

## General Terms and Conditions of Sale

### 1. Definitions

“**Seller**” means KERN-LIEBERS (Taicang) TEXTILE Co.,Ltd as specified in the order confirmation; “**Buyer**” means the buyer named in the placed order; “**Contract**” or “**Terms and Conditions of Sale**” refers to the entire terms stated in these General Terms and Conditions of Sale; “**Order**” means any offer for buying goods, services or articles that is delivered from Seller to Buyer; “**Products**” mean any goods, services or articles which the Buyer intends to purchase from the Seller as mentioned in the placed Order.

### 2. Scope of Application

Any offer, sale, delivery, service, description, quotation, proposal, acknowledgement or acceptance on part of the Seller and all Orders for Products placed by the Buyer with the Seller shall be subject exclusively by the terms and conditions stated herein and create the basis of the Contract between the Buyer and the Seller. Any general conditions of purchase and other diverging conditions of the Buyer shall not be binding unless they have been explicitly recognized by the Seller in writing. Any deviation from the Seller's General Terms and Conditions of Sale shall be valid only if explicitly confirmed in writing by the Seller. Any terms or conditions, in addition to, or inconsistent with those stated herein, proposed by the Buyer in any acceptance or any offer by Seller are deemed material alterations and hereby objected to and rejected by the Seller, unless expressly assented to in writing by Seller. The Seller's General Terms and Condition of Sale shall also apply to any subsequent business transaction with the Buyer, even if no additional agreement to this effect has been concluded.

### 3. Orders

Unless expressly indicated otherwise, all offers or proposals made by the Seller are non-binding until executed by the Seller or a duly authorized representative of the Seller. Buyer's acceptance of any offer or proposal to sell is limited to these Terms and Conditions of Sale. Cost estimates are non-binding. To become legally effective, any Order requires a corresponding written acknowledgement by the Seller. Unless any additional contract between Seller and Buyer is concluded, Seller's written acknowledgement of the Order together with these Terms and Conditions of Sale constitutes the entire Contract between the Seller and the Buyer. No representations, warranties or guarantees, other than those contained herein, shall be binding on the Seller and the Buyer. All Orders shall be made in written form, including e.g. email, letter or fax. All Orders shall contain the required information on quantities, grades, additional specifications, if any, time and place of delivery, and other specific terms of the

## 通用销售条款

### 1. 定义

“**卖方**”是指在订单确认中明确指定的太仓克恩-里伯斯纺织元件有限公司

“**买方**”意为在所下订单中显示的名称; “**合同**”或“**通用销售条款**”是指本通用销售条款中的全部条款; “**订单**”是指购买由卖方向买方交付的商品、服务或物品的要约; “**产品**”是指所下订单中提到的, 买方欲从卖方处购入的任何商品、服务或物品。

### 2. 适用范围

卖方做出的任何报价、销售、交货、服务、描述、报价单、提案、确认函或承诺以及由买方做出的向卖方采购货物的订单均受本通用销售条款的约束, 并成为买卖双方合同的基础。非经卖方书面明确认可, 任何通用采购条件以及其他存在分歧的条件均不具有约束力。非经卖方书面明确确认, 与本卖方通用条款相背离的任何内容均无效。在买方的承诺中或在卖方的报价中除本条款以外的任何条款或与本条款不一致的任何条款, 除非由卖方书面表示同意, 否则将视为实质性变更而因此被卖方所拒绝。即使未就此另行达成协议, 本卖方通用销售条款也应当适用于与同一买方进行的任何后续业务交易。

### 3. 订单

除非另有明确约定, 卖方作出的任何报价及方案均不具约束力直至卖方或卖方授权代表签署。买方对销售的报价或提议的承诺受限于本通用条款。成本估算不具约束力。任何订单须经卖方书面确认后, 始发生法律效力。除非卖方与买方就其他额外合同达成协议, 卖方对买方订单的书面确认连同本通用销售条款构成买卖双方的完整协议。本条款规定以外的任何陈述、担保、保证均对买卖双方不具约束力。所有订单应以书面形式作出, 例如电子邮件、书信或传真。所有订单应当包含关于数量、等级、附加规格(如有)、交货时间地点及其他产品特定条款的信息须由买方直接向卖方提供。任何误解, 例如由于下单不明确造成交货不准确或不完整所发生的费用由买方承担。

Products, and shall be submitted by the Buyer directly to the Seller. Any misunderstanding, for example such as incorrect or incomplete delivery, incurring by a non-specific placement of Order are at the expense of the Buyer.

