

1. PARTIES

These Aftermarket Conditions of Sale (“**ACOS**”) relate to contracts entered into by companies forming part of GKN Automotive for the supply of automotive-related goods (“**Products**”) for use as spare or service parts, irrespective of whether they are supplied to the manufacturer, distributor, dealer, owner or user of any Vehicle, and/or services related to such Products (“**Services**”). This includes the supply of Products to Vehicle manufacturers and their distributors (OES) and to the independent aftermarket (IAM). These ACOS do not apply to the sale of goods for use in new Vehicles or other new equipment, or services related thereto, which are supplied pursuant to GKN Automotive’s General Conditions of Sale; or for use in Vehicles used for racing, rallying, competition or sporting purposes (or similar), which are supplied pursuant to GKN Automotive’s Motorsport Conditions of Sale; or for goods for use in non-automotive applications which are supplied pursuant to GKN Automotive’s Non-Automotive Conditions of Sale. In these ACOS “**GKN**” means the company within GKN Automotive whose name is stated on the Quotation, or which the Contract Documents otherwise state is party to the Contract and “**Customer**” means the company to whom the Quotation is addressed, or which the Contract Documents otherwise state is party to the Contract.

2. QUOTATIONS, ORDERS & CONTRACTS

2.1 *Quotations.* Any written quotation issued by GKN (“**Quotation**”) is an offer by GKN to enter into a contract with the Customer for the sale to the Customer of the Products and/or Services identified in the Quotation.

2.2 *Acceptance.* The offer contained in a Quotation shall be deemed to be accepted by the Customer when the Customer: (a) signs and returns to GKN a copy of the Quotation; (b) issues a purchase order to GKN (an “**Order**”) for the purchase of the Products and/or Services identified in the Quotation; (c) issues any formal written nomination or award document to GKN in respect of the Products and/or Services identified in the Quotation; (d) accepts delivery or performance of any Products or Services; or (e) indicates in some other manner its acceptance of the Quotation.

2.3 *Contracts.* Upon the Customer’s acceptance of the Quotation as set out in section 2.2, there shall be a binding contract between GKN and the Customer (the “**Contract**”) on the terms of: (a) any duly signed long term agreement or framework agreement between GKN and the Customer which relates to the Products and/or Services; (b) the terms of the Quotation; and (c) these ACOS; in each case subject to the terms of all Written Amendments (the documents referred to or containing the terms referred to in (a) to (c) above being the “**Contract Documents**”).

2.4 *Priority of Contract Documents.* In the event of any conflict or inconsistency between the Contract Documents, the Contract Documents stated earlier in section 2.3 shall prevail over those stated later in section 2.3.

2.5 *No Other Terms.* These ACOS apply to the exclusion of and shall prevail over any other terms that the Customer seeks to impose or incorporate including any standard terms of the Customer. Any additional or different terms proposed by the Customer, whether in a purchase order, acknowledgement, correspondence or otherwise, or which are implied by law, trade custom, practice or course of dealing, are expressly rejected by GKN and shall not form part of the Contract.

3. PRODUCTS & SERVICES

3.1 *Products & Services.* The Products and Services are described in the Contract Documents.

3.2 *Remanufacturing Services.* Where GKN provides any remanufacturing, overhaul or servicing of any Material (“**Remanufacturing Services**”): (a) such supply shall be a supply of Services and not Products; (b) the Customer acknowledges that the supply of the Services is conditional upon the supply of the relevant Material which is to be the subject of such Remanufacturing Services (the “**Core Part**”); (c) the provision of such Remanufacturing Services shall be subject to section 21.3 (*Customer Input Materials*) and the Core Part shall be deemed to be Customer Input Materials; (d) GKN shall only be liable for any loss or damage to any Core Part if and to the extent that the Customer can show, by written evidence that such Core Part was in GKN’s possession, custody or control when such loss or damage occurred and the Customer notifies GKN during the performance of the Contract or within 1 month following its termination or expiry; and (e) the Customer acknowledges that Core Parts which have been subject to Remanufacturing Services are not new and may be inferior in quality and performance to the Core Part when new.

3.3 *Other Services.* Whether or not specifically referenced in the Contract Documents, all design, validation, testing, engineering, transportation, sorting, investigation or other services (if any) provided by GKN or its Representatives to the Customer at any time are subject to the terms of these ACOS.

3.4 *Delegated Performance.* GKN may perform any of its obligations under the Contract by procuring that any Affiliate of GKN performs those obligations in its place.

4. SAMPLES & PROTOTYPES

4.1 *Warranties Limited to Contract Documents.* Save to the extent expressly set out in the Contract Documents, any samples, drawings, descriptions or advertising produced by GKN and any descriptions or illustrations contained in any designs or specifications or other documents issued by GKN are produced for the sole purpose of giving an approximate idea of the Products and/or Services referred to therein and shall not form part of the Contract, save to the extent expressly set out in the Contract Documents.

4.2 *No Warranty for Prototypes.* Unless GKN otherwise agrees in writing, Prototype Products or Services are for examination and test purposes only and GKN gives no warranty in respect thereof. Prototype Products or Services are for use only in testing or evaluation by qualified Representatives of the Customer in an appropriate test environment and not for use in Vehicles on public roads.

5. QUANTITY & CAPACITY

5.1 *Quantity.* GKN shall only be obliged to supply the defined quantity or volume of Products and/or Services specified in the Contract Documents or in any release, call-off, order or other equivalent document issued by the Customer thereunder which specifies only the quantity or volume of Products and/or Services and which is accepted by GKN in writing.

5.2 *Open Orders Not Binding.* GKN does not accept orders which do not specify a defined quantity or volume of Products and/or Services, including orders which are blank, state the quantity as zero, or refer to “*open order*”, “*blanket order*”, “*see releases*”, “*as scheduled*”, “*as directed*”, “*subject to production releases*” or similar terms (“**Open Orders**”). Open Orders shall not be binding on GKN, and where GKN does supply any Products or Services referenced in an Open Order, it may decline to continue to do so at any time, or make continued supply conditional upon acceptance of an Order which specifies a defined quantity or volume of Products and/or Services.

5.3 *Forecasts.* The Customer shall provide GKN with written forecasts of its requirement for Products and Services (“**Forecasts**”), as set out in the Contract Documents.

5.4 *Capacity.* Without prejudice to section 5.3, unless otherwise expressly set out in the Contract Documents, GKN shall not be obliged to supply any Products and/or Services if to do so would result in it exceeding any production and/or performance capacity stated in the Contract Documents, including: (a) any maximum total capacity; (b) any stated maximum periodic capacity; or (c) a maximum weekly volume capacity which, unless otherwise expressly set out in the Contract Documents, shall be calculated by dividing the annual Forecast volume of Products and/or Services for the relevant year by the number of normal working weeks in GKN’s first supplying plant or facility in that year.

6. COMMENCEMENT & DURATION

Commencement. The Contract will commence upon the Customer’s acceptance of GKN’s offer in accordance with section 2.2 (*Acceptance*) and shall continue until the earlier of: (a) expiry of the Contract in accordance with the terms of the Contract Documents; or (b) termination of the Contract in accordance with section 23 (*Termination*).

7. CHANGES

7.1 *Written Amendments.* Save as set out in this section 7, all variations or changes to a Contract must be in writing and signed by an authorised representative of GKN (a “**Written Amendment**”). Once signed by both parties, Written Amendments shall form part of the Contract Documents.

