

STANDARD TERMS AND CONDITIONS OF SALE OF GKN AEROSPACE U.S. COMPANIES (“GKNA”)

IMPORTANT: CONDITIONS 7, 13 AND 14 PROVIDE THAT CERTAIN RISKS ARE TO BE BORNE BY THE BUYER AND MAY AFFECT THE BUYER’S INSURANCE ARRANGEMENTS

1. **DEFINITIONS:** The “contract” means any agreement between GKNA and the Buyer for the supply of goods; “the Buyer” means the purchaser of the goods; the “goods” means the subject matter of the contract and includes services; the “price” means the price of the goods and any other payment to be made by the Buyer to GKNA hereunder.
2. **GENERAL:** The contract is entered into and all quotations are given subject to these terms and conditions which may only be varied or waived by written agreement between GKNA and the Buyer. No contract shall be made until GKNA has accepted in writing an order placed by the Buyer. If these terms and conditions differ from the terms of any offer made or order placed by the Buyer, any subsequent communication by GKNA constitutes a counter offer and not acceptance of such terms. Any quotation is given by GKNA on the basis that no contract shall come into existence until GKNA dispatches an acknowledgement of order to the Buyer. The quotation may therefore be varied or withdrawn without notice.
3. **DESCRIPTIONS:** All photographs, drawings, descriptions and details in GKNA catalogues, price lists and other documents are only indicative of a type of product and do not constitute warranties, conditions or representations. No report, representation, advice, communication or statement made by a representative of GKNA shall be binding on GKNA unless expressly contained herein. GKNA reserves the right to incorporate improvements in the general development of its products and make and charge for mandatory modifications to the goods.
4. **PRICE:**
 - 4.1 Unless otherwise agreed in writing, all prices quoted are F.O.B. origin (and for exports, net ex-works trade packed per Incoterms), and apply only in relation to the total quantities and dates and rates of delivery quoted. All prices are subject to the addition of all other duties and taxes (including where applicable sales or use tax or Value Added Tax at the rate ruling at the relevant tax point).
 - 4.2 GKNA reserves the right, by giving written notice to the Buyer at any time before delivery to adjust the price of the goods to take account of increases in the cost to GKNA which is due to any factor beyond the control of GKNA such as costs of components or equipment not manufactured by GKNA, raw materials, general commodities freight or insurance, rates of currency exchange, duties, taxes or surcharges or improvements or mandatory modifications made under Clause 3 above.
5. **PAYMENT:** Unless otherwise agreed in writing, all payments shall be made in full without deduction or withholding in cash in U.S. dollars within 30 days of date of invoice and free of setoff or counterclaim. Failure by the Buyer to make payment in accordance with the terms agreed shall, without prejudice to any other remedies GKNA may have, render the Buyer liable to pay interest upon the total sums outstanding calculated at the rate of 4% above Citibank base rate from time to time in force calculated from the date of delivery, such interest accruing on a daily basis and being payable on demand. Time for payment is of the essence of the contract.
6. **DELIVERY:**
 - 6.1 Unless otherwise agreed in writing, all deliveries shall be made F.O.B origin, and shall be deemed to have been effected when GKNA shall have notified the Buyer the goods are ready for collection
 - 6.2 Any periods quoted for delivery or dispatch are estimates only and time for delivery shall not be made of the essence by notice. If GKNA fails to deliver the goods (or any instalment) for any reason other than any cause beyond GKNA’s reasonable control or the Buyer’s fault, and GKNA is accordingly liable to the Buyer, GKNA’s liability shall be limited to the price of those goods not delivered (notwithstanding Clause 13.3(i)) and the Buyer shall not be entitled to reject any consignment of the goods or to treat the contract as repudiated in the event of any such failure.
 - 6.3 Delivery of the goods to a carrier for transmission to the Buyer or the delivery of the goods to the place of delivery shall constitute delivery to the Buyer and the risk therein shall upon such delivery pass to the Buyer.
 - 6.4 GKNA shall be entitled to make partial deliveries or deliveries by instalments and these terms and conditions shall apply to each partial delivery.
