

NGK Ceramics South Africa (PTY) LTD

TERMS AND CONDITIONS OF PURCHASE

1. **SCOPE:** The terms and conditions specified herein shall apply to all NGK Ceramics South Africa (Pty) Ltd purchase orders.
2. **DEFINITION:** The term "Buyer" shall refer to NGK Ceramics South Africa (Pty) Ltd, also hereinafter referred to as 'ACS' pursuant to the context thereof. The term "Seller" shall refer to the vendor, contractor, manufacturer, agent, service provider or rental agent designated on the face of any ACS purchase order, and shall also include subcontractors, independent contractors and all other classes of persons performing any kind of work under such official ACS purchase order. Reference to "products" herein shall include, without limitation, goods, services, rentals, work and data, ordered in terms of any ACS purchase order, or any part hereof.
3. **OFFER TO PURCHASE:** ACS purchase orders constitute an offer by Buyer to buy from Seller and become a binding contract on the terms set forth herein when accepted by Seller either by acknowledgement or the commencement of performance. ACS purchase orders can be accepted only in accordance with the terms hereof or upon written acceptance of changes or additional terms by Buyer. If the price is omitted, the ACS purchase order is to be executed at the lower of the price last quoted or charged or at the lowest prevailing market price. No changes will be allowed to any ACS purchase order.
4. **DELIVERY:** A packing slip and/or delivery note must accompany each shipment/delivery that includes the ACS purchase order number, quantity and description of the product shipped/delivered. Buyer's count of the quantity of the products shall be accepted as final and conclusive. No charge shall be allowed for boxing, packing or crating without the prior written authorisation of Buyer.
5. **TIME:** For all ACS purchase orders, time is considered to be of the essence and if products are not delivered within the time specified in any such orders, or within a reasonable time if no time is specified, Buyer may either (a) cancel such orders and refuse to accept such products or (b) purchase like products elsewhere and charge Seller with any additional costs and losses incurred as a result, or (c) cause Seller to ship products by the most expeditious means of transportation. Any additional costs

in excess of those which would apply for the usual means of transportation shall be for the account of Seller.

6. **FREIGHT: TITLE AND RISK OF LOSS.** (a) Unless otherwise specifically provided on the face of the applicable ACS purchase order, the goods shall be delivered on a Delivered Duty Paid (DDP) basis, as defined in the International Chamber of Commerce's Incoterms 2000, to Buyer's destination specified on the face of such orders. Any freight charges invoiced to Buyer, either by Seller or the carrier, will be charged back to, and paid by Seller. If the face of such orders designate an Ex-Works or FCA Incoterm, Buyer will be responsible for freight charges to the destination designated on the face hereof. Any costs incurred by Buyer as a result of Seller's failure to comply with Buyer's routing instructions shall be borne by Seller. (b) Notwithstanding any prior inspections, and irrespective of the Incoterm named on any ACS purchase orders, Seller shall bear all risks of loss, damage and destruction to the goods until final acceptance by Buyer at the destination specified on the face of such orders, unless otherwise agreed to in writing by Buyer and Seller. Further, Seller shall bear the same risks with respect to any goods rejected by Buyer or as to which Buyer has revoked its acceptance, from the time of such rejection or revocation. Title to and risk of loss of the goods shall pass to Buyer upon final acceptance.
7. **QUALITY:** Seller warrants that products delivered/provided in terms of any ACS purchase orders shall conform to the descriptions and specifications set forth or referred to therein, shall be of merchantable quality, shall be free from defects in workmanship, material and design and shall be fit for any use intended by the Buyer which the Seller has reason to know. This warranty is in addition to any warranties implied by law. Should any product ordered under any ACS purchase order be defective (whether defective in material, workmanship or design) within one (1) year from the date it is placed in operation, Seller shall, at its sole expense, replace that product. This warranty does not constitute a waiver of any other rights of Buyer express or implied, and shall accrue to Buyer, its customers and users of its products and shall survive inspection and acceptance.
8. **QUANTITY:** Products shipped in excess of the quantities designated in any ACS purchase order may be returned at Seller's expense.
9. **INSPECTION:** Buyer shall have THIRTY (30) days after receipt of the products to accept or reject the products delivered under any ACS purchase order. Acceptance of any non-conforming shipment under any ACS purchase order shall not be deemed a

waiver by the Buyer of its right to require that future shipments be in accordance with the terms of any ACS purchase order.

