

## GÜDEL GROUP GENERAL CONDITIONS OF SALE (Edition: 2/2019) English

## 固都集团 通用销售条款 (版本: 2/2019) 中文

### I. General

- 1.1. These General Conditions of Sale apply to all orders placed by Purchasers with Affiliated Companies of the GÜDEL Group, i.e. world-wide with any direct or indirect subsidiary of Güdel Group AG, Gaswerkstrasse 26, CH-4900 Langenthal, Switzerland, (each individually a "Supplier") for the supply of goods (such as plants, machines, components, modules, spare parts) or services (hereinafter collectively referred to as the "Goods").
- 1.2. Additional or deviating terms proposed by Purchaser, in particular Purchaser's Terms and Conditions of Purchase, are not applicable and hereby expressly rejected, even if (1) the Purchaser expressly refers to other terms and conditions in the course of the business relationship with the Supplier or (2) they are not rejected explicitly by the Supplier in an Order Confirmation or (3) the Supplier delivers the Goods and accepts payment by the Purchaser.

### 2. Formation of Contract, Changes and Amendments

- 2.1. The Supplier shall be bound only to offers specifying a period for acceptance. Purchaser's order must be binding for at least 10 days after receipt by Supplier.
- 2.2. The scope and execution of the contract shall exclusively be governed by Supplier's written Order Confirmation or any other written agreement between the Parties.
- 2.3. Supplier may deviate from the agreed specifications and supply technically improved Goods, as long as the improved Goods have no negative impact on price, function and quality.

### 3. Local Laws and Regulations, Standards

- 3.1. Unless the Purchaser in its Purchase Order has brought to Supplier's attention any laws, regulations or standards to be complied with at the place of destination of the Goods, in particular relating to safety, health or regulatory approvals, the Goods shall comply with the relevant laws, regulations and standards in Supplier's country.

### 4. Delivery

- 4.1. Part shipments shall be permitted and Supplier may invoice each part shipment, provided the respective Goods can be used by Purchaser for the agreed purpose.
- 4.2. The term of delivery shall commence as soon as the contract has been concluded, all regulatory approvals, such as export-, import- and payment permits have been obtained, any advance- or prepayments or the notification of the issue of or the confirmation of a letter of credit have been received by Supplier, all payments due for Goods supplied under prior contracts have been made and as soon as all technical documents agreed between the Parties have been supplied or approved by Purchaser.
- 4.3. Delivery is subject to the following conditions, i.e. the term of delivery shall be reasonably extended:
  - a) if Supplier is prevented from performing the contract by Force Majeure. Force Majeure shall be deemed to be any unforeseeable event beyond Supplier's control which renders Supplier's performance commercially unpractical, unduly burdensome or impossible, such as delayed or defective supplies from sub-contractors or sub-suppliers, labour disputes, governmental orders or regulations, shortage in materials or energy, serious disruptions in Supplier's works, such as total or partial destruction of plant and equipment or the breakdown of essential production facilities, serious disruptions in transport facilities, e.g. impassable roads.

### I. 总则

- 1.1. 本通用销售条款适用于固都集团的关联企业向采购方提供货物（如设备、机器、部件、组件、备件）或服务（以下统称为“货物”）而订立的订单。固都集团的关联企业是指在全球范围内与位于瑞士朗根塔尔 CH-4900 Gaswerkstrasse 26 的固都股份公司有任何直接或间接关系的附属公司（各单独称之为“供应商”）。
- 1.2. 采购方提出的额外或不同的条款，特别是采购方的采购条款和条件不得适用，且供应商应当明确拒绝，即使（1）采购方在与供应商业务关系中明确提及及其他条款和条件，或（2）供应商未在订单确认书中明确拒绝该等条款和条件，或（3）供应商交付货物并接受采购方的付款。

### 2. 合同的订立、变更、修订

- 2.1. 供应商仅受有明确承诺期限的要约之约束。采购方的订单必须在供应商收到订单后的至少 10 天内具有约束力。
- 2.2. 合同的范围及履行应仅受供应商书面订单确认书或双方任何其他书面协议的约束。
- 2.3. 供应商可以偏离约定的规格，并且可以提供技术改进的货物，只要该改进货物对价格、功能和质量没有消极影响。

### 3. 当地法律、规定、标准

- 3.1. 除非采购方在订单中提请供应商注意遵守货物目的地的任何法律、规章或标准，特别是与安全、健康或行政审批相关的法律、规定或标准，否则货物应当遵守供应商所在国家的相关法律、规定和标准。

