

MABUCHI MOTOR AMERICA CORP.

3001 West Big Beaver Road, Suite 520
Troy, Michigan 48084
Tel: 248-816-3100 Fax: 248-816-3242
URL: <http://www.mabuchi-motor.co.jp/>

TERMS AND CONDITIONS OF SALE

1. Acceptance and Modification

This document constitutes an offer or counteroffer (an "Offer") by Mabuchi Motor America Corp., or its subsidiary or affiliate ("Seller") to sell the products and/or services described herein (the "Products") to purchaser ("Purchaser"), subject to and in accordance with these terms and conditions and attachments to this document (the "Terms and Conditions"). This document is not an acceptance of any offer or counteroffer made or purchase order submitted by Purchaser, and this Offer and any contract arising out of this Offer (collectively, the "Contract") are each expressly conditioned upon Purchaser's assent to all of the Terms and Conditions. Seller's acceptance of any order is subject to Purchaser's assent to all of the Terms and Conditions set forth herein, and Purchaser's assent to these Terms and Conditions shall be confirmed by Purchaser's acceptance of all or any part of the Products ordered. Purchaser acknowledges agreement with these Terms and Conditions by placement of an order to purchase Products from the Seller or its acceptance of all or any part of the Products called for in a purchase order. Seller objects to any additional or different terms or conditions contained in any request for quotation, request for proposal, purchase order or other document or communication previously or hereafter provided by Purchaser to Seller. If a purchase order or other correspondence contains terms or conditions contrary to the terms and conditions contained in Seller's acknowledgement, Seller's acceptance of any order shall not be construed as assent to any additional terms and conditions, nor will that constitute a waiver by Seller of any of the Terms and Conditions nor an acceptance of any such additional provisions. No such additional or different terms or conditions will be of any force or effect, unless specifically agreed to by an executive officer of Seller in writing. The Contract constitutes the entire understanding between the parties with respect to the subject matter of the contract and supersedes any prior discussions, negotiations, agreements and understandings. Modifications to the Contract can be made only by a writing signed by an authorized representative of each party.

2. Termination

Unless otherwise set forth on the face of Seller's quotation, the term of the parties' Contract shall be one year. Either party may cancel the Contract upon ninety (90) days written notice. In the event of such a cancellation by Purchaser, Purchaser shall pay to Seller: (i) the agreed unit prices for completed Products (or components or units of components thereof) under the Contract or any related order; including 16 weeks of finished goods produced and 4 weeks of raw material fabrication based on any forecasted schedule, release or order issued by Purchaser prior to notice and acceptance of cancellation; (ii) all other costs incurred by Seller prior to cancellation directly connected with work under the Contract or any related order; (iii) all other costs incurred by Seller associated with the cancellation of the Contract or any related order, including, without limitation, cancellation charges under subcontracts, charges for packing, removal to storage and/or restocking; plus (iv) 15% of the sum of (i), (ii) and (iii). Until Seller has received all of the foregoing cancellation charges, all cancelled Products shall remain the sole and exclusive property of Seller, regardless of the state of completion of such Products.

3. Delivery and Terms of Sale

Unless otherwise agreed, the following terms shall apply: Seller will utilize Seller's standard packing and labeling and ship in full pallet quantities. Sale and Trade terms are from Seller's specified FOB point or warehouse, and Duty, Taxes and Customs Clearance fees are Purchaser's responsibility. Purchaser orders and/or delivery schedules need to be issued at least 16 weeks in advance of the desired delivery date, and are non-cancellable, irrevocable purchase obligations. Orders are subject to confirmation of longer lead-times. Air freight or alternative inland handling for rush shipments may be available upon Purchaser request and at Purchaser's sole expense. Purchaser shall be responsible for all transportation arrangements and costs from Seller's specified FOB point or warehouse to Purchaser's destination. Purchaser is obligated to fulfill pick-up, delivery and purchase of goods no later than thirty (30) days from the delivery date initially requested in Purchaser's order schedule for the goods.



4. Risk of Loss

Risk of loss or damage and any further cost and responsibility for claims, delivery, and, if applicable, placement and storage shall pass from Seller to Purchaser, and delivery shall be deemed to be complete, upon delivery by Seller to Purchaser's private or common carrier at Seller's specified FOB point or warehouse.. Title to goods shall pass to Purchaser upon pick-up of goods from Seller's FOB point or warehouse, subject to Seller's rights as an unpaid vendor.

