

# Terms and Conditions of Purchase

## 1. General

1.1 "NSK" shall mean NSK Steering Systems France S. A. S. or any affiliated company named on the relevant Order. "Supplier" shall mean the person, entity or company receiving the order (whose name is stated on the order). "Contract" shall mean the agreement between NSK and the Supplier for the sale and purchase of any products, material and/or services ("Goods") in accordance with an instruction from NSK (an "Order").

1.2 These Terms and Conditions of Purchase shall form an integral part of any Order and/or Contract. They shall in particular also apply to any future Orders or Contracts even if not expressly agreed upon, again.

## 2. Orders

2.1 Orders made by NSK by whatever means will be valid only if signed by an authorised signatory of NSK, or authorised electronically.

2.2 The acceptance of the Order must be notified to NSK by completing the attached acknowledgment form and returning the same to NSK. Notwithstanding the foregoing 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 of all its terms and conditions.

2.3 These terms and conditions are the only conditions upon which NSK is prepared to deal with the Supplier and they shall govern any Order or Contract to the entire exclusion of all other terms and/or conditions except where a framework purchase agreement has been concluded between the Parties in which case such framework purchase agreement shall take precedence over these terms and/or conditions. No terms and/or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract, even if NSK has not expressly objected to their application. The Supplier waives any right which it otherwise might have to rely on such terms and/or conditions. Any reference below or overleaf to such documents will not be deemed to imply that any terms and/or conditions endorsed upon, delivered with or referred to in such documents will have effect to the exclusion or amendment of the Contract terms.

2.4 No alteration or amendment to an Order or Contract shall be recognised unless confirmed in writing by an authorised signatory of NSK.

## 3. Title

The property of the Goods shall pass to NSK upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to NSK once payment has been made and the Goods have been appropriated to the Contract. Risk in the Goods shall pass to NSK upon delivery to NSK in accordance with the Contract.

## 4. Delivery & Delays

4.1 The Goods must be delivered, services provided or work carried out, as the case may be, in the quantities (or at the rates), at the times and to the locations stated in the Order or specified in any other instruction given by NSK.

4.2 NSK reserves the right to cancel an Order either wholly or in part without liability if delivery is not effected or if the work is not completed within the time stated or any agreed

extension thereof.

4.3 NSK shall be entitled to cancel the Order and any Contract made in respect of all or part only of the Goods by giving notice to the Supplier at any time prior to delivery or performance, in which event NSK's sole liability shall be to pay to the Supplier the price for the Goods in respect of which NSK as exercised the right of cancellation, less the Supplier's net saving of costs arising from cancellation.

4.4 Time of delivery of the Goods and of performance of any services to be provided is of the essence of the Contract.

4.5 If the Goods are to be delivered or performed by instalments then the Contract will be treated as a single contract and not severable.

4.6 NSK shall not be obliged to return to the Supplier any packaging in or packing materials for the Goods, whether or not any Goods are accepted by NSK.

4.7 The Supplier shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

4.8 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, NSK reserves the right to:

4.8.1 cancel the Contract in whole or in part;

4.8.2 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

4.8.3 recover from the Supplier any expenditure reasonably incurred by NSK in obtaining the Goods in substitution from another supplier; and

4.8.4 claim damages for any additional costs, loss or expenses incurred by NSK which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

4.9 NSK shall be deemed to have accepted the Goods unless NSK has notified the Supplier of a defect within five (5) working days following delivery. This shall not apply with respect to any latent defect which could not be identified during the inspection and only becomes apparent later. Any latent defect in the Goods must be notified to the Supplier, without undue delay after it has become apparent. Otherwise NSK shall be deemed to have accepted the Goods also with respect to such latent defect.

4.10 No Goods supplied under the Contract earlier than the date for delivery set out in the Contract will be accepted or paid for unless NSK notifies the Supplier of its intention to accept the same. Until completion of delivery, the Goods shall remain at Supplier's risk and may be returned to the Supplier at the Supplier's risk and expense.

4.11 The Supplier shall supply NSK on delivery of the Goods with all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair for NSK to accept delivery of the Goods.

4.12 The Supplier is responsible for obtaining all necessary export and import licences and will be responsible for any delays due to such licences not being available when necessary.