### 4. 交付

- 4.1. 应允许部分装运，并且供应商可以为每次的部分装运开具发票，但前提是采购方可以将相关货物用于约定目的。
- 4.2. 自合同订立，且所有的行政审批，例如出口、进口以及支付许可均已获得，且供应商已经收到预付款、信用证的开具或确认的通知书，且以往合同项下所供应货物的所有应付款项均已支付，且买方已提供或批准双方约定的所有技术文件时，交付期限开始计算。
- 4.3. 交付必须适用以下条件，即、交付期限应予合理延长：
  - a) 如果供应商因不可抗力无法履行合同。不可抗力是指供应商不可预见且无法控制的事件，该等事件导致供应商的履行变得在商业上不切实际，负担过度加重，或不可能进行，例如，分包商或二级供应商供应延迟或供应存在缺陷、劳资纠纷、政府命令或法规、材料或能源短缺、供应商工作严重中断（如，全部或部分工厂和设备被破坏或重要生产设施抛锚）、交通设施严重破坏（如，道路无法通行）。

Should the effect of Force Majeure and the ensuing reasonable start-up period exceed a total of two (2) months, either Party may terminate the contract forthwith. In such case Purchaser may not claim damages.

b) if Purchaser is in delay with the fulfilment of his obligations under the contract, in particular, if he does not adhere to the agreed terms of payment or if he has failed to timely provide an agreed security.

4.4. If for reasons attributable to Supplier the agreed term of delivery or a reasonable extension of not less than one month to be granted by Purchaser is exceeded, Purchaser may exert its rights at law. Subject to any further limitations provided for in Clause 11, Supplier's liability hereunder shall be limited to maximum 5% of the Price of the Goods in delay.

4.5. If Purchaser fails to take delivery of the Goods notified as ready for dispatch or if he cancels a Purchase Order without cause and if he fails to remedy such breach within latest seven days' from Supplier's notice, Supplier shall be entitled to withdraw from the contract and claim damages pursuant to Clause 6.10.

In addition, Purchaser shall bear the costs of storage of the Goods. In case the Goods are stored in Supplier's premises, the weekly storage charge shall amount to 0.25% of the Price of the Goods stored.

4.6. Supplier shall inform Purchaser as soon as practical of any circumstances occurred or likely to occur, which may impair the agreed delivery date, as well as of the estimated period of delay. The Supplier shall exert its best efforts to minimize the delay or to procure replacements from third parties.

## 5. Shipping, Passing of Risk

5.1. Unless agreed otherwise between the Parties, the Goods shall be shipped FCA Supplier's place of business (Incoterms 2010 or latest edition).

5.2. If Supplier arranges the transport on behalf of Purchaser, Purchaser shall timely, at least one (1) week prior to the agreed delivery date, notify special requests regarding carriage and insurance. Otherwise the Supplier shall, at its discretion but without liability, arrange for the quickest and cheapest carriage possible.

5.3. The risk in the Goods shall pass to Purchaser pursuant to the Incoterm agreed in the Order. In case acceptance tests in Purchaser's works have been agreed, passing of risk shall occur upon Preliminary Machine Acceptance (PMA).

5.4. Each delivery shall be accompanied by a detailed delivery note containing the following data: Purchaser's Order Number, Date of Order, Item Number, Quantity, Gross/Net Weight, Country of Origin, Customs Tariff Number and Type of Packing.

5.5. Purchaser shall note transport damages, missing or wrong items on the notice of receipt and document the damages by photo records.

## 6. Prices, Invoicing, Terms of Payment

6.1. Unless otherwise agreed, the Prices are understood to be agreed in the currency of and FCA Supplier's place of business (Incoterms 2010 or latest edition).

6.2. For supplies to be delivered later than 4 months after conclusion of the contract Supplier reserves the right to increase the price of the Goods or Services in accordance with an increase by more than 10% of the following cost items: labour costs, prices charged by its suppliers or service providers or by an increase in public dues.

6.3. Statutory VAT will be shown on the invoice as a separate item.

6.4. Supplier's invoices shall comply with applicable VAT regulations and, in addition, shall show at least the order number, item number, delivery date and also the scope of the delivery, e.g. partial or residual deliveries.

如果不可抗力的影响时间和随后合理的启动期限总共超过两（2）个月的，任何一方均可立即终止合同。在这种情况下，采购方不得要求赔偿。

b) 如果采购方迟延履行本合同项下的义务，特别是如果没有严格遵守约定的支付条款，或者未能及时提供约定的担保。

4.4. 如果供应商由于自身原因超过了约定的交付期限或者超过了采购方给予的不少于一个月的合理延长期限，采购方可以行使法律权利。根据第 11 条中有关进一步责任限制的规定，供应商此时承担的最高责任限于于延迟交付货物价格的 5%。

4.5. 如果采购方未能接收已经通知备好待发送的货物，或者如果其无故取消采购订单，并且在收到供应商通知后最迟七日内没有补救该违约行为的，供应商有权根据第 6.10 条退出合同并要求赔偿。

另外，采购方承担货物存储费用。如果货物存放在供应场地，则每周存储费应为存储货物价格的 0.25%。

4.6. 如果发生或可能发生会影响约定交付日期的情况时，供应商应当在实际可行的范围内立即通知采购方，并告知预估的迟延期限。供应商应尽最大努力减少迟延或从第三方采购替代品。

