

// GENERAL TERMS AND CONDITIONS OF BUSINESS FOR
COMMERCIAL CUSTOMERS

I. General

1. These General Terms and Conditions of Business of NGK SPARK PLUG EUROPE GmbH (hereinafter referred to as "NGK") constitute an integral part of all contracts with commercial customers. Commercial customers for the purposes of the preceding sentence means entrepreneurs (Unternehmer) (Section 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), legal entities under public law and special funds under public law.
2. The General Terms and Conditions of Business in particular apply to contracts for the sale and/or delivery of chattels ("goods"). Unless otherwise agreed, the General Terms of Business also apply as amended at the time of the customer's order or in any event as last communicated to the customer in writing (Textform) as a master agreement to future contracts of the same kind, without NGK being required to refer to them again in each individual case.
3. These General Terms and Conditions of Business apply exclusively. NGK accepts any general terms and conditions of business of the customer which conflict with or deviate from these General Terms and Conditions of Business only if NGK has explicitly consented to their application. This consent requirement applies in all cases, even if, for example, NGK makes delivery to the customer without reservation despite being aware of such general terms and conditions of business of the customer.
4. Any legally relevant statements or notices made or given by the customer with regard to the contract (e.g. to set a time limit, to notify defects, to rescind the contract or to reduce the purchase price) shall be made or given in writing, i.e. in written form with handwritten signature (Schriftform) or without such signature (Textform) (e.g. by letter, e-mail, fax). Any statutory form, requirements and other proof, especially in case of doubt regarding the authority of the declaring party, shall not be affected hereby.
5. Any information regarding the application of statutory provisions is for clarification only. The statutory provisions therefore apply even without such a clarification, unless directly modified or explicitly excluded in these General Terms and Conditions of Business.

II. Conclusion of the contract

1. NGK's offers are subject to change and not binding. This even applies where NGK has provided the customer with catalogues, technical documentation or other product specifications or documents. NGK reserves any and all rights to the catalogues, technical documentation or other product specifications or documents.
2. Information contained in printed materials (such as price lists, brochures and catalogues) or cost estimates or on electronic data carriers or websites and in NGK documentation which pertain to their offer such as images, descriptions, drawings, measures and weights and other technical data and any standards referred to such as Deutsche Institut für Normung (DIN), International Organisation for Standardization (ISO), Society of Automotive Engineers (SAE) or other standards and models are approximate only unless explicitly referred to as binding in writing.
3. The customer's order for the goods shall be deemed to be a binding offer of contract. A delivery contract is concluded only after the order has been confirmed in writing and at the latest upon shipment of the goods. Unless otherwise provided for in the order, NGK is entitled to accept the offer of contract within 30 days of its receipt by NGK.
4. Transmission by remote data transmission shall be deemed written form (Schriftform).

III. Prices

1. In the event of a sale of the goods involving shipment of the goods to a place other than the place of performance (Versendungskauf; section V), the costs of transport ex warehouse and the costs of any transport insurance requested by the customer are at the expense of the customer. All customs duties, fees, taxes, and other public levies shall be paid by the customer.
2. If the delivery period is more than four months, NGK reserves the right to increase the price agreed in accordance with the increase in NGK's costs (e.g. increases in prices of raw materials, labour costs, customs duties, taxes, etc.). If the price increases by more than 5%, the customer is entitled to rescind the contract, and notice of such rescission has to be given in writing within one week of receipt of the information regarding the price increase.

