

销售条件书

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本《销售条件书》(以下简称《条件书》)旨在通过依据适用的法律法规,允许《销售订单》的双方以协议形式进一步就买方和卖方的权利及义务进行具体的规定,以防止和解决双方的误会及分歧。

1. 本《条件书》的有效性、范围和修改

- 1.1 本《条件书》适用于卖方已出售、供应、出租或已要约或同意出售、供应、出租的每一产品,并适用于全部服务及其他交易,包括但不限于组装、安装、调试、维修、替换件的销售或供应。在本《条件书》中上述所有产品和交易均包括在“货品”一词的含义内。
- 1.2 卖方发出或由双方确认的任何合同要约、反要约、订单等,其均作为本《条件书》的一个组成部分。
- 1.3 在本《条件书》中,“买方”一词包括要约、反要约或同意购买、租用任何货品的个人、公司或实体,除非《本条件书》明确地做出相反说明,《条件书》、《销售订单》或附件中所述的“买方”,应指第一买方,不包括买方转售的终端客户。
- 1.4 本《条件书》构成卖方与买方之间所签署的任何《销售订单》、附件的一个有效组成部分。买方可从销售代表或本公司的官方网站获取;签署《销售订单》意味着买方已充分阅读、了解且完全接受本《条件书》。
- 1.5 本《条件书》、《销售订单》将取代买卖双方之前就销售货品达成的一切谅解、协议或通讯邮件中的任何与本《条件书》、《销售订单》相反的条款规定。
- 1.6 本《条件书》、《销售订单》载明了买方所有适用的法律、法规和法律原则,包括但不限于香港特别行政区的所有条例及普通法、《中华人民共和国合同法》、《中华人民共和国消费者权益保护法》和管辖区域内任何其他适用的民法和侵权法下买方针对卖方的唯一补救权。
- 1.7 本《条件书》、《销售订单》及附件不得由任何将来的反要约、任何人员的任何行为或任何文件予以更改,除非卖方授权代表签署且加盖公司印章明确修改。卖方授权代表指卖方的董事、总经理、副总经理、副总裁、销售部门负责人或财务部门负责人。
- 1.8 本《条件书》如与《销售订单》的规定有冲突,以《销售订单》为准;《销售订单》中未规定事宜或有任何空白或遗漏条款,则应适用本《条件书》中载明的相应条款。
- 1.9 如买方在收到《销售订单》后虽未予以书面确认,但却发出任何货品交货指示、接受任何货品的交货或采取默示确认《销售订单》中所述交易的任何其他行为,则买方应被视为已接受本《条件书》及《销售订单》。
- 1.10 如果本《条件书》的任何部分、条款或规定是不合法的或者是不可执行的,其他部分条款的有效性和可执行性仍不受影响。

2. 生效日期及期限

- 2.1 本《条件书》的生效日为双方签署《销售合同》的日期;生效后对双方均有法律约束力。
- 2.2 除非有相反规定,否则生效日包括所有周末和公共假日。
- 2.3 如果买方未能完全遵守某一货品的任何期限(包括但不限于提供技术规格、如期支付卖方预付款或尾款或信用证或未按订单约定在卖方场所提取货品、按时提货等),则适用于卖方的有关该货品的一切期限应视为买方的放弃,替代期限必须经卖方授权代表重新予以确认。
- 2.4 如果买方的任一该等逾期超过七(7)日,除非卖方同意给予买方宽限期,卖方可以选择视同买方已就所涉货品终止《销售订单》;和/或就同一《销售订单》包括的所有其他货品终止销售。
- 2.5 如果卖方无正当理由没有遵守某一货品约定交货期限,卖方仍应有义务出售该货品,而买方仍应有义务购买、收取该货品,但该货品应减价,每延误七(7)日减百分之零点五(0.5%),不足七(7)日的按七(7)日计算,但卖方做出的减价最多为百分之五(5%)。该减价约定是买方就卖方迟延交货的唯一损害补救。不论买方是否受到其他损害,不论卖方是否已知或可以预见这些损害,买方均放弃有关拖延交货的所有其他补救措施。第三方因延迟交付而向买方提出损害赔偿的,买方不得由此向出卖方主张赔偿追索权。发生导致卖方无法按照约定期限交付产品的情况时或上述情况为卖方所知晓时,卖方应当在三个工作日内通知买方可能的延期交付并说明原因。

