

# Terms and conditions



SKF USA Inc. ("Seller")

## TERMS AND CONDITIONS OF SALE

WE ACKNOWLEDGE WITH THANKS YOUR ORDER. WE ARE PREPARED TO ACCEPT THE ORDER ONLY IF YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS. WE REGARD ANY ORDER THAT YOU SEND TO US AS A DOCUMENT THAT IDENTIFIES ONLY THE PRODUCTS AND SERVICES YOU ARE ORDERING FROM US AND NOT AS A DOCUMENT THAT ADDS TO OR MODIFIES THESE TERMS AND CONDITIONS. ALL OTHER TERMS AND CONDITIONS IN YOUR ORDER ARE EXPRESSLY REJECTED. YOU (as the "Buyer") SHOULD ADVISE US PROMPTLY IF ANY OF THE TERMS AND CONDITIONS BELOW ARE NOT ACCEPTABLE TO YOU. UNLESS YOU GIVE SUCH NOTICE, YOU WILL HAVE ACCEPTED THESE TERMS AND CONDITIONS, AND WE WILL PROCEED AS THOUGH THEY ARE MUTUALLY BINDING ON BOTH OF US. DIFFERENT TERMS AND CONDITIONS AT A DIFFERENT PRICE FROM THOSE GENERALLY APPLICABLE CAN BE NEGOTIATED ON REQUEST, BUT SHALL APPLY ONLY IF SIGNED BY A PRESIDENT OR DIRECTOR OF SELLER.

1. Delivery dates by Seller for the products ordered by Buyer ("Products") are approximate and Seller will not be liable for any delays in delivery for whatever reason unless the parties have expressly agreed in a writing signed by Seller to specific liquidated damages for late deliveries.

2. Prices indicated by Seller are based upon the prices in effect as of the date of this document. Unless otherwise agreed to in a writing signed and delivered by Seller's authorized representative, prices quoted by Seller are subject to change without notice at any time, including (without limitation) between the date of Buyer's order and the date of shipment. Buyer shall be liable for the prices in effect on the date of Shipment. Unless expressly stated otherwise on the reverse side hereof, all excise, privilege, occupational, sales, use and other taxes, foreign and domestic, applicable to the sale under the order shall be added to and become part of the purchase price.

3. Seller may accept subsequent changes in delivery dates, purchase prices, and quantities of Products requested by Buyer in a revised ordering document issued by Buyer without having been deemed to have added to or modified any of these terms and conditions.

4. Products that are not in conformance with the description in the order agreed to by Seller are returnable for

credit or replacement, provided Seller is advised in writing within 30 days of delivery by Seller of such non-conformance and written authorization therefore is given by Seller. Approved returns must be shipped freight prepaid and arrive in good condition to qualify for credit or replacement. Buyer must make payment of the purchase price within the time allotted for payment even if Buyer has not completed its inspection of the Products, but such payment shall not constitute acceptance of the Products or impair Buyer's rights or remedies it may have hereunder for nonconforming Products.

5. Seller fulfills orders based upon part numbers established and maintained by the Seller for its Products. It is your responsibility to ensure that any part numbers you assign and specify on your order correspond to the correct Seller part number. If you modify any drawings previously submitted to us, you need to notify us of the change in writing and provide us with the updated drawing. Changes in revision numbers noted on an order are not adequate notice.

6. If Buyer wants to cancel or reschedule delivery of the Products, Buyer shall provide a written request to Seller. All requests are subject to the review and approval of Seller and may be subject to a handling/administrative charge of 15%. In the case of Products specially manufactured for the Buyer, Buyer shall have no right to cancel any such orders or delivery of any such Products.

7. Unless otherwise specified on the reverse side hereof, all shipments shall be made by any mode of transportation deemed suitable to Seller, F.O.B. Seller's loading dock, and risk of loss to the Products shall pass to the Buyer upon delivery by Seller to the carrier for shipment.

