

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and LS Mtron, Ltd. (LS Mtron), with its principal location at 11th floor, LS Tower, 127, LS-ro, Dongan-gu Anyang, Gyeonggi-do, South Korea (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
- (2) Regulation. CARB adopted the "*Off-Road Compression-Ignition Engines and Equipment*" Regulation (Cal. Code Regs., tit. 13, §§ 2420-2427) (Off-Road CI Regulation) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from these off-road engines.
- (3) Regulatory Provisions. Manufacturers of new off-road compression-ignition (CI) engines that are manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California are required to certify these engines and obtain an Executive Order (EO) from CARB. The engines must meet the emission standards (either through a direct standard or through a family engine level or "FEL" under the averaging, banking, and trading or "ABT" program), and the manufacturer must also properly label, provide for defects investigation and reporting, and conduct production engine testing based on the model year (MY) and maximum engine power. Manufacturers may produce equipment and engines that are exempt from meeting current MY emission standards for a portion of their California-directed production volume using flexible allowances but must meet the notification, reporting, and labeling requirements. (Cal. Code Regs., tit. 13, §§ 2420-2427.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty-seven thousand three hundred sixty-three dollars (\$47,363.00 USD) for each strict liability violation of the Off-Road CI Regulation, respectively, for each noncompliant equipment or engine. (Health & Saf. Code, § 43016; Cal. Code Regs., tit. 13, § 2420 et seq.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, LS Mtron was organized under the laws of South Korea as a limited company, and conducted business in the State of California.

- (6) Allegations. CARB alleges that LS Mtron violated the Off-Road CI Regulation by manufacturing for sale and selling into California, new off-road compression-ignition engines that failed to comply with the requirements of the Off-Road CI Regulation by failing to document two Auxiliary Emission Control Devices (AECD) in its certification applications (Cal. Code Regs., tit. 13, § 2423(c)(2)(B)), resulting in 1,574 violations. CARB also alleges these two AECDs were inadvertently undisclosed in their certification applications to CARB, but were subsequently voluntarily self-disclosed to CARB. They apply to 2019 through 2021 model year engine families (KLGCL02.5L4T, KLGCL01.9L3T, KLGCL01.9L3C, LLGCL02.5L4T, LLGCL01.9L3T, LLGCL01.9L3C, MLGCL02.5L4T, MLGCL01.9L3T, and MLGCL01.9L3C). CARB alleges that if the allegations in paragraphs 1 through 6 (collectively, the "Allegations") were proven, civil penalties could be imposed against LS Mtron for each and every engine involved in the violations.
- (7) Acknowledgment. LS Mtron admits that CARB has made the allegations referenced in paragraphs 1 through 6, but denies any liability in connection with said Allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the alleged violations described herein, LS Mtron has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

## **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against LS Mtron for the alleged violations referred to above in the Legal Background and Case Background, and LS Mtron's agreement to complete all terms and conditions set forth below, CARB and LS Mtron agree as follows:

- (9) Settlement Amount. LS Mtron shall pay a civil penalty in the amount of one hundred eighteen thousand and fifty dollars (\$118,050.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled Residential Air Filtration Program in the amount of one hundred eighteen thousand and fifty dollars (\$118,050.00 USD), consistent with CARB's SEP Policy, for a total settlement of two hundred thirty-six thousand one hundred dollars (\$236,100.00 USD). LS Mtron shall make all payments within thirty (30) calendar days from the Notification Date.

- (10) Notification Date. The Notification Date is the date upon which CARB notifies LS Mtron according to Paragraph 16 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to LS Mtron, whichever occurs first.
- (11) Civil Penalty Payment Method. LS Mtron shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. LS Mtron is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to LS Mtron in accordance with Paragraph 16 (Notices).
- (12) SEP Payment Method(s). LS Mtron shall fund the SEP by wire transfer, payable to the SEP Recipient/Administrator, San Joaquin Valley Air Pollution Control District, using instructions provided separately by CARB in a SEP Payment Transmittal Form. LS Mtron is responsible for all payment processing fees. Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. At the time payment is made to the SEP Administrator/recipient, LS Mtron shall provide CARB with proof of payment and a copy of the SEP Payment Transmittal Form at the email address listed in Paragraph 16 (Notices). Should payment instructions change, CARB will provide notice to LS Mtron in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. LS Mtron has agreed that by funding the SEP entitled Residential Air Filtration Program, LS Mtron will not receive any direct or indirect financial benefit, and that whenever LS Mtron publicizes or refers to the SEP or the results of the SEP, LS Mtron will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Administrator/Recipient does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP Administrator/Recipients, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, LS Mtron assigns any and all rights against the SEP Administrator/Recipient to CARB.
- (15) Documents. LS Mtron shall promptly email or mail the signed and dated Settlement Agreement, and the signed and dated SEP documents to the mail or email address in Paragraph 16 (Notices).

