



1. GENERAL

1.1. These terms and conditions (“Terms”) govern the B2B-sale of goods and the provision of services, including repair by Guentner (Shanghai) Trading Co., Ltd. (“Seller”) to the commercial customer (“Customer”) and become integral part of all such current and future contracts between Seller and Customer, even where they are not specifically agreed again.

1.2. The Terms shall apply in the version as published on Seller’s website at the time of the Order.

1.3. Any modification of the Terms, in particular individual declarations, recommendations, guarantees or any promises, in particular regarding rebates, bonuses, deadlines or repair, require a written confirmation signed by an authorized Seller representative, namely any of Seller’s legal representative, managing directors or sales directors.

1.4. Any terms and conditions of Customer, be it contradictory, deviant or additional are hereby expressly rejected by Seller, unless accepted by Seller in writing.

2. QUOTATION, ORDER AND ORDER CONFIRMATION

2.1 On request of Customer, Seller shall make a quotation including a specification for the requested goods or services to be provided (hereinafter “Goods” or “Services”) (“Quotation”). Alternatively, Customer may configure such Quotation for the Goods or Services with Seller’s configuration software “Güntner Product Configurator” (GPC).

2.2 The prices in Seller’s Quotation are given subject to the agreement of these Terms and are non-binding, unless otherwise noted, and are subject to the quantities, specifications, and conditions received by Seller at the time of the quotation, as well as any exigencies arising from the COVID-19 or any future pandemic or the realization of geopolitical risks .

2.3 Customer shall place an order in writing or by phone with reference to the Quotation (“Order”). The Order shall be considered as an offer to Seller to conclude a contract. The Order will only be processed when all information necessary for Seller is received.

2.4 Seller will issue an acknowledgement of order (“Order Confirmation”) to conclude the contract.

2.5 For the avoidance of doubt, any written Quotation, estimate and/or advertised price for the Goods or Services shall be an invitation to submit a quotation (“invitatio ad offerendum”) and no binding contract shall be created by placing an order on Seller’s website or otherwise until Seller has sent an Order Confirmation to the Customer or (if earlier) Seller delivers the Goods to the Customer, whereupon a Contract shall be formed. Customer’s acceptance of the Goods or Services shall whatsoever, constitute Customer’s complete and unconditional assent to Seller’s Quotation, Order Confirmation and the Terms set out herein.

2.6 If Customer requests any changes to its order subsequent to Seller’s Order Confirmation or commencement

of manufacturing, Seller needs to approve such changes in writing and Seller will separately invoice Customer for the additional costs and/or charges relating thereto.

2.7 Goods or Services cannot be returned or exchanged other than in cases of an approved warranty claim according to clause 8.

2.8 Information of Seller on the Goods or Services (such as illustrations, drawings, details on weight and dimensions, design and performance data) and the representation of the same shall only be approximate. They are not guaranteed quality features but descriptions or characterizations of the supply or service. Deviations customary in the trade and deviations based on statutory provisions or constituting technical improvements as well as the replacement of components by equivalent parts shall be permissible.

3. PRICE & PAYMENT

3.1 Unless otherwise indicated, Seller’s prices, proposals, and quotations are net cash (without deduction) plus VAT and shipping.

3.2 Prices are contingent upon exigencies attributable to the COVID-19 or any future pandemic or the realization of geopolitical risks and may change without notice till the COVID-19 - or if the case may be any future pandemic - has been declared as ended, unless otherwise agreed to in writing.

3.3 If there is a period of more than four months between the date of Order and delivery, the price for the Goods shall be the price indicated in the price list on the date of delivery, subject to the same contingencies and qualifications noted in the foregoing sentence.

3.4 Orders are subject to prepayment unless payment terms are otherwise confirmed by Seller in writing.

3.5 Payments shall be in RMB to Seller’s bank account. Any payment delay shall be subject to the current LPR interest rate for late payment.

3.6 Any Orders will be put on hold if there is any outstanding balance over 30 days on previous orders. A deposit may be required on special built-to-order equipment and cancellations of such orders will incur charges established by the factory.

4. DELIVERY

4.1 Any delivery date(s) provided by Seller to Customer are non-binding estimates, and Seller reserves the right to modify the delivery date(s) without notice.

4.2 Seller shall inform Customer on its readiness to ship and Customer shall confirm a delivery date within latest 30 days after such confirmation. Customer is aware and acknowledges that any failure to communicate a delivery date within the said period will cause a default of acceptance of Customer.

4.3 Any customary costs incurred in particular for storage, and with a minimum as charged by Seller’s logistic company, be it at Seller’s premises or be it at a third party storage company, shall be reimbursed to Seller within 14 days after



receipt of the invoice notwithstanding Seller's right to claim further damages incurred.