8. Orders for Products are subject to an over shipment or under shipment not to exceed 10%, and the order shall be deemed complete, subject to a corresponding adjustment made to the extended purchase price. In the event such over shipment made of special Products, Buyer will pay, in full, but only to the extent such over shipment does not exceed 10% of the affected Products specified in Buyer's order. In the event of such under shipment of special Products, the order shall be deemed complete on such under shipment and there shall be no adjustment in the charges due hereunder unless the extended contract price for the under shipped Product exceeds 5% of the total affected Products ordered by Buyer.

9. In order to maintain consistently high service, marketing and support for its products, Seller permits resale of its products into the aftermarket only by authorized resellers. Accordingly, Buyer states that all of the ordered bearings are solely for incorporation into Buyer's finished products. Buyer further agrees not to resell Seller's bearings unless Buyer receives express written permission from Seller.

10. All intellectual property and all tooling and other tangible manufacturing assets of Seller used to fulfill Buyer's order shall remain the property of Seller and no right or interest of any kind whatsoever in any of the foregoing shall be construed or interpreted as having been granted or otherwise conveyed to Buyer, either expressly, or by implication, estoppel or otherwise. Any tooling sold to Buyer will be limited to that which is separately quoted by Seller, which quote expressly states that the price indicated therein by Seller is "for purchase" or "for sale" of the tooling described therein rather than as an additional charge to defray, whether whole or in part, Seller's tooling costs. Buyer represents and warrants that it has title to any material, specification or design it may provide to Seller, and that Seller's possession and reliance upon the same in connection with the manufacture, sale or use of the Products shall not constitute infringement of any patent, trade secret or other third-party interest.

11. Products manufactured and/or sold by Seller shall, when properly installed and maintained, be fit for the ordinary purposes for which such goods are used, and shall be free of defects in material and workmanship at time of shipment. In no event shall Seller be obligated under this warranty or otherwise in any way whatsoever for normal wear and tear or for any Product which, in Seller's sole and exclusive determination, has been subjected to accident, abuse, misapplication, improper repair or alteration, improper installation or maintenance, excessive operating conditions or for defects or failures resulting from Buyer's specifications or designs, or otherwise caused by Buyer, including without limitation defects or failures resulting from Buyer's manufacture, distribution, sale or promotion of its own products. THERE ARE NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, EXCEPT OF TITLE, WHICH EXTEND BEYOND THAT EXPRESSLY STATED ABOVE IN THIS PARAGRAPH.

12. Seller's sole liability and Buyer's sole and exclusive remedy for Seller's breach of warranty or otherwise is expressly limited to the replacement of any Products sold hereunder, which Seller determines, by laboratory examination, are not in conformance with the limited warranty of Seller expressly stated herein, provided Seller is advised in writing of such nonconformance within thirty (30) days of the date of discovery thereof and said non-conforming Products are returned F.O.B. Seller's warehouse promptly thereafter but not later than twelve (12) months from the date of shipment thereof by Seller. Anything contained herein to the contrary notwithstanding, Seller retains the right, at Seller's sole and exclusive option, to render credit for or refund of the purchase price in lieu of furnishing a replacement product.

13. IN NO EVENT SHALL SELLER BE LIABLE HEREUNDER OR OTHERWISE FOR LOSS OF PROFITS, OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR IN ANY AMOUNT, ARISING OUT OF THIS AGREEMENT OR IN CONNECTION WITH THE PRODUCTS AND RELATED SERVICES PROVIDED BY SELLER HEREUNDER, EVEN IF SELLER HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL AND EXCLUSIVE LIABILITY FOR NONPERFORMANCE UNDER THIS AGREEMENT, INCLUDING NONPERFORMANCE CAUSED BY SELLER'S GROSS OR ORDINARY NEGLIGENCE, SHALL BE STRICTLY LIMITED TO THE COST OF REPLACEMENT OF THE PRODUCTS PROVIDED HEREUNDER. IN NO EVENT SHALL DAMAGES EXCEED THE AMOUNT EQUAL TO THE PRICE OF THE PRODUCTS PAID TO SELLER PURSUANT TO THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT SUCH EVENT WAS FORESEEABLE BY EITHER OR BOTH PARTIES. BUYER SHALL LOOK ONLY TO SELLER FOR REDRESS OF ITS DAMAGES CAUSED BY ANY DEFECT IN THE PRODUCTS, IN ANY RELATED SERVICES, OR BY SELLER'S FAILURE TO FULLY PERFORM AS REQUIRED HEREUNDER, AND SHALL NOT LOOK TO ANY AFFILIATE OF SELLER FOR THE SAME.

