**AGREEMENT ON THE SALE AND PURCHASE OF SHARES**

**OF KA-GB POWER JOINT STOCK COMPANY**

**No: /\_\_\_/2017**

Today on 2017, the Parties named below have executed and signed this agreement (the “**Agreement**”) on the sale and purchase of shares of KA-GB POWER Joint Stock Company (the “**Company**”).

**Mr. HQN**

Nationality: Vietnamese

Identity card No.: \_\_ issued by \_\_

Registered permanent address:

Telephone: +

Fax:

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

(Hereinafter referred to as “**Mr. HQN**”)

AND

**C COMPANY**

Business license No.: \_\_ issued by \_\_

Registered head office:

Telephone:

Fax:

Account number: at

Represented by: [Name] — [Title]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

(Hereinafter referred to as “**C COMPANY**”)

(Mr. HQN and C COMPANY hereinafter may collectively be referred to as the “**Parties**” and individually as “**Party**”)

**WHEREAS**

* Mr. HQN is currently a shareholder of the Company who wishes to sell the Transferred Shares to C COMPANY under its full and legal ownership pursuant to the terms and conditions of this Agreement;

* C COMPANY wishes to purchase the Transferred Shares from Mr. HQN and become a shareholder of the Company pursuant to the terms and conditions of this Agreement;
* Mr. HQN and C COMPANY have agreed on the sale and purchase of the Transferred Shares.

**NOW**, **THEREFORE**, the Parties agree to sign this Agreement with the terms and conditions as follows:

**Article 1: Definitions**

1.1 “**Affiliate**” means in relation to any Party, any subsidiary undertaking or parent undertaking of that Party and any subsidiary undertaking of any such parent undertaking, in each case from time to time and in this regard, an undertaking is a subsidiary undertaking of another undertaking (its parent undertaking) if that other undertaking, directly or indirectly, through one or more subsidiary undertakings:

1. holds a majority of the voting rights in that undertaking; or

ii. is a member or shareholder of that undertaking and has the right to appoint or remove a majority of members of its board of directors or hold a majority of voting rights in its board of directors other equivalent managing bodies; or

iii. has the right to exercise a controlling power over that undertaking:

(A) by virtue of provisions contained in its Charter, or memorandum or articles of association or equivalent constitutional documents; or

(B) by virtue of a contract with that undertaking or other members or shareholders of that undertaking; or

iv. is a member or shareholder of that undertaking and solely controls, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that undertaking;

1.2 “**Charter Capital**” means the charter capital of the Company as registered in the ERC of the Company and has been paid in full by the shareholders of the Company, with the par value of VND [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (*in words: Vietnamese \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dong only*);

1.3 “**Company**” means KA-GB POWER Joint Stock Company, joint stock company incorporated in accordance with the laws of the Socialist Republic of Vietnam under the enterprise registration certificate No. \_\_ issued by the Department of Planning and Investment of GB province for the first time on \_\_, as amended for the second time on \_\_ with its registered head office at Vietnam;

1 .3 “**Closing**” has the meaning ascribed to it in Article 4.1 of this Agreement;

1.4 “**Closing Date**” means the date when C COMPANY has confirmed that the condition precedents as provided in Article 5 have been satisfied or any other date as may be agreed between the Parties but in any event no later than [**please insert the number of days**] from the date of signing this Agreement;

1.5 “**ERC**” means the Enterprise Registration Certificate of a company;

1.6 “**Purchase Price**” means the purchase price of the Transferred Shares to be paid by C COMPANY to Mr. HQN in accordance with Article 3.2 of this Agreement;

1.6 “**Transferred Shares**” means 80,000,000 ordinary shares in the Charter Capital of the Company as detailed in Article 3.1 of this Agreement to be transferred by Mr. HQN to C COMPANY in accordance with the terms and conditions of this Agreement;

1.7 “**Shares**” means any share in the charter capital of the Company;

1.8 “**VIAC**” has the meaning ascribed to it in Article 9.2;

1.9 “**Survival Provisions**” means to Articles 7, 8, 9, and 11;