4.4 If Seller has agreed in writing to a specific delivery or shipping schedule, (i) it shall commence on the date of Seller's Order Confirmation, but not before Customer's delivery of other necessary documents, including any agreed security if any and (ii) end on the date on which Seller delivers the Goods to the carrier.

4.5 Seller shall be entitled to partial shipments within reason. Seller will also have the option of billing for partial shipments. Partial shipments will be made and invoiced by Seller when ready according to clause 4.2.

4.6 Delay in delivery of any partial shipments shall not relieve Customer of its obligation to pay for any shipments received prior to such delay or its obligation to accept the remaining deliveries.

4.7 If Customer is unable to receive the Goods when tendered, Customer shall be liable to Seller for any loss, damage, or additional expense incurred or suffered by Seller as a result thereof.

4.8 Any quoted lead time(s) may be impacted due to the COVID-19 or any future pandemic and any related foreseeable or unforeseeable circumstances arising from it, including but not limited to government regulations, labor shortages, supply chain disruptions, or measures taken to preserve the health and safety of Seller's workforce. Any quoted lead time(s) shall be considered an estimate based upon the best information available to Seller at the time the estimate is made and is subject to change without notice.

4.9 In case of a delay of Seller, Customer shall send a reminder letter to Seller, stating a reasonable deadline for the fulfillment of the performance.

4.10 Where the Customer incurs damage due to a delay arising from Seller's slight negligence, the Customer shall avoid the expansion of loss and shall be entitled, in exclusion of further compensation for damages resulting from delay, to claim a half percent (0.5%) for each full week, but overall not more than five percent, of the value of the part of the total delivery that cannot be used in due time because of the delay. If the delay is caused intentionally or by gross negligence by Seller or constitutes a violation of a material obligation of Seller, statutory liability shall apply. Seller reserves the right to demonstrate that the Customer has suffered a damage smaller than the aforementioned lump sum.

5. SHIPPING

5.1 All Goods are shipped FCA with a carrier as selected by Seller, if not otherwise agreed. Customer shall be responsible for providing Seller with all necessary shipping instructions to ensure that delivery can take place as agreed.

5.2 Customer shall procure and maintain at its cost insurance for the Goods with a reputable insurer and shall produce a certificate of insurance upon request by Seller.

5.3 Effort is made to ensure that Customer's order is delivered trouble free; however, all freight must be inspected at delivery point for freight damage. Any damage must be noted on the bill of lading and signed by the driver. A copy of the bill of lading must be retained by Customer for submission during the freight claim process. Pictures should be taken in all instances. All freight claims must be submitted by Customer. Seller will lend assistance when necessary to help resolve freight damage claims.

5.4 All Goods shall be examined and counted immediately on delivery to ensure they are in agreement with the carrier's bill of lading. Any shipping shortages or damages must be noted on the delivery receipt before the truck leaves the delivery site.

5.5 All claims for any nonconformity in any shipment of Goods delivered to Customer must be made in writing to Seller's office as specified in the invoice within a period of five (5) days after Customer's receipt of such Goods. Customer's failure to make such claims within such time period shall constitute an acceptance of the particular shipment.

5.6 Shipments are contingent on strikes, or other labor trouble, failure on the part of Seller to deliver, interruption of or delay in transportation, embargos, war, riot, fires, accidents, any order or regulation of any governmental entity, pandemics, epidemics, acts of God or any other delays unavoidable or beyond Seller's control.

6. RETENTION OF TITLE

6.1 The Goods delivered to the Customer shall remain the property of Seller until the payment in full of all secured claims ("retention of title"). The Customer shall store the reserved Goods free of charge for Seller.

6.2 The Customer shall be entitled to process and sell the reserved Goods in the normal course of business until the occurrence of the liquidation event. Pledges and assignments as security are not permitted.

6.3 If the reserved Goods are processed by the Customer, it is agreed that the processing shall take place on behalf of and for the account of Seller as manufacturer and Seller shall directly acquire property or – where the processing takes place from material provided by several owners or the value of the processed article is greater than the value of the reserved Goods – the joint ownership (ownership in fractional shares) in the newly created article in the proportion of the value of the reserved Goods to the value of the newly created goods. In the event that no such ownership should be acquired by Seller, the Customer hereby transfers the Customer's future ownership or – in the aforementioned ratio – the Customer's joint ownership in the newly created goods to Seller as collateral. If the reserved Goods are connected or inseparably mixed with other articles into a uniform article and one of the other articles is to be considered the main item, then, where the main item belongs to Customer, Customer shall transfer the joint ownership to Seller in the uniform article in the ratio designated in sentence 1.



