

## CONDITIONS OF PURCHASE

In these Conditions: "the Company" means NSK Steering Systems Europe (Polska) Sp. z o.o, "contract" means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the services subject to these conditions; "the Order" means the order or orders made by the Company; "Goods" means all goods works and materials (including any installment of the goods or any part of them) which are the subject of the Order including (without limitation) any service parts and spare parts included therein; "Services" means the services (if any) described in the Order. "Specification" includes any plans, drawings, data or other information relating to the Goods or Services; "Supplier" means the person, firm or Company to whom the Order is issued; Warranty Agreement" means a written agreement between the Company and the Supplier in such form as the Company may reasonably require containing (inter alia) warranties from the Supplier in respect of the Goods

### 1. APPLICATION OF THESE CONDITIONS

- 1.1 The commencement by the Supplier of any work or Services hereunder (including work and Services in respect of samples and tooling) shall constitute acceptance by the Supplier of the Order and all terms and conditions.
- 1.2 Supplemental to these Conditions the Supplier will if so requested by the Company enter into a Warranty Agreement.
- 1.3 Subject to condition 1.3 the Contract comprises an offer by the Company to purchase the Goods and/or acquire the Services subject to the provisions of the Order and to there Conditions of Purchase as supplemented by a Warranty Agreement (if any) and the Supplier's acceptance thereof by word or conduct. The Contract can only be altered or qualified by a document signed by the Company.
- 1.4 In the event of a conflict between any of these Conditions of Purchase and any provision of a Warranty Agreement (if any) or any specific term or condition referred to on the face of the Order, the Warranty Agreement or such specific term as the case may be, shall prevail.
- 1.5 Any written acceptance of the Order (including an acceptance communicated electronically) performance of services or delivery of Goods shall be deemed to be an unconditional acceptance by the Supplier of the Order on these Conditions of Purchase irrespective of whether any such acceptance purports to impose alternative conditions.
- 1.6 The Company shall not be liable for any orders or amendments thereto other than those issued or confirmed on the Company's official Order or Company's order amendment forms duly signed on behalf of the Company.
- 1.7 In the case of open Orders which do not specify the exact, or any, quantity of Goods or Services required by the Company delivery schedules signed by a duly authorized representative of the Company will periodically be issued by the Company indicating exact quantities required and time(s) for delivery there of and the Supplier shall be bound to supply accordingly. Any such schedule may also contain an indication of the Company's likely future requirements. Such indication shall not be binding on the Company but the Supplier shall be bound to accept end perform any orders which may subsequently be placed by the Company falling within the scope of such indication.
- 1.8 If the Order provides that Goods are purchased on any trade term defined in the current edition of Incoterms the use of the same shall import the obligations there provided upon the Company and Supplier respectively as buyer and seller.
- 1.9 Unless specified otherwise the contractual requirements of the "NSK Steering Systems Europe (Polska) Sp. z o.o SUPPLIER QUALITY MANUAL" shall apply.

### 2. DELIVERY/ ADVICE NOTES

- 2.1 Subject to Condition 2.4 the Goods shall be delivered to, and the Services shall be performed at the address stated by the Company in the Order on the date or within the period stated in the Order. In either case during the Company's usual business hours.
- 2.2 The supplier shall comply in all respects with the Company's programme for delivery of Goods and performance of Services and any reasonable request for information about progress against programme shall be provided forthwith by the Supplier.
- 2.3 All Goods supplied against the Order shall be properly packed and secured in such manner as to reach their destination in good condition and shall (unless otherwise directed by the Company) be delivered by the Supplier to the Company's works carriage paid in accordance with the Company's instructions and bearing the Company's order number on each package.
- 2.4 Delivery shall be completed when the Goods have been unloaded at the point of delivery specified in the Order and the delivery of the Goods and/or performance of the services has been accepted by a duly authorized agent employee, or site representative of the Company.
- 2.5 If Goods are delivered before the date specified in the Order, the Company shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and storage of the Goods until the contractual date for delivery.
- 2.6 In the event of any strike, lock- out fire, explosion, accident and/or of any stoppage of the Company's business and/or work for reasons beyond its reasonable control which may prevent or hinder the use of the Goods and/or performance of the Services, delivery of the Goods and/or performance of the Services and payment therefore may be suspended or postponed at the Company's option by notice in writing without any liability to the supplier until such time as the circumstances preventing or hindering the use of the Goods have ceased.
- 2.7 If a carrier is specified in connection with the Order such carrier shall be deemed to be on an agent of the Supplier end not of the Company.
- 2.8 Consignment and/or part deliveries may be rejected by the Company unless the Company has agreed in writing to accept such deliveries.
- 2.9 In the case of Goods supplied from outside the Poland the Supplier shall insure that accurate information is provided to the Company as to the country of origin of the Goods and shall be liable to the Company for any additional duties or taxes for which the Company may be accountable should the country of origin prove to be different from that advised by the Supplier.

