

# Standard Terms and Conditions of Sale

(See Below for Mandarin Translation)

- 1. Jurisdiction; Contract Formation.** For purposes of these Terms and Conditions, the jurisdiction is the People's Republic of China, which excludes Hong Kong and Macau Special Administrative Regions and Taiwan (the "Jurisdiction"). These Terms and Conditions and any document of Seller attached hereto, and any other written or electronic communication of Seller that directed Buyer to or incorporates these Terms and Conditions, shall collectively constitute the "Contract Documents" (and in the event of any conflict, these Terms and Conditions shall prevail) governing sale of the goods and services described in the Contract Documents (the "Goods"). Buyer shall be deemed to have accepted the provisions of the Contract Documents, including these Terms and Conditions, by manifesting such acceptance by any of the following: (a) signing and returning to Seller a copy of the Contract Documents; (b) sending to Seller a written acknowledgement of the Contract Documents; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of the Goods (including instructions to bill and hold) following receipt of the Contract Documents; (d) failing to cancel a pending purchase order within ten (10) days after receiving the Contract Documents; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of the Contract Documents. Seller may revoke its offer to sell the Goods at any time prior to Buyer's acceptance. Upon acceptance, Buyer irrevocably agrees and commits to purchase the Goods in accordance with the Contract Documents. SELLER HEREBY OBJECTS TO AND REJECTS THE PROVISIONS OF ANY PURCHASE ORDER OR OTHER DOCUMENT WHICH IS INCONSISTENT WITH OR IN ADDITION TO THE PROVISIONS OF SELLER'S CONTRACT DOCUMENTS (WHICH INCONSISTENT OR ADDITIONAL PROVISIONS ARE HEREBY EXCLUDED FROM THE CONTRACT), AND SELLER'S OFFER AND OBLIGATIONS ARE EXPRESSLY CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS. THE CONTRACT DOCUMENTS SHALL BE THE COMPLETE AND EXCLUSIVE CONTRACT BETWEEN BUYER AND SELLER WITH RESPECT TO THE GOODS (THE "CONTRACT") AND MAY BE MODIFIED ONLY IN A WRITING SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE. NO PRIOR OR OTHER CONTEMPORANEOUS PROPOSALS, QUOTATIONS, STATEMENTS, FORECASTS, SAMPLES, MODELS, SPECIFICATIONS, COURSE OF DEALING OR USAGE OF TRADE SHALL BE PART OF THE CONTRACT BETWEEN BUYER AND SELLER. In this Contract, "including" shall be deemed to mean "including without limitation."
- 2. Payment.** Unless specified otherwise elsewhere in the Contract, all invoices are payable in full, at Seller's office in the Jurisdiction, in the official currency of the Jurisdiction, within thirty (30) days after date of invoice. All payments shall be due and payable without offset, discount (unless explicitly provided for in the Contract) or any reduction in the Contract price, without deduction for any exchange or conversion, and also without deduction for any taxes or duties levied by any governmental authority. Any payment received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness owing by Buyer, as shown by the books and records of Seller, without discharge of the remainder of any such indebtedness regardless of any statement by Buyer referring to or accompanying such payment. Buyer agrees to pay late payment charges for each month or portion thereof on any payment hereunder that is not made when due. The late payment charge rate shall be the lesser of (a) 125% of the prime rate of interest quoted by Citibank, in effect on the date of invoice (or if that rate is not then available, the prime rate of another bank in the Jurisdiction selected by Seller), and (b) the maximum rate allowed by the governing law of the Jurisdiction. Seller may, at any time, in its sole discretion, limit or cancel any credit terms given to Buyer as to time and amount; and as a condition to Seller's obligations under the Contract (including manufacturing or delivering all or any part of the Goods), Seller may, in its sole discretion, require Buyer to (i) pay in cash an amount sufficient to cover the unpaid Contract price (including all related transportation, storage and other costs to be charged to Buyer) or (ii) open and confirm an irrevocable commercial letter of credit in favor of Seller for such unpaid Contract price. Such letter of credit shall be payable on sight and be in a form and issued and confirmed by a bank or banks satisfactory to Seller, in its sole discretion. The terms of any such letter of credit shall comply with any specifications or requirements furnished by Seller to Buyer, including provisions for transferability, partial delivery, transshipment, and acceptance of stale documents. Buyer shall bear and pay the full cost, including all banking charges, incurred in connection with the issuance, confirmation and amendment of each such letter of credit. The opening or confirmation of such letter of credit shall not discharge Buyer's direct payment obligation to Seller.
- 3. Default.** Buyer shall be in default and fundamental and material breach of this Contract upon the occurrence of any of the following: (a) Buyer's unexcused breach or nonfulfillment of this or any other contract with Seller; (b) Buyer's failure to open any letter of credit required by Seller in accordance with the Contract; (c) Buyer's failure to make timely payment to Seller for any installment of the Goods; (d) Buyer's failure to assort, specify, or accept any installment of non-defective Goods; (e) Buyer's insolvency, calling of a meeting of its creditors, or general assignment for the benefit of its creditors; or (f) commencement of bankruptcy, insolvency, reorganization, arrangement or similar proceedings concerning Buyer (but, in the case of involuntary proceedings, only if not dismissed within thirty (30) days after commencement). In the event of any such default by Buyer, Seller may, in addition to any