 - 6.5 Where the goods are ready but cannot be dispatched for any reason beyond the control of GKNA or through the fault or delay of the Buyer, GKNA shall be entitled to make a reasonable charge in respect of storage and insurance of the goods.
7. **TITLE AND RISK:**
 - 7.1 Risks in the goods shall pass to the Buyer on delivery.
 - 7.2 Title of the goods shall not pass to the Buyer until GKNA has received in full all sums due to it in respect of:
 - (i) the goods; and
 - (ii) all other sums which are or which become due to GKNA from the Buyer on any account.
 - 7.3 Until title of the goods has passed to the Buyer, the Buyer shall:
 - (i) hold the goods on a fiduciary basis as GKNA’s bailee;
 - (ii) store the goods (at no cost to GKNA) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as GKNA’s property;
 - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and
 - (iv) maintain the goods in satisfactory condition and keep them insured on GKNA’s behalf for their full price against all risks to the reasonable satisfaction of GKNA. On request the Buyer shall produce the policy of insurance to GKNA.
 - 7.4 While title in the goods remains in GKNA, GKNA shall have the right without prejudice to the obligation of the Buyer to purchase the goods, to re-take possession of the goods.
 - 7.5 GKNA shall have the right to maintain an action for the price notwithstanding that title in the goods may not have passed to the Buyer.
 - 7.6 Until title of the goods passes to the Buyer, the Buyer grants GKNA, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to repossess them pursuant to Clause 7.4 or inspect them.
 - 7.7 On termination of the contract, however caused, GKNA’s (but not the Buyer’s) rights contained in this Clause 7 shall remain in effect.
8. **TRANSIT:** Claims for damages to goods occurring in transit or for shortage in delivery or goods received from carriers will be considered by GKNA only if the carriers and GKNA received written notification of such damages or shortage within seven days of arrival or in the event of loss of goods in transit within 21 days of the date of consignment. Where delivery is taken of goods without being checked they will be deemed to have been accepted by the Buyer unless the carrier’s delivery book is signed “Not Examined”.
9. **INSPECTIONS:**
 - 9.1 Unless otherwise agreed in writing, GKNA will carry out such tests and inspection as it deems necessary. Any additional tests or inspections required by the Buyer will be to the Buyer’s account.
 - 9.2 The
10. **INTELLECTUAL PROPERTY RIGHTS (“IPR”)**
 - 10.1 All IPR in the goods (including without limitation any and all patent rights, design rights, copyrights and other IPR (whether registered or unregistered) in the specification(s) and design(s) of the goods or manufacturing processes) shall, as between GKNA and the Buyer, be the property of GKNA. The Buyer represents and warrants that the use of any design(s), specification(s) and/or instruction(s) (or any part thereof) provided directly or indirectly by the Buyer will not infringe any rights of any third party. The Buyer shall indemnify and hold harmless GKNA against any and all claims alleging infringement of trade marks, trade names, patents, copyrights, designs, registered designs and/or any other IPR (including without limitation any “passing off” claims) which arise as a result of GKNA’s compliance with the Buyer’s specification(s), design(s) and/or instruction(s) (or any part thereof).
 - 10.2 (i) The Buyer shall notify GKNA forthwith of any claim(s) that the sale, use or other exercise of the goods infringes any IPR and give to GKNA all authority and information and every reasonable assistance required by GKNA for the defense of any such claim(s) and shall not itself admit, handle, deal with or compromise any such claim(s) except with the written consent of GKNA;
(ii) The Buyer shall comply with all instructions of GKNA and all legislation in relation to the sale, processing, storage and use of the goods. GKNA may without liability cancel or suspend any deliveries or manufacture of any of the goods which have become the subject of a claim by a third party alleging infringement of any IPR.
 - 10.3 The contract does not grant the Buyer or any other third party any licence, express or implied, under any IPR of GKNA for the goods or any product, process, design or machine of which the goods form part, nor does the sale of the goods or supply of supporting information imply, represent or warrant that the goods do not infringe the rights (including without limitation the IPR) of a (or any) third party (and for the avoidance of doubt no indemnity is given by GKNA in relation to any such infringement(s) or alleged infringement(s)).