3. 买方责任、检验、补救和放弃

- 3.1 因买方接受《销售订单》,买方则应被视为具有必要的技能和经验,能安全地、适当地而且依照卖方发出的一切指示进行任何货品与设计工具或系统的一切装配,进行任何货品或上述任何设计、工具或系统的储存、处理、使用、转售、销售或广告推销、加工、组装。
- 3.2 “买方收货”指货品到达买方场所或《销售订单》指定的交付地点,“卖方发货”指卖方从其场所或货仓向买方或买方代理人发出货品,但是,如果双方约定由买方或买方代理人在卖方场所收取货品,则“卖方发货”指卖方在其场所已备妥货品且已合理通知买方或买方代理人货品备妥的事实。买方应在事先约定的地点接受产品。如买方改变交付地点,买方应提前五天书面通知卖方,否则事先约定的交付地点仍被视为交货地点。通常对在途的产品不允许有任何改变。变更交货地点产生的额外费用由买方承担。
- 3.3 买方应在买方收货两日内或卖方发货两(2)个月内(以较早日期为准)打开全部货品的包装进行直观检查。

- 上述检查应以不进行安装或试用就足以发现货品中任何可预见的不符之处的方法和技能水平来进行。若买方未在前述日期内就货品问题通知卖方，则可认定买方收到的货品完好无损。
- 3.4 买方应在买方收货一（1）个月内或卖方发货三（3）个月内(以较早日期为准)进行安装、试用或测试。安装、试用或测试应运用足以发现任何与约定规格不符之处的方法和技能水平来进行。应买方的要求，卖方可派遣技术人员为买方安装产品，提供技术支持。在卖方派遣人员为买方安装工作的过程中，买方应确保工作场所的安全。如卖方派遣人员在工作中伤亡，首先在卖方为员工投保的工伤保险赔偿范围内予以赔偿；超出该保险赔偿范围的部分则由买方承担。
- 3.5 买方应在所有货品的安装、试用和使用过程中密切注意并每隔一段合理时期进行检查，以发现货品中是否存在任何缺陷或其他不符之处。
- 3.6 如果买方未能在任何缺陷或其他不符之处被发现或理应在被发现之后七(7)日内向卖方提供关于该缺陷或其他不符之处的通知(包括说明)，则买方应被视为已放弃就该缺陷或不符之处提出任何请求。
- 3.7 如果买方在本《条件书》规定的期间内向卖方发出关于任何缺陷或其他不符之处的通知(包括说明)，则：
- 3.7.1 卖方可依赖买方的说明确认缺陷或不符之处的存在和详情，也可以在自行调查后才决定其对该缺陷或不符之处的存在和详情的立场。
- 3.7.2 卖方在确认任何缺陷或其他不符之处的存在和详情之后，可维修或以其他方式纠正该缺陷或不符之处。
- 3.7.3 卖方所进行的维修或纠正应由卖方自行承担费用，但如果缺陷或其他不符的货品位于中国大陆之外，买方负责卖方往返该地及当地住宿、交通、签证等费用。
- 3.7.4 买方确保向卖方及其代表提供充分的方便，以便其调查、维修和纠正的缺陷或其他不符之处。如果卖方完全自行确定上述维修或纠正技术上或财务上不实际可行，则卖方应选择(在买方退货之后)更换每件存在缺陷或其他不符之处的货品，或退还该货品全部（适当时则为部分）的价款(扣除税费之后)。
- 3.8 上述程序、维修、纠正、更换或退款，是买方就任何货品的任何缺陷和不符合之处拥有的唯一补救。
4. 卖方的保证和不承担责任声明
- 4.1 卖方保证：在《销售订单》、本《条件书》所规定的任何限制的前提下，卖方或其任何关联公司所制造的一切货品不存在任何“缺陷”。“缺陷”指妨碍货品在正常使用条件下在下列期间内正常工作的、在材料和工艺上的实质性缺陷(《销售订单》中另有规定的除外)。卖方产品的保质期为一年。买方在保质期内所提出的请求应依照上述第3.6、3.7条办理，而卖方的责任限于上述第3.7条规定之范围。
- 4.2 买方主张其保证期间权利的，应当在导致前述权利产生的事件发生后10日内书面通知卖方。买方在导致前述权利产生的事件发生后超过10日或在相关保证期届满后向出卖方主张权利的，卖方没有义务提供任何保证服务。除产品的直接损害或直接损失外，卖方不应就买方或任何第三方的任何其他损害和/或损失承担责任。
- 4.3 对于并非由卖方或其任何关联公司制造的一切货品，卖方仅保证如果它们符合制造商所允诺的设计和规格，将适宜与卖方供应的其它货品共同使用，而且，如果它们是由卖方在实体上组装为较大的货品，卖方仅在组装时进行直观检验视其是否有损坏和是否完整。对于上述货品的材料、工艺及相关的工业产权，卖方不承担任何保证，而买方应只能依赖制造商提供的任何保证，但卖方可以提供信息联系上的协助，以便买方享有制造商的一切保证。
- 4.4 卖方在订立《销售订单》时已知道或不可能不知道第三方对其货品将基于工业产权或其他知识产权主张权利的，且买方在已知道或理应知道第三方权利主张的五日内已书面通知卖方的，卖方才对其货品的知识产权的侵权承担相应的责任。买方在订立《销售订单》时已知道或不可能不知道第三方对卖方货品基于工业产权或其他知识产权主张权利的；或第三方所提出的工业产权或其他知识产权的侵权是由于卖方要遵照买方或买方客户所提供的技术图样、款式、图样或其他规格而完成的货品，或侵权的发生是由于买方转售而导致，卖方对其货品的知识产权的侵权不承担任何责任。任何时候由知识产权侵权而产生的损害赔偿仅限于买方的直接损失，且不超过与争议直接相关的《销售订单》的合同金额。
- 4.5 除前述条款明确规定之保证或卖方授权代表书面明确做出相反的承诺之外，卖方不做任何其它保证。
- 4.6 货品的说明、技术数据和规格应以《销售订单》及附件明确规定为准。如果买方希望《销售订单》、附件中包括另一来源的任何说明、技术数据或规格，例如任何目录、简介、价目表或其它刊登材料，则买方必须取得卖方授权代表对包括该等材料的书面确认。
- 4.7 卖方的一切保证和义务只提供给买方，不提供给任何其它人员。
5. 卖方责任的限制
- 5.1 对任何间接损失或损害，包括但不限于储存成本、利润损失、市场份额损失、机会损失或商誉损害以及类似的损失或损害，卖方不承担任何责任，不管任何《销售订单》或双方之间的任何协议或通信中有任何其它规定。
- 5.2 对因买方的任何行为（包括储存、处理、使用、转售、出售或广告推销、加工、组装或在设计、工具、系统或其它物品中装上货品或经过组装、整合、安装或加工后含有任何货品的任何物品）所导致的任何成本、损失、损害或伤害，卖方不承担任何责任。
6. 付款、抵销和利息
- 6.1 买方的付款方法及时间以《销售订单》为准。如《销

