

**General Terms and Conditions of Sale of
Demag Cranes & Components (Shanghai) Co., Ltd.**
德马格起重机械（上海）有限公司销售通用条款与条件

1. General Provisions 一般规定

1.1 These General Terms and Conditions of Sale ("GTC") shall apply to the present and all subsequent contracts ("Contract") on the delivery of goods and/or the rendering of services ("Goods") between our customers ("Purchaser") and us in business-to-business relationships exclusively.

本销售通用条款与条件（“GTC”）仅适用于我方与我方客户（“买方”）之间对公业务关系中交付货物和/或提供服务（“货物”）的现有的和后续的所有合同（“合同”）。

1.2 Conflicting, differing or supplementing terms and conditions of the Purchaser are not accepted and shall not bind us, even if we do not explicitly object to them or if we unconditionally render performance or accept payments. Any deviations from this GTC shall only become valid if they have expressly been agreed upon in writing.

我方不接受与本 GTC 相冲突、不一致或对本 GTC 进行补充的买方的条款与条件，且这些条款与条件对我方无约束力，即使我方未明确表示反对，或者我方无条件地履行了合同或接受了付款。对本 GTC 的任何偏离仅在双方明确以书面方式约定时方为有效。

1.3 Any Contract shall only become binding after duly signed by the Purchaser and us ("the Parties"). Any contract shall only become binding after duly signed by the Purchaser and us ("the Parties").

1.4 Our offers shall generally not be binding. However, if an offer is declared as being binding by us in writing, it shall be revised and adapted, if, after its submission, modifications of the contractual obligations are necessary due to new or modified legal requirements or new requirements of government authorities, taking into account the interests of both Parties. This shall apply accordingly after the acceptance of the offer.

我方的报价通常不具有约束力。但是，如果我方以书面方式声明某一报价对我方有约束力，则若在该报价提交之后，基于新的或修改后的法律要求或新的政府部门要求而需要修改合同义务，在充分考虑了双方的利益之后，该报价应进行修改和调整。上述规定也适用于被接受的报价。

1.5 The Purchaser shall be entitled to the non-exclusive use of any delivered standard software in unmodified form for use with the agreed equipment. Unless agreed or indicated otherwise, e.g., in the software documentation or software related information, the Purchaser shall be entitled to create two back-up copies.

买方有权以未经修改的形式非排他性地与约定的设备一起使用我方交付的标准软件。除非另有约定或说明（如在软件文档或软件相关信息中有所约定或说明），买方有权创建两份软件的备份副本。

2. Prices, Payment, Securities 价格、付款方式及担保

2.1 If not agreed upon otherwise in writing, prices shall be FCA, our premises (Incoterms 2020) and shall exclude accessory charges, in particular, but not limited to freight, insurance, storage, inspection by third parties, value added tax (if applicable) and any other additional charges or taxes. The minimum order value shall be € 40.00 (net). Payment shall be made to our banking account(s).

free of charge for us and without any deductions by the dates agreed in the Contract.

如未以书面方式另行约定，价格应为 FCA 我方经营场所（《2020 年国际贸易术语解释通则》）且不含额外费用，包括但不限于运费、保险费、仓储费、第三方检查费、增值税（如适用）及任何其它额外收费或税费。订单最小金额应为 40 欧元（净价）。所有的付款应于合同中约定的日期前付至我方银行账户，相关手续费等由买方自行承担，且付款金额不得扣减。

2.2 If we agreed to render installation or erection services and no other agreement has been concluded, the Purchaser shall bear all necessary additional costs such as travel expenses, costs for transportation of tools or the costs of electricity, water or compressed air in addition to the agreed prices.

如果我方同意提供安装服务且未另行达成协议，则除了约定的价格之外，买方应承担所有必要的额外费用，如差旅费、工具运输费用或者水、电或压缩空气的费用。

2.3 With regard to export deliveries, any and all taxes, customs duties, social security contributions and any other public charges which are levied on us or our employees (including our subcontractors and their personnel) in connection with the performance of the Contract in the country of destination, if any, shall be reimbursed by the Purchaser.

针对出口业务，与履行合同有关而由目的地国家向我方或我方雇员（包括我方分包商及其人员）征收的任何和所有的税费、关税、社会保障费用和其它任何公共费用（如有），均应由买方承担。

2.4 The Purchaser may set off only those claims in accordance with the applicable law that a) are owed in the same currency as the main claim and b) are undisputed between the Purchaser and us or have been finally adjudicated. Aforementioned rule shall apply mutatis mutandis to any right of retention of the Purchaser.