7.2 *Modifications to ACOS.* The Customer shall periodically review GKN’s website located at www.gknautomotive.com (the “**GKN Website**”) and all materials made available thereon. GKN may modify or replace these ACOS from time to time by placing revised ACOS on the GKN Website. Such modified or replaced ACOS shall apply to all Orders issued on or after the effective date thereof. The Customer’s continued performance under the Contract without providing written notice to GKN detailing the Customer’s objection to any modified or replacement ACOS prior to the effective date of such ACOS shall constitute the Customer’s acceptance thereof.

7.3 *GKN Changes.* GKN may at any time make changes to the design or method of manufacture of the Products, or to the manner of performance or scope of any Services where such change is required as a result of Applicable Laws. Otherwise, if GKN requests a change to the design or method of manufacture of the Products, the Customer shall not unreasonably refuse to agree to such request and, in any event, shall provide its response to such request in writing within a reasonable time after receipt of the request and, in any event, no later than thirty (30) days after receipt of the request. If and to the extent that GKN’s requested change to the design or method of manufacture of the Products would result in cost savings and the Customer refuse to agree to GKN’s requested change for any reason other than a safety concern as evidenced by the Customer to GKN’s satisfaction, or if the Customer fails to promptly respond to GKN’s request, then GKN shall not be required to provide the Customer with any productivity discounts or other price

decreases set forth in the Contract Documents. If and to the extent that GKN's requested change to the design or method of manufacture of the Products would result in improved performance, quality and/or safety and the Customer refuse to agree to GKN's requested change or fails to promptly respond to GKN's request, then GKN shall have no liability for any Losses relating to the Products to the extent such Losses are attributable to the Customer's rejection of such change request.

7.4 *Customer Requested Changes.* Unless otherwise agreed in a Written Amendment (including any agreed change to the Price), GKN shall not be obliged to make any changes to any Contract, Products or Services, including changes to: (a) any Sub-Supplier; (b) the nature, type or quality of any services, Materials or goods used by GKN or its Sub-Suppliers in connection with the Contract; (c) the GKN Premises or other facility or premises from which GKN or any Sub-Supplier operates; (d) the Price; (e) the fit, form, function, appearance, performance of any Products; (f) the production method, or any process or software used in the production of any Products or performance of any Services; (g) any part numbers or other method of identification; (h) any packing, marking, shipping, date or place of delivery of any Products; or (i) any obligation to supply Products beyond the quoted program life specified in the Quotation. If such a change is agreed in a Written Amendment and this results in an increase in GKN's costs or GKN requiring additional time for performance, GKN shall be entitled to make an equitable adjustment to the Price or time of performance resulting from such change.

8. DELIVERY & PERFORMANCE

8.1 *Packing & Packaging of Products.* GKN shall pack and package all Products as in accordance with all packaging requirements set out in the Contract Documents and if no such packaging requirements are set out in the Contract Documents, in such manner as it may reasonably determine.

8.2 *Applicable Incoterms.* All Products shall be delivered in accordance with the Applicable Incoterms.

8.3 *Transport Methods & Routes.* Unless otherwise expressly stated in the Contract Documents, where in accordance with the Applicable Incoterms, GKN is responsible for arranging a contract of carriage for delivery of Products, it may arrange such contract of carriage on such terms, with such carrier, using such method and by such routes as GKN may determine.

8.4 *Timing of Delivery & Performance.* Any delivery times or dates referenced in the Contract Documents are approximate only and the time of delivery is not of the essence of the Contract. The Customer may not expedite, defer or cancel delivery without GKN's prior written consent, which may be given subject to such conditions as GKN may require, or withheld.

8.5 *Failure of Delivery or Performance.* If GKN fails to deliver any Products or perform any Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products or services of similar description and quality in the cheapest market available, less the price of the Products or Services.

8.6 *Partial or Excess Delivery.* If the volume of Products obliged to be delivered under the Contract cannot be delivered in full when otherwise due for delivery, partial delivery will be made and delivery of the balance will be made as soon as reasonably practicable. The Customer shall accept the supply of such quantity of the Products (whether more or less) as reasonably approximates the amount stated on the Order.

8.7 *Failure to Accept Products.* If the Customer fails to accept delivery of any Products validly delivered: (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which GKN notified the Customer that the Products have been delivered; and (b) GKN shall store the Products until the Customer takes possession or control thereof and may charge the Customer for all related costs and expenses (including insurance) relating to such storage. If by the date ten Business Days after the date on which GKN notified the Customer that the Products were delivered, the Customer has not taken possession or control thereof, GKN may resell or otherwise dispose of part or all of the Products and may charge the Customer for any shortfall in the price it actually receives below the Price.

8.8 *Risk & Title.* The Applicable Incoterms will govern the passing of risk in all Products. Title to Products shall not pass to the Customer until payment is made in full (cash or cleared funds), whereby all deliveries shall be deemed as one continuous delivery transaction. If the Customer inextricably combines the Products with parts in its property to form a new item, the Customer shall be obliged to transfer to GKN proportionate co-ownership in such new item. If and insofar the Customer resells the delivered Products in accordance with the intended purpose, it shall hereby assign to GKN all claims against the purchaser arising out of such sale (including any ancillary rights) until all GKN claims against the Customer have been settled in full. Until title to the Products has passed to the Customer, the Customer shall: (a) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as GKN's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products; and (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

8.9 *Charges, Duties & Tariffs.* Unless otherwise stated in the Contract Documents (including under any Applicable Incoterms), in respect of the

supply of any Products the Customer shall be responsible for all: (a) transportation charges, costs and expenses; (b) loading, unloading, parking, detention, insurance, storage and dunnage charges; and (c) all Tariffs.

9. PRICE

9.1 *Price.* The price payable for Products and/or Services and the currency in which it is payable is set out in the Contract Documents and may be adjusted only as set out in the Contract Documents (the "Price").

9.2 *Price Increases.* GKN may, by giving notice in writing to the Customer at any time prior to delivery or performance of the Products and/or Services, increase the price of the Products and/or Services to reflect any increase in the cost of supply that is due to any: (a) factor beyond GKN's reasonable control; (b) increases in or additional Taxes payable by GKN; (c) increases in labour costs; (d) increases in the cost of Materials; (e) increases in energy costs; (f) increases in packing, fuel or other transportation costs; (g) increases in other manufacturing or overhead costs; (h) delay caused by any instructions of the Customer; or (i) failure of the Customer to give GKN adequate or accurate information or instructions.

9.3 *Transport & Delivery Costs.* Unless otherwise expressly stated in the Contract Documents or the Applicable Incoterms, the Price excludes the costs and charges of packaging, insurance and transport of the Products to the point of delivery, which shall be invoiced to the Customer in addition to the Price.

9.4 *Tax.* Unless otherwise expressly stated in the Contract Documents, the Price excludes value added tax, sales tax, use tax and all other equivalent Tax which the Customer shall additionally be liable to pay to GKN at the prevailing rate. Otherwise, each party shall be responsible for and bear any income or equivalent Tax assessed against it by reason of its receipt of moneys or value pursuant to the Contract.

9.5 *Tariff Changes.* Unless otherwise expressly stated in the Contract Documents, the Price assumes that there is no increase in any the rates of any existing (or introduction of any new) Tariffs after the point at which the Contract is entered into. The cost of any such additional Tariff rates or increased Tariffs shall be borne by the Customer and if such Tariffs are payable directly or indirectly by GKN, it may increase the Price by a corresponding amount so as to give effect to this principle.

9.6 *Exchange Rate Changes.* Unless otherwise expressly stated in the Contract Documents, the Price assumes that there is no change in foreign currency exchange rate(s) after the point at which the Contract is entered into which increases the cost to GKN of performing the Contract. In the event of any such change in exchange rate(s), GKN may increase the Price so as to compensate it in full for such increased costs.