- 售订单》、附件中未规定，卖方应有权在生产、装运或交货之前、同时或之后，通过邮寄、专人递交或传真提交发票，而买方应在收到发票后立即向卖方支付该发票款项。
- 6.2 未经卖方的书面许可，买方无权对卖方的任何发票或买方的应付款项进行任何抵消(即扣除应付卖方的任何款项)。
- 6.3 如果买方的任何应付款项逾期超过七(7)日，在不影响卖方的其他权利及救济之下，从应付款日至付清款为止卖方对于未付款项有权每日按照合同总价的千分之三收取迟延履行滞纳金。
- 6.4 如果买方应向卖方或卖方任何关联公司支付的任何款项逾期超过三十(30)日或买方逾期提货超过七(7)日，则卖方有权向买方发出书面通知，终止买方与卖方之间的所有《销售订单》并要求买方承担订单总金额30%的违约责任及前述的迟延履行违约金。如买方的违约金不足以弥补卖方所遭受的损失，买方应补足卖方的损失。该等终止无损卖方享有的任何其它权利或补救。
- 6.5 如果买方在支付预付款后单方终止《销售订单》；或买方未按约定时间和约定的方式提货；或因买方的其他违约行为而导致《销售订单》无法继续履行或终止，则买方向卖方已付的预付款不予返还；且该款项的扣留无损卖方根据其他条款或相关法律规定取得赔偿的权利。
- 7. 终止**
- 7.1 在《销售订单》因买方违约终止时，在不影响卖方的其他权利及救济之下，卖方有权以其认为合适的方式处置用以向买方销售的所有货品及原材料。
- 7.2 卖方有权就其因该等终止所受到的实际和合理损失得到赔偿，上述补救不影响卖方享有的其他补救。
- 8. 所有权的保留**
- 8.1 在货品的购买价格尚未全部支付之前，无论货品实际由谁占有，卖方仍享有该货品唯一和完整的所有权。该货品中的任何所有权不因任何人士的任何行为或不行为而转移或被视为转移给买方或任何其它人士。
- 8.2 买方应将上述货品与其占有的其它资产分开(除非将一物品安装在另一物品之中或之上是正常业务流程的一部分)，而且不得除去或遮挡卖方置于货品上的任何标志。
- 8.3 如果买方将上述任何货品与其他任何资产混合，卖方的所有权应延伸至所有混合的资产，直至买方消除该等混合。
- 8.4 买方应在卖方要求时协助卖方于一切合理的时间检验上述货品。对于货款逾期未付的货品，卖方有权进入买方的场所重新占有这些货品。
- 8.5 尽管有上述有关所有权的条款，在货品交付之后，买方应承担该货品的一切有关风险并单独承担负责安排该货品的保险事宜。
- 9. 保密与知识产权条款**
- 9.1 由卖方收集、开发、整理、复制、研究的和准备的与《销售订单》、《条件书》等项下的货品及工作有关的所有资料在提供给买方时，均被视为保密信息；未经卖方事先书面许可买方不得泄露给任何第三人、企业或公司。
- 9.2 未经卖方事先书面同意，买方已知的或接触到的属于卖方的商业秘密和保密信息，包括专有技术、方法、系统研发、产品计划、服务、市场、软件、发展计划、发明、进程、配方、技术、设计、图纸、工程数据、设备结构硬件信息、营销等，买方在任何时候不得在内部擅自使用或向第三方披露。如买方侵权或违约而给卖方造成经济损失，买方应向卖方承担订单总价30%的违约金；如违约金不足以补偿卖方损失，买方应补足该损失。卖方为制止知识产权侵权或追究买方违约责任而造成的调查费、律师费、诉讼费等一切费用亦由买方承担。
- 9.3 销售订单的有效期限内，除了一般被公众普遍知晓或对方已明确表示不再要求保密的事项，双方都有义务凭借自己的认知对所有机密事项予以严格保密。未经一方的书面同意，另一方不得泄露给任何第三方。
- 9.4 如卖方派遣人员在为买方提供技术支持的服务过程中，所产生的工业产权以及其他知识产权，以其最广泛的含义，包括工作成果，报告，建议，专有技术，方法，制度等，均归属于卖方。经卖方书面同意，买方可以保存、使用前述工作成果、报告，建议等上述资料的复印件或复制品，但这种使用仅限于买方和买方控股的关联企业；且买方不得以任何其他方式，向任何第三方部分或全部转让该使用权，除非卖方已给予其事先书面同意。
- 9.5 本条的规定在任一《销售订单》履行完或终止后的三年内仍然有效。三年期满后如卖方及其货品的相关信息仍属于其商业秘密的范围内，买方的保密义务不由此自然解除。
- 10. 争端解决与法律适用**
- 10.1 所有与本《条件书》、《销售订单》有效性、解释、履行、终止有关的争议，以及其他任何有关的事项，均应由双方友好协商解决。经友好协商未能在1个月内达成协议，则各方均可将争议提交至上海中国国际经济贸易仲裁委员会，由其按照争议提交时适用的程序规则进行仲裁，适用法律为中国大陆的相关法律。仲裁地为上海。
- 10.2 仲裁庭的裁决为终局和有约束力的裁决，包括律师费在内的一切仲裁费用由败诉方承担。
- 11. 转让与不可抗力**
- 11.1 未经他方书面事先同意，任何一方都无权转让或分包其任何《销售订单》、《条件书》等销售文件下的义

