

SEW-EURODRIVE SDN BHD : STANDARD TERMS AND CONDITIONS OF SALE

- 1. DEFINITIONS**
 - 1.1 The Company means SEW-EURODRIVE SDN BHD, (Co. No. 198501014251 (146707-H))
 - 1.2 The Purchaser means the person, firm or company to whom goods ("Goods") are supplied subject to the following conditions ("Conditions") and to whom a quotation is addressed or whose order is accepted by the Company ("Contract").
- 2. EXISTENCE OF CONTRACT**
 - 2.1 Any written quotation or estimate provided by the Company shall constitute an invitation to treat and no binding contract shall be created by the placing of an order by the Purchaser unless and until the Company has delivered an Order Acknowledgement in writing to the Purchaser confirming the Order or variation thereto at the discretion of the Company.
 - 2.2 All quotations, offers and tenders made by the Purchaser and all orders are accepted by the Company subject to these Conditions. Unless additional terms or variations to the terms herein are expressly accepted by means of a written amendment to these terms and conditions signed by the Director of the Company, all and every other term, condition and/or warranty not stated herein shall be excluded from any contract between the Purchaser and the Company including any terms and conditions which the Purchaser may unilaterally purport to apply under any Order or similar document. All orders for Goods shall be deemed to be an offer by the Purchaser to purchase the Goods pursuant to these Conditions. Acceptance or delivery of the Goods shall be deemed conclusive evidence of the Purchaser's acceptance of these Conditions.
 - 2.3 No particulars or information contained in any advertising matter, catalogues or other publications supplied by the Company nor any verbal representation by any employee and/or agent and/or representative of the Company shall be part of the Contract nor shall they be treated as constituting any representation or promise or warranty on the part of the Company.
 - 2.4 Where Goods are supplied by the Company under a Blanket Order given by the Purchaser or in accordance with Delivery Schedules, Release Authorisations or any other special instruction from the Purchaser to the Company, each such Delivery Schedule, Release Authorisation or special instruction shall be deemed a separate contract to which these Conditions apply and prevail.
- 3. AMENDMENTS AND CANCELLATION**
 - 3.1 No alterations or modifications to these Conditions shall be binding on the Company unless expressly accepted or varied in writing by an officer of the Company.
 - 3.2 Cancellation of any order cannot be made without the Company's consent in writing. In the event of a cancellation by the Purchaser it is agreed that the Company shall be entitled to impose a 30% cancellation charge on the Contract price of the goods ordered. In addition the Purchaser shall also fully indemnify the Company against all losses including but not limited to the Company's loss of profits, liabilities and express incurred by the Company of whatsoever nature arising directly or indirectly from such cancellation.
- 4. PRICE**
 - 4.1 Except as otherwise agreed between the Purchaser and the Company, the quoted price for the Goods shall include the standard West Malaysia mainland delivery and other applicable customs duties. This condition shall apply except or unless otherwise expressed and/or written in the Order Acknowledgment.
 - 4.2 Except as otherwise agreed, the price for the Goods shall be the Company's price ruling for the Goods at the date of the Order Acknowledgement subject to any other alteration by the Company before, before delivery of the Goods, collection or notification that the Goods are awaiting collection. The Company shall be entitled to invoice the Purchaser for the price of the Goods in Ringgit Malaysia or in any other nominated currency at its sole discretion.
 - 4.3 Where the Goods are delivered by instalments in stages the Company may invoice each instalment or stage separately and the Purchaser shall pay such invoice in accordance with these Conditions.
- 5. PAYMENT**
 - 5.1 Unless otherwise agreed in writing the price of the Goods shall be paid in accordance with the credit terms granted by the Company. Prompt and timely payment shall be a condition precedent of any future deliveries of Goods to the Purchaser under the Contract.
