

Sales Agreement

THIS SALES AGREEMENT (hereinafter, this “**Agreement**”) made and entered into as of [Date] by and between XXX CO., LTD., a corporation organized and existing under the laws of Japan with its principal place of business at [address] (hereinafter, “**Seller**”), and [Buyer] a corporation organized and existing under the laws of [country] with its principal place of business at [address], (hereinafter, “**Buyer**”). Buyer and Seller are collectively referred to as the “**Parties**” and individually as a “**Party**”.

[AW to XXX: YYY 企業との間の契約締結に際しては、適用ある YYY 税法に基づき、Stamp Duty (印紙税) を貼付する必要があります。]

Article 1. Products

~~The term “**Products**” as used herein means the products set forth in ANNEX A attached hereto.~~

Article 2. Purchase and Sale

Subject to the ~~terms~~detailed Terms and ~~conditions contained herein~~Conditions below, Seller hereby agrees to sell the Products (as defined below) to Buyer, and Buyer agrees to buy the same from Seller in accordance with this Agreement. The following set forth main terms and conditions for this transaction:

<u>(1) Products</u>	[_____] (the “Products”)
<u>(2) Purchase Price</u>	JPY [_____] (the “Purchase Price”)
<u>(3) Payment Conditions</u>	(1) Advance Payment: JPY [_____] which is to be paid to the bank account below within [3] days after the execution of this Agreement; and (2) Remaining Payment: JPY [_____] which is to be paid to the bank account below within [3] days after the delivery of the Products. <u>SWIFT CODE:</u> <u>name of bank:</u> <u>branch name:</u> <u>account number:</u>
<u>(4) Delivery Schedule</u>	<u>Seller shall deliver the Product to Buyer on an FOB basis in Japan which is designated by Seller on [_____].</u>

Terms and Conditions

Article 31. Payment

Buyer shall pay ~~Seller the~~ 50% of the Purchase Price (the “**First Payment**”) when Buyer issues a purchase price amount set forth in ANNEX A attached hereto in accordance with the terms set forth in ANNEX A order, and the remaining 50% of the Purchase Price (the “**Second Payment**”) when Seller informs Buyer that Seller is ready for the delivery of the Products. If Buyer fails to pay the Second Payment despite Seller’s notice, Seller may immediately terminate this Sales Agreement. In that case, Seller shall be entitled to retain all amounts of the First Payment, and freely sell the same Products to any other third party.

[AW to XXX: 支払いの方法については別紙記載としておりますが、一般的に全ての取引に適用される条件がありましたら本文に明記致します。][XXX: 承知しました。支払い方法は個別協議になりますので、別紙記載（後述の要目表）で良いと考えます。加えてもう一点、追記したいのですが。基本的に注文時 50%、FOB50%の支払条件を考えております。FOBで50%の残金が指定日までに入金されない場合で、かつ当方からの再通告にも拘らず入金がない場合には、①買主は機械の購入権利を喪失し、②注文時の50%は違約金として没収する、との違約条項を追記したいのですが、可能でしょうか？残金が入らない場合には、当社の自由に新たな第三者に販売できるようにしたい考えです。][AW to XXX: FOBで残金支払いという点、入金がない場合、新たに第三者に販売できるようにしたいとのことからすれば、引渡し前に入金を確認されたいと理解致しました。そこで、上記の通り、引渡しの準備ができた時点で残金の支払いをする建付けに致しました。FOBで残金支払いと記載している意図に沿っているかご確認下さい。]

Article 42. Delivery and Inspection

4.1 ——— ~~Seller shall deliver the Products to Buyer in accordance with the schedule of delivery and delivery terms set forth in ANNEX A-2.1~~ Seller shall use its reasonable efforts to deliver Products to Buyer on the delivery date. The terms of delivery shall be construed and interpreted in accordance with the provisions of Incoterms 2010 as published by the International Chamber of Commerce including any updates and/or amendments thereto time to time.