- 务或利益，但是，货品制造应提供服务（如安装、调试或维修）不应被视为卖方的转让或分包。不论任何转让或分包，买方应继续保证其原有的全部付款义务。
- 11.2 如果因任何不可抗力例如天灾、火灾、爆炸、风暴、水灾、闪电、地震以及其它自然灾害、战争、暴乱或其它民案抗命行为、政府或其它法律权威的行为或禁制、工业或行业争议、常用供方的延误或拒售、运输或机械故障或其它在其合理控制范围之外的事件，导致一方延误或不履行全部或部分合同义务或法律义务，该方不向对方承担任何责任，但买方根据任何销售订单付款的义务除外。
- 11.3 受不可抗力影响的一方，必须在不可抗力事件出现后的十天内以书面形式通知另一方；必须在事件发生后的三十天内提供给其他协议方由相关权力机构或中立的独立的第三方出具的证明不可抗力事件的证明书或文件。
- 12. 其他条款**
- 12.1 本《条件书》有中英文版本，以任何其他语言的文本应视为仅供参考的翻译本。如果中英文版本有任何不一致之处，以中文文本为准。
- 12.2 双方应努力通过诚意商讨以有效的规定更换任何无效的规定；本《条件书》的解释权属于卖方。
- 12.3 除非本《条件书》、《销售订单》、附件等中有相反的明确规定，否则任何一方不行使或迟延履行任何权利或补救权，不构成放弃，也不作为对任何随后的或任何继续违约的权利放弃。
- 12.4 未经卖方事先的书面同意，买方对本《条件书》的条款不得添加、限制、修改或取代。本《条件书》未尽事宜，可经买卖双方协商，以书面形式确认；双方所达成的补充协议或附件亦为本《条件书》、《销售订单》不可分割之部分，具有同等的法律效力。

SALES TERMS & CONDITIONS

No. BCSTC140101

The purpose of the Sales Terms and Conditions herein (hereinafter referred to as Terms & Conditions) is to let the Parties of Sales Order further specify rights and obligations of each party through agreement as per applicable laws and regulations and thereby prevent and resolve misunderstanding and divergence between the Parties.

