

## 1 INTRODUCTION

1.1 The terms and conditions contained in this document (*the/these "Terms"*) shall apply to all contracts concluded between JS and its customers for purposes of the production and supplying of their glider products.

1.2 Any terms issued by a customer that deviate from these Terms and have not been acknowledged in writing by JS shall not be binding on JS, even if JS does not explicitly object to them.

1.3 These Terms shall be valid and binding between JS and its customers upon a customer submitted an order, pursuant to the provisions of clause **Fehler! Verweisquelle konnte nicht gefunden werden..**

## 2 INTERPRETATION

2.1 In these Terms:

2.1.1 clause headings are for convenience only and are not to be used in its interpretation;

2.1.2 an expression which denotes:

2.1.2.1 any gender includes the other genders;

2.1.2.2 a natural person includes a juristic person and *vice versa*; and

2.1.2.3 the singular includes the plural and *vice versa*; and

2.1.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law.

2.2 In these Terms, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

2.2.1 "**Anticipated Completion Date**" means such date specified by JS as the date on or by which it intends to complete the production of the Sailplane, failing which such date as advised by JS, in writing;

2.2.2 "**Applicable Laws**" means any and all laws, statutes, regulations, ordinances, rules, guidelines, policies, notices, orders and directions or other laws which apply to the manufacturing and production of the Sailplane by JS;

2.2.3 "**Baseline Options**" mean the standard glider options manufactured and produced by JS, branded either as JS1, JS2, JS3 or JS4, as referred to in the Offer Letter and "**Baseline Option**" means either one of them;

2.2.4 "**CCF**" means the Client Coordination File opened in favour of the CLIENT, pursuant to the provisions of clause **Fehler! Verweisquelle konnte nicht gefunden werden.;**

2.2.5 "**CLIENT**" means the person described as such in the Offer Letter;

2.2.6 "**Client Coordination File**" means a file established by JS for purposes of facilitating the production of the Sailplane and include amongst other information the Specifications;

2.2.7 "**Completion Date**" means the date JS issues a Completion Notice, pursuant to the provisions of clause 5.3.2;

2.2.8 "**Deposit**" means such amount stipulated in the Offer Letter, failing which the amount contemplated in clause 7.4.1.1.1, being the amount payable by the CLIENT to JS as a requirement for JS to commence with the production of the Sailplane;

2.2.9 "**Disbursements**" has the meaning set out in clause 7.2.17.2;

2.2.10 "**glider**" a [fixed-wing aircraft](#) that is supported in flight by the dynamic reaction of the air against its lifting surfaces, and whose [free flight](#) does not depend on an engine;

2.2.11 "**Intellectual Property**" means all rights of JS in and to the intellectual property attaching and/or deriving from the gliders manufactured and produced by JS, of whatsoever nature, whether registered or not, including but not limited to trade names, trademarks, trade mark applications, logos, designs, patents, copyright, software, manufacturing guidelines and know-how;

2.2.12 "**month**" means a calendar month *i.e.* from the first day of any calendar month until the last day of the same calendar month and "**monthly**" has a similar meaning;

2.2.13 "**Offer Letter**" means the letter addressed by JS to the CLIENT, in which JS tenders the production of a certain Baseline Option, selected by the CLIENT at such time;

2.2.14 "**Order Confirmation Sheet**" means the order submitted by the CLIENT for purposes of the supply and production of the Sailplane in the form appended to the Offer Letter, failing which in such form as prescribed by JS;

2.2.15 "**Part**" means a component manufactured by JS or by its subcontractors that forms part of the Sailplane;

2.2.16 "**Parties**" means JS and the CLIENT and "**Party**" means either one of them as indicated by the context;

2.2.17 "**Sailplane**" means such Baseline Option selected by the CLIENT in its Order Confirmation Sheet, subject to such modifications and adjustments as stipulated or required under the Specifications;

2.2.18 "**Sales Price**" means the amount payable by the CLIENT to JS in consideration of the Sailplane, as contemplated in clause 7.1;

2.2.19 "**Specifications**" mean the standard specifications custom to a Baseline Option selected by the CLIENT, subject to:

2.2.19.1 such modifications and/or variations recorded in the CCF, pursuant to the provisions of clause 4.2.2; and

2.2.19.2 any variations effected pursuant to the provisions of clauses 4.2.4 to 4.2.6;

2.2.20 "**VAT**" means value-added tax levied in terms of the Value-added Tax Act relevant to the final destination of the product. If the destination is South Africa, Act 89 of 1991, as amended or replaced, from time to time, is applicable;

2.2.21 "**Warranty Period**" means a period of 2 (two) years following the date the glider is ready for collection by the CLIENT.

