

# Terms & Conditions of Sale

Standard trading terms and conditions of the company (including surety ship and cession of book debts)

## Definitions

In these terms and conditions the following words have the following meanings: "Contract" any contract between the Company and the Customer for the sale and purchase of Goods. "Company" NSK South Africa (Pty) Limited or any other member of the NSK group engaged in the contract. "Customer" the person(s) or company whose order for Goods is accepted by the Company. "Goods" any goods which the Company is to supply to the Customer (including any of them or any part of them)

## 1. Price

The price of the goods shall be stated on the Company Order Form and/or any other Company Forms, price lists or stationery. Prices are subject to change without prior notification and prices ruling at the time of dispatch shall apply unless alternative pricing terms have been agreed to between the Company and the Customer in writing. The price for the Goods is exclusive of any value added tax.

## 2. Payment

2.1 Payment is to be made 30 (thirty) days from the end of the month in which the goods were delivered, unless other payment terms have been agreed in writing.

2.2 The Customer shall not be entitled to any rebates and/or discounts unless a director or manager of the Company shall have agreed to such rebates and/or discounts in writing and provided further that:

2.2.1 even if the director/manager of the Company has agreed to such rebate/discount, the Customer shall not be entitled to same if payment is overdue in respect of any goods;

2.3 In all cases where the Customer uses a postal service to effect payment, to deliver or return goods, such postal services shall be deemed to be the agent of the Customer.

2.4 Should any amount not be paid by the Customer on due date then the whole amount in respect of all purchases by the Customer shall become due, owing and payable irrespective of the dates when the goods were purchased and the Customer shall be liable to pay interest in respect of unpaid amounts as at the due date at the rate of 2 % above the prime overdraft lending rate of the Company's Bank, compounded, on all overdue amounts from due date until date of payment, calculated and payable monthly in advance and should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total

shall form the principal debt which shall then bear interest in the manner as set out above.

2.5 The Customer shall not be entitled to set off any monies due to it by the Company, against any amounts owing by it to the Company.

2.6 The Company may appropriate all payments made by the Customer to such accounts as it will in its sole and absolute discretion decide.

## 3. Withdrawal of credit Facilities

The Company reserve the right to withdraw any credit facilities granted by the Company to the Customer, at any time without prior notice to the Customer and the nature and extent of such facilities shall at all times be in the Company's sole discretion.

## 4. Orders

4.1 All orders, including oral orders, shall be deemed to be offers to purchase, and the Customer shall provide the Company with an order number when placing any such order with the Company.

4.2 Orders shall be subject to confirmation and acceptance by the Company and such acceptance shall be confirmed by the dispatch of goods or confirmation in writing by the Company.

4.3 Orders accepted by the Company are irrevocable and shall not be varied or cancelled by the Customer, except with the written consent of the Company.

## 5. Delivery

5.1 The Company shall have the right to refuse to accept any new orders and/or suspend deliveries in respect of existing orders if any amounts due by the Customer remain unpaid.

5.2 Unless otherwise agreed in writing, the Company's delivery terms are ex works (Incoterms 2010).

5.3 Whilst every effort will be made to dispatch goods timely, the Company does not guarantee dispatch on any specific date and shall not be liable for any damages for failure to effect delivery / dispatch timely for any reason beyond the Company's control, including but not limited to, inability to secure labour, power, materials, equipment or supplies or by reason or an act of God, war, civil disturbance, riot, state emergency, strike, lockout or other labour disputes, fire, flood, drought or legislation. The Customer shall not be entitled to cancel any order in the event of there being a delay in the delivery thereof, and the Customer expressly acknowledges that time shall not be of the essence in the Company executing any orders notwithstanding anything to the contrary contained in any order placed by the Customer with the Company.

5.4 Proper delivery of goods invoiced shall be deemed to have taken place when the Company

delivers the goods to the Customer's premises and any employee of the Customer signs the delivery note or Invoice.