## 5. 装运、风险转移

5.1. 除非双方另有约定，否则货物应按照 FCA 供应商营业地进行装运（国际贸易术语解释通则 2010 版或最新版本）。

5.2. 如果供应商代表采购方安排货物运输的，采购方应当及时地（至少在约定的交付日期前一（1）周）通知有关运输和保险的特殊要求。否则，供应商将自行决定尽可能安排最快和最便宜的运输，但不承担任何责任。

5.3. 货物的风险根据订单中约定的国际贸易术语，转移给采购方。如果已经约定在采购方工厂进行验收测试的，则风险将在初步机器验收（PMA）时转移。

5.4. 每次交付应附有一个详细的交付单，包含以下数据：采购方订单号、订单日期、物品编号、数量、毛重/净重、原产国、海关关税编码和包装类型。

5.5. 采购方应在收货通知单上注明运输损坏，遗失或错误的物品，并通过照片记录来证明该等损坏。

## 6. 价格、发票、付款条件

6.1. 除非另有约定，价格所适用的货币为供应商营业地货币，并且按照 FCA 供应商营业地计算（国际贸易术语解释通则 2010 版或最新版本）。

6.2. 在合同订立 4 个月后交付的供应货物，供应商保留提高商品或服务价格的权利，如果成本项目增长 10% 以上的：劳动力成本、供应商或服务提供商收取的价格或公共会费的增加。

In addition Supplier shall properly indicate the country of origin of the Goods.

- 6.5. Unless otherwise agreed in writing the Price for plants and/or machines shall be due and payable as follows: 30% down payment with within 10 days after conclusion of the contract; 30% upon delivery ex Supplier's works; 30% within 10 days after installation and commissioning of the plant/and or machinery (Preliminary Machine Acceptance [PMA]); 10% within 10 days after final acceptance of the plant and/or machinery and the beginning of the warranty period, latest, however, within 120 days after PMA.
- 6.6. Unless otherwise agreed in writing the Prices for components, modules and spare parts for the Goods shall be due and payable within the later of 30 days from the date of delivery and the receipt of the invoice.
- 6.7. The invoice amount shall be payable without any deductions for cash discounts, costs, taxes, dues or other charges.
- 6.8. Payments shall be deemed effected, as soon as the amount due is freely available in in the agreed currency on the bank account indicated by Supplier.
- 6.9. Purchaser may only withhold or set-off payments against counter claims which are either expressly acknowledged by Supplier or awarded to Purchaser by final judicial judgment. Provided it has no material impact on the use of the Goods, the delay of an insignificant part of the supplies does not entitle the Purchaser to defer payments.
- 6.10. If Purchaser is more than 14 calendar days in arrear in effecting payment of an instalment or in providing an agreed security, the balance of the total Price shall become due and payable. In addition, the Supplier – without having to set any additional deadlines – shall be entitled to withdraw from the contract and claim damages in an amount of at least 10 % of the Contract Price.
- 6.11. In case of payments by letter of credit (L/C), Purchaser shall bear the costs of opening, notification and confirmation of the L/C.

## 7. Retention of Title

- 7.1. Until the Goods are fully paid they shall remain Supplier's property. Supplier shall be entitled to register and do all things necessary to preserve its property rights. Prior to the transfer of title, Purchaser shall not be entitled to pledge or grant security interests in the Goods.
  - 7.2. Should the Purchaser resell Goods to which title is reserved in the ordinary course of business, he shall be deemed to have tacitly assigned to Supplier the receivables deriving from their sale, together with all collaterals, securities and reservations of title, until all of Supplier's claims towards Purchaser have been settled. Up to Supplier's revocation, this assignment shall not preclude Purchaser's right to collect the assigned receivables.
- To the extent the value of the Goods to which title is reserved together with any other collateral exceeds Supplier's claims against the Purchaser by more than 20%; Supplier shall re-assign the above receivables to Purchaser at his request.
- 7.3. If Purchaser is in arrear with its payments by more than 14 calendar days, Supplier may withdraw from the contract and request the return of the Goods at Purchaser's cost.
  - 7.4. For the right to use the Goods from receipt to their return to Supplier, Purchaser shall pay to Supplier the following remuneration a) 2 % of the Purchase Price per calendar week in the first 6 months and b) 0.5 % per calendar week thereafter.

In the event of withdrawal from the contract, Supplier may enter Purchaser's premises to retake possession of the Goods which have not been paid in full.