10. OTHER CHARGES

10.1 *ED&D Costs.* The Customer will reimburse GKN for the cost of its engineering, design, development, research and testing activities ("ED&D") as set out in the Contract Documents. Without prejudice to section 7, where any change is made in accordance with section 7.4 which results in GKN being required to undertake additional ED&D in order to perform the Contract after such change, the Customer shall reimburse GKN for the costs of that additional ED&D on demand.

10.2 *Tooling and/or other GKN Property Costs.* The Customer will reimburse GKN for the cost of any Tooling or other GKN Property required to perform the Contract as set out in the Contract Documents. Without prejudice to section 7, where any change is made in accordance with section 7.4 which results in GKN being required to acquire any Tooling and/or other GKN Property in order to perform the Contract after such change, the Customer shall reimburse GKN for the costs of that additional Tooling and/or other GKN Property on demand.

10.3 *Other Costs & Charges.* The Customer will pay to GKN any other costs and charges set out in the Contract Documents in accordance with the terms thereof.

11. INVOICING & PAYMENT

11.1 *Invoicing.* GKN may issue an invoice in respect of the Price of all Products and Services supplied when stated in the Contract Documents or (if earlier), on delivery of the Products or performance of the Services. GKN may issue an invoice in respect of all sums payable under section 10 (*Other Charges*) when stated in the Contract Documents or (if not so stated), following the relevant costs to which such sums relate being incurred.

11.2 *Payment Terms.* Unless otherwise expressly stated in the Contract Documents, all invoices shall be payable by the Customer within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by GKN and time for payment shall be of the essence of the Contract.

11.3 *Late Payment.* If the Customer fails to make a payment due to GKN under the Contract by the due date, then, without limiting GKN's other rights or remedies GKN may withhold delivery of any Products or performance of any Services otherwise due and the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, at a rate of 20% per annum or (if higher)

- a rate 15% higher than the Bank of England's base lending rate from time to time.
- 11.4 *No Set Off.* All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Applicable Law).
- 11.5 *Unpaid Sums.* GKN shall have a lien over any property of the Customer in its possession against payment in full of all sums due now or in the future to GKN by the Customer on any account whatsoever.
- 12. WARRANTY**
- 12.1 *Products.* Subject to sections 4.2 and 12.4, GKN warrants that all Products shall on delivery and throughout the duration of the Warranty Period: (a) conform in all material respects with the specification expressly set out or referred to in the Contract Documents; (b) be free from any material defects in design, to the extent the design is furnished by GKN and not the Customer; (c) be free from any material defects in materials and workmanship.
- 12.2 *Services.* GKN warrants that all Services shall be performed: (a) in all material respects with the specification expressly set out or referred to in the Contract Documents; (b) with reasonable care and skill.
- 12.3 *Warranty Periods.* Save as otherwise expressly set out in the Contract Documents, in respect of: (a) Products supplied for use in light and commercial Vehicles with a gross vehicle mass of 3.5 tonnes or less, the "Warranty Period" means the period commencing on delivery of that Product and ending on the earlier of: (i) the date 36 months following delivery; (ii) the date on which the first Vehicle into which the Product is incorporated has been used for 36,000 kilometres; or (iii) any point at which the Product is removed from the first Vehicle into which it is incorporated; and (b) in respect of any other Products the "Warranty Period" means the period commencing on delivery of that Product and ending on the earlier of: (i) the date 12 months following delivery; or (ii) any point at which the Product is removed from the first Vehicle into which it is incorporated.
- 12.4 *Warranty Exclusions.* GKN shall have no liability for the failure of any Product to comply with the warranties in section 12.1 as a consequence of any of the following occurring following delivery of that Product: (a) fair wear and tear; (b) the wilful damage or negligence of any person other than GKN or its Representatives; (c) the improper handling, transportation or storage of that Product by anyone other than GKN or its Sub-Suppliers or agents; (d) the exposure of that Product to corrosive substances or substances otherwise known to be likely to damage that Product; (e) the improper installation, commissioning or assembly of that Product; (f) the improper use, operation or maintenance of that Product; (g) the use or operation of that Product in any Vehicle or for any purpose other than the Vehicle or purposes for which it was designed; (h) the modification, overhaul or repair of that Product by any person other than GKN; (i) the use of that Product for racing or competition; or (j) any accident, collision, combat damage, or act of God. GKN shall have no liability for the failure of any Product to comply with the warranties in section 12.1 as a consequence of it or its Affiliates following any drawing, design or specification supplied by GKN.
- 12.5 *No Warranty Regarding Fitness for Customer's Purpose.* Except as expressly set out in the Contract Documents, the Customer is responsible for ensuring that all Products and/or Services are suitable for the Customer's intended needs (including their suitability for use in any Vehicle) and GKN gives no warranty, express or implied, in that regard.
- 12.6 *Inspection & Testing.* The Customer shall inspect and test the Products for any failure to comply with the warranties in section 12.1 within 3 days of delivery.
- 12.7 *Repair or Replacement Obligation.* In respect of any Product which the Customer considers does not comply with the warranties in section 12.1: (a) where such non-compliance was apparent on delivery or would have been apparent had the Customer undertaken the inspection and testing referred to in section 12.6 and the Customer gives notice in writing to GKN within 5 (five) days of delivery that such Product does not comply with the warranties in section 12.1; or otherwise (b) where the Customer gives notice in writing to GKN during the relevant Warranty Period that such Product does not comply with the warranties in section 12.1; provided always that: (i) GKN is given a reasonable opportunity to examine and inspect such Product; and (ii) such Product does not, in fact, comply with the warranties in section 12.1; GKN shall, at its option, repair or replace the Product, or refund the price of the Product in full. These ACOS shall apply to any repaired or replacement Product, save that the Warranty Period for that repaired or replacement Product shall expire on the expiry of the Warranty Period of the original Product. Except as provided in this section 12.7, GKN shall have no liability to the Customer in respect of any Product's failure to comply with the warranties in section 12.1.
- 12.8 *Reperformance Obligation.* If the Customer gives notice in writing to GKN during the relevant Warranty Period that any Services do not comply with the warranties in section 12.2; and (b) such Services do not, in fact, comply with the warranties in section 12.2, GKN shall, at its option, reperform such Services, or refund the price of the Services in full. These ACOS shall apply to any reperformed Services, save that the Warranty Period for those reperformed Services shall expire on the expiry of the Warranty Period of the original Services. Except as provided in this
- section 12.8, GKN shall have no liability to the Customer in respect of any Services' failure to comply with the warranties in section 12.2.
- 12.9 *Exclusion of Implied Terms.* The warranties contained in this section 12 are the only warranties given in respect of the Products or Services and any warranties or other rights or assurances implied or imposed by any Applicable Law, or any course of dealing or conduct, are expressly excluded to the maximum extent permitted by Applicable Law.
- 13. PRODUCT SAFETY**
- 13.1 *Product Safety.* All Products designed and manufactured by GKN are capable of being used in a safe manner, but GKN cannot guarantee their safety in all circumstances. The Customer must use, instal and integrate the Products in a safe manner in compliance all Applicable Laws, general industry standards and using reasonable care.
- 13.2 *Safe Handling and Installation.* It is the Customer's responsibility to establish such processes and procedures as ensure that the handling and installation of the Products is undertaken in a manner which is safe for those persons undertaking such handling and installation and complies with all Applicable Laws.
- 13.3 *Third Party Claims.* The Customer shall indemnify GKN from any third party claims relating to the use, storage, sale, processing or other disposition of the Products (or Vehicles into which the Products have been incorporated) if and to the extent that the act or omission of the Customer or its Representatives results in any damage or injury to any third party person or property.
- 13.4 *Potential Product Recalls.* If the Customer at any time considers that a recall of any Products (or Vehicles into which Products have been incorporated) is necessary or appropriate for reasons of safety, as a result of any actual or suspected defect in any Product (a "Product Related Recall"): (a) the Customer shall give immediate written notice to GKN; (b) the Customer shall keep GKN fully informed and consult with GKN prior to taking any action; (c) GKN shall have the right to perform a full investigation relating thereto including inspection and testing of the Products involved.
- 13.5 *Liability for Product Related Recalls.* If a Product Related Recall is not legally required, GKN shall have no liability for any Product Related Recall actually undertaken. If a Product Related Recall is legally required, without prejudice to section 22 (*Limits on GKN's Liability*) GKN shall be liable only for such fair and equitable proportion of the Customer's costs directly and reasonably incurred in respect of such Product Related Recall (as evidenced by written records), having regard to the portion of each party's responsibility and any other cause(s) of the Product Related Recall.
- 14. INTELLECTUAL PROPERTY**
- 14.1 *Infringement Claims relating to Customer Designs, Drawings & Specifications.* If and to the extent that any Products are manufactured in accordance with a design, drawing or specification supplied by the Customer, the Customer shall indemnify GKN and each of its Affiliates against any Losses resulting from or in connection with any claim made or threatened against them for actual or alleged infringement of any Intellectual Property Rights arising out of, or in connection with GKN's or its Affiliates use of that design, drawing or specification in the manufacture and supply of the Products.
- 14.2 *Infringement Claims relating to GKN Designs, Drawings & Specifications.* If and to the extent that any Products are manufactured in accordance with a design, drawing or specification provided by GKN, GKN shall indemnify the Customer and each of its Affiliates against any Losses resulting from or in connection with any claim made or threatened against them for actual or alleged infringement of any Intellectual Property Rights arising out of, or in connection with the Customer's use of those Products if and to the extent that it relates to that design, drawing or specification. GKN shall have no obligation to indemnify the Customer where the alleged infringement results from: (a) GKN's compliance with the Customer's instructions; (b) any modification of the Products other than by GKN or its Representatives to the extent that the infringement would have been avoided but for such modification; or (c) the combination of Products with components, parts, assemblies, software or hardware not provided by GKN, where the combination causes the infringement and not the Products alone.
- 14.3 *Conduct of Infringement Claims.* If any person makes a claim, or notifies an intention to make a claim against either party (the "Indemnified Party") or its Affiliates which relates to or alleges the infringement of Intellectual Property Rights as referred to in section 14.1 or section 14.2, or may reasonably be considered likely to give rise to a right to indemnification under that section (an "Infringement Claim"), the Indemnified Party shall: (a) as soon as reasonably practicable, give written notice of the Infringement Claim to the other party (the "Indemnifying Party"), specifying the nature of the Infringement Claim in reasonable detail; (b) not make any admission of liability, agreement or compromise in relation to the Infringement Claim without the prior written consent of the Indemnifying Party; (c) be deemed to have given to the Indemnifying Party sole authority to avoid, dispute, compromise or defend the Infringement Claim, unless the Indemnifying Party (by notice in writing to the Indemnified Party) declines to exercise such authority in which case the Indemnified Party shall take all actions reasonably necessary to mitigate any Losses which may result from such Infringement Claim.

