



## GENERAL CONDITIONS OF SALE

### Preliminary

The General Conditions of Sale herein contained govern the sale of all NEXANS BENELUX Products. "Product" means any article manufactured by and/or any service performed by NEXANS BENELUX.

"Seller" means NEXANS BENELUX, and "Buyer" means any person or entity placing an order for a Product.

These General Conditions govern and constitute an integrated part of all contracts and purchase orders.

### 1- Quotation - Price

- 1.1 Quotations are valid for thirty (30) days and are subject to change at any time prior to acceptance by the Buyer. Purchase orders are binding on the Seller only once expressly accepted by the Seller.
- 1.2 Unless otherwise expressly stated, prices are net ex-works packing excluded and are subject to change without notice. The cost of any export packing required will be charged to the Buyer. The Buyer accepts that quantities delivered may vary by approximately 3% either way from the quantities ordered. Quantities invoiced are those actually delivered. If a discount is granted, the rate is shown on the front.
- 1.3 Except where sold, packing (drums, pallets, etc.) are placed at the Buyer's disposal - on his sole responsibility - free of charge for a period of not more than six months from the end of the month in which the Product is shipped or placed at his disposal. The Buyer's failure to return them by the end of such period shall, without other formality, result in the Seller invoicing the cost of packing at the rate in force at the time of the purchase. If they are returned within twelve months after the six months period of free use, and provided they are in good condition for re-use by the Seller, the total value initially invoiced will be credited to the Buyer. If the packing is in a condition where it cannot be re-used by the Seller, the Buyer will be advised of that as soon as possible. Any packing not returned within a year after the period of free use becomes the property of the Buyer, the amount of the deposit charge representing the selling price of the packing. Packing which bears the Seller's trademark may be used only for the Product and may not in any circumstances be used for other products. All extra expenses or costs of special export packing will be charged to the Buyer.
- 1.4 Unless otherwise agreed in writing by the Seller, all payments must be made by thirty (30) days from the end of the month in which the invoice is dated or, for export, by irrevocable letter of credit, confirmed by a bank accepted by the Seller, payable against production of transport documents. Any late payments will incur interest at the monthly rate of 1.5% for each month - part of a month counting as a whole month - from the due date of the unpaid amount until the date on which such amount is paid in full.

### 2- Delivery - Shipment

- 2.1 The Seller will make all reasonable efforts to comply with delivery dates, but in no circumstances shall the Seller be liable to the Buyer for delays resulting from occurrences of force majeure as described in Article 6 hereof. Delivery will be ex-works (Incoterms 2000) unless otherwise expressly accepted. Title and risk of loss or damage to Products shall pass to the Buyer upon delivery.
- 2.2 In case of delayed delivery attributable to the Buyer, the Seller shall be entitled to invoice the payment due at delivery and the warranty period shall commence as if delivery had taken place on the initially agreed upon delivery date. In addition, the Buyer shall pay the Seller resulting storage costs and as liquidated damages, an amount equal to ten percent (10%) of the price of the Products in compensation of the hedging and financing costs of the metal content of the Products incurred in connection with the postponement of the delivery date.
- 2.3 Unless expressly provided otherwise, the Buyer shall provide and maintain transit insurance, with coverage for at least the full value of the Product.
- 2.4 If, by way of express exemption from these General Conditions, the Seller agrees to deliver the Products to the Buyer's designated point of destination, then unless expressly provided otherwise, the shipment route and carrier shall be chosen by the Seller. Whatever else, transportation costs shall remain with the Buyer unless expressly agreed otherwise by the Seller.
- 2.4 Claims for loss or damage while Products are in transit must be made against the carrier by the Buyer.
- 2.5 Claims for shortages must be made within thirty (30) days after date of shipment of Products from the Seller's works.
- 2.6 No Product shall be returned to the Seller without its prior written consent. The costs and risks of returns shall in all cases be borne by the Buyer. If the Seller accepts the return after having inspected the quantity and quality of the returned Product, the Buyer shall be entitled to a credit.
- 2.7 Products may be acceptance-tested at the Seller's factory only with the Seller's prior written consent and at the Buyer's sole cost.