1.10 “**Third-party Right**” means a mortgage, charge, pledge, lien, right of usufruct, option, right of first refusal, right of pre-emption, easement, lease, other third-party right or any interest, encumbrance or security interest of any kind, or any other type of preferential arrangement (including, but not limited to any transfer of title and retention arrangement) having similar effect;

1.11 “**Transaction Documents**” means this Agreement and any other documents that are entered into in connection with the transactions contemplated by this Agreement;

1.12 “**VND**” or “**Vietnamese Dong**” means the lawful currency of the Socialist Republic of Vietnam;

1.13 “**Working Day**” means a day other than a Saturday or Sunday or public holidays in the Socialist Republic of Vietnam and the People’s Republic of China.

**Article 2: Sale and Purchase**

2.1 Subject to the terms and conditions set forth in this Agreement, Mr. HQN agrees to sell to C COMPANY and C COMPANY agrees to purchase from Mr. HQN the Transferred Shares free from any claims from or security interest created in favor of, any Third-party Rights.

2.2 The Transferred Shares are transferred together with all rights attached thereto, except for the rights to undistributed dividends accrued up to the Closing Date, which shall remain under the ownership of, and must be distributed upon the completion of the current financial year without any withholding or retention to, Mr. HQN.

**Article 3: Transferred Shares and Purchase Price**

3.1 Description of the Transferred Shares:

Description of the Transferred Shares:

Type of Shares: Ordinary shares in the Charter Capital of the Company

Quantity of Shares: 48,250,000 ordinary shares, accounting for [11.35]% of the Charter Capital of the Company

Par value: VND10,000 per share

3.2 The Transferred Shares are sold to C COMPANY at the price of VND15,000 for each of the Transferred Shares pursuant to this Agreement. The purchase price that C COMPANY must pay for the Transferred Price in accordance with this Agreement is VND \_\_ (the “**Purchase Price**”), which is equivalent to USD \_\_\_\_\_\_\_\_\_\_\_ on the Effective Date and which shall be converted to the VND amount on the Closing Date upon the time when all the documents specified in Article 4.2 hereof have been delivered by MR. HQN or by the Company to C COMPANY.

**Article 4: Payment**

Subject to the fulfillment of the conditions precedent (the “**Condition Precedent**”) set out in Article 5 below:

4.1 The closing for the transaction contemplated under this Agreement shall take place at [venue] at [•] a.m. on the Closing Date (the “**Closing**”). When the Conditions Precedents set out in Article 5.1 hereof have been achieved by the Parties respectively and the documents set out in Article 4.2 have been obtained, the Parties shall notify the completion of the Condition Precedents to each other and the Closing Date shall occur on the day following the date when the Parties confirm the completion of their respective Conditions Precedents (or the following date if the Closing Date falls in any holidays or weekend). For this purpose, Mr. HQN shall take the role of the coordinator in following up the relevant Parties and in declaring the Closing Date.

4.2 On the Closing Date, Mr. HQN or the Company shall, where appropriate, deliver to C COMPANY the following documents:

i. duly executed agreements and documents relation to the transfer from Mr. HQN in favor of C COMPANY or its authorized representatives of the Transferred Shares;

ii. the share certificate issued by the Company recording C COMPANY as the legal owner of the Transferred Shares;

iii. an extract of the original shareholders register of the Company recording C COMPANY as the legal owner of the Transferred Shares;

iv. a copy of a valid resolution (certified by a duly appointed officer as true and correct) of the Board of Management of the Company approving the registration and recording of the name of C COMPANY in the shareholders register of the Company as the owner of the Transferred Shares;

vi. if required by the Charter of the company, a copy of a valid resolution (certified by a duly appointed officer as true and correct) of the General Meeting of Shareholders of the Company approving the transfer of the Transferred Shares to C COMPANY; and

vii. a certified copy of the Certified Additional Information on the shareholders to the ERC of the Company.

