



## NGF EUROPE LIMITED (“BUYER”) STANDARD CONDITIONS OF PURCHASE

### **1. VARIATION OR WAIVER**

The Buyer's purchase order to which these conditions of purchase apply (the Order) constitutes an offer by the Buyer to purchase the goods referred to in the Order (the Goods) or to any services referred to in the Order (the Work) subject to these terms and conditions. These terms shall apply to the contract for the supply of the Goods and/or the Work (the Contract) to the exclusion of any other terms on which any quotation has been given to the Buyer or referred to in any correspondence or documentation submitted by the Seller or elsewhere or implied by custom, practice or course of dealing or subject to which the Order is accepted or purported to be accepted by the Seller. No variation to the Order or these terms shall be binding unless agreed in writing between the duly authorised representatives of the Buyer and the Seller and accordingly employees of the Buyer who accept delivery of the Goods are not authorised to agree to any variations of these conditions or to accept any conditions proposed by the Seller.

The Order will lapse unless unconditionally accepted by the Seller in writing within seven days of receipt of the Order by the Seller.

### **2. SPECIFICATION AND DESCRIPTION**

The quality, quantity and description of the Goods shall be as specified in the Order and/or any specification supplied by the Buyer to the Seller or agreed in writing with the Buyer.

Any specification supplied by the Buyer to the Seller in connection with the Contract together with copyright, design rights and any other intellectual property rights subsisting in such specification shall be the exclusive property of the Buyer and the Seller assigns with full title guarantee to the Buyer all copyright design rights and other intellectual property rights arising under the Contract for no further consideration.

The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements and shall be properly packed and secured so as to reach their destination in an undamaged condition.

### **3. DELIVERY**

On the delivery date stipulated by the Buyer or, if no date stipulated within a reasonable time from the date of the Order, the Seller shall deliver the Goods to the place designated by the Buyer or if no such place is stipulated to the Buyer's address stated in the Order and in any case during the Buyer's usual business hours of 8.30am to 4.00pm. If the goods are to be delivered by installments the Contract shall be treated as a single contract and not severable.

The time of delivery shall be of the essence of the Contract.

The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods whether or not the Goods are accepted by the Buyer.

The Buyer reserves the right (without prejudice to any other rights the Buyer may have) to:

- (a) reject Goods or the Work not delivered or performed on time; and/or



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- (b) cancel any Contract of which such Goods or the Work are the subject; and/or
- (c) return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use.

### 4. PRICE

- (a) The price or charges for the Goods and/or the Work and unless otherwise so stated shall be:
  - i. exclusive of any applicable value added tax (which shall be payable in addition by the Buyer subject to the provision of an appropriate VAT invoice).
  - ii. inclusive of all charges for packaging packing shipping carriage insurance and delivery of the Goods and any duties imposts or levies other than value added tax.
- (b) No increase in the Price may be made (whether on account of increased material labour or transport costs or otherwise) without the prior written consent of the Buyer in writing.
- (c) The Goods may be incorporated into other products or subjected to further processes of manufacture by the Buyer or its customers and in no event shall any claim for royalty or other compensation be made by the Seller by reason of any such use or manufacture.

### 5. PASSING OF PROPERTY AND RISK

- (a) Unless payment for the Goods is made before delivery (in which case property in the Goods shall pass to the Buyer upon payment) property in the Goods shall pass to the Buyer on delivery.
- (b) The risk in the Goods shall not pass to Buyer until delivery.
- (c) The passing of property and risk is without prejudice to the right of rejection, pursuant to clause 6 below.

### 6. TERMINATION/REJECTION

- (a) If the Seller is in material breach of its obligations under these terms or if the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation or an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Seller or the Seller ceases or threatens to cease to carry on business or the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller the Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time.
- (b) The Buyer shall be entitled to reject any Goods delivered or any Work performed or Deliverables (as hereafter defined in clause 15a hereof) which are not in accordance with the Contract and the Buyer shall not be deemed to have accepted any Goods or Work performed or Deliverables (notwithstanding that it may have paid for them) until the Buyer or its customer has had a reasonable time to inspect them following delivery or if later within a reasonable time after any latent defect in the Work or Goods or Deliverables has become apparent.