- 1. Validity, Scope & Modification of Terms & Conditions**
 - 1.1 The Terms & Conditions hereof shall be applied to every product that Seller has sold, supplied, leased or offered or has agreed to sell, supply and lease, and other transactions, which include, but not limited to assembling, installation, adjustment, maintenance and sale and other supply of replacement. All the aforesaid products and transactions in Terms & Conditions are included within the meaning of the word **Item**.
 - 1.2 Any offer, counter-offer, sales order, etc., which have been issued by Seller or acknowledged by both parties shall constitute an integral part of Terms & Conditions
 - 1.3 Within Terms & Conditions hereof, the meaning of **Buyer** shall include any person, company or entity that offers, counter-offers or agrees to buy or lease any item. Except as expressly stated to the contrary herein, Buyer indicated in Terms & Conditions, Sales Order or attachments shall be deemed as the first Buyer, excluding end-users to whom Buyer has resold item.
 - 1.4 Terms & Conditions hereof, being available at Sales Representative or the official website of Seller, shall constitute an effective integral part of Sales Order and attachments concluded by Seller and Buyer. Signature on Terms & Conditions implies Buyer has fully read, understood and absolutely accepted it.
 - 1.5 Terms & Conditions and Sales Order shall replace all contrary provisions in all previous understandings, agreements or communications between Seller and Buyer in respect of sale of item.
 - 1.6 Terms & Conditions and Sales Order set out Buyer's sole remedies against Seller under all applicable laws, regulations and legal principles, including without limitation all ordinances and common law of the Hong Kong Special Administrative Region, the PRC Contract Law, the PRC Law on the Rights and interests of Consumers and any other applicable civil law and tort law of any jurisdiction.
 - 1.7 Terms & Conditions, Sales Order and Attachments may not be modified or amended by any later counter-offer, by any act of any person, or by any document other than an express amendment signed by Authorized Representative of Seller and chopped by the company stamp. Authorized Representative of Seller might be a Director, General Manager, Deputy General Manager, Vice-president, Sales Department Head or Finance Department Head of Seller.
 - 1.8 Where there is divergence between Terms & Conditions and Sales Order, the latter shall prevail. If any term is not specified or left blank or is omitted in Sales Order, then the corresponding term set out in Terms & Conditions shall be applied as a result thereof.
 - 1.9 If, after receiving Sales Order, Buyer fails to confirm it in writing, but Buyer issues any item delivery instructions, accepts any item delivery, or takes any other action that implies confirmation of the transaction referred to in Sales Order, the Buyer shall be deemed to have accepted Terms & Conditions and Sales Order.
 - 1.10 If any part, provision or regulation of Terms & Conditions is determined to be illegal or unenforceable, the remaining portions shall remain in full force and effect.
- 2. Effective Date & Deadlines**
 - 2.1 The effective date of Terms & Conditions shall be the date of concluding Sales Order by the Parties who thenceforth would be legally bound by Terms & Conditions.
 - 2.2 Except as specified otherwise, Effective Day shall include all weekends and public holiday.
 - 2.3 If Buyer fails to comply with any deadline relating to an item (including without limitation providing technical specifications, arranging Seller's receipt of down-payment or balance or letter of credit as scheduled, or failure to collect items from Seller's premises as agreed in Sales Order or failure to take delivery of item in time, then all deadlines applicable to Seller in respect of such item shall be deemed waived by Buyer and accordingly substitute deadlines must be reconfirmed in writing by an Authorized Representative of Seller.
 - 2.4 If such non-compliance by Buyer exceeds seven (7) days, Seller may elect to deem Buyer to have terminated Sales Order with respect to the item concerned, and/or all other items covered by the same Sales Order.
 - 2.5 In the event of unexpected failure by Seller to comply with agreed delivery date for an item, Seller shall remain obligation to sell such item and Buyer shall still remain obligated to buy and take such item. However, the price of such item should be accordingly cut down, i.e. reduction by zero point five percent (0.5%) for each delay of seven (7) days or less and the maximum reduction under this clause shall be five percent (5%). Such price reduction shall be Buyer's sole damage remedy for Seller's delay in delivery of item. Buyer waives any other remedies relating thereto,

regardless of whether or not Buyer incurs other damages and regardless of whether or not they are known or foreseeable to Seller. Where the third party claims damages arising from delayed delivery to Buyer, Buyer shall not therefrom recourse to Seller for compensation. Seller shall inform Buyer of possible delay and explain reasons within three (3) working days when circumstance which has caused delay in item delivery as schedule occurs or the aforesaid circumstance is known to Seller.

3. Buyer's Responsibilities, Inspection, Remedies & Waivers

3.1 By accepting Sales Order, Buyer shall be deemed as having the skills and experience that are necessary to assemble safely and properly, under Seller's instruction, any incorporation into designed machines or system, as well as store, handle, use, resale, advertise, process or assemble of any item or any such equipment, vehicles or system.