5. Security Agreement and Insurance

To secure payment of the price payable under the Contract and performance of all of Purchaser's obligations under the Contract, Purchaser hereby: (i) grants to Seller a purchase money security interest in all Products; and (ii) authorizes Seller to file such financing statements and other documents, and agrees to execute such other documents and to do such other acts, as Seller may reasonably deem necessary or advisable to protect its rights in such Products. In the event Purchaser breaches the terms or conditions of the Contract, Seller shall be entitled to, among other damages, an award of costs and attorney fees. Until Seller has received full payment of the price payable under the Contract, Purchaser shall (i) maintain insurance covering all Products in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, naming Seller as insured or coinsured, and shall, upon Seller's request, furnish evidence of such insurance satisfactory to Seller, and (ii) upon request by Seller, do all things necessary or desirable to adequately insure the Products against loss or damage.

6. Payment

Unless otherwise agreed, sales will be on a pre-pay on order basis. Any variance from pre-pay on order payment terms must be approved in writing by Seller, and is subject to change at Seller's sole discretion. If Purchaser fails to pay any invoice when due or if, in the judgment of Seller, the financial condition of Purchaser at any time prior to shipment does not justify the extension of credit, then Seller may stop any pending or future shipments until past due amounts are paid in full, and require payment in advance or otherwise modify the payment terms upon notice to Purchaser. All delays occasioned by acts of Purchaser shall be at the expense of Purchaser. Seller reserves the right to assess reasonable charges for its expenses resulting from such delays. All shipments shall be separately invoiced and paid for without regard to subsequent deliveries. Monthly interest at the highest rate allowed by law, shall be charged to all overdue accounts. Purchaser will reimburse Seller for all costs and expenses (including attorneys' fees and the costs of bringing any action) incurred in collecting any amounts past due. If a dispute arises between the parties concerning Purchaser's alleged right to setoff or recoupment against Seller or its affiliates, the parties shall negotiate in good faith to resolve such dispute. Notwithstanding the foregoing, Purchaser acknowledges and agrees that payments owed to Seller for Products supplied under this Contract are not subject to any setoff or recoupment by Purchaser unless and until Seller agrees in writing to such setoff or recoupment, and that Purchaser shall not exercise its right to setoff or recoupment in connection with any disputed, contingent, or unliquidated claim.

7. Prices

Unless otherwise quoted, prices shall be those in effect at the time of shipment. Unless other terms are specified in the attachments to this document, all prices are quoted and payable in U.S. dollars. The prices quoted do not include any taxes imposed on the sale of the Products. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, GST, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority (whether domestic or foreign, or federal, state or local) on or measured by the transactions between Seller and Purchaser (other than income taxes imposed on Seller) shall be added to the price of Products, invoiced separately, and paid by Purchaser in addition to the prices quoted or invoiced. Purchaser agrees to reimburse Seller for any such tax or provide Seller with acceptable tax exemption certificate.



8. Limited Warranty

- a. Seller provides the following Limited Warranty applicable for a period of ninety (90) days from the date of delivery: the Products shall meet the specifications as set forth in the Mabuchi TKS Specification for the Products supplied. Purchaser agrees to inspect the Products upon receipt for completeness and external damage, and forthwith report any deficiency or damage. Seller is not responsible for insubstantial or cosmetic external defects that do not affect the function of the Products. Any claim for defect during the warranty period must be made within thirty (30) days of discovery of the defect.
- b. SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY, EXCEPT AS PROVIDED IN THIS PARAGRAPH 8. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES. SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING.
- c. Purchaser assumes all risk and liability resulting from use of the Products, whether used singly or in combinations with other products.
- d. The warranty set forth in this Paragraph 8 shall not apply in the event of defects or damages caused by: (i) failure of Purchaser or any subsequent purchaser or user to comply with any operational or maintenance guidelines, parameters or requirements; (ii) physical abuse, including but not limited to, dropping, contaminating with foreign substances, applying excessive loads or forces or improper voltages of or to the goods or any component or acts of vandalism, by any persons other than Seller, its employees, agents, or subcontractors; (iii) alterations, modifications, additions, or repairs made by anyone other than Seller, its employees, agents or subcontractors; or (iv) accidents or damage resulting from fire, water, wind, hail, lightning, electrical surge or failure, earthquake, theft or similar causes not caused or contributed to by the sole negligence of Seller or its employees, agents, or subcontractors.

