

## 1.- General considerations and definitions

**1.1** These general conditions of sale for Tornos Technologies U.S. Corporation, hereinafter the "Conditions of Sale", apply to all sales of Services by Tornos US.

"Services" includes machines and supplies, equipment, tools and accessories relating to them, and the services supplied with a machine, in both cases as indicated in the Supplier's Order Confirmation.

Where there is a discrepancy between the Conditions of Sale and the clauses of the Supplier's order confirmation to the Purchaser, hereinafter the "**Order Confirmation**", or a lacuna or problems of interpretation or otherwise, the terms of the Order Confirmation and the annexes to it will prevail over these of the Conditions of Sale.

"Supplier" will mean Tornos US and "Purchaser" will mean the legal person to whom the Order Confirmation is addressed.

The term "**Contract**" used herein shall refer to (1) the Order Confirmation, together with any additional written acknowledgment for an order of Services, or (2) the Order Confirmation where such additional written acknowledgment does not exist.

The Supplier and the Purchaser will be referred to individually as a Party and collectively as the "**Parties**" to the Contract.

"Documentation" will include the Supplier's sales brochures, catalogues and similar documents and all drawings and technical documentation given by one Party to the other in relation to the Contract.

**1.2 The Contract will be deemed to have been concluded as soon as the Supplier has received the Supplier's written Order Confirmation back from the Purchaser duly dated and signed by the Purchaser on the last page to signify acceptance without reservation of the Supplier's Order Confirmation.**

Any offer which does not give a time limit for acceptance will not be binding.

**1.3** Relations between the Parties will be governed by the Conditions of Sale. **Any terms and conditions of the Purchaser which derogate from the Conditions of Sale will only be valid if they are accepted in writing by the Supplier.**

**1.4** Any agreement or representation by the Parties intended to have legal force will only be valid if it is in writing.

Representations given via or stored on electronic media will be treated as being in writing.

## 2.- Scope of the delivery of the Services

The Services to be delivered by the Supplier are listed exclusively and exhaustively in the Order Confirmation and the annexes to it. The Supplier may make any changes leading to improvements unless they give rise to a price increase.

## 3.- Documentation

**3.1** Unless indicated otherwise in writing, the Documentation provided by the Supplier is not binding on it.

**3.2** Each Party retains all rights over the Documentation it gives to the other. The recipient of the Documentation acknowledges those rights and undertakes not to disclose the Documentation to third parties, fully or in part, without the written authorisation of the Party issuing it. It will only use the Documentation in accordance with the purpose for which it was sent.

**3.3** The Supplier may send its subcontractors the drawings of the Purchaser's parts, confidentially and on loan, so that they can perform the tasks with which the Supplier entrusts its subcontractors for the purpose of performance of the Contract.

**3.4** The Purchaser will not pass on to third parties any indications, photos, documents, files, drawings etc. that would enable them to copy some or all of the Supplier's Services, and will not authorise third parties to observe, photograph or make drawings or other reproductions of them where there could be a risk of copying.

## 4.- Prices

**4.1 Prices will be net and in the convertible currency defined in the Order Confirmation, and will not be subject to any deduction.** If the Purchaser cannot pay in the agreed currency, it will inform the Supplier immediately in writing; the Supplier will determine the replacement currency, the applicable rate of exchange and resulting additional expenses will be borne by the Purchaser.

**4.2** In respect of the Services, with the exception of the normal transport and insurance costs which are payable by the Supplier up to the named destination, all ancillary costs such as the costs of export, transit and import licences and other authorisations and certificates, will be payable by the Purchaser which will also be liable for any tax, fee, contribution, customs duty or other charge payable in relation to the Contract.

**4.3 All the prices will be exclusive of VAT and other similar taxes.**

**4.4 The respective liabilities of the Parties, in particular in relation to transport, insurance, packing and delivery, are defined in the International Chamber of Commerce 2016 edition Incoterm, "Carriage and insurance paid to the named destination"(CIP), unless otherwise specified in the Order of Confirmation.**

**4.5** The Supplier reserves the right to adjust its prices in the event of:

4.5.1: the delivery period being extended on one of the grounds referred to in Article 7.4 or 7.5. or

4.5.2: a change in the nature or extent of the Services whose delivery had been agreed;

4.5.3: a change in the materials or performance due to the Purchaser's Documentation being incorrect or incomplete.