2.3 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout these Terms.

2.4 Reference to "**days**" shall be construed as calendar days unless qualified by the word "**business**", in which instance a "**business day**" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;

2.5 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

2.6 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2.7 Where it is required that a Party to use "**best endeavours**" in relation to an obligation, that Party shall do all things as are or may be necessary or desirable so as to comply with or satisfy that obligation unless the Parties agree that it is not reasonable to take the action or assume that obligation.

2.8 No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

### **3 ORDER**

3.1 JS will only deem that an order for the Sailplane is submitted upon receiving a signed Order Confirmation Sheet from the CLIENT.

3.2 An Order Confirmation Sheet submitted by the CLIENT will be deemed to constitute a contract between JS and the CLIENT for purposes of the supply and production of the Sailplane, subject to the Specifications and against payment of the Sales Price.

3.3 Failure by the CLIENT to return a signed Order Confirmation Sheet to JS within 2 (two) weeks after JS delivered an Offer Letter to the CLIENT, will result in the Offer Letter lapsing, unless JS agrees otherwise, in writing.

3.4 Production of the Sailplane will only commence once:

3.4.1 the CCF is finalised and submitted, pursuant to the provisions of clause 4.2.2 ; and

3.4.2 the CLIENT settled the Deposit.

3.5 Documents which form part of an Offer Letter, such as illustrations, drawings and data sheets with weights and dimensions, shall be only indicative and only binding where this is explicitly declared as such by JS.

### **4 PRODUCTION**

#### **4.1 Production & Performance:**

4.1.1 In the production and supply of the Sailplane, JS undertakes to:

4.1.1.1 comply with all Applicable Laws;

4.1.1.2 undertake the production of the Sailplane in accordance with Specifications.

4.1.2 JS undertakes to use its best endeavours to finalise the manufacturing of the Sailplane on or before the Anticipated Completion Date.

4.1.3 In the event of:

4.1.3.1 any dispute between the Parties; and/or

4.1.3.2 the CLIENT being in breach of any of these Terms; and/or

4.1.3.3 any delay being caused as a result of the CLIENT's failure to perform its duties and/or responsibilities timeously; and/or

4.1.3.4 resulting from any requirements of the CLIENT that materially affects the time within JS is required to perform its duties; JS is entitled to, in its sole discretion and without prejudice to its other rights and remedies, suspend the production of the Sailplane, in whole or in part, by delivering written notice to such effect to the CLIENT. In such instance:

4.1.3.5 JS retains the right to recover all monies due and owing to it:

4.1.3.5.1 up and until the date of suspension of productions; and

4.1.3.5.2 resulting from damages suffered as a result of the breach by the CLIENT.

4.1.4 All dates for performance by JS, including but not limited to the Anticipated Completion Date (*if applicable and as far as they may be affected by the suspension*) will automatically be extended by any reasonable period, as directed by JS, to reflect, alternatively cater, for the period of suspension of the production of the Sailplane, as contemplated in clause 4.1.3. Fehler! Verweisquelle konnte nicht gefunden werden..

4.1.5 Adherence to a contractually agreed delivery and/or performance deadlines by JS shall assume that all commercial and technical issues between the Parties have been conclusively resolved at the time that the date concerned is agreed and that the CLIENT has met all obligations incumbent on them on time. Should this not be the case or should subsequent Variations be agreed, the delivery time shall be extended for a reasonable period as determined by JS.

4.1.6 The CLIENT acknowledges that all contractually agreed delivery and/or performance deadlines, including but not limited to the Anticipated Completion Date is only an estimated date for completion of production of the Sailplane. Accordingly, the CLIENT shall have no claim of whatsoever nature, against JS, if the Sailplane is not completed on or before the due dates concerned.