5.5 A carrier engaged by the Customer, or on behalf of the Customer by the Company, shall be deemed to be agent of the Customer and the risk in the goods shall pass to the Customer upon delivery to such carrier. The signature of any employee of the carrier on the Company's Invoice or delivery note, shall be deemed to be proof of delivery to the carrier.

5.6 Should the Company, at the Customer's request and on the Customer's behalf, agree to engage a carrier to transport goods to the Customer, the Company shall engage the carrier on such terms and conditions as it deems fit and the Customer indemnifies the Company against all demands and claims which may be made against it by the carrier so engaged and all liability which the Company may incur to the carrier arising out of the transportation of the goods.

5.7 Where the Customer requires any goods to be insured by the Company on its behalf, such request shall be directed to the Company in writing and the cost of Insurance shall be for the Customer's account. Notwithstanding that the Customer requires the Company to arrange such insurance, if such insurance is not effected by the Company, or is inadequate in respect of the goods so insured, the Company shall not be held liable by the Customer for any loss in regard to the foregoing.

5.8 Where the Company is requested by the Customer to withhold or postpone delivery in the event that the Company agrees to do so, the Customer shall pay for the costs of storage, demurrage interest, insurance, or any other charges occasioned by the postponement of delivery.

5.9 In the event, that the Company makes delivery to the customer in instalments, each instalment shall be deemed to be subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the balance of the contract or entitle the Customer to cancel the contract and the terms and conditions of the agreement shall be the terms and conditions of each such separate contract.

## 6. Licences

6.1 The Customer is responsible for obtaining all documents, licences and authorizations which may be required to enable the Company to deliver the Goods to the Customer. For the avoidance of doubt the Company shall not be liable to the Customer for a failure to obtain any documents, licences and authorizations referred to in

this Condition 6.

6.2 Certain products will be designated as "dual-use" and some countries designated as restricted and therefore subject to Trade and Export Restrictions and controls. The customer is responsible for identifying when export or trade restrictions may apply and to obtain a license or Government clearance as necessary

## 7. Negotiable Instruments

Acceptance of a negotiable instrument by the Customer shall not be deemed to be a waiver of the Company's rights under this agreement. In relation to cheques furnished by the Customer to the Company, the Customer waives its right to it in the event that the cheque is dishonoured.

## 8. Ownership and Risk

8.1 Notwithstanding that all risk in and to all goods sold by the Company to the Customer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in the Company until the purchase price has been paid in full for the goods in question.

8.2 The Customer shall fully insure the goods purchased from the Company against loss or damage, until the full purchase price has been paid by the Customer for such goods, pending payment to the Company for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods are hereby ceded to the Company.

## 9. Returnable Crates and Containers (only applicable if the customer is advised by the Company)

9.1 It is recorded that all crates and containers in which the goods are supplied by the Company to the Customer shall remain, at all times, the property of the Company and are never sold, despite the fact that the Customer shall pay to the Company a refundable deposit in respect of such crates or containers.

9.2 The Customer shall, at its own expense, return to the Company all crates and containers in which goods are supplied to it, and if not returned within a reasonable time, and in good order and condition, the Company shall be entitled to forfeit the deposit held by it in respect of such crates or containers, without in any way affecting the Customer's continuing obligation to return them.

9.3 The Customer is prohibited from using the crates and containers for any purposes other than the storing and transport of goods sold by the Company. In the event of the Customer using or

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permitting any such crates or containers to be used for any other purpose, the Company shall be entitled to claim forfeiture of the deposits held by it in respect of such crates or containers without prejudice to its rights to claim from the Customer any other damages it may have suffered as a result of such unauthorized use of the crates or containers.

**10. Legal Proceedings**

10.1 Regardless of the place of conclusion, execution, performance or breach under this contract or domicile of the Customer, this agreement and all modifications and amendments hereof, shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa.

10.2 The Company shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrates Court, be entitled to institute action out of such court.

