

General Terms and Conditions for the Sale of Goods
NGK Europe GmbH
(January 1st, 2022)

1. List of Definitions:

Seller: NGK Europe GmbH, Westerbachstraße 32, D-61476 Kronberg, Germany

Buyer: The party who intends to buy Goods from Seller

Delivery Date: Time of delivery as agreed in the Sales Contract

Goods: All production materials and automotive components specified in the offer of the Seller

Incoterm: Incoterms® 2020 published by the International Chamber of Commerce

In Writing or Written: Signed by both Parties

Parties: Seller and Buyer together

Party: Seller or Buyer respectively

Sales Contract: Contract concluded by concurrent declarations of both Parties (offer and acceptance)

HGB: German Commercial Code – Handelsgesetzbuch

BGB: German Civil Code – Bürgerliches Gesetzbuch

2. General

2.1. 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 terms shall only apply towards entrepreneurs as defined in Sec. 14 BGB.

2.2. Seller hereby objects to any counter confirmation, counter-offer or other reference made by Buyer to his general terms and conditions; any dissenting terms and conditions of Buyer shall only apply when expressly confirmed by Seller in writing. The terms and conditions set out below shall also apply if Seller performs delivery despite his knowledge of differing or contrary terms.

3. Prices and Terms of Payment

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

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

3.3. Buyer shall pay the price of Goods within 30 days of the date of Seller's invoice. If not otherwise agreed in Writing, 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.

3.4. If Buyer fails to make any payment on the due date, Seller shall at his discretion be entitled to charge Buyer interest on the amount unpaid, at the rate of 9 per cent per annum above the European Central Bank reference rate from then being valid, until payment is fully made. Notwithstanding the foregoing, Seller reserves the right to claim further damages for delay. Seller reserves the right to postpone further deliveries to the Buyer in case the Buyer is more than insignificantly in arrears.

3.5. If Buyer's business is operated beyond the ordinary course of business, 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 opened, Seller has the right to rescind the Sales Contract.

4. Delivery

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

5. Delay of Delivery

5.1. Unless otherwise expressly agreed in Writing, any indicated time of delivery shall be non-binding.

5.2. Seller's delivery obligation shall always be subject to timely and orderly receipt of the products necessitated for Goods from Seller's own supplier.

5.3. Any inability to deliver as a result of force majeure or other unforeseen incidents outside Seller's responsibility, including, without limitation, pandemic situations (e.g. COVID-19 pandemic), strike, lock out, acts of public authorities, subsequent cease of export or import opportunities and Seller's reservation of timely supply from Seller's own supplies, shall, for their duration and in accordance with their impact, relieve Seller from the obligation to comply with any agreed time for delivery and/or unloading. Such inability to deliver shall entitle Seller also to withdraw from an agreed delivery which shall not result in any compensation claims of Buyer.

5.4. If any agreed time of delivery shall be exceeded and there shall be no incident referred to in subsection 5.3 above, Buyer must specify to Seller a reasonable cure period of minimum two weeks. If Seller also fails to meet such deadline, due to its fault or responsibility, 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 willful misconduct or gross negligence on Seller's part.

5.5. Buyer is aware that, due to global crises affecting the transport sector, such as the COVID-19 pandemic, bottlenecks are occurring in the area of logistics and that logistics companies are only liable to a fixed – therefor sometimes limited – amount due to the regulations applicable to them. Should any claims for damages arise against Seller due to delayed delivery by Seller, Seller reserves the right to assign its own claim for damages against carrier in whole to Buyer. Buyer hereby accepts this assignment on account of performance. Further claims for damages against the Seller arising from the delayed delivery shall be excluded after the assignment has been made. Notwithstanding the foregoing, Seller shall be liable for negligence regarding the proper selection of the carrier.

5.6. In case of delay of delivery, Buyer shall not be entitled to recover losses of profit or losses of business interruption from Seller unless in cases of willful misconduct or gross negligence on Seller's part. Should such a case occur, unless the default has not been caused by willful misconduct on Seller's side, the liability to compensation of damages shall be limited to predictable damage typically caused by such incident.

6. Duty to Inspection and Objection

- 6.1. Upon taking possession or upon delivery at the agreed destination, Buyer shall immediately examine Goods as required by German Law (Sec. 377 HGB) Buyer shall specifically check quantities, weight and packaging and record any objections thereto on the delivery note. Buyer shall also conduct a quality check representatively on a spot check basis.
- 6.2. In case of a objection, the Buyer shall notify Seller immediately in written form. Any goods to which objections have not been raised in accordance with the provision of Sec. 377 HGB, shall be regarded as approved and accepted.

