



NIFCO UK LIMITED

Elta House, Yarm Road

Stockton-on-Tees

TS18 3RX

NIFCO UK LIMITED

GENERAL CONDITIONS OF PURCHASE

20TH OCTOBER 2005

GENERAL CONDITIONS OF PURCHASE**1. DEFINITIONS**

1.1 In these Contract Terms:-

“Authorised Officer of the Company”	shall mean the Company’s Purchase Manager from time to time or any other authorised representative of the Company;
“Authorised Officer of the Seller”	shall mean a Director or a Partner or an employee of the Seller authorised or who might reasonably be expected to be authorised, to accept contractual terms or variations on behalf of the Seller;
“Company”	means Nifco UK Limited whose registered office is at Yarm Road, Stockton on Tees, Cleveland, TS18 3RX;
“Contract”	shall mean each contract between the Company and the Seller for the sale and purchase of the Goods and the supply and acquisition of the Services on these Contract Terms;
“Contract Terms”	means these standard terms and conditions of purchase and includes any special terms agreed in writing between the Company and the Seller;
“Goods”	means the goods (including any articles, materials, works or services) described in the Order;
“Intellectual Property Rights”	any rights in inventions, patents, registered designs, design rights, know-how, trade marks and service marks, copyright and all or any other intellectual or industrial property rights whether or not registered or capable of registration;
“Order”	means the Company’s purchase order to which these Contract Terms are annexed;
“Packaging”	shall include bags, cases, cylinders, drums, pallets, Octibins, boxes and any other containers;
“Price”	means the price of the Goods and/or Services;
“Seller”	means the person, firm or company to whom the Order is addressed and any associated or subsidiary person, firm or company responsible for executing the Order and shall include the Seller’s personal representative successors and permitted assigns;
“Services”	means the services (if any) described in the Order; and
“Specification”	includes any plans, drawings, data, description or other information relating to the Goods and/or Services.

2. BASIS OF PURCHASE

- 2.1 The Order constitutes an offer by the Company to purchase the Goods and/or acquire the Services, subject to these Contract Terms.
- 2.2 Any of the following are deemed to constitute the Seller's agreement to comply with these Contract Terms:-
 - 2.2.1 any offer and/or acceptance of an Order by the Seller (notwithstanding any conditions attached to such offer or acceptance or any purported incorporation of terms other than these Contract Terms);
 - 2.2.2 the commencement of any work by the Seller; or
 - 2.2.3 the delivery of any Goods or the performance of any Services by or on behalf of the Seller.
- 2.3 These Contract Terms shall apply to each Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Company or subject to which the Order is accepted or purported to be accepted by the Seller.
- 2.4 Any variation to the Order or these Contract Terms shall become binding only if agreed in writing by the Authorised Officer of the Company.

3. PRICE

- 3.1 The Price of the Goods and the Services shall be as stated in the Order or where not stated in the Order, the price listed in the Seller's published price list from time to time notified to the Company in writing and, unless otherwise so stated, shall be:-
 - 3.1.1 [fixed;]
 - 3.1.2 [exclusive] of any applicable VAT (which shall be payable by the Company subject to receipt of a VAT invoice); and
 - 3.1.3 [inclusive] of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Company's specified delivery address and any import duties, taxes or levies other than VAT.
- 3.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Authorised Officer of the Company.

4. SPECIFICATIONS AND VARIATIONS

- 4.1 The quantity, quality and description of the Goods and the Services shall be as specified in the Order and/or in any applicable Specification supplied by the Company to the Seller or agreed in writing by the Authorised Officer of the Company.
- 4.2 The Company shall have the right during the execution of the Order by notice in writing from the Authorised Officer of the Company to change any details specified in the Order by written instructions. If any such change affects the time of performance or delivery costs involved an equitable adjustment shall be made to the delivery schedule and/or Price as the Authorised Officer of the Company may agree.

- 4.3 Where the Seller receives any instructions from the Company to vary the Order which would result in an amendment to the Price or the time for delivery of the Goods or the time for completion of the Contract, the Seller shall promptly advise the Company in writing to that effect giving the amount of any such amendment which shall be ascertained and determined at the same level of pricing as the Price originally agreed in the Contract.
- 4.4 Any Specification supplied by the Company to the Seller or specifically produced by the Seller for the Company in connection with a Contract shall be the exclusive property of the Company and delivered to the Company with the Goods or supply of the Services.
- 4.5 Goods made to the Company's Specification shall not be manufactured for or supplied to any other party and the Seller shall not alter any of the Goods, except as directed in writing by an Authorised Officer of the Company.

