

VEM motors Asia Pte Ltd.

Company registration 200312884C

TERMS AND CONDITIONS FOR SALE OF EQUIPMENT

1. GENERAL

1.1 In these Conditions:

“Buyer” means the company who accepts a quotation/proposal of Seller for the sale of Equipment or whose order for the purchase of Equipment is accepted by Seller;

“Conditions” means the terms and conditions of sale set out in this document and shall constitute the entire and only agreement between the Buyer and Seller and shall supersede all prior oral or written communications, agreements or representations between the parties. No waiver, alteration or modification of any of the provisions hereof shall be binding unless it is agreed in writing and signed by authorized representatives of the Parties;

“Equipment” means any product, good, parts, material or accessory which Seller is to supply in accordance with these Conditions, and includes all software and application software licensed to Buyer by Seller;

“Incoterms” means the set of rules published by the International Chamber of Commerce to assist with the interpretation of trade terms as in force at the time of the contract. If there is any conflict between the provisions of all Incoterms and these Conditions, the latter shall prevail;

“Intellectual Property Rights” includes any patent, design, trade mark, copyright, trade secret, confidential information and any right to use, or to grant the use of, or to be the registered owner or user of, any of them.

“Seller” means VEM motors Asia Pte Ltd and its servants, employees, agents and contractors;

1.2 In the event of inconsistency between the various documents forming the contract, these Conditions shall prevail.

1.3 Seller may correct any typographical, clerical or other error or omission in any sales literature, quotation, proposal, price list, acceptance of offer, invoice or other document or information issued by Seller without incurring any liability on his part;

2. SPECIFICATIONS

2.1 The quantity, quality and description of and any specification for the Equipment shall be those set out in Seller's quotation/proposal (if accepted by Buyer) or Buyer's order (if accepted by Seller). Buyer shall be responsible to Seller for:

2.1.1 ensuring the accuracy of the process application of the Equipment and for defining and specifying the hardware configuration in meeting the process requirements;

2.1.2 any deficiencies affecting or influencing the Equipment at Buyer's site, including, but not limited to, input signals, power and environmental conditions outside specified limits and improper application engineering; and

2.1.3 Providing all necessary information required by Seller to perform the contract in accordance with its terms.

2.2 If the Equipment are to be manufactured or any process is to be applied to the Equipment by Seller in accordance with a specification submitted by Buyer, Buyer shall indemnify Seller against all loss, damages, costs and expenses awarded against or incurred by Seller in connection with any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Seller's manufacture or application of Equipment in accordance with Buyer's specification.

3. CHANGES

3.1 Any changes requested by Buyer affecting the Equipment may be accepted by Seller at the Seller's sole discretion and resulting adjustments to affected provisions including but not limited to price, delivery schedule or guarantees, etc. are to be mutually agreed in writing prior to the implementation of the change. Seller shall effect any change described in detail on a written change order issued by Buyer and accepted by Seller.

4. Seller may, at its own expense and in its sole discretion, make such changes to the Equipment as it deems necessary in order to meet any performance guarantees provided for in the quotation/proposal. If Buyer refuses to approve any such changes, Seller shall be relieved of its obligations to meet such guarantees to the extent to which Seller may be affected by such refusal. **PRICE OF THE EQUIPMENT**

4.1 All prices quoted by the Seller are valid for thirty (30) days only. Prices are exclusive of any present or future GST (applicable only to the sale or delivery of Equipment in Singapore), customs duties, taxes, withholding taxes and other government assessments payable by reason of the purchase of Equipment. Buyer shall pay all such duties and taxes.

4.2 All prices quoted or proposed are exclusive of all expenses related to special packing or procedures to cover unique circumstances of shipment or storage and Buyer shall pay all expenses related to the same, unless otherwise agreed in writing.

4.3 Unless otherwise agreed in writing between Buyer and Seller, all prices quoted by Seller are on an ex works basis.

5. TERMS OF PAYMENT

5.1 Buyer shall pay the price of the Equipment by 100% down payment with placing the order, unless otherwise provided in the quotation/proposal. Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and property in the Equipment has not passed to Buyer. The time of payment of the prices shall be of the essence of the contract.