6.4 In the case of the resale of the reserved Goods, the Customer hereby assigns by way of security the claim arising therefrom against the Customer – in the event of joint ownership in the reserved Goods on a pro-rated basis according to the joint ownership share – to Seller.

6.5 If third parties gain access to the reserved Goods, particularly by garnishment, the Customer shall immediately advise them of Seller's ownership and shall notify Seller thereof in order to enable Seller to enforce Seller's property rights. If the third party is unable to reimburse Seller for the judicial and extrajudicial costs arising in this connection, the Customer shall be liable towards the Seller for these.

6.6 Seller shall release the reserved Goods as well as all claims or goods replacing such Goods on Seller's request, if its value exceeds the secured claims by more than 50%. In case Seller terminates the agreement for reasons vesting with Customer – in particular delay with payment – Customer shall be entitled to request that the reserved Goods be handed out.

7. SPARE PARTS

7.1 Replacement parts can be ordered by phone, by email or at the Güntner Online-Shop by providing the information as requested by Seller to carry out its spare part order.

7.2 If not otherwise agreed, Seller shall have no obligation to provide spare parts beyond the Warranty Period.

7.3 All replacement warranty parts will be shipped FCA 2020 INCOTERMS by normal used shipping at Customer's flatrate freight costs.

7.4 Spare parts cannot be returned or exchanged.

8. WARRANTY

8.1 Customer shall conduct a reasonable and complete inspection of the Goods after Customer's actual receipt of the Goods within a reasonable deadline (3 working days).

8.2 Customer must request repair or replacement of the defective component through a written notice, preferably Seller's form, delivered to Seller as soon as reasonably possible after Customer becomes aware of the Defect and providing the information as requested by Seller. All claims for a Defect in the Goods delivered to Customer shall be stating the serial number of the allegedly defect Good, both the serial number of the affected unit and – if available - the serial number of the defect component.

8.3 An invoice will be generated by Seller for any failure analysis of the allegedly defected Good. It shall in all cases be returned for failure inspection by the Seller. If a failure is determined due to Customers neglect, the invoice will become due and payable. If it is determined to be a manufacturing or vendor supplied defect, a credit will be issued against the invoice. In some instances, Seller may determine that the Good be scrapped on site at the Customer's, after which no invoice will be issued and no returning of the part will be required.

8.4 Customer shall return any allegedly defective goods, postage or freight paid from the place of its current

whereabouts, to Seller. Seller may waive this obligation of Customer's in writing. Customer shall only be entitled to scrap any defective good after Seller has confirmed so in writing. Customer agrees and consents that Seller may scrap a returned part held as defective by Seller two weeks after Seller's report on diagnostic finding, unless Customer expressly informs Seller to return the defective part at Customer's costs.

8.5 Customer shall not return any material without first obtaining tracking number from Seller, the provision of which is subject to Seller's sole discretion which can at any time be revoked. Seller will not be responsible for the disposition of any returned materials that are not marked with an RMA. Credit for any returns is subject to inspection and handling charges.

8.6 A Defect shall be any deviance of the Goods or Services from the agreed Specification.

8.7 Seller, at its discretion shall repair or replace ("subsequent performance") all components of the Goods which have been defective in the moment of transfer of risk and that show as defective during the Warranty Period. Ordinary wear and tear shall be excluded, and a repair shall not contain costs for assembling or disassembling of the defective goods, provided they had not been part of the Specification.

8.8 In case Seller and Customer have agreed that the repair or replacement shall be carried out by Customer, Customer shall submit a cost estimate to Seller prior to any works carried out for approval. Seller shall not refund costs beyond those of such approved cost estimate.

8.9 Customer shall bear all costs for services carried out by Seller for claiming Defect without cause. Seller shall charge such services at current prices, including expenses (e.g. traveling expenses).

8.10 Warranty Period: All claims for warranty shall be barred 24 months from Seller's information to customer of his readiness to ship. For spare parts as under section 7., all claims for warranty shall be barred 12 months from the transfer of risk.

8.11 Any warranty shall be excluded a) for attrition and natural wear and tear, b) for dynamically stressed components and goods, c) for unauthorized assembly or commissioning by the Customer or a third party, d) for unsuitable or improper use, e) for faulty or negligent handling, f) for non-compliance with installation, operating and maintenance instructions, g) for non-compliance with technical documentation, h) for the use of unsuitable operating material (fluids), i) for unauthorized changes or repairs undertaken by the Customer or by a third party, j) for unsuitable subsoil or assembly site, k) for chemical or electro-chemical influences, unless Seller is responsible for them, l) system component and piping design is not in accordance with state-of-the-art HVAC practice, m) forming gas is not introduced into the piping during the brazing of the piping installation.