10. **INVOICES AND PAYMENT:** Invoices shall be submitted in duplicate and shall contain the following information: Purchase order number, item number, description of products (including sizes and quantities) unit prices, and totals in addition to any other information specified elsewhere herein. Payment of an invoice shall not constitute acceptance of products and shall be subject to adjustment for errors, shortages, defects in the products, or any other failure of Seller to meet the requirements of any ACS purchase order. Payment due dates, including discount periods, will be computed either from the date of receipt of all products or the date of receipt of correct invoice, whichever is later. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller to Buyer or any of its affiliated companies.
11. **RISK OF LOSS:** Seller assumes the following risks: (a) all risks of loss or damage to all products and to third parties and their products until delivery thereof as herein provided; (b) all risks of loss or damage to any property received by Seller, from or held by Seller or its supplier, for the account of the Buyer until such property has been delivered to Buyer; and (c) all risks of loss or damage to any of the products or part thereof rejected by Buyer, from the time of shipment thereof to Seller.
12. **CHANGES:** Buyer may, by written notice, make changes within the general scope of any ACS purchase order to drawings and specifications, shipping and packing instructions and place of delivery, by cancelling the original purchase order and the substitution thereof with a new purchase order. Should any such change materially increase or decrease the cost of, or the time required for performance, an equitable adjustment in the price and/or delivery schedule will be made including an allowance for obsolescence, rework or scrap page, but only for materials being processed within the Sellers normal manufacturing cycle required to meet the delivery schedule. Any claims by Seller for such adjustment must be asserted in writing within fifteen (15) days from the date the change was ordered, or within such other period of time as may be agreed upon in writing. Failure to agree on any claim for equitable adjustment under this clause shall be deemed to be a dispute and the Buyer and/or Seller may thereupon pursue any remedy which it may have in any tribunal of competent jurisdiction. Pending the resolution of any such dispute, the Seller shall diligently perform any ACS purchase order, as substituted.

13. **TERMINATION:** Buyer may terminate any purchase order for its convenience at any time in whole or in part as to undelivered products, in which event Buyer and Seller will negotiate an equitable settlement payment for the terminated portion consisting of Seller's cost to date of termination, including an allowance for obsolescence, rework or scrap page, but only for materials being processed within Seller's normal manufacturing cycle required to meet the delivery schedule. Buyer shall have the right to acquire any inventory relating to any ACS purchase order in the hands of Seller at the time of termination. Service or rental agreements may be terminated by the buyer for convenience upon 30 days written notice, which notice shall be mailed or faxed to Seller' office. No cancellation penalty will be allowed unless entered on the face of the ACS purchase order.
14. **EXCUSABLE DELAYS:** Neither party shall be liable for damages for delay in delivery arising out of causes beyond its control and without fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, earthquakes, volcanic eruptions, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, nor shall such delay effect the remainder of contracts entered into and/or accepted purchase orders. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the control of both Seller and subcontractor, and without the fault or negligence of either of them, Seller shall not be liable to Buyer in damages unless the materials or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after the beginning of any cause for an excusable delay or such cause shall be deemed waived.
15. **DISCLOSURE OF ORDER:** Seller shall not, without the prior written consent of Buyer, in any manner advertise or publish the fact that Buyer has placed any ACS purchase order with Seller.
16. **BUYER'S INFORMATION:** Any specifications, drawings, sketches, models, samples, patterns, dies or other tools, technical information or data, and written, oral or otherwise (all hereafter called "Information"), furnished to or left with Seller by Buyer in contemplation hereof or in connection herewith shall remain Buyer's property. All copies of such information in written, graphic or other tangible form shall be returned to Buyer or destroyed by Seller, as Buyer specifies, but if not specified by Buyer, shall be returned to Buyer. Unless such information was previously known to Seller free of any obligation to keep it confidential, or has been subsequently made public by Buyer

or a third party, it shall be kept confidential by Seller and shall be used only for preparing quotations for or furnishing products to Buyer.