买方仅可根据适用的法律规定抵销以下索赔：a) 与主债权的币种相同的索赔；和 b) 买方与我方之间就该索赔不存在争议或已经被最终裁定/判决。前述规则应比照适用于买方的任何保留权（即在满足法律规定以及上述条件的情况下买方有权抵销其相应金额的应付款项）。

2.5 Only if expressly agreed upon, we shall accept discountable and properly taxed bills of exchange or cheques for payment. When accepting bills of exchange, debts shall only be deemed as paid after the bills of exchange have been cashed. When accepting cheques, debts shall only be deemed as paid when the amount is irrevocably credited to our bank account. Discount costs and any costs resulting from honouring the bill of exchange or cheque amount shall be borne by the Purchaser.

仅在明确约定的情况下，我方才接受以可贴现和适当征税的汇票或支票作为付款方式。当以汇票方式支付时，债务仅在汇票承兑之后方可视为被清偿。当以支票方式支付时，债务仅在相应金额不可撤销地被记入我方银行账户后方可视为被清偿。承兑汇票或支票而产生的承兑费用或其它任何费用均应由买方承担。

2.6 Should the Purchaser be in arrears with payment, we shall be entitled to charge interest at an amount of 0.5% of the past due payment for each full week of delay whereas this shall not exclude our further rights and remedies provided by the Contract or the applicable law.

如买方延误付款，我方有权要求买方支付逾期付款利息，该利息的计算方式为每延误一周，买方需承担逾期付款金额 0.5% 的利息，该利息的收取不排除我方根据合同或适用的法律主张其它权利和采取其他补救措施。

2.7 Without prejudice to any further rights and remedies, in the event of a default in payment of the Purchaser or in the event of a material deterioration of the Purchaser's creditworthiness or application or commencement of insolvency proceedings relating to the assets of the Purchaser, we shall be entitled to make due immediately all claims we have against the Purchaser, regardless of the terms of any bills of exchange, or to demand securities. We shall also be entitled to effect any outstanding deliveries against prepayment only or against the provision of securities or to terminate the Contract.

在不影响任何其它权利和补救措施的前提下，如果买方拖欠付款，或者买方的信用严重恶化，或者与买方资产有关的破产程序被申请或被启动，我方有权要求我方对买方的所有债权立即到期应付，而无需考虑汇票条款，或者要求买方提供担保。我方有权仅交付买方支付的预付款所对应的部分货物或提供了担保所对应的部分货物，或者我方有权解除合同。

3. Packing 包装

3.1 Unless otherwise agreed, packing is included in prices and will not be invoiced separately to the Purchaser.

除非另有约定，价格中已经包含包装费用，不再另行单独向买方收取包装费。

4. Dates of Delivery, Obstacles to Performance 交付日期，合同履行的阻碍

4.1 The agreed dates of delivery shall only apply if in due time a) all details of the Contract have been clarified, b) all necessary documents and approvals to be procured by the Purchaser have been provided to us, c) all drawings have been approved by the Purchaser, and d) any agreed down payments have been received by us and any securities agreed upon have been provided. A further precondition shall be the completion of the preparatory services for installation and/or erection to be provided by the Purchaser in due time, in particular provision of electrical power, gas, water and any required auxiliary workers free of charge for us.

约定的交付日期仅在以下前提均被按时满足时才适用：a) 合同中的所有细节均已经澄清；b) 应由买方提供的所有必需的文件及批准已经提供给我方；c) 买方已经批准所有的图纸；以及 d) 我方已经收到所有约定的预付款和担保。另一个先决条件为买方按时完成了安装的准备工作的，尤其是免费为我们提供电、气、水和任何所需的辅助人工。

4.2 The agreed dates of delivery shall be considered as met with the notice of readiness for dispatch, especially if the Goods ready to be delivered cannot be dispatched on time for reasons for which we cannot be held responsible.

我方发出备妥待运通知即视为按约定的交付日期交付，特别是因不可归责于我方的原因而导致备妥的货物无法按时发出时。

4.3 Should we be hindered in fulfilling our obligations due to an event of unforeseen circumstances affecting us and/or our sub-suppliers and/or sub-contractors and which we could not have avoided with due care based on the circumstances of the specific case, e.g. war, intervention by a higher authority, internal unrest, natural forces, accidents, strikes and lockouts, other interruptions and delays in the supply of major operating material or any pre-materials or other necessary supplies,

the delivery deadlines shall be extended by the duration of the interruption and a reasonable start-up time. Regarding the adjustment of the other terms of the Contract, the Purchaser shall enter into good faith negotiations with us. Should the fulfilment of our obligations become impossible or unacceptable for us due to the unforeseen circumstances, we may terminate the Contract.