5. **ACCEPTANCE, PROPERTY AND RISK**

- 5.1 The Goods shall only be accepted by the Company after they:-
- 5.1.1 have satisfied all requirements and passed all tests specified in the Order and any Specification; and
- 5.1.2 have thereafter been accepted in writing by and to the full satisfaction of the Company.
- 5.2 The Company shall not be deemed to have accepted any Goods and/or Services until the Company has had a reasonable time to inspect or test them following delivery or, if later, within a reasonable time after any latent defect has become apparent.
- 5.3 The Company shall be entitled to reject all or any part of the Goods delivered or Services performed which are not in accordance with the Contract, including a right to reject defective Goods even if the defect is minor.
- 5.4 Until delivered to and accepted by the Company, the Goods shall remain at the sole risk of the Seller, who shall at its own cost insure the Goods in the name of the Seller against all insurable risks which are likely to affect the Goods with insurers and on terms approved by the Company. Satisfactory evidence of such insurance and payment of the current premiums shall be shown to the Company on request.
- 5.5 Property in the Goods shall pass to the Company on delivery or, if earlier, when payment for the Goods is made.

6. **DELIVERY**

- 6.1 The Goods shall be delivered to, and the Services shall be performed at, the address specified by the Company on the date or within the period stated in the Order, in either case during the Company's usual business hours. The Company reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods and/or the Services by the Company in accordance with all terms of the Contract.
- 6.2 In order to confirm receipt of a delivery of Goods the Seller shall obtain, on delivery, the signature of a representative of the Company or the person to whom the Seller has been instructed to effect delivery of the Goods. This confirmation shall be evidence of delivery only but shall not amount to acceptance of the Goods.

- 6.3 Time of delivery of the Goods and of performance of the Services is of the essence of the Contract. Notwithstanding this, if for any reason the Company requests delivery or performance to be delayed, the Seller shall agree to such request at no extra cost to the Company and the provisions of this Contract Term 6 shall apply to any such revised date for delivery or performance.
- 6.4 The Goods shall be marked in accordance with the Company's instructions and shall be properly packed, secured and despatched at the Seller's expense to arrive in good condition by the delivery date and at the place specified in the Order.
- 6.5 The Seller shall, at its own expense, furnish such programmes of manufacture and delivery as the Company may reasonably require and shall give in writing notice to the Company immediately if such programmes are or may be delayed.
- 6.6 If the Goods are delivered to the wrong destination the Seller will be held responsible for any additional expense in delivering them to their correct location.
- 6.7 Unless otherwise provided by the Contract, all Packaging supplied by the Seller shall be considered as non-returnable, and their cost included in the Price. Where the Company agrees to return Packaging, full disposal particulars must be quoted on the Seller's delivery advice note. The empties must have legible marks to show to whom they belong and the Seller will be required to bear all carriage and cartage charges of the Packaging. The Company accepts no liability for Packaging lost or damaged in transit.

7. PAYMENT

- 7.1 Unless otherwise stated in the Order, the Seller may only invoice the Company on or after delivery of the Goods or supply of the Services with a separate invoice for each individual delivery or supply.
- 7.2 In the absence of any express condition in the Order, the Company shall pay the Price of the Goods and the Services within [60] days after the end of the month of receipt by the Company of the Seller's invoice or, if later, after acceptance of the Goods or Services in question by the Company.
- 7.3 Invoices must be addressed to the Company department indicated on the Order. The completed Order number must be quoted on all invoices.
- 7.4 The Company shall be entitled to deduct from the Price :-
- 7.4.1 the unit price for such proportion of the Goods as may be defective and rejected by the Company together with the costs of returning such Goods to the Seller;
 - 7.4.2 any costs or expenses incurred by the Company as a consequence of the Seller failing to deliver the Goods to the correct destination;
 - 7.4.3 the fees or other charges or other costs incurred by the Company arising out of any Services not provided or provided inadequately by the Seller to the Company;
 - 7.4.4 any amount which is disputed by the Company, pending resolution of such dispute; and
 - 7.4.5 any sums owing by the Seller to the Company [or any other company within the Seller's group] on any Contract.

