

GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY TO  
COMMERCIAL CUSTOMERS

**I. General**

1. These Terms and Conditions of Sale and Supply for NGK Spark Plug Europe GmbH (hereinafter referred to as "NGK") are an integral component of contracts with their commercial Customers.
2. A contract generally comes into being as a result of a written confirmation of order issued by NGK.
3. The Customer's General Terms and Conditions of business shall only become part of the contract with NGK's express written consent.

**II. Offers**

1. Drawings, illustrations, measures, weights and other performance data are, approximate definitions in the event of doubt. Moreover, these definitions and further reference to DIN provisions, brochures, catalogues, etc. only constitute a guarantee for quality and durability if they are explicitly described as such.
2. Offers are, if not otherwise stated, non-binding and without commitment.

**III. Prices**

1. In the absence of an express agreement to the contrary, prices are made ex NGK including packaging without freight costs.
2. If the delivery time exceeds four months, NGK reserves the right to increase the agreed price to the extent that our costs increase (e.g. increase of raw materials, payroll costs, customs and excise, taxes etc.). If the price increase ex-

ceeds 5%, the Customer is entitled to withdraw from the contract by giving written notice within one week of receipt of notification of the price increase.

#### **IV. Reduced Creditworthiness**

1. If, after entering into a contract, NGK becomes aware of circumstances which might prejudice the creditworthiness of the Customer, NGK is entitled to demand immediate payment, even if cheques had already been received for payment. Furthermore, due to the above mentioned circumstances, NGK is entitled to execute pending orders only against pre-payment or provision of security and after a period of grace to withdraw from contracts with jeopardized payment or claim compensation for damages.

#### **V. Delivery**

1. Should NGK, due to reasons which could not be attributed to their fault, be obstructed from complying with a delivery date, NKG is not obliged to forward/procure the goods via air-freight.
2. Should an obstruction of performance repeatedly continue, both parties are entitled to withdraw from the part of the contract which has not yet been fulfilled. The rescission from the unfulfilled part of the contract may not be declared prior to four weeks after the occurrence of obstruction of performance, unless this waiting period is unreasonable to either of the parties.
3. If orders on request are agreed, call-off orders must be made to NGK in good time and if not agreed to the contrary, to approximately equal monthly amounts. If the orders are not called-off in time, NGK is entitled, after expiry of a futile period of grace, to deliver the goods or to withdraw from the outstanding part of the contract and demand compensation for damages.
4. Part deliveries are permitted as long as this is reasonable to the Customer.

5. If NGK, on Customer's request, exports goods without payment of customs and excise, the Customer shall be held liable for any supplementary claims made by the customs and excise office against NGK

## **VI. Terms of Performance/Passing of Risk**

1. The risk of an accidental loss passes to the Customer as soon as the goods are handed over for dispatch to the forwarding agent (delivery to the agreed point of destination) or with notification by NGK to the Customer that the goods are ready for dispatch (delivery ex NGK's warehouse).
2. If nothing to the contrary has been explicitly agreed, packaging and the mode of transport are at the discretion of NGK.

## **VII. Retention of Title**

1. The goods supplied remain the property of NGK until fulfilment of all claims which are due to NGK by the Customer under the business relationship, whether such claims result from previous or subsequent deliveries, including interest and costs for possible legal pursuit. Retention of title also secures liabilities unilaterally established by a bankruptcy administrator during the course of fulfilment selection.
2. Goods subject to retention of title may be resold by the Customer to third parties or otherwise utilised within the normal course of business, provided that the Customer is not in default and no circumstances are evident which might jeopardise NGK's claims. In the event of resale, the Customer is obliged in turn to retain title vis á vis its customer until its claims are settled. In order to secure all claims of NGK against the Customer, all rights and claims resulting from utilisation of the goods are hereby assigned to NGK. On request by NKG, the Customer is obliged to give NKG an appropriate assignment declaration. The Customer is entitled to collect such receivables even after assignment. On receipt of payment of said claims of the Customer, the latter is obliged to use the

payment receipt immediately to settle the claim of NGK in the amount already due. NGK's authorisation to collect the receivables itself remains unaffected by this. NKG undertakes, however, not to collect the receivables as long as the Customer meets its obligations from the income received by it, the Customer is not in default of payment and in particular, no application has been made for the institution of insolvency proceedings against the Customer's assets and stoppage of payment has not taken place. If this is the case, NKG is entitled to demand that the Customer discloses to NGK the receivables assigned and the debtors of such receivables, provides all the information necessary for collection, hands over the related documents and notifies the debtors with regard to the assignment.

3. If the realisable value of the existing securities in favour of NKG exceeds the value of the secured receivables by more than 20%, NKG is obliged, upon request by the Customer, to release securities as selected by NGK.
4. In case of attachment or seizure of goods subject to retention of title or other disposals or attacks by third parties on the rights of NGK, the Customer must promptly notify NGK and in agreement with NGK take all necessary action to avert the jeopardy. To an appropriate extent in protection of the goods subject to retention of title, the Customer shall, upon request of NGK, assign claims to NGK.
5. The Customer shall ensure safe and proper custody of objects to which NGK has title and must insure such at its own expense against theft, fire and other property damage.
6. If in a foreign country of destination, retention of title is ineffective or not effective to the intended extent, the Customer must on request co-operate in the provision of securities of which the effectiveness comes as close as possible to such retention of title.