### 3. TIME

- 3.1 Where time is specified such provision shall be of the Essence of the contract, and where no such time is specified, the Company may by 28 days notice to the Supplier make time of the essence as at the date fixed by such notice.
- 3.2 Failure by the Supplier to adhere to any provision as to time contained in the Order shall entitle the Company at its option to treat the contract as repudiated in whole or in part. The Company shall be entitled to exercise its option at any time not withstanding that it has acquiesced in any delay unless a written extension of time has been given to the Supplier by a duly authorized representative of the Company and the time of any extension has not elapsed.
- 3.3 Failure by the Company to exercise its option pursuant to condition 3.2 in respect of any part of an Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Order.
- 3.4 Unless an extension of time has been agreed by the Company in accordance with condition 3.2, the Supplier's failure to effect delivery on the date or dates specified shall entitle the Company to purchase substitute goods and to hold the Supplier accountable for all loss or additional costs (or both) incurred as a result.

### 4. ALUE ADDED TAX

All Suppliers who are registered for value added tax are required to issue a proper tax invoice in accordance with the relevant legislation before the Company shall be required to make payment for Goods or Services supplied in accordance with the Order.

### 5. PRICE AND PAYMENT

- 5.1. The price for the Goods and/or Services shall be as stated in the Order save that if no such price is stated the price for the Goods and/or Services shall be the lowest price currently quoted or charged by the Supplier for goods and/or Services of that description at the date of order but in any event shall not be higher than the price for Goods and or Services of that description most recently charged to the Company by the Supplier.
- 5.2. Unless otherwise agreed by the Company in writing:-
  - 5.2.1. All prices are fixed and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of Goods to the address for delivery shown on the order (VAT (if applicable which shall be payable at the rate Prevailing at the relevant tax point)) and any other applicable duties and taxes are not subject to escalation;
  - 5.2.2. invoices shall not be rendered by the Supplier until completion of delivery of all of the Goods and performance of all of the Services the subject of the Order, and
  - 5.2.3. payment shall be due ninety days following the month of receipt of the invoice.
- 5.3. The Company specifically reserves right to deduct from any monies due or to become due to the Supplier any monies due to the Company from the Supplier.
- 5.4. The Company shall not be responsible for the payment of any charges for Goods supplied and/or Services performed in excess of the Good and/or Services required by the Order or in the case of open Orders the quantity of Goods subject to a firm requirement by the Company in any delivery schedule or any variation of an Order or delivery Schedule which complies with Condition 19.
- 5.5. No payment of or on account of the contract price shall constitute any admission by the Company as to proper performance by the Supplier of its obligations.
- 5.6. No payment will be made for containers, crates or packing materials of any description except by special arrangement in writing.
- 5.7. In attention to the following details by the Supplier may mean delay in payment but no prompt payment discount shall be forfeited by the Company due to the failure of the Supplier:-to

5.7.1 send on the day of dispatch for each consignment appropriate advice(s) of dispatch, and  
5.7.2 to mark clearly the Company's Order number on each consignment package, packing notes, advice notes invoices monthly statements and all other correspondence relating thereto.

#### **6. PACKAGING**

The Company shall only be responsible for returning cases or other durable packaging to the Supplier if such responsibility is accepted by the Company in the Order.

#### **7. STORAGE**

If for any reason the Company is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Supplier shall at its expense store the Goods for a reasonable time having regard to the circumstances and shall safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery.

#### **8. RISK AND TITLE**

8.1 Unless otherwise stated on the Order, risk of damage to or loss of the Goods and/or Services shall pass to the Company upon completion of delivery as specified in condition (2.3) and property in and title to the Goods or any part thereof shall pass to the Company upon the earlier of delivery or the time of any payment being made therefore.

8.2 All tools equipment end materials of the Supplier required in the performance of the Supplier's obligations hereunder shall be and remain at the sole risk of the Supplier whether or not they are upon premises of the Company or other premises whatsoever pursuant to the Order.