- (c) Should the Buyer reject the Goods after delivery the Seller shall at its own expense collect the Goods. Up until the date of their collection the Goods shall be stored by the Buyer at the Seller’s risk. Should the Goods not be collected by the Seller within 30 days of the date upon which the Seller has been notified by the Buyer of their rejection the Buyer shall have the right to sell such Goods or rectify any defects in the Goods at the Seller’s expense and shall be entitled to deduct from any sale proceeds costs any losses and expenses which the Buyer has incurred or will be likely to incur as a result of the breach of Contract by the Seller.
- (d) The rights remedies and obligations set out in Clause 6, are in addition to any other rights and remedies of the Buyer and obligations of the Seller.

## **7. WARRANTIES AND LIABILITY**

- (a) The Seller warrants to the Buyer that the Goods at the time of delivery and for a period of 12 months afterwards:
  - i. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
  - ii. will be free from defects in design material and workmanship;
  - iii. will correspond with any relevant specification or sample;
  - iv. will comply with all statutory requirements and regulations relating to the sale of the Goods including UK Safety Standards & British Standards.
- (b) The Seller warrants to the Buyer that the Work will be performed by appropriately qualified and trained personnel with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- (c) Without limitation to any other remedy to which the Buyer may be entitled if any Goods or Work are not supplied or performed in accordance with the Contract then the Buyer shall be entitled;
  - i. to require the Seller to repair the Goods or to supply replacement Goods or Work in accordance with the Contract within 7 days;  
or
  - ii. at the Buyer's sole option and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or carry out any replacement Work to treat the Contract as discharged by the Seller’s breach and require repayment of any part of the price of the Goods or Work.
- (d) The Seller will pass on to the Buyer the benefit of any additional warranties secured from the Seller's suppliers.

## **8. INDEMNITY**

The Seller shall indemnify the Buyer in full against all actions claims demands losses (whether indirect direct consequential loss of profit or otherwise) expenses costs and proceedings awarded against or incurred or paid by the Buyer as a result of or in connection with:

- (a) breach of the Contract and/or any negligence of the Seller
- (b) the Seller’s breach of statutory duty
- (c) any claim that the Goods infringe or their use importation use or resale infringes any patent, copyright, design right trade mark or one rights of any one person.
- (d) any liability under the Consumer Protection Act 1987;
- (e) breach of any warranty given by the Seller in relation to the Goods and/or the Work; and



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- (f) any act or omission of the Seller or its employees against or subcontractors in supplying delivering and installing the Goods or performing the Work (or otherwise in connection with the same);

### **9. ASSIGNMENT**

The Seller shall not assign or sub-let the Contract or any part of it unless agreed by the Buyer in writing.

### **10. STATUTORY REQUIREMENT**

The Seller shall ensure that the Goods are designed and made and the Work performed so as to comply in use with all relevant statutes, regulations, best practice and by-laws in effect at the time of delivery.

### **11. CONFIDENTIALITY**

The Order, the Contract and all tools, materials, documents and information issued by the Buyer in connection therewith are confidential, and their use and disclosure must be strictly confined to the Seller himself and his employees properly engaged thereon (except in so far as confidential disclosure to subcontractors or suppliers is agreed by the Buyer to be necessary) and for the purposes of the Contract. In particular the Seller shall not use the Contract for the purposes of advertisement nor shall take or allow his employees to take any photographs and shall not make any public statement in relation to the Contract the Buyer or its affairs customers or businesses.

### **12. GENERAL**

- (a) No waiver by the Buyer of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (b) If any provision of these terms is held by any court or other body of competent jurisdiction to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected.
- (c) The parties hereto intend that no term of these terms may be enforced by any person entity or body that is not a party to them.
- (d) At any time during the continuance of the Contract the Buyer or its duly authorised representatives may request a variation to the Work to be performed or the Goods to be supplied hereunder and the parties may agree to vary or modify the terms of the Contract accordingly (including but without limitation the price or charges for the Goods and or the Work) provided always the Contract shall only be varied or modified by written agreement duly signed by persons authorised on behalf of the Seller and the Buyer.
- (e) The construction validity and performance of the Contract shall be governed in all respects by English Law and the Seller submits to the exclusive jurisdiction of the English courts save in respect of enforcement where such jurisdiction shall be non exclusive.