other rights and remedies under applicable law, exercise any one or more of the following rights and remedies, which are intended to be cumulative and not mutually exclusive: (i) cancel any part of this Contract (including any warranty) or any other contract with Buyer (with Buyer liable for damages); (ii) defer any shipment under this or any other contract; (iii) declare immediately due and payable all outstanding invoices under this or any other contract; (iv) immediately repossess all or any part of the Goods in transit or in the custody or control of Buyer pursuant to this or any other contract, at the sole risk and expense of Buyer; (v) finish all or any portion of its performance of the Contract and charge Buyer up to the full Contract price and (vi) re-sell all or any part of the Goods covered by this or any other contract, or any materials supplied for the Contract, at public or private sale, with Buyer responsible for all losses and expenses incurred in such sale.
- 4. Retention of Title.** Unless specified otherwise elsewhere in the Contract, all Goods delivered to Buyer shall remain the property of Seller, or if such retained title is not valid or enforceable under applicable law, Seller shall have and retain a security interest and lien in and against the Goods until Seller shall have received payment in full therefor from the Buyer. Buyer agrees that it shall cause all Goods which Seller has delivered but for which Seller has not been paid in full (wherein Seller has accordingly retained its interest) to remain in a separate and distinct location, marked by conspicuous signage disclosing Seller's retained interest in such Goods and shall not transfer to any third party any interest in such Goods. Notwithstanding Seller's retained interest in the Goods, Buyer shall bear all risk of loss or damage with respect to the Goods, and shall be responsible for maintaining full replacement cost insurance for the Goods, at Buyer's sole expense, with Seller named as a loss payee and additional insured, until Seller shall have been paid in full therefor. Notwithstanding Seller's retained interest in any of the Goods, Buyer shall be solely responsible and liable for any and all taxes, warehousing or storage costs, transportation costs or other costs or liabilities associated with the Goods following delivery thereof by Seller in accordance with the Contract. Buyer agrees to execute any document deemed necessary or appropriate by Seller, in its sole discretion, to perfect or enforce the retained interest of Seller in the Goods, or in the alternative, Seller may file or record the Contract or any memorandum or statement thereof without Buyer's signature.
- 5. Delivery; Bill and Hold.** Unless specified otherwise elsewhere in the Contract, Seller's delivery of the Goods shall be Ex Works (EXW) Origin INCOTERMS 2010, with risk of loss and damage passing to Buyer at such point, subject to Seller's rights under applicable law. For any Goods held subject to Buyer's instructions or which Seller, in its sole discretion, has determined should be held for Buyer's account, Seller may invoice before delivery, with risk of loss or damage passing to Buyer as of the date of such invoice. Buyer shall pay all insurance, freight, and delivery charges as a separate item. Unless specified otherwise elsewhere in the Contract, delivery of Goods in a quantity varying not more than ten percent (10%) from the Contract amount or a fraction of one (1) commercial unit of the Goods purchased, whichever is greater, shall be deemed complete delivery of the Contract amount, and payment shall be made for the actual quantity delivered. Delivery may, in Seller's discretion, be made in severable installments, and installment deliveries shall be accepted by Buyer and paid for at Contract prices and terms. Unless specified otherwise elsewhere in the Contract, all delivery dates are Seller's good faith estimates of shipping and are not guaranteed. Goods invoiced and held in any location for any reason shall be held at Buyer's risk and expense, and Seller may charge for insurance and storage at prevailing rates.
- 6. Limited Warranties.** SUBJECT TO SECTION 7, FOR ALL GOODS SOLD AS FIRST QUALITY, SELLER WARRANTS GOOD TITLE AND THAT THEY ARE OF SELLER'S STANDARD QUALITY AT THE TIME OF SUCH SALE. ALL OTHER GOODS SOLD HEREUNDER, INCLUDING GOODS SOLD AS "SECONDS," "AGED," "OFF-QUALITY," OR "DISCONTINUED LINES" ARE SOLD "AS IS." SELLER MAKES NO REPRESENTATION OR WARRANTY BEYOND ANY EXPLICIT STATEMENTS CONTAINED IN THE CONTRACT AS TO THE FLAMMABILITY CHARACTERISTICS OF THE GOODS OR THAT THE GOODS, OR ANY ITEM, ARTICLE OR PRODUCT CONTAINING OR INCORPORATING THE GOODS, CONFORM TO APPLICABLE FLAMMABILITY STANDARDS, IF ANY, OR HAVE BEEN TESTED FOR CONFORMITY THERETO. BUYER'S FAILURE TO OBTAIN AN EXPLICIT WARRANTY OF FLAMMABILITY AND TESTING IN THE CONTRACT PRIOR TO DELIVERY OF THE GOODS SHALL RELIEVE SELLER OF ANY LIABILITY ASSOCIATED WITH THE FAILURE TO PROVIDE SAID INFORMATION. BUYER ACKNOWLEDGES THAT SUBSEQUENT FINISHING TREATMENT, USE IN COMPOSITE STRUCTURES, OR OTHER ALTERATION OF THE GOODS CAN ADVERSELY AFFECT THE GOODS' FLAMMABILITY CHARACTERISTICS AND THAT, UNDER SOME CONDITIONS, THE GOODS WILL BURN AND THEREFORE CAUTION SHOULD BE USED NEAR SOURCES OF HEAT OR FLAME. EXCEPT FOR ANY SUCH LIMITED WARRANTIES THAT SELLER MAY EXPRESSLY AND SPECIFICALLY PROVIDE, ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT, OR ANY WARRANTIES BASED UPON SAMPLES, MODELS, OR SPECIFICATIONS, ARE EXPRESSLY DISCLAIMED. BUYER ASSUMES ALL RISK AND LIABILITY CONCERNING THE USE OF GOODS.