11. **INFORMATION:** All drawings, descriptions, specifications, designs, documents and other information (including without limitation features contained in any of the foregoing or in any objects or software), whether business or technical, (together “Information”) supplied or otherwise disclosed by GKNA are supplied or disclosed on the express understanding that such supply or disclosure shall not be construed as passing to the Buyer any copyright (or any other rights whatsoever) in such Information. All rights including, without limitation, copyright and property in all such Information shall, as between GKNA and the Buyer, remain vested in GKNA..
12. **GKNA WARRANTY:**

- 12.1 GKNA will at its option either replace or repair or issue credit for the price to the Buyer for any goods found to be defective by sole reason of faulty design (to the extent parts are manufactured to GKNA detailed design), materials or poor workmanship (fair wear and tear excluded) within 6 months from the date of delivery or within 60 hours of use (whichever shall first expire) provided that:
- (i) GKNA is notified in writing within 7 days of the discovery of any such defects by the Buyer and the defective goods are returned to GKNA, transportation charges being prepaid by the Buyer;
 - (ii) examination by GKNA of such goods shall establish to its satisfaction that such defects exist and have not been caused by misuse, neglect, improper installation or repair, alteration or accident, or inadequate storage;
 - (iii) this warranty shall not extend to any products or parts thereof not manufactured by GKNA. In the case of products not manufactured by GKNA, GKNA will so far as possible pass to the Buyer the benefit of any warranty or guarantee given to GKNA by the manufacturers.
- 12.2 If GKNA complies with Clause 12.1, it shall have no further liability for a breach of the warranty in Clause 12.1 in respect of such goods.
13. **EXCLUSION OF LIABILITY:**
- 13.1 Subject to Clause 12, the following provisions set out the entire financial liability of GKNA (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any matters relating to the contract including without limitation:
- (i) any breach of the contract;
 - (ii) any use made or resale by the Buyer of any of the goods, or of any product incorporating any of the goods; and
 - (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the contract.
- 13.2 EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL CONDITIONS, WARRANTIES AND OTHER TERMS IMPLIED BY STATUTE, COMMON LAW OR EQUITY, ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.
- 13.3 Subject to Clause 13.2:
- (i) GKNA's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to 10% of the contract price (save where Clause 6.2 applies); and
 - (ii) GKNA shall not be liable to the Buyer for any:
 - (a) loss of profit;
 - (b) loss of business;
 - (c) depletion of goodwill and/or similar losses;
 - (d) loss of anticipated savings;
 - (e) loss of contract;
 - (f) loss of use;
 - (g) loss or corruption of data or information; orany special, indirect, incidental, consequential or pure economic loss, costs, damages, charges or expenses whatsoever (howsoever caused) which arise out of or in connection with the contract.
14. **FORCE MAJEURE:**
- 14.1 GKNA shall not be liable for delay in performance or for non-performance in whole or in part of its obligations under the contract direct or indirectly resulting from causes beyond control either of GKNA or of GKNA's suppliers including, but not limited to reference to, acts of God, acts of the Buyer or a third party, hostilities, embargoes, sabotage, civil disturbance, government regulations, strikes, lock-outs or other industrial action, illness, flood, fire, impact, explosion, adverse weather, delay in delivery to GKNA or GKNA's suppliers or shortage of any services, products or materials.
- 14.2 In any such event GKNA may without liability extend the time for performing the contract, cancel the contract or reduce the volume of the goods ordered by the Buyer. If the contract is frustrated or cancelled as a result of an event set out in Clause 14.1 GKNA shall be entitled to such reasonable remuneration as it may specify.
15. **BREACH AND FINANCIAL CONDITIONS:**
- 15.1 If any of the Buyer's obligations to GKNA under any contract are not fulfilled or if the Buyer's financial condition at any time does not in GKNA's unfettered judgement justify continuance of the contract on the terms of payment specified, GKNA may, without prejudice to any other rights it may have, by notice in writing cancel any outstanding order or suspend any deliveries of or work on any of the goods unless the Buyer makes such payment for any of the goods ordered as GKNA may require.