## 5.- Payment terms

**5.1** The Purchaser will pay for the Services in accordance with the payment terms described below, with no deduction of any discount, expenses, taxes, fees, contributions or customs or other duties.

**The payment terms for the Services are as follows:**

5.1.1: **a first (1<sup>st</sup>) instalment of thirty percent (30%) immediately on receipt of the Order Confirmation;**

5.1.2: **a second (2<sup>nd</sup>) instalment of sixty percent (60%) payable in full before delivery,**

5.1.3: **The balance of ten percent (10%), net, immediately after signature of the final Acceptance Report** (described under Article 11) for the delivered Services, with no discount or rebate even if the final Acceptance (described under Article 21) is delayed for reasons not attributable to the Supplier.

Where that report is not signed, the balance will be paid within ninety (90) days from the date of the invoice at the latest.

**5.2** The Supplier may refuse any payment whose source appears to it not to be transparent or where the amount paid in cash is more than five thousand Swiss francs (> CHF 5,000) or an equivalent amount in a different currency.

**5.3** The payment obligation will be satisfied where the total amount, in the currency referred to in the Order Confirmation, has been made freely available to the Supplier on the account indicated in the Order Confirmation. Where the agreement authorises payment

by letters of exchange, letter of credit or promissory notes, the Purchaser will be liable for any discount, tax and collection and other expenses, that is to say, the costs associated with issuing, notifying, confirming, renewing and amending those instruments.

**5.4** Payments must be made on the due dates even if transport, delivery, assembly, commissioning, reception or final Acceptance has been delayed or prevented for reasons not attributable to the Supplier.

**5.5** If the instalments or the security mentioned in the Order Confirmation have not been provided in accordance with the Order Confirmation, the Supplier will be entitled either to maintain the Contract or to terminate it and, in either case, to claim damages.

**5.6** If the Purchaser is in default in respect of a payment, for any reason whatsoever, or if, as the result of circumstances subsequent to conclusion of the Contract the Supplier fears that the Purchaser may not perform its obligations in full or in time, the Supplier may, without prejudice to its statutory rights, suspend performance of the Contract and withhold deliveries of the Services until a new agreement has been reached on the terms of payment and delivery and sufficient security has been provided. If there is no agreement within a reasonable period, or if the Supplier does not receive sufficient security, it may terminate the Contract and claim damages.

**5.7** If the Purchaser fails to make payment on the due dates it will be liable, with no requirement for a formal demand, to pay interest calculated at a rate of either the normal rate in force in the place where the Purchaser has its registered office, or a monthly rate of two and one-half percent (2.5%) from the agreed payment date. The right to claim indemnity for other loss is reserved.

## 6. - Reservation of title

**6.1** **The Supplier will remain the owner of the Services until it receives payment in full in accordance with the Contract.**

**6.2** The Purchaser must participate in all measures necessary to protect the Supplier's title. In particular, the Purchaser authorises the Supplier to register the reservation of title at the public registry and in the company books or other similar documents, in accordance with the applicable legislation, and to carry out the necessary formalities, at the Purchaser's expense.

**6.3** So long as the Supplier retains title, the Purchaser will keep the Services in the condition in which they were delivered and insure them at its own expense for the benefit of the Supplier against theft, breakage, fire, water damage and other risks. The Purchaser will also take all appropriate measures to prevent any infringement of the Supplier's rights of ownership.

## 7.- Delivery period

**7.1** The delivery period will begin to run as soon as the Contract is concluded, all official formalities such as, but not limited to, obtaining import, export, transit and payment authorisations, have been performed, the Supplier has received in full the sums owed, in particular the 1st instalment, all agreed security has been provided to the Supplier and the principal technical issues have been resolved.

**7.2** The delivery period will have been complied with where, on its expiry, the Supplier has informed the Purchaser that the Services are ready for dispatch.

**7.3** **Delivery of the Services will take place at the location specified in the Contract when the Supplier makes them available to the first carrier.**

**7.4** Compliance with the delivery period is linked to compliance with the Purchaser's contractual obligations.

**7.5** The delivery period will be extended by an appropriate period:

7.5.1: where the Supplier has not received in time the indications from the Purchaser necessary to perform the Contract, or where the Purchaser has changed those indications subsequently and thereby causes a delay in performance of the Services;

7.5.2: where compelling circumstances affecting the Supplier, the Purchaser or a third party arise which the Supplier is unable to overcome, despite giving due attention to those circumstances, such as events of "an Act of God", including but not limited to, epidemics, natural catastrophe, unforeseeable transport and mobilisation problems, war, civil war, terrorist acts, riot, political upheaval, revolution, acts of sabotage, significant disruptions to operation of the business, accidents, industrial disputes, late or defective delivery of the necessary raw materials, semi-finished or finished goods, refusal to accept delivery of significant parts, and also administrative measures or omissions by the national or supranational public authorities or administrations such as, but not limited to, a prohibition on exporting, re-exporting, importing, re-importing or transit or an embargo and lastly in the event of fire or explosion.

