

# TERMS AND CONDITIONS OF SALE (2005) Vekoma Rides Parts & Services B.V.

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## A. ACCEPTANCE

An order placed by buyer shall become a binding contract upon Seller's (Vekoma's) acceptance. These terms and conditions are incorporated into the contract between Seller and buyer to the exclusion of any others submitted by buyer, or any other standards or specifications of buyer, unless expressly accepted in writing by Seller as part of the contract. Proposals, representations or agreements made prior to this sales contract, whether verbal or written, are excluded unless otherwise expressly agreed by Seller in writing to buyer.

## B. PRICES

All price quotations are Ex-works (Inco terms 2000) Seller's factory (Vlodrop, Kessel, the Netherlands) unless another place of delivery is agreed in writing by Seller. All sales, use, import, excise and like taxes, whether foreign or domestic, shall be charged to and borne by buyer. Seller bears no responsibility for any consular fees for legalizing invoices, certificates of origin, stamping bills of lading, or other charges required by the laws of any country of destination, or any fines imposed due to incorrect declarations. Charges will be added for factory preparation and packaging for delivery. If by reason of any act of government, the cost to Seller of performing its obligations hereunder is increased, such increase shall be added to the quoted price.

## C. PAYMENT TERMS

Terms of payment are subject to written approval by Seller's credit department, and shall be (i) letter of credit, (ii) progress payments, or (iii) Net 30 days. Seller reserves the right to modify or withdraw credit terms at any time without notice. Invoices shall be issued at the time of delivery, unless otherwise specified, and all payments are due in the currency specified in Seller's quote and/or invoice. Interest shall be due from buyer to Seller on over due accounts at the maximum rate allowed by law. Payment for goods is due whether or not technical documentation and/or any third party certifications are complete at the time of shipment due to a reasonable circumstance. Seller shall be entitled to recover all reasonable attorney's fees and other costs incurred in the collection of overdue accounts. Seller reserves the right where genuine doubts arise as to buyer's financial position, or in the case of failure to pay for any goods or services, to suspend delivery or performance of any order or any part thereof without liability until payment or satisfactory security for payment has been provided. Buyer shall not be entitled to compensate any payment in respect of the purchase price.

## D. DELIVERY (EX-WORKS)

Partial deliveries may be made at the option of Seller. Stated delivery dates (Ex-Works Inco terms 2000) are approximate only. Seller shall have no liability for damages arising out of the failure to keep a projected delivery date, irrespective of the length of the delay. In the event that Seller's performance is delayed by force majeure in accordance to the law, defined as causes beyond the reasonable control of Seller, the date for Seller's performance shall be extended by the length of the delay, and buyer shall not be entitled to cancel any order on the basis of such delay. In the event buyer is unable to accept delivery of goods when tendered, Seller may, at its option, arrange storage of the goods and buyer shall be liable to Seller for the reasonable cost of such storage. This provision is without prejudice to any other rights which Seller may have with respect to buyer's failure to take delivery of goods which includes the right to invoice buyer for the goods. Each and every delivery of goods by the Seller shall take place while reserving the ownership of these goods until the buyer has paid all that he is obliged to pay pursuant to the contract.

## E. CANCELLATION

Orders placed by buyer and accepted by Seller may be cancelled only with the consent of Seller and will subject buyer to cancellation charges. All of Seller's documents, drawings and like information shall be returned to Seller upon buyer's request for cancellation. No orders may be canceled subsequent to delivery. As estimated actual damages, buyer agrees to pay Seller the greater of Seller's actual costs incurred prior to cancellation plus a reasonable profit, or the following minimum cancellation charges to the option of Seller.

20% of order value if canceled 12 months prior to the original delivery date;

50% of the order value if canceled thereafter; or

100% of the value of any non-standard items, which are items not built for stock or built to customer specifications.

Buyer shall verify the amount of the cancellation charges prior to canceling an order.

## F. TITLE AND RISK OF LOSS

Seller accepts no responsibility for any damage, shortage or loss in transit. Seller will attempt to pack or prepare all deliveries so that they will not break, rust or deteriorate in shipment, but does not guarantee against such damage. Claims for any damage, shortage or loss in transit must be made by buyer on the carrier.