10.3 In the event of the Company instituting legal proceedings against the Customer for a breach of its obligations in terms of this application for credit, or for damages in the event of the cancellation of this application for credit facilities by the Company pursuant to such breach, then the Customer shall be liable for all legal costs incurred by the Company on the attorney and own client scale including collection charges and tracing agent's fees.

10.4 A certificate under the hand of any director or manager of the Company, (whose authority need not be proved), in respect of any indebtedness of the Customer to the Company or in respect of any other fact, including but without limiting the generality of the foregoing the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to the Company and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.

10.5 The Customer's physical address referred to in Section A point 6 of the credit application shall be its domicilium citandi et executandi for all purposes in terms of this application for credit facilities.

**11. Arbitration**

11.1 The Company at its sole option shall be entitled to refer any dispute arising from or in connection with this application for credit facilities to arbitration, the award by the arbitrator being binding on both the Company and the Customer, and the Company shall be entitled to make such award an order of court if the Customer does not give effect thereto.

11.2 The arbitrator must be a person agreed upon by the parties or failing agreement, an arbitrator must be appointed by the Arbitra-

tion Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of SA.

11.3 If the Company so stipulates, the arbitrator shall however be entitled to disregard the Rules of the Arbitration Foundation of South Africa and lay down the procedure to allow the dispute to be determined as expeditiously and cheaply as possible.

**12. Intellectual Property**

All patent, copyright, design, trade mark or other intellectual property rights in the Goods are and shall remain vested in the Company and nothing in these terms and conditions shall be construed as granting to the Customer a license or other right of manufacture of the Goods.

**13. Electronic Information**

Any information provided electronically by the Company is provided 'as is' and without warranties of any kind express or implied. Such information is the copyright of the Company, and may be used solely in connection with making purchases from the Company and not for any other purpose.

**14. Use of Goods by Customer**

The Customer confirms that the goods are to be installed, maintained and repaired in accordance with manufacturers specifications which have been made available to the Customer by the Company alternatively the Customer can request the information from the Company who shall provide same to the Customer as soon as is reasonable possible.

**15. Returned Goods**

15.1 Whilst the Company is under no obligation to accept the return of goods, the Customer may apply to the Company for permission to return the goods and if written permission is given by the Company's sales department for such return, the following will apply:

- a) Goods returned for credit will only be accepted from those Customers who initially purchased the stock from the Company or who have an account with the Company. All goods returned must be clean, saleable and undamaged and in their original packaging;
- b) The value of credit for excess stocks returned will be calculated at the invoice value when the goods were purchased, less 10 % handling charge.
- c) The Company's Credit Control Department must be notified of relevant invoice, packing slips and batch numbers before any claim will be considered.

15.2 Company sales representative are not empowered to uplift goods for return and credit.

15.3 All returns are to be effected carriage paid to the Company's warehouse where the goods have been dispatched or collected by the customer.

**16. Cession of Book Debts**

16.1 The Customer does hereby irrevocably cede, pledge, assign, transfer and make over unto and in favour of the Company all of its right, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever ("the Customer's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by the Customer to the Company.

16.2 Should it transpire that the Customer at any time entered into prior deed of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer's reversionary rights. Notwithstanding the terms of the foregoing cession, the Customer shall be entitled to institute action against any of its debtors provided that all sums of money which the Customer collects from its debtors shall be collected on the Company's behalf and provided further that the Company shall at any time be entitled to terminate the Customer's rights to collect such monies/debts.

**17. Cession**

17.1 The Customer shall not be entitled to cede any of its rights nor delegate any of its obligations in this application for credit facilities, to a third party.

17.2 The Company shall at any time in its sole discretion be entitled to cede all its rights in terms of this application for credit facilities to any third party without prior notice to the Customer who hereby consents thereto.

**18. Consequential Loss and Damage**

Save as herein expressly provided, the Company shall not be liable for any loss or damage direct or consequential, whether in contract, delict or otherwise, of whatsoever nature or to whosoever or whatsoever cause arising out of or through the use of any of the goods supplied by it. The Customer shall indemnify the Company against all claims made against the Company by the third party in respect thereof.