- 7. Limitation of Liability.** WITHOUT LIMITING THE GENERALITY OF ANY OTHER PROVISION IN THE CONTRACT LIMITING OR EXCLUDING LIABILITY OF SELLER, THE DAMAGES RECOVERABLE BY BUYER BASED ON ANY CLAIM OF ANY KIND WHATSOEVER (INCLUDING NEGLIGENCE) ARISING FROM OR IN ANY WAY CONNECTED TO THIS CONTRACT OR THE GOODS SHALL NOT BE GREATER THAN THE ACTUAL CONTRACT PRICE OF THE GOODS PAID BY BUYER WITH RESPECT TO WHICH SUCH CLAIM IS MADE, AND IN NO EVENT SHALL SELLER BE LIABLE FOR BUYER'S OR ANY THIRD PARTY'S SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES DUE TO LOSS OF USE, LOST PROFITS, LOSS OF GOODWILL, LATE DELIVERY, NONDELIVERY, DEFECTIVE CONDITION, OR USE OF THE GOODS. Any technical advice or assistance that Seller furnishes to Buyer hereunder and the results thereof are provided at Buyer's sole risk and expense.
- 8. Defects and Claims.** Buyer shall examine and test Goods within ten (10) days after receipt and before use or resale and shall give Seller prompt notice of any alleged nonconformity. Buyer's use or resale of Goods shall be deemed acceptance as conforming to this Contract. All claims of any kind, nature, or description are barred and waived unless made in writing. Buyer shall be deemed to have accepted the Goods, and any right to cancel, reject, or claim damages shall expire, and Buyer shall lose and waive any right to rely upon or claim nonconformity of the Goods, unless Buyer's written and particularized claim is received by Seller (a) within ten (10) business days after receipt of Goods for all claims other than those for latent defects or (b) within ninety (90) days after receipt of Goods for a latent defect; provided, however, that in no case shall any claim be considered after Goods have been dyed, finished, cut, or processed in any manner. Within thirty (30) days after receipt of written notice of claimed defective Goods, Buyer shall make such Goods available without cost to Seller at a point designated by Seller (with failure to do so deemed acceptance and waiver of all claims for defect). If Seller determines a defect claim to be valid, Seller may, at its sole option and election, (i) replace any defective Goods, (ii) repair any defective Goods, (iii) accept return of any defective Goods and refund the purchase price thereof to Buyer, or (iv) pay to Buyer the difference in value of conforming Goods as of the scheduled Contract delivery date and the value of the Goods actually delivered. To the extent permitted by law, the foregoing is Buyer's exclusive remedy for any defective Goods hereunder.
- 9. Patent Infringement.** Seller's delivery of Goods does not expressly, or by implication, grant Buyer any license or other right under any patent or copyright or grant authorization to infringe any patent or copyright. In the event the Goods, in the form delivered by Seller, are found by a court of competent jurisdiction to infringe a patent in Buyer's country, Buyer shall give Seller prompt written notice thereof, and Seller, at its option and discretion, shall either procure for Buyer the right to continue to use the Goods (in the form delivered by Seller) in Buyer's country, replace the allegedly infringing Goods with non-infringing Goods, or accept a return of the allegedly infringing Goods for a refund of the purchase price paid by Buyer. The foregoing states the entire liability of Seller with regard to any claim of patent infringement. Buyer shall indemnify, defend and hold Seller harmless against all damages and expenses arising from claims of infringement of patent rights on Goods specifically produced or modified at Buyer's request and against all damages or expenses arising from any infringement or from any misuse of any trade name, trademark, symbol, identification of material content, or other labeling used by Seller under Buyer's instructions.
- 10. Force Majeure.** Neither party shall be liable for loss or damage due to nonperformance resulting from any cause beyond the affected party's reasonable control, including compliance with any regulation, order, or instruction of any governmental authority, act of God, war (declared or undeclared), terrorism, act or omission of the other party, act of civil or military authority, fire, epidemic, flood, catastrophe, strike, factory or port shut-down, lockout, riot, rationing, shortage of material, or inability of such affected party to obtain necessary labor from usual sources; provided, however, no delay in the performance of Buyer's payment obligations hereunder (including any obligation with respect to opening a confirmed letter of credit) shall be excused on account of any such cause. In the event of any excused delay due to any such cause, the affected party shall as soon as practical notify the other party thereof and shall at the same time, or the earliest practical date after such notice, specify any revised performance schedule. In the event of any such excused delay, the time of performance by the affected party shall be extended for a period equal to the time lost by the affected party by reason of the delay. If the transaction is covered by a letter of credit, the letter of credit shall provide that receipt by the confirming or issuing bank of a copy of the notice of delay from Seller shall operate as the instruction of Buyer to said banks to amend the letter of credit to extend the times for shipment and the expiration of the letter of credit to the date(s) indicated in said notice.
- 11. Prices.** All prices are exclusive of any applicable import duties and tariffs, Customs fees, export licensing fees, or import or export taxes, federal, state, provincial or local sales, use, property, or value added taxes or other any taxes or official charges, all of which are Buyer's sole responsibility. Prior to Buyer's acceptance of the Contract Documents, Seller may change any price without notice. After such acceptance, Seller may change any price on undelivered Goods by giving Buyer at least fifteen (15) days' prior written notice, and in the event of such change, Buyer's sole recourse shall be the right to cancel this Contract as to any Goods for which such change in price applies, by written notice given to and received by Seller prior to the date when the change is to become effective. If Seller is prevented by law, governmental decree, order, or regulation from making a change in price, or continuing a price already in effect, Seller may terminate this Contract after giving Buyer thirty (30) days' prior written notice.