In case of partial payment of the Purchase Price, a positive or negative

- 6.3. 法定增值税将作为独立项目显示在发票上。
- 6.4. 供应商的发票应符合适用的增值税法规，此外，发票应至少显示订单号、物品编号、交付日期以及交付范围，例如部分或剩余交付。另外，供应商应适当指明货物的原产国。
- 6.5. 除非另有书面约定，否则设备和/或机器的价款应按下列方式到期进行付款：合同订立后 10 天内支付 30%的预付款；在供应商工厂交货时支付 30%；在安装和调试设备和/或机器（初步机器验收 [PMA]）后 10 天内支付 30%；在设备和/或机器最终验收和保修期开始后 10 天内支付 10%，但是，不得晚于初步机器验收（PMA）后 120 天。
- 6.6. 除非另有书面约定，否则货物零部件、组件及备件的价款应在交付之日和收到发票之日（以较晚者为准）起 30 日内到期应付。
- 6.7. 发票金额应在不扣除现金折扣、费用、税金、应付款或其他费用的情况下支付。
- 6.8. 一旦到期金额在供应商指定的银行账户中以约定货币可进行自由使用时，付款即视为完成。
- 6.9. 只有供应商明确认可的或最终司法判决授予采购方的反索赔，采购方才可以从付款中进行扣除或抵销。但在不会对货物使用产生重大影响的情况下，如果部分不重要的货物迟延的，采购方无权迟延付款。
- 6.10. 如果采购方延迟支付某笔分期付款或迟延提供约定的担保超过 14 个日历日的，总价款的余额应变为到期应付。此外，供应商有权从合同中退出并提出至少为合同价款 10%的损害赔偿，而无需设定任何额外的截止日期。
- 6.11. 如果是信用证（L/C）付款，采购方应承担信用证开立、通知和确认的费用。

## 7. 所有权保留

- 7.1. 货物在全部货款付清之前，仍为供应商的财产。供应商有权登记并采取所有必要措施来保护其产权。在转让所有权之前，采购方无权质押或在货物上设立担保权益。
  - 7.2. 如果采购方在日常经营过程中转售所有权保留的货物，采购方则被视为默认将销售所得的应收账款，以及所有抵押物、担保和所有权保留均转让给供应商，直到供应商对采购方的所有索赔都得到结算为止。在供应商决定撤销之前，此转让不应阻碍采购方收取已转让的应收账款的权利。
- 如果所有权保留的货物以及任何其他抵押物的价值超过供应商对采购方案赔额的 20%，供应商将按照其要求将上述应收款重新转让给采购方。
- 7.3. 如果采购方延迟付款超过 14 个日历日，供应商可以退出合同并要求采购方退回货物，因此产生的成本由采购方承担。
  - 7.4. 从收货至将货物退还给供应商期间，对于货物使用权，采购方应向供应商支付以下补偿 a) 最开始 6 个月内，每个日历周支付采购价格的 2%，且 b) 此后，每个日历周支付采购价格的 0.5%。

如果退出合同，供应商可以进入采购方的场所，以重新获取尚未

balance resulting a) from the aforementioned remuneration for the use of the Goods plus possible claims of Supplier for damages, including damages for an improper use of the Goods, and b) Purchaser's claim to repayment of its partial payments of the Purchase Price shall be due and payable to the respective creditor 10 days following the return of the Goods to Supplier.

- 7.5. As long as title is reserved to Supplier, Purchaser shall insure the Goods at its cost, naming Supplier as beneficiary, against theft, breakage, fire, water and similar calamities and risks. In addition, he will take all other measures reasonably required to protect Supplier's property.

## 8. Inbound Inspections

- 8.1. Unless a joint Acceptance Test is agreed between the Parties, Purchaser upon receipt shall inspect the Goods with regard to transport and other apparent defects as well as with regard to identity and quantity.
- 8.2. In the ordinary course of business, latest within one week after receipt, Purchaser shall, at least by random sampling, inspect the Goods to determine whether they correspond to the agreed specifications.

## 9. Acceptance Tests

- 9.1. The terms and conditions of a final Site Acceptance Test (SAT) of the Goods at the place of destination shall be defined in a separate agreement. If the details of a SAT agreed in the contract are not defined in such a separate agreement, the following shall terms and conditions shall apply:
- 9.2. Supplier shall notify Purchaser at least 5 working days ahead of the scheduled date of the SAT to enable the latter or his representatives to attend the SAT.

The representatives of the Parties shall sign a Final Acceptance Certificate (FAC). The FAC shall record either (a) the passing of the acceptance test; (b) the passing of the acceptance test with reservation or (c) Purchaser's refusal to accept the Goods as compliant with the contract.

The Purchaser may not refuse the acceptance due to minor defects, in particular defects which do not significantly impair the function of the Goods. In case Purchaser is entitled to refuse the acceptance of the Goods, the Supplier shall remedy the defects, deviations or deficiencies within a reasonable period of time. For this purpose, the Purchaser shall grant the Supplier access to the plant. Thereafter, another acceptance test shall take place. Should the Goods again fail to pass the SAT, Purchaser, subject to the limitation of liability provided in Clause 11 may avail itself of its rights at law.

- 9.3. The Goods shall be deemed to have been tacitly accepted, if a) Purchaser, without proper cause, fails to attend a SAT duly announced by Supplier or b) Purchaser has used the Goods for production purposes for more than a month without notifying any defects.