**19. Warranty**

19.1 Subject as provided below, the Company warrants all Goods supplied by it to be free from defects in material and workmanship, but its sole liability under such warranty shall be limited to either replacing, repairing or is-

suing credit (at its option) for any Goods which within twelve (12) months of delivery are returned, carriage paid, to the Company and which the Company accepts as having been defective in materials and workmanship.

19.2 The Company shall incur no liability under this warranty:

- a) Unless the Company is notified in writing within 7 (seven) days of the discovery of any defects by the Customer;
- b) for any Goods in which the alleged defect is found on examination to have been caused in whole or in part by misuse, neglect, overload, unsuitable lubricant, improper installation or repair, alteration or accident or defects arising from fair wear and tear, abnormal working conditions and failure to follow any instructions issued by the Company;
- c) for any transport, installation, removal, labour or other costs;
- d) for any goods not manufactured by an NSK Group Company, but the Company will use its reasonable endeavours to pass on to the Customer the benefit of any warranty or guarantee given to the Company;
- e) where the defect arises because the Customer has failed to follow the Company's oral or written instructions as to the storage installation, commissioning, use or maintenance of the Goods;
- f) if the Customer alters or repairs the Goods without the written consent of the Company;
- g) if the defect in such Goods arises from any design defect in any drawing, design of specification supplied or approved by the Customer.

**20. General**

20.1 No amendment to, variation of, or consensual cancellation of any of the terms and conditions of this application for credit shall be of any force or effect unless reduced to writing, signed by the Customer and by a director or duly authorized representative of the Company.

20.2 No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Customer's obligations in terms hereof shall prejudice or be deemed to be a waiver of any of the Company's rights in terms hereof, or the Company's rights to insist on strict compliance therewith at any time, or from time to time in the future.

20.3 The Customer expressly acknowledges that no warranties or representations have been made by the Company to it except as contained in this applica-

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tion for credit has been made by the Customer or an arms' length basis, and no inducements have been offered by the Company to it to apply for credit facilities from the Company.

20.4 Any written notice to the Company shall be by Fax to (011) 458-3608 with a copy to PO Box 1157, Kelvin, 2054.

20.4.1 The Company or its branches shall have the right at any time or from time to time to change the fax number by written notification to the Customer.

20.5 The headings in this document are inserted for convenience and shall not be taken into account for the purpose of interpreting this document.

20.6 Each of the terms and conditions herein shall be separate and divisible and if any such terms or conditions become unenforceable for any reason whatsoever, then that term or condition shall be severable and shall not affect the validity of any of the other terms and conditions which remain of full force and effect.

20.7 The singular shall include the plural; any gender includes the other genders; natural persons includes artificial persons (including trusts) and vice versa.

20.8 The Customer acknowledges that the Company intends to advise the landlord that ownership in all stock purchased from the Company will remain vested in the Company until paid in full. The Customer shall be obliged to supply the Company with the full particulars of the Customer's landlord, failing which the Customer shall be deemed to have affected notice to the landlord..

**21. Disclosure of personal information**

21.1 The Customer understands that the personal information given in this credit application for is to be used by the Company for the purposes of assessing his credit worthiness. The Customer confirms that the information given by him in his credit application form is accurate and complete. The Customer further agrees to update the information supplies, as and when necessary, in order to ensure the accuracy of the above information, failing which the Company will not be liable for any inaccuracies.

21.2 The Company has the Customer's consent at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the amounts purchased from suppliers per month, length of time Customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.

21.3 The Customer agrees and understands that information given in confidence to the Company by a third party on the Customer will not be disclosed to the Customer.

21.4 The Customer hereby consents to and authorizes the Company at all times to furnish credit information concerning the Customer's dealings with the Company to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Company.