## **VIII. Terms of Warranty and Guarantee**

1. Goods supplied by NGK have to be inspected without delay upon receipt with regard to any defects in identity, quantity or quality. Same applies in the case of resale. The Customer is obliged to immediately notify NKG in the written form of all visible or invisible defects as soon as they are discovered. If the Customer fails to do so any further claims concerning defects which have not been notified in due time regarding the respective goods shall be excluded.
2. If deviations have been notified within due time, the Customer may claim from NGK subsequent delivery of undelivered goods or in case of defect goods, the exchange of said goods or the remedy of the defect. In the event that imperfect goods were resold, it is the option of the Customer to choose the kind of corrective action, otherwise NGK shall have the option of choice.
3. Proven costs which may become necessary on behalf of the Customer for transport, labour etc. resulting from the defective goods delivered will be borne by NGK.
4. The Customer's legal rights for reduction of price or cancellation of the contract or indemnity instead of fulfilment remain unaffected from the foregoing provisions if their legal prerequisites are fulfilled.
5. Other than the above mentioned provisions, no further claims shall be due to the customer in the event of defects in a delivery. § 320 BGB/German Civil Code remains unaffected.
6. The legal warranty periods apply.
7. The Customer shall inform his customers accordingly as far as NGK refers to the functional duration concerning the delivered goods in their product descriptions. As a rule, the Customer shall solely use the current version of the customer information as released by NGK or information corresponding therewith within the relationship with his customers.

8. In exceptional cases where NGK has granted a guarantee for quality or durability to the Customer, this guarantee entitles the Customer, in the absence of another provision, to request remedy of a defect within the guarantee period (see below) free of charge. This shall also apply if claims based on defects according to the above provisions do not exist or have ceased to exist. Malfunctioning caused by operating errors of the Customer are not subject to the guarantee. In the absence of an agreement to the contrary, claims other than the above mentioned remedies are not content of the guarantee. The manner of remedy – exchange or repair – shall be determined by NGK. The claims shall be time barred after expiry of three months after expiration of the guarantee period but not prior to expiry of the respectively valid warranty period. In cases of doubt, the guarantee period shall be considered equal to the warranty period. If a durability guarantee was granted relating to the durability of the effective usage, claims of recourse may, in case of doubt, only be asserted within the warranty- or guarantee period or respectively within the period mentioned in the following paragraph. The period mentioned in the paragraph below only applies in cases where the end-user has asserted his claims within the warranty period applicable between himself and his supplier.
9. The Customer is obliged to immediately notify NGK in writing with regard to any claims by his customers which may be asserted against NGK for recourse. The report of the claim has to be submitted as specific as possible in order to enable NGK to portray a clear picture of the defect and the appropriate corrective measures. If reasonable, the Customer will, prior to any agreement with his buyer, wait for NGK's comment, in particular, whether the method of remedy requested by the buyer is reasonable. In the event that the buyer should have fulfilled claims of his customers due to defective goods, NGK will fulfil his claim resulting there from, even if the warranty period has expired. The claim becomes statute-barred two months after the Customer has settled the claim with the buyer, at the latest, however, five years after the time of delivery to the Customer.

Claims of recourse do not come into being in cases where NGK and the Customer have entered into a package agreement regarding claims of recourse.

#### **IX. Product Liability**

1. If possible and reasonable, the Customer is requested to keep records on resale in order to be able to identify the buyer in events of damage. The Customer is obliged to bind his customer accordingly as long as this kind of documentation is possible and reasonable to them.
2. The Customer will support NGK in every reasonable manner in defending NGK against product liability.
3. The Customer will notify NGK promptly with regard to any claims or other unusual circumstances in connection with the products.

#### **X. Limitation of Liability**

1. Claims for compensation for damage or loss of whatever kind (tortuous acts or infringement of principal or ancillary duties or of pre-contractual duties to the extent not already infringed before incorporation of the General Terms and Conditions of Business in the contract or of post-contractual duties, etc.) may be pursued against NGK only in the case of intentional or gross negligence. The limitation does not apply in the case of no-fault liability stipulated by law, the infringement of essential obligations resulting from the nature of the contract in case of a guarantee as to the quality and for damages caused such as injury to life, bodily harm and physical health based on intentional or negligent violation of duty by a statutory representative or employee of NGK.
2. In the event that NGK because of the infringement of essential obligations resulting from the nature of the contract (without any of the events as mentioned in the previous paragraph regarding expanded liability being prevalent), is liable even in

case of slight negligence, this only applies to typical, foreseeable damage or loss and not to atypical and/or unforeseeable damage or loss.

3. These limitations of liability also apply to the personal liability of legal representatives and employees of NGK.

## **XI. Intellectual Property Rights**

NGK retains proprietary rights and copyright for all illustrations, drawings, technical descriptions, operating instructions, calculations and other documents. Such information may not be made available to third parties without the express written consent of NGK.

## **XII. Applicable Law, Place of Jurisdiction, Place of Performance**

1. The legal relationship between NGK and the Customer is governed by the laws of the Federal Republic of Germany, including UN Purchase Law.
2. The sole place of jurisdiction and the place of performance is the head office of NGK (Ratingen). NGK is also entitled to pursue claims against the Customer within its (the Customer`s) general place of jurisdiction.