如果因无法预见的事件影响我方和/或我方的供应商和/或我方的分包商从而导致我方无法履行合同义务，并且即使我方采取谨慎的态度依然无法避免该情况的发生，例如战争、上级政府的介入、内乱、自然灾害、事故、罢工和封锁，以及其它导致主要生产物料或前期物料或其它必需供应物质供应中断和延误的事件，则交付日期应按照被中断的时间相应顺延，并给予合理的启动时间。买方应真诚地与我方就合同其它条款的调整进行沟通。如果因不可预见的事件导致我方不可能继续履行合同义务或者履行合同对我方而言不可接受，我方可解除合同。

4.4 In case of delay with delivery or delay with any other performance related to the Contract we shall only be liable if the delay has been culpably caused by us. Our liability for damages thereby caused (including damages as a result of termination of the Contract by the Purchaser due to the delay) shall in the aggregate be limited to an amount of 0.5% of the contractual value of the Goods (net) for each full week of delay up to a maximum of 5% of the contractual value of the Goods (net) whereas such value shall in each case be calculated in relation to the delayed part of the Goods. Payment of damages pursuant to this Clause 4.4 shall constitute the sole and exclusive compensation of the Purchaser for delay to the exclusion of further claims for damages. This limitation of liability shall not apply in any of the events stipulated in Clause 10.4 below.

我方仅对因我方原因导致的延迟交货或延迟履行合同其它义务承担责任。对因此而导致的损害（包括买方因我方延迟而解除合同所导致的损害），我方所承担的全部赔偿责任限于：每延迟一整周赔偿金额为延迟交付货物的合同净价的 0.5%，上限为延迟交付货物的合同净价的 5%。根据本第 4.4 条计算的赔偿金应构成买方就我方延迟可获得的唯一且排他的赔偿，除此之外的其它索赔不在我方赔偿范围之内。本条责任限制不适用于下述第 10.4 条中规定的情况。

4.5 At our request, the Purchaser is obliged to declare within a reasonable period of time whether it wants to assert any rights it may be entitled to due to a delay.

应我方要求，买方有义务在合理时间内声明其是否打算主张因我方延迟而可能享有的任何权利。

4.6 Any right of the Purchaser to terminate the Contract shall apply exclusively to the part of the Contract not yet fulfilled.

买方解除合同的权力仅适用于合同中尚未履行的部分。

5. Acceptance 验收

5.1 If an acceptance has been agreed upon, the acceptance test must be carried out immediately by the Purchaser after the Goods are delivered to the Purchaser. After completion of the acceptance test, the Purchaser shall confirm the acceptance in written form within one week. The Purchaser must provide for the conditions required for carrying out the acceptance test. With the exception of our labour costs, the Purchaser shall bear all costs arising in relation with the acceptance.

如双方约定了验收，则买方应于货物送达后立即进行验收测试。买方应于验收测试完成后一周内以书面方式确认验收。买方必须提供验收测试所需的各项条件。买方应承担除我方人工费之外的所有与验

收相关的费用。

5.2 An acceptance pursuant to Clause 5.1 shall also be carried out if specific performance features of the Goods have been agreed upon. This shall also apply to completed partial deliveries.

如果双方对货物的特定性能指标有约定，则也应按上述第 5.1 条的要求进行验收。该要求同样适用于已经完成的部分交付的情况。

5.3 In case of Purchaser's failure to carry out the acceptance test or to confirm the acceptance of the Goods in the time frame indicated or if the Goods or any portion thereof are put into operation by the Purchaser without our prior consent, the Goods shall be deemed to have been accepted by the Purchaser. The same shall apply if the Purchaser refuses the acceptance, but does not state the reasons therefor in writing within one week after receipt of our request. The reasons to be stated by the Purchaser shall at least indicate the portion of the Goods that the Purchaser considers incomplete or substantially defective and why the Purchaser is of such an opinion. The Purchaser shall in particular not be entitled to refuse acceptance in case of:

若买方未能进行验收测试或未能在指定时间内确认货物验收，或者在未获得我方事先同意的情况下买方将货物或货物的任何部分投入使用，则货物应被视为已经通过了买方的验收。这同样适用于当买方拒绝验收且在我方提出要求后的一周内未以书面方式说明原因的情况。买方在说明拒绝验收的原因时，至少应指出其认为货物不完整或存在严重缺陷的部分以及买方持有该等观点的原因。针对以下情况，买方无权拒绝验收：

- a) defects which only insignificantly impair the use of the respective Goods;
仅对相关货物的使用造成轻微影响的缺陷；
- b) minor deviations of the Goods from the specification of the Goods;
货物与其规格描述存在细微的偏差；
- c) defective installation or erection not carried out by us.
非由我方实施的有缺陷的安装。

6. Passage of Risk, Dispatch 风险转移，发货

6.1 Unless otherwise agreed upon in writing, risk of loss to the Goods shall pass to the Purchaser upon delivery FCA, our premises (Incoterms 2020).