**22. Additional Security**

22.1 The Company shall be entitled at any time, or from time to time, at its sole discretion to demand that the Customer pass a notarial bond in such amount as may be stipulated by the Company, over its movable assets at the cost and expense of the Customer, which notarial bond shall be registered by the Company's Attorneys.

22.2 In the event of the Customer failing to comply with the provisions of Sub-paragraph 20.1 above within 7 (seven) days of written notice calling upon the Customer so to do, then the Company at its sole discretion shall be entitled to elect whether to continue to supply further goods on credit to the Customer and if it chooses not to do so, the Customer shall have no claim of whatsoever nature and howsoever arising, including any claim for consequential damages against the Company.

22.3 Notwithstanding that the Company may require the registration of a notarial bond, this shall not preclude the Company in addition, from insisting that the Customer, or any person signing surety for its obligations in terms hereof, pass a mortgage bond over immovable property to secure the obligations of the Company and/or surety. In such event the cost of registration of the bond, which shall be registered by the Company's Attorneys, shall be paid by the Customer/surety.

**23. Breach of Lease**

23.1 The Customer acknowledges that if he breaches any of the terms of any agreement of lease, whether written or oral, in respect of which he hires the premises from which he carries on business, then notwithstanding anything to the contrary herein contained, all monies owing by the Customer for goods which may be already been sold and delivered, shall immediately become due and payable to the Company.

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**24. Continuing covering surety ship**

24.1 I/We by my/our signature hereto (which appears below) do hereby bind myself/ourselves in my/our private and individual capacity as surety for an co-principal debtor with the Customer in favour of the Company for the due performance of any obligation of the Customer and for the payment to the Company by the Customer of any amounts which may now or at any time be or become owing to the Company by the Customer, whether such amounts are due under the current credit limit or due because of any increases in the credit limit.

24.2 I/We acknowledge and understand that as surety and co-principal debtor, I/we waive and renounce the benefits to which I/we may be entitled to arising from the legal exceptions available to us including but not limited to "non cause debiti, errore calculi, excussion and division, de duobus vel pluribus, reis debendi, na value received, and revision of accounts" with the meaning and effect of all of which I/we declare myself/ourselves to be fully acquainted.

a) Excussion – the right to require the Company to proceed first against the Customer for payment of any debt owing to the Company before proceeding against the surety;

b) Cession of action – the right to require the Company to proceed first against the Customer for payment of any debt owing to the Company before proceeding against the surety;

c) The benefit of simultaneous citation and division of debt – the right of a co-surety to be liable only for his pro rata share of the principal debt;

d) The right to an accounting from the Company.

24.3 I/we hereby agree that any indulgence which may be granted by the Company to the Customer at any time, or from time to time, shall not be constituted as a waiver of any of my/our obligations in terms of this surety ship which shall at all times remain of full force and effect until I/we am/are released from such obligations by written notice from the Company.

24.4 This surety ship is given as a continuing covering surety ship for all present and future obligations of the Customer to the Company.

24.5 I/we expressly acknowledge that my/our liability as surety and co-principal debtor in terms of this surety ship will extend to any other associated or subsidiary company of NSK which may not have supplied goods on credit to the Customer as at the date of signature of this application by the Customer, or which associated or subsidiary company of NSK is not yet in existence at the date of signature of this application for credit by the Customer.

24.6 I/we acknowledge that the physical address of the Customer recorded IN Clause 6 of this document shall be my/our domicilium citandi et executandi for all purposes in terms of this surety ship.

24.7 I/we warrant that if I/we are married in community of property, I/we have obtained our spouse's consent to this surety ship.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of 20 \_\_\_\_\_

1. Surety Signature \_\_\_\_\_

Name in full \_\_\_\_\_

2. Surety Signature \_\_\_\_\_

Name in full \_\_\_\_\_

1. Witness Signature \_\_\_\_\_

Name in full \_\_\_\_\_

2. Witness Signature \_\_\_\_\_

Name in full \_\_\_\_\_