

## **GKN Driveline Service Limited**

### **Terms and Conditions of Sale** **(the "Conditions")**

#### **1. GENERAL**

- 1.1 In these Conditions "the Seller" means GKN Driveline Service Limited; "the Buyer" means the person, firm or company whose order is accepted by the Seller; and the "Contract" means each contract between the Seller and the Buyer for the sale or supply of goods formed by the Seller's acceptance which, however, made or communicated shall be deemed made subject to these Conditions for the Buyer's order and will include any renewal or variation of the same and "the goods" means the goods and/or services to the goods agreed to be sold by the Seller to the Buyer.
- 1.2 The Seller only sells or supplies goods on these Conditions which shall be deemed to be incorporated into the Contract. In case of conflict these Conditions shall override any terms or conditions which the Buyer tries to impose in any document forwarded to the Seller or otherwise and the placing of an order for, or the acceptance of, the goods by the Buyer shall indicate unqualified acceptance of these Conditions.
- 1.3 No variation to these Conditions shall be binding unless agreed in writing between the respective authorised representatives of the Buyer and the Seller.

#### **2. QUOTATIONS**

All prices quoted are subject to availability and are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be subject to withdrawal at any time before receipt of an unqualified order from the Buyer and shall be deemed to be withdrawn unless so accepted within 30 days from their date.

#### **3. PRICES AND TERMS OF PAYMENT**

- 3.1 The price of the goods shall be the Seller's quoted price or, where no price has been quoted or a quoted price is no longer valid, subject to clause 3.3, the price listed in the Seller's published price list current at the date of the Seller's confirmation of acceptance of the order.

- 3.2 All prices are quoted by the Seller in pounds sterling and are exclusive of the cost of delivery, packaging, insurance and Value Added Tax ("VAT") and such other taxes and duties as may be imposed from time to time. The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the goods, but credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.
- 3.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the goods or any of them individually to reflect any increase in the cost to the Seller of providing them such as, without limitation, any increase in the costs of labour, materials, overheads, or insurance, any increase in taxes or duties or variation of exchange rates and any change in delivery dates, quantities or specifications for the goods (or any of them individually) which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 3.4 Accounts are due for payment at the end of the month following the month in which the Seller issues its invoice. Time shall be of the essence for such payment.
- 3.5 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:
- 3.5.1 cancel the Contract or suspend any further deliveries to the Buyer; and/or
  - 3.5.2 sue the Buyer for the price even if title to the goods has not passed to the Buyer; and/or
  - 3.5.3 appropriate any payment made by the Buyer to such of the goods (or items supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or
  - 3.5.4 charge the Buyer interest both before and after any judgement on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank plc base rate from time to time, until payment in full is made.
- 3.6 The Buyer shall not purport to set off or withhold any payments claimed or due to the Seller under the Contract.

#### 4. **DELIVERY**

- 4.1 Delivery of goods within the UK will be made at the cost of the Buyer to the address specified in the Buyer's order by any method of transportation regarded as suitable by the Seller.

- 4.2 Any date or period quoted by the Seller or discussed with the Buyer for despatch, delivery or performance is given and intended as an estimate only and is not to be of the essence of the Contract. The Buyer shall nevertheless be bound to accept the goods ordered whether available on or after the date quoted or discussed. If delivery is delayed the Buyer shall be entitled to cancel the Contract by giving notice to the Seller if the goods are not delivered by the end of month of the estimated delivery date, the Buyer shall have no right to rescind the Contract and the Seller shall not be liable in damages or otherwise for any loss whatsoever arising from non delivery, or late despatch, delivery or performance howsoever caused.
- 4.3 The Seller may, at its discretion, deliver in instalments, each delivery constituting as regards payment a separate order (such that clause 3.5 shall apply to each order), but 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.
- 4.4 The Buyer shall accept the supply of such quantity of the goods (whether more or less) as reasonably approximates to the stipulated amount of the Buyer's order.
- 4.5 If the Buyer fails to take delivery of the goods or give adequate delivery instructions then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 4.5.1 store the goods at the risk of the Buyer until actual delivery and charge the Buyer for the costs (including insurance) of storage; and/or
- 4.5.2 sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 5. **RISK AND TITLE**

- 5.1 Risk in the goods shall pass to the Buyer when the goods are delivered to or collected by the Buyer or when the Buyer is notified that they are available for collection, whichever is the earlier.
- 5.2 Title to the goods remains vested in the Seller until the purchase price and all other monies owing by the Buyer in relation to those goods or the price (whether or not due) are paid unconditionally in full and cleared through the Seller's bank account.
- 5.3 In addition and without prejudice to Clause 5.2 above, title to goods supplied by the Seller remains vested in the Seller until such time as there are no monies owing by the Buyer to the Seller on any account (whether or not due).
- 5.4 If any of the goods owned by the Seller are attached to, mixed with or incorporated into any other goods not owned by the Seller so that the goods in question are not separate from the resulting composite or mixed goods, then immediately upon manufacture all such composite or mixed goods shall belong to the Seller absolutely and not by way of charge until the goods have been paid in full or until the Seller recovers possession of and resells sufficient of the composite or mixed goods to discharge the purchase price in full and the Seller's costs, any excess recovered shall be accounted for to the Buyer.