- 12. Governing Law.** For domestic sales, the law of the Jurisdiction, without regard to its conflict of laws principles, shall govern this Contract and the rights and obligations of the parties hereunder. For international sales, the United Nations Convention on Contracts for the International Sale of Goods (the "Sales Convention") shall, to the extent applicable and as limited herein, govern this Contract and the rights and obligations of the parties hereunder. Notwithstanding the foregoing, in the event of any inconsistency or conflict between provisions of the Contract, including these Terms and Conditions, on the one hand, and the Sales Convention, on the other hand, the provisions of the Contract shall govern and prevail. To the extent of any such inconsistency or conflict, the provisions of the Contract shall be deemed to derogate from the provisions of the Sales Convention within the meaning of Article 6 thereof. Further, without limiting the generality of the foregoing, the following provisions of the Sales Convention are hereby excluded from the Contract: Articles 8(3), 9, 11, 16(2), 39(2), 44, 46, 50, and 84(1). Questions that are not expressly settled in the Contract or by application of the Sales Convention are to be settled in conformity with the internal laws of the Jurisdiction, without regard to its conflict of laws principles. For international sales not governed by the Sales Convention, the internal laws of the Jurisdiction, without regard to its conflict of laws principles, shall govern this Contract and the rights and obligations of the parties hereunder. The Convention on the Limitation Period in the International Sale of Goods is hereby excluded and shall not govern any claim arising from or relating to this Contract or the sale or purchase of the Goods.
- 13. Dispute Resolution.** Unless otherwise agreed to by the parties, any dispute arising out of or in connection with the transaction contemplated by the parties hereunder shall be submitted to and resolved by China International Economic and Trade Arbitration Committee for arbitration in Shanghai in accordance with the arbitration rules then in force. The arbitral award shall be final and binding upon both parties.
- 14. Assignment and Delegation.** Neither party shall transfer or assign this Contract, whether by operation of law or otherwise, without the prior express written consent of the other party. Any attempted transfer or assignment hereof without such consent shall be void and without force or effect. Except as otherwise expressly provided herein, this Contract is not intended to be for the benefit of, and shall not be enforceable by, any person not a party to it or the permitted assignee of such party.
- 15. Notices.** Unless specified otherwise elsewhere in the Contract, all notices and similar communications provided hereunder shall be in the English language or the official language of the Jurisdiction, in writing, and delivered by first-class, prepaid, registered mail or the postal service of the Jurisdiction or reputable express courier service.
- 16. Miscellaneous.** All rights and remedies hereunder shall be in addition to all other rights and remedies under applicable law, all of which rights and remedies shall be nonexclusive and cumulative. No waiver by either party of any default shall be deemed a waiver of any subsequent default. If any provision of this Contract is determined to be invalid, such invalidity shall not affect the validity of the remaining portions of this Contract. Buyer's acceptance of the Contract Documents shall constitute Buyer's representation and warranty that it has obtained all necessary approvals, licenses and permits required from any governmental authority in Buyer's country with respect to the shipment, importation, delivery or use of the Goods, and the payment of the Contract price and all other amounts due to Seller in the currency of payment specified in the Contract or, if no such currency is specified, the currency of the Jurisdiction. Seller shall have the right to cancel its performance under this Contract, and may withhold or suspend performance of any of its responsibilities hereunder, for any failure or delay by Buyer in giving Seller any assurances Seller may require, in its sole discretion, that all such approvals, licenses and permits have been obtained, in which event Buyer shall promptly reimburse and indemnify Seller for all damages, costs or losses incurred by Seller due to such failure or delay by Buyer. The parties shall maintain the confidentiality of this Contract, except to the extent disclosure is required by applicable law or information contained in this Contract is generally available to the public through no act or omission of the party receiving such information. In the event of any translation of the Contract into a language other than English, the provisions of the English-language version shall prevail and govern in the events of any conflict or inconsistency in interpretation. Seller desires to conduct its business in accordance with the highest legal and ethical standards; BUYER SHOULD REPORT ANY VIOLATIONS DIRECTLY TO SELLER'S MANAGEMENT OR VIA A THIRD-PARTY, ANONYMOUS HOTLINE AT (1-866)327-8419 (US TOLL-FREE NUMBER). **CONSUMERS:** Where Buyer is considered a "consumer" under applicable law, any explicit written "consumer" warranty provided and any warranties or guarantees required under law shall apply instead of those provided in Sections 6 and 8 above; and in such "consumer" cases, Seller's liability is limited to fullest amount allowable under such "consumer" laws (this Contract does not intend to exclude, restrict or modify such laws).