除非另有书面约定，货物的灭失风险在按 FCA 我方经营场所（《2020 年国际贸易术语解释通则》）交付后转移至买方。

6.2 Unless the passage of risk has already taken place, the risk shall pass to the Purchaser if dispatch, delivery, commencement or implementation of installation, erection or assembly, receipt in own facility or acceptance of the Goods are delayed for reasons imputable to the Purchaser or in case of the Purchaser's default of acceptance.

除非货物的灭失风险已经发生转移，否则，如果因买方原因导致货物的发货、交付、安装、组装、收货或验收延误，或因买方原因未能验收，货物灭失的风险从延误之日起转移至买方。

6.3 In case we are in charge of transportation of the Goods pursuant to the agreed delivery terms, means and route of transportation shall be at our discretion. The same shall apply to the selection of the forwarding agent or carrier.

若按照约定的交货条款由我方负责货物的运输，则我方有权自行决定运输的方式和路线。我方亦有权自行选择货运代理或承运人。

6.4 Goods which have been notified as ready for dispatch must be reclaimed immediately by the Purchaser, otherwise we shall be entitled, at our discretion, to store them at the cost and risk of the Purchaser and to invoice them as if delivered.

当我方发出货物备妥待运通知后，买方应立即安排取走货物，否则我方有权自行安排仓储，仓储费用及风险由买方承担，且该情况将视为货物已经交付，我方将向买方开具发票。

6.5 We are entitled to supply partial deliveries and to invoice them correspondingly.

我方有权部分发货并相应开具发票。

7. Reservation of Title and Nondisclosure 所有权保留和保密

7.1 As security for payment of the full purchase price, legal and equitable title in the Goods shall not pass to Purchaser until receipt by us of payment in full for the Goods. Purchaser is authorized to use the Goods in the ordinary course of business or sell the Goods to a third party. The entire proceeds of any sale or disposition of the Goods shall be held by Purchaser in a fiduciary capacity for us. Until receipt by us of payment in full, Purchaser shall hold the Goods in a fiduciary capacity as bailee for us and insure the Goods for their full replacement value against all risks. Purchaser's right to possess and sell the Goods shall automatically terminate if Purchaser becomes insolvent or the subject of any bankruptcy, insolvency or similar proceedings; makes an assignment for the benefit of creditors; or is unable to pay its debts as they become due. Upon termination of the right to possession, we and our representatives may at any time enter the premises of Purchaser or any third party to repossess the Goods. If Purchaser pledges or otherwise encumbers any Goods that have not been paid for in full, all monies owed by Purchaser to us shall immediately become due and payable. If any portion of this clause shall be invalid or unenforceable, then such provisions shall be enforced to the maximum extent permitted by law, and such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this clause.

作为全额价款的收款保证，在我方收到所有货款前货物的所有权不转移至买方。买方有权在正常业务活动中使用货物或向第三方转售货物。任何出售或处置货物的全部收益应由买方以我方受托人的身份为我方代为持有。在我方收到所有货款之前，买方应以我方受托人的身份为我方持有货物，并按照货物的全额重置价格购买全风险保险。如果买方资不抵债或进入任何破产、资不抵债或类似程序，或为债权人的利益而处置资产，或无法支付到期债务，则买方占有和出售货物的权利将自动终止。当买方对货物的占有权终止时，我方和我方代表可随时进入买方或任何第三方的经营场所取回货物。如果买方将尚未全额付款的货物进行质押或设置其他担保权益，则我方对买方的所有债权将立即到期应付。如果本条款任何部分无效或无法执行，则双方应在法律所允许的最大范围内执行该等规定，并且这些无效或无法执行的部分不影响本条款其它部分的有效性或可执行性。

7.2 We retain the ownership, copyrights and all other rights concerning models, estimations of costs, drawings and other material.

我方保留与模型、成本预测、图纸和其它资料相关的所有权、著作权和其它所有权利。

7.3 The Purchaser shall keep secret all information obtained from us in hardcopy, electronic version

or in any other way, such as, in particular, drawings, models, estimations, business secrets and other confidential documents and information. They may only be revealed to third parties if necessary and with our prior written consent. This obligation shall persist after termination of the Contract until the information has ceased to be of a confidential nature.