 - 5.2 In the event payment is not made within thirty (30) days from the payment due date, late payment finance charge at the rate of 1.5% per month shall be imposed on the Purchaser and assessed on the portion of account or outstanding balance still due until the said outstanding balance is paid in full.
- 6. CARRIAGE AND DELIVERY**
 - 6.1 Delivery of the Goods shall take place at the Purchaser's premises or at such other location as may be agreed by the Company.
 - 6.2 Time for delivery is given as accurately as possible but is not guaranteed and time is not of the essence of the Contract.
 - 6.3 Whilst the Company will endeavour to complete delivery of the Goods within the agreed time and if no time is agreed upon, within a reasonable time, the Company shall in any event not be liable in any way for any direct or indirect loss, damage or expense whatsoever (including without limitation loss of any profits, loss of business or turnover, all consequential loss and/or liability to third parties) suffered or incurred by the Purchaser as a consequence of any delay in delivery or completion of the Contract.
 - 6.4 The Company reserves the right to deliver the Goods by instalments in any sequence. Where the Goods are delivered by instalments, the Contract shall become severable and each instalment shall be deemed to be the subject of a separate Contract. No default or failure by the Company in respect of any one or more instalments shall entitle the Purchaser to treat the Contract as repudiated or to damages.
 - 6.5 Where the Company has notified the Purchaser that the Goods are awaiting collection or are ready for despatch and Purchaser fails to arrange for such collection or delivery within a reasonable time, the Company may at its discretion arrange for such Goods to be delivered to the Purchaser who shall remain at all times subject to the Conditions herein.
- 7. WARRANTIES**
 - 7.1 So far as practicable the Company may assign to the Purchaser at its discretion the benefit of any guarantee, warranty, service or maintenance commitment which it may have received from any third party in relation to the Goods.
 - 7.2 The assurance of warranty policy is for 12 months from date of commissioning or 18 months from date of despatch whichever expires earlier any part manufactured by the Company for the Purchaser under the Contract is found by the Company upon its inspection to have become defective under normal conditions of service and use the Company will at its sole discretion repair or replace the defective part. All such repair and/
- or replacement under this Clause 7.2 shall be undertaken by the Company solely upon Company premises and the Purchaser shall bear the costs of delivering the Goods to the Company together with any costs incurred by the Company in the dismantling and/or reassembling of the Goods unless otherwise agreed. The benefit of this Clause is non-assignable.
- 7.3 For the avoidance of doubt, the operation of Clause 7.2 above and/or any defective Goods shall remain subject to the provisions of Clause 10 below.
- 7.4 Clause 7.2 will not apply to any part:
 - 7.4.1 whose identification or serial number has been altered, defaced removed or otherwise deliberately damaged by the Purchaser's employees, agents or any third party; or
 - 7.4.2 has in the Company's view not been maintained in accordance with its recommended maintenance procedure and/or the specifications overleaf; or
 - 7.4.3 has been subjected to any misuse, unauthorised repair, modification or alteration; or
 - 7.4.4 that has been incorrectly installed and/or connected by the Purchaser, its servants or agents.
- 7.5 The Company makes no warranty as to the condition, safe keeping or maintenance of the Purchaser's tools if such tools are utilised during the process of manufacture and shall in no way be liable to compensate the Purchaser for any damage caused thereon.
- 8. MAINTENANCE**
 - 8.1 The Purchaser shall at all times act in accordance with all statutory or regulatory enactments relating to the Goods. The Purchaser shall indemnify the Company against any liability incurred due to the breach of this Clause 8.1.
 - 8.2 The Purchaser shall at all times adhere and comply with the Company's maintenance schedules and the specifications overleaf relating to the Goods.