3.2 Buyer's Receipt of Item shall mean the arrival of items at Buyer's premises or the delivery place appointed in Sales Order. Seller's Dispatch shall mean the dispatch of items by Seller from its premises or warehouse to Buyer or Buyer's agent. If it has been agreed that Buyer or Buyer's agent collects items at Seller's premises, Seller's Dispatch shall mean Seller making goods available for collection at its premises and giving Buyer or Buyer's agent reasonable notice of such availability. Buyer shall take delivery of item at prior agreed place. Where Buyer wants to change the delivery place, Buyer shall notify Seller in writing five (5) days in advance, otherwise the prior agreed delivery place shall still be regarded as the delivery place. The item in transit usually cannot be altered any longer. The extra cost arising out of changing delivery place will be at Buyer's account.

3.3 Buyer shall open all packaging and make a visual inspection of all items within two (2) days of Buyer's Receipt and within two (2) months of Seller's Dispatch, whichever occurs earlier. Such inspection shall be conducted in a manner and with a level of competence sufficient to detect any non-conformance of items that is visible without any installation or trial usage. Where Buyer fails to notify Seller of any non-conformance of item within the above period, the item received by Buyer shall be recognized as being intact.

3.4 Buyer shall conduct installation, trial usage or testing within one (1) month of Buyer's Receipt and within three (3) months of Seller's Dispatch, whichever occurs earlier. Such inspection, trial usage or testing shall be conducted in a manner and with a level of competence sufficient to detect any non-conformance of items. Seller may dispatch technical staff to install item and provide technical support at Buyer's request. Buyer shall ensure safety of the workplace while the person assigned by Seller is working for him. In case the assigned person suffers from work-related injury or death, the compensation shall be first within the scope of work-related injury insurance covered by Seller and the part beyond the said insurance shall be undertaken by Buyer.

3.5 Buyer shall, in the course of all item installation, commissioning and usage, pay close attention, and shall make inspections at

3.6 If Buyer fails to provide Seller with notice (containing a description) of any defect or non-conformance within seven (7) days as of the date when it has been discovered, or the date when it should have been discovered, then Buyer shall be deemed to have

3.7 If Buyer, within the deadlines specified in Sales & Conditions, provides Seller with a notice and description of any defect or non-conformance, then:

3.7.1 Seller may acknowledge the existence and details of such defect or non-conformance in reliance on Buyer's description. Alternatively, Seller may make its own investigation before deciding its position on the existence and details of such defect or non-conformance.

3.7.2 Upon acknowledging the existence and details of such defect or non-conformance, Seller may repair or otherwise correct such defect or non-conformance.

3.7.3 Any repair or correction implemented by Seller shall be at Seller's expense. If a defective or non-compliance item is located outside of mainland China, Buyer shall bear Seller's reasonable expenses for accommodation, travel and visa, etc.

3.7.4 Buyer shall ensure that Seller and its representatives have access sufficient to investigate, repair and correct items alleged to have defect or non-conformance. If such repair or correction is determined by Seller in its sole discretion to be technically or financially impractical, then Seller shall elect between replacing (upon Buyer's return of) every item alleged to have defect or non-conformance, or refunding all (or, if appropriate, a portion) of payment of such items (after taxes and fees).

3.8 The preceding procedures, repair, correction, replacement or refund shall be Buyer's sole remedy for any defect or non-conformance.

4. Seller's Warranties & Disclaimers

4.1 Seller's warrants that, subject to any limitation set forth in Sales Order and Terms & Conditions, all items manufactured by Seller or by any affiliate of Seller will be free from any Defect, which shall mean a substantial defect in materials and workmanship that prevents normal performance under normal conditions of use (except as otherwise provided for in Sales Order). The quality guarantee period of Seller's item is one (1) year. The claims made by Buyer within the quality guarantee period will be handled in accordance with the above article 3.6 and 3.7 and the Seller's liability will be only limited to article 3.7.

4.2 Buyer shall notify Seller in writing within ten (10) days when the incident which leads to Buyer's claim within the quality guarantee period occurs. Seller will avert its warranty liability if Buyer fails to claim its right within the said (10) days and warranty period. Seller disclaims other damage and/or loss incurred by Buyer or any third party except direct damage or direct loss of item.

4.3 In respect of all items that are not manufactured by Seller or by any affiliate of Seller, Seller warrants only that, if they conform to the design and specifications promised by the

