1 Definitions and introduction

“we”, “us” and “our” refers to the applicable purchaser among GKN Driveline Poland (hereinafter referred to as “us”), Bolesława Krzywoustego 310, 56-400 Olesnica, Poland, inscribed in the register of businesses held by the Regional Court for Wrocław-Fabryczna in Wrocław, IX Division of the National Court Register under the number 16705, Tax Identification Number PL 5291166888 or other members of the Group.

“Group” means GKN plc and its group companies; group companies include companies listed in the article 4 § 1 point 4 and 5 of the Commercial Companies Code.

Our agreement with you (the “Contract”) consists of: (i) any duly signed contract which applies to our purchase of goods and/or services from you; (ii) purchase orders or delivery orders (an “Order”) that we issue to you and you confirm; (iii) these General Purchasing Conditions; (iv) any specifications and safety, health and environmental requirements that we agree with you; (v) any supplementary terms and conditions of purchase that we agree with you; and (vi) general terms and conditions or procedures made available to you (via GKN’s Supplier Portal or otherwise). If there is any inconsistency between any parts of the Contract, the parts placed higher in the list will prevail.

2 Your conditions excluded

If you wish to impose additional or different terms on our purchase, they will not form part of the Contract and are excluded and rejected by these General Purchasing Conditions.

3 Delivery

3.1 You must deliver goods and/or services that we order in accordance with the description and dates set out in the Contract. If any goods and/or services are not delivered on time or are delivered incorrectly, we may terminate the relevant Order.

3.2 Goods may be delivered DDP (as defined in current Incoterms), unless another part of the Contract states different delivery terms. Ownership of the goods you deliver will transfer to us on delivery.

3.3 All goods must be packaged so as to protect them adequately before, during and after delivery and, if we require, each delivery shall be accompanied, in a form acceptable to us, by a certificate of conformity and/or an up-to-date material safety data sheet.

4 Quality, rejection and indemnity

4.1 Any goods supplied by you must be: (i) of the quality and description specified in the Contract; (ii) of satisfactory quality; (iii) fit for their normal purpose and any specific purpose we inform you about or which you ought reasonably be aware of; (iv) free from defects in design, material and workmanship; and (v) free from any encumbrances.

4.2 Any services supplied by you must be: (i) performed efficiently, safely and competently by suitably qualified and experienced personnel, in conformity with any applicable industry requirements and regulations, to the quality which would reasonably be expected from a skilled and experienced operator providing equivalent services in the same circumstances.

4.3 Any goods or services (and any associated technology) supplied by you must: (i) compensate us for any non-conformity; (ii) be available for collection by us; (iii) conform to any specification or other requirements referred to in the Contract; and (iv) conform to any sample approved by us.

4.4 We may (but are not obliged to) inspect and test the goods delivered by you at a time convenient for us in accordance with our requirements and may reject and return any goods and/or services (your risk and expense) any goods that fail to conform with the terms of the Contract within six (6) months of discovery of such non-conformity. You must replace such rejected goods within a reasonable time (being not more than 15 days) after giving notice of rejection with goods which comply with the requirements and specifications of the Contract.

4.5 You will reimburse each member of the Group for all losses, damages, costs and expenses (including reasonable legal fees) or other claims (including third party claims and costs relating to recalls and service measures implemented by or on behalf of the Group) arising as a result of: (i) any breach by you of the Contract; and (ii) any negligent act or omission by you or your employees, agents or sub-contractors in supplying goods and/or services pursuant to the Contract.

5 Invoicing and payment

5.1 We will pay you the price set out in the Contract (which will be inclusive of delivery costs and exclusive of sales tax) for the goods and services that you deliver in accordance with the Contract. You may only invoice us after delivery of the goods and/or services ordered by us and in accordance with any payment schedule in the Contract.

5.2 Invoices must be in compliance with applicable laws and show: the title of the buyer (Order number); the address of the goods (and/or) services delivered, and must be sent to the invoice address specified in the relevant Order.

5.3 Unless otherwise set out in the Order, payment will be due from us within 60 days of receipt by us of a validly issued invoice.

5.4 We may deduct from the price of the goods and/or services ordered by us any sums due to the Group under the Contract or any other contract between you and the Group.

