

# Terms & Conditions of Sale

## 1. 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 UK Limited or NSK Europe Limited

"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)

## 2. Basis of Contract

a) The Contract will be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document). Each order for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these terms and conditions. No addition or variation shall apply unless specifically agreed in writing by the parties.

b) No order shall be binding on the Company unless and until accepted or confirmed in writing by the Company. The Company reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of any of the Customer's commitments to the Company not being met.

c) No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit, loss of business and depletion of goodwill) costs, damages, charges and expenses incurred by the Company as a result of cancellation.

## 3. Delivery

a) While the Company will use its reasonable endeavours to comply with any dates specified by the Company for the delivery of the Goods, such dates are approximate only and may not be made of the essence by notice. If no dates are specified, delivery will be within a reasonable time. Subject to the other provisions of these terms and conditions, the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence) nor unless such delay exceeds one hundred and eighty (180) days will any delay entitle the Customer to terminate or rescind the Contract.

b) Unless otherwise agreed in writing, the Company's delivery

terms are ex works (Incoterms 2010).

c) The Goods shall be at the sole risk of the Customer from the time of delivery to the Customer or to his agent or carrier (including any such agent or carrier instructed by the Company acting strictly on behalf of the Customer). In the event of loss or damage in transit, no claim will be accepted, unless the Company is advised in writing within five days of delivery or in the case of non-delivery, within 21 days of despatch. Any damage to the Goods in transit or claims for shortage should be notified to the carrier and the Company immediately following receipt at the customer's premises, or port of entry as the case may be.

d) Property

i) Legal title and property in and beneficial ownership of the Goods shall not pass to the Customer (notwithstanding delivery of such Goods to the Customer) until the Customer has paid both the full price of such Goods and all other sums whatsoever due to the Company. Pending such payment the following provisions of this condition shall be applicable to such Goods.

ii) The Customer shall at all times in his fiduciary capacity hold the Goods as the Company's bailee.

iii) The Customer shall mark and keep the Goods so as to identify them clearly as the property of the Company.

iv) The Company shall be entitled at any time at the Customer's expense to enter upon the Customer's premises and to recover and dispose of the Goods and the Customer shall make no claim against the Company in respect of any such entry or disposal save to recover any balance due to the Customer after the Company has disposed of the Goods and recouped all sums due from the Customer to the Company. The Customer will indemnify the Company's representatives in respect of any and all claims arising from such attendance.

v) The Customer may in the ordinary course of business mix the Goods with other objects or convert the Goods into other objects whether by the process of manufacture or otherwise. In this event, the Customer agrees that the property in the mixture or the converted goods as the case may be shall not pass to the Customer until the provisions of condition d(i) have been complied with. For the avoidance of doubt, the provisions of sub-paragraphs (ii) (iii) and (iv) of this condition 3 shall apply to any such mixture or converted goods.

vi) The Customer may in the ordinary course of business sell or otherwise dispose of the Goods or any mixture or converted goods referred to in condition 3(e)(v), but shall hold the proceeds of any

such sale or disposal and any rights or claims against third parties arising out of such sale or disposal in a fiduciary capacity for and to the account of the Company and the Customer shall take all steps necessary to keep such proceeds separate from other monies, to pay over such proceeds to the Company, and to transfer to the Company any such rights or claims to the extent necessary to discharge in full the Customer's indebtedness to the Company.

vii) The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Customer.

e) The Company reserves the right to deliver the Goods in instalments, in which case the Contract shall be construed as a separate contract in respect of each instalment. Failure to deliver any instalment shall not entitle the Customer to treat the Contract as repudiated.

## 4. Insurance

The Company will at the request of Export Customers, arrange marine insurance of the Goods and report shipment of the Goods to the insurers but shall not be liable for any negligence or otherwise for any error in complying with such request or omission to do so.

## 5. Price

The price shall be the price in force at the time of delivery and the Company's current price list does not constitute an offer to sell at the prices set out therein. The Company reserves the right to apply a minimum charge on small value orders, and to vary the prices in the Company's price List where the exchange rate between sterling and the currency in which the price is to be paid varies by more than five per cent. between the date of publication of such price list and the date on which the Goods are delivered. The price for the Goods is exclusive of any value added tax or any other applicable tax which the Customer shall pay in addition when it is due to pay for the Goods.

## 6. Force Majeure

The Company shall not be liable to the Customer or deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations if the delay or failure was due to any cause whatsoever beyond the Company's reasonable control (including, without limitation those arising from strikes, lockouts or any other industrial dispute or from Act of God, War, National or Local Government restriction, prohibition or control, fire, flood or accidents). In the event that such circumstances last for a period in excess of one hundred and eighty (180) days, the Company shall have the right to terminate the Contract.

## 7. Packing

Unless otherwise stated prices quoted include non-returnable packing. Returnable containers will be charged for if they are not returned carriage paid and in good condition within thirty (30) days of delivery; the Company must be notified of the return at the date of despatch by the Customer.

## 8. Payment

a) EU Customers

The Company's payment terms are net cash with order. Unless otherwise agreed by the Company in writing, payment is due net cash four (4) weeks from the date of invoice.

b) Non EU Customers

Orders from Customers outside the European Union are accepted subject to either of the following modes of payment having been arranged;

i) net cash with order, or

ii) deposit at a bank nominated by the Company, of an irrevocable documentary credit of a first class bank, or a Non EU bank bearing the confirmation of a first-class London bank;

unless other payment terms shall first have been agreed by the Company.

c) Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.

d) The Customer shall make all payments due under the Contract without any deduction, whether by way of set-off, counterclaim or otherwise, unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

e) If the Customer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) the Company may charge the Customer interest (both before and after judgment) on the amount unpaid at the annual rate of three per cent (3 %) above the base rate from time to time of Barclays Bank plc and/or suspend further deliveries of the Goods until payment is made in full.