5.2 If Buyer shall fail to make payment for the Equipment on the due date stipulated in the Seller's invoice, Seller shall, without prejudice to any other right or remedy available to it, be entitled to:

5.2.1 suspend the delivery or any further deliveries to Buyer (whichever is applicable); and

5.2.2 Charge Buyer interest (both before and after any judgment, order or award made by a Singapore court or any arbitral tribunal) on the amount unpaid, at the rate of one and a half percent (1.5%) per month or part thereof, until payment in full has been made.

5.3 If, in the sole judgment of Seller, the financial condition of Buyer at any time prior to delivery does not justify the terms of payment specified, then Seller may require payment in advance or payment security satisfactory to Seller.

6. DELIVERY

6.1 Any delivery dates quoted by Seller in his quotation or proposal are approximate only and based upon information available to Seller at the time of the quotation.

6.2 The Equipment delivery date shall be agreed by both parties. Buyer shall notify Seller at least 2 months before the agreed date of delivery, all information required for the delivery of the Equipment, including but not limited to the address for delivery.

6.3 Seller shall not be liable to Buyer for any delay if the Buyer has failed in his obligations set out in Clauses 2.1.3 and/or 6.2.

6.4 If Buyer fails to take delivery of the Equipment or fails to give Seller adequate delivery instructions within the time stated in Clause 6.2 or otherwise causes delay in delivery other than by reason of any cause beyond Buyer's reasonable control, Buyer shall nevertheless make payment to Seller for the Equipment as if delivery had been made by Seller on the agreed delivery date or pay to Seller interest on the portion of the contract price due on delivery at a rate of one and a half (1.5%) per month or part thereof from the scheduled delivery date until payment is made in full. Without prejudice to any other right or remedy available to Seller, Seller may:

6.4.1 store the Equipment until actual delivery and charge Buyer for the reasonable costs (including insurance) of storage; or

6.4.2 Sell the Equipment at the reasonable price and (after deducting all reasonable storage and selling expenses) account to Buyer for the excess over the price under the contract or charge Buyer for any shortfall below the price under the contract.

7. LIQUIDATED DAMAGES

If the Equipment are not delivered by the agreed delivery date and the delay (whether from shipment, commissioning or other obligation of Seller) is solely attributable to Seller (except for any event which constitutes Force Majeure), Buyer shall be entitled to claim liquidated damages, not as a penalty from Seller. For each full week of delay, liquidated damages of 0.5% of the value of the delayed Equipment shall be payable by Seller to

Buyer, subject to a limit of 5% of the value of the delayed Equipment, and shall constitute Buyer's sole remedy for delay. Buyer may terminate the contract for prolonged delay only after maximum liquidated damages is reached.

8. INSPECTION, TESTING AND ACCEPTANCE

- 8.1 Inspections by Buyer of the Equipment at Seller's premises shall be scheduled in advance and during working hours which shall be from 8.00am to 5.00pm, Monday to Friday except public holidays.
- 8.2 If the Equipment purchased is a system, Seller shall notify Buyer as to the date Seller will be conducting a standard factory acceptance test for Buyer prior to delivery.
- 8.3 Unless Buyer objects in writing within ten (10) working days of the acceptance test specifying the nature of his objections, successful completion of the acceptance test constitutes Buyer's acceptance of the Equipment and authorization of delivery. After delivery, Seller's personnel shall perform an on-site acceptance test to verify that the Equipment supplied has arrived at Buyer's site complete, without physical damage and is ready for application of power. The on-site acceptance test shall be performed at Buyer's site within sixty (60) days of delivery of the Equipment. Successful completion of the on-site acceptance test constitutes full and final acceptance of the Equipment by Buyer.
- 8.4 If the on-site acceptance test is not carried within sixty (60) days of the delivery of the Equipment due to Buyer's act or delay or other default by Buyer. Final acceptance of the Equipment shall be deemed to have been made by Buyer.

9. RISK AND PROPERTY

Title to the Equipment shall pass to Buyer when Seller has received the full contract price. If payment has been made by cheque, title to the Equipment shall pass to Buyer upon clearance of the cheque. Until title passes to Buyer, Buyer shall keep all Equipment stored and insured (to full replacement value) separately as Seller's property and shall account to Seller for any proceeds of sale or otherwise, including insurance proceeds. The time at which the risk shall pass from Seller to Buyer shall be determined in accordance with Incoterms.

