

CONDITIONS OF SALE OF GKN AEROSPACE SERVICES LTD (“GKNAS”)

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 the agreement between GKNAS 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 for any other payment to be made by the Buyer to GKNAS hereunder.
2. **GENERAL:** The contract is entered into and all quotations are given subject to these conditions which may only be varied or waived by written agreement between GKNAS and the Buyer. No contract shall be made until GKNAS has accepted in writing an order placed by the Buyer. If these conditions differ from the terms of any offer made or order placed by the Buyer, any subsequent communication by GKNAS constitutes a counter offer and not acceptance of such terms. Any quotation is given by GKNAS on the basis that no contract shall come into existence until GKNAS despatches 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 The quotation may therefore be varied or withdrawn without notice.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 GKNAS 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 GKNAS shall be binding on GKNAS unless expressly contained herein, subject to Clause 13.4(ii). GKNAS 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 net ex-works trade packed 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 Value Added Tax at the rate ruling at the relevant tax point).
 - 4.2 GKNAS 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 GKNAS which is due to any factor beyond the control of GKNAS such as costs of components or equipment not manufactured by GKNAS, 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 pounds sterling 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 GKNAS may have, render the Buyer liable to pay interest upon the total sums outstanding calculated at the rate of 4% above Barclays Bank PLC 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 and stated on the face hereof, all deliveries shall be made ex-GKNAS Works, and shall be deemed to have been effected when GKNAS shall have notified the Buyer the goods are ready for collection
 - 6.2 Any periods quoted for delivery or despatch are estimates only and time for delivery shall not be made of the essence by notice. If GKNAS fails to deliver the goods (or any instalment) for any reason other than any cause beyond GKNAS's reasonable control or the Buyer's fault, and GKNAS is accordingly liable to the Buyer, GKNAS'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. Section 32(2) and (3) of the Sale of Goods Act 1979 shall not apply.
 - 6.4 GKNAS shall be entitled to make partial deliveries or deliveries by instalments and these conditions shall apply to each partial delivery.
 - 6.5 Where the goods are ready but cannot be despatched for any reason beyond the control of GKNAS or through the fault or delay of the Buyer, GKNAS 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 GKNAS 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 GKNAS 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 GKNAS’s bailee;
 - (ii) store the goods (at no cost to GKNAS) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as GKNAS’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 GKNAS’s behalf for their full price against all risks to the reasonable satisfaction of GKNAS. On request the Buyer shall produce the policy of insurance to GKNAS.
 - 7.4 While title in the goods remains in GKNAS, GKNAS 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 GKNAS 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 GKNAS, 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, howsoever caused, GKNAS’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 GKNAS only if the carriers and GKNAS 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, GKNAS will carry out such tests and inspection as it usually carries out on such goods. Any additional tests or inspections required by the Buyer will be to the Buyer’s account.
 - 9.2 The goods shall be manufactured and released in accordance with the relevant requirements of such public or responsible body or bodies in the United Kingdom to whose jurisdiction, control or regulations the goods may from time to time be subject and in addition such goods as are manufactured by GKNAS shall be inspected and released by GKNAS under its own system of inspection as approved by any such body and such inspection and release shall constitute acceptance by the Buyer of all the goods.
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) shall, as between GKNAS and the Buyer, be the property of GKNAS. 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 GKNAS 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 GKNAS’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 GKNAS forthwith of any claim(s) that the sale, use or other exercise of the goods infringes any IPR and give to GKNAS all authority and information and every reasonable assistance required by GKNAS for the defence 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 GKNAS;
- (ii) The Buyer shall comply with all instructions of GKNAS and all legislation in relation to the sale, processing, storage and use of the goods. GKNAS 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 GKNAS 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 GKNAS 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 GKNAS 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 GKNAS and the Buyer, remain vested in GKNAS..