## 9. Licences

a) The Customer is responsible for obtaining all document, licences and authorisations 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 authorisations referred to in this Condition 9.

b) 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

obtaining a licence or Government clearance as necessary.

#### 10. Description and specification

Whilst every effort is made to ensure accuracy the descriptions, illustrations and material contained in any catalogues, price lists, brochures, leaflets or other descriptive matter represent the general nature of the items described therein but do not form part of the Contract or amount to any representation or warranty and should be relied upon only in the exact circumstances in which they are expressed but otherwise they are excluded from the contract. The Company reserves the right to modify the design of Goods without notice.

#### 11. Warranty

a) 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 issuing 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.

b) The Company shall incur no liability under this warranty:

i) unless the Company is notified in writing within seven (7) days of the discovery of any defects by the Customer;

ii) 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;

iii) for any transport, installation, removal, labour or other costs;

iv) 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;

v) 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;

vi) if the Customer alters or repairs the Goods without the written consent of the Company; or

vii) if the defect in such Goods arises from any design defect in any drawing, design of specification supplied or approved by the Customer.

c) The Company is unable to warrant the suitability or fitness for any particular purpose or use of the Goods. In particular, but without limiting the generality of the foregoing, Goods for aeronautical

applications may only be from a supplier who has the appropriate CAA approval. If Goods are required for aeronautical use this should be disclosed to the Company by the Customer.

#### 12. Limitation of Liability

a) The following provisions and the provisions of condition 10 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

i) any breach of these terms and conditions; and

ii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

b) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract; except that the Customer retains the benefit of the statutory conditions and warranties in Section 13 to 15 of the Sale of Goods Act 1979.

c) Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

The Customer's attention is in particular drawn to the provisions of condition 12(d):

d) Subject to conditions 12(b) and 12(c)

i) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price of the Goods, subject to price revisions;

ii) the Company shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for any indirect or consequential loss or damage (whether for loss of profit, loss of business, increased production costs, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether or not caused by the negligence of the Company, its employees, agents or sub-contractors) which arise out of or in connection with the Contract.

#### 13. Special material and products

Where Goods are manufactured specially to the Customer's specification, it is a condition of sale that the Company reserves the right to deliver, and charge for, 10 per cent (10 %) more or less than the quantity ordered. Unless otherwise agreed in writing the Company does not accept any restriction of its rights to manufacture, sell or offer any other customers, goods which may be manufac-

tured specially for a specific customer or customers or goods of like pattern.

In the case of such goods manufactured specially to the Customer's specification the Customer shall indemnify the Company against all losses and damages awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any person with results from the Company's use of the Customer's specification.

#### 14. 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 licence or other right of manufacture of the Goods.

#### 15. Legal Construction

These conditions and the Contract shall in all respects be construed and operate in accordance with English Law and the parties hereto submit to the exclusive jurisdiction of the English courts.

#### 16. 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.

#### 17. General

a) The Company employees or agents are not authorised to make any representations or give any advice or recommendations concerning the goods unless confirmed by the Company in writing. Without prejudice to condition 12(c), when entering into any contract the Customer acknowledges that it does not rely on and waives any claims for breach of, any such representation, advice, or recommendation which are not so confirmed.

b) The Company shall, without prejudice to any other right or remedy available to it, be entitled to terminate the Contract or suspend any further deliveries under Contract without any liability to the Customer, or if Goods have been delivered and not paid for immediately demand payment of the price due, in any of the following circumstances:

i) The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation or has passed a winding-up petition or ordered against it a winding up order (other than for an amalga-

mation or reconstruction); or

ii) An encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Customer; or

iii) The Customer ceases, or threatens to cease, to carry on business; or

iv) The Company reasonably apprehends that any of the events mentioned above are about to occur.

c) The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

d) Any notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing and addressed to the other party at its registered office or principal place of business. Any notice delivered personally shall be deemed received when delivered; any notice sent by fax shall be deemed received on despatch (provided the normal answer back shall have been received); any notice sent by first class post shall be deemed to be received forty eight (48) hours after posting: PROVIDED ALWAYS, that where delivery occurs after 4 pm or occurs on any day other than a normal working day such notice shall be deemed to have been received at 9 am on the next working day.

e) Each right or remedy of the Company under this Contract is without prejudice to any other right or remedy of the Company whether under this Contract or not.

f) Failure by the Company to enforce or partially enforce any provision of this Contract will not be construed as a waiver of any of its rights under this Contract.

g) This Contract is personal to the Customer who may not assign, license or sub-contract all or any of its rights or obligations under this Contract without the Company's prior written consent. The Company may assign, license or subcontract all or any part of its rights or obligations, including receivables, under this Contract without the Customer's consent.

h) The parties acknowledge and agree that the Company sells Goods as principal only, to the intent and with the effect that no other person or persons shall have any rights or obligations, or be entitled to sue or be sued, under the contracts it enters into.

i) Save as expressly provided for, nothing in this Contract shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999 or any equivalent statute or rule of law in any jurisdiction.

j) This Contract shall be governed by and construed in accordance with the laws of England and Wales.