9. Force Majeure

Seller shall not be liable for delays or failures in performance of an order or default in delivery arising out of or resulting from causes beyond its control. Such causes include, but are not restricted to, acts of God, acts of Purchaser, acts of the Government or the public enemy, fire, flood, epidemics, quarantine restrictions, strikes, freight embargoes, severe weather or default of suppliers due to any of such causes.

10. Patents, Trademarks and Copyrights

- a. Seller, at its own expense, shall defend or settle any suits that may be instituted by an unrelated third party against Purchaser to the extent such suits relate to infringement of any patent, trademark or copyright by Products manufactured by Seller pursuant to the Contract, if such infringement directly arises out of the use of such Products, or components thereof, in Purchaser's business for any of the purposes for which the same were sold by Seller under the Contract, and provided that Purchaser shall (i) have made all payments then due under the Contract, (ii) give Seller immediate notice in writing of any such suit, (iii) transmit to Seller immediately upon receipt all processes and papers served upon Purchaser, (iv) permit Seller through its counsel, either in the name of Purchaser or in the name of Seller, to defend such suits, and (v) give all needed information, assistance and authority to enable Seller to do so.
- b. If Products sold to Purchaser under the Contract are held in and of themselves, by final court decision from which no appeal can be taken, to infringe any patent and their use is enjoined, or in the event of a settlement or compromise approved in writing by Seller that precludes future use of



Products sold to Purchaser under the Contract, then Seller (i) shall pay any final and unappealable award of damages in such suit to the extent such damages are directly attributable to such infringement, and (ii) shall, at its own expense and at its sole option, (A) procure for Purchaser the right to continue using such Products to the extent contemplated in the Contract, (B) modify such Products to render them noninfringing, (C) replace such Products with noninfringing Products, or (D) refund the price paid by Purchaser for such Products after Purchaser's return of such Products to Seller. This Paragraph 10 states Seller's sole obligation and Purchaser's exclusive remedy with respect to patent, trademark or copyright infringement, provided that Seller's liability for patent, trademark and copyright infringement shall not exceed the price paid by Purchaser under the Contract.

- c. Seller shall own and continue to own any and all intellectual property rights (including any rights in patents, trademarks, copyrights, and similar intellectual property rights, both in the United States and in jurisdictions foreign thereto) related to or embodied in the Products, and no rights in such intellectual property are transferred or licensed to Purchaser other than the limited right to incorporate Products purchased from Seller in products to be manufactured or sold by Purchaser.

11. Limitation of Remedies

- a. Seller shall be given reasonable and prompt opportunity to examine any claim of defect by the Purchaser.
- b. Purchaser agrees that its sole and exclusive remedy against the Seller shall be limited to either repair or replacement of the Products or a refund of the purchase price at Seller's option. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing to repair or replace the defective Products.

12. Limitation of Damages

- a. THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE IN THE CLAIM.
- b. IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS AND/OR MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD PARTY CLAIMS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. Notwithstanding anything to the contrary in the Contract, Seller shall not be responsible for, and shall incur no liability with respect to, any information supplied by Purchaser or any of its subcontractors to Seller.
- d. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATION OF DAMAGES PROVISIONS SET FORTH IN THIS PARAGRAPH 12 SURVIVE BETWEEN PURCHASER AND SELLER EVEN IF THE EXCLUSIVE REMEDY SET FORTH ABOVE IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.