42.2 The title and risk of loss and damage shall pass from Seller to Buyer upon delivery. [XXX: ここでいう納品は、FOBであれば船積み時で、そこで危険負担が売主から買主に移ることになりますでしょうか？][AW to XXX: ご理解の通りです。引渡条件については別紙記載としておりましたが、FOBであることを契約書上も明記しておきました。]

42.3 Buyer shall (i) obtain any and all necessary governmental approvals and permissions to export the Products at its own cost and responsibility, (ii) comply with any and all applicable laws and

regulations for export, pay all tariff, charge and duty, and (iii) take any and all procedure at the customs at its own cost and responsibility. Seller may provide Buyer with reasonable cooperation and assistance for the export of Product upon request by Seller.

Article 53. Warranty

53.1 Subject to Section 53.5, Seller warrants to Buyer for a period of twelve (12) months after the date of delivery that Products will be free from defects in material and workmanship.

53.2 Claims for non-compliance with the warranty shall be accompanied by a full description of the alleged non-compliance and submitted to Seller within the warranty period of twelve (12) months.

53.3 Subject to the claims set forth in Section 53.2, Seller shall, at its option, repair or replace Products failing to conform to the warranty at no charge to Buyer and, at its cost and risk, deliver the repaired or replaced Products to Buyer.

53.4 Products repaired or replaced under this warranty is warranted for the remainder of the original warranty period. The aforementioned provisions do not extend the original warranty period of any Products which has been repaired or replaced.

53.5 The purpose of, and conditions for, the use of the Products shall be specified in ANNEX BA. The warranty set forth in this Section shall not apply to Products which has been subjected to abnormal use, misuse, negligence or accident or altered or repaired.

53.6 No agent or employee of Seller is authorized to extend any representations or warranties beyond those expressly provided herein.

53.7 BUYER'S EXCLUSIVE REMEDY FOR BREACH OF THE FOREGOING WARRANTY AND SELLER'S SOLE LIABILITY IN THE EVENT OF SUCH BREACH IS LIMITED TO REPAIR OR REPLACEMENT OF PRODUCTS FAILING TO CONFORM TO THE FOREGOING WARRANTY. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT THE FOREGOING LIMITATION IS DETERMINED INVALID BY ANY COMPETENT COURT OR GOVERNMENTAL AUTHORITY, BUYER AGREES THAT ITS REMEDY SHALL BE LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS FAILING TO CONFORM TO THE WARRANTY IN THIS SECTION. XXX：本項は損害賠償の範囲を定めるものと思いますが、

①保証範囲は、製品の修理・交換に限定、②保証金額は、製品価格が上限、との認識で合っ

ていますでしょうか？（ちなみに、本項だけ大文字になっているのは何か理由がありますでしょうか？） [AW to XXX: 基本のご理解の通りです。この種の責任限定合意は無効主張の対象とされることが多く、その重要性に鑑みて大文字にしております。もともとはアメリカの実務慣行で、英文契約書では一般的に取り入れられております。]

Article ~~64~~. Maintenance

After delivery of the Products to Buyer, Buyer shall bear repair costs, tax and public dues, and other operational, administrative and maintenance costs arising from or in connection with the Products, unless otherwise provided herein or in the relevant warranty. Buyer shall ensure that all permits, approvals and licenses for installation and operation of the Products are maintained by Buyer and agree that Seller shall not be liable in any manner for obtaining or maintaining such permits, approvals and license.

Article ~~75~~. Intellectual Property

~~75.1~~ Buyer shall not, by reason of anything in this Agreement or otherwise, acquire or deem to acquire: (i) any proprietary right relating to Products under the law of any jurisdiction, including, but not limited to, patents, copyrights and trademarks embodied in the Products; (ii) any right, title or interest in or to any design, invention, improvement, process, information or goodwill embodied in Products or otherwise furnished by Seller; or, (iii) any exclusive rights to use such design, invention, improvement, process, information or proprietary right embodied in the Products.

~~75.2~~ Nothing in this Agreement or in the arrangements hereby contemplated shall grant Buyer any license in connection with manufacturing, sales and distribution of the Products.

Article ~~86~~. Infringement

Buyer shall promptly notify Seller in writing of any actual or suspected infringement, if any, by a third party of patents or copyrights or trademarks of Seller embodied in the Products or related documentation of which Buyer has become aware. Buyer shall cooperate with Seller in all respects in the event Seller elects to take action as necessary to protect said patents and copyrights or trademarks.