## 10. Warranty

- 10.1. Supplier warrants that the Goods: (i) conform to the agreed specifications and achieve the agreed performance, (ii) have been manufactured in accordance with all applicable laws and regulations in force from time to time, (iii) are free from defect in materials and workmanship, (iv) are non-infringing on third party patent rights and other intellectual property rights at the place of destination (the place of destination, unless otherwise agreed in the contract, being Purchaser's place of business) and in the country of their manufacture, and (v) are fit for the agreed purposes and of good and merchantable quality.
- 10.2. In case of Goods manufactured to specifications, drawings or patterns supplied by Purchaser, Supplier's warranty shall be limited to defects in material and workmanship.
- 10.3. Supplier, at its election, undertakes to repair or replace all defective

支付全额价款的货物。

如果部分支付采购价格, 由于 a) 上述使用货物的补偿加上供应商可能提出的损害赔偿, 包括不当使用货物导致的损害赔偿, 以及 b) 采购方要求偿还其已支付的部分采购价格, 而导致的正数或负数余额应在货物退回供应商 10 天内到期并应支付给相应的债权人。

- 7.5. 只要供应商保留所有权, 采购方应自费给该等货物购买保险, 指定供应商为受益者, 保险范围包括盗窃、破损、火灾、水灾和类似的灾难和风险。此外, 其将采取合理需要的所有其他措施来保护供应商的财产。

## 8. 入库检查

- 8.1. 除非双方约定进行联合验收测试, 否则采购方应在收货时就货物运输、其他明显的缺陷, 以及标识和数量进行检查。
- 8.2. 在正常业务过程中, 最迟在收到货物后一周内, 采购方应当至少通过随机抽样检查货物的方式以确定货物是否符合约定的规格。

## 9. 验收测试

- 9.1. 货物在目的地进行最终现场验收测试 (SAT) 所适用的条款和条件应在单独的协议中予以明确。如果合同中约定的现场验收测试 (SAT) 的细节内容没有在单独协议中予以明确, 则将适用以下条款和条件:
- 9.2. 供应商应在现场验收测试 (SAT) 计划日期之前至少 5 个工作日通知采购方, 使得采购方或其代表能够进行现场验收测试 (SAT)。

双方代表应签署最终验收证书 (FAC)。最终验收证书 (FAC) 应当记录 (a) 通过验收测试; (b) 有保留地通过验收测试, 或者记录 (c) 采购方拒绝认可货物符合合同约定。

采购方不得由于微小缺陷而拒绝验收, 特别是那些不会严重损害货物功能的缺陷。如果采购方有权拒绝验收货物的, 供应商应在合理的时间内弥补缺陷、偏差或不足。为此, 采购方授权供应商进入其工厂。在此之后, 应当再次进行验收测试。如果货物再次未能通过现场验收测试 (SAT), 则在受第 11 条责任限制的约束下, 采购方可以寻求其在法律下的权利。

- 9.3. 在以下情况下, 货物应默认视为验收合格: a) 没有合适原因, 采购方未能参加供应商正式通知的现场验收测试 (SAT), 或 b) 采购方已将货物用于生产目的超过一个月而未通知供应商存在任何缺陷。

## 10. 质量保证

- 10.1. 供应商保证, 货物: (i) 符合约定的规格并达到约定的性能, (ii) 根据适用的所有不时生效的法律法规进行生产, (iii) 不存在质量和工艺上的瑕疵, (iv) 在目的地 (除非合同中另有约定, 目的地为采购方的营业地) 以及货物制造国, 没有侵犯第三方的专利权以及其他知识产权, 而且 (v) 符合合同约定目的并具有良好且适于销售的质量。
- 10.2. 如果货物是按照采购方提供的规格、图纸或图案制造的, 供应商

Goods free of charge after having received Purchaser's written notice thereof, such notice (if no SAT has been agreed) to be given within fifteen (15) days after the receipt of the respective Goods, or, in the event of latent defects, within fifteen (15) days after Purchaser has or should have become aware of the defect.

- 10.4. Purchaser may withdraw from the contract or to demand a reduction of the Purchase Price,
- if the repair or replacement of the defective Good is impossible; or
  - if Supplier refuses the repair or replacement or if, for reasons attributable to Supplier, the repair or replacement is unduly delayed.
- 10.5. The warranty period is 12 months and begins, unless otherwise agreed by the Parties, upon receipt of the Goods by Purchaser (or, in case of a PMA, upon successful completion of the PMA); it ends latest 18 months after notification of readiness of dispatch.
- 10.6. The warranty period for repairs or replacements shall be 12 months from the date of replacement or successful repair.
- 10.7. The warranty given hereunder shall not apply to defects or damages resulting from normal wear and tear, improper storage and maintenance, failure to observe the commissioning- or operating instructions, over-stressing or overloading, unsuitable operating media, improper repairs or alterations by Purchaser or third parties, defects resulting from the use of other than original spare parts or other reasons beyond Supplier's control.
- 10.8. Used Goods are sold without warranty.