- (16) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the mail or email address below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Engine and Parts Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to LS Mtron:

LS Mtron, Ltd.  
11th floor, LS Tower, 127, LS-ro, Dongan-gu  
Anyang, Gyeonggi-do, South Korea  
mijung.kim@lsmtron.com

As to LS Mtron's Legal Representation:

John Kinsey  
Wanger Jones Helsley PC  
265 East River Park Circle Suite 310  
Fresno, California 93720  
JKinsey@wjhattorneys.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or mail or email address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (17) Recovery of Costs. Should either Party file a civil action to enforce this Settlement Agreement, the non-prevailing Party shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. LS Mtron agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 9 pages and 37 numbered paragraphs.

- (20) Binding Effect. This Settlement Agreement binds LS Mtron, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (23) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (24) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (25) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (26) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (27) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (28) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and

effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.

- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of full payment of the civil penalty, and SEP payment, and all other undertakings above, CARB hereby releases LS Mtron and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have arising out of or related to the circumstances described in Paragraph 6 (Allegations) above.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (33) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty-seven thousand three hundred sixty-three dollars (\$47,363.00 USD) per action under Health and Safety Code section 43016, for violations of the Off-Road CI Regulation (Cal. Code Regs., tit. 13, §§ 2420 et seq.) The penalty of \$236,100.00 over an unspecified number of days of alleged violation is for 1,574 noncompliant off-road CI equipment or engines. The per unit penalty alleged in this case is approximately \$150.00 per noncompliant unit.
- (34) Emissions. The provisions cited in Paragraph 6 (Allegations) above do not prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions.
- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the

available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case. Mitigating factors in this matter include the following examples:

- (a) LS Mtron voluntary and promptly self-disclosed the inadvertent omission of the AECDs from its certification applications;
  - (b) The AECDs do not result in any excess emissions or environmental impacts and are necessary for engine protection and to ensure emissions compliance;
  - (c) The AECDs were approvable at the time of certification and have been approved by CARB;
  - (d) LS Mtron has committed to conducting more thorough discussions with CARB on any future engine certification efforts to ensure all AECDs are declared;
  - (e) LS Mtron has hired technical consultants to ensure future CARB certification applications are complete and without error. LS Mtron has also been educated on the various terminology, which was the source of the inadvertent omission. The two undisclosed AECDs were not an intentional or willful omission but rather, a misunderstanding of what qualifies as an AECD;
  - (f) LS Mtron notified CARB immediately and expeditiously amended prior years' engine certification applications to include the inadvertently omitted, approvable AECDs;
  - (g) The alleged violations were first-time occurrences of its type;
  - (h) LS Mtron was very cooperative during CARB's investigation and provided timely responses and thorough explanations to all CARB inquiries;
- (36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by LS Mtron or confidential settlement communications.

(37) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves all potential claims of CARB for the violations alleged in this Settlement Agreement, including any claims arising from or related to the Allegations.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against LS Mtron with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against LS Mtron with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by LS Mtron to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, LS Mtron shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case. Notwithstanding the foregoing, nothing in this Paragraph 37(c) shall be construed to prevent or limit LS Mtron from asserting its rights under Paragraph 31 (Release) of this Agreement in any subsequent administrative or judicial proceeding involving CARB.
- (d) This Settlement Agreement does not limit or affect the rights of LS Mtron or of CARB against any third parties not covered by this Settlement Agreement,

nor does it limit the rights of third parties not covered by this Settlement Agreement against LS Mtron, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. LS Mtron is not relieved from responsibility for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; LS Mtron's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that LS Mtron's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: September 10, 2024

**LS Mtron, Ltd.**

Signature: /S/

Name: Wan Kho

Title: Director

Date: August 29, 2024