6 Confidentiality and Intellectual Property

6.1 You must not disclose to any other person or entity any confidential information belonging to the Group or any of its divisions, customers, suppliers or collaboration partners, without our written consent (including without limitation, this Contract, specifications, formulae, manufacturing processes, know-how and any technical or economic information) or use such information for any purpose except for the supply of goods and/or services to us or as expressly authorised in writing by us. You must keep such information and copies thereof confidential.

6.2 You must, on request, transfer to us, free of charge and free from encumbrances, any documents, specifications, plans, drawings, samples, information or goods created or prepared for you by our employees, subcontractors and consultants, which we may use without any charge.

6.3 Intellectual property rights in any information, documentation, prototypes or tools provided by us to you shall remain owned by us or our customers or our suppliers, as applicable, and shall not be a licence or other right, whether held or part of a product or services or for any other purpose, whether or not modified, repaired or replaced (“Our Property”).

6.4 Our Property (and any crap resulting from it) is solely owned by us and we shall keep title to it at all times. If we disagree as to who owns any of Our Property, the presumption will be that we do.

6.5 Where you are in possession or control of Our Property it is on a fiduciary basis as our bailee and you have no rights in it. You have a revocable non-exclusive licence to use Our Property at your premises only for performing the Contract until we request its return, which we may do at any time. You may not sub-licence the use of Our Property or use it for any other purpose.

7 Claims

7.1 This section relates to all property (including toileing of any kind) and any related information, documentation and intellectual property rights therein: (i) purchased by us and/or manufactured by you pursuant to an Order; (ii) provided by us to you use in the supply of goods and/or services or for any other purpose, whether or not modified, repaired or replaced (“Our Property”).

7.2 Our Property (and any scrap resulting from it) is solely owned by us and we shall keep title to it at all times. If we disagree as to who owns any of Our Property, the presumption will be that we do.

7.3 Where you are in possession or control of Our Property it is on a fiduciary basis as our bailee and you have no rights in it. You have a revocable non-exclusive licence to use Our Property at your premises only for performing the Contract until we request its return, which we may do at any time. You may not sub-licence the use of Our Property or use it for any other purpose.

8 Right to sub-contract

8.1 If we refer to any sub-contractor in the Contract then such rights shall be owned by us.

8.2 We may terminate the Contract: (i) for convenience by providing you with written notice; (ii) immediately if we become aware that there are grounds for you or your parent company to become insolvent or you or any of your creditors plan to file or have filed an application to start insolvency proceedings, bankruptcy proceedings or any other preventive or restructuring proceedings under the applicable law or enter into any composition with any of your creditors; or (iii) if you breach the Contract, and if the breach is not remedied, you fail to remedy such breach within 10 days of receiving notice of the breach.

8.3 Termination of all or part of the Order or the Contract will not prejudice accrued rights.

8.4 You may be required to continue to supply spare parts and related services up to 15 years after termination or expiry of the Contract.

9 General

9.1 You and your suppliers must comply with all applicable laws, regulations and codes and also with the requirements of the GKN Supplier Code of Conduct available at www.GKNAutomotive.com/SupplierCodeofConduct. We have the right to inspect your premises on reasonable notice to audit and ensure compliance.

9.2 You must provide us with a list of your applicable insurance policies and a copy of any insurance documents you have in place.

9.3 You and your employees, agents and sub-contractors must abide by applicable site and safety rules when on our property and you shall provide evidence of your applicable insurance.

9.4 Our rights or remedies under the Contract will not limit any of our other rights or remedies, whether under the Contract or otherwise.

9.5 You will not be entitled to transfer or sub-contract any of your rights or obligations under the Contract without our prior written consent. Each company within our Group shall have the benefit of the Contract and may purchase goods and/or services pursuant to the terms of the Contract.

9.6 Any failure or delay by us to enforce or partially enforce any provision of the Contract will not be a waiver of any of our rights.

9.7 If any of your employees transfer to us by law then we may dismiss him/her without payment of any compensation or other indemnity arising from such dismissal.


10 Law and Jurisdiction

10.1 The Contract shall be exclusively governed by Polish law. If you are incorporated or otherwise legally resident in any member state of the European Union, Iceland, Switzerland or Norway, the courts of Poland shall have non-exclusive jurisdiction to settle any disputes or claims that arise out of or in connection with the Contract or its subject matter (“Claims”). If, not any Claims shall be referred to and finally resolved by arbitration in Poland under the rules of arbitration of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, by one or more arbitrators appointed in accordance with the rules of that court (http://www.sakig.pl/). The language of the arbitration shall be Polish.