## 11. Limitation of Liability

- 11.1. The rights and remedies of Purchaser are exclusively governed by these General Conditions of Sale and shall be in lieu of any remedies at law. All further claims for damages, reduction of the contract price, termination of or rescission of the contract are excluded.
- 11.2. Purchaser shall not be entitled to claim damages for loss of production, loss of use, loss of orders, loss of profit, loss of anticipated savings, loss of data, costs for dismantling or reinstallation of the Goods or handling costs for claims management, as well as for claims of third parties for such damages or costs.
- 11.3. Supplier's liability for damage to property or recourse claims for injury or death of persons shall be limited to the equivalent of USD 500'000 per occurrence and in the aggregate to the equivalent of USD 2'000'000 per calendar year.
- 11.4. This limitation of liability equally applies to the extent Supplier is liable for acts or omissions of its employees or third parties engaged in the performance of its obligations.
- 11.5. The limitation does not apply to the extent Supplier's liability is mandatory, in particular in case of unlawful intent or gross negligence on the part of Supplier and its employees or third parties engaged in the performance of the contract, in case of fraudulent concealment of a defect, for direct claims arising from personal injury or death or under Supplier's mandatory liability under applicable Product Liability Acts.

## 12. Infringement of Third Party Intellectual Property Rights

- 12.1. In the event of a claim of infringement of any third party intellectual property rights at the agreed place of destination of the Goods, Supplier, at its discretion, shall take the needed steps to ensure for Purchaser a non-infringing source of supply, which may involve securing the needed licenses, redesign of the Goods, or other steps Supplier deems necessary to ensure that non-infringing Goods are delivered to Purchaser.
- 12.2. Supplier shall further indemnify, defend and hold Purchaser harmless from and against all liabilities, costs, damages, claims and expenses (includ-

的保证仅限于材料和工艺方面的缺陷

- 10.3. 在收到采购方的书面通知后，供应商可自行选择免费维修或更换所有缺陷货物。该等通知（如果没有约定现场验收测试（SAT））应在采购方收到相应货物后十五（15）天内发出，或者，对于潜在缺陷，在采购方已经或应该已经注意到该缺陷后十五（15）天内发出。
- 10.4. 采购方可以从合同中退出或要求降低采购价格，
- 如果无法修理或更换有缺陷的货物；或者
  - 如果供应商拒绝修理或更换，或如果由于供应商的原因，货物的维修或更换过度迟延。
- 10.5. 保修期为 12 个月，除非双方另有约定，保修期在采购方收到货物时开始计算（或者，若有初步机器验收（PMA），则自初步机器验收成功完成时起算），最迟于收到货物备好待发货的通知后 18 个月结束。
- 10.6. 维修或更换的保修期为自更换或成功维修之日起 12 个月。
- 10.7. 本通用销售条款下的保证不适用于因正常磨损、不当存储和维护、未遵守调试或操作说明、过压或超载、不合适的操作介质、买方或第三方的不当维修或变更而导致的缺陷或损坏，因使用非原装备件或供应商无法控制的其他原因而导致的缺陷。
- 10.8. 二手货物在销售时不提供任何保证。

## 11. 责任限制

- 11.1. 采购方的权利和救济仅受本通用销售条款的约束，并代替法律规定的任何救济。所有进一步的损害索赔、降低合同价格、终止或撤销合同的主张都不包括在内。
- 11.2. 采购方无权主张赔偿生产损失、使用损失、订单损失、利润损失、预期储蓄的损失、数据损失、拆解或重新安装货物的费用、索赔管理的处理费用以及第三方就该等损害或费用提出的索赔。
- 11.3. 供应商对财产损失的责任或人身伤亡赔偿的追索责任应限于每次相当于 500,000 美元的金额，总计每个日历年相当于 2,000,000 美元的金额。
- 11.4. 此责任限制同样适用于供应商对其员工或履行供应商义务的第三方的行为或疏忽所承担的责任。
- 11.5. 该责任限制不适用于供应商的法定责任，特别是当供应商及其雇员或从事履行合同的第三方具有非法故意或重大过失时，当隐瞒缺陷并具有欺诈性质时，而对于因人身伤亡或在相关产品责任法案中供应商法定责任项下提起的直接索赔，该责任限制也不适用。

## 12. 侵犯第三方知识产权

- 12.1. 如果在约定的货物目的地有任何侵犯第三方知识产权的主张，供应商可自行决定采取必要措施，向采购方确保供应货源无侵权问题，这些措施可能涉及获取所需许可证、重新设计货物或采取供应商认为必要的其他措施以确保将非侵权货物交付给采购方。

ing court costs and legal expenses and any settlement of such claim or action) incurred by Purchaser in respect of any claim or action brought by a third party against Purchaser or its Purchaser alleging that the Goods or their use by Purchaser or Purchaser's Purchaser infringe the intellectual property rights of such third party.