12. **GKNAS WARRANTY:**
- 12.1 GKNAS 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 GKNAS 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) GKNAS is notified in writing within 7 days of the discovery of any such defects by the Buyer and the defective goods are returned to GKNAS, transportation charges being prepaid by the Buyer;
- (ii) examination by GKNAS 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, inadequate storage;
- (iii) this warranty shall not extend to any products or parts thereof not manufactured by GKNAS. In the case of products not manufactured by GKNAS, GKNAS will so far as possible pass to the Buyer the benefit of any warranty or guarantee given to GKNAS by the manufacturers.
- 12.2 If GKNAS 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.
- 12.3 In the case of a consumer transaction as defined in the Consumer Transactions (Restrictions on Statements) Order 1976 (as amended) this condition shall not affect the statutory rights of the Buyer.
13. **EXCLUSION OF LIABILITY:**
- 13.1 Subject to Clause 12, the following provisions set out the entire financial liability of GKNAS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (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 **SAVE AS EXPRESSLY PROVIDED IN THESE CONDITIONS, ALL CONDITIONS, WARRANTIES AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW, ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.**
- 13.3 Subject to Clause 13.2 and Clause 13.4:
- (i) GKNAS'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 the contract price (save where Clause 6.2 applies); and
- (ii) GKNAS 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; or
- any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses whatsoever (howsoever caused) which arise out of or in connection with the contract.
- 13.4 Except where the contract is an international supply contract within section 26 of the Unfair Contract Terms Act 1977 ("the Act") nothing contained in these conditions shall exclude or restrict:
- (i) any liability of GKNAS for death or personal injury (as defined in the Act) resulting from negligence (as defined in the Act);
- (ii) any liability of GKNAS for fraud or fraudulent misrepresentation;
- (iii) any liability of GKNAS for breach of the implied undertakings as to title contained in section 12 of the Sale of Goods Act 1979 (as amended); and
- (iv) where the Buyer deals as a consumer within the meaning of the Act, any liability of GKNAS for breach of its implied undertakings as to conformity of the goods with description or sample or as to their quality or fitness for a particular purpose contained in sections 13, 14 and 15 of the Sale of Goods Act 1979 (as amended).
14. **FORCE MAJEURE:**
- 14.1 GKNAS 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 GKNAS or of GKNAS'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 GKNAS or GKNAS's suppliers or shortage of any services, products or materials.
- 14.2 In any such event GKNAS 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 GKNAS shall be entitled to such reasonable remuneration as it may specify.
15. **BREACH AND FINANCIAL CONDITIONS:**
- 15.1 In any of the Buyer's obligations to GKNAS under any contract are not fulfilled or if the Buyer's financial condition at any time does not in GKNAS's unfettered judgement justify continuance of the contract on the terms of payment specified, GKNAS 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 GKNAS may require.
- 15.2 In addition to any rights of lien to which GKNAS may by law be entitled, while any amount remains due to it from the Buyer, GKNAS shall be entitled to a general lien for such amount on all property of the Buyer in GKNAS's possession (whether paid for by the Buyer or not).
16. **HEALTH AND SAFETY AT WORK ETC ACT 1974**
- 16.1 If the goods are articles for use at work within the meaning of the Health and Safety at Work etc Act 1974, 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 pursuant to the said Act.
17. **BUYER'S PROPERTY:** Any property of the Buyer received by GKNAS whether for incorporation in goods of GKNAS or for repair or otherwise will be held by GKNAS at the Buyer's risk as regards loss or damage whatsoever arising (whether due to GKNAS's negligence or otherwise). The Buyer shall also accept liability in cases where quantity, quality or delay in delivery of free issue items prejudices GKNAS's performance of the contract.
18. **PROPER LAW AND JURISDICTION:** The contract shall be governed by and construed in accordance with English law and the Courts of England 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 GKNAS, the Buyer shall indemnify GKNAS 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 It is hereby declared and agreed that the Uniform Laws on International Sales Act 1967 and any statutory modification or re-enactment thereof shall not apply.
- 20.2 GKNAS 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 GKNAS.
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 GKNAS 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 GKNAS 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 virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
24. **ASSIGNMENT:** GKNAS 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 GKNAS.