买方应对以纸质版、电子版或任何其它方式从我方获得所有信息予以保密，尤其是图纸、模型、预测、商业秘密和其它保密文件及信息。该等信息仅在必要且得到我方事先书面同意的情况下方可披露给第三方。该保密义务在合同终止后仍应继续履行，直至该信息不再需要保密为止。

8. Liability for Defects 瑕疵责任

Without prejudice to any further legal and contractual preconditions and restrictions set forth notably under the applicable law, our liability for defects shall be subject to the following provisions:

在不影响适用法律允许的任何法定和合同约定的前提及限制条件的情况下，我方按如下条款承担相应的瑕疵责任：

8.1 The Goods shall only be defective if already at the time of the passage of risk a) the Goods are clearly different from the specifications laid down in the Contract (which shall conclusively describe the applicable conformity standard of the Goods) or, in the absence of agreed specifications, they are not fit for the purpose for which they were designed or b) the Goods are not free from enforceable rights or claims of third parties. Except for any express warranties stated in the Contract, we disclaim any other express or implied warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose, or otherwise. We shall in particular not be liable for compliance of the Goods with any legal requirements existing outside of China. Our liability shall not apply to defects which are:

下列情况在风险转移时就已经存在的，方可视为货物存在瑕疵：**a)** 货物与合同约定的规格（规格中必须明确写明货物所适用的合格标准）明显不符，或者当没有约定的规格时，货物不能满足设计目的；或**b)** 货物上存在第三方的可执行权利或索赔。除了合同中明示的各项质保之外，我方不承担任何其它明示或默示的保证责任，包括但不限于对于适销性、适用于某种特定用途或其它的默示保证。我方尤其不对货物是否符合中国境外其它法律的要求负责。我方对下述瑕疵不承担责任：

a) due to reasons beyond our control,

由于我方不可控的原因而导致的瑕疵；

b) defects in expendable and/or consumable parts regularly replaced due to normal wear and tear arising after the passage of risk,

在风险转移之后，因正常磨损和消耗而需要定期更换磨损件和/或消耗件的瑕疵；

c) caused by faulty or negligent handling, excessive strain, or other abuse by Purchaser or any third party,

因买方或任何第三方错误使用或使用中的疏忽大意、过度使用或其它不当使用而造成的瑕疵；

d) attributable to non-compliance with the instructions contained in the operation and maintenance manuals of the original equipment manufacturer,

因未遵守原设备生产方的操作维护手册中的指引而造成的瑕疵；

e) non-reproducible software errors,

不会重现的软件错误;

f) minor defects or
微小的瑕疵; 或者

g) attributable to incorrect or negligent treatment, incorrect, inappropriate, omitted or untimely maintenance, inappropriate storage, excessive loading or operation, unsuitable operating equipment, defective civil engineering or building work, unsuitable building site or due to special influences (e.g., chemical, electrochemical or electrical influences or exceptional temperature and atmospheric influences) not specified as requirements according to the Contract.

因不正确或疏忽大意的处理, 或不正确、不适当、遗忘或不及时的维护, 或不适当的存储、过度负荷或使用、不适当的操作设备、土木工程或建筑工程存在瑕疵、不合适的工地, 或者在合同中未列出需要特别注意的特殊影响因素(例如化学、电化学或电气影响, 或者异常的温度和大气影响等等)而导致的瑕疵。

8.2 We shall be entitled to rectify any defective Goods or to replace them by new parts or to render them again free of charge at our discretion.

我方有权自行选择维修有瑕疵的货物或者用新的部件替换有瑕疵的部件或者免费重新提供货物。

In the case of software with source code that we are able to modify ourselves, we shall rectify defects in the software at our discretion by provision of an update to the software in which only the defects are rectified or by provision of an upgrade to the software in which the defects are also rectified. In the case of software with source code that we are unable to modify ourselves, this presupposes that such an update or upgrade is made available to us or can be procured by us at appropriate cost.

对于我方可以自行修改源代码的软件, 我方可自行选择纠正软件中瑕疵的方式, 即仅对软件中的瑕疵部分进行更新, 或是将整个软件进行升级。对于我方无法自行修改源代码的软件, 若我方可获得或可以合适的价格购买该等更新或升级时, 我方也可提供给买方。

Claims for defects of software extended by the Purchaser beyond an interface provided by us may only be asserted up to the interface.