4.13 If a carrier is specified in the Order the carrier is deemed to be an agent of the Supplier and not NSK.

## 5. Drawings, Specifications, Tooling, etc.

5.1 All drawings and specifications in respect of the Order shall be to the latest issue level at the time of placing the order.

5.2 The Supplier shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

5.3 The Supplier acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and NSK shall be entitled to reject the Goods if they are not in conformance with the Contract, however slight the breach may be.

5.4 The Goods shall be marked in accordance with NSK's instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition in the ordinary course.

5.5 All drawings, specifications, patterns, tools, free issue materials and other documents or things supplied or fully or in part paid for by NSK and any and all intellectual property rights therein shall be identified as NSK's property and unless otherwise agreed remain or become the property of NSK. They shall be returned to NSK in good condition immediately upon request. If NSK request the NSK trademark to be applied to any of the Goods, the Supplier must comply fully with the specific provisions provided by NSK for the use of such trademark. The Supplier must obtain approval, before applying the NSK trademarks to Goods.

5.6 The Supplier will not without the prior authority of NSK sell, hire, use or otherwise dispose of, to or for any other person, any Goods manufactured by the Supplier to NSK's designs, drawings or specifications based upon them, or any tooling designed for use in their manufacture (such designs, drawings, specifications or tooling referred to as "Tools") and the Supplier shall refer to NSK all enquiries received for the Tools. In addition, the Supplier shall ensure that the Tools are maintained in good condition and shall replace any such Tools, or part thereof, lost or damaged and shall adequately insure against loss or damage thereof. The Supplier shall deliver up to NSK forthwith upon NSK's request any Tools in its possession or control. The Supplier hereby waives any and all rights of lien or similar legal rights over any or all of the Tools in its control or possession.

5.7 Unless specified otherwise the contractual requirements of NSK Q 001 and NSK Q 002 Supplier Assurance Manuals shall apply.

5.8 All purchased materials used in parts 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 (see Glossary - Approved Materials). The Supplier shall also comply with the NSK Green Procurement Standard NSK E001 in the requirements for compliance of all products supplied to NSK.

## 6. Prices

The price of the Goods shall be that stated in the Order. If no price is stated in the Order, the price of the Goods shall be the lower of the prices last

charged by the Supplier to NSK prior to the Order and the lowest prevailing market price applicable on the date of the Order. Unless otherwise agreed, price includes delivery to the works concerned together with all costs of packaging and insurance and any value added tax or similar taxes, levies or duties. The price shall be fixed and not capable of increase (whether on an account of increased material, labour or transport costs or fluctuations in exchange rate or otherwise).

## 7. Excess/Shortfall on Orders

7.1 Unless previously authorised, no quantity or Goods produced or work done in excess of that specified in the order will be paid for. Excess Goods will remain at Supplier's risk and may at any time be returned to the Supplier at the Supplier's risk and expense.

7.2 Where the quantity of Goods produced or work done is less than that specified in the Order the Supplier shall be deemed to be in breach of the Contract and shall pay to NSK as damages for the breach all costs and expenses incurred by NSK as a result thereof and in particular but without prejudice to the generality of the foregoing all sums expended by NSK in securing alternative supplies of any or all of the Goods and services and any loss suffered by NSK as a result of delays in their production.

## 8. Insurance

8.1 Unless otherwise agreed all Goods in transit shall be insured by the Supplier at the Supplier's cost.

8.2 NSK may, at its option, call for the assignment of such insurance.

## 9. Inspection

9.1 NSK reserves the right at any time during normal business hours to inspect Goods under this Order but such inspection shall not relieve the Supplier of any obligation and/or responsibility under the Order and all Goods delivered and all work done must be strictly to the quality required and in complete accordance with specifications or samples furnished by NSK or relating to the Goods to be supplied by the Supplier or, in the absence of such specifications or samples, be the best of their respective kinds.

9.2 Any inspections pursuant to Sec. 9.1 shall be at the Supplier's expense.

9.3 Any Goods or work done which fails to pass NSK's inspections will be liable to rejection. Rejected Goods will at NSK's option be held at the Supplier's risk at the place of delivery or returned to the Supplier at the Supplier's risk and expense.

9.4 Rejected Goods shall be credited in full to NSK and not replaced unless a further Order is placed by NSK. Defective works shall at NSK's option be removed or redone by the Supplier or retained by NSK and any loss or expense incurred by NSK in having such defective works redone by others or in bringing such defective works up to the standard required shall promptly be met by the Supplier.