#### 4. Prices, Taxes and Payment

Only written price quotations shall be binding upon the Seller and such written quotations shall apply only to the specific quantity and delivery schedule shown. Written quotations will be honored to their expiration date, or in the absence of a specific date for a period of **30 days**. All prices stated in written price quotations are exclusive of all excise, sales, use, property, occupational, value added or other taxes which are applicable and may be imposed by any taxing authority upon the manufacturing, sale or delivery of the Products sold hereunder. If any such taxes must be paid by the Seller or if Seller is liable for collection of such tax, the amount thereof shall be added to the invoice price for the Products sold hereunder. Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of Seller's invoice. However, the Seller reserves the right, by giving prior notice at any time before the confirmation of an Order, to increase the price of the Products to reflect any increase in price based on factors beyond the Seller's control, such as foreign exchange fluctuations, currency regulations, increases in customs duties, taxes, a significant increase in the costs of labor, energy, materials or other costs of manufacture, as well as based on changes in an Order of the Buyer with respect to delivery dates, quantities or specifications requested by the Buyer. In addition, the Seller shall have no obligation to sell products to Buyer on as favorable conditions as Seller may have with any other customer or buyer for the same or similar goods or services. Unless agreed upon otherwise in writing **payment term shall be 30 days after invoice date without discount**. The payment terms are subject to change without notice.

#### 5. Delivery

Dates of shipment shall be valid after being expressly acknowledged in writing by the Seller. They shall be deemed to have been met if the Products have been advised as being ready for dispatch on the agreed date. However, Buyer may, after obtaining written confirmation by Seller, change delivery schedules; any additional costs or expenses incurred as a result of said changes shall be paid for by the Buyer. Any shipment will be EX WORKS in agreement with the International Commercial Terms (Incoterms) issued by the International Chamber of Commerce and in force at the time of shipment unless otherwise agreed on by the Seller and the Buyer in writing. Benefits and risks of the Products, e.g. of damage and loss, shall pass to the Buyer at the Seller's place of business. Shipments will not be insured except at Buyer's written request and expense. The Products from the Seller shall be packaged with standard packing

#### 4. 价格、税负和支付

只有书面报价单对卖方有约束力，该书面报价单仅适用于列出的特定数量和送货时间。书面报价单有效直到截止日期，或有效期为（30 天（若无具体截止日期））。书面报价单中的价格不包括消费税、营业税、使用税、财产税、开业许可税、增值税等其他可应用于以及可能被任何税务机关对本条款所涉及的产品生产、销售以及运输征收的税种。若有任何卖方应付税款或卖方有义务代扣代缴的税款，应在本条款所涉及产品的发票金额中增加相应费用。买方应根据收到的发票同意支付卖方相应税款或报销相应费用。卖方保留在确认订单前任何时候经提前告知买方，而对产品价格进行提高的权利，以反映因超出卖方控制而导致价格上涨的因素，例如：外汇汇率波动、货币政策调整、关税提高、税收、包括劳动力、能源、原材料或其它生产成本在内的成本的显著增加以及因买方要求改变订单的交货日期、数量或规格所引起的价格变动。除此以外，当买方购买的商品或服务与其他客户或买家相同时，卖方没有义务提供买方与其他客户或买家一样的优惠条件。除非另有书面规定，否则付款周期默认为收到发票后 30 天且无折扣。付款条款如有变更，恕不另行通知。

#### 5. 交货条件

交货日期经卖方明确书面认可后方为有效。如果货物在约定的时间被告知已经准备好装运，应被视为符合交货日期。在得到卖方的书面确认后，买方可修改送货安排，由此产生的额外费用或支出由买方承担。若双方无其他书面规定，交货应按国际商会颁布的在交货时有效的国际贸易术语（Incoterms）进行工厂交货（EX WORKS）。产品的利益和风险，如损坏和丢失，自卖方营业地即转移至买方。除买方的书面要求并承担相应费用外，运输不设保险。卖方应采用标准包装材料将产品包装以便于国内运输，送至买卖双方书面规定或订单规定的目的地，运输费用由买方承担。在买方不履行付款和其他义务的情况下，卖方应被免除交货义务。如果因买方原因不能发货，卖方有权将产品储存在仓库，风险和费用由买方承担。在该等情况下，储存入库日期视为交货日期，入库仓单代替装运单据或交货单。若买方要