若买方将软件扩展至我方提供的接口范围之外, 则我方仅对我方提供的接口范围内的软件瑕疵负责。

8.3 Notification of defects must be submitted immediately and in writing. We shall be given adequate time and opportunity to cure any defect. For this purpose, the Purchaser shall grant to us working access to the defective Goods. The Purchaser shall provide us with a complete technical data report and shall carry out the disassembly and reassembly of the Goods upon our request, all of this without cost to us.

买方的瑕疵通知应立即以书面形式向我方递交。我方应被给予充足的时间和机会来纠正任何瑕疵。为此, 买方应确保我方可以正常接触有瑕疵的货物。买方应向我方提供一份完整的技术数据报告, 并应我方的要求拆卸和组装货物, 费用由买方自行承担。

8.4 To the extent that we have incurred cost or expenses, we shall be entitled to compensation if:

下列情况下, 我方有权要求买方赔偿我方由此产生的成本或费用:

a) the defect notified to us by the Purchaser is subsequently determined to not exist or
买方通知我方的瑕疵最终被证实并不存在; 或

b) we are not liable for the notified defect.

我方对该瑕疵不承担责任。

8.5 We shall not be liable if:

以下情况，我方无须承担责任：

a) the Purchaser or a third party carries out modifications or repairs to the Goods,

买方或第三方对货物进行了更改或维修；

b) the Purchaser does not notify us during the limitation period in writing of a defect without undue delay, at the latest however fourteen (14) calendar days after Purchaser's discovery or after the Purchaser should have discovered the respective defect if Purchaser had exercised due care pursuant to the requirements of the applicable law (whereas the Purchaser is obliged to examine the Goods with regard to potential defects immediately after take over),

买方未能在限定的时间内以书面方式及时将瑕疵通知我方，但是，最迟应于买方发现存在瑕疵，或者根据适用的法律要求（如买方有义务在接收货物之后立即检查货物是否存在潜在瑕疵），买方在采取谨慎的态度之后应当发现存在瑕疵后的十四（14）个日历日之内；

c) if the Purchaser has not immediately taken all appropriate steps to mitigate a damage caused by a defect, or

如果买方未能立即采取所有适当的措施以减轻瑕疵造成的损害；或

d) if the Purchaser prevents us from remedying a defect.

如果买方阻止我方纠正瑕疵。

8.6 The warranty period for the Goods shall be eighteen (18) months from the commissioning, however, limited to twenty-four (24) months from the date of passage of risk, if not agreed upon otherwise. Any actions against us based on a defect of the Goods shall be time-barred thereafter. For the avoidance of doubt, no new warranty period shall commence with regard to any repaired or replaced parts of the Goods.

除非另有约定，货物的质保期为调试完成后十八（18）个月，但不超过风险转移之日后二十四（24）个月。质保期结束之后，基于货物瑕疵而对我方采取的任何行动均为无效。为避免疑义，任何维修后或更换后的货物部分并不享有新的质保期。

8.7 Subject to all and any additional requirements set forth by applicable law and this Section 8, the Purchaser shall not be entitled to terminate the Contract unless a defect amounts to a fundamental breach of contract and a reasonable period of time required for appropriate remedial works has expired to no avail after the receipt of the Purchaser's written notification of the defect.

受制于适用的法律及本第 8 章所载明的所有和任何额外要求，仅当某项瑕疵构成了对合同的根本违约，并且在收到买方就该瑕疵的书面通知后，我方在适当的纠正工作所需要的合理期限内未能纠正该等瑕疵的，买方才有权解除合同。

8.8 With regard to claims for damages due to defects, Section 10 shall apply in addition and take precedence. Without prejudice to Sections 9 and 10, any other claims or rights of the Purchaser due to any defect of the Goods shall be explicitly excluded. The Purchaser shall in particular not be entitled to rescind the Contract based on any error about conditions which it considered to be a necessary basis for the Contract, notably an error about the actual condition of the Goods.

对于因瑕疵而导致的损害索赔，第 10 章应优先予以适用。在不影响第 9 章和第 10 章规定的前提下，买方基于任何货物瑕疵而得以主张的任何其它索赔或权利均被排除，不予适用。特别地，买方无权基于其对合同必要基础的条件、尤其是对货物实现状况存在认知错误而要求解除合同。

9. Defects due to Intellectual Property Rights 知识产权瑕疵

9.1 Third parties' enforceable rights or claims which are founded on industrial or other intellectual property ("Property Rights") shall only constitute a defect to the extent that already at the time of the passage of risk the Property Right was granted and made public in China and that the usual use of the Goods by the Purchaser is thereby impeded. Without prejudice to further preconditions, notably pursuant to Section 8, we shall be liable for such defects as follows:

第三方基于工业产权或其它知识产权（“知识产权”）而享有的可执行的权利或索赔，仅在风险转移时该知识产权已经在中国境内被授予并公开，且对买方正常使用货物造成阻碍时方可被视作货物存在瑕疵。在不影响其它先决条件、尤其是第 8 章的情况下，我方按照下述规定对该等瑕疵承担责任：

9.1.1 At our discretion and at own cost, we shall either effect a right of use for the relevant Goods or change them in such a way that the Property Right is not violated or replace them. If this is not possible on economically appropriate conditions, the Purchaser shall be entitled to assert its statutory rights to withdraw the infringing Goods or to reduce the price.