**4.2 Specifications, Modifications & Variations:**

4.2.1 All Specifications, will be required to be incorporated into the CCF and is subject to the approval and acceptance by JS.

4.2.2 Upon receipt of the Order Confirmation Sheet by JS, JS will open a Client Coordination File in favour of the CLIENT and allocate 1 (one) of their agents to the CLIENT in order to complete such Client Coordination File, in consultation with CLIENT, for purposes of accommodating the Specifications, selected by the CLIENT at such time, provided that:

4.2.2.1 all main options are required to be finalised at least 2 (two) weeks before JS commences with production of the Sailplane;

4.2.2.2 the final date for paint and instrument options will be communicated to the CLIENT, at least 2 (two) weeks in advance;

4.2.2.3 failure by the CLIENT to attend to the selections within the aforesaid periods, will result in JS manufacturing the Sailplane in accordance with the specifications custom to the Baseline Option selected by the CLIENT.

4.2.3 additional costs may be applicable if late changes and/or selections are made by the CLIENT.

4.2.4 Thereafter, if the CLIENT requires any modifications and/or variations to the Specifications contained in the CCF, such modifications and/or variations will be required to be communicated to JS, in writing, ("**Variation Notice**").

4.2.5 All modifications and/or variations required by the CLIENT, under a Variation Notice, is subject to the approval and acceptance by JS and will only become binding once JS accepts the modifications and/or variations recorded in a Variation Notice ("**Variations**"), in which event the Variation will be incorporated into the CCF.

4.2.6 In the event the Variations affects the Sales Price, JS will adjusted the Sales Price in order to accommodate the Variations and advise the CLIENT accordingly. Failure by the CLIENT to dispute any adjustment of the Sales Prices, as aforesaid, within 10 (ten) business days after receiving notice to such effect, will be deemed to constitute an acceptance of the CLIENT.

**4.3 Avionics, Instruments & Equipment**

4.3.1 JS undertakes to offer avionics and instruments to the CLIENT at the manufacturer's list prices valid upon the date of commencing with the production of the Sailplane.

4.3.2 Installation fees in relation to the complex avionic devices or special requests are excluded from the Sales Price and will be deemed to constitute a disbursement.

4.3.3 For any customer supplied avionics or instruments, an additional 15% (fifteen percent) handling fee, calculated against the landed cost price of the avionics or instruments concerned, is charged in order to cover handling, storage and supplying of minor items. For the avoidance of doubt, this handling fee do not cover the cost, expenses and fees contemplated in paragraph 4.5 below.

4.4 As a general rule, the final definition of selected options, avionics, instruments, and equipment must be finalized 20 (twenty) weeks before completion of production the Sailplane in South Africa and any instructions in this regard will only be adhered to JS if the instructions of the CLIENT is incorporated into the CCF, pursuant to the provisions of clause 4.2. If this deadline is not met, the Sailplane will be manufactured according to the Specification recorded in the CCF, at such time. Additional costs may be applicable if late changes to the Specification are made.

4.5 Selection of unapproved instruments may attract additional installation fees when wiring or panels have to be modified. It is the CLIENT's responsibility to ensure that instruments selected are certified and available in time.

4.6 JS, through its allocated agent, will discuss the avionics and instrument preferences, coordinate an instrument panel layout with the JS engineering staff, and provide a drawing for review and approval by CLIENT. JS, through its allocated agent, will also be in communication with the CLIENT regarding the main options, registration, competition numbers, finishing, and other items as listed in the standard specification document.

**5 INSPECTION, TESTS & IMPLEMENTATION**

**5.1 Inspection & Testing:**

Inspections and tests to be carried out on the Sailplane shall be such tests as JS would normally carry out in the ordinary course of production.

**5.2 Presentations:**

JS shall during the production of the Sailplane inform the CLIENT of:

5.2.1 the progress made with the production of the Sailplane;

5.2.2 any matter that may hinder JS to fulfil its duties timeously;

5.2.3 such other matters that may affect the mandate of JS and/or the performance of its duties.

**5.3 Completion:**

5.3.1 Upon completion of production of the Sailplane, JS will attend and execute the necessary test flight, which test flight will be

conducted at the premises of JS in the Republic of South Africa or such other premises as nominated by JS at such time.

