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## **STANDARD TERMS AND CONDITIONS**

### **1. DEFINITIONS:**

In this document the following words shall have the following meanings:

- 1.1 "Buyer" means the organization and/or person who buys Goods from the Seller;
- 1.2 "Goods" means the articles to be supplied or services to be rendered to the Buyer by the Seller;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time
- 1.5 "Seller" means KITPLANES FOR AFRICA (PTY) LTD and/or SAPLANES (PTY) LTD, HANGAR 1, PETIT AIRPORT, RUDI STREET, PETIT, BENONI and/or any of its worldwide subsidiary companies, shareholders, agents, distributors or dealers.
- 1.6 NTCA – Non-Type Certificated Aircraft. Aircraft which do not meet the requirements of a Certificate of Airworthiness in terms of ICAO Annex 8.
- 1.7 Builder assistance programs – A program offered by KFA where a builder can assemble his/her aircraft under the guidance and assistance of KFA.
- 1.8 Production Build Aircraft – these are aircraft fully assembled by KFA under approval from an approved authority, whether local or international.
- 1.9 Kit for self-assembly means parts and goods supplied by KFA which, when assembled in accordance with the KFA assembly manuals and procedures, will be transformed into and classified as one of KFA's approved/accepted aircraft models.

### **2. GENERAL:**

- 2.1 These Terms and Conditions shall apply to the sale of any and all Goods by the Seller to the Buyer.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed to in writing by the Seller.
- 2.3 Any typographical, clerical or other error or omission in any quotation, price list, acknowledgement of order, invoice or other document issued by the Seller shall be subject to correction without any liability on the part of the Seller. E&OE
- 2.4 **By accepting an invoice, quotation and/or estimate by means of signature or by acknowledging acceptance by means of any form of electronic acceptance/confirmation, and/or by making payment for the Goods, whether by means of a deposit or by full payment of the amount due, the Buyer unconditionally accepts these terms and conditions of the Seller.**

### **3 PRICE AND PAYMENT:**

- 3.1 The price shall be that in the Seller's current List Price, or such other price as the parties may agree in writing. (This could be by means of a quotation, invoice or estimate). The price is exclusive of VAT or any other applicable costs. The Buyer shall pay for carriage and or delivery, if applicable.
- 3.2 Payment of the price and VAT and any other applicable costs shall be due in advance before any Purchase Orders are accepted.
- 3.3 No Goods or Services shall be provided on credit.
- 3.4 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of the max percentage as allowed by South African law, per annum above the base rate of the Reserve Bank of South Africa.
- 3.5 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
  - 3.5.1 require payment in advance of delivery in relation to any Goods not previously delivered;
  - 3.5.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
  - 3.5.3 terminate the contract.
  - 3.5.4 charge a storage fee
- 3.6 Parts are 100% payable on order placement. No parts will be ordered and/or manufactured without full prepayment.
- 3.7 A 50% labour deposit is payable before commencement of any repair and or alteration with the balance payable on completion.
- 3.8 Aircraft built as production aircraft or under a builder assist program could be subject to individual payment agreements between the Seller and the Buyer. These agreements will normally consist of full payment of the Goods in advance by the Buyer and with the labour portion spread out over the build period or builder assistance period. Any payment agreements/arrangements made individually between the Seller and the Buyer does not absolve the Buyer from the Seller's terms and conditions.

### **4. DESCRIPTION:**

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

### **5. SAMPLE:**

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

## **6. DELIVERY:**

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall take be ex-works Petit. The Buyer shall make all arrangements necessary to collect the Goods when informed by the Seller to do so.
- 6.2 The date of collection or completion specified by the Seller is an **estimate** only. Time for delivery shall not be of the essence of the contract and no liability will attach to late or postponed deliveries due to conditions beyond the reasonable control of the Seller.
- 6.3 Collection by the Buyer, delivery by the Seller, the courier to the Buyer or written acknowledgement by the Buyer will be deemed to be receipt of the goods by the Buyer for the purpose of this agreement, whether the Goods have left the premises of the Seller or not.
- 6.4 Good not supplied or not available at the time of shipping or collection (goods on back-order) will be ship as and when received by the Seller. Cost of shipping or delivery will be for the Buyer's account.