9.5 If as a result of any inspection or testing by NSK prior to delivery or performance NSK is not satisfied that the Goods will comply in all respects with the Contract then, without prejudice to any other right or remedy that NSK may have, NSK shall be entitled to inform the Supplier who shall take such steps as deemed necessary in order to ensure compliance with the terms of the contract.

## 10. Supplier's Warranty and Indemnity

10.1 The Supplier warrants that all Goods supplied and works done under the Order or, respectively, under the Contract:

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10.1.1 are fit and sufficient for their intended purpose or any reasonably apparent or obvious purpose;

10.1.2 are of satisfactory quality and free from defects, where patent or latent, in both material and workmanship;

10.1.3 are so designed and constructed as to be safe and without risk to health when properly used and are supplied with adequate information as to the use for which they were designed;

10.1.4 will be performed by appropriately qualified and trained personnel, with due care and diligence to such high standard of quality as is reasonable for NSK to expect in all the circumstances; will correspond with any relevant specification or sample;

10.1.5 will comply with all statutory requirements and regulations relating to the manufacture, sale and use of the Goods.

10.2 The benefit of this warranty together with any other warranty made by the Supplier or on his behalf or as may be implied by law shall pass to NSK, its successors, assigns and/or to persons to whom the articles or other Goods incorporating the same may pass or be resold.

10.3 The Supplier warrants that any information supplied to NSK (whether in writing, electronically or otherwise) in connection with the Order is complete and accurate.

10.4 The Supplier shall indemnify and keep indemnified NSK in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by NSK as a result of or in connection with:

10.4.1 breach of any warranty given by the Supplier in relation to the Goods supplied or work done by the Supplier, unless the Supplier is not responsible for the breach of duty (*kein Vertretenmüssen*);

10.4.2 any claim made against NSK in respect of any liability, loss, damage, cost or expense sustained by NSK's employees or agents by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods supplied or work done by the Supplier, unless not within the Supplier's responsibility (*kein Vertretenmüssen*); or

10.4.3 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivery and installing the Goods or carrying out work in accordance with the Contract, unless the Supplier is not responsible for the act or omission (*kein Vertretenmüssen*).

## 11. Remedies

Without prejudice to any other right or remedy which NSK may have, if any Goods are not supplied in accordance with any of the terms of the Contract, NSK shall be entitled to any one or more of the following remedies, whether or not any part of the Goods have been accepted by NSK:

11.1 to rescind the Order;

11.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

11.3 at NSK's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacements Goods and carry out any other necessary work to ensure that the terms of the Contract are

fulfilled;

11.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier; and

11.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract.

## 12. Confidential Information

The terms of all Orders and/or Contracts are strictly confidential and shall not be used for the benefit of the Supplier, except for the purpose of any Contract, or of any third party or disclosed in any way to any third party. The same applies to any information supplied under any Order and/or Contract or derived therefrom, unless such information is or becomes available in the public domain or generally at the time the Supplier was provided with such information (except by reason of any breach of any Contract).

## 13. Invoices

13.1 Except where the price has not been agreed at the date of despatch (in which case an invoice must be sent as soon as the price has been agreed) an advice note and priced invoice each showing NSK's order number in full must be sent to NSK within three days after despatch of the Goods and not in advance of despatch of the Goods.

13.2 Unless otherwise agreed between the parties NSK shall pay the price of the Goods in the currency stated in the Order according to the payment terms agreed with the Supplier. If no payment terms have been agreed NSK shall pay within 60 days of receipt by NSK of a proper invoice, or if later, after acceptance of the Goods in question by NSK. NSK reserves the right to make consolidated payments in respect of any two or more invoices.

13.3 A Statement of Account must be sent to NSK not later than the sixth day in each month otherwise payment may be delayed.

13.4 NSK shall be entitled to set off against the price any sums owed to NSK, or any company within the group of companies in which NSK forms part, by the Supplier.

13.5 NSK shall also be entitled to use any sums owed to it to make deductions and withholdings from disputed invoices.

13.6 No payment of or on account of the contract price shall constitute any admission by NSK as to the proper performance by the Supplier of its obligations.