5.3.2 Upon the test flight being conducted successfully, JS will issue a certificate certifying that the Sailplane has been tested and is ready for delivery to the CLIENT ("**Completion Notice**").

## **6 DELIVERY & SHIPMENT**

### **6.1 Delivery:**

6.1.1 In the absence of any other terms to the contrary in the Offer Letter, delivery of the Sailplane will be tendered and effected, Ex Works, at the premises of JS, situated at Potchefstroom, Province of the North West, Republic of South Africa.

6.1.2 JS undertake to, either simultaneously with delivery of the Completion Notice or as soon as reasonably possible thereafter, advise the CLIENT of the date on which delivery of the Sailplane ("**Delivery Items**") shall be made available for delivery to the CLIENT, by addressing at least 2 (*two*) weeks notice to such effect to the CLIENT ("**Delivery Notice**").

6.1.3 Delivery shall be deemed to have occurred if the Delivery Item has left JS's premises or in the event the CLIENT failed to accept delivery of the Delivery Items, on the date specified in the Delivery Notice, whichever is earlier ("**Delivery Date**").

6.1.4 JS shall be entitled at all times to supply part-deliveries and part-performance, where this is acceptable to the CLIENT.

6.1.5 Should the CLIENT fail to take delivery or culpably fails in its other obligations to cooperate, JS shall be entitled to demand compensation for the damages incurred and any eventual additional expense.

6.1.6 Should the despatch of the Delivery Items be delayed at the CLIENT's request or he fails to take delivery of the Delivery Items on the Delivery Date:

6.1.6.1 the cost of storage at the JS's premises shall be charged to the CLIENT at 0.5% (*zero comma five percent*) of the Sales Price for each month or portion thereof from the Delivery Date until the CLIENT took physical delivery of the Delivery Items; and/or

6.1.6.2 JS shall be entitled to dispose of the Delivery Items otherwise, after a reasonable deadline has been set and unsuccessfully expires.

### **6.2 Shipment:**

6.2.1 Delivery Items shall be loaded and shipped uninsured and at the CLIENT's own risk.

6.2.2 JS undertakes to assist the CLIENT with the coordination of shipping and loading of the Sailplane, if the CLIENT requires any assistance in this regard. In such instance JS shall make every effort

to take account of the wishes and interests of the CLIENT in respect of the shipping method and route.

6.2.3 Unless cost of shipment is included in the Sales Price, all cost and expense incurred in relation to the shipment of the Delivery Items, will be for the account of the CLIENT and if such cost and expenses is settled by JS, such cost and expenses will be deemed to constitute a Disbursement.

6.2.4 At the request and expense of the CLIENT, JS shall insure the delivery by means of transport insurance; provided that cost and expenses incurred in this regard will be deemed to constitute a Disbursement.

### **6.3 Handover:**

6.3.1 In the event the Sailplane is shipped to place outside the borders of the Republic of South Africa, JS undertakes to mandate a person or organization in such country to assist with assembling, testing certification and handover of the Sailplane in such country.

6.3.2 The provisions of clause 6.3.1 will not affect the passing of risk of profit and loss to the CLIENT, as contemplated in clause 6.1.2.

### **6.4 Packaging:**

6.4.1 JS shall be responsible to package the Delivery Items in accordance with reasonable practises and/or regulations custom to the packaging of the the Delivery Items for purposes of the method of shipment required by the CLIENT.

6.4.2 JS shall not take back transport packaging and all other packaging according to packaging regulations, unless otherwise directed by JS, in writing. The CLIENT shall dispose of the packaging at his own expense.

6.4.3 Unless cost of packaging is included in the Sales Price or to the extent that alternatively packaging material is required for purposes of the method of shipment required by the CLIENT, all cost and expense incurred in relation to the packaging of the Delivery Items, will be for the account of the CLIENT and if such cost and expenses is settled by JS, such cost and expenses will be deemed to constitute a Disbursement.

### **6.5 Passing of Risk and Ownership:**

6.5.1 In the absence of any other agreement, all risk of profit and loss attaching to the Delivery Items pass to the CLIENT upon the Delivery Date.