14.4 **Background Intellectual Property Rights.** GKN remains the owner of any Intellectual Property Rights which it owns prior to the Contract being entered into or that arise, are obtained or are developed by GKN other than in the performance of the Contract. Nothing in any Contract shall operate to transfer any right, title or interest in any such Intellectual Property Rights to the Customer and no such Intellectual Property Rights shall be used by the Customer for any purpose other than the limited licence granted under section 14.5, without GKN's prior written consent.

14.5 **Foreground Intellectual Property Rights.** All Intellectual Property Rights which arise, are obtained, or are developed by either party during the course of the performance of the Contract shall vest in and be owned solely and absolutely by GKN. If, by operation of Applicable Law or otherwise, any such Intellectual Property Rights do not vest in GKN, the Customer hereby assigns (by present assignment of future Intellectual Property Rights, if applicable) and shall procure that its Representatives and agents assign, all right, title and interest in and to such Intellectual Property Rights to GKN as soon as they are created and shall provide such assistance as GKN requires to perfect its right, title and interest in such Intellectual Property Rights, including by executing and delivering all documents reasonably requested by GKN in order to perfect, register, and/or enforce the same.

14.6 **Limited Licence to use Intellectual Property Rights.** GKN hereby grants the Customer a limited royalty-free, worldwide, non-exclusive, licence of all Intellectual Property Rights owned by GKN, for the following purposes only: (a) to use Products supplied by GKN; (b) to benefit from Services provided by GKN; (c) to incorporate Products supplied by GKN into Vehicles and to sell, import and export those Vehicles; (d) to repair and service (or have repaired and serviced) Vehicles incorporating Products supplied by GKN. The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause 14.6.

14.7 **Customer Intellectual Property Rights.** If and to the extent that any Products are manufactured, or Services provided, in accordance with a design, drawing or specification supplied by the Customer, the Customer hereby grants to GKN and each of its Affiliates a royalty-free, worldwide, non-exclusive, perpetual and irrevocable licence (with the right to sub-licence) of all Intellectual Property Rights contained in that design, drawing or specification for the purpose of supplying that Product or Services to the Customer or its Affiliates.

14.8 **Customer Funded Development.** The fact that the Customer has funded any particular ED&D or other activities undertaken by GKN or its Affiliates, shall not operate to transfer any right, title or interest in any Intellectual Property Rights to the Customer unless and to the extent expressly set out in the terms of the Contract.

15. USE OF INFORMATION

15.1 **Confidential Information.** In these ACOS "**Confidential Information**" means: (a) the existence and terms of each Contract; (b) all technical information, know-how, specifications, drawings, designs, blueprints, reproductions, formulas, notes, instructions, engineering data and analyses, trade secrets and know-how relating to the Products and their manufacture and/or the Services and their performance which are supplied or disclosed by GKN or its Affiliates to the Customer or its Affiliates in connection with the Contract ("**Technical Information**"); (c) all financial data, parts lists, prices, plans, reports, working papers, computations, information relating to operations, processes, plans, products and other commercial or business data which are supplied or disclosed by GKN or its Affiliates to the Customer or its Affiliates in connection with the Contract; (d) any other information designated as confidential by GKN; and (e) any materials or information that contain, or are based on, any information referred to in (a) to (d) above, whether prepared by GKN, the Customer or any other person. Confidential Information will not however include information that is or becomes generally available to the public other than as a result of a breach of this section 15.

15.2 **Confidentiality, Non-Use & Degree of Care.** Unless it has the other party's prior written approval, each party shall: (a) keep all Confidential Information confidential and not disclose Confidential Information to any third party; (b) disclose Confidential Information only to its Representatives who need to know such Confidential Information in order to perform the Contract; (c) not use any Confidential Information other than for the exercise and performance of its rights and obligations under the Contract; (d) use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorised access or disclosure, but in any event not less than reasonable care; and (e) upon request by the other party, promptly return or (at that party's option) destroy the original and all copies of Confidential Information. The party's confidentiality obligations under this section 15.2 will survive termination or expiry of the Contract and continue for a period of five (5) years thereafter (or in the case of trade secrets disclosed as Confidential Information for so long as the trade secret information remains a secret).

15.3 **Legally-Compelled Disclosure.** Either party may disclose Confidential Information solely to the extent required by Applicable Law, provided always that that party shall first notify the other party and shall take all steps (and cooperate with the other party taking all steps) as are lawful and practicable to limit such disclosure.

