

YORK Standard Terms & Conditions 2009



1. Definitions

- 1.1 "Seller" shall mean York Transport Equipment (Asia) Pte Ltd and any of its subsidiaries.
- 1.2 "Buyer" or "Customer" shall mean a person, firm or corporation seeking to acquire goods from Seller, and shall include any person acting on his/her/its behalf and with his/her/its authority.
- 1.3 "Parties" shall mean collectively the Buyer and Seller.
- 1.4 "Guarantor" shall mean [●].
- 1.5 "Manufacturer" shall mean [●].
- 1.6 "Goods" shall mean goods supplied by the Seller either directly or through the Seller's authorized agents, and shall include any alteration or variation works which the Buyer has requested and the Seller has agreed to perform on the Goods.
- 1.7 "Services" shall mean all services supplied by the Seller to the Buyer and shall include any advice, recommendation, and supply of services incidental to the supply of the Goods.
- 1.8 "Price" shall mean the cost of the Goods as agreed between the Buyer and Seller.
- 1.8.1 "Conditions" shall mean these Terms and Conditions of Trade

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of goods and/or the Buyer's acceptance of Goods shall constitute acceptance of these Conditions.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally bound by these terms and conditions of trade and jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these Conditions by the Buyer, these Conditions shall be irrevocable and may only be rescinded or altered in accordance with these Conditions or with the written agreement of an authorized signatory of the Seller.

3. Description of Goods

- 3.1 The Goods (which may be described by a particular name commonly used by the Seller) shall be as described on quotations, invoices, work authorization forms, sales order, or other work commencement forms as provided by the Seller to the Buyer.

4. Price and Payment

- 4.1 The Price payable for the Goods shall be as defined in 1.8.
- 4.2 However, if no price is agreed upon, the Price shall be the Seller's current price at the date of delivery of the Goods according to the Seller's current price list.
- 4.3 The validity of any Price quoted by the Seller shall be thirty (30) days from date of the Seller's quotation unless otherwise specified by the Seller in the quotation provided by the Seller to the Buyer.
- 4.4 Notwithstanding anything contained herein to the contrary, the Seller reserves the right to adjust the Price specified at any time prior to the agreed delivery date.
- 4.5 Any variation from the description of the Goods required by the Buyer, such description being governed by 3.1 herein, and any variation from the plan of scheduled works agreed between the Parties, shall be subject to additional charges which shall be agreed in writing between the parties. In absence of any agreement to the contrary, such additional charges shall be paid in full upon at the same time as payment for the Goods.
- 4.6 The Price shall be increased by the amount of any GST and other taxes, duties, imposts or other charges which may be applicable to the sale of Goods in Singapore or overseas, except to the extent that such are expressly included in any written quotation given by Seller. All such additional amounts as are referred to herein which may be applicable shall be borne by the Buyer.
- 4.7 Unless otherwise agreed in writing by the Seller, payment for Goods shall be made to the Seller prior to delivery of the Goods by one of the following modes of payment:-
 - a) Cash, or
 - b) Telegraphic transfer to an account designated by the Seller; or
 - c) Letter of credit in the form and issued by a bank approved by the Seller.
- 4.8 Time for payment for Goods/Services shall be of the essence and shall be specified by the Seller in the quotation, invoice or any other order forms. In absence of any specified time for payment, the time for payment for Goods/Services shall be the date on which the Goods are tendered for delivery.

- 4.9 The Seller may, when full payment for the Goods is agreed by parties to be made prior to delivery of the Goods, withhold delivery of the Goods if payment for Goods is not made by the Buyer in accordance with the time for payment agreed between the parties until the Seller receives full payment for such Goods. The withholding of delivery of the Goods shall be without prejudice to any other remedies available to the Seller.
- 4.10 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2% per month.
- 4.11 If the Buyer defaults in payment of any invoice when due, the Buyer shall be liable for all costs and expenses incurred by the Seller to enforce its rights to be paid, including but not limited to the cost of prosecuting the non-payment.
- 4.12 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these terms and conditions. The Seller shall not be liable to the Buyer for any loss or damage the Buyer suffers solely because the Seller has exercised its rights under this clause.
- 4.13 Where the Seller has not received or been tendered the whole of the Price at the agreed time for payment, or if payment has been dishonored, the Seller, without prejudice its rights to other remedies, shall have the right to:-
- a) a lien on the Goods
 - b) retain the Goods if the Goods have not been delivered, and sue for breach of contract;
 - c) stop the Goods in transit whether or not delivery has been made or ownership has passed; and
 - d) resell the Goods and to claim the difference between the resale price and the Price,
- Provided the lien shall continue despite the commencement of proceedings or judgment for the price having been obtained.
- 4.14 In the event that, whilst some or all payment for the Goods is still due including but not limited to:-
- a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payment obligations to the Seller as they fall due; or
 - b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer of any asset of the Buyer;