Should such situations arise, the Parties will confer in order to define appropriate measures depending on the situation, having regard so far as possible for their respective interests and levels of financial commitment;

7.5.3: where the Purchaser or a third party is late in performing tasks for which it is liable, or in fulfilling its contractual obligations, in particular if the Purchaser fails to comply with the payment terms.

**7.6** Unless it has received a replacement delivery and provided it is specifically established in the Supplier's Order Confirmation, the Purchaser will be entitled to make a claim for late delivery of the Services, where it is proven that the delay is attributable to fault by the Supplier and the Purchaser can prove resulting damage. Each full week of delay in the Services will give entitlement to compensation of a maximum of half a percent (½%) of the Contract price apportioned to the part of the delivery which is late. Total compensation will be capped at five percent (5%) of the Contract price based on such apportioned amount. The first two (2) weeks of delay will not give rise to any compensation. Once the compensation reaches the five percent (5%) cap, the Purchaser may in writing give the Supplier a further appropriate period in which to deliver the Services. If that time limit is not met for reasons attributable to the Supplier, the Purchaser will be entitled to refuse the late part of the delivery. If partial Acceptance by the Purchaser appears to be economically unreasonable, the Purchaser will be entitled to terminate the Contract and claim reimbursement of payments already made, but must in that case return the deliveries already made.

**7.7** Where a date has been agreed instead of a delivery period, that date will correspond to the last day of the delivery period; Articles 7.1 to 7.6 will apply accordingly for the purposes of determining compliance and damages.

**7.8** The Purchaser's rights and claims on the grounds of late delivery of the Services are set out exhaustively in this Article. The foregoing restrictions and limitations will not apply in the event of malicious intent or gross negligence by the Supplier; they will however apply to malicious intent or gross negligence by contractors.

## 8.- Packing

**Packing is not returnable.**

## 9.- Transfer of risk

### **9.1 Risk will pass to the Purchaser on delivery.**

**9.2** If dispatch is delayed at the request of the Purchaser or for other reasons not attributable to the Supplier, the risk will pass to the Purchaser at the time initially set for delivery. From that time, deliveries will be warehoused and insured at the expense and risk of the Purchaser.

## 10.- Dispatch, transport and insurance

**10.1** The Supplier must be informed in good time of any specific requirements relating to dispatch, transport and to freight insurance. The Purchaser will bear all transport risks and the supplementary costs resulting from its specific requirements relating to dispatch, transport and freight insurance.

**10.2** **As soon as it receives the deliveries or transport documents, the Purchaser must advise the last carrier of any complaint relating to dispatch or transport.**

**10.3** If the Purchaser wishes to cover risks other than transport risks, it will take out the corresponding policies at its own expense.

**10.4** The Purchaser will be responsible for unloading and installing the machines.

## 11.- Reception procedure and Acceptance Report for the Services

**11.1** The Supplier will check the Services in accordance with customary practice, before dispatch.

**11.2** The Purchaser must check the Services, within a reasonable period, and notify the Supplier of any defects immediately in writing. If the Services are compliant, the Purchaser will confirm its acceptance by signing an acceptance report, the "**Acceptance Report**", in accordance with the Supplier's standard form, which it will send immediately to the Supplier.

**11.3** In the event of a defect detected by the Purchaser and notified by it to the Supplier, the Purchaser will give the Supplier an opportunity to rectify it, which the Supplier must do as soon as possible. Once the defects have been rectified, the Purchaser will confirm its acceptance by signing the final Acceptance Report.

**11.4** The following principles will apply to the procedure leading to signature of the Acceptance Report:

11.4.1: the Supplier will inform the Purchaser as soon as possible that the Acceptance procedure has been commenced so that it can take part in it;

11.4.2: the Acceptance Report will be drawn up and signed by the Parties and will record that acceptance has taken place, and will either confirm Acceptance or state that Acceptance is confirmed subject to certain reservations or that the Purchaser refuses Acceptance. Each of the defects detected will be mentioned, where applicable.

