

Sales Agreement

This Sales Agreement (hereinafter referred to as “this Agreement”), is made and entered into by and between a seller of product(s) such as construction machineries (hereinafter referred to as “the Seller”), posted on the website (BIGLEMON: <https://biglemon.kenkey.jp>; hereinafter referred to as “the Site”) which is operated and managed by KENKEY Inc. (hereinafter referred to as “KENKEY”), and a Buyer who buys such product(s) (hereinafter referred to as “the Buyer”) through the Site and stipulates the terms and conditions relating to the sales and the purchase of the Applicable Product(s).

Article 1 (Definition of Terms)

Unless otherwise specified in this Agreement, the terms and definitions stipulated herein shall be as follows:

- (1) “BIGLEMON” collectively refers to provided services on the Site that enable the purchase of an Applicable Product and any other related services.
- (2) “Anshin-Yuso Service” refers to a domestic transportation service in Japan offered by a recommended Transport Company incidental to the sales of an Applicable Product.
- (3) “Deadline for Receipt” refers to the time limit, which is described in the Proforma Invoice of domestic transactions, Buyer shall accept delivery of the Applicable Product from Seller.
- (4) “Purchase Price” refers to the total amount of price for an Applicable Product, including but not limited to, the purchase price of the Applicable Product, inspection fee, and insurance premiums that the Buyer should pay to the Seller in accordance with this Agreement.
- (5) “Destination” refers to the place or port which the Buyer designates to deliver the Applicable Product.
- (6) “Receiving Agent Service” refers to the service in which the Buyer remits the Purchase Price to the KENKEY’s designated bank account and KENKEY will pay out specified amount from such remittance to the Seller when the specified requirements are satisfied with regard to the sales of the Applicable Product.
- (7) “Proforma Invoice” refers to a billing statement or Proforma Invoice based on KENKEY designated format, stating terms and price of sales and transportation of an Applicable Product and related services.
- (8) “Applicable Product” refers to a Product listed on BIGLEMON such as construction equipment.
- (9) “Yushutsu-Omakase Service” refers to services related to the export procedures outside of Japan offered by a recommended Export Agent in relation to purchasing of the Applicable Product or related services.
- (10) “Export Agent” refers to the partner company of KENKEY who offers the Yushutsu-Omakase Service.
- (11) “Transport Company” refers to the partner company of KENKEY who offers the Anshin-Yuso Service.
- (12) “Delivery Date” refers to the date of delivery determined after due consultation between the Seller and the Buyer.

Article 2 (Conclusion of this Agreement)

1. This Agreement shall be concluded when the Buyer clicks the “Order” button on the Site. The Seller and the Buyer agree that they will be mutually bound by the provisions of this Agreement by communicating through KENKEY on the Site, signatures or name and seal by both parties hereto shall not be required for the validity or enforceability of this Agreement.
2. The details of an Applicable Product on this Agreement shall be stated in the Proforma Invoice.

Article 3 (Settlement Terms)

1. The Buyer shall remit the full amount stated on the Proforma Invoice for the Applicable Product to the KENKEY designated bank account by using the Receiving Agent Service under the terms stated on the Proforma Invoice. All bank remittance fees in this case shall be borne by the Buyer.
2. The Seller shall hold the Applicable Product for the Buyer until the due date for payment stated on the

Proforma Invoice. This Agreement shall be terminated immediately if the Buyer fails to pay the full amount by the due date, unless KENKEY accepts the deposit at their own discretion.

3. The Buyer shall accept the delivery of the Applicable Product by the Deadline for Receipt. In the event that the Buyer does not accept the Applicable Product by the Deadline for Receipt after the Purchase Price is accepted by KENKEY, this Agreement shall be deemed to be canceled for a reason attributable to the Buyer.
4. The Seller and the Buyer shall comply with and agree to the Terms of Use regarding the Receiving Agent Service that KENKEY separately stipulates and presents.

Article 4 (Terms of Delivery, Ownership, Risk Bearing, and Freight Costs and Insurance Costs)

1. The Seller and the Buyer shall separately agree on the Delivery Date, delivery location, transfer of ownership, risk bearing, the burden of ocean freight, transport fee, insurance premium and other related costs for the Applicable Product.
2. Notwithstanding the provisions in the preceding paragraph, in the event that the Destination of an Applicable Product is inside of Japan, and the Buyer utilizes the Anshin-Yuso Service parties shall comply with the following conditions.
 - (1) When the Seller delivers the Applicable Product to the Transport Company on the Delivery Date and the delivery place separately agreed with the Buyer, the delivery to the Buyer shall be deemed to have been completed with the loading of the Applicable Product in a means of transport provided by the Transport Company or with the consignment under the disposal of the Transport Company (hereinafter referred to as "Delivery").
 - (2) The ownership and risk bearing of the Applicable Product shall be transferred from the Seller to the Buyer simultaneously upon completion of the Delivery.
 - (3) The Buyer shall bear the usage fee for the Anshin-Yuso Service. Provided, however, that the Seller shall bear the expenses of loading the Applicable Product for the Transport Company, and the expenses and responsibility that arise as a result of unloading the Applicable Product from the Seller's means of transport regarding the transport from the facility of the Seller to the delivery place when the delivery place is not a facility of the Seller.
 - (4) The Buyer shall bear insurance costs for transport of the Applicable Product.
3. In the event that the Destination of an Applicable Product is outside of Japan, the parties shall comply and agree with the selected terms among the terms specified by KENKEY and any other separate agreements. Provided, however, that the Buyer shall obtain all the necessary approvals and permits from governments for exporting the Applicable Product at its own expense.
4. Notwithstanding the provisions of paragraphs 1 and 3 of this article, when using the Yushutsu-Omakase Service, the Seller shall comply with the following terms:
 - (1) Delivery of the Applicable Product to the Buyer shall be deemed to be completed, when the Export Agent has delivered the Applicable Product on the Vessel at the port of loading as per the Seller's instructions.
 - (2) The ownership and risk bearing of the Applicable Product shall be deemed to have transferred to the Buyer when the Applicable Product is delivered on board a vessel at the designated port of loading.
 - (3) Expenses regarding transport agreement and insurance agreement shall be subject to the terms selected by the parties among the terms specified by KENKEY hereto and any other separate agreements.