Then, without prejudice to the Seller's other remedies at law

- (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

5. Delivery of Goods

- 5.1 Delivery of the Goods shall be as agreed between the parties. In absence of any agreement as to the place of delivery, the place of delivery shall be at the Seller's address.
- 5.2 Unless otherwise agreed, the Buyer shall make all arrangements and shall be responsible for all costs incurred in making such arrangements to take delivery of the Goods whenever they are tendered for delivery.
- 5.3 Where Parties have agreed that the Seller shall be responsible for delivery of Goods to the Buyer, delivery of the Goods to a carrier, either named by the Buyer or failing such naming, to a carrier at the discretion of the Seller for the purpose of conveying such Goods to the Buyer, shall be deemed to be delivery of the Goods to the Buyer.
- 5.4 Notwithstanding anything contained herein to the contrary, in absence of any agreement regarding delivery, the Seller shall have the discretion to deliver the Goods to the Buyer's address, and delivery to a carrier at limited carrier's risk at the expense of the Buyer, and for the purpose of conveying such Goods to the Buyer, shall be deemed to be delivery of the Goods to the Buyer.
- 5.5 Where the Goods are capable of being delivered in separate installments, the Seller may deliver the Goods by separate installments (in accordance with delivery schedules agreed in writing between the parties).
- 5.6 Any period or date agreed by the Parties for the delivery of the Goods is intended as an estimate only and is not a contractual obligation. The Seller shall use all reasonable endeavors to meet any estimated delivery periods or dates. The failure by the Seller to deliver the Goods on time shall not entitle either of the Parties to treat this contract as repudiated.
- 5.7 Notwithstanding anything contained herein to the contrary, the Seller shall not be liable for any loss or damage whatsoever and howsoever sustained arising out of the failure by the Seller to deliver the Goods (or any part thereof) promptly or at all.

6. Risk

- 6.1 Notwithstanding that the Seller may retain property in the Goods till full payment for them is made by the Buyer, all risk for the Goods shall pass to the Buyer upon delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the contract. The production of these Conditions by the Seller shall constitute sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Buyer's Waiver

- 7.1 The Buyer waives all rights to rescind, or to cancel the contract for the supply by the Seller of the Goods/Services to the Buyer, or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller, and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgment and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

8. Inspection and Notice

- 8.1 The Buyer shall inspect the Goods immediately upon the arrival of the Goods at the agreed place of delivery, or, if the place of delivery shall be the premises of the Seller, then at the premises of the Seller, to satisfy itself that the Goods are of the description, quantity, quality, and character ordered. If any defect, damage, shortage or unsuitability is observed or suspected, the Buyer shall immediately make a record of such actual or suspected defect, damage, shortage or unsuitability on the delivery documents, a copy of which shall be returned to the Seller at the time of delivery or collection. The Buyer shall, as soon as possible after taking delivery of or collecting the Goods, and in any event no later than seven (7) days after delivery or collection of the Goods, notify the Seller in writing of any alleged defect, shortage in quantity, damage or unsuitability, providing clear details of the defect, shortage, damage or unsuitability as alleged.
- 8.2 The Buyer shall also preserve the Goods in a safe place pending inspection by the Seller (and/or such other person or persons as the Seller may dispatch to inspect the Goods), which opportunity to inspect the Buyer shall afford to the Seller (or its representative) within a reasonable time following the Buyer's delivery or collection of the Goods, and no event later than thirty (30) days after delivery of or collecting the Goods.
- 8.3 Where requested by the Seller, the Buyer shall provide such additional information as is reasonable and necessary for the Seller to evaluate and determine its responsibilities, if any, to the Buyer. The Seller shall analyze the failures, making use, when appropriate, of technical information provided by Buyer relating to the circumstances surrounding the failures. The Seller will verify whether any defect appears in the Goods.
- 8.4 If the Buyer fails to comply with these provisions, the Goods shall be deemed to be in full compliance with the Buyer's order and free from any defect, damage, shortage or unsuitability.