material for domestic shipment, and shall be shipped, at Buyer's expense, to the delivery location as agreed between the Seller and the Buyer in writing or as stated in the Order. The Seller shall be exempt from the obligation to ship as long as the Buyer is in default with any payment and other obligations. If the Products cannot be dispatched for reasons for which the Buyer is responsible, the Seller shall be entitled to place the Products in storage at the Buyer's risk and expense. In such case, the storage shall be deemed to be the date of delivery and the warehouse bond shall replace the shipping or delivery documents. Products shall be packaged further if requested by Buyer and at Buyer's expense. If necessary, the Seller shall be entitled to effect partial shipments. Shipment shall be effected subject to the condition that performance is not prevented by any national or international regulations, including, but not limited to, any export control regulations or embargos or other sanctions. The Buyer undertakes to furnish all information and documents required for exportation, transport or importation. If delays occur due to export checks or approval procedures, the respective time limits and terms of shipment shall be suspended accordingly. If necessary approvals are not granted, e.g. by authorities, the Order placed by Buyer shall be deemed to be ineffective with regard to the parts concerned. The Buyer shall have the right to inspect the products manufactured by Seller prior to delivery. Buyer shall conduct said inspection at Seller's plant. The Buyer shall pay for any expenses incurred by the Buyer to conduct said inspection.

#### **6. Returns/Cancellation**

Unless otherwise agreed in advance in writing, Products returned are subject to a restocking charge of **10 %**. The Buyer must prepay all freight charges with respect to such returned Products. All returns must receive prior authorization in order to be returned. Unless otherwise agreed, Buyer may cancel all or any part of an Order by written notice received by Seller. On receipt of such cancellation notice, all work on the Order or part thereof canceled shall be stopped as promptly as is reasonably possible. Buyer will then be invoiced for, and will pay to Seller as liquidated damages, a cancellation charge. For completed items that charge will be equal to established prices. For items not completed, the charge will be equal to one hundred and twenty percent (120%) of the Seller's full cost including burden and overhead costs as determined by the Seller in accordance with Seller's standard accounting practices, plus a charge for any packing and storage, less a credit for the balance of the material as scrap.

#### **7. Retention of Title**

The Seller shall retain title to the Products until all its claims against the Buyer have been fulfilled. If the law of the People's Republic of China ("**PRC**") does not permit retention of title in the future but permit the Seller to

求, 可对产品进行进一步包装, 产生费用由买方承担。如果有必要, 卖方有权部分交货。运输应在符合国家或国际规定下进行, 包括但不限于任何出口控制规定或禁运或其它制裁。买方承诺提供出口、运输或进口所需的所有资料 and 文件。如果因出口检查或审批程序导致延迟, 交货期限应相应延长。如果未能通过必要的审批, 买方所作订单的相应部分视为无效。买方应有权在产品交货前检查生产的产品, 上述检查应在卖方工厂进行, 由此产生的费用由买方支付。

#### **6. 退货/取消订单**

除非另有书面规定, 标准的退货产品需支付百分之十 (10%) 的回置费。相关货运费需由买方提前支付。退货产品在退回前需得到提前批准。除非另有规定, 买方可能通过向卖方发送书面通知, 取消全部或部分订单。收到取消订单通知后, 对上述订单的相应工作应立即停止。买方将收到卖方关于违约赔偿金和取消订单费的发票, 并支付卖方相应费用。对完工产品按规定价格支付。对未完工产品按卖方全部支出的百分之一百二十 (120%) 支付, 包括由卖方标准会计实务计算得出的营业成本、加上包装费、存储费、减去相应的材料损耗余额。

#### **7. 所有权保留**

在卖方在对买方的所有请求权得到满足之前, 应保留对产品的所有权。若将来中华人民共和国 ( "中国" ) 法律不允许保留产品所有权但允许卖方保留产品的其他权利, 则

retain other rights to the Products, the Seller shall be entitled to exercise all rights of this kind. The Buyer shall take all measures to register the retention of title as far as these are necessary according to the rules of the PRC or foreign legal systems. The Buyer undertakes to assist the Seller in connection with all measures for purposes of securing credit for the Products and, in particular, to enter into corresponding supplemental agreements, if necessary. The Buyer further agrees to handle purchased Products with care and in good repair as long as the ownership has not passed to the Buyer and to adequately insure them against loss, damage or theft at replacement value. Any costs arising due to any investments that may become necessary, including but not limited to maintenance or inspection work, shall be borne by the Buyer. If the Products supplied by the Seller are resold in accordance with their intended use or handed over to any third party for any other legal ground whatsoever before the purchase price has been fully paid, the Buyer hereby assigns to the Seller all the claims, including any ancillary rights against his customers, to which the Buyer is entitled due to the resale of the Products subject to retention of title. When processing the Products or combining or mixing them in accordance with their intended use, the assignment shall be based on the invoice value of the Seller's Products used for this purpose. At the Seller's request, the Buyer shall notify his debtor of the assignment as soon as the Buyer is in default, provide the Seller with any information necessary to collect the claim and hand over necessary documents. In the event that the Seller's Products are combined with other movable goods to form one composite good, or are blended in separately with other goods, and if the other goods are regarded as the main item, the Buyer shall assign the Seller a proportionate co-ownership to the item, insofar as the Buyer owns the main item. If claims are raised by any third party against the Products subject to retention of title on the part of the Seller, for example by attachment, or if claims are raised by any third party for the claim assigned to the Seller, the Buyer shall notify the Seller without delay and inform such third party of the retention of title and the assignment respectively. If the total value of the securities to which the Seller is entitled exceeds the secured claim by more than **ten per cent (10%)**, then on demand of the Buyer the Seller shall release securities to this extent as selected by the Buyer. If an application for insolvency or closing proceedings has been filed against or by the Buyer, the Seller is entitled to rescind this Contract with the Buyer with immediate effect and request immediate return of the delivered Products.

