

General Conditions of Sales and Delivery of Knorr-Bremse Systems for Commercial Vehicles Ltd.

These General Conditions of Sales and Delivery shall be applicable to all contractual relations between all purchasers of goods (hereinafter: Buyer) and the company of Knorr-Bremse Systems for Commercial Vehicles Ltd (hereinafter: Seller)

DEFINITIONS

“Order” The Buyer’s offer to purchase the Goods in accordance with the Tender and these General Conditions.

“Buyer” The purchaser of the Goods.

“Contract” a contract for the sale and purchase of the Goods.

“General Conditions” the standard terms and conditions of sale set out in this document including (unless the context otherwise requires) any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with condition 2 (c).

“Goods” Specified in the Seller’s invoice.

“Seller” Knorr-Bremse Systems for Commercial Vehicles Ltd.

“Tender” An invitation from the Seller to the Buyer to place an Order for Goods.

1. GENERAL

All Tenders are given, and all Orders are accepted on the terms of the Seller’s General Conditions and on no others. These General Conditions, which supersede any earlier sets of conditions appearing in the Seller’s catalogue or elsewhere, shall override and exclude any other terms or conditions stipulated or incorporated or referred to by the Buyer, whether in the order or in any negotiations, and any course of dealing established between the Seller and the Buyer.

2. TENDERS

(a) Tenders may be withdrawn at any time before receipt of the Buyer’s Order and shall be deemed to be withdrawn if no Order is received within the time stated upon the Tender or, if no time is stated, within thirty days from the date of Tender.

(b) The Buyer’s Order shall include all instructions to the Seller and if not so contained any instructions shall not be binding upon the Seller.

(c) No variation of these General Conditions shall be binding unless agreed in writing between the authorised representative of the Seller and the Buyer.

(d) The Seller reserves the right to refuse to accept any Order.

3. GOODS

(a) Unless otherwise agreed in writing in the Tender, all specifications, drawings and of weights and dimensions submitted with the Tender are approximate only, and the descriptions and illustrations contained in the Seller’s catalogues, price lists and other advertisement matters, are intended merely to present a general idea of the products described therein and none of these shall form part of the Contract.

(b) Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer, the Buyer acknowledges that such sample was so exhibited and inspected solely to enable the Buyer to judge for himself the quality of the bulk and not so as to constitute a sale by sample under the Contract. The Buyer shall take the Goods at his own risk as to their corresponding with any sample and as to their quality, condition or sufficiency for any purpose.

(c) The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.

(d) The Seller may at its discretion from time to time vary the design of the Goods from that advertised without notice to the Buyer provided that any such variations do not constitute material alterations to the Goods.

4. ORDERS AND SPECIFICATIONS

(a) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

(b) The quantity, quality and description of, and/or any specification for, the Goods shall be those set out in the Buyer’s Order (if accepted by the Seller).

(c) No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the costs of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.

USE OF THE GOODS

(a) Where the Goods have been purchased by the Buyer either for use or resale, the Buyer shall bring to the attention of all persons using or purchasing them all of the Seller’s instructions and/or any recommendations for use.

(b) The Buyer shall not remove any plaque or other label affixed to the Goods referring any user to the Seller's instructions and/or recommendations for use, and the Buyer must exact an equivalent enforceable undertaking from any entity purchasing the Goods from the Buyer.

(c) The Buyer shall indemnify the Seller against all actions, suits, claims, demands, losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts which if established would indicate a breach of the undertakings representations and warranties on the part of the Buyer contained in these General Conditions or which if established would indicate a breach by any purchaser from the Buyer of any undertaking which the Buyer is required in these General Conditions to exact from such purchaser.

6. THE PRICE

(a) The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the Order. All prices are ex works unless otherwise stated in writing and are exclusive of any duty or taxes.

(b) The Seller reserves the right to increase the price for the Goods ordered to meet any charges and expenses incurred by it as a result of the suspension of delivery by the Buyer. Any such increase in price shall be without prejudice to any of the rights of the Seller and remedies under these General Conditions and this Contract.

7. TERMS OF PAYMENT

(a) All accounts are due for payment on the last day of the month following that in which Goods are invoiced in accordance with these terms unless otherwise agreed in writing.

(b) If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum over the base rate for the time being of Royal Bank of Scotland PLC (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made.

(c) The Seller reserves the right to refuse to execute any order or contract if the arrangement for payment or the Buyer's credit are not satisfactory to the Seller. The Seller may make delivery conditional upon simultaneous matching payment (such as cash on delivery or bank direct debit) or on pre-payment, especially (but without limitation) where there is no previous business relationship between the Seller and the Buyer, if delivery is to be made to a foreign country or if there is a high risk of late payment.