10. HEALTH AND SAFETY

- 10.1 Seller considers health and safety one of its top priorities and will endeavor to co-operate with Buyer as far as reasonably practicable, to achieve good safety performance.
- 10.2 Seller may, where applicable, submit a health and safety program to Buyer to ensure compliance with such program prior to sale and delivery of the Equipment. In the event site condition(s) as determined by the Seller are unsafe or if the Buyer fails to comply with any aspect of the health and safety program, the Seller shall be entitled to suspend delivery of the Equipment or the performance of this contract. In such an event the Seller shall not be deemed to be in breach of the contract or be liable to the Buyer by reason of such conduct.

11. WARRANTIES

- 11.1 Unless otherwise specified in writing by Seller, the Equipment manufactured by Seller shall be free from defects in material and workmanship for a period of eighteen (18) months from the date of shipment or twelve (12) months from the date of Site Acceptance test, whichever occurs earlier, subject to Buyer's compliance with applicable warranty conditions as provided by Seller. Parts and components which are repaired or replaced during such period are warranted for the remainder of the original warranty period.
- 11.2 The above warranty given by Seller shall not apply to defects resulting from:
- 11.2.1 willful damage or negligence;
 - 11.2.2 normal wear and tear;
 - 11.2.3 misuse or abuse of the Equipment;
 - 11.2.4 modifications or alterations made by Buyer or a third party without Seller's consent;
 - 11.2.5 failure of Buyer to maintain environmental conditions in accordance with Seller's instructions, including, but not limited to, adequate electrical power, temperature and humidity control;
 - 11.2.6 customized equipment manufactured by third parties for incorporation into the Equipment and for resale to Buyer except that Buyer shall be entitled to the benefit of any warranty or guarantee given by such third party manufacturers; and

11.2.7 Causes beyond Seller's reasonable control.

11.3 Seller's obligation under the warranty herein shall be limited to:

11.3.1 in the case of hardware, repairing or replacement of the defective parts and components on FOB Singapore basis; and

11.3.2 In the case of software, to reprogramming or replacement of Computer Program Material (or part thereof) in order to remedy software faults detected in fixed programs on PROMs, compact discs, cassettes or similar media. A defect in the standard software is only to be corrected, if the plant concerned does not function as originally intended.

11.4 The foregoing warranties shall not include freight, import taxes, duties for the replacement of any Equipment or parts, costs of labor or travel time and expenses incurred for the performance of any warranty at Buyer's site. Any and all such costs shall be borne by Buyer.

11.5 All warranties, conditions or other terms implied by statute or common law, including but not limited to, the implied warranties of merchantability and/or fitness for a particular purpose or arising from course of dealing or usage of trade are excluded.

12. LIMITATION OF LIABILITY

12.1 Neither party shall be liable to the other party, whether in contract, under statute, tort (including negligence or breach of statutory duty) or howsoever otherwise arising and whatever the cause thereof, for any indirect, special or consequential loss or damage of any nature or kind, or for loss of profit, loss of revenue, loss of use, loss of data, loss of power, loss of production, costs of capital, costs of replacement power, any economic or financial loss.

12.2 Notwithstanding anything contained in these Conditions or in the contract, Seller's aggregate liability to Buyer for all matters arising under or in connection with the contract and/or the Equipment, whether in contract, tort (including negligence), indemnity, warranty (except only warranty as to title) or representation shall be limited to fifty percent (50%) of the contract price.

13. FORCE MAJEURE

13.1 Neither the Buyer nor the Seller shall be liable to each other or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of their obligations in relation to the Equipment, if the delay or failure was due to any cause beyond their reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond their reasonable control:

13.1.1 Act of God, explosion, flood, tempest, fire or accident;

13.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

13.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

13.1.4 import or export regulations or embargoes;

13.1.5 Strikes, lock-outs or other industrial actions or trade disputes.

13.1.6 epidemic or pandemic

13.2 The affected party shall promptly notify the other in writing of the said delay or failure and the event relied upon for such failure or delay. The dates for the performance and or delivery shall be correspondingly extended by a period or periods equal to the duration of such event(s). In addition, a further reasonable period of time for Seller to resume production, if needed, may be agreed by Buyer and Seller.