#### 8. Warranty and Liability

Seller warrants that all products furnished under the Order and these Terms and Conditions of Sale shall comply with all specifications, samples, drawings, written

卖方应有权行使此类权利。买方应采取一切措施对根据中国法律或外国法律体系应当登记的对所有权的保留进行登记。买方承诺协助卖方利用一切措施保证产品信誉，特别是在有必要时，双方可签订相关补充协议。买方进一步同意在所有权转移到买方前小心处理所购产品、保证产品的良好状态并以替代价值对产品进行充分投保以此防范丢失、损毁或偷盗。由任何必要的投资（包括但不限于维护或检查工作）所产生的支出应由买方承担。如果买方在全部支付购买价款前按照其预期用途将卖方供应的产品再销售或因任何合法原因转交给任何第三方，买方在此将其所有请求权，包括买方因再销售附所有权保留的产品而取得的针对其客户的任何附属权利转移给卖方。根据预期用途加工、组合或混合产品时，该转让应以为该等目的使用的卖方产品的发票价格为基础。经卖方要求，买方在其无法履行时应尽快通知其债务人该等权利转让，向卖方提供索赔所需的任何必要信息并转交必要文件。在卖方产品与其他动产产品一起形成一件复合产品的或与其他货物混合且不可分割的情况下，如果其他产品是主物，且买方拥有该主物的，买方应向卖方分配相应比例的共有权。如果任何第三方对卖方保留所有权的产品提出权利主张（如因添附），或任何第三方对转移给卖方的请求权提出权利主张，买方应毫不迟延地通知卖方并分别告知该等第三方此所有权保留及转移。

如果卖方得到的担保的总价值超过被担保的请求权达百分之十（10%），经买方要求，卖方可以根据买方选择的范围向买方退还该超过部分的担保。

如果有要求买方进行破产程序的申请已经提交，卖方应有权立刻解除与买方的合同即时生效并要求立刻返还已交付的产品。

#### 8. 保证和责任

卖方保证订单和本通用销售条款提供的产品应遵照买方提供给卖方且经卖方的书面同意的规格、样品、图纸、书面

testing and sampling procedures, designs or other requirements (“**Specifications**”) provided by the Buyer to the Seller, if approved by the Seller in writing. If Seller complies with the Specifications provided by the Buyer, then Seller shall not have any liability. The Buyer undertakes to inspect received shipments immediately upon receipt for integrity, completeness, identity and quality. All claims for loss or damage during shipments must be made immediately against the carrier. Any claims by Buyer for omissions or shortages in a shipment shall be waived unless Seller receives notice thereof within ten (10) days after Buyer’s receipt of shipment, and in the event of a defect the Buyer has notified the Seller immediately in writing of the defect. Any defect that could not be detected by a thorough examination within this period shall be notified to the Seller in writing immediately after detection; otherwise the Products shall be deemed to have been approved even in view of such defect. Shipment is deemed to be the time at which the shipped Products come under the control of the Buyer or, in case Buyer is at fault, could have come under the Buyer’s control. If the Buyer fails to make such complaint, the Products shall be deemed to have been accepted without objection and the shipment is deemed to have been performed in accordance with the Order or any contract agreed on between the Seller and Buyer. If external damage is noticed upon receipt of Products, a complaint shall be made to the forwarding agent or carrier immediately. Subject to the corresponding timely complaint and upon the Seller’s own discretion, defective Products shall be either replaced by Seller at Seller’s cost (including cost of new Product, transportation, customs, and other import duties) or the Seller may remedy the defective Products at Seller’s cost. Seller’s limitation of warranty shall apply even if any remedy fails its essential purpose. Warranty claims shall expire twelve (12) months after the Products delivered by the Seller have been received by the Buyer or the shortest period permitted by law, whichever is shorter. Seller’s duration of the warranty shall not be extended by any repair or replacement work performed by Seller during the warranty period. Seller shall not be liable for normal wear and tear of the Products. The Seller shall be entitled to refuse to honour its warranty obligations at its own discretion as long as the Buyer has not fulfilled its entire obligations. The Buyer shall keep any rejected Products available for the Seller.