15.4 **Disclosure by GKN.** Notwithstanding any existing confidentiality agreement in place between the parties, unless otherwise agreed in a

Written Amendment, GKN may disclose all Technical Information supplied or disclosed by the Customer or its Affiliates in connection with the Contract to GKN's or its Affiliates' Sub-Suppliers engaged by it in the performance of the Contract.

16. ADVERTISING & TRADE MARKS

The Customer shall not, in any manner or at any time, advertise, disclose or publish that it has contracted to purchase any Products or Services from GKN, or use any trademarks or trade names of GKN without GKN's prior written approval, in each case save to the minimum extent required: (a) by Applicable Law; or (b) to exercise and perform its rights and obligations under the Contract. GKN may disclose: (a) the fact that it is a supplier to the Customer; (b) the Vehicles which Products supplied by it are used in where the existence of those Vehicles is in the public domain; and (c) the Products and Services it supplies to the Customer; to any person, provided that in doing so it shall not communicate anything which may be harmful to the reputation of the Customer.

17. TOOLING & GKN PROPERTY

17.1 **GKN Property.** In these ACOS, "**GKN Property**" means all Tooling and all other plant, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products and other Materials which are the property of GKN, which at the relevant time is in the Customer's possession, custody or control.

17.2 **Tooling.** Unless otherwise expressly set out in the Contract Documents, all Tooling used in the performance of the Contract will be the property of GKN. The fact that the Customer has funded the cost of any Tooling or other GKN Property (in whole or in part) shall not give the Customer any right, title or interest in that Tooling or other GKN Property, save to the extent expressly set out in the Contract. Only Tooling which is specifically identified as a separate item in the Contract Documents and which (in accordance therewith) has been paid for in full by the Customer shall be owned by the Customer.

17.3 **Customer-Owned Tooling.** Where the Contract Documents expressly provide that any Tooling is the property of the Customer ("**Customer-Owned Tooling**") and such Customer-Owned Tooling is in placed in GKN's possession, custody or control for any reason, GKN's sole obligation in respect thereof shall be to treat such Customer-Owned Tooling with reasonable care for the duration of the Contract or (if earlier) such Customer-Owned Tooling being returned to the Customer. The Customer shall be responsible (at its own cost) for arranging the collection of the Customer-Owned Tooling following termination or expiry of the Contract and GKN shall have no liability for any loss or damage to any Customer-Owned Tooling which occurs after termination or expiry of the Contract. GKN shall only be liable for any loss or damage to any Customer-Owned Tooling if and to the extent that: (a) the Customer can show, by written evidence that such Customer-Owned Tooling was in GKN's possession, custody or control when such loss or damage occurred; and (b) the Customer notifies GKN during the performance of the Contract or within 1 month following its termination or expiry.

17.4 **Title to GKN Property.** Without prejudice to section 17.1, all right, title and interest in all GKN Property shall be and remain that of GKN. The Customer authorises GKN to make such filings with any relevant authority as may be necessary to protect GKN's interest in GKN Property.

17.5 **Customer's Obligations in respect of GKN Property.** The Customer shall: (a) properly keep, store, house and maintain GKN Property at a designated Customer Premises as bailee for GKN; (b) not use GKN Property for any purpose other than for performance of the Contract; (c) use GKN Property only in compliance with GKN's or the manufacturer's instructions and in compliance with all Applicable Laws and not modify or tamper with it, or attach it to anything, or anything to it; (d) not move GKN Property to another location whether owned by the Customer or a third party, without the prior written consent of GKN; (e) adequately insure GKN Property against accidental loss or damage for the full replacement value thereof; (f) regularly inspect and keep and maintain GKN Property in good condition and repair, including repair necessitated by wear and tear and other usage by the Customer; (g) where necessary, replace GKN Property that requires replacement due to normal use by the Customer; (h) prominently and conspicuously mark GKN Property as property of GKN; (i) not mix or commingle GKN Property with the property of the Customer or with that of a third party; (j) not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of any GKN Property; (k) take reasonable steps to ensure that GKN Property does not become subject to any liens or other claims and expressly waives and releases, and agrees not to file or otherwise assert or prosecute or suffer to permit any statutory, equitable or other liens that the Customer has or might have on or in connection with GKN Property; (l) immediately notify GKN if the GKN Property is lost, damaged or seized; (m) shall assign to GKN any claims the Customer has against third parties with respect to GKN Property; (n) upon written request from GKN, provide GKN with a written inventory of all GKN Property in the Customer's possession or control; (o) upon written request from GKN, at its expense immediately deliver GKN's Property to any premises designated by GKN, properly packed and marked in accordance with the requirements of GKN; and (p) cooperate with GKN's removal of GKN Property from any Customer Premises.

17.6 **Replacement of or Additions to GKN Property.** Any replacement for GKN Property shall belong to GKN. Any replacement parts, tools, additions, improvements, and accessories to GKN Property, shall become part of that GKN Property.