(d) In the case of non-payment of any account when due or in case there shall be any default or refusal on the part of the Buyer to take due delivery of any Goods or materials or in the case of death, incapacity, bankruptcy or insolvency of the Buyer, or when the Buyer is a limited company in the case of liquidation or the appointment of a receiver then the purchase price of all Goods invoiced and delivered by the Seller to the Buyer at that date shall immediately become due and payable by the Buyer to the Seller and in addition the Seller is entitled to have the right to cancel every Contract made with the Buyer or to suspend or to continue delivery of Goods at the Buyer's option without prejudice to its right to recover any loss sustained.

(e) The Buyer shall have no right of set-off against sums due to the Seller under these General Conditions or any Contract.

8. DELIVERY

(a) All delivery dates are estimates only and the Seller shall not be liable for failure to make the Goods available by such dates save where any express guarantee in writing is given by the Seller.

(b) If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

(c) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

(d) The Buyer shall not refuse to take delivery on account of minor defects in the Goods.

9. TRANSPORT

Unless otherwise specified in the Tender where the price tendered includes delivery, the Seller may use its absolute discretion as to the method of transport. Special transport arrangements made at the Buyer's request may be charged extra to the Buyer. When the price quoted includes delivery the Seller will repair or replace free of charge products damaged in transit provided the carriers and the Seller receive written notification of such damage within three days of delivery, but not otherwise. Only where notification of non-delivery of the goods is notified in writing to the Seller within twenty-eight days of the date of despatch shall the Seller replace the goods in accordance with these General Conditions.

10. TITLE AND RISK

(a) The Goods supplied by the Seller shall be at the Buyer's risk immediately on delivery to the Buyer or into custody on the Buyer's behalf (whichever is the sooner) and the Buyer should therefore be insured accordingly. The property in the Goods will pass to the Buyer only when the Goods which are the subject of the Contract and all other Goods the subject of any other contract between the Seller and Buyer have been paid for in full.

(b) At any time before receipt of full payment for the Goods the subject of this Contract or at any time when money is owed by the Buyer to the Seller, the Seller shall have the right to immediate recovery of all Goods of the Seller in the possession of the Buyer without prejudice to all other rights and the Buyer shall allow all facilities for the recovery of the Seller's Goods from its premises or the premises of any servant, agent, assign or associated company and shall do everything reasonably practicable to ensure recovery of the Goods from any other premises in which they are situated.

(c) Such right of immediate recovery of its Goods shall be exercised by the Seller on the occurrence of any one or more of the following events:

(i) the appointment of a receiver or a manager in respect of the Buyer's affairs or any notice that a receiver or manager is to be appointed.

(ii) The presentation of a petition to wind up the Buyer (or any notice that steps are to be taken to wind up the Buyer) or the passing of a resolution to wind up the Buyer (save for the purpose of reconstruction or amalgamation) or notice of any intention to move or pass such a resolution save as aforesaid.

(iii) Any fact of bankruptcy as defined by Section 1 of the Bankruptcy Act 1914 or any amendment thereto.

(iv) A decision by the Buyer that the Buyer intends to make an arrangement or composition with its creditors or the making of any arrangement or composition with its creditors.

(v) The levying of any distress or distraint upon the property or goods of the Buyer.

(vi) Notwithstanding the property in the Goods does not pass to the Buyer the Goods may nevertheless be sold by the Buyer as principal under a resale agreement, which terms means any agreement to resell the Goods to a third party, if the Buyer does so in the normal course of business and at a price which constitutes the full market value of the Goods.

(d) Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to enter upon any premises where the Goods are stored to inspect them and to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

11. REJECTION OF GOODS

The Buyer shall inspect the Goods on collection or immediately on their receipt from the Seller and shall within fourteen days from such collection or receipt give notice to the Seller of any matter or thing by reason whereof he alleges that the goods are not in accordance with the Contract. If the Buyer shall fail to give such notice the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be deemed to have accepted the Goods accordingly.

12. REPRESENTATIONS

(a) The Buyer is responsible for suitability of the Goods. The Goods are supplied by the Seller on the basis that they conform to the written terms and to any description contained in these General Conditions. No other representations terms and conditions or variations of any sort whatsoever whether written or oral or alleged to have been made or entered into by the Seller or any servant or agent of the Seller shall be of any force or effect unless confirmed in writing by a director or designated representative of the Seller.

(b) The Buyer acknowledges that no representations outside these terms have induced him to enter into the Contract (which expression shall include any contract of which these terms form part).

13. DEFECTS, LOSS AND DAMAGE

(a) The Seller warrants that the goods are of satisfactory quality and built with good materials and workmanship and with all reasonable skill and are fit only for the purpose stated on the Seller's offer or quotation as the case may be.

(b) All implied conditions, warranties and/or representations are hereby excluded to the fullest extent permissible by law.