- 5.5 Until title to the goods passes to the Buyer, the Buyer shall be the bailee of the goods and:
- 5.5.1 the Buyer shall keep the goods in good and substantial repair and condition, properly stored, protected, insured to their full value and identified and recorded as the property of the Seller; and
  - 5.5.2 the Buyer shall, if the Seller so requests, at the Buyer's expense immediately return the goods to the Seller or permit the Seller to enter upon any of the Buyer's premises where the goods are stored or where they are reasonably thought to be stored in order to inspect and/or repossess the goods or any of them. The Buyer hereby grants the Seller an irrevocable licence to enter any premises where the goods are stored in order to repossess them or inspect them at any time.
- 5.6 The Seller hereby licences the Buyer to sell, as the Seller's agent and bailee goods which belong to the Seller. All monies received from any such sale shall be held on trust to settle any sum due in respect thereof to the Seller and pay any balance to the Buyer. Such monies shall be placed to the credit of a separate fiduciary bank account which shall not be permitted to become overdrawn and shall not be released to the Buyer until payment for the goods has been received.
- 5.7 Where property in goods has not passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing by the Buyer in relation to the goods.
- 5.8 The Seller shall have a lien over any tools, machinery or other goods of the Buyer in its possession against payment in full of all sums due now or in the future to the Seller by the Buyer on any account whatsoever.

## 6. **CANCELLATION**

Cancellation will only be agreed to by the Seller on condition that all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller up to the time of cancellation will be paid forthwith by the Buyer to the Seller.

## 7. **DRAWINGS AND INSTRUCTIONS AND BUYER'S DUTIES**

- 7.1 All drawings, documents and other information supplied by the Seller are supplied on the express understanding that such supply shall not be construed as passing to the Buyer the copyright in any such drawings, documents and information and that the Buyer will not without the prior written consent of the Seller either give away, loan, exhibit or sell any such drawings or extracts therefrom or copies thereof or use them in any way which is inconsistent with the Seller's instructions.
- 7.2 If the goods are to be manufactured or a process is to be applied to the goods by the Seller in accordance with a specification or design submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damage, costs and expenses awarded against or incurred by the Seller in connection with any claim for infringement of any copyright, patent, design, trademark or other intellectual property right.

- 7.3 The Buyer warrants to the Seller that all necessary tests and examinations have been made or will be made prior to the goods being brought into use to ensure that the goods are designed, constructed and operated so as to be safe and without risk to the health or safety of workmen or others using them.
- 7.4 The Buyer shall be solely responsible for the accuracy of all drawings, advice and recommendations given to the Seller by or on behalf of the Buyer and shall indemnify the Seller for all and any damage, loss, costs and expenses incurred from the use of any dies, patterns or tools supplied by the Buyer.
- 7.5 The Seller shall not be obliged to retain any dies, patterns, tools, drawings or specifications for any period after the performance of the Contract unless otherwise expressly agreed in writing.
- 7.6 No warranty is given by the Seller that the use of the goods for any purpose does not infringe any British or foreign patents.
- 7.7 The information contained in the Seller's publications is provided for general guidance only and forms no part of the Contract unless expressly agreed in writing in accordance with these Conditions. The Buyer should obtain specific recommendations and advice from the Seller regarding the uses and attributes of the goods.
- 7.8 The Buyer shall ensure that suitable protective clothing is worn by all persons handling the goods and shall also ensure that the goods are suitable for the purpose to which they are put.
- 7.9 The Buyer shall indemnify the Seller and its employees and agents against all claims relating in any way to the Contract which claims arise as a result of the improper incorporation, assembly, use, processing, storage or handling of goods by the Buyer.
- 7.10 Where the Seller undertakes work or provides labour (which it may sub-contract) at the Buyer's works or elsewhere (not in the Seller's exclusive occupation) the Buyer shall indemnify the Seller against all liability (including without limitation in respect of employee or other third party claims) arising directly or indirectly from defects in or unsuitability of the works or site or apparatus or plant (other than that provided by the Seller) or from negligence or breach of statutory duty on the part of the Buyer or that of its employees or any other third party (other than the Seller's own employees) and howsoever arising.
- 7.11 The Buyer shall be responsible for compliance with all relevant laws and regulations and for obtaining and maintaining at its expense any necessary import or export licences, customs clearance, exchange control consent or other authorisations and permits whatsoever and the Buyer shall ensure that the goods are at all times labelled in such a way as to ensure the safety which a person is entitled to expect from the goods.