13.7 If NSK fails to make payment agreed under the Invoice on the due date then (without prejudice to its other rights and remedies), the Supplier may charge NSK interest 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 until payment is made in full.

## 14. Intellectual Property Rights

14.1 The Supplier warrants that the Goods and parts may be sold anywhere in the world without infringing any patent, trade mark, registered design, copyright, unregistered assign, service marks or other intellectual or industrial property right.

14.2 The Supplier will indemnify NSK from and against any judgements, damages, decrees, costs and expenses paid or incurred by NSK resulting from any infringement or alleged infringement stipulated in section 14.1, and the Supplier shall upon receipt of a request from NSK and at the Suppliers own expense defend or assist in the defence of any

action which may be brought against NSK.

14.3 If NSK requires the Supplier to produce Goods according to NSK's specifications, all intellectual property rights in such Goods and associated drawings and documentation will remain the property of NSK.

## 15. Variation

15.1 NSK reserves the right to require changes in:

15.1.1 the designs and/or the specifications applicable to the Goods and/or the services covered by the purchase order;

15.1.2 the method of shipment and packing;

15.1.3 the place of delivery;

15.1.4 the quantity of Goods to be delivered.

15.2 If any changes affect the time for performance, the cost of manufacture or the cost of finishing the services, NSK shall make equitable adjustments of the cost of the delivery schedule or time.

15.3 The Supplier shall not make any changes in the design or composition of any Goods ordered hereunder without NSK's written consent.

## 16. Force Majeure

NSK reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control.

## 17. Termination

NSK shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier if at any time:

17.1 the Supplier commits a breach of any of the terms and conditions of the Contract;

17.2 any distress, execution or other legal process is levied upon any of the assets of the Supplier;

17.3 the Supplier enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court for its winding up or the appointment of an administrator, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the Supplier's undertaking or assets;

17.4 the Supplier ceases or threatens to cease to carry on its business;

17.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of NSK the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

17.6 NSK reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier.

## 18. Non-assignment

The Supplier shall not without NSK's prior consent assign, transfer, or sub-contract to any third party this Order or any benefit or obligation hereunder except as may be necessary in the normal course of business. In all circumstances the Supplier remains personally responsible for the due fulfilment of this Order.

## 19. Anti-Bribery

The Supplier shall comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the UK Bribery Act 2010 and any applicable European Union

Directives. The Supplier shall also comply with NSK's codes and policies on business ethics, interests in transactions and corporate hospitality, and any updates thereof as communicated to the Supplier from time to time. Any breach of this clause shall be deemed a material breach under this Contract.

## 20. Health and Safety

In any situation where the Supplier or any of its employees, agents, servants or contractors are on any premises owned or controlled by NSK for any purposes relating to the supply of the Goods then the Supplier shall:

20.1 procure that any such employees, agents, servants and contractors comply with all security, health, safety, confidentiality and other rules and regulations which apply to or are in force on such premises; and

20.2 remain responsible for satisfying itself that all laws, rules and regulations relating to any of the Supplier's activities carried out on the said premises as they relate to the supply of the Goods are being complied with by it and its employees, agents, servants and contractors.

20.3 The Supplier must comply with all obligations and duties imposed on it by the German Working Conditions Act (*Arbeitsschutzgesetz*) or, as the case may be, any equivalent laws applicable to the Supplier, and any subsequent amendments, in the manufacture of the Goods.

## 21. Applicable Law

The contract shall be construed and operated exclusively in accordance with the laws of Germany excluding the UN-Convention on Contract for the International Sale of Goods (CISG). The Supplier hereby submits itself to the exclusive jurisdiction of the German Courts.

## 22. General

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

22.2 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 principle place of business. Any notice delivered personally shall be deemed received when delivered; any notice sent by express post shall be deemed to be received 48 hours after posting; provided always that where delivery occurs after 4pm or occurs on any day other than a normal working day in Germany such notice shall be deemed to have been received at 9am on the next working day.

22.3 The Contract is personal to the Supplier and the Supplier shall not assign or transfer or purport or assign to transfer to any other person any of its rights or subcontract any of its obligations under the Contract without the prior consent of NSK.

22.4 No waiver by NSK of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

22.5 Each right or remedy of NSK under the Contract is without prejudice to any other right or remedy of NSK whether under the Contract or not.

22.6 Failure of NSK to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.