8.12 If, for any reason, a visit by Seller's factory personnel for the purpose of service evaluation or assistance is requested, a purchase order by Customer for the visit is required. All forms of corrective remedies must be exhausted before an



authorization for a factory visit occurs. If a field service inspection is required, this will be billed at the current applicable date per day plus all related travel, lodging, sustenance, and incidental expenses. In case that the job site visit results from a confirmed Defect in the Goods and Services, Seller shall bear the respective costs on the basis of a fair compensation.

8.13 Continuous conformity of the Goods with the applicable guidelines can only be ensured if assembly or replacement work in explosion-proof environments is carried out by a qualified person of Customer or a third party, holding a qualification according to the relevant construction and safety operation regulations. This shall include the assembly or replacement of: explosion-proof fan motors; fully explosion-proof fans; repair switches for explosion-hazard environments; and terminal boxes for explosion-hazard environments. In such event, Customer must ensure that the necessary tests are carried out in order to guarantee the ongoing admissibility of the operation of such device in explosion-proof areas. The company performing any such work shall be liable therefore, and Customer shall hold Seller harmless respectively. Industry standard refrigeration practices must be observed and utilized by certified refrigeration technicians, mechanics, pipe fitters, design engineers, etc. when installing and servicing Seller's Goods.

8.14 Beyond the aforesaid, for dry coolers/condensers and the HydroSpray system the following shall apply: The design and the material combination of air-cooled finned heat exchangers are optimized for their operation with dry air. Spraying and evaporating water may cause calcification that leads to incrustation. The minerals dissolved in the water (salt, among other things) may lead to various forms of corrosion. The percentages of lime and minerals in the water can greatly differ and depend on the site. Therefore, the water quality of the site must be analyzed in every project. In order to ensure long-term trouble-free operation of sprayed dry coolers/condensers, Seller has defined corresponding requirements for the water quality that are considered part of the Specification. Any warranty for sprayed dry coolers/condensers and the HydroSpray system shall thus only apply if Customer takes appropriate measures to meet Seller's defined water quality standards for such systems. Appropriate measures include use of a softening system or, in addition to a softening system, demineralizing the water by means of reverse osmosis (depending on the initial water quality at the location of such equipment).

8.15 In case refrigerant needs to be replaced as part of a subsequent performance measure, Buyer shall bear all costs.

8.16 Considering the particular requirements of the special surroundings on/for ships or vessels or respective objects, any claims of the Customer with respect to compensation of subsequent performance or damages from Defects in connection with the subsequent performance, in particular any costs arising in connection with the provision for the subsequent

performance, in particular charges for docking and costs for towage, are excluded. The aforementioned does not apply to damages which are based on a provision under the Product Liability Act and/or damages which result from a deliberate or grossly negligent breach of contractual or statutory duties. Moreover, the aforementioned additional limitation of liability does not apply to damages which are based on infringement of material contractual obligations and/or which are corresponding with an assumed guarantee.

9. LIABILITY

9.1 Seller's liability for compensation of damages, irrespective of legal grounds, in particular due to impossibility, delay, default, defective or incorrect delivery, breach of contract, infringement of duties during contract negotiations and liability in tort, to the extent that culpability is involved, shall be limited as follows:

9.2 Seller shall not be liable in the event of simple negligence of its bodies, legal representatives, employees or other vicarious agents, unless material contractual obligations are breached. Material for the contract are, in particular, obligations for delivery of the Goods or Services free of significant Defects.

9.3 If Seller is liable on the merits for compensation of damages, such liability shall be limited to actual damage, which Seller has anticipated at the time of entering into the contract as a possible consequence of a breach of contractor which Seller should have foreseen by applying due care and attention. The direct & actual damage arising from defects of goods delivered shall only be eligible for compensation if such damage is typically to be expected with intended use of the delivered goods. In addition, the above mentioned actual damages shall have corresponding evidences to prove their true existence and direct causal relationship with the seller.

9.4 In the event of liability for simple negligence, Seller's obligation to pay compensation for property damage and additional financial losses arising shall be limited to an amount of 100% of the total value of the contract per event of damage, even where it involves an infringement of material contractual obligations.

9.5 The preceding liability exclusions and limitations shall apply to the same extent to the benefit of the bodies, legal representatives, employees and other vicarious agents of Seller.

10. CHANGES

10.1 Except as specifically agreed by Seller, an order which has been accepted by Seller is not subject to changes by Buyer in specifications or changes in time of delivery.