13. Confidential Data

- a. All information and materials received by Purchaser from Seller or Seller's agents pursuant to this Contract (including any idea, concept, design, prototype, product configuration, invention, method, procedure, system, plan, model, program, software or code, data, specification, drawings, diagram, flow chart, documentation, know-how, work of authorship, and any other subject matter, material, or information that is considered by Seller to be proprietary or confidential and/or that otherwise qualifies for protection under any law providing or creating intellectual property rights, collectively referred to herein as "Confidential Information") shall remain the property of Seller and shall be treated by Purchaser as confidential unless Seller has indicated a contrary intent in writing. Purchaser agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances, and will promptly notify Seller of any loss, misuse, or unauthorized disclosure of Confidential Information. Purchaser will not remove any confidentiality, proprietary, or similar markings from Confidential Information. Immediately upon termination of this Agreement, all such Confidential Information, together with any and all copies thereof, shall be returned to Seller. Any Confidential Information made, conceived, developed or acquired by Seller in connection with the Contract or any related order shall vest in and inure to Seller's full benefit, notwithstanding any charges therefor that may have been or may be imposed by Seller, and shall not be disclosed to third parties without Seller's prior written consent. This obligation shall continue for so long as any Purchase Order for Products related to or using such Confidential Information is in effect and for a period of two years thereafter, provided, however, that the obligations of confidentiality with respect to Confidential Information designated by Seller to constitute a trade secret shall continue for as long as such information is entitled to protection as a trade secret. The obligations of confidentiality herein will not apply to information that is or becomes publicly known through no fault of Purchaser.
- b. Any property of Purchaser placed in Seller's custody for performance of the Contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any event beyond Seller's control.

14. Changes in the Products

Purchaser may request in writing changes in the specifications and shipping instructions of Products. As promptly as practicable after receipt of such request, Seller shall advise Purchaser whether or not such changes are feasible, timing for implementation if feasible, and what amendments to the Contract, if any, may be necessitated by such changes, including, without limitation, amendment of price, specifications and shipment schedule. If such proposed amendments to the Contract are accepted in writing by Purchaser, Seller shall make the requested changes with respect to such Products as may be affected thereby. Seller may at any time make such changes in the Products as shall constitute an improvement of the product or production efficiency in the judgment of Seller. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

15. Export Packaging and Documents

Prices include Seller's standard commercial export packaging, which will vary depending on whether shipment is made by air or ship. Purchaser shall bear any additional expenses required to satisfy Purchaser's specifications. Packages will be marked in accordance with Purchaser's instructions, and Seller shall furnish complete packing lists and such other information that Purchaser will have advised Seller may be necessary to enable Purchaser's agent to prepare documents required for export shipment. For customs and duty purposes, Purchaser shall supply Seller with all necessary information and assistance that is required for proper classification of the Products and each shipment to secure the most expeditious clearance of each shipment. No shipping devices may be returned to Seller unless such return is accepted in advance by Seller in writing and unless all return freight is prepaid by Purchaser.



16. Miscellaneous

- a. Whenever possible, each provision of this Contract shall be interpreted in such a way as to be effective and valid under applicable law. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and the parties shall substitute therefor an enforceable provision that achieves the same business purpose as the provision that is prohibited or unenforceable.
- b. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF MICHIGAN AND, ADDITIONALLY, WITH RESPECT TO PRODUCTS DELIVERED OUTSIDE THE UNITED STATES, THE UNITED STATES OF AMERICA (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.
- c. Seller and Purchaser specifically agree that any action brought by Seller or Purchaser to enforce any of the provisions of this Offer or the Contract shall be brought, heard and determined exclusively in either the Circuit Court for the County of Oakland, State of Michigan or, if subject matter jurisdiction exists, the U.S. District Court for the Eastern District of Michigan. The parties stipulate that the referenced venues are convenient. Seller and Purchaser acknowledge that all directions issued by the forum court, including, without limitation, all injunctions and other decrees, shall be binding and enforceable in all jurisdictions and countries.
- d. Seller's failure to exercise a right or remedy or Seller's acceptance of a partial or delinquent payment shall not be deemed to be a waiver of any of Seller's rights or Purchaser's obligations under this Contract, and shall not constitute a waiver of Seller's right to declare an immediate or a subsequent default.
- e. No assignment of this contract or of any right or obligation under this contract shall be made by Purchaser without the prior written consent of Seller. In the event of a proper assignment, the contract shall be binding upon and inure to the benefit of the Purchaser's successors and assigns.
- f. In the event of Seller's enforcement of any term or condition in the Contract, Purchaser shall be liable to Seller for all costs, including attorneys' fees, incurred by Seller in enforcing the Contract and in collecting any sums owed by Purchaser to Seller.
- g. In its relationship with Seller, Purchaser is an independent contractor. Nothing in this Contract shall be construed such that Purchaser shall be considered an employee, agent or partner of Seller. This Contract shall not confer any rights or remedies upon any third-party, other than the parties to this Contract and their respective successors and permitted assigns.