- 12.3. Notwithstanding the foregoing, Supplier shall not be liable to the extent that the infringement results from the manufacture of the Supplies in accordance with instructions received from Purchaser and Supplier (having taken all reasonable precautions) could not have known that following these instructions would result in an infringement of a third party's intellectual property rights.
- 12.4. The Parties will inform each other forthwith of all actual or alleged infringements of third party rights of which they become aware. Supplier will assist Purchaser in its investigation, defence or handling of any such claim, including the provision any documents needed by Purchaser to defend the action.
- 12.5. If Purchaser selects its own legal counsel, Supplier's indemnification extends to the reasonable costs and fees associated with such representation. If Purchaser does not select its own legal counsel, Purchaser will give Supplier sole conduct of the defence of any such claims or actions

### 13. Ownership in Documents and Software

- 13.1. Supplier retains all rights in the drawings, plans, technical specifications, images, calculations, brochures, catalogues, models, tools and other documents or in the software supplied to Purchaser, unless Purchaser has specifically ordered and paid for their creation. Purchaser acknowledges these rights and will not - without Supplier's prior written consent - make these documents or the software available to third parties or use them for other than the agreed purpose.
- 13.2. If software forms part of the scope of supply, Purchaser is granted a non-exclusive, non-transferable license to use the software for the agreed purpose. Copies may be made only for archival or debugging purposes or in connection with the replacement of a defective data carrier. Without Supplier's prior consent, the Purchaser is not entitled to update, upgrade, enhance disassemble, decompile, decode or reverse-engineer the software. In case of breach of one of these undertakings Supplier may revoke the right to use the software with immediate effect

### 14. Confidentiality

- 14.1. The Parties shall not disclose to third parties and shall use solely for the execution of an order all confidential information of which they have gained knowledge in the course of their dealing with the other Party, in particular technical information, business secrets and details of the order, such as quantities, technical specifications, commercial terms of an order, etc. as well as any knowledge derived from said information.
- 14.2. The Supplier shall ensure that any subcontractors or sub-suppliers to whom confidential information is disclosed for the purpose of executing the subcontract or sub-order, agree to be bound by these terms
- 14.3. Without Supplier's prior consent, Purchaser shall not publish the fact that he has contracted with Supplier to use his business relationship with Supplier for publicity purposes.
- 14.4. If either Party or one of its agents, sub-suppliers or subcontractors infringes the aforementioned confidentiality obligations, it shall pay to the other Party a penalty equivalent to USD 50'000 (fifty thousand) unless it can prove that neither the Party itself nor the sub-supplier or subcontractor was at fault.
- 14.5. The aggrieved Party may assert claims for higher damages as well as seek injunctive relief for cease and desistance or enjoinder. Payment of the penalty shall not relieve the breaching Party from the further performance of its obligations hereunder.

12.2. 若第三针对采购方或采购方的采购方提起索赔或诉讼，主张货物或采购方及采购方的采购方对货物的使用侵犯了该第三方的知识产权，此时，供应商应赔偿采购方，为采购方进行抗辩，并使采购方免于承担所有责任、成本、损害赔偿、索赔和费用（包括法院费用和法律费用以及此类索赔或诉讼的和解款）。

- 12.3. 尽管有上述规定，如果该等侵权是由于供应商按照从采购方收到的指示制造产品而导致的，而且供应商（已采取所有合理的预防措施）也无法知道遵循该等指示会导致侵犯第三方的知识产权的，供应商不应当承担责任。
- 12.4. 双方将立即相互通知他们发现的所有实际或涉嫌侵犯第三方权利的行为。供应商将协助采购方调查、抗辩、或处理任何该等索赔，包括提供采购方在诉讼中进行抗辩所需的任何文件。
- 12.5. 如果采购方选择自己的法律顾问，供应商的赔偿金将包括与此类代理相关的合理成本和费用。如果采购方未选择自己的法律顾问，则采购方将让供应商全权对该等索赔或诉讼进行抗辩。

### 13. 文档和软件的所有权

- 13.1. 供应商保留提供给采购方的图纸、方案、技术规格、图像、计算、手册、目录、模型、工具和其他文档或软件中的所有权利，除非采购方已经特地订购并支付了创作费用。采购方认可这些权利，且未经供应商事先书面同意，不会将这些文件或软件提供给第三方或将其用于约定目的之外的其他目的。
- 13.2. 如果软件构成供货范围的一部分，则采购方将被授予非独占、不可转让的许可并按照约定的目的使用该软件。副本只能用于存档或调试目的，或与更换有缺陷的数据载体相关。未经供应商事先同意，采购方无权更新、升级、增强、反汇编、反编译、解码或对软件进行反向工程。如果违反其中一项承诺，供应商可以立即撤销使用该软件的权利。

### 14. 保密

- 14.1. 对于所有在与另一方交易过程中获知的保密信息，特别是技术信息、商业秘密和订单细节（例如数量、技术规格、订单的商业条款等），以及从上述信息中衍生出的任何信息，双方不得向第三方披露，并且应仅用于执行订单。
- 14.2. 为了执行分包合同或子订单而向任何分包商或二级供应商披露保密信息的，供应商应确保该分包商和二级供应商同意受这些条款的约束。
- 14.3. 未经供应商的事先同意，采购方不得公布其与供应商签订合同这一事实或利用其与供应商的业务关系进行宣传。
- 14.4. 如果任何一方或其代理人、二级供应商或分包商违反上述保密义务，则应向另一方支付相当于 50,000（伍万）美元的罚金，除非其能证明违约的该方当事人、二级供应商或分包商没有过错
- 14.5. 受害方可以主张要求更高的赔偿金，并寻求停止、中止或禁止侵