A) In the event of insignificant defects, in particular those which do not fundamentally impair operation of the Services, the Purchaser may not refuse Acceptance or to sign the Acceptance Report. The Supplier will rectify such defects immediately.

B) In the event of significant non-compliances with the Contract or serious defects, the Purchaser will give the Supplier an opportunity to rectify them within a reasonable period. A new Acceptance procedure will then be commenced.

C) If the non-compliances or defects are such that they cannot be rectified within a reasonable period and that the Services cannot be used for the purpose envisaged, or their use is considerably reduced, the Purchaser may in that case refuse Acceptance of the defective elements. In that case the Supplier will be liable to reimburse only the sums paid for the elements concerned.

**11.5** Acceptance will also be deemed to be confirmed:

11.5.1: if the Acceptance Procedure could not be commenced on the date set for reasons not attributable to the Supplier;

11.5.2: if the Purchaser refuses Acceptance based on (i) a non-material performance measure or (ii) non-delivery of an option that does not impact the run-off or Acceptance criteria as stated in the Order Confirmation;

**11.6** Irrespective of the defects affecting the Services, the Purchaser enjoys only the rights and is entitled to make the claims referred to in Articles 11.4 and 12.

## 12.- Warranty, liability for defects

**12.1** Term of the warranty:

12.1.1: **For all the Services, the warranty period will be twelve (12) months from final Acceptance, with a maximum of fifteen (15) months from delivery, with no limit on the number of hours of operation.**

12.1.2: for all the Services, if dispatch, completion of assembly or commencement of the Acceptance procedure is delayed for reasons not attributable to the Supplier, the warranty period will expire at the latest eighteen (18) months after the notice informing the Purchaser that the delivery is ready for dispatch.

12.1.3: for **elements of the delivery which are replaced or repaired during the warranty period, the warranty period will be six (6) months from the delivery**, although at least until expiry of the warranty of the corresponding machine and, where the replacement is carried out by a technician belonging to the Supplier, **that warranty period will be twelve (12) months from the delivery of the replacement.**

12.1.4: in the case of **wear parts and tools**, the warranty period will be indicated in the Order Confirmation; if it is not, no time period or period of use will be covered by warranty.

12.1.5: the warranty entitlement will cease before expiry if the Purchaser or a third party makes modifications or carries out inappropriate repairs or if, in the event of a defect, the Purchaser fails to take the appropriate measures to reduce the resulting damage or fails to give the Supplier an opportunity to rectify it.

**12.2** On receiving written notice from the Purchaser, the Supplier will, at its election, repair or replace free of charge, as soon as possible, all the elements of its deliveries in respect of which it is proven that they have become defective before expiry of the warranty as a result of poor materials, defective design or faulty manufacture. The replaced parts and machine elements will become the property of the Supplier.

**12.3** Only those performance metrics described in the Order Confirmation will be regarded as promised qualities. Those qualities will be covered by warranty until expiry of the warranty at the latest. The promised qualities will be deemed to have been achieved provided proof of those qualities has been produced during the Acceptance procedure.

- 12.3.1: if the promised qualities are not achieved or are only partially achieved, the Purchaser may require the Supplier to improve the Services within a reasonable period; it will give the Supplier the necessary time and opportunity to do so.
- 12.3.2: if the improvement fails or is only partially satisfactory, the Purchaser will be entitled to require a fair reduction in the price.
- 12.3.3: if the defect is sufficiently serious that it cannot be remedied within a reasonable period and the Services cannot be used for their intended purpose, or can be so used only to a considerably reduced extent, the Purchaser may refuse Acceptance of the defective elements. The Supplier will only be liable to repay the sums paid for the elements affected by the cancellation.