Article 5 (Notice of Receipt)

1. The Seller shall submit to the Buyer all the necessary original documents (including but not limited to documents certifying the rights, and bills of lading) required by the Buyer to legitimately receive and use the Applicable Product no later than the Delivery Date. The Buyer cannot require reissuing the received document.

2. After the Applicable Product is delivered and carried in by the Transport Company etc., the Buyer shall immediately inspect such Applicable Product and shall notify the Seller of the results. By clicking the "Item Received" button on My Page in the Site (hereinafter referred to as "Notice of Receipt"), or no notice is given from the Buyer or the Transport Company to the Seller within seven (7) days (including the Delivery Date) from the Delivery of the Applicable Product, the inspection of Applicable Product shall be deemed to have been completed. After the completion of inspection, the Buyer affirms the completeness of all factors of the Applicable Product including its structure, apparatus and function and can not file any claim or protest over such factors.
3. In the event that the specifications of the Applicable Product fail to conform to the contents of the agreement with the Seller as a result of the inspection, the Buyer shall submit a written list of nonconformities to the Seller within seven (7) days from the Delivery, and shall consult about the measures.

Article 6 (No Warranty)

The Applicable Product is a second-hand machine and is sold "as is"; therefore, the Seller shall make no express or implied warranty to the Buyer. The Seller shall expressly disclaim any implied warranties of merchantability or fitness for a specific purpose.

Article 7 (Cancellation of Agreement)

After the conclusion of this Agreement, neither the Seller nor the Buyer shall be entitled to cancel this Agreement unilaterally at its own convenience. In the event that the Destination is outside Japan, and if this Agreement is canceled for a reason attributable to the Buyer after the Applicable Product is delivered to a bonded area, the Buyer shall not be exempted from the obligation to make payment for the Applicable Product and shall issue a power of attorney to the Seller regarding the procedure necessary to transport the Applicable Product out of the bonded area.

Article 8 (Compensation for Damage)

1. In the event that the Seller or the Buyer incurs damage in relation to this Agreement, the Seller or the Buyer shall assume liability for compensating the other party for only general damages, reasonable professional expenses such as attorney's fee required for the elimination of the applicable damage, and shall not assume any liability for compensating damages with regard to special damages and consequential damages, regardless of whether or not such a possibility is foreseeable. Provided, however, that damages resulting from willful misconduct or gross negligence shall be excluded.
2. Notwithstanding the provisions of the preceding paragraph, the Seller shall not assume any liability for any of the following cases:
 - (1) When attributed to false information provided by the Buyer on the Site or by any other means
 - (2) When the total billing amount is less than 30,000 yen (tax excluded)

Article 9 (Prohibition of Transfer)

Without the prior written approval from the other party hereto, the Seller and the Buyer shall be prohibited from transferring the rights and obligations arising under this Agreement, in whole or in part, to a third party.

Article 10 (Severability of Agreement)

If any provisions of this Agreement are deemed invalid or unenforceable, the other provisions in this Agreement shall remain valid and enforceable to the maximum extent possible under the applicable laws without being affected at all. Any provisions judged invalid shall be deemed to have been replaced by any valid and enforceable provisions that are as close as possible in detail to those agreed by the parties.

Article 11 (Entire Agreement)

This Agreement shall constitute the entire agreement regarding the sales and purchase of an Applicable Product between the parties hereto and shall supersede any and all the prior or current negotiations, representations, promises, and agreements between the parties with respect to the subject matter herein. In the event of any discrepancy between this Agreement and any other provisions stipulated by the parties hereto, the provisions of this Agreement shall govern.

Article 12 (Governing Laws and Court of Jurisdiction)

1. This Agreement and all the matters related hereto shall be governed by and construed in accordance with the laws of Japan. Any disputes arising in connection with this Agreement shall be settled at the Tokyo District Court or Tokyo Summary Court, which shall assume the agreed exclusive jurisdiction as the court of first instance.
2. Application of the United Nations Convention on Contracts for the International Sale of Goods shall be expressly excluded from this Agreement.

Article 13 (Languages)

The Japanese language version of this Agreement shall be the official text and shall be construed accordingly. A translation of English or any other language version shall not affect any interpretation of this Agreement.