6.5.2 Ownership in and to Delivery Items, will, notwithstanding delivery thereof to the CLIENT, vest in JS until the Sales Price has been settled in full.

## **7 FEES AND DISBURSEMENTS**

### **7.1 Sales Price:**

7.1.1 JS shall, in consideration for the Sailplane charge a fee, equivalent to:

7.1.1.1 the base cost of the Baseline Option, selected by the CLIENT, as prescribed by JS; and

7.1.1.2 all cost, charges and fees in connection with, alternatively charged by JS, in order for the aforesaid Baseline Option, selected by the CLIENT to comply with the Specifications.

7.1.2 The aforesaid base cost, cost, charges and fees will be calculated against the tariffs and charges appended to the Offer Letter and is subject to an annual determined by JS based on the European Inflation rate to be effected on the 1<sup>st</sup> day of January of each and every year.

## **7.2 Disbursements**

7.2.1 In addition to the Sales Price, the CLIENT shall be liable to reimburse JS for all cost and expenses incurred by JS in favour of the CLIENT; provided such Disbursements was approved by CLIENT, alternatively incurred by JS pursuant to the provisions of these Terms. ("**Disbursements**").

7.2.2 Where JS is to be reimbursed for any Disbursements, JS must, on demand, make the relevant accounts and records available for audit by the CLIENT in order to verify the amounts of the Disbursements concerned.

## **7.3 Invoicing**

7.3.1 The Sales Price is payable by the CLIENT to JS in accordance with the payment terms recorded in the Offer Letter.

7.3.2 JS shall, upon the Sale Price or any portion thereof becoming due and payable by the CLIENT, issue an invoice to the CLIENT to such effect.

7.3.3 Any failure by JS to issue an invoice aforesaid, shall not prejudice the rights of JS to invoice for the amount concerned at a later stage and/or to recover same from the CLIENT.

## **7.4 Payments:**

7.4.1 The CLIENT shall:

7.4.1.1 make payment of the Sales Price to JS, in such amounts and on or before the due dates stipulated in the Offer Letter, provided that in the event the Offer Letter fails to record the said terms and/or any other agreements have been made, the CLIENT shall effect payment for the Sales Price as follows:

7.4.1.1.1 30% (*thirty percent*) of the Sales Price within 5 (*five*) business days submitting the Order Confirmation Sheet, as contemplated in clause 3; and

7.4.1.1.2 60% (*sixty percent*) of the Sales Price within 10 (*ten*) business days after JS delivered the Completion Notice; and

7.4.1.1.3 the balance before hand-over or delivery.

7.4.1.2 settle all Disbursements and Taxes within 30 (*thirty*) days after JS demanded payment thereof.

7.4.2 All payment to be made by the CLIENT shall:

7.4.2.1 be paid in such currency as recorded in the Offer Letter;

7.4.2.2 be without:

7.4.2.2.1 bank charges; and/or

7.4.2.2.2 set off or deduction; provided that:

7.4.2.2.2.1 the CLIENT shall be entitled to set off or deduction of their own claims, even if complaints in respect of defects or counterclaims have been filed, only if the counterclaims have been legally established, accepted by JS or are uncontested; and

7.4.2.2.2.2 the CLIENT shall be entitled to exercise any right of retention only if their counterclaim is based on the same contractual relationship.

7.4.2.3 be made by electronic transfer;

7.4.2.4 be made at such place or places as JS may indicate in writing or stipulate on the invoice concerned;

7.4.2.5 first be utilized in settlement of interest and/or other cost and/or Disbursements that accrued, whereafter the balance, if any, will be utilized in settlement or partial settlement of Sales Price.

7.4.3 Discounts shall only be permitted where there is a specific written agreement between JS and the CLIENT, to such effect.

## **7.5 Disputed Invoices:**

If the CLIENT reasonably disputes, in good faith its obligation to pay part or all of an invoice submitted by JS, either in relation to the Sales Price and/or Disbursements, then the CLIENT shall not be entitled to withhold the disputed amount, but will pay same to JS and JS will thereafter make a refund to the CLIENT of any amount paid in excess or declared upon the adjudication of the dispute concerned.