Unless the Seller, its legal representatives or vicarious agents causes a damage by gross negligent or intentional conduct or a personal injury, the Seller shall not, whether as a result of breach of contract, breach of obligations of this Contract are violated or not otherwise stipulated by the law of the PRC. In other respects, the liability for any financial loss shall be limited to the contractually typical predictable damage. However, Seller’s warranty shall be void and of no effect if (i) Buyer alters, modifies or repairs the Products; (ii) Buyer uses the Products in a manner not intended by the Seller or in

的产品测试和采样程序、设计及其他要求（“规格”）。若卖方遵照买方提供的规格，卖方不负任何责任。买方承诺收货后立即进行交货检查，包括完整性、完备性、一致性及质量。所有对运输期间的丢失或损坏的索赔需即时向运输者提出。除非买方收到货物后的十（10）天内，卖方收到买方关于交付的产品短缺或数量不足的通知，以及在产品瑕疵的情况下买方立即书面告知卖方该等瑕疵，否则买方关于产品的短缺或数量不足的索赔均无效。任何在该期限内无法通过彻底检验发现的瑕疵应在检验后立即书面通知卖方。否则产品视为虽然有瑕疵，但仍被认可。所交付的产品置于买方控制之下时视为交货，或者如果不是由于买方过错应当已经转由买方控制之时视为交货。如果买方未能提出上述投诉，产品应被视为无异议接受，且应视为根据订单要求或者任何买卖双方签订的合同要求而完成了交货。如果在收货时发现外部损坏，应立即向运输代理机构或者承运人投诉。根据相应的及时的投诉以及卖方自行决定，瑕疵产品应由卖方自担成本（包括新产品、运输、海关及其他进口关税的成本）进行更换，或者由卖方自担成本进行修复。即使所有补救方式仍无法满足主要目的，卖方保修的限制应适用。保修索赔期为自买方收到卖方所交付的产品后的十二（12）个月，若法律规定的保修索赔期更短，则按较短的执行。卖方的保修期不应在实施过维修或换货后做延长。卖方不对产品的正常磨损负责。如买方未能履行其全部合同义务，则卖方有权自行决定拒绝履行其保修义务。买方应替卖方保存任何拒收的产品。除非卖方、其法定代表人或代理人由于重大过失或故意造成损害或人身伤害，卖方不应为买方任何间接、附随或从属的损害（包括但不限于利润、机会或收入损失）或买方客户就该等损害提起的索赔负责，无论由于违约、违反陈述和保证、侵权或其它，违反本合同下的主要义务或中国法律另有规定的除外。在其它方面，经济损失责任应当仅限于合同的可预期损失。但是，如果（i）买方对产品进行过变更、修饰或修改；（ii）买方不按卖方指导或说明的方式使用产品；（iii）由第三方作为或不作为或误用造成的产品损坏，卖方的保证无效。

a manner not disclosed by Buyer; or (iii) the breach resulted from the actions or omissions by another party or misuse of the Products.

#### **9. Registration**

Provided that the Seller is not obligated for the registration of the Products sold by the Seller to the Buyer, neither by statutory law nor by a separate agreement with the Buyer, the Buyer will be responsible for the registration of the Products in the geographies where the Buyer or his sales partners sell the Products. The Buyer will bear all costs in relation to such registration.

#### **10. Force Majeure**

Seller does not assume the risk of and shall not be liable for a delay or failure to perform any of the Seller's obligations by reason of events of Force Majeure. "Force Majeure" shall mean all events which are beyond the control of the Parties to this contract, and which are unforeseen, unavoidable and insurmountable, and which prevent total or partial performance by either of the Parties. Such events shall include earthquakes, typhoons, epidemic, flood, fire, war, strikes, riots, acts of governments, changes in law or the application thereof or any other instances which cannot be foreseen, prevented or controlled, including instances which are accepted as Force Majeure in general international commercial practice. If an event of Force Majeure occurs, a Party's contractual obligations affected by such an event under this contract shall be suspended during the period of delay caused by the Force Majeure and shall be automatically extended, for a period equal to such suspension. In the event of Force Majeure, the Parties shall immediately consult with each other in order to find an equitable solution and shall use all reasonable endeavors to minimize the consequences of such Force Majeure.