## G. GUARANTEE

Seller Guarantees, for a period of 13 months as from the moment the goods are ready for delivery ex-works (Inco terms 2000) or 12 months from installation, whichever is earlier, that goods of its own manufacture shall be free of defects in materials under normal use and service, provided they are maintained in accordance with Seller's instructions. By the mere lapse of the guarantee period, any and all obligations and liabilities of Seller with regards to defects shall end. At its option, Seller will either repair or replace goods which are found to be defective within the guarantee period for which defect it is clear that Seller is responsible. Replacement parts will be delivered Ex-Works (Inco terms 2000), and Seller may require the return of allegedly defective parts, freight pre-paid, to establish the guarantee. This guarantee is applicable only if: a) the defect occurred under normal use and service not due to wear and tear or weather conditions; b) the defect arose from faulty materials; c) buyer notified Seller in writing of the defect within 14 days of its discovery by buyer; and d) the goods are properly used for which they are intended and installed, operated and maintained in accordance with any applicable Seller operation and service manuals e) it are no goods subject to wear such as but not limited to road/guide wheels and tires, brake linings, chain guide lining, lights, fuse, batteries, elasto springs, lower-pads, pur, springs, nuts, bolts, seals, safety cables, ratchets, tooth segments, cams, chain dog, filter elements, bearings, sprocket wheels and chains. With respect to the installation and/or repair activities regarding existing apparatus, machinery or installations whether or not at Client, no guarantee is given other than the assurance that these activities will be carried out by skilled personnel to the best of their ability; Goods delivered in connection with an installation/repair order are covered by this guarantee clause. The guarantee provided will be void if the goods were either: a) repaired or serviced by a service facility which was not authorised by Seller; b) replacement parts not manufactured by Seller were utilised; or c) modifications were made to the goods which were not prior approved by Seller in writing. Any descriptions, drawings, samples or similar materials used in connection with this sale are for the sole purpose of identifying the goods and are not to be construed as a guarantee that the goods will conform to such description. In relation to make good defects in materials the following services will be delivered by buyer free of charge or will be reimbursed by buyer to Seller at actual costs against documentary proof on first request a) air travel (incl. lodging) and other transport costs for Seller's personnel. b) traveling man hours c) general assistance by buyer's personnel and facility equipment during repairing or replacing of defective goods. d) provision of scaffolding e) provision of crane assistance, special tools etc. on location other than at the workshop of Seller in Vlodrop, The Netherlands. On orders for parts which has an individual value (= per part) of less than Euro 250 there will be no guarantee applicable.

**THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE WARRANTIES, AND THESE ARE IN LIEU OF ANY CONDITIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, AS TO THEIR SUITABILITY FOR ANY PARTICULAR FITNESS OR PURPOSE ARISING OUT OF THE OPERATION OF LAW OR OTHERWISE.**

## H. INDEMNIFICATIONS

- Each party is completely liable for its own personnel, property, equipment, materials and any other items within such party possession or control and that of its other subcontractors whether owned, hired, leased, chartered, etc. and defends, indemnifies and holds harmless the other party for damage and/or loss howsoever caused to such property regardless of whether any such damage and/or loss is due to the negligence of the indemnified party.

- Third Party Liability. Each party shall assume its legal liability towards third parties for any of its own acts or omissions and shall indemnify, defend and hold harmless the other party accordingly. For the purposes of this provision the term third party excludes the client(s) of the buyer. Notwithstanding any of the indemnities and liabilities specifically referred to elsewhere in the contract at all times buyer shall indemnify, defend and hold harmless Seller in respect of client(s) of the buyer.

- Consequential Loss. Notwithstanding any of the indemnities and liabilities or warranties specifically referred to elsewhere Seller shall under no circumstance be liable for any indirect, incidental or consequential damage including but not limited to, loss of use or downtime, loss of profit or revenue, or loss of product, or any other economic loss arising, or alleged to arise from Sellers failure to properly carry out its obligations and buyer hereby agrees to indemnify, defend and hold harmless the Seller against such losses regardless whether any such loss is due to the negligence of the Seller.