## **7.6 Penalty for overdue payment**

7.6.1 If the Sales Price and/or the Disbursements or any portion thereof is not settled in full on or before the due date concerned, whether or not formal demand has been made, the CLIENT will, in addition to amount due and payable, pay interest on the overdue and outstanding amount against a *tempore morae* rate of interest, applicable in Republic of South Africa at such time, from the due date for payment until payment was made in full.

7.6.2 Any payment received from the CLIENT will first be utilised in settlement of accrued interest, whereafter the balance will be utilized in settlement or partial settlement of any other amount due and owing as contemplated in clause 7.4.2.5.

## **7.7 Cancellation**

7.7.1 In the event the CLIENT cancels its order, before JS commences with production of the Sailplane:

7.7.1.1 such cancellation will automatically result in forfeiture of the Deposit; and

7.7.1.2 JS undertakes to use its best endeavours to accommodate a transfer of the Deposit depending upon circumstances at the time; provided that JS reserves the right to retain the amount stipulated in the Offer Letter to cover administrative and agent fees and failing such stipulation such amount reasonably directed by JS.

7.7.2 In the event the CLIENT cancels its order, after initiation of production of the Sailplane,

7.7.2.1 such cancellation will automatically result in forfeiture of the Deposit; and

7.7.2.2 JS will be entitled to charged an additional fee which will be determined based the costs to transfer the Sailplane to a new customer.

7.7.3 The Deposit is not transferable to a third party without written approval from JS.

## **8 TAXES**

8.1 The Sales Price, unless otherwise stated and/or provided for, is exclusive of VAT and/or any other taxes levied and/or incurred in relation to the production, supply, export and delivery of the Sailplane to the CLIENT ("**Taxes**").

8.2 The CLIENT shall, in addition to the Sales Price, be liable to pay all Taxes which results from the taxable supply and delivery of the Sailplane as contemplated in clause 8.1.

## **9 CLIENT'S OBLIGATIONS**

The CLIENT will be liable to:

9.1 refrain from doing anything or allow anything to be done that may hinder JS from performing its responsibilities in the production and supply of the Sailplane;

9.2 disclose the modifications and/or variations to the Sailplane or part, selected and/or required by the CLIENT, timeously;

9.3 as far as reasonably possible commit to the modifications and/or variations made in the Order Confirmation Sheet and CCF, pursuant to the provisions clause 4.2.2;

9.4 at all times perform its responsibilities timeously, especially as far as the responsibilities affects the productions and supply of the Sailplane.

9.5 settle all reasonable costs which accrue to JS as a result of the CLIENT's delay, negligence or default. Unless and to the extent otherwise stated elsewhere in these Terms, the CLIENT is responsible for the giving of all notices and the obtaining of all licenses, consents, authorizations and permits required for the use and/or operation of the Sailplane.

## **10 SUB-CONTRACTING**

JS shall be entitled to sub-contract any of the obligations, without the prior written consent of the CLIENT being required; provided that no agreement entered into with a sub-contractor, shall release JS from any of its obligations towards the CLIENT.

## **11 WARRANTIES**

JS hereby warrants that:

11.1 it has the means and expertise with which to attend to the production and supply of the Sailplane;

11.2 all authorisations required to have been obtained by or under any Applicable Laws in order to enable JS to lawfully attend to the production and supply of the Sailplane have been obtained and will be maintained;

11.3 the production and supply of the Sailplane do not and will not result in the breach of:

11.3.1 the terms of or constitute default under any agreement or undertaking (*whether verbal or written*) or any instrument to JS may be affected or bound; or

11.3.2 any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any Law applicable to JS.

## **12 WARRANTY & DEFECTS**

12.1 JS warrants to the CLIENT that:

12.1.1 the production of the Sailplane will conform with the JS design and the Specifications, and be free from defects in material or workmanship; and

12.1.2 the Sailplane will perform the functions custom to the Baseline Option selected by the CLIENT and/or approved by the Specifications.