- 17.7 *Loss of or damage to GKN Property.* The Customer shall bear the risk of loss of and damage to all GKN Property for so long as it is in the Customer's possession, custody or control, and shall be responsible for replacing or repairing, at GKN's sole discretion, all GKN Property if it is stolen, lost, damaged or destroyed whilst in the Customer's possession, custody or control, regardless of cause or fault.
- 17.8 *Disclaimer of Liability.* The Customer has sole responsibility for inspecting, testing and approving all GKN Property and ensuring that all GKN Property is suitable and fit for its purposes prior to any use by the Customer. The Customer acknowledges that: (a) GKN may not be the manufacturer of GKN Property; (b) GKN is bailing GKN Property to the Customer for the Customer's benefit; and (c) GKN has not made and does not make any warranty or representation whatsoever, either express or implied, as to the fitness, condition, merchantability, design or operation of any GKN Property or its fitness for any particular purpose. GKN shall not be liable to the Customer for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by GKN Property, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused. GKN does not guarantee the availability of any GKN Property. The Customer shall assume all risk of death or injury to persons or damage to property arising from its use of GKN Property and shall indemnify GKN against all Losses resulting from or in connection with its use of GKN Property. Nothing in this section 17.8 purports to exclude or limit GKN's liability to the extent it cannot be limited or excluded under any Applicable Law.
- 18. GKN & CUSTOMER PREMISES**
- 18.1 *GKN Premises.* If and when the Customer, any of its Affiliates or any of their respective Representatives enter any site, property, premises or location owned, occupied or controlled by GKN or any of its Affiliates or to which GKN or any of its Affiliates have been granted access by any third party (a "**GKN Premises**"), the Customer shall (and shall procure that its Representatives shall) comply with all rules, policies and procedures relating to the access to the GKN Premises as may be applicable at that GKN Premises from time to time ("**Access Rules**") and shall indemnify GKN, its Affiliates, and their respective Representatives against any Losses resulting from or in connection with: (a) any failure to comply with the Access Rules; and/or (b) any property damage, death and/or personal injury, arising from any act, omission or negligence of the Customer, any of its Affiliates or any of their respective Representatives whilst present at that GKN Premises.
- 18.2 *Customer Premises.* If and when GKN, any of its Affiliates or any of their respective Representatives enter any Customer Premises, the Customer shall indemnify each of them against defects in or unsuitability of the Customer Premises or from negligence or breach of statutory duty on the part of the Customer, any of its Affiliates or any of their respective Representatives howsoever arising.
- 19. INFORMATION, CUSTOMS, EXPORT CONTROLS & MILITARY END USES**
- 19.1 *Information.* The Customer shall provide GKN with such information as it may reasonable request regarding: (a) its existence, incorporation and other status under any Applicable Laws; (b) the locations in which it does business; and (c) the person or persons who Control the Customer; and the Customer shall notify GKN immediately upon any such information ceasing to be accurate or complete.
- 19.2 *Customs Compliance.* The Customer shall comply with all Applicable Laws relating to customs, import and export.
- 19.3 *Customs Credits and Refunds.* All customs credits, reliefs, benefits or rights associated with or arising from Products or Services purchased under any Contract (including trade credits, export credits, or rights to the refund or drawback of Tax, duties or fees) ("**Customs Credits & Refunds**") shall belong to GKN to the extent permissible under Applicable Law. Upon GKN's request, the Customer shall at its own cost and expense promptly provide GKN with all information relating to the Products or Services (including written documentation and electronic transaction records) necessary to permit GKN to receive all Customs Credits & Refunds, properly completed in accordance with all government regulations applicable thereto.
- 19.4 *Export Control Compliance.* The Customer shall comply with all Applicable Laws relating to export, re-export, re-transfer, import, embargo and sanctions ("**Export Control Laws**") and shall provide GKN with all information concerning any application of such Applicable Laws to the Products or Services.
- 19.5 *Country of Importation.* The Customer warrants and represents that it is purchasing the Products for the purposes of importing them only into the country specified in the Contract Documents and that the Products will not be re-exported or diverted to any other country without the prior written approval of GKN.
- 19.6 *No export in violation of Export Control Laws.* Without prejudice to section 19.5, the Customer will not export or reexport or otherwise transfer any Products or Technical Information to any country, person, entity or end-user where to do so would result in the Customer, GKN, any of their respective Affiliates or any of their or their Affiliates' respective Representatives breaching any Export Control Laws.
- 19.7 *Export Licences.* Without prejudice to sections 19.5 and 19.6, the Customer shall at its own cost and expense obtain all licenses, certificates, authorisations or permits necessary for any export or re-export of the Products.
- 19.8 *No Military End-Use.* The Customer will not use any Products in any Vehicle or other application which is designed or intended for military or security use, without first obtaining GKN's prior written approval, which may be given or withheld at GKN's sole discretion.
- 19.9 *Written Confirmation of Compliance.* When requested by GKN, the Customer shall certify to GKN in writing signed by an officer of the Customer, compliance with this section 19 by the Customer, along with such supporting evidence of compliance as GKN may reasonably request.
- 19.10 *Right to Refuse Supply.* GKN may, without any liability, refuse to enter into or perform any Contract, and/or terminate any Contract, if GKN in its sole discretion determines that the entry into such Contract or the performance of such Contract would result in GKN, any of its Affiliates or any of their respective Representatives breaching any Export Control Laws.
- 20. NO CORRUPT PRACTICES**
- In its performance of the Contract, the Customer shall at all times: (a) comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the (UK) Bribery Act 2010 and the (US) Foreign Corrupt Practices Act of 1977 ("**Anti-Bribery & Corruption Laws**"); (b) maintain its own policies and procedures so as to ensure compliance with Anti-Bribery & Corruption Laws and shall enforce them where appropriate; (c) promptly report to GKN any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract; and (d) when requested by GKN, certify to GKN in writing signed by an officer of the Customer, compliance with this section 20 by the Customer, along with such supporting evidence of compliance as GKN may reasonably request.
- 21. EXCUSABLE NON-PERFORMANCE**
- 21.1 *Excusable Non-Performance.* If GKN's performance of any of its obligations under the Contract is prevented or delayed as a result of an event or occurrence beyond its reasonable control (an "**Excusable Cause**"), GKN shall be excused from the performance of any of its obligations under the Contract to the extent the Excusable Cause prevents or delays GKN's performance of any of those obligations. Excusable Causes shall include, but not be limited to: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion, insurrection, riot, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (f) collapse of buildings, fire, explosion or accident; (g) labour or trade dispute, strike, industrial action or lockout; (h) interruption or failure of utility service; (i) unavailability of transportation; or (j) unavailability or shortage of Materials.
- 21.2 *Customer Default.* If GKN's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation under the Contract (an "**Customer Default**") then without limiting or affecting any other right or remedy available to GKN: (a) GKN shall have the right to suspend performance of the Contract until the Customer remedies the Customer Default; (b) GKN shall be excused from the performance of any of its obligations under the Contract to the extent the Customer Default prevents or delays GKN's performance of any of those obligations; (c) GKN shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from GKN's failure or delay to perform any of its obligations as set out in this clause 21.2; and (d) the Customer shall indemnify GKN and each of its Affiliates against any Losses resulting from or in connection with the Customer Default.
- 21.3 *Customer Input Materials.* In the event that the Customer agrees to provide (or as a matter of practice provides) GKN with Material for the purpose of GKN performing the Contract ("**Customer Input Materials**"), GKN shall be excused from the performance of its obligations under the Contract to the extent that: (a) the Customer fails to provide those Customer Input Materials; or (b) such Customer Input Materials are of inadequate quality or otherwise do not meet GKN's needs.
- 22. LIMITS ON GKN'S LIABILITY**
- 22.1 *Liability.* This section 22 sets out the entire financial liability of GKN (including any liability for the acts or omissions of its Representatives) to the Customer in respect of: (a) any breach of the Contract however arising; (b) any use made or resale of the Products by the Customer, or of any product or Vehicle incorporating any of the Products; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract, in each case, whether such liability is in contract, tort (including negligence), restitution, for breach of Applicable Law, misrepresentation or otherwise (GKN's "**Liability**").