13.3 Should Buyer or Seller be prevented from fulfilling their respective contractual obligations by such event lasting for a period of more than three (3) months, either party may, with written notice to the other party, terminate this contract. If the contract is so terminated, Seller shall be paid by Buyer as full and final compensation, the remaining unpaid balance of the contract price, pro-rated according to the percentage of the work completed by Seller at the date of such termination.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 The Seller is, and remains, the owner of all Intellectual Property Rights (and all adaptations and reproductions thereof) used on or in relation to the Equipment or any related software or hardware supplied, whether existing at

the start of the contract or created by the Seller during the course of and/or in furtherance of the contract.

14.2 Nothing contained in this contract shall convey or deem to convey to the Buyer, any title or ownership to the Intellectual Property Rights of any software or hardware relating to the sale of the Equipment.

15. INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

15.1 If any action or suit is brought against Buyer for the infringement of patent or other intellectual property rights by the use or resale of the Equipment and unless the claim arises from the use of any drawing, design or specification supplied by Buyer, Seller shall be entitled to take over the defense of the suit and pay any award of damages assessed against the Buyer in any suit or proceeding provided that:

15.1.1 Seller is given full control of any proceedings or negotiations in connection with any such claim;

15.1.2 Buyer shall give Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

15.1.3 except pursuant to a final award, Buyer shall not, prior to Seller taking over the defense of the action or suit, pay or accept any such claim, or compromise any such proceedings without the consent of Seller (which shall not be unreasonably withheld);

15.1.4 without prejudice to any duty of Buyer at common law, Seller shall be entitled to require Buyer to take such steps as Seller may reasonably require Buyer to mitigate or reduce any such loss, damages, costs or expenses for which Seller is liable to indemnify Buyer under this clause.

15.2 Seller shall have no obligations hereunder and the indemnity under this Clause 15 shall not apply:

15.2.1 to any other equipment or processes, including Equipment or processes supplied hereunder by Seller which have been modified or combined by Buyer with other equipment or processes;

15.2.2 to any products or articles manufactured by the Equipment;

15.2.3 to any patent issued after the date of the acceptance of the quotation/proposal;

15.2.4 In the event any of the said actions or claims are settled or otherwise terminated without the prior written consent of Seller.

15.3 If, in any action or suit, the production, use, manufacture, sale or resale of the Equipment is held to constitute infringement of intellectual property rights, or the practice of any process using the Equipment is finally enjoined, Seller shall, at its option and its own expense, either procure for Buyer the right to continue using the Equipment; or modify or replace it with non-infringing equipment; or, with Buyer's assistance, modify the process so that it becomes non-infringing; or remove it and refund the purchase price allocable to the infringing equipment.

15.4 The foregoing paragraphs state the entire liability of Seller and Equipment manufacturer with respect to intellectual property rights infringement.

15.5 If the said Equipment or any part thereof is modified by Buyer, or combined by Buyer with equipment or processes not furnished under these Conditions (except to the extent that Seller is a contributory infringer) or the said Equipment or any part thereof is used by Buyer to produce an article, and by reason of the said modification, combination, performance or production, an action is brought against Seller, Buyer agrees to defend and indemnify Seller in the same manner and to the same extent that Seller indemnifies Buyer under this Clause 15.

16. INDEMNITY

Buyer agrees to indemnify and hold Seller harmless from all injury, loss, costs or damage (including legal costs) incurred by Seller as a result of Buyer's negligence or of any default or breach by Buyer of the provisions herein or enforcement by Seller of any of Seller's rights or Buyer's obligations hereunder, or arising from Buyer's use of Equipment or any part thereof for any purpose or in any manner other than that for which the Equipment is delivered, including modifications or use thereof in connection with items supplied by others.

17. LAWS AND REGULATIONS

17.1 All laws and regulations expressly incorporated herein shall be those in effect as of the date of the contract. In the event of any new, subsequent revisions or changes thereto, all additional costs incurred by Seller in ensuring compliance to the applicable statutory requirements shall be borne by Buyer.

17.2 Nothing contained herein shall be construed as imposing responsibility or liability upon Seller for the obtaining of any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.