## 15. Protection of Personal Data

15.1. The Parties may exchange Personal Data such as names, phone numbers, e-mail addresses and other personal related information in the course of their contractual relationship. In such case, both Parties shall use such Personal Data in accordance with applicable laws on the protection of personal data, in particular, to the extent applicable, the requirements of the General Data Protection Regulation of the European Union of 4th May 2016 (EU 2016/679; "GDPR") and ensure that no unauthorized third parties will have access to such Personal Data without the consent of the affected individuals or based on another legal reason to process such data.

15.2. The Parties shall keep Personal Data of the other Party strictly confidential and process such data solely for contractual purposes. The Party that processes Personal Data is responsible for the lawfulness of its processing as well as for ensuring the rights of the data subjects.

## 16. Final Provisions

16.1. If a provision hereof or any partial provision is held by any competent court or authority to be invalid or unenforceable, such provision or partial provision will be deemed null and void, the remaining portions hereof continuing to be in full force and effect. The Parties shall replace such invalid or unenforceable provision with a valid and enforceable provision having similar economic consequences, provided that the content of these terms and conditions is not materially altered. The same applies should any gaps or loopholes be found.

16.2. No delay or omission of Supplier to exercise any right or remedy granted under the contract and these terms and conditions shall operate as a waiver of such rights, and every right and remedy of Supplier provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.

16.3. Any communication transmitted via facsimile or electronically (e.g., via the Internet, including but not limited to EDI, cXML, e-mail) shall also be considered to have been made "in writing."

16.4. In case of deviation between the Chinese version and the English version the Chinese version shall prevail.

## 17. Place of fulfilment

17.1. Unless otherwise agreed, the place of fulfilment for delivery and payment shall be Supplier's place of business.

17.2. Should Supplier be responsible for the assembly or installation of the Goods, the place of fulfilment shall be the location at which assembly or installation takes place.

## 18. Applicable Law and Place of Jurisdiction

18.1. The contract between the Parties is subject to the substantive laws in force at Supplier's place of business, the UN-Convention on Contracts for the International Sale of Goods (CISG) expressly being excluded.

18.2. Exclusive place of jurisdiction for all actions arising out of or in connection with a Purchase Order or another agreement between the Parties shall be Supplier's place of business, the Supplier being entitled to bring actions also before any other court having jurisdiction over the subject-matter in dispute.

Effective as of February 15, 2019

害的禁令救济。罚金的支付不免除违约方继续履行义务。

## 15. 个人数据保护

15.1. 双方可以在合同关系过程中交换姓名、电话号码和电子邮件地址等个人数据和其他个人相关信息。此时，双方应根据适用的个人数据保护法，特别是在适用的范围内，根据 2016 年 5 月 4 日《欧盟通用数据保护条例》（欧盟 2016/679;"GDPR"）的要求使用此类个人数据，并确保未经相关个人同意，未经授权的第三方不得访问此类个人数据，或基于其他法律原因处理该等数据。

15.2. 双方应严格保密另一方的个人数据，并仅为合同目的处理此类数据。处理个人数据的一方负责其处理该数据的合法性以及保护数据主体的权利。

## 16. 最后条款

16.1. 如果本协议的某一条款或任何部分条款被任何有管辖权的法院或政府部门认定为无效或不可执行，则该等条款或部分条款将被视为无效，其余条款仍然继续完全有效。如果有需要，双方应将此类无效或不可执行的条款替换为具有类似经济后果的有效且可执行的条款，前提是这些条款和条件的内容未发生重大变更。如果发现任何差异或漏洞的，此方法同样适用。

16.2. 供应商迟延或遗漏行使合同项下以及相关条款和条件下授予的任何权利或救济的，不构成对该等权利的放弃，并且此处授予供应商的每项权利和救济应当是并行适用、同时存在的，且附加于法律或衡平法下享有的任何其他权利和救济。

16.3. 通过传真或电子（例如，通过互联网，包括但不限于 EDI、cXML、电子邮件）传输的任何通信也应视为以书面形式进行。

16.4. 如果中文版本和英文版本之间存在差异的，以中文版本为准。

## 17. 履行地点

17.1. 除非另有约定，交付和付款的履行地点应为供应商营业地。

17.2. 如果供应商负责货物的装配或安装，则履行地点应为装配或安装地点。

## 18. 适用的法律和管辖地

18.1. 双方之间的合同受供应商营业地现行有效的实体法律约束，联合国国际货物销售合同公约被明确排除适用。

18.2. 因订单或双方之间的其他协议而产生的或与之相关的所有诉讼应由供应商营业地进行专属管辖，供应商也有权向对争议标的事宜有管辖权的任何其他法院提起诉讼。

自 2019 年 2 月 15 日生效。