4.3 On the time when all the documents listed in Article 4.2 above have been delivered by Mr. HQN to C COMPANY, the Purchase Price stated in Article 3.2 above shall be paid fully by C COMPANY to Mr. HQN by the order of payment signed by C COMPANY instructing its bank to remit the amount equivalent to the Purchase Price from the Indirect Investment Capital Account (“**IICA**”) opened by C COMPANY at a bank licensed in Vietnam to the account of Mr. HQN as set out in Article 4.4 hereof.

4.4 The payment of the Purchase Price shall be made by telegraphic transfer to the account of MR. HQN with the following details:

* Account Name : HQN;
* Bank Name : Joint Stock Commercial Bank for Investment and; Development of Vietnam- South Thai Nguyen Branch;
* VND Account No : [***Please insert the VND Account No. of Mr. HQN***];
* Swift Code :
* Amount :
* Content : Transferring money to buy shares.

4.5 The total amount of the Purchase Price must be transferred by C COMPANY to Mr. HQN within 02 (two) Working Days from the Closing Date.

4.6 In the event that any payment amount of the Purchase Price is not transferred to Mr. HQN’s account with the details provided in Article 4.4 above on the Closing Date despite Mr. HQN’s delivery of all documents pursuant to Article 4.2, C COMPANY shall pay late payment interest with the rate of 0.1% per day (zero point one percent per day) on any late payment amount. The late payment interest will be accrued over the period from the day immediately following the Closing Date to the date of actual payment of the late payment amount to Mr. HQN’s account with the details provided in Article 4.4.

4.7 If C COMPANY does not complete its obligation to pay the Purchase Price within 30 days from the Closing Date, this Agreement shall automatically be terminated.

**Article 5: Conditions precedent**

5.1 The sale and purchase of the Transferred Shares pursuant to Article 2 and the payment of the Purchase Price pursuant to Article 4.3 of this Agreement will only take place if the following conditions precedent are fulfilled by C COMPANY and Mr. HQN, respectively:

1. the Transferred Shares are under full legal and beneficial ownership of Mr. HQN and Mr. HQN have the full discretion to sell the Transferred Shares to C COMPANY in accordance with the terms and conditions of this Agreement;
2. Each of the representations and warranties of the Parties in this Agreement is true and correct in the material respects on the date of this Agreement;
3. all the documents, consents and approvals required under Article 4.2 of this Agreement have be obtained by Mr. HQN and the Company, respectively, or otherwise waived by C COMPANY;
4. to register the shareholder’ status and obtain all authorizations and consents as required under Article 4.2 hereof in order for the Closing of this transaction, C COMPANY shall provide all its legal documents pursuant to Vietnamese law and as requested by Mr. HQN and the Company, and its account balance certified by a well-known foreign bank in Hong Kong; and
5. C COMPANY has opened the IICA at a bank licensed in Vietnam, which is acceptable to Mr. HQN, and the Purchase Price has been remitted to the IICA at least 2 Working Day before the Closing Date.

5.2 The Parties shall make all reasonable efforts to achieve satisfaction of the conditions set out in Article 5.1 as soon as possible from the date of signing of this Agreement. C COMPANY may at its discretion and at any time waive in whole or in part the conditions in [Article 5.1(i), (ii), (iv), and (v)] (the “**Conditions for C COMPANY**”). Mr. HQN may only refuse to fulfill the condition in Article 5.1 (iii) if the failure to achieve satisfaction of the condition is due to C COMPANY and C COMPANY may only refuse to fulfill the same condition if the failure to achieve satisfaction of the condition is due to Mr. HQN (the “**Common Conditions**”). Mr. HQN may at its discretion and at any time waive in whole or in part the conditions in Articles 5.1 (vi) (the “**Conditions for Mr. HQN**”).

5.3 If Mr. HQN fails or is unable to perform any of the Condition Precedent for C COMPANY in accordance with Article 5.2 and without the waiver from C COMPANY for that uncompleted Condition Precedent, C COMPANY shall be entitled to make one of the following decisions:

1. waive the Conditions Precedent required to be completed by Mr. HQN in accordance with Article 5.2;
2. terminate this Agreement (other than the Survival Provisions), and in this case neither Party shall have any claim of any nature whatsoever against the other Party under this Agreement (save in respect of any rights and liabilities which have accrued before termination or in relation to any of the Survival Provisions); or
3. elect to defer Closing Date to any other date as it may specify in such notice.