## **7. CANCELLATION AND POSTPONEMENT OF ORDERS:**

- 7.1 Deliveries in respect of orders for Goods may only be postponed with the written agreement of the Seller. If the Buyer cancels an order, The Seller will endeavor to find an alternative Buyer, subject to 7.7, but will be entitled to charge the Buyer for any losses suffered as a result of the cancellation. There shall be no requirement to prove such losses provided they do not exceed 25% of the value of any orders cancelled, unless the conditions in 7.2 (iii) have been exceeded, in which case the latter shall take precedence.
- 7.2 the Seller shall be entitled, on the termination of this contract by the Buyer and without prejudice to any other claims against the Buyer:
  - (i) To recover from the Buyer the cost of any goods acquired by the Seller for the Buyer.
  - (ii) To charge the Buyer by way of cancellation a sum not less than 25% of the invoice value of the goods ordered and or paid for by the Buyer and
  - (iii) To sell the goods after a period of 90 days to cover any losses incurred by the Seller, including loss of income, storage, insurance and handling fees and to claim damages and/or any other costs from the Buyer not recovered from/by the sale of the Goods.
  - (iv) To complete the Goods (unfinished project) on the Seller's discretion in order to make the Goods sellable to recover any and all losses suffered due to the cancellation by the Buyer.
- 7.3 Orders for Goods manufactured or purchased in accordance with the Buyer's specifications may not be cancelled without the written authority of the Seller. The Buyer undertakes to indemnify the Seller for all costs and expenses resulting from a breach of this condition by the Buyer.
- 7.4 All Goods ordered and not collected within 30 days of being informed to do so by the Seller will either be forfeited by the buyer and sold by the Seller to recover costs of storage or will be stored at a cost equal to the going rate of similar products at the place of business of the Seller to the buyer.
- 7.5 All Goods not completely paid for within 30 days of being informed to so by the Seller will be stored and charged for at the rates states in 7.4.

- 7.6 All Goods not fully paid for within 90 days of being informed to do so by the Seller, will be forfeited by the Buyer and the Seller will then have the right to sell the Goods in order to recover any and all losses suffered by the Seller due to the non-performance of the Buyer.
- 7.7 The Seller's intention and willingness to find an alternative Buyer for the Goods within the period as stipulated in 7.1, does not absolved the Buyer from the original terms and conditions stipulated herein and the Buyer will remain obligated under these terms and conditions of the Seller. The Buyer specifically agrees that the willingness of the Seller to entertain such an arrangement does not constitute a new agreement between the Buyer and Seller. If for any reason the new Buyer does not fulfill the original Buyers obligations, in the time, as per these terms and conditions, the original Buyer will still be liable to fulfill his obligation of performance under these terms and conditions.