- 9. INTELLECTUAL PROPERTY AND DESIGN RIGHTS**
 - 9.1 Where Goods are manufactured to the Purchaser's design and/or specifications the Company will retain all or any drawings, designs or other documents which are supplied to the Company by the Purchaser under the Contract unless agreed otherwise.
 - 9.2 The Purchaser shall further warrant that any of its designs or specifications do not infringe any confidential information, patent registered design, trade mark, copyright or other intellectual property rights.
 - 9.3 No variation undertaken by the Company to any design or specification provided by the Purchaser under the Contract shall constitute a breach of contract on the part of the Company and shall not subject the Company to any liability whatsoever.
- 10. LIMITATION OF LIABILITY**
 - 10.1 Under no circumstances whatsoever shall the Company be liable for losses special to the particular circumstances of the Purchaser, including without limitation loss of any profits, loss of business or turnover, all consequential loss, liability to third parties, indirect loss, damage to property and/or wasted expenditure.
 - 10.2 Without prejudice and subject to the other provisions of Clause 10 herein, it is mutually agreed that the Company's liability, if any, whether in respect of one claim or the aggregate of various claims, shall not in any event exceed the Contract price of the Goods.
 - 10.3 The price of the Goods is based on the assumption that the liability of the Company and the Purchaser are as set out herein. The Purchaser is advised to insure against any risk not accepted by the Company.
- 11. RESERVATION OF TITLE & RISK**
 - 11.1 The risk in the Goods shall remain with the Company until delivery by the Company or collection of the Goods by the Purchaser or payment for the Goods by the Purchaser whichever is the earlier at which time the risk in the Goods shall be transferred to the Purchaser.
 - 11.2 Title to the Goods shall only pass to the Purchaser upon the happening of any one of the following events:-
 - 11.2.1 the Purchaser having paid to the Company all sums due from it to the Company under this Contract and under all other contracts between the Company and the Purchaser including any sums due under contracts made after this Contract whether or not the same are immediately payable; or
 - 11.2.2 the Company serving on the Purchaser notice in writing specifying that title in the Goods has passed.
 - 11.3 The Company may at its absolute discretion recover and retake Goods in respect of which title has not passed to the Purchaser on the expiration of any agreed period of credit in relation to the Goods without prejudice to any other claims the Company may have against the Purchaser for such breach of contract and the Purchaser hereby irrevocably licenses and permits the Company, its officers employees and/or agents to enter upon any premises of the Purchaser with or without vehicles to recover and retake any Goods in respect of which title has not passed to the Purchaser.
 - 11.4 Notwithstanding that the property in the Goods has not passed to the Purchaser, the Company shall be entitled to maintain an action for the price of Goods and/or for all losses and damages incurred by the Company against the Purchaser.
 - 11.5 Each paragraph and sub-paragraph of this Clause 11 is separate, severable and distinct.
- 12. TERMINATION**
 - 12.1 The Company shall be entitled forthwith to terminate any Contract between it and the Purchaser by written notice if the Purchaser fails to pay any invoice in accordance with these Conditions or the Purchaser commits any continuing or material breach of these Conditions or makes any composition with its creditors or suffers any distress or execution to be levied upon its assets or is wound up either compulsorily or voluntarily or suffers a receiver of any of its assets to be appointed or otherwise ceases or threatens to cease to carry on business.
 - 12.2 If for any reason the completion of the Contract or the delivery of the Goods is in the Company's view rendered impracticable the Company may terminate the Contract by written notice to that effect. Thereupon the Purchaser will pay to the Company such proportionate sum under the Contract of any Goods delivered prior to such notice.
- 13. FORCE MAJEURE**