#### **11. Indemnity**

Buyer, its officers, agents, representatives or employees, its successors and assigns, and its customers shall indemnify and hold the Seller, its officers, agents, representatives and employees, shareholders and directors harmless from and against any and all claims, losses, damages (direct, indirect, consequential, secondary, incidental or punitive, but excluding damages for personal injuries), liabilities, costs, and expenses, including attorney fees and other costs of defending any action, that Seller may sustain or incur as a result of any claim of breach of contract, tort (excluding gross negligence, strict liability and tort claims due to personal injuries), breach of warranty, or other theories of law, whether direct or indirect, arising in connection with the use of the Products furnished hereunder provided the Products are manufactured pursuant to the Specifications provided by Buyer.

#### **9. 登记**

若根据法律规定或与买方的单独约定，卖方均无就卖方销售给买方的产品进行登记的义务，则买方将负责在其或其销售伙伴销售产品的区域对产品进行登记。买方承担登记相关的所有费用。

#### **10. 不可抗力**

卖方无需承担且不应承担由不可抗力造成的任何延迟或无法履行卖方义务的风险。“不可抗力”指合同双方无法控制、无法预见、不可避免且不可逾越的所有事件，妨碍任意一方的全部或部分履行。上述事件包括地震、台风、瘟疫、洪水、火灾、战争、罢工、暴乱、政府行为、法律或适用变更或其他不可预见、不可防范或不可控制的意外事件，包括一般国际商业管理中采纳为不可抗力的意外事件。若不可抗力事件发生，一方根据该条款的合同义务受此影响，该义务在不可抗力发生的延迟期间内应中止执行并自动延长。在不可抗力事件中，双方应立即通知对方，寻求公平解决方案，尽适当努力将该不可抗力的结果最小化。

#### **11. 损害赔偿**

对于任何及所有的索赔、损失和损坏（直接的、间接的、后果性的、次要的、偶然的或惩罚性的，但不包括对人身损害的赔偿）、责任、成本和支出（含律师费和其他辩护费），凡因任何直接或间接违反合同、或侵权行为（包括重大过失和严格责任及因人身伤害的侵权索赔）、违反保证、或其他法律条款的索赔而使卖方可能维持或发生的任何损害，若与根据本合同提供的产品相关，而该产品是根据买方提供的规格加工生产的，买方、其人员、代理商、代表或员工、继承人和受让人，和其客户应使卖方、卖方人员、代理商、代表或员工、股东和高管免受其害。

## 12. Intellectual Property and Patent Infringement

Unless independently developed or generally known to the public through no act of the Buyer, the Buyer shall have no right to use the Seller's trademarks, trade names, intellectual property or confidential information in any of Buyer's business activities, including but not limited to, advertising or promotional materials and the Buyer is prohibited from passing on the trademarks, trade names, intellectual property or confidential information to its vendors, customers or other third parties. Seller warrants that the Products purchased hereunder shall be delivered free of any rightful claim for infringement of any Chinese patent or trademark, provided however, that this warranty shall not apply with respect to claims for patent and trademark infringement to the extent that any Products purchased hereunder are: (i) manufactured to Buyer's Specifications, or (ii) used in a manner not reasonably anticipated by the Seller.

## 13. Drawings, software and other information

All drawings, layouts, diagrams, specifications, software and other material or information furnished to the Buyer by the Seller in connection with these Terms and Conditions of Sale shall remain the exclusive property of the Seller and the Buyer agrees to treat all such materials and information as confidential and proprietary to the Seller unless written permission to the contrary is given by the Seller.

## 14. Termination

- a) The Seller has the right to terminate this Contract or releases "without cause", without liability to the Buyer, if Seller gives **30** days notice. (with the exclusion of ongoing orders)
- b) The Seller has the right to terminate this Contract or releases "for cause", without liability to Buyer, upon an event of Default by Buyer. "Default" means (i) the Buyer fails to make timely payments, (ii) Buyer's failure to comply with any terms of this Contract; (iii) Buyer's failure to provide the Seller, upon request, reasonable assurances of Buyer's future performance; (iv) Buyer repudiates this Contract; (v) Buyer becomes insolvent, suspends its operations, its business license gets revoked, a petition is filed or proceeding commenced by or against Buyer under any law or regulation related to bankruptcy, arrangement, reorganization receivership or assignment for the benefit of creditors, is adjudicated a bankrupt, liquidated or dissolved; or (vi) any other event which causes reasonable doubt as to Buyer's ability to render due performance hereunder. If, after termination for Default, it is determined that Buyer is not in Default, the rights and obligations of the Parties will be the same as if this Contract was terminated "without cause".
- c) Regardless of whether the Seller terminates this Contract "without cause" or "for cause", the Seller shall not be liable for any damages to the Buyer, directly or indirectly, or to Buyer's customers or any third party,

