Attachment 2 – Draft Contract TERMS

**Sale and Purchase Agreement**

**Date**: [*insert*]

**Seller**: His Majesty the King in right of the Government of the Cook Islands acting by and through the Ministry of Finance and Economic Management.

**Purchaser**: [*insert*]

Together the “Parties”

**Background**

The Purchaser has submitted a tender (“Tender”) in respect of the Cook Island Government Electrical Vehicle Sale Invitation to Tender (Reference No. SA2324-01).

This Agreement sets out the terms and conditions of the sale and purchase of the relevant vehicle(s) in connection with that Tender.

**Terms and Conditions**

1. **Agreement**

The Seller agrees to sell, and the Purchaser agrees to purchase, the vehicle, or vehicles, detailed in the attached Schedule (“Vehicle(s)”), subject to the terms and conditions of this Agreement.

1. **Price and payment**

The total price payable by the Purchaser for the Vehicle(s) is $[*amount*] (exclusive of VAT, if any) (“Price”).

The Purchaser will, immediately upon the signing of this Agreement by the Parties (the date of which being the “Contract Date”), and prior to Purchaser’s collection of the Vehicle(s), pay the Price to the Seller by way of bank transfer to the Seller’s nominated account (as advised by the Seller to the Purchaser).

If the Seller does not receive into its nominated account payment of the Price (in cleared funds) within 5 business days following the Contract Date, the Seller may, with or without notice to the Purchaser, terminate this Agreement with immediate effect.

1. **Collection**

The Purchaser will, within 24 hours following:

i. receipt of the Price (in full and in cleared funds) into the Seller’s nominated bank account; and

ii. completion of the transfer of ownership of the Vehicle(s) with the Bank of the Cook Islands (which includes the purchase of new number plates and associated costs);

collect the Vehicle(s) from such location in Rarotonga as is advised by the Seller. Collection is not permitted prior to receipt by the Seller of the Price and evidence of transfer of ownership in accordance with subclauses 3.i and ii above.

1. **Transfer of Vehicle(s) to Purchaser**

Title and risk in each Vehicle transfers to the Purchaser upon the occurrence of the events described in sub clauses 3.i and ii above in respect of that Vehicle.

The Vehicle(s) carry the standard new car manufacturer’s warranties which can be transferred to the Purchaser as a consequence of the purchase and transfer of title to the Vehicle(s). The Purchaser will be solely responsible for procuring and arranging the transfer of the warranties attached to their purchased Vehicle(s) directly with Hyundai New Zealand (including, without limitation, by completing and submitting, within any required timeframes, any documentation to effect such transfer). The Seller will not be responsible or liable to the Purchaser if, for any reason, these warranties fail to be transferred.

1. **Exclusion of Warranties**

The Purchaser acknowledges and agrees that the Vehicle(s) is/are being sold by the Government on an ‘as-is, where-is' basis. To the fullest extent permitted by law, the Seller excludes all warranties, conditions, terms, representations or undertakings whether express, implied, statutory or otherwise, including, without limitation, any condition or warranty as to merchantability, quality, compliance with description or fitness for a particular purpose.

The Parties acknowledge and agree that the Vehicle(s) are being supplied pursuant to a competitive tender, and otherwise than in trade, and that the Consumer Guarantees Act 2008 (“CGA”) therefore does not apply to the supply of the Vehicle(s), including by virtue of section 41 of the CGA. However, if and to the extent it is determined by a court of competent jurisdiction that the CGA applies to the supply of the Vehicle(s), then: (i) if the Purchaser is acquiring, or holding itself, himself or herself out as acquiring, the Vehicle(s) for the purposes of a business, then the CGA will not apply; and (ii) subject to the preceding subclause (i), nothing in this agreement will remove or modify the Purchaser’s rights under the CGA.

1. **Damage by Seller**

If any Vehicle is damaged during the period between the time the Purchaser submitted its Tender and the time at which risk in that Vehicle transfers to the Purchaser pursuant to clause 4 above, the Seller may, at its option and as its sole and exclusive liability to the Purchaser in respect of such damage, either repair the damage, refund to the Purchaser an amount which is commensurate with the cost of repairing the damage, or offer the Purchaser a full refund. Where the Seller offers the Purchaser a full refund, the payment of any such refund will be conditional upon, where applicable, the Purchaser transferring title to the relevant Vehicle back to the Seller and the Vehicle being returned into the Seller’s possession in the same condition as it was in at the time risk in the Vehicle transferred to the Purchaser in accordance with clause 4 above.

1. **Liability**

If the Seller fails (for any reason) to make the Vehicle(s) available to the Purchaser for collection, the Seller’s sole and exclusive liability to the Purchaser will be to refund the Price paid by the Seller.

To the fullest extent permitted by law, the Seller will not be liable to the Purchaser for: (i) any loss of profits, loss of revenue, loss of goodwill, loss of opportunity, loss of business or loss of use; or (ii) any indirect, consequential or special loss, damage, cost or expense; in each case suffered or incurred by the Purchaser under or in connection with this Agreement.

To the fullest extent permitted by law, the Seller's total aggregate liability to the Purchaser under or in connection with this Agreement will not exceed an amount equal to the Price.

1. **No inducement**

The Purchaser warrants, represents and undertakes that the Purchaser has not offered any inducement in connection with the entry into this Agreement.

1. **Termination**

The Seller may terminate this Agreement at any time and with immediate effect by written notice to the Purchaser if the Purchaser has committed a breach of this Agreement and has failed to remedy that breach within 5 business days following a direction from the Seller to the Purchaser to remedy that breach.

1. **General Terms**

This Agreement records the entire understanding and agreement of the Parties relating to the matters dealt with in this Agreement. This Agreement supersedes all previous arrangements, understandings or representations (whether written, oral or both) relating to these matters. No amendment to this Agreement will be effective unless it is recorded in writing, signed by a duly authorised representative of each party.

No waiver by a party of any of its rights or remedies under this Agreement will be effective unless it is in writing and signed by a duly authorised representative of that party.

If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

This Agreement is governed by the laws of the Cook Islands and the Parties submit to the exclusive jurisdiction of the courts of the Cook Islands in respect of all matters relating to this Agreement.

In this Agreement, a “business day“ means any day of the week excluding Saturdays, Sundays and days which are observed as public holidays in the Cook Islands, as specified in the Public Holidays Act 1999.

Signed by the Seller: Signed by the Purchaser:

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**Schedule**

**Vehicle(s)**

*[Below identification will be completed for each vehicle purchased]*

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| --- | --- |
| **Vehicle Item Number:** | [include identification number] |
| **Vehicle Type:** | Car |
| **Vehicle Brand:** | Hyundai |
| **Vehicle Colour:** | Silver |
| **Vehicle Make & Model:** | IONIQ Electric 38.2kW Entry |