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- (f) Any notice given by one party to the other in connection with a Contract must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given two working days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

### **ADDITIONAL CONDITIONS FOR PERFORMANCE OF WORK**

13. Clauses 1 to 12 shall apply mutatis mutandis to any Work referred to in the Order and where such Work is described in the Order the following shall also apply:

- (a) The Seller shall execute and complete the Work in accordance with any particulars and any specifications contained or referred to in the Order and to the satisfaction of the Buyer;
- (b) The Seller shall complete the Work by the date stipulated by the Buyer or, if no date is stipulated, within a reasonable time from the date of the Order;
- (c) The Seller shall carry out the Work with all due reasonable skill and care;
- (d) If the Buyer advises the Seller that any personnel assigned to any part of the performance of the Work (Personnel) shall be in any respect unsatisfactory to the Buyer at the Buyer’s request the Seller shall immediately cease to involve such person or persons in the performance of the Work and shall at the Seller’s request supply a replacement or substitute of equivalent calibre and experience as soon as reasonably practical after being so advised by the Seller.

#### **14.**

- (a) Except for anything specified in the Order as being provided by the Buyer, the Seller shall provide everything required for the Work, including but not limited to plant, tools, equipment and protective clothing, all of which shall be entirely at the risk of the Seller and its employees howsoever any loss or damage to them may arise. The Seller shall ensure that everything he so provides is safe for use for the Work. The Seller shall also ensure that anything lent to him by the Buyer is safe for use for the Work. The Seller shall also ensure that anything lent to him by the Buyer is safe for use, shall use it entirely at his own risk, shall indemnify the Buyer against all claims demands losses (whether indirect direct consequential or otherwise) expenses costs and proceedings awarded against or incurred or paid by the Buyer as a result of or in connection with that use. Without being relieved of his foregoing obligations, the Seller shall ensure that he holds all appropriate tests and examination certificates in respect of any equipment requiring those certificates and shall on request produce those certificates for the Buyer’s inspection when and where required by the Buyer.
- (b) The Seller shall carry out the Work safely and without risk to person or property and shall ensure that all Personnel conform to all health and safety at work and security regulations from time to time in force. Without prejudice to that foregoing obligation, the Seller shall also comply with all safety regulations or policies of the Buyer. The Seller shall indemnify the Buyer against all claims demands losses (whether indirect direct consequential or otherwise) expenses costs and proceedings awarded against or incurred or paid by the Buyer as a result of or in connection with the Seller’s failure to perform its obligations in accordance with this clause 14 (b).



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- (c) The Seller shall insure against such risks in connection with the Work as the Buyer may require and in any event to cover the liability of the Buyer. The insurance shall be in a form and amount and with insurers acceptable to the Buyer. The Seller shall also insure against third party risks as the Buyer may require. Before starting the Work, and thereafter whenever so requested, the Seller shall produce such evidence of insurance as the Buyer may require. If the Seller fails to comply with this requirement, the Buyer may affect such insurance as the Buyer considers desirable and the Seller shall reimburse the Buyer the costs of doing so.

### 15.

- (a) The Deliverables (as hereafter defined) and the copyright, design rights and any other intellectual property rights subsisting therein or relating thereto shall become and shall remain the exclusive property of the Buyer and shall vest in the Buyer at the time they are first created. "Deliverables" shall mean any and all works of authorship products and materials created written prepared or provided by the Seller in relation to the Work.
- (b) In the event and to the extent that any of the Deliverables or the copyright, design rights and any other intellectual property rights subsisting therein or relating thereto are deemed for any reason not to vest in the Buyer pursuant to clause 15(a) above then upon request by the Buyer the Seller shall forthwith assign or otherwise transfer or procure the assignment or transfer of the same to the Buyer free of any encumbrance or compensation to the Buyer.
- (c) The Seller shall at all times indemnify and keep indemnified the Buyer from and against all claims demands losses (whether indirect direct consequential or otherwise) expenses costs and proceedings awarded against or incurred or paid by the Buyer in relation to any infringement or alleged infringement of any third party's intellectual property rights suffered by the Buyer as a result of the use possession or supply of the Deliverables.

### **NGF EUROPE Limited**

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