Article ~~97~~. Prohibited Matter

Buyer shall not be entitled to:

- (1) use the Products in a way contrary to Seller's instruction;
- (2) resell the Products to any third party;
- (3) dismantle, modify or change the Products without prior permission by Seller;
- (4) take the Products out of the territory of country where Buyer is located; ~~and~~

(5) replicate the Products or have somebody replicate the Products; and [XXX:この表現で「類似する」という意味も含まれますでしょうか？] [AW to XXX:この条文は複製を禁止する趣旨なので、必ずしも「類似する」という意味は含まれていないとご理解ください。継続的なディストリビューション契約、ライセンス契約等であれば格別、単発の売買契約でどこまで契約相手方を拘束するかは悩ましいですが（そもそも相手方がかかる拘束を受け入れない、場合によって過度の拘束として、契約条件が無効になるリスク）、もしその点をあえて契約に明記したいのであれば、下記(6)のように類似品を含めた競業避止義務を定めることも考えられるところです。]

(6) manufacture, sell, market, distribute, transfer or otherwise deal with competing products which have similar function and/or design.

Article ~~108~~. Limitation of Liability

INDEPENDENTLY OF ANY OTHER LIMITATION HEREOF AND REGARDLESS OF WHETHER THE PURPOSE OF SUCH LIMITATION IS SERVED, IT IS AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER THIS AGREEMENT. REGARDLESS OF GROUND OF LIABILITY IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE TOTAL PURCHASE PRICE WHICH WAS ACTUALLY PAID BY BUYER TO SELLER. [XXX:本項も大文字に意味はありますか？] [AW to XXX:上記と同様です。]

Article ~~119~~. Tax

Buyer shall be liable to the consumption tax in Japan if it is imposed.

Article ~~1210~~. No Agency

It is understood and agreed between the Parties that this Agreement is on principal to principal basis and each Party is independent and not an agent or employee of the other Party. The Parties shall perform and execute the provisions of this Agreement as an independent entity and none of its officers, directors, employees or agents shall be deemed to be the agents, representatives, employees or servants of the other Party. Nothing in this Agreement or in the arrangements hereby contemplated shall constitute any Party as the agent of the other Party, nor create or be deemed to create a partnership or joint venture between the Parties, for any purpose whatsoever except as expressly contained herein. The Parties further agree that no employer-employee relationship shall be deemed to be created between the Parties and the personnel employed by each Party, whether directly or indirectly, in connection with fulfilling its contractual obligations hereunder and that each Party shall incur no liability in respect of any such personnel in any manner whatsoever.

Article ~~1211~~. Assignment

Neither Party may assign or delegate any rights or obligations under this Agreement without prior written consent of the other Party, except as otherwise provided herein.

Article ~~13~~12. Amendment

No amendment or modification of any provision of this Agreement, shall in any event be effective unless the same shall be in writing and signed by the Parties.

Article ~~14~~13. Waiver

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable laws.

Article ~~15~~14. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Japan.

Article ~~16~~15. Arbitration

Any and all dispute, controversy or difference which may arise between the parties hereto out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in Tokyo in accordance with the Arbitration Rules of the Japan Commercial Arbitration Association. The award rendered by arbitrator(s) shall be final binding upon the parties hereto.

Article ~~17~~16. Entire Agreement

This Agreement together with its annexures, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any other prior agreement, term sheet or understanding, written or oral, that the Parties may have had.

The Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Seller: XXX CO., LTD.

By: _____

Name:

Buyer: [Buyer]

By: _____

Name:

[Draft as of 2018/02/0309]

ANNEX A

Warranty Conditions

[AW to XXX: 対象製品の性能に関する保証内容、使用制限等は本別紙に明記することを想定しております。技術的な話なので、貴社においてご検討頂きますようお願い致します。]

[XXX: 前述の通り、製品性能や使用方法については、納品時に提示する取扱説明書に記載するのが良いと考えております。製品性能については、主要なものは別添する見積書にも記載することになると思います。]

[AW to XXX:前述のように、取扱説明書に記載される製品性能、使用方法については、当事者間の認識の不一致を避けるため、契約書の別紙扱いにしておくことをお勧め申し上げます。]