3. Unless otherwise agreed, the agreed purchase price is due and payable within 30 calendar days of the invoice date. However, NGK is entitled at any time to carry out a delivery in whole or part only against advance payment, even in the course of an ongoing business relationship. NGK will declare such a proviso at the latest when confirming the order. For all payment methods, the date on which NGK can dispose of the amount owed by the customer shall be deemed to be the date of receipt of payment.
4. After expiry of the term for payment stated in subsection 3, the customer will be in default of payment. During the period of delay in payment, default interest is payable on the purchase price in the amount of the applicable statutory interest rate. NGK reserves the right to assert further damages based on such default. In dealings with merchants (*Kaufleuten*), NGK's right to claim commercial default interest (Section 353 of the German Commercial Code (*Handelsgesetzbuch* – HGB)) shall not be affected.
5. The customer is entitled to set-off or retention only to the extent that such right has been confirmed by a final court judgment or is undisputed. In the event that the goods delivered are defective, the customer's adverse rights shall not be affected thereby.
6. If, after conclusion of the contract, it becomes apparent (e.g. as a result of a petition for the opening of insolvency proceedings) that NGK's entitlement to the purchase price is at risk as a result of an insufficient ability of the customer to perform, NGK is entitled to rescind the contract in accordance with the statutory provisions on refusing performance – and, if applicable, after setting a time limit (Section 321 of the German Civil Code). If the contract is for the manufacture of a unique item (single piece production), NGK can rescind the contract immediately; the statutory provisions regarding the dispensability of a time limit shall not be affected.

IV. Delivery, default; passing of risk

1. The delivery period will be agreed individually or stated by NGK upon acceptance of the order.
2. If NGK is unable to meet binding delivery periods for any reason for which NGK is not responsible (unavailability of performance), NGK will inform the customer about this immediately and, at the same time, communicate the expected new delivery period. If performance continues to be unavailable even within the new delivery period, NGK is

entitled to rescind the contract in whole or in part; any consideration already paid by the customer will be refunded by NGK without undue delay. Unavailability of performance for the purposes of this provision in particular includes a failure of NGK's suppliers to make delivery to NGK in due time provided that NGK has concluded a congruent transaction to cover expected orders, neither NGK nor the NGK supplier is at fault or NGK is not obliged to procure in an individual case.

3. The occurrence of default in delivery by NGK is governed by the statutory provisions. In any event, however, the customer is required to first send a reminder.
4. Delivery will be made ex warehouse which is also the place of performance for the delivery and subsequent performance, if any. If so requested by the customer, the goods will be shipped to a different destination at the customer's expense (*Versendungskauf*). Unless otherwise agreed, NGK is entitled to determine the kind of shipment (including transport company, transport route and packaging).
5. The risk of accidental loss or accidental deterioration of the goods passes to the customer on delivery of the goods, at the latest. In case of a sale involving shipment to a place other than the place of performance (*Versendungskauf*), however, the risk of accidental loss or accidental deterioration of the goods and the risk of delay already pass when the goods are handed over to the forwarding agent, carrier or other person or entity designated to perform shipment. Where an acceptance has been agreed, such acceptance shall be authoritative for the passing of risk. The statutory provisions applicable to contracts for work and services (*Werkvertrag*) shall also apply accordingly to an agreed acceptance in all other respects. Any default of the customer to take delivery shall be considered equivalent to delivery or acceptance.
6. If a customer defaults in taking delivery or if the customer fails to cooperate or if NGK's delivery delays for any other reason for which the customer is responsible, NGK is entitled to claim compensation of any damage resulting therefrom including any additional expenses (such as storage costs).
7. The customer's rights under section VIII of these General Terms and Conditions of Business and NGK's statutory rights, in particular when NGK is not obliged to perform anymore (e.g. as a result of performance and/or subsequent performance being impossible or unreasonable), shall not be affected.



V. Retention of title

1. NGK reserves title to the goods sold until all present and future claims of NGK under the sales contract and an ongoing business relationship (secured claims) have been settled in full.
2. Until full settlement of all secured claims, the goods subject to a reservation of title may neither be pledged nor transferred by way of security to any third party. The customer shall inform NGK in writing without undue delay if a petition for the opening of insolvency proceedings has been filed or in the event of a third party access to the goods belonging to NGK (e.g. attachment).
3. In the event of a failure of the customer to comply with the contract, in particular by failing to pay the purchase price due, NGK is entitled to rescind the contract in accordance with the statutory provisions and/or to demand on the basis of its reservation of title that the goods be returned. The demand for a return of the goods does not imply rescission; NGK is rather entitled to only demand that the goods be returned and to reserve the right to rescind the contract. If the customer fails to pay the purchase price due, NGK may assert these rights only after unsuccessfully fixing a reasonable time limit for the customer to make payment or if fixing such time limit is dispensable pursuant to the statutory provisions.
4. The customer is entitled to resell and/or further process the goods subject to reservation of title in the ordinary course of business, subject to revocation in accordance with subsection (c) below. In that case, the following additional provisions apply:
 - a. The reservation of title extends to the products created by processing, mixing or combining the goods of NGK at their full value, with NGK being considered the manufacturer. If in the event of processing, mixing or combining with third party goods the ownership right of such third party survives, NGK acquires co-ownership in the ratio of the invoice values of the goods so processed, mixed or combined. In all other respects, the product created is subject to the same rules and provisions as the goods supplied subject to reservation of title.
 - b. By way of security, the customer hereby assigns to NGK all claims against third parties resulting from a resale of the goods or the product created in their entirety or in accordance with NGK's co-ownership