5.4 If either of Mr. HQN or C COMPANY is unable to perform and achieve any of its respective Common Conditions under Article 5.2 where the failure to perform the condition is due to C COMPANY, Mr. HQN shall not be obliged to complete the sale of the Transferred Shares and may, in his respective absolute discretion, by written notice to C COMPANY at the time the Closing Date would otherwise be due to take place:

i. waive the Common Conditions in accordance with Article 5.2;

ii. terminate this Agreement (other than the Survival Provisions), and in this case neither Party shall have any claim of any nature whatsoever against the oilier Party under this Agreement (save in respect of any rights and liabilities which have accrued before termination or in relation to any of the Survival Provisions); or

iii. ask C COMPANY for deferring the Closing Date to such other date as it may specify in such notice.

5.5 Mr. HQN undertakes to disclose as soon as reasonably practicable to C COMPANY in writing any breach, matter, event, condition, circumstance, fact or omission of which Mr. HQN is or in its reasonable opinion may give rise to a right of termination under this Article 5.

**Article 6: Representations and Warranties**

6.1 Mr. HQN hereby represents and warrants to C COMPANY as follows:

i. Mr. HQN is the lawful and beneficial owner of the Transferred Shares and has the right and power to sell and transfer the Transferred Shares to C COMPANY in accordance with the provisions of this Agreement;

ii.  The Transferred Shares to be sold by Mr. HQN are neither subject to transfer restriction nor require any consent of other third party (except for the competent authorities of Vietnam) that would prevent C COMPANY from becoming the legal and beneficial owner of the Transferred Shares upon the Closing Date; and

ii. There is no Third-party Right, and there is no agreement, arrangement or obligate to create or give a Third-party Right, in relation to any of the Transferred Shares;

6.2 Each of the representations and warranties of the respective Parties in this Agreement are separate and independent and, except as expressly provided to the contrary in this Agreement, is not limited by reference to any other paragraph in this Agreement.

6.3 Mr. HQN acknowledges and agrees that C COMPANY has entered into this Agreement on the basis of the representations and warranties given by Mr. HQN in this Agreement on the date of signing of this Agreement.

6.4 Mr. HQN undertakes to notify C COMPANY in writing as soon as reasonably practicable if it becomes aware of any circumstances arising after the signing date of this Agreement which would cause any representation or warranty (if the same were repeated with reference to the facts and circumstances then existing) to become untrue or inaccurate or misleading in any respect.

6.5 C COMPANY hereby represents and warrants to Mr. HQN as follows:

i. C COMPANY is fully entitled under the laws in Vietnam and China to purchase the Transferred Shares to become a shareholder of the Company, and fully capable of paying the Purchase Price.

6.6 The representations and warranties given by the Parties in this Agreement shall be deemed to be repeated immediately before the Closing Date by reference to the facts and circumstances then existing as if references in the representations and warranties to the date of this Agreement were references to the Closing Date.

**Article 7: Costs and Taxes**

7.1 Each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation of the Transaction Documents, except that any documents prepared in the name, or issued to the Company shall be borne by the Company.

7.2 C COMPANY shall be responsible for the payment of any cost and tax due to any authority in Vietnam and/or in China required in relation to the purchase of the Transferred Shares pursuant to the terms of this Agreement, including any costs relating to the transfer and registration of the Transferred Shares under its name.

7.3 Notwithstanding the above provisions of this Agreement, C COMPANY shall not be allowed to withhold any taxes, levies, charges, fees or any payment of tax and levy nature from the Purchase Price to be paid to Mr. HQN for whatsoever reasons.

**Article 8: Notices**

8.1 Any notice or other communication in connection with this Agreement shall be in writing and in English and shall be delivered to the receiving Party with the contact details as mentioned in the citation of this Agreement (or other contact details notified by one Party to the other Party in writing from time to time). Notice or other communications could be effected via email and/or facsimile (with the record that it has been sent) of the relevant Party as set out respectively in the introduction to the Parties hereunder.