- manufacturer, they will be suitable to be used in combination with the other items supplied by Seller and, if they are physically assembled by Seller into larger items, Seller shall at the time of assembly make a visual inspection for damage and completeness. In respect of the material and workmanship of such items, Seller makes no warranty and Buyer shall rely solely on warranties, if any, available from the manufacturer, provided that Seller shall provide liaison assistance in order to facilitate Buyer's entitlement to all manufacturer's warranties.
- 4.4 Seller shall not undertake liability for any intellectual property infringement unless Seller knew or could not have been unaware, at the time of the conclusion of Sales Order, that the third party would make claims against item based on industrial property or other intellectual property, and Buyer has notified Seller of such claim within five (5) days after he knew or could have been unaware of the third party's claim. Seller shall not undertake liability for any intellectual property infringement if Buyer knew or could not have been unaware, at the time of the conclusion of Sales Order, that the third party would make claims against item based on industrial property or other intellectual property, or IP infringement claim by the third party is caused by the fact that Seller has to complete item in compliance with technical drawings, designs, formulae or other specifications furnished by Buyer or Buyer's clients, or the result of resale of Buyer. At any time damages caused by IP infringements are only limited to Buyer's direct loss and shall not exceed the contractual amount of Sales Order directly in dispute.
- 4.5 Except as expressly warranted in the preceding clauses or as expressly agreed to the contrary in writing by an Authorized Representative of Seller, Seller disclaims any other warranty.
- 4.6 Item description, technical data and specifications shall be subject to express regulations in Sales Order and annexes. If Buyer desires Sales Order and annexes to incorporate any description, technical data or specifications from another source, such as any catalogue, brochure, price list or other published material, Buyer must obtain written confirmation of such incorporation from an Authorized Representative of Seller.
- 4.7 All of Seller's warranties and obligations shall extend only to Buyer and not to any other person.
- 5. Limitations on Seller's Liability**
- 5.1 Seller shall have no liability for any indirect losses or damages, including and without limitation to storage costs, loss of profit, loss of market share, loss of opportunity, or damage to reputation and the like—notwithstanding any other provision of Sales Order or any agreement or communication between the parties.
- 5.2 Seller shall have no liability for any cost, loss, damage or injury that result from any actions of Buyer, including storage, handling, use, resale, sale or advertising, processing, assembly or in corporation.
- 6. Payment, Set-off & Interest**
- 6.1 Buyer's payment method and schedule shall be subject to Sales Order. Where there is no regulation in Sales Order and annexes, Seller shall have the right to present invoices before, simultaneous with or after production, shipment or delivery via mail, courier or fax. Buyer shall honor invoice in no time after receipt of it.
- 6.2 Without Seller's written permission, Buyer shall have no right to make any set-off (e.g., of any amounts payable by Seller) against any invoice of Seller or payment due from Buyer.
- 6.3 In the event that any payment due from Buyer is overdue by more than seven (7) days, without prejudice to any other right or remedy available to Seller, Seller is entitled, from the original due date until the date of payment, to collect three (3) per thousand of contractual amount as penalty each day against payment past due.
- 6.4 In the event that any payment due from Buyer to Seller or to any affiliate of Seller is overdue by more than thirty (30) days or Buyer fails to take delivery of item in excess of seven (7) days, Seller is entitled to terminate all Sales Orders by means of a written notice to Buyer and concurrently claim 30% of contractual amount and the aforesaid delay penalty as damages. Where the said damages are insufficient to cover Seller's losses, Buyer shall redeem the shortage. Such termination shall be without prejudice to any other right or remedy available to Seller.
- 6.5 In the event Buyer terminates the Sales Order unilaterally after enforcing the prepayment, or Buyer fails to take delivery of item as agreed time and method, or Sales Order can't be fulfilled or has to be terminated due to other default of Buyer, without prejudice to any other right of the Seller to be compensated as per other provisions and relevant laws, the prepayment made by the Buyer shall not be returned by the Seller.
- 7. Termination**
- 7.1 Upon the termination of Sales Order due to a breach by Buyer, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to dispose, in any manner that Seller sees fit, of all items and materials that were designated for sale to Buyer.
- 7.2 Seller shall be entitled to compensation for Seller's actual and reasonable damages resulting from such termination, which shall not affect other remedy enjoyed by Seller.
- 8. Retention of Ownership**
- 8.1 Regardless of who has possession thereof, Seller shall hold sole and complete ownership in all items for which payment has not been completed of the entire purchase price. No act or failure to act by any person shall confer or be deemed to confer on Buyer, or on any other person, any ownership in such item.
- 8.2 Buyer shall keep such item separate from other assets in its possession (except when installing one item in or on another item is part of the normal course of business) ,and