由我方自行决定并自担费用，我方可选择或是令相关货物具有合法使用权，或是修改货物以使其不再侵犯他人的知识产权，或是替换该货物。如果上述方式在经济上不可行，买方有权行使其法定权利，要求退还侵权货物或降价。

9.1.2 The above obligations relevant to us shall apply only if the Purchaser informs us immediately and in writing of any claims made by third parties, the violation is not acknowledged and if all defensive measures and settlement negotiations are reserved for us. If the Purchaser ceases to use the Goods to mitigate losses or for other significant reasons, it undertakes to inform the third party that the cessation of use implies no acknowledgement of the infringement of Property Rights.

仅当买方收到第三方的任何索赔后立即以书面方式通知我方，且该等侵权并未被承认，同时买方将相关的抗辩及和解谈判的权利都让渡给我方的前提下，上述与我方相关的义务才适用。如果买方出于降低损失或其它重大原因而停止使用货物，买方应通知第三方，其停止使用并不意味着承认存在侵犯第三方知识产权的情况。

9.2 Any claims of the Purchaser shall be excluded, insofar as it is responsible for the infringement of Property Rights. Any claims shall also be excluded, insofar as Property Rights are infringed upon as a result of special requirements laid down by the Purchaser or if the Purchaser modifies the Goods or uses them together with products not supplied by us.

若买方应对侵犯知识产权的情况负责，则买方无权提出任何索赔。如果侵犯知识产权的情况是由于买方的特殊要求而导致，或是由于买方更改了货物或将货物与非我方提供的产品一起使用而导致的，则买方亦无权提出任何索赔。

9.3 Clauses 8.3, 8.4, 8.5, 8.6, 8.7 and 8.8 shall apply accordingly.

第 8.3 条、8.4 条、8.5 条、8.6 条、8.7 条和 8.8 条应相应适用。

9.4 Section 10 shall apply in addition and take precedence with regard to any claims for damages

of the Purchaser due to an infringement of Property Rights.

买方基于知识产权侵权而提出的任何损害索赔应优先适用第 10 章的相关约定。

9.5 Any further rights or claims other than those regulated in this Section 9 asserted against us and any parties employed by us in fulfilling our obligations due to a defect of the Goods resulting from third parties' Property Rights shall be excluded.

因侵犯第三方知识产权而导致货物存在瑕疵，从而使我方和我方为履行合同义务而使用的任何其它方需要承担的责任以本第 9 章的约定为限。

10. Limitation of Liability 责任限制

10.1 Subject to any further legal and contractual preconditions and restrictions set forth notably by the applicable law and without prejudice to further limitations set forth below in this Section 10, we shall in any event not be liable for damages that have been not intentionally or negligently caused by us.

在遵守适用法律规定的任何其它法定和合同约定的前提条件和限制条件的情况下，以及在不影响本第 10 章所载明的其它限制的情况下，我方在任何情况下均不对非因我方故意或过失而导致的损害承担责任。

10.2 Without prejudice to Clause 4.4, but notwithstanding anything to the contrary elsewhere in the Contract, we shall in no event and irrespective of the legal basis (contract, tort or any other area of law) be liable towards the Purchaser for loss of profit or revenue, loss of use, loss of data, cost of capital, down-time costs, cost of substitute goods, the costs of assembly and reassembly of the Goods, property damage external to the Goods and any damage or loss arising out of such damage or any special, incidental, indirect or consequential damage or any of the foregoing suffered by any third party.