## 12. 知识产权和专利侵权行为

除非自主开发或无需买方行动即为一般为大众所熟知, 否则买方在买方的任何商业行为中, 包括但不限于广告或宣传资料, 应无权使用卖方的商标、商品名、知识产权或保密信息。买方被禁止将上述商标、商品名、知识产权或保密信息传给供货商、客户或其他第三方。卖方保证合同所述的采购产品应于交付且不受因中国专利侵权、商标侵权的索赔。但是, 该保证不得应用于对下述采购产品范围内的专利侵权和商标侵权: (i) 按买方的规格生产, 或 (ii) 不按卖方合理预期的方式使用。

## 13. 图纸、软件和其他信息

与本通用销售条款相关的、由卖方提交给买方的所有图纸、布局图、图标、规格、软件和其他资料或信息是卖方的独家财产。除非卖方另行书面允许, 否则买方同意将上述资料和信息视为保密信息并作为卖方所有物。

## 14. 终止

- (1) 经提前 **30** 天通知买方, 卖方有权“无理由”地终止或解除合同, 且不因此对买方产生任何责任。(正在执行的订单仍将继续履行)
- (2) 当买方违约时, 卖方有权“有理由”地终止或解除合同, 且不因此对买方产生任何责任。“违约”指: (i) 买方未能及时付款; (ii) 买方未能遵守本合同任一条款; (iii) 买方未能根据要求向卖方提供未来履责的合理保证; (iv) 买方否定合同; (v) 买方破产, 停业, 被吊销营业执照、根据任何法律或规定有关破产、整顿、重组、或为债权人利益分配的诉讼或程序已经由买方启动或针对买方开始、买方被裁决为破产、清算或解散; 或 (vi) 其他事件导致对买方就本合同约定的适当履行的能力产生合理怀疑。由于违约导致合同终止, 若经确认买方并无违约, 双方权利和义务应与“无理由”地终止合同相同。
- (3) 不论卖方是否有理由终止本合同, 只要损失并非基于疏忽大意、严格责任或因人身伤害的索赔, 卖方不对买方、买方客户或第三方造成的直接或间接损害承担责任, 包括但不限于: 预期商业收益损失, 生产线关闭, 买方或买方客户的商业中断, 延迟交付, 间接费用, 索赔的利息, 产品开发支出、资质费用、项目工程或类似的支出, 设施和设备采购及租赁费用, 未摊销的投资支出, 一般行政负担或其他特殊、意外、附带的、直接的、间接的、补偿性的、或惩罚性赔偿, 即使卖方乙被告知上述损失或损

including but not limited to, lost of anticipated profits or business, production line shutdowns or interruption of the Buyer's or Buyer's customer's business, late delivery, unabsorbed overhead, interest on claims, product development, qualification, engineering or similar costs, facilities and equipment purchase or rental costs, unamortized investment expenditures, or general and administrative or burden charges or other special, incidental, consequential, direct or indirect, compensatory or punitive damages, as long as such damages are not based on gross negligence, strict liability or claims due to personal injuries, even if Seller is advised of the possibility of such loss or damages.

#### **15. Waiver**

No failure by the Seller to insist upon strict compliance with any term of this Contract between the Seller and the Buyer, to exercise any option, enforce any right, or seek any remedy under the Contract shall constitute a waiver of the Seller's rights. No custom, practice, course of dealing or usage of trade at variance with any provisions of this Contract between the Seller and the Buyer shall affect or constitute a waiver of Seller's rights under the Contract. The Seller does not waive any defense that it may have, including the non-absolute contributory negligence.

#### **16. Confidentiality**

The Buyer agrees to treat these Terms and Conditions of Sale as confidential information which shall be held in strictest confidence and the Buyer warrants that no such information has been or will be disclosed to third parties except as authorized by Seller in writing. Buyer shall safeguard, preserve and maintain the confidential nature of all know-how, trade secrets and other confidential information disclosed to it by the Seller whether prior to, pursuant to or after this Contract is entered into between the Buyer and the Seller.

