by improper handling of the product or inappropriate replacement of parts subject to wear and tear.  
  
The user or original equipment manufacturer will be responsible for the selection of the products and the proper use of the products. We do not accept any liability for damages caused by a non-compliance with these points or an inappropriate product selection.
- f. Guarantees will be honored either by supply of a replacement or repair of the defective part, such choice being at the discretion of Nitto Kohki, and these measures are only deemed to have failed after the second unsuccessful attempt. The Buyer has no right under guarantee to consequential losses. Liability for damages arising from default or faulty performance is excluded unless due to willful intent or gross negligence by us or by one of our representatives or agents.
- g. The provision contained in paragraph f. above applies both to compensation in addition to the performance and to compensation in lieu of performance, regardless of the legal basis, including but not limited to defects, breach of contract or tort. It will also apply with regard to any claims for compensation for expenditure made in vain as well as damage to the Buyer's assets, e.g. damage to other physical assets, caused by the delivered goods.
- h. The liability for cases of damage resulting from slight negligence is limited to a maximum amount US \$ 2,500,000. This limitation applies to all claims for material and financial damages of essential contractual obligations caused by slight negligence of us, our representatives or agents – except for damages resulting from injury to life, body or health.
- i. The liability for cases of damage resulting beside sec. (h) is limited to damages which are predictable as a possible result of the contractual relationship.
- j. For the delivered goods and services we give expressly no warranty or guarantee concerning the infringement of patent or any other intellectual property.

## **7. Final provisions**

- a. The court of competent jurisdiction for any disputes arising from the contractual relationship between Nitto Kohki and the Buyer is the District Court of Stuttgart or the court of competent jurisdiction of the domicile of the Buyer, such choice being at the discretion of Nitto Kohki.
- b. In the event that the Buyer qualifies as a businessman (*Kaufmann*), a legal person under the civil code (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich - rechtliches Sondervermögen*), the site of performance for all deliveries of goods and services and payments is Steinbronnen.
- c. All contracts for the delivery of goods and services are governed solely by the law of the Federal Republic of Germany. All international and supranational regulations, including but not limited to the United Nations Convention on the Sale of Goods are hereby excluded.
- d. The German version of these Terms will prevail in all cases of doubt, inconsistency or contradiction between the German and English versions.