- 22.2 *Matters not excluded.* Nothing in these ACOS shall limit or exclude GKN's Liability: (a) for death or personal injury resulting from negligence; or (b) for fraud or fraudulent misrepresentation; or (c) any Liability which cannot be excluded as a matter of Applicable Law.
- 22.3 *Excluded Liabilities.* Without prejudice to sections 22.4 and 22.5, GKN shall in no circumstances whatsoever have any Liability for any of the following losses suffered by the Customer (in each case whether such losses are direct or indirect): (a) loss of profit; (b) loss of revenue; (c) loss of goodwill or business reputation; (d) loss of business; (e) loss of business opportunity; (f) loss of anticipated saving; (g) increased funding or borrowing costs, or costs and expenses paid to its bankers or other funders; (h) fines or penalties imposed by Applicable Law; (i) payments made by the Customer to its customers or clients on an ex-gratia basis or where there is otherwise no binding obligation to do so; (j) Liabilities calculated pursuant to any sampling methodology, where there is no direct evidence of the Liability actually having been incurred; (k) loss or corruption of data or information; or (l) any special, indirect or consequential losses not otherwise excluded above.
- 22.4 *Partial Responsibility.* If, but for this section 22.4, GKN's Liability would include liability for loss or damage to which any other person(s) (each a "Contributor") has also contributed, GKN's Liability shall be several, and not joint, with such Contributor, and shall be limited to such amount as is just and equitable, based on the relative extent of GKN's and the Contributor's contribution to the loss and damage. For the purposes of assessing GKN's proportionate Liability: (a) it shall be assumed that each Contributor has entered into an agreement with the Customer which imposes on that Contributor obligations no less onerous than those imposed on GKN by these ACOS; and that each Contributor has paid to the Customer the proportion of the Customer's loss and damage as is just and equitable, having regard to the extent of their responsibility for that loss and damage; and (b) no regard shall be had to any exclusion or limitation of the liability of GKN or any Contributor imposed or agreed at any time, the settlement of any actual or potential claim against any Contributor, any difficulty in enforcing any actual or potential claim against any Contributor, the death, dissolution or insolvency of any Contributor, or any Contributor ceasing to be liable for the loss or damage or any portion thereof.
- 22.5 *Financial Limit on Liability.* Without prejudice to sections 22.3 and 22.4, GKN's total Liability, shall in all circumstances be limited to the aggregate amount paid by the Customer to GKN under the Contract during the 12 months immediately preceding the event giving rise to such Liability.
- 22.6 *Time Limit for Bringing Claims.* Any claim, proceeding or action by the Customer under the Contract must be notified to GKN within six (6) months of the date of the breach, act or omission giving rise to such claim, proceeding or action, irrespective of the Customer's knowledge of such breach, act or omission or of its consequences. Failure to do so shall preclude the Customer from making such claim, proceeding or action.
- 22.7 *No Liability to Third Parties.* GKN's only Liability under any Contract shall be to the Customer and the Customer shall indemnify GKN against any claim by any of its Affiliates or its or their Representatives in respect of any Products, Services or otherwise relating to the Contract.
- 23. TERMINATION**
- 23.1 *Termination for Convenience.* GKN may, by notice in writing to the Customer, immediately terminate all or any part of a Contract at any time and for any reason by giving no less than 1 month's prior written notice to the Customer.
- 23.2 *Termination Where Unlawful to Supply.* GKN may, by notice in writing to the Customer, immediately terminate all or any part of a Contract at any time where failure to do so would result in GKN or any of its Affiliates breaching any Applicable Laws including any trade embargo or sanctions.
- 23.3 *Termination for Breach.* GKN may, by notice in writing to the Customer, immediately terminate all or any part of a Contract in the event that the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of being notified in writing to do so.
- 23.4 *Termination for Non-Payment.* GKN may, by notice in writing to the Customer, immediately terminate all or any part of a Contract in the event that the Customer fails to pay any amount due under the Contract on the due date for payment.
- 23.5 *Termination for Ancillary Breach.* GKN may, by notice in writing to the Customer, immediately terminate all or any part of a Contract in the event that the Customer or any of its Affiliates breaches any other contract with GKN or any of its Affiliates (irrespective of whether such other contract is related to a Contract) (an "Ancillary Contract") and GKN or its Affiliate terminates that Ancillary Contract for breach in accordance with its terms.
- 23.6 *Termination due to Insolvency.* GKN may, by notice in writing to the Customer, immediately terminate all or any part of a Contract in the event that the Customer suffers an Insolvency Event. The Customer may, by notice in writing to GKN, immediately terminate all or any part of a Contract in the event that GKN suffers an Insolvency Event.
- 23.7 *Termination following a Change of Control.* GKN may, by notice in writing to the Customer, immediately terminate all or any part of a Contract in the event that there is a change of identity of the person or persons who Control the Customer. The Customer shall notify GKN as soon as it becomes aware that any such change of Control is to or may take place.
- 23.8 *Basis of Termination.* GKN's right to terminate all or any part of each Contract under each of sections 23.1 to 23.7 (inclusive) is in addition to and without prejudice to any other right of GKN to terminate all or any part of that Contract under this section 23 or otherwise and any such termination is without prejudice to any of GKN's other rights or remedies.
- 24. CONSEQUENCES OF EXPIRY OR TERMINATION**
- 24.1 *Customer's Obligations on Expiry or Termination.* Upon receipt of any notice of termination of a Contract from GKN pursuant to section 23 or the expiry of a Contract for any reason (irrespective of any breach by GKN), the Customer shall: (a) immediately pay to GKN all of GKN's outstanding unpaid invoices and interest and, in respect of Products and Services supplied but for which no invoice has been submitted, and GKN shall submit an invoice which shall be payable by the Customer immediately on receipt; (b) take such actions as are reasonably necessary to protect and preserve any GKN Property relating to that Contract; (c) (at GKN's option) promptly return all GKN Property to GKN, or make all GKN Property available for collection by GKN; (d) promptly return or (at GKN's option) destroy the original and all copies of Confidential Information; and (e) on request, certify in writing to GKN that it has complied with the requirements of this section 24.1.
- 24.2 *Survival.* Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of a Contract (including sections 13 (*Product Safety*), 14 (*Intellectual Property*), 15 (*Use of Information*), 16 (*Advertising & Trade Marks*), 17 (*Tooling & GKN Property*), 18 (*GKN & Customer Premises*), 19 (*Customs, Export Controls & Military End Uses*), 20 (*No Corrupt Practices*), 21 (*Excusable Non-Performance*), 22 (*Limits on GKN's Liability*), 24 (*Consequences of Expiry or Termination*), 25 (*Notices & Communication*), 26 (*Miscellaneous*), 28 (*Law & Jurisdiction*) of these ACOS) shall remain in full force and effect. Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued prior to termination or expiry, including the right to claim damages in respect of any breach which occurred on or prior to termination of expiry.
- 25. NOTICES & COMMUNICATION**
- 25.1 *Notices.* Save as otherwise expressly stated in the Contract Documents, any notice given or other communication sent under the Contract shall be in writing and shall be delivered: (a) by hand; (b) by prepaid commercial courier; (c) by registered mail (or equivalent); in each case to the applicable address noted on the face of the Order or other Contract Document. In addition to the above, GKN (but not the Customer) shall be entitled to deliver any notice or communication by e-mail to any e-mail address of the Customer which is in active use by the Customer. Either party may notify the other party, by notice under this section, of any change of address for the purpose of giving notices or sending communications under the Contract.
- 25.2 *Deemed Delivery.* Any notice or communication given as provided herein shall be deemed to have been delivered: (a) at the time of its delivery if delivered by hand; (b) on the Business Day following its dispatch if transmitted by commercial courier or e-mail; or (c) on the third Business Day following its dispatch if transmitted by registered mail (or equivalent).
- 26. MISCELLANEOUS**
- 26.1 *Rights & Remedies Not Exhaustive.* The rights and remedies provided to GKN under any section of these ACOS and in any Contract shall be cumulative with and additional to all other or further remedies provided under any other section of these ACOS, any other term of the Contract, and under any Applicable Law.
- 26.2 *Assignment.* GKN may at any time assign, grant any lien, claim or other encumbrance over or deal in any other manner with any or all of its rights and obligations under any Contract. The Customer shall not assign, transfer, grant any lien, claim or other encumbrance over or deal in any other manner with any or all of its rights and obligations under any Contract without the prior written consent of GKN.
- 26.3 *Relationship Of Parties.* GKN and the Customer are independent contractors and nothing in any Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. By entering into a Contract GKN and the Customer each confirm they are acting on their own behalf and not for the benefit of any other person.
- 26.4 *Set-Off.* Without prejudice to any other right or remedy it may have, GKN may at any time, without notice to the Customer, set off any liability of the Customer (or any of its Affiliates) to GKN (or any of its Affiliates) against any present or future liability of GKN (or any of its Affiliates) to the Customer (or any of its Affiliates), whether either liability is present or future, liquidated or un-liquidated and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, GKN may convert either liability at a market rate of exchange for the purpose of such set-off. All amounts due from the Customer to GKN under a Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.