#### 12.4 Exclusion of liability for defects:

- 12.4.1: the Supplier gives no warranty and will not be liable in respect of damage where it is not proven that the damage is the result of defective materials, a design defect or faulty manufacture, such as damage due to wear and tear, inadequate maintenance, failure to observe instructions for use, to overuse, the use of inappropriate materials, the effects of chemicals or electrolytes, manufacturing or assembly tasks not performed by the Supplier or any other causes not attributable to it;
- 12.4.2: the instructions, prescriptions, indications, descriptions, specifications or other such content of documents, brochures and computerised and other files provided by the Supplier to the Purchaser in relation to the Contract, and subsequent revisions thereof by the Supplier provided to the Purchaser or made available to it on the Supplier's website must be complied with without fail; failure to comply with them will immediately terminate the Supplier's warranty and release it from any liability. This concerns, inter alia, but not exclusively, the keeping of the logbook, inspection procedures, descriptions, prescriptions, specifications and other documents relating to the installation, commissioning, safety, use and maintenance of the Services;
- 12.4.3: in the event of a third party claim arising from the use, resale, loan or leasing of Services which had previously been sold by the Supplier to the Purchaser, the Purchaser will provide and pay for the Supplier's defence and will release the Supplier from any liability and hold it harmless.

12.5 In relation to deliveries and services provided by subcontractors required by the Purchaser, the Supplier will give a warranty only within the limits of that given by those subcontractors.

12.6 The Purchaser's rights and claims on the grounds of defects affecting materials, design or manufacture, and those arising from the absence of promised qualities, are limited to those referred to in Articles 12.1 to 12.5.

12.7 Where the Purchaser brings claims arising from advice or incorrect data or from breach of any other ancillary obligation, the Supplier will be liable only for malicious intent or gross negligence.

#### 13.- Termination of the Contract by the Supplier

13.1 The Contract will be adjusted appropriately, when unexpected events profoundly change the economic effects or the content of the Services or substantially affect the Supplier's activities, or if performance subsequently becomes impossible. If such an adjustment is not economically justifiable, the Supplier will be entitled to terminate the Contract or the relevant part of the Contract.

13.2 If the Supplier wishes to exercise its right to terminate under Article 13.1, it will immediately notify the Purchaser in writing. In that situation, the Supplier can require payment for the Services already supplied. The Purchaser will not be entitled to any compensation or damages on the grounds of such a termination of the Contract.

#### 14.- Exclusion of all other liability of the Supplier

14.1 All breaches of the Contract and the legal consequences and all claims available to the Purchaser are governed in the Conditions of Sale.

14.2 No claim for compensation, damages, price reduction, cancellation or termination of the Contract may be brought other than those referred to in these Conditions of Sale.

14.3 The Purchaser may under no circumstances require any services from the Supplier other than to rectify defects in the Services delivered. **In particular, no compensation or damages may be claimed for any loss of production, operation, business, profit or any other direct, indirect or consequential damage.**

That exclusion will be ineffective in the case of malicious intent or gross negligence by the Supplier and when it conflicts with mandatory rules of law; it will however apply to malicious intent and gross negligence by contractors.

#### 15.- The Supplier's right of recourse

Where persons are injured or property is damaged as a result of an act or omission by the Purchaser or its contractors and the Supplier is held liable as a result, the latter will have a right of recourse against the Purchaser.

#### 16.- Machinery fire risk

The inappropriate use of a machine, a defective tool, the machining of certain metals, in particular, but not exclusively, using oil as the cutting and cooling medium, can give rise to conditions causing ignition of the oil, oil mists, metal chips, or parts of the machine which could cause considerable damage. That risk is considerably increased if the machine is operated unsupervised. **The Purchaser is required to take all necessary measures, according to the use of the machine, to avoid such an incident, in particular by equipping it with an appropriate extinguishing system; the Supplier cannot be held liable for any damage or other consequences of any possible incident.**

#### 17.- Quality and safety norms and prescriptions

In its request for a quote and in its order, the Purchaser will give all necessary details of the safety and quality prescriptions, norms, procedures and protocols applicable to the Contract at the place the Service is delivered and of the necessary safety measures. The Supplier will otherwise apply its standard norms and procedures. If the Purchaser subsequently requests any modifications with respect to those points, the Supplier will examine whether it can satisfy those requests, although at the Purchaser's expense.

#### 18.- Installation and checking of functions by the machinery Supplier at the Purchaser's premises

Where the Order Confirmation provides that the Supplier will install the machinery at the Purchaser's premises, the Purchaser will be required to:

- install the machinery in its final position,
- clean and degrease the components,
- fill the hydraulic devices, the lubricating system and the cutting oil reservoirs,

- prepare the compressed air connections,
- install the peripherals and
- prepare and lay the electric cables and the necessary sockets **but without connecting the machinery**, connection being the exclusive responsibility of the Supplier's technicians or of qualified electricians, as applicable.