## 销售条款和条件

**1. 管辖地; 合同成立。** 为本条款条件之目的, 管辖地为中华人民共和国, 不包括香港和澳门特别行政区和台湾地区 (“管辖地”)。本条款和条件、此处所附的任何卖方文件和任何其他由卖方发往买方的, 或包含本条款和条件的书面或电子通讯, 共同构成适用于货物 (“货物”) 销售和合同文件中描述的服务的 “合同文件” (其中若有任一不一致的地方, 本条款和条件优先)。买方通过下列任意方式之一表明承诺, 即应被认定为已经接受了合同文件中的条款 (包括本条款和条件): (a) 在一份合同文件上署名并将其返回给卖方; (b) 向卖方发送一份对合同文件的书面确认函; (c) 在收到合同文件后向卖方下订单或发出指示 (该等订单或指示有关货物的制造、分类或交付 (包括货物暂存的指示)); (d) 未能在收到合同文件后十 (10) 个工作日内取消待定的订单; (e) 接受全部或部分货物的交付; (f) 支付货物的全部或部分价款; 或; (g) 以其他方式表明买方对合同文件的接受。卖方在买方作出承诺前任何时候可以撤销其销售货物的要约。一经承诺, 买方不可撤销地同意和承诺根据合同文件购买货物。 **买方特此不同意并拒绝任何与卖方合同文件中条款不一致或附加的任何购买订单或其他文件中的条款 (不一致或附加的条款) 将从合同中删除。卖方的要约和义务明显以买方对本条款和条件的承诺为前提。合同文件应是买方和卖方间有关货物的完整的和排他的合同 (“合同”), 且仅能由卖方授权代表书面签字后进行修改。任何先前的或其他同时的提议、报价、陈述、预测、样品、模具、说明书、交易进程或贸易用途不是买方和卖方间合同的一部分。** 在本合同中, “包括” 意指 “包括但不限于”。

**2. 支付。** 除非本合同另有规定, 所有价款应以管辖地官方货币在发票开具之日起三十 (30) 日内向卖方在管辖地的办公室全额支付。所有付款应当按时支付且不得对合同价款抵消、折扣 (除非合同中明确规定) 或减少, 不得因货币转换或兑换而产生任何扣减, 且任何政府部门征收的税费不得从价款中扣除。卖方可以接受自买方处收到的或为买方账户支付的任何价款, 并按照卖方的账簿记录抵消买方所欠的债务, 同时不解除买方对于该欠款的剩余部分的债务责任, 无论买方支付价款时附随任何声明。买方同意, 对于任何届时尚未支付的价款按月或按期支付迟滞费。迟滞费应按照以下两者中较低者计算 (a) 在发票当日有效的花旗银行所报最优惠利率的125% (或如不适用, 则为卖方在管辖地选择的另一家银行的最优惠利率), 以及 (b) 管辖地具有管辖权的法律所允许的最高利率。卖方可以在任何时候由其自行决定限制或撤销给买方的关于时间和数额的信用条款; 并且作为买方在本合同项下的义务的条件 (包括生产制造和运输全部或部分货物), 卖方可以自行决定要求买方1) 以现金形式支付尚未支付的货款 (包括买方应当支付的所有相关的运输、存储和其他费用) 或2) 针对尚未支付的合同价款, 为卖方开设和保兑一个不可撤销的商业信用证。该信用证应当见单付款或卖方同意的银行同意的形式支付。该信用证的条款应当遵守卖方向买方出具的任何规格或者要求, 包括对于过期单据的转让、部分交付、转运和接收的相关条款。买方应当支付所有花费, 包括有关开证、保兑、修改该信用证的所有银行费用。该信用证的开证和保兑费用不应当抵消买方应向卖方直接支付的责任。