12.2 JS agrees that if any defect in the design, workmanship or materials used in that part of the Sailplane arises during the Warranty Period, JS shall, at its option, either repair or replace, free of charge, the defective part; provided that:

12.2.1 fitting of replacement part is CLIENT's responsibility;

12.2.2 where a defect arises in relation to any part of the Sailplane not manufactured by JS, JS shall transfer to the CLIENT such warranties, if any, from the supplier of such part as are capable of transfer but makes no warranty in relation to and shall have no liability in respect of that part;

12.2.3 claims by the CLIENT arising from defects may only be established if the CLIENT has duly examined and lodged a complaint

immediately upon becoming aware of such defects, during the Warranty Period;

12.3 JS will not be liable:

12.3.1 unless the CLIENT promptly notifies JS, in writing, upon such defect arising and supplies JS with such information in relation to the defect, as JS may reasonably require;

12.3.2 if the defect arises as a result of misuse, neglect, willful damage, negligence (*other than on the part of JS*), lack of servicing or maintenance, abnormal working conditions, failure to comply with JS's instructions, failure to comply with good aviation practices, dismantling, alteration or repair;

12.3.3 in relation to fair wear and tear;

12.3.4 for defects and/or damage caused by the operation of use of the Sailplane or components thereof, outside of the design specifications;

12.3.5 deformation of composite structures, including wing surfaces due to composite shrinkage or the known effects of water absorption in composite structures;

12.3.6 in relation to defects resulting from CLIENT's instructions, designs or specifications or as a result of the installation or commissioning of any part, other than by JS;

12.3.7 where the defect arises as a result of any defect in, non-compatibility of or unsuitability of any part not supplied by JS.

12.4 The CLIENT undertakes to, within a reasonable time after receiving written notice to such effect from JS, return the Sailplane to such designated factory representative, as nominated by JS, for inspection at the facility of such representative.

12.5 JS undertakes to, within a reasonable time, correct any defects, for which it may be responsible and in such instance the repairs, including but not limited to parts and labour will be for the account of JS; provide that any cost of transport to the designated facility be and remains for the account of the CLIENT.

12.6 Should JS be unable to rectify a defect (*for which repairs it is liable*) within a reasonable period of time and to a reasonable standard, then JS shall be liable for damages suffered by the CLIENT; but in any instance limited to the cost incurred by the CLIENT to repair the defect through third parties.

12.7 The liability of JS is completely excluded if the CLIENT attempts to correct or allows third parties to correct or attempt to correct any defects, or any portion thereof, without the prior written approval of JS (*save and except if same is done by the CLIENT in an attempt to mitigate its damages due to JS's failure to perform in terms of the provisions of clause 12.1*).

12.8 Any other liability on the part of JS arising from any cause whatsoever is specifically excluded.

12.9 Any warranties given by JS, in relation to the Sailplane, is limited to the warranties recorded in these Terms and/or the Offer Letter and subject to the terms and conditions associated with the warranties as prescribed by JS, from time to time.

### 13 INDEMNITY

The CLIENT indemnifies JS and JS's officers, agents, employees, directors, successors and assigns, from and against any and all loss, claims, demands, costs, expenses of every nature, including reasonable attorney's fees arising directly or indirectly from or in connection with the use and/or operation of the Sailplane by the CLIENT, its officers, agents, employees, directors, successors, invitees, assigns or any person associated with the CLIENT, except when any such claims arise from the sole negligence of JS.

### 14 INTELLECTUAL PROPERTY & OWNERSHIP

14.1 JS shall be and remain the sole owner of any Intellectual Property, including any technology or process, owned by it prior to the Completion Date, and any Intellectual Property, including any technology or process, developed or invented solely by JS during the production of the Sailplane shall be the sole property of JS.

14.2 Ownership in and to the Sailplane, will, notwithstanding delivery thereof to the CLIENT, vest in JS until the Sales Price has been settled in full.

### 15 CONFIDENTIALITY

15.1 The Parties acknowledge that during the production of the Sailplane ("**Confidential Information**"), the CLIENT may come into contact with confidential information and trade secrets belonging to JS and undertakes to, both during the duration of the production of the Sailplane and at all times thereafter, refrain from disclosing any such information to any third party in any manner, whether directly or indirectly, for any purpose whatsoever.

15.2 The CLIENT agreed and undertakes to keep all Confidential Information confidential and not to disclose it any third party, without the written consent of JS first being had and obtained.