(c) Save as hereinafter appears the Goods supplied will be replaced or repaired free of charge or in the Seller's absolute discretion the purchase price refunded if the Seller is satisfied that they do not accord with the warranty given under (a) upon delivery to the Buyer and provided always that:

(i) the Buyer has made payment strictly in accordance with the terms and conditions hereof;

(ii) the Goods have been correctly operated and maintained in strict accordance with the Seller's instructions and directions;

(iii) the Buyer has informed the Seller in writing of the defects complained of in the Goods and the nature of the defects within fourteen days of their discovery;

(iv) the products or parts thereof have been properly and correctly used, operated and maintained in strict accordance with any instructions and directions of the Seller; and

(v) the fault occurs within 12 months of delivery or 100,000 miles whichever is the sooner, unless otherwise agreed in writing.

(d) Without prejudice to the foregoing in so far as any manufacturer of parts limits its liability in respect of such parts used by the Seller in manufacturing the Goods or in respect of any consequential liability in connection therewith the same limitation (a copy of which will be provided to the Buyer on request) shall apply to the Seller's liability and shall be taken to have been accepted by the Buyer in lieu of all other conditions or warranties expressed or implied statutory or otherwise which are hereby expressly excluded.

(e) The Seller hereby notifies the Buyer that the price of the Goods has been determined on the basis that the Seller's liability for any breach of warranty or contract, negligence or misrepresentation shall be limited at the Seller's option to:

(i) a refund of the price of the Goods or

(ii) replacement and/or making good any damaged parts (excluding labour) and the Seller's liability shall be limited accordingly. In no circumstances will the Seller be liable for loss or damage arising out of circumstances over which it has no control.

(f) Except as provided in sub-condition 13(c), the Seller will not be liable for the following loss or damage however caused and even if foreseeable by the Seller:

(i) economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;

(ii) loss arising from any claim made against the Buyer by any other person; or

(iii) loss or damage arising from the Buyer's failure to fulfil its responsibilities or any matter under the control of the Buyer.

(g) The Buyer will co-operate fully and promptly with any product recall operation which the Seller may elect to conduct in respect of any Goods, subject to the Seller reimbursing to the Buyer any transport costs reasonably incurred in transporting any recalled Goods to the Seller.

14. SELLER'S LIEN

In addition to any right of lien or recovery to which it may by law be entitled the Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (although such Goods or some of them may have been paid for) for all sums, whether liquidated or quantified or not, due from the Buyer to the Seller. The Seller does not accept responsibility for loss or damage of the Buyer's property in the Seller's possession either as a result of the exercise by the Seller of its lien or otherwise.

15. INDEMNITY

The Buyer shall indemnify the Seller in respect of all damages, injury, loss and expenses occurring to any person or property and against all actions, suits, claims, demands, charges or

expenses in connection therewith for which the Seller may become liable in respect of the Goods, where such damage, injury, loss or expense shall have been occasioned partly or wholly by the negligence, breach of contract or carelessness of the Buyer or its servants or agents.

16. FORCE MAJEURE

(a) The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: (i) act of God, explosion, flood, tempest, fire or accident;

(ii) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties);

(iii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;

(iv) import or export regulations or embargos;

(v) difficulties in obtaining raw materials, labour, fuel, parts or machinery;

(vi) power failure or breakdown in machinery.

17. INTELLECTUAL PROPERTY

(a) The Goods include designs ("the Designs") which are the property of the Seller. The Seller owns the copyright, design right and all other intellectual property rights in the Designs.

(b) The Buyer agrees that the Designs may not be reproduced or used in any way except with the prior written consent of the Seller.

(c) The Seller has not knowingly infringed any intellectual property rights of any third party but does not warrant or give any assurance to the Buyer that any Design does not infringe the intellectual property rights of any third party.

18. DISPUTE RESOLUTION

If any dispute arises out of these General Conditions or any Contract the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution's (CEDR) Model Mediation Procedure. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

19. PROPER LAW

These General Conditions and each Contract shall be governed by and read and construed in accordance with English Law, and subject to condition 18 each party irrevocably submits to the jurisdiction of the courts of England.

20. ASSIGNMENT

The Buyer shall not assign any benefit under these General Conditions or any Contract without the consent in writing of the Seller, which may if given be on such terms as to guarantee or indemnify or otherwise as the Seller thinks fit.

21. NOTICES

Any notice given under or pursuant to these General Conditions or any Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile (provided in the case of facsimile that evidence of successful transmission is received by the sender) and if so sent or transmitted to the address of the party as stated on the Order or Tender, as the case may be, or such other address as the party may by notice to the other have substituted therefor shall be deemed validly and effectively given on the day when in the ordinary course of the means of transmission it would first be received by the address in normal business hours.

22. NO WAIVER

Either party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it under the Contract by the other party without in any way prejudicing or affecting its rights in respect of any other liability or right not so released, compounded, compromised, waived or postponed. No single or partial exercise or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or impair or preclude any further exercise of that or any right, power or remedy arising under the Contract or otherwise.

23. EXCLUSION OF THIRD PARTY RIGHTS

No term of these General Conditions or any Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by

any person who is not a party to it.

24. INVALIDITY

To the extent that any provision of these General Conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of these General Conditions, it shall not affect the enforceability of the remainder of these General Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.