**3. 违约。** 发生以下情况时, 视为买方违约和实质性及根本性的违反本合同: 1) 买方对其违反或不履行与卖方签订的本合同或任何其他合同的行为不予纠正; 2) 买方未按照卖方的要求依据本合同开取信用证; 3) 买方未即时向卖方支付货物的分期付款; 4) 买方没有分类、具体化或接收任何分批运输的合格货品; 5) 买方破产、召集债权人会议、或者总体转让其债权人的权益; 或者6) 启动有关买方的破产、清算、重组、安排或其他类似的程序 (但是在破产程序中, 仅如果在程序启动之后三十 (30) 天内没有被驳回)。当买方存在任何以上违约行为时, 卖方可以在, 在适用法律允许的任何权利和救济之外, 履行任何一项或多项累积而非排他性的以下权利和救济: 1) 取消本合同的任何部分 (包括任何担保) 或任何其他与买方签订的合同 (买方负责损失赔偿); 2) 在本合同或任何其他合同项下延期运费; 3) 宣布本合同或任何其他合同项下尚未支付的账单立即到期应付; 4) 由买方承担全部风险和费用, 依据本合同或任何其他合同立即回收在运输中或由买方保管或控制的全部或部分货品; 5) 完成全部或部分合同的履行并要求买方支付全部合同价款, 且6) 公开或私下转售本合同或其他合同项下的全部或部分货品, 或者任何为本合同提供的原材料, 且买方应当承担该销售中产生的任何损失和费用。

**4. 保留所有权。** 除非本合同另外具体规定, 所有交付至买方的货品的财产权应当由卖方享有; 如果该保留的所有权在现行法律下无效或不可执行, 卖方应当在货品上保留担保权益或留置权益直至卖方收到买方全部价款。买方同意将所有卖方已经交付但尚未收取全额付款的货品 (即卖方据此保留权益的货品) 另行保存, 并在该等货品上贴附醒目标记以表明卖方在该货品上仍保有益, 且不得向任何第三方转让该货品的任何权益。尽管卖方仍对货品享有权益, 买方应当承担该货品缺失或损坏的所有风险, 且应当自担费用负责支付货品的重置成本保险, 并命名卖方为保险受益人和附加被保险人, 直至卖方收到全部价款。即使卖方对任何货品拥有保留的权益, 在卖方根据合同发货后, 买方有责任和义务自行承担与货品有关的所有及全部的税费、仓储费用、运输费用或其他费用或责任。买方同意签署买方自行担保并认为必要或适合的任何文件, 以使卖方对货品的保留权益得以完善或执行, 或者, 卖方可以将合同或任何不包括买方签名的备忘录或声明备案或记录在案。

**5. 交付; 账单和存放。** 除非本合同另行规定, 卖方交付货物的定义应当为2010年国际贸易术语解释通则 (英文版) 中规定的工厂交货 (EXW)。任何依据买方要求或者经卖方自行决定应为买方所有的货品, 卖方可以在运送货物前开账单, 从发出账单之日起损失或损坏的风险转移至买方。买方应当另行支付所有保险、货物和运输的费用。除非本合同另行规定, 运输的货物数量不超过合同规定数量的10% 或者购买货物的一单件 (两者间取更多者) 应当被视为完全交付合同规定的数量, 并且买方应当支付实际运输数量的价款。由买方自行决定, 货物运输可以分批进行, 买方应当接收分批运输并且按照合同的价格和条款支付价款。除非本合同另行规定, 所有运输日期皆为卖方诚信估计但不保证的运输日期。已经发出账单的货物, 无论因任何原因保存在任何地方, 应当由买方承担风险和费用, 并且卖方应当按标准价格收取保险和存储费用。