- 26.5 **Severability.** If any provision (or part of any provision) of a Contract is invalid, illegal or unenforceable under any Applicable Law (an “**Unenforceable Provision**”): (a) such Unenforceable Provision will be deemed amended or deleted to the extent necessary to comply with such Applicable Law; (b) such Unenforceable Provision will not affect the validity or enforceability of any other provision of the Contract; (c) such Unenforceable Provision will not affect the validity or enforceability of the Unenforceable Provision in any other jurisdiction in which the Applicable Law resulting in such invalidity or unenforceability does not apply; and (d) the remaining provisions of the Contract will remain in full force and effect.
- 26.6 **Rights of Third Parties.** To the extent permitted by any Applicable Law, all Affiliates of GKN may enforce the terms of each Contract but otherwise no third party shall have any right to enforce any term of a Contract. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under a Contract are not subject to the consent of any third party.
- 26.7 **Affiliate Losses.** Without prejudice to section 26.6, in the event that any breach by the Customer of any Contract Document results in any Affiliate of GKN suffering any Losses, such Losses shall be treated as if they had been suffered by GKN and GKN shall be entitled to recover such Losses from the Customer as if they had been so suffered by it.
- 26.8 **No Waiver by GKN.** No failure or delay by GKN to exercise any right or remedy provided under any Contract or by any Applicable Law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise by GKN of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. No waiver by GKN of any breach of a Contract by the Customer shall constitute a waiver of any subsequent breach. No course of dealing or course of performance may be used to evidence a waiver or limitation of the Customer’s obligations under a Contract.
- 26.9 **Waiver by Customer.** The Customer’s failure to provide any notice, claim or other communication to GKN in the manner and within the time periods specified in the Contract Documents shall constitute a waiver by the Customer of any and all rights and remedies that otherwise would have been available to the Customer upon making such notice, claim or other communication.
- 26.10 **Further Assurance.** At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract.
- 26.11 **Entire Agreement.** The Contract Documents constitute the whole agreement and understanding between the parties with respect to their subject matter, and supersede any previous arrangement, understanding or agreement between them relating to their subject matter, save to the extent expressly incorporated into the Contract. The Customer acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract Documents and that any liability of GKN in respect of any representations are excluded except as expressly provided in this Agreement. Nothing in this section 26.11 shall limit or exclude any liability for fraud.
- 27. LANGUAGES, TRANSLATIONS, INTERPRETATION & DEFINITIONS**
- 27.1 **Languages & Translations.** These ACOS are written in the English language. GKN may provide translated versions of these ACOS for informational purposes only, but in the event of any disagreement as to the meaning or construction of any translated version of these ACOS the English language version of these ACOS shall apply. The fact that certain of the Contract Documents may be written in a languages other than English, or in more than one language, shall not prejudice GKN’s rights under the terms of the Contract.
- 27.2 **Interpretation.** When used in these ACOS: (a) “**including**” means “including without limitation”; (b) the singular includes the plural and vice versa; (c) one gender includes every other gender; (d) a “**section**” means a section with that number in these ACOS; (e) section headings are not intended to affect how these ACOS are interpreted; (f) a “**person**” includes a natural person, company or unincorporated body (whether or not having separate legal personality) including any governmental organisation or agency; and (g) a “**company**” includes any type of company, corporation or other body corporate, no matter where, or how, it is incorporated or established.
- 27.3 **Definitions.** In addition to other words and expressions defined throughout these ACOS, in these ACOS: (a) “**Affiliate**” in respect of any person, means any other company that Controls, is Controlled by, or is under common Control with that person; (b) “**Applicable Incoterms**” in respect of a Contract, means the Incoterms® 2020 stated in the Contract Documents, or if none are stated means EXW the applicable GKN Premises, Incoterms® 2020; (c) “**Applicable Laws**” means, in respect of any matter, fact or circumstance, all applicable laws, statutes, enactments, orders, regulations and applicable guidance which apply or relate to that matter, fact or circumstance; (d) “**Business Day**” means a day other than a Saturday, Sunday or public holiday in any country or territory in which the parties are located; (e) “**Control**” in respect of any company, means the ownership, directly or indirectly, of fifty percent (50%) or more of the capital or equity of that company, or the ability, by voting rights, contract or otherwise, to elect a majority of the board of directors or other governing body of such company and “**Controlled**” shall be construed accordingly; (f) “**Customer Premises**” means any site, property, premises or location owned, occupied or controlled by the Customer or any of its Affiliates or to which the Customer or any of its Affiliates have been granted access by any third party; (g) an “**Insolvency Event**” is suffered by a person when that person: suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or takes any step or action (including making any filing) in connection with an actual or potential administration, liquidation, receivership, insolvency, bankruptcy, composition or arrangement with its creditors (other than in relation to a solvent restructuring) or any analogous procedure in the any relevant jurisdiction; is wound up or liquidated (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), has an administrator, liquidator, receiver or equivalent person appointed to manage any of its assets or its business, or is subject to any analogous procedure in the any relevant jurisdiction; or suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; (h) “**Intellectual Property Rights**” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, work of authorship, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; (i) “**Losses**” means all losses, liabilities, costs, expenses, damages (including any direct, indirect, incidental, consequential losses and punitive and exemplary damages), including loss of profits, loss of business, depletion of goodwill and similar losses and all related interest, penalties and legal costs; (j) “**Material**” means any material, goods, product, item, substance, matter, asset, part or component; (k) “**Prototype**” in respect of Products or Services means any Products or Services which are supplied as prototype, sample, development or pre-production in nature; (l) “**Representatives**” means, in respect of a person, that person’s employees, directors, officers, representatives or agents; (m) “**Sub-Supplier**” means a direct or indirect supplier to GKN of Materials for use in Products; (n) “**Tariffs**” means all customs, import and export duties, levies, tariffs, quotas or other similar Tax in respect of the Products or any components thereof; (o) “**Tax**” means any form of tax and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and any penalty, fine, surcharge, interest, charges or costs relating to such tax; (p) “**Tooling**” means tooling, jigs, dies, gauges, fixtures, moulds, patterns, tools, machinery, equipment, supplies, materials and other similar items; and (q) “**Vehicle**” means a vehicle of any description.
- 28. LAW & JURISDICTION**
- 28.1 **Countries in which GKN is located.** For the purposes of this section 28 a “**Country**” means a sovereign state (and for these purposes United States of America are a single Country) and GKN shall be “**located**” in the Country in which it is physically located according to the principal address of GKN specified in the Order or Contract.
- 28.2 **Applicable Governing Law and Jurisdiction.** Each Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the Applicable Governing Law. Each Contract shall be subject to the exclusive jurisdiction of the Applicable Courts and each party waives any objection to proceedings in such courts on the grounds of venue or on grounds that proceedings have been brought in an inappropriate forum. The “**Applicable Governing Law**” and “**Applicable Courts**” shall depend upon the Country in which GKN is located, as set out in sections 28.4 to 28.7.
- 28.3 **Vienna Convention Excluded.** The United Nations Convention on the International Sale of Goods (also known as the Vienna Convention) shall not apply to any Contract.
- 28.4 **France.** Where GKN is located in France the “**Applicable Governing Law**” shall be French law and the “**Applicable Courts**” shall be the courts of Paris, France.
- 28.5 **Germany.** Where GKN is located in Germany the “**Applicable Governing Law**” shall be German law and the “**Applicable Courts**” shall be the courts of Cologne, Germany.
- 28.6 **Spain.** Where GKN is located in Spain, the “**Applicable Governing Law**” shall be Spanish law and the “**Applicable Courts**” shall be the courts of Bilbao, Spain.
- 28.7 **United Kingdom.** Where GKN is located in the United Kingdom of Great Britain and Northern Ireland, the “**Applicable Governing Law**” shall be English law and the “**Applicable Courts**” shall be the courts of England.
- 28.8 **USA.** Where GKN is located in The United States of America, the “**Applicable Governing Law**” shall be the laws of the State of Michigan and the “**Applicable Courts**” shall be the Federal Court for the Eastern District of Michigan (and if no federal jurisdiction, then state courts located

in Oakland County, Michigan). For each Contract where the Applicable Governing Law is the laws of the State of Michigan: (a) the parties have agreed and it is their intent the battle of the forms Section 2-207 of the Uniform Commercial Code shall not apply to these ACOS and these ACOS (and the other Contract Documents) shall exclusively control the relationship of the parties and in the event of any inconsistency between any document sent by the Customer to GKN and these ACOS, these ACOS shall prevail; and (b) GKN AND THE CUSTOMER ACKNOWLEDGE THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF GKN AND THE CUSTOMER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY CONTRACT.