8. QUALITY AND DESCRIPTION

- 8.1 The Company shall have the right to inspect all Goods at the Seller's works and the works of sub-contractors at all reasonable times and to reject Goods that do not comply with the terms of the Order. Any inspection, checking, approval or acceptance given on behalf of the Company shall not relieve the Seller or its sub-contractor from any obligation under the Contract.
- 8.2 The Seller warrants to the Company that it is fully experienced, qualified, equipped, organised and financed to perform its obligations under the Contract and warrants to the Company that the Goods:-
- 8.2.1 shall conform in all respects with the particulars and requirements contained in the Order and any relevant Specification or samples, drawing plans or patterns and be supplied, where applicable, in compliance with the company's APPD document;**
- 8.2.2 will comply with all statutory requirements, regulations and EU directives and regulations relating to the manufacture and sale of the Goods, product safety, packaging, labelling, environmental aspects and hazardous substances (including the appropriate British Standard or equivalent specification unless otherwise agreed);
- 8.2.3 will comply with the general requirements of safety in terms of risk presented to the health and safety of persons;
- 8.2.4 be capable of any standard of performance specified in the Contract and conform to best industry practice;
- 8.2.5 be of satisfactory quality and be fit for such purposes as shall be made known by the Company to the Seller at the time the Order is placed and in this respect the Company relies on the Seller's skill and judgement; and
- 8.2.6 will not infringe any Intellectual Property Rights of any other person.
- 8.3 The Seller warrants to the Company that the Services:-
- 8.3.1 will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standards of quality as it is reasonable for the Company to expect in all the circumstances; and
- 8.3.2 will comply with all statutory requirements, regulations and EU directives and regulations relating to the performance of the Services.

9. COMPANIES RIGHT TO REJECT

- 9.1 Each right or remedy of the Company is without prejudice to any other right or remedy of the Company, whether or not under the Contract.
- 9.2 The Company reserves the right to reject all or any part of the Goods delivered or Services performed which are not in accordance with the Contract, including a right to reject defective Goods even if the defect is minor.
- 9.3 The making of payment shall not prejudice the Company's right of rejection. Goods rejected under this Contract Term shall not be considered as having been delivered under the Order

and shall be removed from the Company's premises by the Seller at its own expense within five working days (5) from the date of the receipt of notification of rejection or within such greater period as the Company may agree. In the event of the Seller failing to remove all or any rejected Goods within such a period, the Company shall be at liberty to return the rejected Goods or any of them at the Seller's cost and risk.

- 9.4 If Goods are not delivered or Services are not performed on the due date then the Company shall be entitled to cancel the Order (or any part) without liability to the Seller and purchase substitute items or services elsewhere and recover from the Seller any loss or additional costs incurred.
- 9.5 If any Goods or Services are not supplied or performed in accordance with the Contract, then the Company shall be entitled [at any time within the [24] month period from the date of first use and/or completed performance of the Goods and Services]:-
- 9.5.1 to require the Seller to repair the Goods or (at the Company's sole option) to supply replacement Goods or Services in accordance with the Contract within [seven] days (and the provisions of this Contract Term 9 shall apply to any such repaired or replaced Goods or Services); or
- 9.5.2 whether or not the Company has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

10. INDEMNITY

The Seller shall indemnify the Company in full against all liabilities, losses (whether direct or indirect and including loss of profits), damages (including special and consequential damages), costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:-

- 10.1 breach of any warranty given by the Seller in relation to the Goods or the Services;
- 10.2 any claim that the Goods infringe, or their importation, use or resale, infringes the Intellectual Property Rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Company;
- 10.3 any claim made against the Company in respect of any breach or alleged breach by the Company of any statutory provision, regulation arising from the acts or omissions of the Seller or its employees, agents or subcontractors;
- 10.4 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 10.5 any liability under the General Product Safety Regulations 1994 in respect of the Goods and any claims which might arise as a result of the Goods being a risk to health and safety/unsafe; and
- 10.6 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods and in performing the Services, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the Company).

11. FORCE MAJEURE

- 11.1 Neither the Seller nor the Company shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure was beyond that party's reasonable control.
- 11.2 Without prejudice to the generality of the foregoing and subject to Contract Term 11.1, the following shall be regarded as causes beyond either party's reasonable control including Act of God, act of terrorism, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either the Seller or the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery or power failure or breakdown in machinery.
- 11.3 If, during the currency of the Contract, the Company is prevented from or hindered in the use of the Goods or the performance of the Services due to a reason specified in Contract Term, 11.2, then the Company at its option may partially or wholly suspend deliveries of the Goods or performance of the Services during the continuance of such causes and the time for delivery or performance shall be correspondingly extended but if such suspension continues for more than one month, the Company may give written notice to terminate the whole or any part of the Contract thereby affected without liability but without prejudice to the accrued rights of either party. If the Seller postpones delivery at the request of the Company pursuant to this Contract Term, the Seller shall store, protect and insure the Goods until actual delivery and the Company shall be liable for any reasonable costs (including insurance) for its so doing.

12. HEALTH & SAFETY, HAZARDOUS GOODS AND ENVIRONMENTAL

Hazardous Goods must be marked with the name of the material in English and the Seller shall observe the requirements of the United Kingdom, the European Community or any government or public body or any international agreement or convention of whatsoever nature and by whomsoever imposed relating to the packaging, labelling, distribution and carriage of hazardous goods. The Seller will promptly inform the Company of any dangers and special instructions relating to the handling or use of hazardous goods.