18. SOFTWARE LICENSE

- 18.1 Seller grants to Buyer a site specific non-transferable and non-exclusive license to use the computer software packages and related materials furnished hereunder (collectively, the "Computer Program Material" ["CPM"]) for the limited use described herein. This license shall remain in effect until retirement or decommissioning of the CPM or the Equipment provided by Seller unless terminated by Seller due to Buyer's breach of the provisions of the Conditions. Title to the CPM and parts thereof licensed hereunder and rights therein including all rights in patents, copy rights, trademarks and trade secrets applicable shall remain vested in Seller. Buyer shall ensure that the CPM:
- 18.1.1 Is used only in conjunction with equipment specified by Seller.
 - 18.1.2 Is kept strictly confidential.
 - 18.1.3 Is not printed, displayed, copied, reverse engineered, duplicated, merged or modified.
- 18.2 The rights to use the CPM are non-exclusive, and are non-transferable, except with Seller's prior written consent. In the event that Buyer resells the Equipment or part thereof to an end-user, Buyer is responsible for informing Seller and ensuring that the end-user abides by the conditions stated above.

19. TERMINATION

- 19.1 No termination by Buyer for any default of Seller, including but not limited to defaults relating to these Conditions, shall be effective unless Seller has failed to initiate and pursue with due diligence correction of such specified default within fifteen (15) days of due receipt by Seller of Buyer's written notice specifying such default.
- 19.2 Without prejudice to any other right or remedy available to Seller, Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to Buyer or Seller, if:
- 19.2.1 Buyer makes any voluntary arrangement with its creditors or becomes subject to a judicial management order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 19.2.2 an encumbrancer takes possession, or a receiver is appointed in connection with any of the property or assets of Buyer; or
 - 19.2.3 Buyer ceases, or threatens to cease, to carry on business; or
 - 19.2.4 Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to Buyer and notifies Buyer accordingly; or
 - 19.2.5 Buyer breaches any term of this contract and Buyer shall have failed to initiate and pursue with due diligence correction of such specified default within fifteen (15) days after receipt of such notice specifying the default.

20. EXPORT CONTROL

- 20.1 Buyer represents and warrants that the Equipment provided hereunder and any products manufactured by the Equipment are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use.
- 20.2 Buyer agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by Seller or the "direct product" as defined in the Export Control Regulations of the manufacturing country of the Equipment, except in compliance with such Regulations.
- 20.3 If applicable, Seller shall file for an export license, but only after appropriate documentation for the license application have been provided by the Buyer. Buyer shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of this contract by Seller.
- 20.4 If the export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be cancelled by Seller without liability for damages of any kind resulting from such cancellation.
- 20.5 At Seller's request, Buyer shall provide to Seller a Letter of Assurance and End-User Statement in a form reasonably satisfactory to Seller or the relevant authority.

21. CANCELLATION

21.1 Unless the Equipment has been shipped, Buyer may cancel the order for that particular shipment by written notice to Seller subject to payment of the following charges:

21.1.1. 10% of contract price if the cancellation is made 0-15 days after receipt of the order.

21.1.2 25% of contract price if the cancellation is made 16-30 days after the receipt of the order.

21.1.3 The greatest of (a) 25% of contract price or (b) the percentage of work executed multiplied by the contract price, plus the costs of cancellation of all sub-contracts if the cancellation is made after 30 days after receipt of the order.

21.2 Seller's determination of the cancellation charges shall be final and conclusive.

22. ASSIGNMENT AND RIGHTS OF THIRD PARTIES

22.1 This contract shall be binding on and endure to the benefit of the successors of Seller and Buyer but the rights and obligations hereunder shall otherwise be personal to the parties and shall not be capable of assignment, without the other party's prior written consent.

22.2 A person who is not a party to these Conditions shall have no rights under the Contracts (Rights of Third Parties) Act (Cap 53B) to enforce any terms of these Conditions.

23. NOTICE

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

24. CONFIDENTIAL INFORMATION

24.1 Any design, manufacturing drawings or other information submitted to Buyer remain the exclusive property of Seller. Buyer shall not, without Seller's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

24.2 Buyer's obligation under this clause shall not apply to any information that has validly and properly come into public domain.

25. WAIVER

No waiver by Seller of any breach of the contract by Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

26. ENFORCEABILITY

If any of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

27. ARBITRATION

Any disputes arising out of, or in connection with these Conditions, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by Arbitration, by a single arbitrator, in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference to this clause.

28. GOVERNING LAW

The contract shall be governed by and construed in all respects in accordance With the laws of the Republic of Singapore.