8.2 Except for evidence of earlier receipt, any notice or other document sent under this Agreement shall be deemed to have been served at the time of delivery if delivered by hand; or upon the successful transmission as evidenced by a confirmation report if sent by facsimile; or upon the expiry of 5 (five) Working Days after posting if sent by registered mail.

**Article 9: Governing Law and Dispute Settlement**

9.1 This Agreement shall be governed by and construed in accordance with the Laws of Vietnam. In the event of a dispute, this Agreement shall be interpreted and applied in accordance with the Laws of Vietnam but without reference to any rules of conflicts of laws of Vietnamese laws.

9.2 Any dispute, controversy or claim arising between the Parties as to the construction of this Agreement or as to any matter of whatsoever nature arising thereunder or in connection therewith, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Hanoi City Vietnam by Vietnam International Arbitration Centre (“**VIAC**”) in accordance with the UNCITRAL Arbitration Rules as at present in force. The award of VIAC shall be finally binding upon the relevant Parties. The language to be used in the arbitral proceedings shall be English.

9.3 The arbitral tribunal shall consist of three (3) independent arbitrators One (1) of whom shall be appointed by the Claimant, one (1) of whom shall be appointed by the Party who has been served a Notice of Dispute in accordance with Article 9.4, and the third (who shall act as Chairman of the arbitral tribunal) to be appointed by VIAC.

9.4 For the purpose of this Agreement a dispute shall be deemed to arise when the Party initiating the proceedings (the “**Claimant**”) serves on another Party a notice in writing (in this Clause, a “**Notice of Dispute**”) stating the nature of the dispute.

9.5 The Claimant shall appoint one (1) arbitrator in such Notice of Dispute.

9.6 The Party in receipt of any Notice of Dispute shall appoint an arbitrator within twenty-eight (28) days or such longer time as may be agreed between the Parties.

9.7 Failing such appointment by any Party that arbitrator shall also be appointed by VIAC within fourteen (14) days after such time period. The third arbitrator shall be appointed by VIAC within twenty-eight (28) days of the receipt of such Notice of Dispute.

9.8 The Parties acknowledge that it is their intention that damages shall be available as a remedy against any breach by a Party of any’ provision in this Agreement even if the remedy of injunction, specific performance or similar remedy for such breach is not available in the courts of Vietnam. Each Party agrees that where a claim for damages is made against it for a breach of a provision in this Agreement, it will not raise any defence that any provision in this Agreement is void, voidable or unenforceable for any reason.

9.9 The prevailing Party in the arbitration shall be awarded the costs and expenses (including legal fees and expenses) reasonably incurred in connection with any such arbitration.

**Article 10: Termination**

This Agreement will be terminated upon occurrence of any one of the following events:

10.1. Upon the fulfillment of all obligations hereunder;

10.2 Upon agreement of termination between the Parties;

10.3 By either Party in accordance with Articles 5.3(ii) or 5.4(ii) of this Agreement; or

10.4 By either Party by a written notice within 30 days dated from the occurrence of Event of Force Majeure to the other Party in case of Event of Force Majeure which causes this Party to fail or delay in the performance of its obligations under this Agreement.

For avoidance of doubt, events beyond a Party’s reasonable control, including fire, radioactivity, war, earthquakes, typhoons, flooding, acts of governments or their officials where the occurrence or consequences are unforeseeable and unavoidable and cannot be overcome by due diligence. The failure or delay to perform its obligations under this Agreement by a Party affected by a Force Majeure event shall not be deemed a breach of this Agreement.

**Article 11: Confidentiality**

11.1 Either Party (the “**Promisor**”) to this Agreement hereby warrants, represents and undertakes to keep strictly confidential this Agreement, any and all of its terms and conditions, and any other information related to the other Party to this Agreement (the “**Disclosing Party**”) that it is provided or possesses during the execution and implementation of this Agreement.

