



NGK CERAMICS USA, INC.

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Purchasing Terms and Conditions

Purchasing Terms and Conditions

1. DEFINITION: Reference to “products” herein shall include, without limitation , goods, services, work and data, expressly or impliedly ordered herein or delivered hereunder, or any part hereof, including the terms and conditions listed on the front side of this order or any purchase order or agreement incorporating these terms and conditions.

2. OFFER TO PURCHASE: This purchase order constitutes an offer by Buyer to buy from Seller and becomes a binding contract on the terms set forth herein when accepted by Seller either by acknowledgement or the commencement of performance hereof. This order can be accepted only in accordance with the terms hereof or upon written acceptance of changes or additional terms by Buyer. Buyer objects to all additions, exceptions, or changes to these terms and any alternate or different terms whether contained in any printed form of Seller or elsewhere unless expressly approved by Buyer. Any terms and conditions set forth on the front side of this order, or any purchase order or agreement generated by Buyer incorporating these terms and conditions shall control over any inconsistent terms or conditions below. If the price is omitted, this order is to be filled at the lower of the price last quoted or charged or at the lowest prevailing market price. Unless otherwise specified, such price includes all charges for cartage, packing, boxing, labeling, unloading, storage, transportation to the point of delivery, freight insurance, taxes and installation.

3. DELIVERY: All invoices shall include the purchase order number. Unless otherwise indicated on a purchase order, Seller shall deliver all products FOB (UCC Term) to the applicable NGK location. A packing slip must accompany each package, and buyer's count shall be accepted as final and conclusive. No charge shall be allowed for boxing, packing or crating without the prior written authorization of Buyer.

4. TIME: Time is the essence hereof and if products are not delivered within the time specified in this order, or within a reasonable time if no time is specified, Buyer may either (a) cancel this order 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 thereof, 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.

5. QUALITY: Seller warrants that products delivered hereunder shall conform to the descriptions and specifications set forth or referred to herein, shall be of merchantable quality, shall be free from defects in workmanship, material and design, shall be fit for any use intended by the Buyer which the Seller has reason to know, shall be manufactured, performed, labeled, shipped, sold and shipped in compliance with all applicable laws, rules and regulations of governmental authorities (including, without limitation, import/export and customs clearance regulations and consumer product safety regulations). Seller also warrants that it shall deliver good, exclusive and marketable title to the products free and clear of all liens, security interests, claims, and encumbrances. These warranties are in addition to any warranties implied by law. Should Buyer request, Seller, at its sole expense, shall repair or replace f.o.b. Buyer's plant, all or any part of any product covered by this order which proves within one (1) year from the date it is placed in operation, but no later than eighteen (18) months from the date of shipment, to be defective in material, workmanship or design. This warranty of repair or replacement does not constitute a waiver of any other rights of Buyer express or implied, and shall run to Buyer, its customers and users of its products and shall survive inspection an acceptance. Any warranty period set forth above or on the front side shall be extended for 12 additional months (or any longer period specified in this purchase order) after any repair or replacement with respect to affected products.

6. QUANTITY: Products shipped in excess of the quantities designated in this order may be returned at Seller's expense.

7. INSPECTION: Buyer shall have THIRTY (30) days after receipt of the products to accept or reject products furnished under this order. Acceptance of any non-conforming shipment under this

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 this order.

8. PAYMENT: Buyer reserves the right to withhold payment of invoices until products have been received, inspected and accepted by Buyer, unless otherwise agreed to in writing, Buyer's terms are net 30 days from date of receipt. Buyer shall deduct any available cash discounts when payment is made within the number of days of the discount term, using the date of receipt as the starting point.

9. 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 properties have 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.

10. CHANGES: Buyer may, by written notice, make changes within the general scope of this order to drawings and specifications, shipping and packing instructions and place of delivery. 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 scrapage, but only for materials in process within the Seller's 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 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 this order, as changed.

11. TERMINATION: Buyer may terminate this 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 scrapage, but only for materials in process within Seller's normal manufacturing cycle required to meet the delivery schedule plus a reasonable profit thereon, less any value hereof to Seller, but in no event shall such terminated portion, if this order has not been so terminated. Buyer shall have the right to acquire any inventory relating to this order in the hands of Seller at the time of termination.

12. DEFAULT: If Seller defaults under any term of this order, Buyer shall be entitled: (a) to suspend performance under this order; (b) to terminate this order and have no further obligation to

Seller; (c) to declare all or part of Seller's obligations to Buyer under this order immediately due and payable; and (d) to pursue any other right or remedy Buyer may have. Buyer shall be entitled to set off any claims and amounts owed by Seller against all amounts Buyer owes Seller under this order or otherwise.