8.3 Where the Supplier has contracted to perform Services or work upon Goods without title thereto pass in or belonging to the Supplier, risk shall pass to the Supplier in respect of such Goods when it takes delivery thereof and it shall remain at risk until the Goods worked upon are redelivered to the Company. Delivery for the purposes of this condition shall mean the time of parting with physical possession by the Company and redelivery shall occur upon acceptance of delivery by a duly authorized agent, employee or representative of the Company.

#### **9. INSURANCE**

The Supplier shall insure and keep insured the Goods and/or Services for the period of the Contract against all risk of loss or damage in a minimum sum of (ten Millions Eur or it's equivalent) on any one claim and with unlimited liability on the public liability policy. The Supplier shall produce the relevant policies and evidence of payment of premium from time to time upon request from the Company and shall require the insurance company to place an endorsement on the policy noting the Company's interest.

#### **10. TOOLING**

10.1 All tools, equipment, patterns, materials, drawings, specifications and other documentation provided by the Company in connection with the Order shall at all times remain the property of the Company together with all intellectual property rights of whatever nature therein and shall be used by the Supplier solely for the purpose of the Contract and returned to the Company forthwith on request or upon completion of the Contract whichever is earlier. In the event that the Supplier fails so to return such tools, equipment, patterns, materials, drawings, specification and documentation the Company is hereby irrevocably authorized without any requirements as to notice to enter upon the premises of the Supplier for the purpose of only recovering the said tools, equipment, patterns, materials, drawings, specification and documentation.

10.2 Risk in such tools, equipment, patterns, materials, drawings, specifications and documentation shall pass to the Supplier upon delivery of the same to the Supplier all collection by the Supplier and shall remain with the Supplier until the same are returned to the Company's premises or collected by the Company as the case may be. The Supplier shall Indemnify the Company in full against any and all loss and/or damage of such tools, equipment, patterns, materials, drawings, specification and documentation and shall insure the same whilst at it's risk.

10.3 Any tools (such as jigs, dies, etc) which the Supplier may construct or acquire specifically in connection with the Goods and for which the Supplier makes any charges shall be and remain the Company's sole and unencumbered property and the Company may at any time call for possession. Unless and until the Company takes physical possession of any such tools they shall be at the sole risk of the Supplier and as such shall be insured by the Supplier to their full value against all risk of damage and loss.

10.4 Any surplus materials shall be disposed of in accordance with the Company's directions and materials wasted as a result of the Suppliers bad workmanship or negligence shall be replaced at the Suppliers expense. The Supplier shall at ant time forthwith upon the Company's request deliver up to the Company all materials issued by the Company.

#### **11. INSPECTION AND TESTING**

Any inspector or representative authorized by the Company shall be entitled to inspect the Goods either complete or in the process of manufacture or, as the case maybe, any Services being performed at any reasonable time at the Suppliers premises and/or at the premises of any sub-contractor and to require the Supplier at its own expense to make good all defects and/or deficiencies and/or ensure the Goods and/or Services comply in all respects with the Contract provided nevertheless that such inspection and/or right to inspect shall not of itself constitute acceptance or approval of the Goods or any part thereof.

#### **12. QUALITY & GUARANTEE**

12.1. The Supplier warrants to the Company that the Goods will be of highest quality and fit for their normal purpose and any other purpose held out by or known to the Supplier in writing at the time the Order is placed; will be free from defects in design material and workmanship; will correspond with any relevant Specification, quantities, stipulations or samples provided in the Contract; and will comply with all statutory requirements and regulations relating to the sale of the Goods.

12.2. The Supplier warrants to the Company that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence; and will be provided to such high standards of quality as it is reasonable for the Company to expect in all the circumstances.

12.3. The Supplier warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods and Services prior to the Order.

12.4. Nothing contained in these conditions shall in any way detract from the Suppliers obligations under common law or statute or any express warranty or condition contained in the Order or from the obligations of the Supplier and the rights and remedies of the Company under the Warranty Agreement (if any).

12.5. Notwithstanding that;

12.5.1. the Company as accepted the Goods and/or Services thereof, or,

12.5.2. where the contract is for the sale of specific Goods, the title in the Goods has passed to the Company; the breach by the Supplier of any express or implied condition to be fulfilled by it may (subject to condition(12.7)) be treated by the Company as a ground for rejecting the Goods and treating the contract as repudiated

12.6. without prejudice to any other remedy the Company shall be entitled to require the Supplier to perform the obligations contained in condition (12.7) or, alternatively at the Company's option, reject the Goods and/or Services and treat the contact as repudiated and require the repayment of any part of the price which has been paid at any time prior to the expiration of the following periods:

12.6.1. where the defect is apparent on a visual inspection within a period of three months after delivery to the Company; or

12.6.2. in any other case three months after the Company has discovered or been notified of the defect in question.