17. **SELLER'S INFORMATION:** No information furnished by Seller to Buyer hereunder or in contemplation hereof shall be deemed to be confidential or proprietary insofar as Buyer is concerned unless specifically agreed to by Buyer in writing.
18. **PATENTS:** Seller shall disclose and does hereby assign to Buyer all inventions, discoveries, techniques and processes resulting here from and does hereby grant Buyer the exclusive right to use for any purpose all data specified to be delivered hereunder.
19. **PATENT INDEMNITY:** Seller agrees to indemnify Buyer, its customers, and agents against liability, including costs and expenses, for or by reason of any actual or alleged infringement of any patent arising out of the manufacture, use, sale, delivery or disposal of the products furnished under any ACS purchase order and the cost of replacing such products with non-infringing goods. Buyer shall notify Seller, as soon as practicable, of any claim of infringement received by it.
20. **SUBCONTRACTING AND ASSIGNMENT:** Seller shall not subcontract for completed or substantially completed products called for by any ACS purchase order without the prior written consent of Buyer nor shall it assign any ACS purchase order or any part thereof without such written consent.
21. **INDEMNITY:** Seller agrees to indemnify, defend and hold Buyer harmless (including any company affiliated with Buyer) against all claims and liability, including any costs, attorneys fees and expenses, made by any person or persons, including but not limited to its employees, subcontractors and their employees, for injuries or death to persons or damage to or the destruction of property caused by or resulting from negligence, in whole or in part, of Seller, its agents or employees in the performance of any ACS purchase order. Seller shall further indemnify and hold Buyer harmless from all [labourers', material men's and mechanic liens] upon the property where the work is located arising out of the services, labour and materials furnished by Seller or any of its subcontractors under this agreement.
22. **NON-WAIVER:** Failure of the Buyer to insist upon strict and punctual performance of any terms and conditions herein shall not be deemed a waiver of any rights or remedies that Buyer shall have, and shall not estop Buyer from enforcing strict and punctual compliance with the terms and conditions hereof. Shipment or receipt of any article under an ACS purchase order shall not constitute a waiver of any right of the

Buyer hereunder or of any obligation of the Seller to comply with any of the provisions of any ACS purchase order.

23. **TAXES:** The prices for the products ordered shall include all taxes from which Seller cannot obtain exemption. The amount of any such taxes shall be shown separately on Seller's invoice.
24. **COMPLIANCE WITH LAWS:** Seller warrants that all products supplied hereunder are produced and priced in compliance with all South African laws and regulations established thereunder. Seller hereby certifies and agrees to certify on the face of all invoices if requested that: (a) all products covered hereby have been produced in compliance with the Labour Relations Act of 1995 as amended, and all regulations and orders thereunder; (b) such products are priced in accordance with the Competition Act of 1998 as amended; (c) the products and all work performed are in accordance with all requirements of the Occupational Health and Safety Act of 1993 as amended, and all regulations and rules thereunder and will indemnify and hold Buyer harmless from all liability, losses and damages (including penalties thereon) arising from the failure of the material to meet such and (d) such other compliance as Buyer may reasonably request.
25. **INSOLVENCY:** Buyer may forthwith cancel the contract resulting from the acceptance of any ACS purchase order in the event of the happening of any of the following, or of any other comparable events: insolvency of the Seller; steps being taken for the compulsory or voluntary winding-up of the Seller; the appointment of an administrator; or the execution by Seller of an assignment for the benefit of creditors.
26. **TOXIC SUBSTANCES:** Seller warrants that any chemical substance, sold or otherwise furnished by Seller to Buyer, conforms with all relevant requirements set out in environmental legislation.
27. **ENVIRONMENTAL RESPONSIBILITY:** Seller warrants that any facility to be utilised in the performance of any ACS purchase order does not violate any environmental legislation.
28. **ENTIRE AGREEMENT:** These terms and conditions, together with any ACS purchase order (including any specifications, schedules, exhibits or amendments which may be referred to therein or attached thereto by Buyer), when accepted by Seller, are the entire agreement of the parties, and supersede any and all prior or contemporaneous oral or written communications relating to its subject matter and may not be orally modified. Any shipment of products or performance of services by Seller shall be

deemed to be only upon the terms and conditions contained herein, except as Buyer may expressly consent in writing to such modifications or alterations.

29. **APPLICABLE LAW:** All ACS purchase orders as accepted by Seller shall be governed by the laws of South Africa.