## **8. RISK:**

### **Aircraft and aircraft kits**

- 8.1.1 In the case of parts - Risk in the Goods shall pass to the Buyer at the moment the Goods are dispatched, acknowledged by means of a delivery note/receipt or collected by the Buyer from the Seller's premises. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.
- 8.1.2 In the case of builder assistance or maintenance - Risk in the Goods shall remain with the Owner/s at all times. KFA will not be liable for damage to goods left in its possession.
- 8.1.3 Aircraft/Project owners are to arrange for their own insurance whilst the Goods are in the possession of KFA
- 8.1.4 The Buyer understands that the owner/builder is by law considered to be the manufacturer of the aircraft and therefore accepts sole responsibility for the construction, operation and maintenance of the aircraft. The Buyer also understands that the BUSHBABY/ EXPLORER/ SAFARI aircraft, whether in kit form or fly-away form, was designed to be an NTCA (Non type certified aircraft) and as such it cannot be issued with a Certificate of Airworthiness in terms of ICAO Annex 8. Purchaser also accepts responsibility for complying with the appropriate building, registration, licensing and operating regulations of the appropriate authority in the country of import and registration. **As many factors beyond the control of the designer affect the operational safety of this aircraft the PURCHASER HEREBY INDEMNIFIES THE SELLER AND ITS SUPPLIERS, AGENTS AND EMPLOYEES AGAINST ANY DAMAGES, SUITS AND/OR CLAIMS FOR ANY DEATHS, BODILY INJURY OR PROPERTY DAMAGE INVOLVING A BUSHBABY/EXPLORE/SAFARI AIRCRAFT. THIS RELEASE IS GIVEN IN RECOGNITION OF THE INHERENT DANGERS OF AVIATION AND SPECIFICALLY FOR NON-CERTIFIED, AMATEURBUILD, EXPERIMENTAL AND UL AIRCRAFT AND TO PROTECT THE SELLER SHOULD ANY CLAIMS OF NEGLIGENCE, DEFECTIVE DESIGN, DEFECTIVE MATERIALS AND/OR WORKMANSHIP ARE STATED AT ANY STAGE.**
- 8.1.5 The Buyer understands that the plans and accompanying manuals and kits contain information proprietary to Seller and it is supplied to the Buyer solely for his own use and to construct his own aircraft from the kits supplied. The Buyer agrees not to duplicate any parts supplied in the kit, not to

copy any manuals, not to trace photograph, or otherwise record dimensional or any other information from parts or drawings supplied by Seller or to permit others to do the same.

- 8.1.6 The Buyer understands that all aircraft completed under a builder assist program are NOT production build aircraft and the builder/owner is entirely responsible for the airworthiness of the aircraft.
- 8.1.7 Collection and deliveries arranged by a Buyer will be for their own account and own risk. Any ferry arrangements between a Buyer and a ferry pilot will be between those parties and KFA will not be liable for any loss, injury or death, even if the sale has not been concluded, but the deposits were paid and the ferry pilot acts on the instruction of the buyer.
- 8.1.8 It is necessary for Seller to communicate important safety information to builders and operators from time to time. The Buyer therefore, agrees to notify KITPLANES FOR AFRICA promptly of any change in address or sale of the aircraft. With change of ownership, the terms of this agreement become applicable to the new owner/s or the aircraft, and it should be passed on to such person/s.

### **ENGINES, PROPELLERS, TURBO INSTALLATIONS AND RELATED PARTS**

**Please note that all KFA branded and supplied engines and parts are NOT Certified. Some of the engine combinations may be approved in different countries but the owner takes full responsibility to ensure the continued airworthiness of the engine and its components. The purchaser hereby indemnifies the seller and its suppliers, agents and employees against any damages, suits and/or claims for any deaths, bodily injury or property damage involving any KFA engine. This release is given in recognition of the inherent dangers of aviation and specifically for non-certified, amateurbuild, experimental and ul aircraft and to protect the seller should any claims of negligence, defective design, defective materials and/or workmanship are stated at any stage.**

- 8.1.9 All Turbo kits supplied by KFA for self-installation come **without** a warrantee from KFA and are NOT ROTAX APPROVED. The turbo conversions have been extensively used for many years and have proven their reliability. KFA cannot control the quality and or know whether the installation of the turbo kit will be done correctly, nor whether the base engine is suitable for the purpose and will therefore not be responsible/liable for any loss due to damage or defects associated with the supplied goods apart from obvious production flaws BEFORE installation by the customer.
- 8.1.10 All engine conversions done at KFA, or one of their representatives, **where the engine is supplied by the customer**, will not be covered by any warrantee by KFA apart from any manufacturing defects of the turbo units **before** installation as per clause 8.1.5 above.
- 8.1.11 Any engines supplied by KFA as a complete unit will be covered by a 200hr or 18-month limited warrantee against defective parts or workmanship.

### **9. TITLE:**

- 9.1 Title in the Goods shall not pass to the Buyer until such time that all the terms and conditions of the Seller has been fulfilled.