share as per the preceding paragraph. NGK accepts the assignment. The obligations of the customer referred to in subsection 2 also apply with respect to the claims assigned.

- c. The customer remains entitled to collect the claim beside NGK. NGK undertakes to not collect the claim as long as the customer meets the customer's payment obligations towards NGK, there is no lack of ability of the customer to perform, and NGK does not assert the reservation of title by exercising any of its rights under subsection 3. If that is the case, however, NGK can demand that the customer discloses to NGK the claims assigned and the relevant debtors, provides all information required for collection, hands over the relevant documentation and informs the debtors (third parties) of the assignment. NGK is also entitled in this case to revoke the customer's authorisation to resell and further process the goods subject to reservation of title.
 - d. If the realisable value of security exceeds the amount of NGK's claims by more than 10%, NGK will release security of its choice at the customer's request.
5. If the destination is located abroad and the reservation of title has no effect or is not as effective as intended, the customer, if so requested, has to cooperate in providing security which is as equivalent as possible in its effect to a reservation of title.

VI. Rights of the customer in the event of defects

1. The rights of the customer in the event of material defects or defects of title (including the delivery of wrong items or insufficient quantities and improper assembly or defective assembly instructions) shall be governed by the statutory provisions, unless otherwise provided below. The special provisions of law applicable in case of a final delivery of unprocessed goods to consumers shall not be affected in any event, even if the consumer has further processed the goods (supplier recourse in accordance with Section 478 of the German Civil Code). The seller's recourse under Section 445a of the German Civil Code shall also be unaffected. Claims under supplier recourse are excluded if the defective goods were further processed by the customer or another entrepreneur, for example by incorporation into another product.

2. NGK's liability for defects is primarily based on the agreement between the parties regarding the quality of the goods. All product specifications covered by the individual contract or published by NGK (in particular in catalogues or on NGK's website) shall be deemed to constitute an agreement as to the quality of the goods.
3. Where no specific quality has been agreed, the existence or non-existence of a defect has to be determined according to the statutory rule (Section 434 (1) sentences 2 and 3 of the German Civil Code). However, NGK accepts no liability for public statements made by third parties.
4. The customer's rights in case of defects are subject to the condition that the customer has complied with the statutory obligations to inspect the goods and to notify defects (Sections 377, 381 of the German Commercial Code. If a defect is discovered at delivery, during inspection or at any time thereafter, NGK shall be notified of such defect in writing without undue delay. If the customer fails to properly inspect the goods and/or to notify defects, NGK's liability for any defect not notified or not notified in time or not properly notified is excluded in accordance with the statutory provisions.
5. If the item delivered is defective, NGK can first choose whether to make subsequent performance by rectifying the defect (repair) or by delivering an item free of defects (substitute delivery). NGK's right to refuse subsequent performance where the statutory requirements are fulfilled shall not be affected.
6. NGK is entitled to make subsequent performance conditional upon the customer's payment of the purchase price due. However, the customer is entitled to retain such portion of the purchase price which is appropriate in relation to the defect.
7. The customer shall give NGK the time and opportunity required for the subsequent performance owed and in particular to hand over the item complained about for examination. In case of substitute delivery, the customer shall return the defective item to NGK in accordance with the statutory provisions.
8. The expenses necessary for examination and subsequent performance, in particular costs of transport, road user charges, costs of labour and materials and, if applicable, removal and installation, will be paid or reimbursed by NGK in accordance with the statutory provisions, provided that a defect actually exists. Otherwise NGK can demand from the

customer reimbursement of the costs incurred as a result of the unjustified demand for a rectification of defects (in particular costs of examination and transport), unless it was impossible for the customer to determine the lack of defectiveness.