- shall not remove or obscure any mark placed thereon by Seller.
- 8.3 If Buyer commingles, with any other assets, any of such items, then seller's ownership shall extend to all commingled assets until Buyer terminates such commingling.
- 8.4 Buyer shall on request assist Seller to inspect such item at all reasonable times and, after any payment in respect of such items has become overdue, Seller shall have the right to enter Buyer's premises for the purpose of retaking possession of such item.
- 8.5 Notwithstanding the preceding clauses governing ownership, after delivery of an item, Buyer shall bear all risks relating thereto and shall bear sole responsibility to arrange insurance thereof.
- 9. Confidentiality & Intellectual Property**
- 9.1 All materials regarding the items and works under Sales Order, Terms & Conditions, etc., which are collected, developed, sorted, duplicated, researched, prepared by Seller, shall be deemed as the confidential confirmation. Buyer shall not disclose them to any other third person, enterprise or company without a prior written permission.
- 9.2 Buyer shall not at any time, without the prior written authorization of Seller, use internally in an unauthorized way or disclose to any third party the trade secrets and confidential information to which he has known or accessed, including know-how, method, system research and development, products plan, services, markets, software, strategies of development, inventions, process, formula, designs, drawings, engineering parameters, configuration and function of major equipments or sales, etc. Where Buyer commits infringement or breach of contract and thereby causes economic losses to Seller, Buyer shall accordingly assume penalty which shall be equivalent to 30% of the contractual amount thereof to Seller. Should the said penalty be insufficient to cover losses incurred by Seller, Buyer shall compensate the balance as a result thereof apart from undertaking all the relevant expenses inclusive of attorney's fees, investigation fees, litigation costs arisen from Seller's prevention of infringement or seeking its liabilities for breach of contract as well.
- 9.3 During the valid period of Sales Order, the Parties hereto are obliged to hold in the strictest confidence to all the confidential information by virtue of their knowledge, except as regards matters which are generally known to the public or which the other party explicitly indicated not to require any confidentiality. In no event should either party disclose them to any third party without the written consent of the other party.
- 9.4 In the course of providing technical support services to Buyer, all industrial and intellectual property, in their broadest sense, including works, reports, advice, know-how, methods, systems, etc. are vested in Seller. With Seller's written permission, Buyer is entitled to preserve and use copies of works, reports and advice produced, but the right of use thereof is only restricted to Buyer and its controlled affiliated enterprises. In no event should Buyer, in any way, transfer this right in part or in full to any third party, unless Seller has given its prior written consent.
- 9.5 The clause hereof shall still be valid for three (3) years after fulfillment or termination of any of Sales Orders. Upon expiration of three years, Buyer shall not disclaim its confidential obligation naturally if relevant information in respect to Seller and its items are still within the scope of confidentiality for Seller.
- 10. Dispute Settlement & Applicable Law**
- 10.1 Any dispute relating to the validity, interpretation, implementation and termination of Terms & Conditions, Sales Order and other relevant issues, shall be settled by amicable negotiations between the Parties. If no settlement can be reached through amicable negotiations within one (1) month time, each Party may present the dispute to the Shanghai International Economic and Trade Arbitration Commission (SIETAC), which shall arbitrate under the rules of procedure applicable at the time of filing the application. The arbitration award is final and binding for both Parties. The arbitration place shall be Shanghai.
- 10.2 The award of the arbitration tribunal shall be final and binding and all arbitration costs including attorneys' fees shall be borne by the losing party.
- 11. Assignments & Force Majeure**
- 11.1 Neither party has the right to assign or subcontract any of its obligations or benefits under the sale documents inclusive of Sales Order, Terms & Conditions without the prior written consent of the other party. The provision of services such as installation, commissioning and repair by the manufacturer of an item shall not be deemed to be assignment or sub-contracting by Seller. Notwithstanding any assignment or sub-contract, Buyer shall continue to guarantee all its original payment obligations.
- 11.2 Other than Buyer's obligation to make payments in accordance with any of Sales Orders, neither party shall be under any liability to the other party for any delay or failure to perform its contractual or statutory obligations either in whole or in part where such delay or failure is due to an event or force majeure such as acts of God, fires, explosions, storms, floods, lightning, earthquakes and other natural calamities, war, riots or other acts of civil disobedience, acts of or restraints, industrial or trade disputes, delays or non-sale by customary sellers, or breakdown or transport or machinery, or other events beyond its reasonable control.
- 11.3 The Party whose duties are affected by a force majeure event must inform the other Party of the circumstances in writing within ten (10) days and must provide to the other Party within thirty (30) days after the event a certificate or document issued by the relevant authorities or a neutral, independent third Party, attesting to the force majeure event.

12. Miscellaneous Clauses

- 12.1 Terms & Conditions hereof has English and Chinese versions. Any version prepared in any other language shall be deemed only a reference translation. In the event of any discrepancy between English and Chinese versions, the Chinese version shall prevail.
- 12.2 The Parties shall endeavor, through negotiations in good faith, to replace any invalid provisions with valid provisions and the interpretation right shall be vested in Seller.
- 12.3 Except as expressly stated to the contrary elsewhere in Terms & Conditions, Sales Order and annexes, any forbearance or delay by either party in exercising any right

or remedy shall not constitute a waiver of right and a waiver of right to any subsequent or any continuing breach by such party.

- 12.4 The provisions in Terms & Conditions may not be added to, limited, or altered otherwise superseded without a prior written acknowledgement by Seller. Any anything not contained thereof may be made based on the consultation and acknowledged in writing by the Parties. Any Complementary Agreement or Appendix to be concluded by the Parties shall form an integral part of Terms & Conditions and Sales Order, which shall have the same legal force and effect.