7. Warranty

- 7.1. Precondition for any warranty claim of Buyer is Buyer's full compliance with all requirements regarding inspection and objection established by Sec 377 HGB.
- 7.2. Warranty claims shall be time-barred after 12 months of passing of risk.
- 7.3. Seller's warranty is limited to the compliance with the expressly agreed product specifications (Sec. 434 (1) 1 BGB). Upon justified objections which have been raised in accordance with the procedures and deadlines stipulated, 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 substitution of the objected Goods.

8. Liability

- 8.1. In case of intent or gross negligence on part of Seller, Seller shall be liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent that the breach of contract is unintentionally, Seller's liability for damages shall be limited to the typically predictable damage.
- 8.2. Seller's liability for culpable damage to life, body or health as well as Seller's liability under the German Product Liability Act shall remain unaffected.
- 8.3. If Buyer decides on a Product recall, Seller's liability shall be limited to the replacement (redelivery) of Seller's Products to the extent such replacement is mandatory. Any further participation of the Seller in the costs of the product recall is excluded.
- 8.4. Any liability not expressly provided for above shall be disclaimed.

9. Retention of Title

- 9.1. The Seller shall retain full title of the Goods that have been delivered until the Buyer has discharged all claims arising from the business relationship which include any account balance.
- 9.2. Buyer shall be entitled to resell or use Goods in the ordinary course of business. For this, the Buyer hereby assigns all claims arising from the resale or use under retention of title, whether the Goods have been processed or not, to the Seller. The Seller hereby accepts such assignment.
- 9.3. The authority granted hereunder shall cease in the case that Buyer's business is operated beyond the ordinary course of business. Moreover, Seller may withdraw the sales authority of Buyer through written notice if he is in breach of any obligation owed to Seller, in particular in payment default or

if Seller becomes aware of other incidents that give rise to doubts about the Buyer's creditworthiness. In this case, Seller also is entitled to take possession of Goods.

- 9.4. Buyer's right to process or reshape Goods delivered shall also be subject to the limitations mentioned before. If Goods are processed or reshaped by Buyer and if processing is done with other goods that Seller has no property in, Seller shall become owner of the processed or reshaped goods. Buyer shall not acquire title to the fully or partly processed or reshaped Goods. The processing shall be free of charge for the benefit of the seller as Manufacturer in the sense of Sec. 950 BGB. If Seller loses, for whatever reason, his right under the retention of title, then it is hereby agreed between Parties, that Seller shall acquire title upon processing of Goods and Buyer shall remain custodian of Goods, which shall be free of charge.
- 9.5. If Seller's Goods are inseparably mixed with other goods that are a third party's property, then Seller shall acquire co-title in the new goods or the mixed stock. Goods in which Seller acquires sole or co-title due to processing or mixing in accordance with this clause, shall be regarded the same as Goods delivered under retention of title.
- 9.6. Where claims of Seller are secured through the retention of title by more than 125 %, any surplus of Goods delivered under retention of title shall, upon demand of Buyer, be released in accordance with Seller's choice.

10. Intellectual and Industrial Property Rights

- 10.1. Seller will indemnify 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 Goods or their use by Buyer infringe the Intellectual Property Rights of such third party, if Buyer has notified Seller about such claims immediately after it has come to its attention and cooperates with Seller in defending such claims. In any case, the Buyer requires the prior written consent of the Seller for any settlement and/or payment. Any payment promised or made to third parties without such consent shall not cause any payment or compensation obligation of the Seller.
- 10.2. Seller shall be released from any liability above to the extent that Seller has manufactured the Goods in accordance with instructions received from Buyer.

11. Final Provisions, Choice of Law, Place of Jurisdiction

- 11.1. This Sales Contract shall be governed by and construed in accordance with German law excluding the Convention on Contracts for the International Sale of Goods (CISG) and any other international purchase laws.
- 11.2. The courts of Seller's premises shall have jurisdiction over all disputes arising from this Sales Contract. However, Seller shall have the right to bring a claim before a court at Buyer's principal place of business or, at his discretion, before any other court being competent according to any national or international law.
- 11.3. The invalidity of any provision of these general terms and conditions 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 provisions to the greatest extent possible.