9. If subsequent performance has failed or if the time limit to be fixed by the customer for subsequent performance has expired without success or if such period is dispensable pursuant to the statutory provisions, the customer can rescind the sales contract or reduce the purchase price. However, the customer is not entitled to rescind the contract if the defect is insignificant.
10. Even in the event of defects the customer is entitled to claim damages or reimbursement of futile expenses only in accordance with section VIII; otherwise, such claims are excluded.

VII. Product liability

1. If possible and reasonably acceptable, the customer is asked to maintain records of onward sales to enable an identification of the buyer in the event of damage. The customer is obliged to impose a corresponding duty upon the customer's own customer, provided that such documentation is possible and appropriate for the customer.
2. The customer will reasonably assist NGK in defending any claims under product liability.
3. The customer will inform NGK without undue delay of all claims or other unusual circumstances in connection with the products.

VIII. Other liability

1. Unless otherwise provided for in these General Terms and Conditions of Business including the provisions set out below, NGK is liable for breaches of contractual and non-contractual duties in accordance with the relevant statutory provisions.
2. NGK is liable for damages – irrespective of the legal ground – in the event of intent or gross negligence. In case of slight negligence, NGK is only liable for
 - a. damage resulting from injury to life, body or health,
 - b. damage resulting from the breach of a material contractual duty (a duty the fulfilment of which enables the proper performance of the contract in the first place and on the fulfilment of which the other party to the contract usually relies and may rely); in

this case, however, NGK's liability is limited to compensation of the foreseeable damage typically arising.

3. The limitations of liability resulting from subsection 2 also apply to breaches of duty by or in favour of persons for whose fault NGK is responsible pursuant to the statutory provisions. They do not apply if NGK has fraudulently concealed a defect or assumed a guarantee for the quality of the goods or to claims of the customer under the Product Liability Act.
4. In the event of a breach of duty which does not consist in a defect, the customer can rescind or terminate the contract only if NGK is responsible for the breach of duty. The right of the customer to terminate at discretion (in particular under Sections 650, 648 of the German Civil Code) is excluded. In all other respects, the statutory requirements and legal consequences apply.

IX. Limitation

1. In deviation from Section 438 (1) No. 3 of the German Civil Code, the general limitation period for claims arising from material defects or defects of title is one year from delivery. Where an acceptance has been agreed, the limitation period begins to run upon acceptance.
2. The limitation periods applicable under sales law stated above also apply to contractual and non-contractual claims of the customer for damages which are based on a defect of the goods, unless the application of the usual statutory limitation period (Sections 195, 199 of the German Civil Code) would, in an individual case, result in a shorter limitation period. However, claims of the customer for damages under section VIII (2) or under the Product Liability Act become statute-barred only in accordance with the statutory limitation periods.

X. Confidentiality

1. The parties undertake to treat as business secrets all commercial and technical details of which they become aware as a result of the business relationship which are not obvious.
2. Drawings, models, templates, samples and similar items may not be provided or otherwise made available to any unauthorised third party. Copying such items is permitted only within the limits of operational requirements and copyright legislation.
3. The parties may refer to their business relationship for

advertising purposes only after obtaining the other party's prior written consent.

XI. Applicable law, jurisdiction

1. These General Terms and Conditions of Business and the contractual relationship between NGK and the customer are governed by the laws of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. If the customer is a merchant (*Kaufmann*) within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the courts at our principal place of business in Ratingen, Germany, shall have exclusive – including international – jurisdiction over all disputes directly or indirectly arising from the contractual relationship. The same applies accordingly if the customer is an entrepreneur as defined in Section 14 of the German Civil Code. However, NGK is in all cases also entitled to take legal action at the place of performance for the delivery obligation as provided by these General Terms and Conditions of Business or an overriding individual agreement or at the customer's place of general jurisdiction. Any overriding statutory provisions, in particular on exclusive jurisdiction, shall not be affected.

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