The Company shall not be liable for failure to deliver or delay in the delivery of the Goods for any reason whatsoever outside the reasonable control of the Company including without limitation, strikes, riots, lock-outs or other industrial action, war, government requisitions of any kind, suspension or loss of means of transport, non-availability to the Company of supplies, legislation or regulations of any kind or Act of God. Any such failure or delay shall not affect the obligation of the Purchaser to pay for the Goods already delivered.
- 14. RESALE**

The Company shall not be liable for any Goods which are resold by the Purchaser to any third party and the Purchaser shall indemnify the Company against any loss, damage, injury, expense, cost (including legal costs) and/or damages arising directly or indirectly from any actual or alleged fault in the resale of any Goods.
- 15. RETURN OF GOODS**

Subject to Clause 7.2 above, no Goods delivered in accordance with the Contract will be accepted for return without the prior approval of the Company in accordance with the Company's official returns authorisation procedure and on the terms to be determined at the absolute discretion of the Company. Goods returned without the prior written approval of the Company may at the Purchaser's absolute discretion be returned to the Purchaser or retained at the Purchaser's cost without any prejudice to any rights and remedies available to the Company.
- 16. SET OFF AND COUNTERCLAIM**

The Purchaser shall not be entitled to withhold payment of any invoice by reason of any right of set-off or counterclaim which the Purchaser may have or allege to have or for any reason whatsoever.
- 17. NOTICES**

Any notice required to be served pursuant to this Contract shall be served on the Company at No. 2, Jalan Maju Cemerlang 5, Taman Perindustrian Maju Cemerlang, 81800 Ulu Tiram, Johor, Malaysia or such other addresses the Company may from time to time notify to the Purchaser and on the Purchaser at the address notified to the Company by first class registered post, registered air mail or by facsimile. Any such notice shall be deemed to have been served in the case of a destination in the Malaysia two days after the date of despatch and seven days after the date of despatch to any other destination and in the case of despatch by facsimile when the addressee's fax machine acknowledges receipt thereof.
- 18. SEVERANCE**

Any provision or term of these Conditions which is or may be void or unenforceable shall to the extent of such invalidity be deemed severable and shall not affect any other provision or term hereof.
- 19. WAIVER**

Failure by the Company at any time to enforce any of these Conditions shall not be construed as a waiver by the Company of such Conditions or any other Conditions and the Company shall be entitled to enforce any such breach at any time. Waiver of one or more of these Conditions by the Company shall in no way affect the validity and/or enforceability of any other Condition herein.
- 20. ASSIGNMENT**

The Company is entitled to assign, sub-contract or sub-let the Contract or any part thereof without prior consent of the Purchaser.
- 21. EXPORT CONTROL COMPLIANCE**
 - 21.1 The Company and the Purchaser (collectively "Parties") acknowledge that the supply and/or service or parts thereof, in particular the export and transit of goods, the transfer of technology, trade and brokering, technical support or the provision of economic resources may be subject to EU-, German-, US- or other country-specific export control laws and regulations (e.g. restrictions against countries, person, use) and financial sanctions (afterwards named as Export Control Regulations).
 - 21.2 The Parties shall comply with all applicable Export Control Regulations. This includes in particular any regulations of the country of destination. The Parties acknowledge that the supply and/or service affected by such Export Control Regulations can be subject to authorization or may be prohibited. In the event that any applicable Export Control Regulation would prevent the Company or the Purchaser not only temporarily from complying with this Agreement, then each Party shall have the right to cancel the affected supply and/or service or the Agreement in whole or in part.
 - 21.3 Delays caused by licensing procedures by competent export control authorities shall extend the time of performance accordingly; this applies in particular to delivery times.
 - 21.4 Any claims for compensation in connection with the refusal or delay of an application with respect to Export Control Regulations are excluded, unless they concern damages from the injury of life, body or health or unless the damage was caused intentionally or gross negligently by any Party.
 - 21.5 The Parties undertake to cooperate in any authorisation/licensing procedures. Upon request, each Party shall immediately provide relevant information/documents (e.g. end-use certificates) that are required in the application process to the other Party.
- 22. PERSONAL DATA PROTECTION ACT**

The provisions of the Personal Data Protection Act shall apply to all Contracts herein without exception and Purchaser shall be liable for damages in the event the Purchaser is found to have breached any provisions therein to the detriment and loss of the Company.
- 23. LAW AND JURISDICTION**

The Contract shall be governed and interpreted according to the laws of Malaysia and shall be subject to the jurisdiction of the English courts. Nothing in this clause shall limit the right of the Company at its sole discretion to bring proceedings in connection with this Contract in any other Court of competent jurisdiction including but not limited to the Courts in Malaysia.