### **3- Warranties**

- 3.1 The Seller warrants the Product manufactured by it to be free from defects in material and workmanship at date of delivery and for a period of one (1) year thereafter, under normal and appropriate use for its specifications. No action taken under the warranty shall have the effect of extending the warranty period. Provided that, for accessories not manufactured by the Seller which are components of or ancillary to the Product, the Seller's only obligation shall be to obtain for the Buyer such warranties as are available from the vendors of such accessories if obtainable at no cost to the Seller.
- 3.2 The Seller warrants that the Product will have passed those performance tests, if any, called for in the applicable specifications. If such performance tests are specified in the contract or quotation but, for reasons beyond the control of the Seller, are not completed within a year after the delivery of the Product or sixty (60) days after the Products are first put into service, whichever shall first occur, the Product shall be presumed to have passed such tests and all liability or warranties of the Seller in respect thereof shall terminate. Unless expressly provided otherwise by special agreement, the Seller's only warranty is that the Product is fit for the purpose for which designed, and not for any purpose for which the Buyer may intend it, even if the Seller has been informed of the Buyer's intended purpose beforehand.
- 3.3 If, during the applicable warranty period, the Products manufactured by the Seller are found to have been defective when delivered, they will be repaired at the Seller's factory or replaced without charge FOB named port of shipment, provided that the Buyer gives the Seller immediate written notice upon discovery of such defect. In such a case, the Seller may require that the defective Product be returned carriage paid to confirm the complaint. Under no circumstances shall the Seller be liable for the expenses of removal and reinstallation of the defective Product. As to accessories manufactured by other vendors, the Buyer's recourse shall be against such vendors only, and the Seller's only obligation shall be to request such vendors to fulfil the obligations of their warranties on the understanding that the Seller shall have no obligation to initiate legal or other proceedings against vendors for failure to fulfil their obligations, unless the Buyer agrees to hold the Seller harmless of the costs thereof in advance.
- 3.4 The Seller's only liability under this warranty shall be the replacement without charge or repair of the Product or parts of the Product acknowledged by its services to be defective. The Seller may also recover possession of the Product, carriage paid, and repay to the Buyer all sums received, in which event all liability of the Seller shall terminate absolutely.
- 3.5 No refund will be granted in respect of repairs or alterations to the Product made by the Buyer or a third party without the prior written consent of the Seller. In such a case, the Seller's warranty shall be void and of no effect. The Buyer shall be responsible for all damage or alterations to the Product which are attributable to it or occur after delivery.
- 3.6 Limitation of Warranty : this warranty is limited to the terms of the present article 3 and is in lieu of all other warranties of any kind, whether tacit, express, implied or statutory apart from the covenant of peaceful possession.
- 3.7 This warranty is conditional upon the proper receipt, handling, storage, installation proper use in accordance with the technical specifications in particular, and appropriate servicing of the Product.

### **4- Liability**

The Seller shall not in any circumstances be liable for any loss or damage arising in connection with any business interruption, lost production or loss of profits, loss of data, loss of earnings, loss of possession or enjoyment of a right or property, loss of enjoyment of services, and more generally, any loss of an economic or financial character.

### **5- Taxes**

The price of the Product does not include taxes or customs duties. The Buyer agrees to pay or reimburse the Seller as the case may be all taxes or duties connected with the sale of the Product.

### **6- Force Majeure**

- 6.1 The Seller shall not be considered in default in the performance of its obligations hereunder, or be liable for loss or damage where such failure, loss or damage is due to circumstances over which the Seller has little or no control. By way of example only, such causes shall include but not be limited to industrial dispute or strife of any kind (whether affecting the Seller and Buyer or a third party on whom performance of the sale is contingent), fire, explosion, flood or other natural catastrophe, civil disturbance, riot or armed conflict whether declared or undeclared, shortage or rationing of labour, materials, components, transportation, energy, delayed delivery by suppliers or subcontractors, compliance with new legislation or regulations (whether or not valid), embargo and the like.
- 6.2 In the event of a delay arising from any of the above causes, the time of performance shall be extended by a period of time necessary for the Seller to mitigate the effect of the disruption.