## 8. **CLAIMS AND LIABILITY**

- 8.1 The Seller is willing to undertake liability additional to that provided by this Clause 8 in exchange for a higher price for the goods.

- 8.2 If delivery is arranged by the Buyer then the Seller shall not be liable for any loss of any kind to the Buyer arising from any damage or deterioration to the goods or other loss occurring after risk has passed to the Buyer, however caused.

If delivery is arranged by the Seller then if the goods are lost or damaged in transit the Buyer shall notify the Seller and the carrier of the same 2 clear days before notice is required to be given to the carrier of the loss or damage or if earlier within 3 days of delivery of the goods. Failure to notify the Seller and carrier shall release the Seller from any liability in respect of such damage or loss in transit.

- 8.3 The Buyer shall inspect the goods immediately on receipt thereof and shall within seven days give notice to the Seller in detail of any ground on which the Buyer alleges that the goods are not in accordance with the Contract. If the Buyer fails to give such notice the goods shall be conclusively presumed to be in all respects in accordance with the contract and free from any defect which would be apparent on reasonable examination of the goods and the Buyer shall be deemed to have accepted the goods accordingly. In the event that the Buyer establishes to the Seller's reasonable satisfaction that the goods are not in accordance with the contract, the Buyer's sole remedy in respect of such defects shall be limited as the Seller may elect to the replacement, or repair of the goods or refund of the purchase price against return of the goods.

**THE BUYER'S PARTICULAR ATTENTION IS DRAWN TO THIS CLAUSE:**

- 8.4 Subject to clause 8.5, the Seller agrees that if any defect caused by the faulty materials or workmanship of the Seller is discovered and accepted by the Seller as such during the period of 30 days commencing with the date the goods were despatched from the Seller's premises the Seller will, in its sole discretion, repair the goods at its own expense, replace the defective goods or credit the price paid for them and in the case of services, perform corrective services or, at the Seller's option, credit the price paid for them.

- 8.5 The Buyer cannot claim the benefit of Clause 8.4 unless

8.5.1 he informs the Seller of the relevant defect in writing within the 30 days period; and

8.5.2 the claim is not attributable to fair wear and tear or any fault or damage arising from impact, modification, inappropriate use or treatment, incorrect handling or exposure to corrosive substances or substances otherwise injurious to the goods (or the items on which services have been performed, if appropriate) or their constituent materials since the goods were delivered to the Buyer or the Buyer's nominee.

- 8.6 The Seller shall not be liable for any of the following types of loss suffered by the Buyer whether such loss arises from breach of contract or breach of a duty in tort or in any other way (including loss arising from the Seller's negligence): (1) consequential or indirect losses; (2) loss of profits; (3) loss of contracts; (4) loss of anticipated savings; (5) damage to property of a customer or anyone else.

- 8.7 The Seller's total liability whether in contract, tort or otherwise in respect of any defect in the goods or arising from any acts or default of the Seller in performance of the Contract or breach of any duty (whether arising from the Seller's negligence or otherwise) shall not exceed the contract price.

8.8 These terms set out the Sellers entire liability in respect of the goods and the Sellers liability under these terms shall be in lieu of and to the exclusion of all other warranties, conditions, terms and liabilities express or implied, statutory or otherwise in respect of the quality, state and condition, fitness for purpose, durability, safety and freedom from defects of the goods or otherwise except any implied by law which by law can not be excluded.

## 9. **FORCE MAJEURE**

The Seller shall have no liability for any delay, loss or damage, costs or expenses, caused wholly or in part by any circumstances beyond its control including, without limitation, any act of God, any governmental restriction or condition, any strike, lock-out or other industrial action, any failure by the Buyer to carry out its obligations under the Contract, or any failure on the part of any supplier upon whom the Seller may be relying.

## 10. **TERMINATION**

10.1 This Clause applies if:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver, administrative receiver or administrator is appointed, over any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Buyer exceeds any credit limit; or

10.1.5 the Buyer is in breach of the Contract or any other contract with the Seller; or

10.1.6 there is a change in the control, or ownership of the Buyer, or

10.1.7 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this Clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract or stop any goods in transit without any liability to the Buyer, and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 11. **MISCELLANEOUS PROVISIONS**

11.1 The Seller is a member of the group of companies whose holding company is GKN plc, and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the GKN group.

- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 The Contract shall be governed by the laws of England and the parties agree to submit to the non-exclusive jurisdiction of the English courts.
- 11.5 If any provision of any of these Conditions shall be held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.