- 15.2 In addition to any rights of lien to which GKNA may by law be entitled, while any amount remains due to it from the Buyer, GKNA shall be entitled to a general lien for such amount on all property of the Buyer in GKNA's possession (whether paid for by the Buyer or not).
16. **HEALTH AND SAFETY**
- 16.1 The Buyer hereby agrees that it is responsible for taking all necessary steps to ensure that the goods are safe and without risks to health when properly used including:
- (i) regular and properly testing, inspecting and maintaining, properly installing, storing and housing the goods,
 - (ii) disseminating adequate detailed information regarding their sale and proper use to the persons using the goods, and ensuring that the goods are adequately manned, and the Buyer's order for the goods shall be deemed to be its written undertaking therefore.
17. **BUYER'S PROPERTY:** Any property of the Buyer received by GKNA whether for incorporation in goods of GKNA or for repair or otherwise will be held by GKNA at the Buyer's risk as regards loss or damage whatsoever arising (whether due to GKNA's negligence or otherwise). The Buyer shall also accept liability in cases where quantity, quality or delay in delivery of free issue items prejudices GKNA's performance of the contract.
18. **PROPER LAW AND JURISDICTION:** The contract shall be governed by and construed in accordance with the law of the state of the U.S. in which the GKNA company selling the goods is located, and the courts located in such state shall have non-exclusive jurisdiction to hear all disputes arising in connection with the contract.
19. **CONFIDENTIALITY:** Any information or data given in confidence, including Information (as defined in Clause 11), or any confidential drawings or other general commercial intelligence which may be received by the Buyer or any representatives of the Buyer (insofar as it is not demonstrably public knowledge) shall not be divulged to any third party and may be used by the Buyer only in connection with the goods supplied hereunder and not in any other connection whatsoever. In the event that the Buyer or any such representative so divulges any such data, drawings, information or intelligence to the detriment of GKNA, the Buyer shall indemnify GKNA in full against all costs, expenses, damage or loss directly or indirectly occasioned thereby.
20. **EXPORTS:** In the case of export contracts the following additional conditions shall apply:
- 20.1 Buyer and GKNA shall comply with the laws and regulations of the United States of America (USA) relating to exports and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Regulation (EAR) (15 C.F.R. Parts 730-774) and the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et. Seq.). In particular, the Parties shall not disclose any technical data, nor deliver, export, re-export or re-transfer any Product out of the USA, or to foreign persons or entities within or outside the USA, without the proper written authorization and/or license from the U.S. Government. Buyer hereby indemnifies and agrees to hold GKNA harmless from any costs, damages, penalties, attorney's fees and similar expenses of GKNA due to Buyer's breach (or threatened breach) of such obligation. Any governmental license, approval or notification required for export shall be the responsibility of the Buyer. The Parties shall reasonably cooperate with each other in obtaining all required export and import licenses, approvals and/or notifications pursuant to such U.S. laws.
- 20.2 GKNA shall not be taken as indemnifying the Buyer or as being liable for IPR infringement where the goods are sold or used outside UK or their usual function.
- 20.3 Any order that conflicts with the Export Control Act (ECA2002) and any revisions thereto shall in no event be binding upon GKNA.
- 20.4 The contract excludes the application of the 1980 United Nations Convention for the International Sale of Goods.
21. **SEVERANCE:** If any provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.
22. **WAIVER:** Failure or delay by GKNA in enforcing or partially enforcing any provision of the contract shall not be construed as a waiver of any of its rights under the contract. Any waiver by GKNA of any breach of, or any default under, any provision of the contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.
23. **THIRD PARTIES:** The parties to the contract do not intend that any terms of the contract shall be enforceable by any third party that is not a party to the contract.
24. **ASSIGNMENT:** GKNA may assign the contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the contract or any part of it without the prior written consent of GKNA.
25. **BUYER-FURNISHED MATERIAL:**
When a quotation or Order specifies that material is to be furnished by the Buyer, ample allowances shall be made by the Buyer for reasonable spoilage or scrap of the material so as to facilitate efficient, timely production by Seller.