## **10. WARRANTY:**

- 10.1 Subject to the terms of this clause Seller warrants to the Buyer that:
  - 10.1.1 Production build Goods are free of defects in materials and workmanship that materially affect their performance for a period of 30 days from collection by the Buyer.
- 10.2 Seller agrees to repair or replace all Goods produced by it, which fail to conform to the relevant warranty set out in clause 10.1 provided that:
  - 10.2.1 notification of the defect is received by Seller within the warranty period specified above;
  - 10.2.2 allegedly defective Goods are returned to Seller with Seller's prior authorization within thirty (30) days of the defect becoming apparent; and
  - 10.2.3 the Goods have not been altered, tampered with, modified or subject to misuse, incorrect installation, maintenance, neglect, accident or damage or used with incompatible parts.
  - 10.2.4 Replacement Goods shall have the benefit of the applicable warranty for the remainder of the applicable warranty period.
- 10.3 If the Seller complies with clause 10.2 it will have no further liability for a breach of the relevant warranty set out in clause 10.1.
- 10.4 Allegedly defective Goods returned to Seller in accordance with 10.2.2 will, if found by Seller on examination not to be defective or to have been tampered with, to be returned to Buyer and a charge made for examination and testing.
- 10.5 The warranty is not transferable and shall only apply to the original Buyer and shall not extend to any Subsequent Buyer or User.
- 10.6 Where the Goods have been manufactured and/or supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer, if any. The Seller will not offer any warranties apart from those offered by individual parts manufacturers. The Seller will endeavor to assist the Buyer, within reason, in so far as to claims being made against a third-party supplier.
- 10.7.1 The Seller shall be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.
- 10.7.2 Due to the nature of NTCA (Non-Type Certified Aircraft)/Experimental/UL/Amateur build aircraft, Used or previously owner aircraft (Goods) are sold on an "on condition" basis, the Seller will not offer any warranties, whether expressed or implied, whatsoever, on used aircraft, their parts or components. It is the Buyer's responsibility to ensure that the Goods are fit in form and function and that he/she is satisfied as to its airworthiness state. Buyer's from South Africa should educate themselves as to the laws governing NTCA aircraft and in particular, SACARS part 24, 44, 66.04 and 94.
- 10.8 The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein.

## **11. LIABILITY:**

- 11.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:
  - 11.1.1 the correspondence of the Goods with any description;

- 11.1.2 the quality of the Goods; or
- 11.1.3 the fitness of the Goods for any purpose whatsoever.
- 11.2 No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:
  - 11.2.1 the correspondence of the Goods with any description;
  - 11.2.2 the quality of the Goods; or
  - 11.2.3 the fitness of the Goods for any purpose whatsoever.
- 11.3 All implied terms, conditions or warranties as to the correspondence of the Goods to any description or the satisfactory quality of the Goods or the fitness of the Goods for any purpose whatsoever (whether made known to the Seller or not) are hereby excluded from the contract

## **12. LIMITATION OF LIABILITY:**

- 12.1 Where any court or arbitrator determines that any part of Clause 10 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the contract price.
- 12.2.1 The Buyer acknowledges and agrees that the exclusions from and limitations of liability provided for in this document are reasonable in the circumstances and that if they had not been included the Sale Price
- 12.2.2 Without affecting our responsibilities to you under this acknowledgment and to the fullest extent permitted by law; you agree that you are solely responsible for
  - (i) Any product or process using or incorporating the Goods;
  - (ii) Testing the Goods and determining their suitability for your application, product or process.

## **13. INTELLECTUAL PROPERTY RIGHTS:**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

## **14. FORCE MAJEURE:**

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

## **15. RELATIONSHIP OF PARTIES:**

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

**16. ASSIGNMENT AND SUB-CONTRACTING:**

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

**17. WAIVER:**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

**18. SEVERABILITY:**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

**19. GOVERNING LAW AND JURISDICTION:**

This terms and conditions shall be governed by and construed in accordance with the law of South Africa and the parties hereby submit to the exclusive jurisdiction of the South African courts and specifically within the jurisdiction of the Seller's Domicile address.

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