**6. 有限保证。** 在受限于第7条的前提下, 作为一等品出售的所有货物, 卖方保证在出售时拥有该货物无瑕疵的所有权且该货品符合卖方的质量标准。出售的所有其他货物, 包括 “二等”、“旧的”、“次品” 或 “停用生产线” 都按照其自身质量出售。 **卖方不承诺或保证任何合同明确规定之外的事项, 例如货物的可燃性, 或货物包含的任何物品或产品符合适用的可燃性标准, 或已经检测符合标准。若买方未在货品运输前依据合同获得关于可燃性和检测的明示保证, 则应视为免除卖方未能提供上述信息的任何责任。买方确认, 任何后续精细加工、用于复合结构或其他对货品的改变, 均可能对产品的易燃性产生不利影响, 并且货品可能在某些条件下燃烧, 因此在接近热源或火源使用时应格外注意。除了上述卖方可能明示和具体提供的保证, 卖方明确表示不承担任何明示或暗示的保证, 包括适销性、符合特定目的、或任何有关样品、模型或规格的保证。买方承担所有有关使用货品的风险和费用。**

**7. 有限责任。** 在不限制本合同其他有关限制或排除卖方责任的条款的一般适用性的前提下, 买方基于任何原因的与本合同或货品有关的主张 (包括疏忽) 可以获得的损失补偿不得超过买方支付的与该主张相关的货品的实际合同价格, 并且卖方不对买方或任何第三方的特殊的、间接的、偶然的、惩罚性的或附带损失 (包括失去使用价值、利润损失、商誉损失、延迟交货、无法递送、不良状态或使用货品造成的损失) 承担责任。任何卖方给买方的技术意见或支持及其成果都应由接洽的、偶然承担全部风险和费用。

**8. 瑕疵和主张。** 买方应当在收到货品后十日内, 但在使用或转售货品之前, 检测货品并将任何不合格之处及时通知卖方。买方使用或转售货品应当被视为依据合同接受该等货品。任何种类、性质或内容的主张除非通过书面形式提出, 否则将视为禁止或放弃。除非卖方1) 在买方收到货品后十 (10) 天内收到其书面的具体的所有主张 (隐藏瑕疵除外); 或者2) 在买方收到货物九十 (90) 天内就隐藏瑕疵主张权利 (但是货品被以任何方式印染、切割或加工后, 买方不得主张任何权利), 则买方应被视为接受货品, 并且任何取消、拒绝或主张损失的权利已经失效。在卖方收到买方关于货品缺陷的书面权利主张三十 (30) 日内, 买方应当自行承担费用和将货品运至卖方指定的地点 (否则视为接受瑕疵并放弃所有权利主张)。如果卖方决定买方主张的瑕疵属实, 卖方可以由其自行选择1) 替换任何有瑕疵的货品; 2) 修复任何有瑕疵的货品; 3) 接受任何返还的有瑕疵的物品, 并且向买方返还购买价格, 或4) 向买方支付依据合同规定的日期应当交付的合规货品和实际交付的货品之间的差价。在法律允许的范围内, 上述内容即为买方于本合同项下对于任何瑕疵货品的仅有的权利救济。

**9. 侵犯专利权。** 卖方运输货品不明示或暗示授予买方任何有关专利或著作权的许可权或其他权利, 或者授予其侵犯任何商标或著作权的权利。当依据要求由卖方交付的货品经有管辖权的法院认定侵犯了在买方所在国家登记的专利权, 买方应当及时书面通知卖方, 并且卖方应当自行决定替买方获取继续在买方所在国家使用该货品的权利 (符合卖方运输的货品的规格), 用不侵权的货品替换侵权的货品。或者接受返还的侵权的物品并且返还给买方购买价格。上述规定包括卖方就货品侵犯专利权有关的所有责任。买方应当就以下情况对买方赔偿, 并保证其不受其害: 卖方依据买方具体要求或修改的货品侵犯专利权而产生的损失和费用主张, 以及因为买方侵权或者误用商号、商标、标记、重要内容的标识, 或者其他卖方依据买方指示使用的标记。

**10. 不可抗力。** 对于超出合理控制的原因 (包括履行任何法规、命令、或任何政府的指令、天灾、战争 (宣战或未宣战的)、恐怖活动、另一方的行为或遗漏、民用或军用机关的行为、火灾、流行疾病、洪水、灾难、罢工、工厂或港口关闭、停工、暴乱、资源配给、短缺、或者受影响方无法通过正常途径获取必需的劳动力) 而造成未能履行其在合同文件项下的任何义务, 任何一方不应当承担责任, 但是买方于本合同项下支付价款的责任 (包括开取保兑信用证的义务) 不应当因为上述原因而推迟。一旦上述可以豁免迟延履行事由发生, 受影响的一方应当立即尽早向另一方发出关于任何所谓不可抗力事件的通知, 并且在该通知后尽早修改履行时间表。当发生上述迟延时, 受影响方的履约时间应当适当延长至受影响方因为迟延原因而失去的时间。如果交易涉及信用证, 该信用证应当表明开证行已经从卖方处收到迟延通知的复印件, 并且已经按照买方向上述银行的指示修改了信用证, 将运输时间和信用证到期时间顺延至通知规定的时间。