14. Shipments hereunder shall be at all times subject to the approval of Seller's credit department. Seller's remedies with respect to any breach of the agreement made between Buyer and Seller shall be cumulative, and, without limiting the generality of the foregoing, Seller shall have the right to suspend its performance or terminate the agreement in the event of Buyer's non-payment of the purchase price for any delivery of Products even though the agreement may provide for the delivery of Products in more than one installment.

15. These terms and conditions and those appearing on the front page hereof constitute the final, complete and exclusive agreement between Buyer and Seller. No reference herein to Buyer's inquiry or order shall in any way incorporate different or additional terms or conditions, which are hereby objected to. No rescission, waiver, discharge, or modification of the agreement shall be binding upon Seller unless made in writing signed and delivered by Seller's authorized representative. No prior course of dealing or usage of trade not expressly set forth herein shall be admissible to explain, modify or contradict the agreement. Buyer acknowledges and agrees that any and all representations, promises, warranties or statements by Seller's salesperson or agent that differ in any way from the terms of this writing shall be given no force or effect. The invalidity of any one provision constituting part of the agreement between Buyer and Seller shall not affect the validity of the remainder of such provision or the remaining provisions of the agreement.

16. The agreement between Seller and Buyer shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the laws of the Commonwealth of Pennsylvania, U.S.A. without reference to the conflicts of laws principles thereof. Any action for breach of the agreement shall be commenced within one (1) year after the cause of the action has accrued. **THE EXCLUSIVE FORUM FOR CLAIMS AGAINST SELLER SHALL BE MONTGOMERY COUNTY, PENNSYLVANIA, OR THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.** Seller and Buyer irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue in such a courts and their rights to jury trial.

17. Buyer agrees to indemnify and hold Seller harmless for any and all damages caused by Buyer's breach of these Terms and Conditions.

18. Payment terms on all invoices rendered by SKF under the agreement, except as expressly provided herein shall be net thirty (30) days from invoice date. SKF shall be entitled to charge a finance charge of two percent (2%) per month, i.e., twenty-four percent (24%) annually, on any account past due over thirty (30) days. Buyer agrees that if its account hereunder is referred for collection to an attorney or agency, Buyer will pay all of SKF's attorneys' fees and other costs of collection, which other costs include, but are not limited to, courts costs, expert witness fees, execution costs and filing fees. Interest shall accrue on all sums outstanding at the rate specified above notwithstanding the entry of judgment. In the event any finance charge is determined to be excessive by a court or other tribunal, such charge shall be reduced to the maximum allowable under the law. Buyer pays all invoices rendered by SKF for reimbursement of SKF's expenses and for the services provided to Buyer by SKF's representative(s) for work performed. In addition, Buyer shall pay all invoices rendered by SKF for the delivery of the Products to Buyer at the purchase price for the Products indicated by SKF in its quotation to Buyer for the period of time, if any, as specified therein and as well the fair and reasonable value of all replacement parts provided by SKF for the proper repair and maintenance of any equipment covered by Buyer's order as accepted by SKF. Prices for the Products indicated by SKF on or before the date the agreement is made between Buyer and SKF are based upon the prices in effect as of such date. Unless otherwise indicated in SKF's quotation or otherwise agreed to in a writing signed by SKF's authorized representative, Product prices quoted by SKF are subject to change without notice at any time.