For further details, see the Supplier's instructions, recommendations, prescriptions, indications, descriptions, specifications and other information relating to installation of the machinery.

The Purchaser will inform the Supplier in writing at least one (1) week in advance of the date from which its technicians can begin installing the machinery.

**18.1** For all machines except Multi-spindle machines, the Supplier's services included in its Order Confirmation for installation at the Purchaser's premises and function checking will include, depending on the complexity of the machine, one (1) to five (5) days' work on the basis of eight (8) hours per day.

**18.2** For Multi-spindle machines, those services will include, depending on the complexity of the machine, three (3) to ten (10) days on the basis of eight (8) hours per day, to perform the following:

- level and align,
- electrically connect and power up the machine, unless this work must be done by a qualified electrician, and
- check the functions.

**18.3** If, for reasons beyond the Supplier's control, installation takes longer than indicated above, the Supplier will invoice the Purchaser for all resulting additional costs.

## 19.- Training

Provision of the training included in the Order Confirmation:

- The Supplier will hold training courses on the use of its machinery according to availability and demand.
- The Supplier will set the list of participants and dates on the basis of proposals made by the machinery users.
- All the participants' travel and subsistence expenses, including any medical expenses, will be payable by the company that delegated them.
- The Supplier will decide the language in which the course will be given, having regard for the participants who must be appropriately familiar with that language and must also have a good theoretical and practical knowledge of the DIN-ISO programming language and of MS Windows software.
- Any training ordered with a machine must be taken within twelve (12) months from delivery of the corresponding machine.

## 20.- Set up of specific items

**20.1** If the Purchaser orders the set up of items from the Supplier, that order must form an integral part of the Contract. The Supplier will draw up an Order Confirmation defining the specifications for and the cost of the work.

The Purchaser will be liable for the development costs relating to preparing a set up project.

**20.2** The drawings of the items to be set up must be clear, unambiguous and precise and must include indications of tolerance requirements and surface quality. The instructions and indications will be written in a language previously accepted by the Supplier.

**20.3** To become effective, any modification to a drawing by the Purchaser must be submitted to the Supplier; the modification will only become effective once it has been accepted by the Supplier which will invoice the Purchaser for the resulting additional costs. During the three (3) months preceding delivery of a machine for which a set up has been agreed it will no longer be possible to modify the drawings of the item to be produced.

**20.4** The Supplier's indications of hourly production and performance will be calculated on the basis of theoretical machining and machinability characteristics of the materials; those indications will nevertheless be subject to optimisation according to the real conditions at the Purchaser's premises and the Supplier therefore cannot warrant that they will be achieved. The Purchaser will be exclusively responsible for that optimisation which may only be carried out in the context of mass production by the Purchaser. If the Supplier's indications are not achieved, the Purchaser may request the Supplier to provide it with supplementary training and/or support on terms to be defined by mutual agreement.

**20.5** The Purchaser alone will be responsible for ordering the necessary materials and making them available at the place agreed, in good time, in a quantity and of quality compliant with the specifications; it will bear all the costs thereof. If the materials are to be delivered to the Purchaser's premises, the latter will be responsible for checking the quality of those materials. However, if the materials are delivered to the Supplier, the Supplier will conduct the quality check at the Purchaser's expense.

**20.6** Cutting tools supplied by the Purchaser must be approved in advance by the Supplier.

**20.7** The Purchaser will bear in full the costs and risks related to any changes decided on by the Purchaser once the Order Confirmation has been drawn up, the consequences of inadequate quality and irregularity of the material, delivery delays and unforeseen machining problems. The Supplier will invoice the Purchaser for the resulting additional costs.

**20.8** If a set up requested by the Purchaser involves modifying the specifications of the machine ordered, the Supplier will only take that modification into account for the purposes of development, at the Purchaser's expense, if it is brought to its attention more than three (3) months before the delivery date of the machine. If the need to modify the machine only becomes apparent later or once the machine is completed, the Supplier will submit possible solutions and the additional costs to the Purchaser.

## 21.- Pre-Acceptance and final Acceptance of a machine with set up. No use of the machine before final Acceptance

**21.1** For a machine with set up, the Order Confirmation may provide that a pre-Acceptance of the machine must take place at the Supplier's works followed by final Acceptance at the Purchaser's works; the assessment conditions must be identical in both cases.

**21.2** The Supplier's quotation for a set up will be based on its best estimates. The Supplier will use its best endeavours to achieve the desired objectives, but cannot guarantee the results within the time agreed. By accepting the quotation, the Purchaser confirms that it approves it without limitation.

**21.3** Unless indicated otherwise in the Order Confirmation, the time agreed for the setup will be fifteen (15) days' work on the basis of eight (8) hours per day for Multi-spindle machines, and five (5) days' work on the basis of eight (8) hours per day for the other types of machine.

**21.4** If difficulties are encountered during set up and it is found that the agreed deadline will be missed, the Parties will confer. If they decide to continue with the work, they will each pay half of the costs in excess of the agreed price, and each Party will nevertheless be entitled to decide to terminate the work and, irrespective of the reasons and the respective liability of each Party, the agreed price will in any event be payable by the Purchaser. In no case will the Supplier owe any indemnity to the Purchaser.

**21.5** The machine capability will be assessed on the basis of a batch of parts manufactured within a maximum of four (4) hours. That batch of parts produced will be no more than one hundred and twenty-five (125) parts for the Multi-spindle machines and no more than fifty (50) parts for all other machines. The conditions for that assessment, in particular the calculation methods used and the objectives, will be defined by the Supplier.

**21.6** For any requirement of the Purchaser not clearly stipulated in the Contract, the resulting costs will be invoiced by the Supplier in addition to the price agreed in the Contract, on an hourly basis at its rate in force at the time.

**21.7** The specialists delegated by the Purchaser to carry out that pre-Acceptance at the Supplier's works must be authorised to sign the corresponding reports. All travel, accommodation and other expenses of the Purchaser's specialists will be borne by the Purchaser.

**21.8** Unless indicated otherwise in the Order Confirmation, all the Supplier's services necessary for the pre-Acceptance at the Supplier's works and final Acceptance at the Purchaser's premises will total one day's work per item, on the basis of eight (8) hours per day.

If, for reasons unconnected with the Supplier, Acceptance takes longer than the time indicated above, the Supplier will invoice the Purchaser for all the resulting additional costs.

**21.9** Unless previously agreed in writing by the Supplier, any use of a machine by the Purchaser for a commercial purpose, before its final Acceptance, will be deemed to be final and unreserved Acceptance of the machine by the Purchaser.

**22.- Period during which the Supplier will provide the after-sales service and training**

Provided the Purchaser is not in default of payment and is solvent, and provided the necessary parts or sub-assemblies, in particular electronic parts or sub-assemblies, that the Supplier has to obtain on the market are still available, the Supplier will, at the rates and on the terms in force at the time, provide the after-sales service (spare parts, maintenance and repair of machinery, user training), and updating of software for the machinery for ten (10) years from delivery of the corresponding Service.

**23.- Software**

**23.1** The Purchaser will be granted a single user licence, limited to the Services delivered by the Supplier. Unless previously agreed by the Supplier in writing, that software may not be used for other purposes or by third parties.

**23.2** If the Purchaser resells the Services to a third party, the software licences issued by Tornos US which form an integral part of the machine will automatically be transferred to the third party and other successive third parties on the same terms.

**23.3** The Purchaser may not copy (unless for the purpose of archiving, detecting defects or to replace defective data storage media) or manipulate the software. In particular the Purchaser may not, without the Supplier's prior written authorisation, disassemble, decompile, decode or reconstitute the software. In the event of infringement, the Supplier will be entitled to revoke the right to use the software. In respect of third party software, the terms of use of the grantor of the licence will be treated as valid. In the event of infringement, that grantor may assert its rights in addition to the Supplier. The Purchaser shall defend, indemnify and hold harmless the Supplier from any claims of liability or for damages from third parties arising out of the Purchaser's breach of this Article 23.

**24.- Cancellation, reduction or postponement of the order by the Purchaser**

**24.1** In the event that the Purchaser cancels an order confirmed by the Supplier for a Service for a reason not attributable to the Supplier, the Supplier will invoice the Purchaser for the following portion of the total price according to the Order Confirmation, which will be payable within thirty (30) days:

<u>Cancellation charge</u>	<u>With set up</u>		<u>Without set up</u>	
	(1)	(2)	(1)	(2)
<b>All machines except Multi-spindle machines</b>	> 10	20%	> 8	20%
	> 6 ≤ 10	50%	> 4 ≤ 8	50%
	≤ 6	80%	≤ 4	80%
<b>Only for multi-spindle machines</b>	> 12	20%	> 10	20%
	> 8 ≤ 12	50%	> 6 ≤ 10	50%
	≤ 8	80%	≤ 6	80%

(1)= number of weeks before the agreed delivery date, when the Supplier has received official confirmation from the Purchaser that it is cancelling the order;

(2) = percentage of the total sale price according to the Order Confirmation, payable to the Supplier.