### 16 BREACH

16.1 Should any of the Parties ("**the Defaulting Party**"), commit any material breach of any term, condition, undertaking or representation contained in these Terms and:

16.1.1 should such breach be incapable of being remedied; or

16.1.2 should such breach be capable of being remedied, and should the Defaulting Party fail to remedy such breach within 14

(fourteen) days after receipt of a written notice to that effect from the non-Defaulting Party requiring the breach to be remedied, then the other Party ("**the Non-Defaulting Party**") shall be entitled, without prejudice to any other rights which it may have in terms of these Terms or at law, either:

16.1.3 to claim payment of an amount equal to the extent of the damage resulting to the non-Defaulting Party from such breach; or

16.1.4 to claim specific performance of the Defaulting Party's obligations in terms of these Terms.

16.2 Notwithstanding anything to the contrary herein contained, the Non-Defaulting Party shall not be obliged to perform any obligation or pay any amount to the Defaulting Party at any time whilst the Defaulting Party is in breach of these Terms and the date for performance of any obligation or payment of any such amount by the Non-Defaulting Party shall be extended from the due date until the date upon which the Defaulting Party remedies the breach in question.

#### **17 ADJUDICATION OF DISPUTES**

17.1 Should any dispute or disagreement arise between any of the Parties ("**disputes**"), then in such event the Parties shall use its best endeavours to resolve the dispute by means of informal negotiation.

17.2 This entails that:

17.2.1 all disputes will firstly be referred to the Chief Executive Officers ("**CEOs**") of JS (or their delegated nominees); and

17.2.2 JS's CEOs (or their delegated nominees) and the CLIENT will attempt to resolve the disputes within a period of 20 (twenty) business days or such later date as agreed to by the CEO and the CLIENT, after the dispute was referred to them or was called for by either of the Parties.

17.3 Any dispute which is not resolved between the Parties in terms of clauses 17.1 and 17.2, will be deemed to constitute a dispute that will not be resolved by means of informal negotiations.

17.4 Notwithstanding anything to the contrary in this clause

17.4.1 any Party shall be entitled to apply for, and if successful, be granted, an interdict or other interim and/or urgent relief from any competent court having jurisdiction; and

17.4.2 JS shall not be required to comply with the provisions of this clause 17 prior to commencing with legal proceedings to recover any amount due and owing to it by the CLIENT.

The provisions of this clause 17 does not prejudice the rights of any Party, to claim for specific performance and/or cancellation as contemplated in clause 16. It merely makes provision for an informal

attempt to adjudicate a dispute, in instances where same may be reasonable in the circumstances due to the nature of the relationship between the Parties.

#### **18 JURISDICTION**

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for any proceedings arising out of or in connection with this agreement.

#### **19 NOTICES AND DOMICILIA**

19.1 All notices to be given in terms of these Terms will be in writing and will:

19.1.1 if delivered by hand during business hours, be rebuttably presumed to have been received on the date of delivery; any notice delivered after business hours or on a day which is not a business day will be rebuttably presumed to have been received on the following business day; and

19.1.2 if sent by email during business hours, be rebuttably presumed to have been received on the date of successful transmission of the email; any email sent after business hours or on a day which is not a business day will rebuttably be presumed to have been received on the following business day.

19.2 Any notice in terms of these Terms shall only be validly given if in written or printed paper based form. For the avoidance of doubt, where any provision of these Terms requires any Party to perform any act in writing, this requirement will only be satisfied if such performance is made in a written or printed paper base form.

19.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause 19.

19.4 The CLIENT chooses the addresses nominated and recorded in the Order Confirmation Sheet as the address for service of any notices.

#### **20 MISCELLANEOUS MATTERS**

##### **20.1 No stipulation for the benefit of a third person**

Save as is expressly provided for herein, no provision of these Terms constitutes a stipulation for the benefit of a third person (*i.e. a stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.



**20.2 Variation, cancellation and waiver**

No contract varying, adding to, deleting from or cancelling these Terms, and no waiver of any right under these Terms, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

**20.3 Indulgences**

The grant of any indulgence, extension of time or relaxation of any provision by a Party shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

**20.4 Applicable law**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of South Africa.

**20.5 Costs**

Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

**20.6 Good faith**

The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

**20.7 Co-operation**

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.