#### **17. Dispute Settlement**

In the event of any dispute, controversy or claim arising out of or relating to any provision of this Contract or the interpretation, enforceability, performance, breach, termination, or validity hereof, the Parties shall attempt, in good faith, amicably to resolve the dispute. If no settlement can be reached through consultations within two (2) months of the submission of such matter by one Party to the other, such disputes, controversies, or claims shall be settled by China International Economic and Trade Arbitration Commission (CIETAC) with its registered address in Beijing for arbitration in Shanghai which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The parties agree that the arbitral award shall be enforceable by applying to the relevant court and such court procedure for enforcing an arbitral

坏的可能性。

#### **15. 权利放弃**

卖方未坚持严格遵守买卖双方签署的本合同的任何条款、未行使选择权、未执行任何权利、或未寻求本合同规定的任何补救措施，均不构成卖方对权利的放弃。不存在任何与买卖双方签订的本合同内的条款不一致的惯例、实践、交易习惯或商业惯例构成卖方对其权利的放弃。卖方并未放弃其可能有的任何抗辩，包括非绝对的共同过失。

#### **16. 保密**

买方同意将本通用销售条款视作保密信息，并严格保密，且保证相关信息不曾也将不会泄露给第三方，除非由卖方书面授权。买方应保全、保存和保持买卖双方签署本合同事前、事中或事后卖方向其披露的所有技术秘密、商业秘密和其他保密消息的机密性。

#### **17. 争议解决**

在发生纠纷时，与本合同相关的条款、解释、执行、履责、违约、终止或有效性引起的争议、争论或索赔，双方应努力以诚信、友好的方式解决。若在一方向对方提交争议、争论或索赔后经过两（2）个月的磋商无法解决的，上述争议、争论或索赔将由位于北京的中国国际经济贸易仲裁委员会（CIETAC）在上海按照申请仲裁时当时生效的CIETAC的仲裁规则仲裁。仲裁结果是终局性的并对双方都有约束力。双方同意仲裁结果应由相关法院执行，且执行仲裁裁决的相关法律程序不可排除。仲裁语言为英语，仲裁费由双方平均承担。



award shall not be excluded. The arbitration language shall be English, arbitration costs shall be paid equally by the parties.

#### **18. Miscellaneous**

The contractual relationship and the entire business relationship between the Seller and the Buyer shall be subject to the laws and regulations of the PRC, excluding the laws of Hong Kong, Macau, and Taiwan. The United Nations Convention on Contract for the International Sale of Goods is expressly excluded. If any provision of this Contract is determined by a court or arbitrator to be invalid or unenforceable, such determination shall not affect any of the other remaining provisions of this Contract which shall remain in full force and effect.

The terms and conditions set forth in this Contract, together with any amendments, modifications and any different terms or conditions expressly accepted by the Seller in writing, shall constitute the entire agreement concerning the Products sold, and there are no oral or other representations or agreements which form a part thereto. The terms of this Contract take precedent over and supersede any course of dealings, usage of trade or course of performance.

In the event of a conflict between the terms of this Contract and the terms of any acknowledgment, invoice or other document delivered by the Buyer to the Seller relating to the subject matter of this Contract, whether delivered to Seller prior to or contemporaneously with or after this contract, the terms of this Contract shall prevail. In case of ambiguity the provisions of this Contract shall be interpreted according to the Incoterms in force at the time of Order placement by the Buyer.

The provisions in items 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15 and 17 shall survive the expiration or termination of this Contract.

Seller and Buyer are independent contractors and nothing in this Contract shall make either party an agent, joint venture or legal representative of the other. There are no third party beneficiaries to this Contract. Any attempted assignment by the Buyer of this Contract in whole or in part will be void and of no effect, except with consent of the Seller in writing.

#### **18. 其他**

买卖双方的合同关系和商业关系应遵守中国相关法律法规，不包括香港、澳门和台湾的相关法律法规。联合国国际货物销售合同公约明确排除在外。若本合同任何条款被法院或仲裁庭判定为无效或不可执行的，相关判决不应影响本合同其他条款，其他条款仍然完全有效。

本合同条款，以及其他由卖方书面确定的修改、修正和不同条款，应共同组成关于产品销售的全部协议，口头或其他陈述或约定不得作为组成部分。本合同条款优先于并替代任何交易、商业惯例或履约过程。

若合同内条款与买方递交给卖方与本合同主旨相关的承认书、发票或其他文件相矛盾时，不论递交给卖方的文件先于、同时或在本合同之后，本合同的相关条款优先。

合同到期或终止后，合同的第 2、3、4、5、6、7、9、10、11、12、14、15 和 17 条应继续有效。

买卖双方为独立的合同方，本合同内任何条款不能使任何一方成为另一方的代理商、合资企业或法律代表。无第三方受惠于本合同。除非卖方的书面同意外，买方全部或部分转让合同的无效。