13. 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, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, nor shall such delay effect the remainder of this contract. 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 and the efforts Seller is undertaking and will undertake to reduce the effects of the excusable cause for delay or such cause shall be deemed waived.

14. 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 this order with Seller.

15. BUYER'S INFORMATION: Any specifications, drawings, sketches, models, samples, patterns, dies or other tools, technical information or data, 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. 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 goods or services to Buyer.

16. 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.

17. PATENTS: Seller shall disclose and does hereby assign to Buyer all inventions, discoveries, techniques and processes resulting herefrom and does hereby grant Buyer the exclusive right to use any purpose all data specified to be delivered hereunder.

18. 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 this 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. The indemnity provided in this section shall survive the delivery and acceptance of any products or any termination of this purchase order for any reason.

19. SUBCONTRACTING AND ASSIGNMENT: Seller shall not subcontract for completed or substantially completed products called for by this order without the prior written consent of Buyer nor shall it assign this order or any part hereof without such written consent.

20. INDEMNITY: Seller agrees to indemnify, defend and save harmless Buyer and any company affiliated with Buyer against all claims and liability, including any costs, reasonable 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, breach of warranty, claim the products are defective, in whole or in part, of Seller, its agents or employees in the performance of this order. The indemnity provided in this section shall survive the delivery and acceptance of any products or any termination of this purchase order for any reason.

21. NON-WAIVER: Failure of the Buyer to insist upon strict performance of any terms and conditions herein shall not be deemed a waiver of any rights or remedies that the buyer shall have, and shall not be deemed a waiver of any subsequent default of terms and conditions hereof. Shipment or receipt of any article under this purchase order shall not constitute a waiver of any right of the Buyer hereunder or any obligation of the Seller to comply with any of the provisions of this purchase order.

22. TAXES: The prices for the products ordered include all Federal, State, and Local taxes from which Seller cannot obtain exemption. The amount of any such taxes shall be shown separately on Seller's invoice.

23. COMPLIANCE WITH LAWS: Seller warrants that all products supplies hereunder are produced and priced in compliance with all Federal and State laws and regulations established thereunder. Seller hereby certifies and agrees to certify on the face of all invoices if requested (a) that all products covered hereby have been produced in compliance with the Fair Labor Standards Act of 1938, as amended, and all regulations and orders thereunder: (b) that such products are priced in

accordance with the regulations and procedures of the Price Commission and its successors, if any, in governmental authority: (c) that the products and all work performed are in accordance with all requirements of the Federal Occupational Safety and Health Act of 1970 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. The United Nations Convention on the International Sale of Goods shall not apply to products that Seller sells to Buyer.

24. **INSOLVENCY:** Buyer may forthwith cancel the contract resulting from the acceptance of this order in the event of the happening of any of the following, or of any other comparable event: insolvency of the Seller; the filing of a voluntary petition in bankruptcy; the filing of involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; the appointment of a Receiver or Trustee for Seller provided such appointment is not vacated within thirty (30) days from the date of such appointment; or the execution by Seller of an assignment for the benefit of creditors.

25. **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION:** Seller will comply with all the provisions of Executive Order 11246 dated September 24, 1965, and all rules, regulations and relevant orders relating thereto. In the event of Seller's non-compliance, Buyer reserves the right to cancel and terminate this order in whole or part.

26. **TOXIC SUBSTANCES:** Seller warrants that any chemical substance, as defined in the Toxic Substances Control Act (U.S.) as it may be amended from time to time, sold or otherwise furnished by Seller to Buyer is or will be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency (hereinafter called "EPA") pursuant to the Act on the date as of which such substance is sold or furnished to Buyer.

27. **CLEAN AIR AND WATER CERTIFICATION:** Seller warrants that any facility to be utilized in the performance of this order has not been listed on the EPA List of Violating Facilities and that should Seller be informed by the EPA that any Seller facility is being considered for listing on the EPA List of Violating Facilities, that Seller will promptly so inform Buyer of this fact in writing.

28. **ENTIRE AGREEMENT:** This order, when accepted by Seller, is the entire agreement of the parties, and may not be orally modified. Any shipment of products or performance 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.

APPLICABLE LAW: This purchase order as accepted shall be governed by the laws of the State of North Carolina. Any suit, action or other proceeding relating to this Order or the purchase and sale of the Goods or the performance of the Services may be instituted and maintained in the state courts for North Carolina, or the United States District Court for the Western District of North Carolina. Seller consents to the exercise of jurisdiction over it by such courts for the purpose of any such suit, action or proceeding, and agrees that the venue in such courts is appropriate and the forum in not inconvenient.



Address:

117 Mazerpa Rd.
Mooresville, NC 28115

Email: info@ngkceramics.com

Phone: (704) 664-7000