11.2 Without prejudice to Article 11.1 above, Mr. HQN has the right to disclose any information related to C COMPANY to the Company for Completion of the sale and purchase of Transferred Shares and the registration of the Transferred Shares under C COMPANY’s name but Mr. HQN shall procure that the Company shall keep such information confidential in accordance with the obligations herein.

11.3 Nothing in Article 11.1 above prevents any announcement being made or any confidential information being disclosed:

1. by a Promisor with the prior written consent of the Disclosing Party, which in the case of any announcement shall not be unreasonably withheld or delayed; or

ii. to the extent required by law or required to be disclosed pursuant to any order, rule or regulation of any court or competent government authority or pursuant to the rules or the requirements of any applicable stock exchange (provided, however, that the Promisor promptly notifies the Disclosing Party of such requirement and its reason for disclosing such information); or

iii. by C COMPANY to any of its Affiliates.

11.4 Nothing in Article 11.1 above prevents disclosure of confidential information by any Promisor:

i. to the extent that the information is in or becomes generally known to the public other than as a result of a breach of any undertaking or duty of confidentiality of this Agreement by that Promisor or any willful or negligent act or omission on the part of the Promisor or any of its employees; or

ii. to that Promisor’s lawyers, financiers, professional advisers, auditors or bankers provided that the Promisor shall use its best endeavous to procure that each of its employees and that each of the lawyers, financiers, professional advisers and consultants so appointed by the Promisor are made aware of the terms of this Article and shall strictly observe such terms as if the said lawyers, financiers, professional advisers, auditors or bankers had extended similar binding undertakings to the Disclosing Party by the provisions of this Article.

**Article 12: Generals**

12.1 Assignment: Neither Party shall be entitled to assign this Agreement or transfer any rights or obligations hereunder without the express prior written consent of all the other Parties or by operation of laws, except that C COMPANY may designate any of its Affiliates to purchase and act as the transferee of any part or all of the Transferred Shares.

12.2 Amendment: Any amendment or modification to this Agreement must be in writing and signed by the authorized representative of the Parties and any such amendment or modification shall form an integral part of this Agreement.

12.3 No waiver: A Party may, in its discretion, in whole or in part release, compromise or waive its rights or grant time or indulgence in respect of, any liability to it under this Agreement without in any way prejudicing or affecting the liability of or its rights against the other Parties in respect of the same or a like liability.

Neither the single or partial exercise or temporary or partial waiver by a Party of any right, nor the failure by a Party to exercise in whole or in part any right or to insist on the strict performance of any provision of this Agreement, nor the discontinuance, abandonment or adverse determination of any proceedings taken by a party to enforce any right or any such provision shall (except for the period or to the extent covered by any such temporary or partial waiver) operate as a waiver of, or preclude any exercise or enforcement or (as the case may be) any further or other exercise or enforcement by that Party of, that or any other right or provision.

12.4 Illegality: The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Agreement.

12.5 Entireness: This Agreement constitutes the entire agreement between the Parties and supersedes any and all previous agreements, understandings and correspondences, both in written and oral, related to the subject of this Agreement.

12.6 Third Party Rights: A person who is not a Party in this Agreement has no right to enforce any term and condition of this Agreement except for having been legally authorized by such Party and received the prior written consent from the other Party of the Agreement.

12.7 Counterparts: This Agreement is made into six (6) originals in English and six (6) originals in Vietnamese of the equal validity. Each of the Parties shall keep one (1) original version in each language for record and implementation. Three (3) originals in English and three (3) originals in Vietnamese shall be for submission to the relevant governmental bodies of Vietnam in accordance with the Vietnamese law. If there is any inconsistency between the English and Vietnamese versions, the English version shall prevail to the extent of such inconsistency.

12.8 Effect: This Agreement takes effect from the date of its signing.

**IN WITNESS WHEREOF**, the Parties have duly signed this Agreement on the date mentioned above.

|  |  |
| --- | --- |
| **Mr. HQN**  Name:  Position: | **C COMPANY**  Name:  Position: |