**11. 价格。** 所有价格不包括适用的进口税费、海关费用、出口许可费用或进出口税、联邦、州、省或地方的销售、使用、不动产或增值税或其他官费, 以上全部税费由买方负责。在买方接受本合同之前, 卖方可以未经通知修改任何适用的价格。买方接受合同之后, 卖方可以提前至少15天书面通知买方对未交付的货物的任何价格进行调整。在进行该等调整时, 买方的应对措施仅限于在调整生效日之前以书面形式发出, 并且卖方在调整生效日之前收到, 关于撤销与适用价格调整的货品有关合同的通知。若卖方被法律、政府行政法令、命令、及法规禁止改变货物价格或继续已经执行的价格, 卖方可在提前30天书面通知买方后终止此合同。

**12. 适用法律。** 就国内销售而言, 管辖地法律, 不包括其冲突法原则, 应适用于本合同及各方的权利和义务。就国际销售而言, 《联合国国际货物销售合同公约》 (“销售公约”) 在其可适用及受本合同所限范围内, 应适用于本合同及各方的权利和义务。尽管有以上规定, 如本合同条款 (包括这些条款和条件) 与销售公约存在任何不一致或相冲突之处, 应以本合同的条款为准。就相关的不一致或相冲突之处, 本合同的条款应被视为依据销售公约第六条, 排除销售公约条款的适用。更进一步而言, 在不对前述内容的普遍适用性做出限制的前提下, 销售公约的以下条款不适用于本合同: 第8(3) 条、第9条、第11条、第16(2) 条、第39(2) 条、第44条、第46条、第50条和第84(1) 条。任何在本合同或通过适用销售公约条款未能明确解决的问题, 应根据管辖地的国内法 (不包括其冲突法原则) 予以解决。就不受销售公约管辖的国际销售而言, 管辖地的国内法 (不包括其冲突法原则) 应适用于本合同及各方的权利和义务。在此排除《联合国国际货物买卖时效期限公约》的适用, 其不应适用于因本合同或货品的销售或购买而产生或与之有关的权利主张。

**13. 争议解决。** 除非双方另行同意, 因本合同双方预期交易产生的或与其有关的任何争议应当在上海提交中国国际经济贸易仲裁委员会, 根据该会届时有效的仲裁规则仲裁并解决。仲裁裁决应当是终局的且对双方均有约束力。

**14. 转让和委托。** 未经另一方事先明确的书面同意, 无论是因为法律的实施或其他原因, 任何一方不得转让或转移本合同或转包本合同项下的任何义务。任何未经他方同意而转让或转移的企图都应被视为无效且不具备执行力。除非另有明示规定, 本合同并非为任何非为合同一方或该方允许的受让人之利益而设定, 并且前述人等无权要求执行本合同。

**15. 通知。** 除非本合同其他条款另行规定, 本合同项下的所有通知和类似通讯应当以书面形式进行, 并且以英文或管辖地的官方语言书就, 通过管辖地的一等预付挂号邮递服务或具有良好声誉的快速服务递送。

**16. 其他。** 本合同项下的所有权利和救济应当都是非排他的和累计的。任何一方对任何违约的豁免不得视为对后续违约的豁免。如果本合同任何规定被确定为无效, 该等无效不得影响本合同剩余部分的有效性。买方接受本合同的行为应被视为买方陈述及保证, 其已经获取所有必须的, 买方所在国政府部门要求的, 和运输、进口、交付或使用货品、和依据合同具体规定的货币或当合同没有具体规定时用管辖地货币支付合同价格或其他到期款项有关的批准, 许可和允许。如果买方已经担保的, 且卖方自行决定的任何已经应当获取的批准、许可和允许, 买方没有或者延迟获取, 则买方应当及时补偿和赔偿给卖方因为买方未履行或迟延而导致的所有损坏、花费和损失。双方应当保持合同的保密性, 但适用法律要求披露的信息, 或合同中包含的、非因接收该等信息的合同方披露信息的行为或疏忽而已经为公众所知的信息除外。如果本合同翻译为英文以外的其他语言, 当解释中出现任何矛盾或不一致, 本英文版本的条款应优先适用并具有约束力。卖方有意在其商业活动中遵守最高标准的法律和道德准则; 买方应将任何违反的情况向卖方管理层直接报告, 或通过第三方匿名热线 (1-866) 327-8419 (美国免费拨打号码) 报告卖方。 **消费者:** 如果买方根据适用的法律被认定为 “消费者”, 任何明确的成文性的 “消费者” 担保和法律中要求的任何担保或保证应替代上述第6条和第8条内容而适用; 在视为 “消费者” 的情况下, 卖方责任限于该等 “消费者” 法律下所允许的最大数额 (本合同无意排除、限制或修改该等法律)。