在不影响第 4.4 条的前提下，无论合同中是否有其它相反约定，无论基于何种法律依据（合同、侵权或其它法律规定），我方在任何情况下均不对买方所遭受的利润或收入损失、使用损失、数据损失、资本成本、停机成本、代替成本、货物组装和重新组装的成本、除货物之外的财产损失以及因此而导致的其它损害或损失，或者任何特殊的、偶然的、间接的或继发的损害或任何第三方所遭受的上述任何损害或损失承担责任。

10.3 Furthermore, our overall liability shall in the aggregate be limited to the contractual value of the Goods (net).

此外，我方所承担的全部责任上限不超过货物的合同净价。

10.4 The aforementioned restrictions of liability shall not apply:

上述的责任限制不适用于：

- a) in the event of property damages caused by gross negligence or willful misconduct of us but they shall apply in the case of willful misconduct and gross negligence of any other party acting for us, including without limitation our subcontractors, agents, advisors and their employees; 因我方重大过失或故意造成的财产损失，但因代表我方行事的任何第三方的故意或重大过失造成的财产损失在上述责任限制范围之内，代表我方行事的第三方包括但不限于我方的分包商、代理商、顾问以及其雇员；

b) in case of bodily injury or insofar as mandatory law provides otherwise.

人身伤害或法律强制性规定的其它情况。

10.5 These limitations of liability shall also apply for the benefit of our subcontractors, agents, advisors, directors and employees.

这些责任限制也同时适用于我方分包商、代理商、顾问、董事和雇员的利益。

11. Anti-Corruption; Export Controls 反腐败，出口管制

11.1 Purchaser agrees that it shall, and that any party retained by the Purchaser shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Purchaser further agrees that it shall, and that any party retained or paid by the Purchaser shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, distribution and sale of the Goods, including without limitation Export Control laws, regulations, policies and executive order of United Nations, U.S., EU and China as may be amended from time to time. Failure to comply strictly with this Clause and all applicable laws prohibiting public corruption or commercial bribery or relating to embargoes, sanctions, export or re-export shall be grounds for immediate termination of this Contract by us.

买方同意，买方以及买方聘用的任何一方均应遵守所有适用的法律，包括但不限于禁止公职人员腐败和商业贿赂的法律。买方进一步同意，买方及买方聘用的任何一方均应遵守所有适用的出口管制、经济制裁、禁运要求以及与出口、再出口、货物分销和出售有关的规定，包括但不限于联合国、美国、欧盟以及中国不时修订的出口管制法律、法规、政策和行政命令。若买方未能严格遵守本条以及所有适用的禁止公职人员腐败或商业贿赂的法律、或者所有适用的与禁运、制裁、出口或再出口相关的法律，我方将立即解除合同。

12. Assignment 转让

12.1 We are entitled to transfer our rights and obligations under this Contract to third parties. No rights arising under the Contract may be assigned by the Purchaser unless expressly agreed upon in writing by us.

我方有权将合同项下我方的权利和义务转让给第三方。除非我方书面明确表示同意，买方不得转让合同项下的任何权利。

13. Miscellaneous 其它

13.1 Place of delivery for our supplies shall be the location of our delivery plant. Should we have to render services (e.g. erection), place of delivery shall be the location where the services are to be rendered. For the payment obligation of the Purchaser, payment of debts shall be rendered at the bank designated by us.

我方的交付地点为我方工厂所在地。如果需我方提供服务（例如安装服务），交付地点则为服务提供地。对于买方的付款义务，买方应将款项支付至我方指定的银行。

13.2 All disputes arising out of or in connection with the Contract shall be submitted to China International Economic and Trade Arbitration Commission ("CIETAC") Shanghai Sub-Commission for

arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The language to be used in arbitration shall be Chinese. The seat of arbitration shall be Shanghai, China. The arbitral award is final and binding upon both Parties.

凡因合同引起的或与合同相关的任何争议，均应提交至中国国际经济贸易仲裁委员会上海分会，按照仲裁申请时中国国际经济贸易仲裁委员会现行有效的仲裁规则进行仲裁。仲裁语言为中文。仲裁地点为中国上海。仲裁裁决是终局的，对双方均有约束力。

13.3 Should any of the provisions of the GTC be or become invalid or otherwise unenforceable, this shall not affect the validity and enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by an operative one coming as close as possible to the economic purpose and effect intended by the original provision.

若本 GTC 中的任何条款无效或无法执行，不得影响其它条款的有效性和可执行性。无效或无法执行的条款应使用与原条款的经济目的和效果尽可能接近的、可执行的条款进行代替。

13.4 The legal relationship between the Parties shall be governed by and construed in accordance with the laws of the People's Republic of China, notwithstanding conflicts of law principles and under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). 双方的法律关系应受中华人民共和国法律管辖并依其解释，排除冲突法的适用，也不适用《联合国国际货物销售合同公约》。

13.5 The GTC is made in both English and Chinese. In case of any dispute as to the interpretation, the English version shall prevail.

本 GTC 以中英文两种语言书就。如果两种语言解释出现争议，则以英文为准。

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