12.7. Where the Company notifies the Supplier of any defective and/or damaged Goods (whether due to defective design, materials, workmanship and/or otherwise) and/or faulty workmanship in the provision of the Services, the Company shall be entitled to required the Supplier to be responsible for making good free of charge and in accordance with the Contract within the time stated in writing by the Company the defective and/or damaged Goods and/or faulty workmanship (fair wear and tear expected) including full replacement where necessary together with all costs of delivery to site and installation and all other costs and expenses incurred by the Company.

12.8. the Supplier agrees to assign to the Company upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods or any part thereof.

#### **13 HEALTH & SAFETY**

13.1. The Supplier warrants that in the design, manufacture and supply of the Goods (including all work at the Company's premises) and the provision of information relating thereto it will comply with the duties imposed on it by the Health & Safety at Work etc. Act 1974 or any amendment thereto or re-enactment thereof and of all other statutory provisions, bye-laws, rules and regulations so far as they are applicable to the said premises and/or the Goods and that it will perform the contract such that no liability is incurred by the Company under such statutory provisions, bye-laws, rules and regulations.

13.2. All purchased materials used in part manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials; as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale (see Glossary-Approved Materials).

#### 14. INDEMNITY

14.1. The Supplier agrees to indemnify the Company in full against all liability, loss including loss of profit and increased production costs, damages, cost and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:-

14.1.1. any failure by the Supplier to fulfill its express and/or implied obligations under this contract:

14.1.2. any claims that the Goods infringe or their importation, use or resale, infringes any patents, design right, copyright, registered design, trade mark or other intellectual property rights of any other person, except to the extent that the claims arise from compliance with any specification or drawing supplied by the Company.

14.1.3. all claims in respect of royalties payable by the supplier in respect of the goods;

14.1.4. all claims arising out of errors and/or omissions in drawings, calculations, packaging details and/or other particulars supplied by the Supplier.

14.1.5. all claims made against the Company arising out of any act or omission of the Supplier, its employees, agents or its sub-contractors in supplying, delivering and/or installing the goods and in connection with the performance of the Services;

#### 15 PUBLICITY

15.1. Neither the Order nor the name of the Company shall be disclosed to any third party or used by the Supplier and/or any sub-contractor for advertisement or publicity purposes without the Company's prior written consent.

15.2. The Supplier shall keep confidential and shall not use nor disclose to any person, firm or company any manufacturing process, trade secret and/or any other confidential information of the Company (Other than the performance of the Contract) PROVIDED that the obligations of this condition shall not extend to any information which is in or enters the public domain other than as a result of breach by the Supplier of its obligations hereunder. Or which was known to the Supplier prior to its disclosure hereunder or which was disclosed to the Supplier by a third party independently entitled to disclose.

#### 16 SUB-CONTRACTORS

16.1. The Supplier shall not without the prior written consent of the Company sub-contract or assign or transfer or purport to assign or transfer to any other person any of its rights under the Contract.

16.2. Any authority given by the Company for the Supplier to sub-contract performance of any of its obligations shall not impose any duty on the Company to enquire as to the competence of any authorised sub-contractor but the Supplier shall ensure that any authorised sub-contractor is competent and that the work is properly done in accordance with the Contract. For the avoidance of doubt the Supplier shall be liable in full in respect of any act or omission of the sub-contractor and in respect of insurance of the Goods and/or Services when under the control of the sub-contractor.

#### 17 TERMINATION

17.1. Without prejudice to any other rights or remedies to which it may be entitled the Company may terminate the Contract without liability to the Supplier by giving notice to the supplier, if

17.1.1. the Supplier shall become bankrupt or, be deemed to be unable to pay its debts or shall compound the creditors or if a resolution shall be passed or proceedings commenced for the administration or liquidation of the Supplier (other than for a voluntary solvent winding up for the purpose of reconstruction or amalgamation) or if a receiver or manager shall be appointed of all or any part of its assets or undertaking or the Supplier ceases or threatens to cease to carry on business; or

17.1.2. the Supplier commits breach of any provision of this Contract (other than any obligations as to time of performance as to which Condition 3 alone shall apply) and fails to remedy such breach (where remedy is possible) within seven days of receipt of written notice from the Company requiring remedy thereof.