12.1 Health & Safety at Work Act 1974

The Seller shall make available to the company adequate information as to the use for which an article or substance has been designed and tested and any conditions necessary to ensure that when put to that use the article or substance will be safe and without risk to health.

12.2 Substances of Concern (SOC)

The Seller shall ensure that all goods comply with the Nifco UK Limited Substances of Concern Standard, the European End of Life Vehicle directive 2000/53/EC, and/or any customer specific requirements specified by the buyer

12.3 Environmental

The Seller shall ensure that all relevant environmental legislation is complied with during the manufacture and supply of the goods

13. ARTICLES ON LOAN AND USE OF INFORMATION

All tools, materials, drawings, Specifications and other equipment and data (the “Articles”) loaned by the Company to the Seller in connection with the Contract will remain at all times the property of the Company and be surrendered to the Company upon demand in good serviceable condition (fair wear and tear allowed) and are to be used by the Seller solely for the purposes of completing the Contract. The Seller agrees that no copy of any of the Articles will be made without consent in writing of an Authorised Officer of the Company. Such Articles shall be at the risk of the Seller and insured by the Seller at Seller’s own expense against the risk of loss, theft or damage.

14. CONFIDENTIALITY

14.1 All information supplied to the Seller by the Company at any time in connection with the Contract and any Specification:-

14.1.1 is and remains the Company’s property and must be returned to the Company on request;

14.1.2 shall be regarded as confidential; and

14.1.3 shall not without the prior written consent of the Company be published or disclosed to any third party or used by the Seller except for the purpose of implementing the Order.

14.2 The Seller shall not advertise or announce the supply of the Goods and/or the Services to the Company without the Company’s prior written consent.

14.3 The obligations under this contract term shall remain in force notwithstanding completion, cancellation or termination of the Contract.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 If the Services involves design and /or development work, but not otherwise, the provisions hereinafter set out in this Contract Term 15 shall apply.

15.2 All rights in the Intellectual Property Rights arising as a result of the performance by the Seller of the Services shall belong to and be the sole legal and beneficial property of the Company and the Seller shall as soon as practicable communicate and, upon request, deliver up to the Company all such works or materials all of which shall be the exclusive property of the Company.

15.3 The Seller shall not, other than in the performance of its obligations under this Agreement or with the Company’s prior written consent, use or reproduce any information relating to the Services or Goods.

15.4 The Seller shall at the request and cost of the Company (whether during or after termination of this Agreement) sign and execute all such deeds and documents and do all such acts and things as the Company may reasonably require to apply for, obtain and vest and maintain in

the name of the Company alone (unless the Company otherwise directs) any Intellectual Property Rights referred to under this Contract Term 15, and defend any proceedings in respect of such applications.

16. **TERMINATION**

- 16.1 The Company shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance without incurring any liability to the Seller other than to pay for Goods and/or Services already delivered or performed at the time of such notice.
- 16.2 The Company shall be entitled to terminate immediately the Contract without liability to the Seller and reserving all rights of the Company by giving notice to the Seller at any time if:-
- 16.2.1 the Seller is in material breach of any of its obligations under these Contract Terms and that breach cannot be remedied; or
 - 16.2.2 the Seller is in material breach of a material obligation under these Contract Terms which can be remedied, but the Seller fails to do so within 28 days starting on the day after receipt of notice from the Company; or
 - 16.2.3 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986, as amended) or any person takes any step to appoint an administrator or administrative receiver or receiver or the Seller goes into liquidation or bankruptcy; or
 - 16.2.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
 - 16.2.5 the Seller ceases, or threatens to cease, to carry on business, or substantially changes the nature of its business; or
 - 16.2.6 the Company reasonably believes that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.
- 16.3 If delivery is incomplete then, without prejudice to its other rights, the Company may accept or reject the Goods or Services delivered or performed and cancel or vary the balance of the Order.

17. **GENERAL**

- 17.1 The Order is personal to the Seller and the Seller may not, without the prior written consent of the Company, transfer, assign, charge, dispose of or deal with in any manner or purport to do the same any of its rights or beneficial interests.
- 17.2 The Seller shall not sub-contract any of its obligations under the Contract.
- 17.3 Any waiver by the Company of any breach is not a waiver of any subsequent breach.
- 17.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.



- 17.5 If any provision of these Contract Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Contract Terms and the remainder of the provision in question shall not be affected.
- 17.6 The Contract shall be governed by the laws of England, and the parties submit to the exclusive jurisdiction of the English Courts. This contract term is for the benefit of the Company only and as a result the Company shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.
- 17.7 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

Signed on behalf of Nifco UK Limited.

.....

Print Name: ...Doug Binks.....

Position: ...C.F.O./ Company Secretary

Date: ...Friday 21st November 2008

Signed on behalf of Seller.

.....

Print Name:

Position:

Company:

Date: