1. Definitions and introduction

“we”, “us” and “our” refers to GKN Wheels Nagelbl A/S.

Our agreement with you for the sale of goods or services (the “Contract”) consists of: (i) any terms that our and your authorised representatives have signed; (ii) any oral confirmation we provide to you; (iii) any statements or descriptions we make to you; and (iv) the conditions of sale (“Conditions of Sale”). If there is any inconsistency between any parts of this list, the parts of the Contract placed higher in the list shall take precedence.

2. Acceptance of orders; your conditions excluded; inspection

2.1 You may send us orders in writing, by phone, by electronic data interchange or any other method agreed with us. Any order you send us will form part of the contract, and no binding contract will arise unless we accept your order in writing.

2.2 If you seek to impose additional or different terms on us, they will not form part of the Contract, and are excluded and rejected by these Conditions of Sale.

2.3 Any quotations given by us are not binding on us.

2.4 The goods or services delivered under the Contract shall be deemed fully inspected and accepted by you within 30 days after delivery or performance by us, unless you give us written notice of rejection or notice of claim within such 30 days.

2.5 You must maintain an adequate system to identify and trace the goods delivered by us at all times that is compatible with our tracing system. We shall not be liable for any costs associated with such systems.

3. Warranty and notice of defects

3.1 At the time our goods leave our factory or warehouse we warrant to you only the goods we sell to be: (i) of the quantity and description specified in the Contract, delivered in a satisfactory quality, and free from defects in material and workmanship under correct use, normal operating conditions and proper applications (including maintenance of goods in accordance with our written instructions); and (ii) free from defects in material and workmanship shall be given by us to you within ten (10) days after such defect(s) are detected or appear. The warranty of our goods shall be subject to the circumstance of operational failure. Title in any returned goods shall not be transferred to us upon receipt and we may scrap returned goods at our discretion.

3.2 Where we provide services, they will be performed in accordance with the specification in all material respects and they will be provided using reasonable care and skill.

3.3 Our obligation upon breach of warranty in relation to goods shall be limited to replacing or repairing (at our option) the particular goods which inspection discloses to have been defective at time of delivery, but not including instalment of the goods or installation of the same. Written permission shall be at our plant, transportation costs prepaid by you.

3.4 Written permission for the return of any goods based on a warranty claim must be obtained from us. All returned parts shall be accompanied with a complete written explanation of claimed defects and the circumstances of operational failure. Title in any returned goods is transferred to us upon receipt and we may scrap returned goods at our discretion.

4. VAT, Sales tax

Prices are exclusive of any VAT, sales or use tax or equivalent tax, which will be chargeable by us in accordance with applicable law against receipt of an appropriate invoice from us.

5. Delivery

5.1 We will arrange delivery of the goods to, and you will accept delivery of the goods at, the agreed place of delivery and according to the terms of delivery set out in the Contract. Unless otherwise agreed in writing, delivery is EXW Incoterms® 2010.

5.2 We can only provide estimated delivery dates, and any order is accepted by us on the basis that time is not of the essence.

5.3 Where the Contract allows you to buy our goods over a period of time by successive orders to us, each order will constitute a separate contract and any breach in relation to an order will not entitle you to terminate the Contract as a whole.

6. Risk, ownership and duty of care

6.1 The goods are at your risk from the time of delivery.

6.2 All goods supplied by us will continue to belong to us until you have paid us in full for them (together with any VAT or equivalent sales tax).

6.3 You agree to use goods as intended by the goods or as part of your business and we will have no responsibility for any injuries to you or others that may result.

6.4 You must return to us goods on which we have charged a used parts charge, unless you return them to us within 12 months of the date of our invoice (including return costs). You must pay all costs of returning the goods to us. All claims will be final and binding unless you come to any other agreement with us in writing.

7. Payment

7.1 You must pay us in full and in cleared funds within the period stated in the Contract, unless, if you exceed 30 days after delivery of goods or performance of services.

8. Limitation of Liability

8.1 Notwithstanding any other contract term, our total liability for any claim or series of related claims however arising in connection with our performance or non-performance of the Contract (including negligence) (“Claims”) shall be limited to an amount equal to goods damaged or rejected by you for the sale of goods or services in relation to which the claim or series of related claims arises.

8.2 We will not be liable for any Claim for: (i) loss of profits, revenue, goodwill, production, business, anticipated savings or third party contracts (in each case, whether or not foreseeable); or (ii) for consequential or incidental damages or indirect loss.

8.3 All warranties, guarantees, conditions and terms, other than those expressly set out in the Contract, whether express or implied by statute, common law, trade usage or otherwise, and whether written or oral, are hereby excluded.

8.4 Representations about the goods and directions for their use are made in good faith, but we will not be liable for such representations.

8.5 We will not check the accuracy and completeness of information and data transmitted to us in this connection and we will not be responsible for losses incurred due to any changes made or suggested to them are subject to your validation.

8.6 This Condition is subject to our overriding agreement to be responsible for our fraud and any death or personal injury resulting from our negligence.

9. Intellectual Property and Confidentiality

9.1 All intellectual property rights in and relating to the goods we supply to you under the Contract and the use of same are our property.

9.2 You agree to use the goods only in accordance with our written instructions and not to make any changes or additions to them or to recombine same with other materials which we have not approved.

9.3 You shall indemnify and hold us harmless from any claims based on infringement of any intellectual property rights caused by your use of the goods.

10. Force Majeure

10.1 We will not be liable for failure to comply with our obligations under the Contract if this failure is caused by events beyond our reasonable control, including, without limitation, acts of war, hostilities, riot, fire, explosion, accident, flood, sabotage, strike, breakage of plant or equipment or lack of adequate fuel, power, raw materials, containers or transport lines, delays in supply of other breaches of contract of our suppliers, or economic or trade sanctions.

11. Termination

11.1 We may, at our sole discretion, terminate, without prejudice to our accrued rights, all or part of the Contract: (i) for convenience by providing 90 days’ written notice; (ii) immediately if you are in arrears of any amount owed to us or if insolvency proceedings are commenced involving you; or (iii) if you breach the Contract and the breach is not remedied within such period of time as we may determine, you fail to remedy such breach within 30 days of receiving notice of the breach.

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

11.3 The Termination

11.4 The provisions of the Contract is found by any court of competent jurisdiction to be wholly or partly invalid, illegal, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, unenforceability or unreasonableness be declared null and void and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

11.5 Failure or delay by us in enforcing any provision of the Contract will not be a waiver of any of the provisions of the Contract.

11.6 You are not entitled to transfer any of your rights or obligations under the Contract without our prior written consent. The Contract terms are not assignable by you without our prior written consent.

11.7 You must comply with all applicable laws, regulations and codes including those concerning export control restrictions.

12. Law and Jurisdiction

12.1 The Contract shall be exclusively governed by Danish law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). If you are incorporated or otherwise legally resident in any member state of the European Union, Iceland, Switzerland or Norway, the courts of Denmark shall have exclusive jurisdiction to settle any disputes or claims that arise out of or in connection with the Contract or its subject matter (“Claims”). If not, any Claims shall be subject to and finally resolved by arbitration in Copenhagen, Denmark, under the rules of the Danish Institute of Arbitration by one or more arbitrators appointed in accordance with those rules. The language of arbitration shall be English.