#### 18 CONSUMER PROTECTION ACT ("the Act")

18.1. The Supplier warrants that all Goods supplied to the Company together with all necessary instructions, information and warnings supplied therewith will be designed, manufactured and produced in such a manner as to ensure that under no circumstances could the Goods be held to be defective pursuant to Part 1 of the Act.

18.2. If the Supplier becomes aware at any time of any incidents, events or discoveries, which are in any way relevant to the safe operation of Goods previously supplied, the Supplier shall forthwith issue written notice thereof to the Company.

18.3. The Supplier shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for legal actions in which the Company may be involved) that the Company may incur or have to bear as a result of any claim or claims arising as a result of the Goods being adjudged defective pursuant to the provisions of Part 1 of the act.

18.4. The Supplier undertakes to maintain adequate insurance cover (with insurers of repute) in respect of liability pursuant to the Act and to produce to the Company forthwith on demand a copy or copies of the relevant policy or policies of insurance.

#### 19 VARIATION

19.1. Any amendments to the Order or to any delivery schedule issued by the Company pursuant to the Order shall be made by agreement evidenced in writing.

19.2. The Supplier shall advise the Company immediately if such amendments either prevent the specified delivery date (s) being met or have any other significant implications regarding the Suppliers obligations to the Company.

#### 20 CANCELLATION

Without prejudice to any other specific provision of this Contract or any other Lawful right available, the Company shall have the right to cancel the Contract in whole or in part at any time by giving written notice to the Supplier whereupon all work pursuant to the Order thereby cancelled shall be discontinued and the Company shall pay to the Suppliers such proportion of the Order price as may be fair and reasonable having regard to the value of work done, of the Goods previously delivered and of Services performed under the order (including an element of profit to be calculated on a pro rata basis by reference to the net profit margin on the Contract as a whole which the Supplier can evidence to the satisfaction of the Company it would have obtained had the contract proceeded to completion) and on such payment no further sum or sums shall be due by way of damages, loss of profits and/or otherwise from the Company to the Supplier by reason of such cancellation.

#### 21 INTELLECTUAL PROPERTY

21.1. All designs, inventions, drawings, patents, know how, new technology, improvements and all similar matters made, designed or developed by the Supplier in connection with the contract shall be the sole property of the Company and the Supplier shall procure at no charge to the Company the execution of any and all deeds and documents necessary to perfect ownership by the Company.

21.2. All materials, drawings, patterns, gauges, samples, specifications and other technical data prepared by the company in connection with the Contract shall be and shall at all times remain the property of the Company which shall be entitled to reproduce and use all such data at any time for any purpose whatsoever. For the avoidance of doubt the Supplier shall not use any such data except in connection with the contract.

21.3. In relation to goods designed by the Company and/or tooling for such goods in respect of which the copyright, design rights and/or all other rights of a similar nature remain the property of and vested in the Company, the Supplier shall not supply or attempt to supply such goods other than to purchasers authorised by the Company without the Company's prior consent.

#### 22 FORCE MAJEURE

If the Supplier is delayed or hindered in the performance or its obligations by circumstances beyond its reasonable control (including any form of government intervention or strikes and lock outs not involving the parties hereto or their respective work forces) then delivery of the Goods and/or performance of the Services shall be suspended and if such delivery cannot be effected within a reasonable time after the due date the Company may cancel the Order by notice in writing to the Supplier and shall be under no liability whatsoever to the Supplier in respect of such cancellation.

#### 23 WAIVER

Failure by the Supplier or the Company to exercise an option or right conferred by these conditions shall not of itself constitute a waiver of such option or right. Any waiver by the Company of any breach by the Supplier of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

23.1. Any notice required to be given in writing under the Contract shall be given, where possible, by facsimile and otherwise by first class post addresses to the registered office of the party for which it is intended, or to such other address as may be notified in writing in accordance herewith for the purposes, and shall be deemed to have been received, in the case of a facsimile upon transmission and, in case of a letter, forty eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

#### 24 POLISH LAW

All matters not settled in this contract shall be governed by the provisions of the Polish Civil Code and shall be subject to the exclusive jurisdiction of the Polish Courts.

25 THIRD PARTY RIGHTS For the avoidance of doubt save as expressly provided herein nothing in the Contract shall confer on any third party any benefit or the right to enforce any provision of the Contract.