### **7- Acceptance of Terms**

- 7.1 These General Conditions of Sale apply to all sales made by the Seller. Accordingly, the placing of an order entails the Buyer's complete and unqualified acceptance of these conditions to the exclusion of any other document issued by the Seller or Buyer. Unless specifically and formally accepted by the Seller in writing, no special conditions which purport to modify or supersede these General Conditions shall prevail over these General Conditions. Accordingly, any conditions stipulated by the Buyer which conflict with these Conditions shall, unless expressly accepted, be unenforceable against the Seller regardless of the time at which they may have been brought to its attention.
- 7.2 These General Conditions represent the entire conditions of sale. The Seller's silence shall not be taken as consent. Neither any terms or conditions added or varied by the Buyer when ordering the Product, nor delivery of the Product, nor the commencement by the Seller of any work shall be construed as the Seller's assent to any terms and conditions which cancel, modify or are additional to these General Conditions.

**8- Assignment of rights**

The Seller shall be free to subcontract or assign any or all of the rights and obligations arising under any contract concluded or order placed subsequent to communication of these Conditions to any companies forming part of the group of companies to which the Seller belongs, or to any body corporate succeeding in title to any or all of the assets and liabilities comprising its line of business in connection with any part asset contribution, spin-off, merger or otherwise.

It is expressly agreed and accepted that any such transfer shall not entitle the Buyer to any right of termination or any form of compensation whatsoever.

The Buyer may not transfer or assign any of its rights or obligations without the prior written consent of the Seller.

**9- Termination**

- 9.1 Should the Buyer intend to terminate any contract or cancel any purchase order made subsequent to communication of these General Conditions but before expiry of the prescribed term, notice of such termination must be made in writing not less than sixty (60) days prior to the expiry of the prescribed term, stating the reasons therefor.
- 9.2 The Buyer shall pay the Seller reasonable and proper termination charges which shall include a portion of the price reflecting the amount of work completed until termination date plus any incurred or committed costs, additional expenses incurred by reason of termination of the Seller's agreements with its suppliers and subcontractors, including but not limited to, the financing costs related to raw materials in inventory, and as liquidated damages, an amount equal to the negative difference, if any, between the value of the metal content of the Products determined using the official LME cash rate prevailing on the effective date of the contract or the Purchase order and the value of the metal content of the Products determined using the official LME cash rate prevailing on the termination date,
- 9.3 The Seller reserves the right to cancel without notice any contract concluded or purchase order placed subsequent to the communication of these General Conditions in the event of the Buyer's failure to make the agreed payments, or if the Buyer suspends payments, has a court-appointed administration or winding-up order made against it, goes into voluntary winding-up, or ceases in any other way to trade as a going concern, subject to prevailing statutory provisions.

**10- Waiver**

The Seller's failure to enforce any term or condition hereof at any time shall not be construed as a waiver of its right to enforce any such term or condition thereafter.

**11- Severability**

In the event that any part of these General Conditions shall be determined invalid by any court or arbitration body of competent jurisdiction, such invalidity shall not invalidate any of the other terms and conditions hereof.

**12- Jurisdiction**

The courts and tribunals of the judicial district of the place in which the Seller has its principal place of business shall have sole jurisdiction over all disputes arising in connection with these conditions. The Seller reserves the right to refer any such dispute to the courts and tribunals of the judicial district of the place in which the Buyer is resident or has its principal place of business. Belgian law shall apply exclusively.

**13- Reservation of title clause**

The Product remains the Seller's property until payment in full of the price and all ancillary amounts, on the understanding that the delivery of an instrument giving rise to an obligation to pay, whether a draft or other instrument, does not constitute a payment within the meaning of the present clause until such time as such negotiable instrument is paid. This provision shall not prevent the various risks, including the risks of loss or deterioration of the Product, from passing to the Buyer. Until such time as the price is paid, the Buyer must ascertain the Product. If the Product is not ascertained, the Seller may require immediate payment of the price. The Buyer absolutely must notify the Seller immediately of any attachment or other third party action affecting the Product. The Buyer shall also refrain from pledging the Product or offering it as collateral. The Buyer may not sell the Product on until the price has been paid in full. The Seller's claim for return of the unpaid Product shall automatically act to rescind the sale, and all the costs of recovery shall be borne by the Buyer, without prejudice to any such other claim as may be pursued by the Seller.