

## **General Terms and Conditions for the Sale of Goods**

### **NGK Ceramics South Africa (PTY) LTD**

**(September 1<sup>st</sup>, 2006)**

#### **1. List of Definitions:**

**Agreement:** date of the acceptance of Seller's offer by the Buyer.

**Buyer:** the party who intends to buy Goods from Seller.

**Delivery Date:** Time of Delivery as agreed in the Sales Contract.

**Seller:** NGK Ceramics South Africa (Proprietary) Limited.

**Goods:** all production materials and automotive components specified in the offer of the Seller.

**Incoterms:** trade terms published by the International Chamber of Commerce and entitled Incoterms 2000.

**Parties:** Seller and Buyer together.

**Party:** Seller or Buyer as the case may be.

**Sales Contract:** the agreement formed by Seller's offer and the Buyers acceptance of the Goods.

#### **2. General**

The terms and conditions set out below shall form part of the Sales Contract concluded between Seller and Buyer. The terms and conditions shall apply to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such action.

The Seller hereby objects to any counter confirmation, counter offer or other reference by the Buyer to its general terms and conditions; any dissenting terms and conditions of the Buyer shall only apply when confirmed by the Seller in writing.

#### **6. Duty to inspection and objection**

Upon taking possession or upon delivery at the agreed destination, the Buyer shall immediately examine the Goods. The Buyer shall specifically check quantities, weight and packaging and record any objections thereto on the delivery note. The Buyer shall also conduct a quality check on the Goods. In case of a notice of defect the Buyer shall notify the Seller immediately in written form. Any good to which objections shall not have been raised shall be regarded as approved and accepted.

#### **7. Warranty, Limitation of Liability**

The warranty of NGK is limited to the compliance with the agreed product specifications.

Upon justified objections which have been raised in accordance with the procedures and deadlines hereunder, the Buyer shall have the right to claim a reduction in the purchase price which shall be without prejudice to the Seller's right, to provide the return of the objected goods.

The Buyer shall not be entitled to any further rights or remedies.

#### **8. Retention of Title**

The Seller shall retain full title of the Goods that have been delivered until the Buyer has settled the purchase price in full arising from the Sale Contract and which shall include any other outstanding account balances.

The Buyer shall be entitled to resell or use the Goods in the ordinary course of business. The authority granted hereunder shall cease if the Buyer is in breach of any

### 3. **Prices: Terms of Payment**

The prices shall exclude any statutory VAT which shall be payable at the date of delivery.

If, as a result of a change of law between the Agreement Date and the Delivery Date, additional or increased charges – in particular duties, levies, currency compensation payments, are payable, then the Seller shall have the right to increase the purchase price accordingly.

The Buyer shall pay the price of goods within 30 days of the date of the Seller's invoice. If not otherwise agreed in writing, the Buyer is not entitled to any discount for prompt payment.

Payments shall either be made by bank transfer or by cheque, as specified by Buyer.

If the Buyer fails to make any payment on the due date, the Seller shall at his discretion be entitled to charge the Buyer interest on the amount unpaid, at the Prime Rate plus 2% charged by the Seller's bankers from time to time, until payment is made in full. On the happening of any *force majeure* event which shall include, without limitation, acts of seizure or a situation, where payments are delayed or even discontinued or insolvency proceedings have been petitioned or commenced against the Buyer, the Seller has the right to rescind the Sales Contract.

### 4. **Delivery**

If not otherwise agreed in writing, the Delivery of the Goods is affected *ex works* (Incoterm "EXW").

### 5. **Delay of Delivery**

Unless otherwise expressly agreed in writing, any indicated time of delivery shall not be binding on the Seller.

If any agreed time of delivery has lapsed without delivery of the Goods, the Buyer must specify to the Seller a reasonable

obligation owed to the Seller, in particular is in payment default or if the Seller becomes aware of other incidents that give rise to doubts about the Buyer's creditworthiness.

If the Goods are processed or reshaped by the Buyer, the Seller shall become owner of the processed or reshaped goods.

If the Goods are processed or reshaped by the Buyer and if processing is done with other goods that the Seller has no property in, Seller shall apply if Seller's Goods are inseparably mixed with other goods.

Where claims of the Seller are secured through the retention of title by more than 125%, any surplus of Goods delivered under the retention of title shall, upon demand of the Buyer, be released in accordance with the Seller's choice.

### 9. **Intellectual and Industrial Property Rights**

The Seller will indemnify the Buyer from and against all liabilities, costs, damages, claims and expenses that may be awarded or paid to any third party in respect of any claim or action that the Goods or their use by the Buyer infringe the intellectual Property Rights of such third party, if the Buyer has notified the Seller about such claims immediately after it has come to its attention and cooperates with the Seller in defending such claims. The Seller shall be released from any liability above to the extent that the Seller has manufactured the Goods in accordance with instructions received from the Buyer.

### 10. **Choice of Law, Place of Jurisdiction**

This Sales Contract shall be governed and construed in accordance with South African Law. The courts of the Seller's premises shall have jurisdiction over all disputes arising from this Sales Contract. However, the Seller shall have the right to bring a claim before a court at the Buyer's principal place of business or at his discretion before any other court being

cure period for delivery. If the Seller fails to meet such deadline due to its fault or responsibility, the Buyer shall have the right to rescind the agreement but shall have no right to seek compensation for breach of contract or default unless in cases of wilful misconduct or gross negligence on the Seller's part.

In case of delay of delivery, the Buyer shall not be entitled to recover from Seller losses of profit or losses of business interruption unless in cases of wilful misconduct or gross negligence on the Seller's part.

competent according to any national or international law.

The invalidity of any provision of these general terms and conditions of sale shall not affect the validity of the other provisions, invalid provisions shall be deemed to be replaced by such valid provisions that are suitable to implement the economic purpose of the deleted provision to the greatest extent possible.