- Cumulative Liability. Seller's cumulative overall liability for the work, regardless of the kind of liabilities and/or non-performances, if any, under this Contract shall not exceed a maximum overall amount equal to 100% (one hundred percent) of the Contract Price paid to Seller under this Contract or the maximum overall amount of Euro. 2.500.000,- whichever is less, even if held to amount to a breach of warranty. Buyer shall indemnify defend and hold harmless Seller for such claims in excess of this percentage/amount.

- Defined terms to include. For the purposes of the provisions H and I, the term Seller is used as a reference individually and collectively for Seller including its partners, affiliated companies, agents, representatives and subcontractors of Seller and their respective employees and the subrogees of that party. Similarly, the term buyer is used as a reference individually and collectively for buyer including its partners, affiliated companies, agents, successors, representatives, other contractors of buyer, and their employees and the subrogees of that party.

## I. INSURANCES

The buyer shall insure, up to the contract price, the work under a project Construction All Risks Insurance including guarantee. On prior written request of buyer the Seller shall insure the goods against additional cost of buyer, until the moment of delivery ex-works (Incoterms 2000) or leaving of the goods from Sellers workshop, under Construction All Risks insurance up to the contract price. Seller shall be co-assured, under the above insurance policies of buyer, which shall contain a waiver of right of subrogation of claims against the Seller, on request insurance certificate and or policy will be provide to Seller.

## J. CHANGES

Seller reserves the right to change, discontinue or modify the design and manufacture of its products without obligation to retrofit goods previously sold. In the event buyer makes a change to the scope of this contract which impact the: (i) designs, drawings or specifications of the goods, (ii) method of shipment or packing, (iii) place of delivery or (iv) delivery schedules, and such change impacts the cost of, or time required for, Seller's performance, an equitable adjustment shall be made in the price and/or delivery schedule. No change shall be effective except upon written agreement of both parties.

## K. TECHNICAL ASSISTANCE

Upon request, Seller will provide engineering or technical information regarding its goods and, if feasible, will provide personnel to assist buyer in affecting field installation or field service. Any such information, service, advice or assistance so provided, whether with or without additional charge, shall be advisory only. It is expressly agreed that Seller shall have no liability for any damage or loss arising out or resulting from, or caused in whole or in part by such information, service, advice or assistance provided.

## L. REGULATORY COMPLIANCE

By acceptance of delivery of this order, buyer warrants it has complied with all applicable governmental, statutory and regulatory requirements and will furnish Seller with such documents as may be required. Seller warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of The Netherlands including laws and regulations pertaining to labor, wages, hours and other conditions of employment, applicable price ceilings if any.

## M. CONFIDENTIAL INFORMATION

Each party recognizes and acknowledges that all disclosures, documents, drawings, specifications, patterns, intellectual property rights and other technical information (collectively, "Confidential Information") furnished to one party by the other shall remain the sole property of the owner and is submitted in confidence upon the understanding and agreement that (a) all Confidential Information shall promptly be returned to the owner upon request, (b) recipient shall not use the Confidential Information, in whole or in part, for any purpose other than the performance of this Contract, and (c) recipient shall not disclose or furnish the Confidential Information, in whole or in part, to any third party, unless it (i) enters the public domain without breach hereof by the recipient, (ii) is used or disclosed with the prior written approval of the owner, or (iii) is obligated to be produced under order of a court of competent jurisdiction.

## N. FORCE MAJEURE

Seller's omission or failure to carry out or observe any stipulation, condition, or obligation to be performed under the contract will not give rise to any claim against Seller, or be deemed to be a breach of contract if the failure or omission arises from causes beyond Seller's reasonable control.

## O. DISPUTES

The contract shall be governed by and construed in accordance with the Laws of the Netherlands. The invalidity or unenforceability of any particular provision of this contract shall not affect any other provision therein. The particular invalid or unenforceable provision may be replaced by the court with a provision that comes closest to that invalid or unenforceable provision. In the event that a dispute and/or claim arising out of or in relation to this contract and any further agreements resulting there from, which cannot be settled amicably by the parties, shall be finally determined in accordance to the Laws of the Netherlands and with the exclusive jurisdiction of the district court of Roermond, The Netherlands. No action for breach of this contract shall be brought by the buyer more than 18 months after the cause of action has arisen.