9. Warranties

- 9.1 Subject to the terms of the Warranty set out in these Conditions, Seller warrants that if any defect in any Goods (or part thereof) becomes apparent and is reported to Seller within a time frame stipulated by Seller from the date of delivery (time being of the essence) then Seller shall, at its sole discretion, either repair the defect or replace the Goods.
- 9.2 The Warranty shall be for **12 months or 100,000km warranty, whichever occurs soonest, from the date of delivery**. On complete beam weld assembly comprising finished axle beam, and all welded brackets on all axles supplied with suspensions fitted by Seller. On axle end fixings, hub and conventional assemblies, drum brakes, disc brake rotor (mechanical failure only), disc caliper assembly (excludes damage due to off-road usage), camshaft, camshaft bearings, cam rollers, brake anchor pins, hub cap, dust covers and screws, brake shoe, ABS sensor with bracket, brake retaining and return springs, oil and grease seals.
- 9.3 Seller warrants only those Goods which are bought direct from Seller or Seller's authorized agents.
- 9.4 Seller will not be responsible under this Warranty, for any expenses which the Buyer may incur in removing or having removed or in replacing or having replaced any part or parts to be sent for inspection, or in fitting or having fitted any new parts in lieu thereof, and all labour expended on any such inspection or other work must be paid for by the Buyer.
- 9.5 This Warranty does not cover any defect or damage which may be wholly or partly caused by, or attributable to, or which arises through:-

- i) Failure on the part of the Buyer to properly maintain any Goods;
 - ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by Seller; or
 - iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
 - iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - v) Fair wear and tear, any accident or act of God; or
 - vi) Dirt, misuse or neglect
- 9.6 This Warranty shall immediately cease if:-
- i) A load has, at any time, been imposed in excess of the maximum load stipulated in writing or in any product literature published by Seller.
 - ii) The Goods have been used for a purpose other than they were intended;
 - iii) The Goods have, without the written consent of Seller, been altered or repaired otherwise than by Seller;
 - iv) Either the Goods or part or parts thereof have been applied to a use which, in the opinion of Seller, is unsuitable;
 - v) Designs other than Seller's own are used, or work is done contrary to Seller's standard practice or against its advice;
 - vi) Defects are aggravated by continued use after the defects out reasonably to have been discovered;
 - vii) The defects have arisen due to the incorrect installation of the Goods;
 - viii) The Goods have not been stored or maintained as recommended by the Seller;
 - ix) The defect has arisen due to normal wear and tear on the Goods
- 9.7 In order to make a claim under this Warranty, a person must:-
- i) Give the Seller written details of any defect in the Goods together with documentary proof of the date of purchase and date of installation by the end user of the Goods within 30 days of identifying the defects;
 - ii) Return the defective Goods to allow its employees or agent to inspect the Goods;
 - iii) Provide any information requested by Seller in relation to the Goods or handling or installation of the Goods by the Buyer.

10. Liabilities

- 10.1 All conditions and warranties implied into contract for the supply of goods at law are excluded to the maximum extent permitted.
- 10.2 Seller is not liable for any consequential loss, damage or expense suffered by the Customer or any third party howsoever caused, including but not limited to loss of profits, business or goodwill or any liability to a third party.
- 10.3 Any advice, recommendation, information or assistance provided by Seller in relation to the Goods or as to their use or application is and shall be deemed to have been given in good faith and upon Seller's belief that they are appropriate, accurate and reliable. The Customer agrees that Seller shall not be liable for any loss, damage or injury whatsoever, whether direct or indirect, caused by, arising from or in connection with the provision of such advice, recommendation, information or assistance and further agrees to indemnify and hold harmless Seller against all claims whatsoever arising out of or in connection with such provision.

11. Title

- 11.1 It is the intention of the Seller, which is acknowledged and agreed by the Buyer, that title in the Goods shall only pass from the Seller, notwithstanding that the risks for, possession in and use of the Goods may have already passed to the Buyer, when:-
- (a) The Seller has received payment in full for the Goods/Services from the buyers;
 - (b) The Buyer has met all other obligations due to the Seller in respect of all contracts between the Seller and Buyer, and that all other obligations of the Buyer are met.
- 11.2 It is further agreed that:-
- (a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer in obtaining ownership or any other interest in the Goods shall cease.
 - (b) If the Buyer fails to return the Goods to the Seller then the Buyer hereby agrees that the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer as invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (c) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognized and until then the Seller's ownership of rights in respect of the Goods shall continue.
 - (d) The Buyer shall not charge the Goods in any way, nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.

- (e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

12. Security and Charge

12.1 Notwithstanding anything to the contrary herein or any other rights which the Seller may have howsoever:

- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's cost and disbursements including legal costs on a solicitor and own Buyer basis.

13. Intellectual Property

- 13.1 Where the Seller has designed or drawn the Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 13.2 Conversely, in such a situation, where the Buyer has supplied drawings or designs, the Buyer warrants that all designs and drawings provided to the Seller shall not cause the Seller to infringe any patent, copyright, trademark, registered design or other intellectual property right, and shall (i) defend or settle any claim of infringement against the Seller alleging that any Goods manufactured by the Seller pursuant to the drawings and designs supplied by the Buyer directly infringes any patent, copyright, trademark, registered design or other intellectual property right; (ii) reimburse the Seller for any costs incurred at the Seller's written request relating to such claim; and (iii) pay damages and costs assessed by final judgment against the Seller and attributable to such claim.