**24.2** If the Purchaser modifies the confirmed order in respect of an Asset, the Supplier will invoice it for the increased unit prices for the modified components. The increase will be half (1/2) the percentages referred to above for components added and the full percentages for the components withdrawn. The increase will be of at least two hundred Swiss francs (CHF 200) by way of handling costs.

**24.3** If the Purchaser postpones delivery of all or part of an order, the Supplier will invoice it, in respect of expenses (storage, interest, insurance) for half a percent (½%) of the total price of the Services whose delivery is delayed, for each full week of postponement from the original delivery date indicated in the Order Confirmation until actual delivery.

If the postponement goes beyond six (6) months from the original delivery date, the Supplier will additionally require the Purchaser immediately to pay the 2nd instalment under Article 5.1.2 for the Services whose delivery is delayed or for the whole order if delivery of the whole order is postponed.

**25.- Possible return of tooling delivered with a Service**

**25.1** Subject to the Supplier's prior written agreement and at its sole discretion, the Purchaser may, within four (4) weeks from its delivery, return to the Supplier any tooling delivered with a Service, including machine handling and installation tools, provided the tooling is not specific to the order, is as new, in perfect condition and is not obsolete.

**25.2** On reception of the tooling, the Supplier will credit the Purchaser with the net price (net = after deduction of the costs of packing, transport, insurance, customs duties and any other charge) invoiced by the Supplier to the Purchaser, after deduction of twenty-five percent (25%) and in no case less than two hundred Swiss Francs (CHF 200), for handling the return.

**26.-** Date of manufacture

Unless indicated otherwise in the Supplier's Order Confirmation, irrespective of the date of manufacture mentioned on the nameplate, the machine delivered will be new, will never have been used in manufacture and will have been stored with care. Under no circumstances will a date on the nameplate confer any rights to an indemnity or price reduction.

**27.-** Export control

**27.1** The Purchaser acknowledges that deliveries may be subject to Swiss and/or foreign statutory provisions and regulations on export control and that it is prohibited to sell, rent, transfer them in any way or use them for a purpose other than that agreed, without an export or re-export authorisation from the competent authority. The Purchaser will comply with those provisions and regulations. It is aware that those provisions and regulations may change and will apply in accordance with the valid Contract.

**27.2** In respect of any export order, the Supplier's Order Confirmation will be subject to the export authorisation being granted or, as the case may be, its non-withdrawal by the competent authorities.

**28.-** Data protection

In the context of performance of the Contract the Supplier will be entitled to process the Purchaser's personal data. The Purchaser agrees in particular that in the context of managing their commercial relationship, the Supplier may transfer those data to third parties in Switzerland or abroad.

**29.-** No undue advantages

Neither Party will grant direct or indirect undue advantages to employees or persons close to employees of the other Party.

**30.-** Severability of terms

If a provision of the Conditions of Sale becomes partially or fully invalid, the other provisions will remain fully valid. The Parties will confer in order to reach a replacement solution by mutual agreement, the legal and economic effect of which will be as close as possible to that of the invalid provision.

**31.-** Applicable law and jurisdiction

**31.1** The Contract and these Conditions of Sale shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Illinois (excluding conflicts of laws principles), and venue shall either be in the state courts in Lake County, Illinois or the federal courts for the Northern District of Illinois. The Purchaser hereby waives any claim that any legal proceeding (including any tort claim) brought in accordance with these Conditions of Sale has been brought in an inconvenient forum or that the venue of that proceeding is improper. The Parties agree to proper venue and hereby submit to jurisdiction in the appropriate state or federal courts of record sitting in the State of Illinois.

**31.2** In the event that the Supplier prevails in any legal actions or proceedings, the Supplier shall be entitled to recover damages, cumulative with the remedies of specific performance or such other equitable relief as the court may deem appropriate and reasonable attorneys' fees and costs.

**32.-** Headings

The headings and captions used in these Conditions of Sale are for reference purposes only and should not have any effect on the interpretation of the agreement between the Parties.

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