14. Non-disclosure Agreement

- 14.1 During performance of this Agreement, the Parties may disclose or furnish to each other proprietary marketing, technical, or business information, including, without limitation, products and/or software ("information"), relating to the subject of this Agreement. Information provided in tangible form shall be clearly marked as proprietary. Information provided orally will be considered proprietary if the disclosing party says it is proprietary at the time of oral disclosure and summarizes it in a proprietary writing provided to the other party within twenty (20) days of the oral disclosure.
- 14.2 The receiving party shall: (a) hold information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, (b) restrict disclosure and use of information to employees (including any contractors or consultants) with a need-to-know, and not disclose it to any other parties, (c) advise those employees, contractors and consultants of their obligations with respect to the information, (d) not copy, duplicate, reverse engineer or decompile information, (e) use the information only in furtherance of performance under this Agreement, and (f) upon expiration or termination of this Agreement, return all information to the disclosing party or at the request of the disclosing party, destroy such information.
- 14.2 The receiving party shall have no obligation to keep confidential information that: (a) was previously known to it free of any confidentiality obligation, (b) was independently developed by it, (c) is or becomes publicly available other than by unauthorized disclosure, (d) is disclosed to third parties by the disclosing party without restriction, or (e) is received from a third party without violation of any confidentiality obligation.
- 14.3 If a party is faced with legal action or a requirement under government regulations to disclose or make available proprietary information received hereunder, such Party shall forthwith notify the furnishing party and, upon request of the latter, cooperate in contesting such action or requirement at the requesting party's expense. Neither party shall be liable for damages for any disclosure or unauthorized access pursuant to legal action or government regulations or for inadvertent disclosure, access, or use if the customary degree of care as it uses with respect to its own proprietary information has been exercised and if, upon discovery of such inadvertent disclosure, access, or use the furnishing or receiving party has endeavored to prevent any further (inadvertent or otherwise) disclosure or use.

15. Assignment

15.1 The Buyer shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Seller. Any attempted assignment without the Seller's consent shall be void and ineffective.

16. Excuse of Performance

16.1 Except with respect to the Buyer's obligation to make timely payments when due, neither Party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, inability to secure material or transportation facilities, inadequate yield of Goods despite the Seller's reasonable efforts, act or omission of carriers or any other causes beyond its reasonable control.

17. Choice of Law

17.1 The parties expressly intend and agree that the construction, interpretation, and performance of the Agreement and all transactions under it shall be governed by the laws of Singapore and excluding the Convention for the International Sale of Goods.

18. Severability

18.1 If any provision or part hereof shall be held to be invalid or unenforceable for any reason, then the meaning of such provision or part hereof shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save such provision or part hereof, it shall be severed here from, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect unless such severance effects such a material change as to render these Conditions unreasonable.

19. Complete Terms and Conditions

These Conditions, together with any quotation, invoice, work authorization forms, sales order, or other work commencement forms as provided by the Seller to the Buyer, supersede all prior oral or written understandings between the parties and shall constitute the entire agreement between the parties with respect to the supply of Goods. These Conditions shall not be modified or amended except by a writing signed by the Parties.

20. General

20.1 All Goods supplied by the Seller are subject to the laws of Singapore and the Seller takes no responsibility for changes in the law which affect the Goods.

20.2 The Seller shall be under no liability whatsoever to the Buyer howsoever caused for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these Conditions.

20.3 In the event of any breach of contract by Seller, the remedies of the Buyer shall be limited to damages only. Under no circumstances shall the liability of Seller exceed the price of the Goods.

20.4 The Buyer shall not set off against the price amounts due from Seller.

20.5 Notwithstanding anything contained anywhere in these Conditions or elsewhere to the contrary, no Warranty granted by Seller shall apply to, and Seller accepts no responsibility for, Goods or proprietary articles not manufactured by Seller. In the event of any claim, the Goods will be returned to the original supplier for examination. Seller will avail any benefit of any Warranty given by the supplier should they be found to be defective. The Company will not be under any obligation to provide replacement while the examination of the Goods is undertaken by the original supplier.

20.6 Any warranty granted in these Conditions likewise excludes every form of liability for every form of consequential loss or damage. Seller will only be liable under this Warranty for the exchange or repair of the Goods or part(s) thereof which have proved to be defective as a result of faulty workmanship or materials.

20.7 Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change shall take effect from the date on which Seller notifies the Buyer of such change.