10.2 Changes in specifications or changes in time of delivery will be only permitted if Seller specifically approves such adjustment in writing. Changes or modifications may result in additional costs which will be to Customer's account. Changes to specifications may also require adjustment of the delivery schedule, and Seller will advise Customer as soon as



practicable of any such adjustments. Additional costs and/or changes to delivery time in respect of any changes requested by Customer must be agreed upon prior to Seller's implementation of any change order.

10.3 Seller reserves the right to change or revise specifications and product design in connection with any feature of its Goods. Such changes do not entitle Customer to corresponding changes, improvements, additions or replacements for Goods previously sold or shipped.

11. FORCE MAJEURE

11.1 If Seller is unable to carry out its obligations under any contract of which these Terms form a part either wholly or in part due to a cause described in this Section, such obligations shall be suspended during the continuance of such hindrances and the obligations of any contract of which these Terms form a part shall be extended for such periods as may be necessary for the purpose of making good any suspension of deliveries so caused.

11.2 Seller shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to

11.2.1 – if not in the control of Seller - plant conditions, accident, equipment breakdown or equipment malfunction;

11.2.2 strike, differences with workmen, lockout, or any labor shortage or difficulty; fire, flood, accident, quarantine restrictions, earthquake, tornado, epidemic, or other casualty or act of God; act of terrorism, war, riot, civil disobedience, or other emergency, or acts of civil or military authorities; compliance with orders, priorities, or requests of any government agencies or courts or arbitrators; embargoes; failure of Seller to meet delivery schedules, or any shortage of raw materials however caused; inability or delay in obtaining labor or materials; inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation;

11.2.3 or any cause, condition, or contingency beyond the reasonable control of Seller, whether similar to those enumerated or not. In the event of any of the foregoing, Seller may apportion the Goods among its customers as it considers equitable.

11.3 As a result of the situation of COVID-19 situation or future pandemics and the unpredictability in respect to its potential development, scope and influence, COVID-19 or future pandemics may affect the fulfillment of the Seller's obligations under the Order. Thus, in case the Seller's fulfillment of its obligations according to any Order is delayed, prevented or unreasonably burdened by or related to COVID-19 or future pandemics - and whether or not this would constitute Force Majeure or may be regarded as predictable - the Seller disclaims any responsibility for failure to fulfill its obligations until such time as where such fulfillment is again possible and within the limits of reasonableness. By way of example, such a situation occurs if; (i) the Seller's workforce is affected by COVID-19 or future pandemics, e.g. in the form of quarantines, travel or transportation restrictions or similar

circumstances; (ii) if the Seller is reasonably unable to purchase or deliver the Goods ordered; (iii) in the event of price increases due to or related to COVID-19 or future pandemics, and/or (iv) if one of the other above-mentioned COVID-19 or future pandemics circumstances or restrictions occur.

12. TERMINATION

12.1 Cancellation of Orders by Customer is subject to Seller's agreement. Any such cancellation will carry a factory handling charge and Seller shall invoice Customer for all costs incurred, including but not limited to costs of manufacturing, import, logistic and storage, which shall be paid by Customer to Seller within three working days.

12.2 Upon failure or refusal of Customer to accept conforming Goods, make timely payment of amounts due to Seller, or if Customer's financial standing is or becomes impaired or unsatisfactory in Seller's sole discretion, or if Customer otherwise breaches any of its obligations under the Contract, Seller shall be entitled to terminate Customer's order and exercise all remedies to which Seller may be entitled by law, including but not limited to accelerate all payments due Seller and/or seeking specific performance.

12.3 In the event of any such termination, Seller may request that Customer segregate the Goods from its other equipment and/or inventory, have the Goods shipped to Seller at Customer's expense and/or enjoin Customer from selling or otherwise encumbering the Goods.

13. INTELLECTUAL PROPERTY

13.1 All copyrights, trademarks and all inventions, patentable and un-patentable, relating to any work performed by Seller for Customer, and/or developed by Seller and Customer, and/or in the course and scope of the work shall be the property of Seller.

13.2 Customer agrees to and does hereby grant and assign to Seller any right, title, and interest in and to ideas, inventions and improvements which relate in any way to any task or work of Seller on behalf of Customer, together with any and all domestic and foreign patent or other intellectual property rights in such ideas, inventions and improvements. Customer agrees to execute specific assignments and do anything else properly requested by Seller, at any time, to secure such rights. Under no circumstances shall Customer gain any right or title to any of Seller's intellectual property rights unless expressly agreed to by Seller in writing, including exclusively Customer-supplied designs that need to be separately remunerated.

13.3 All specifications, drawings, technical data, including, but not limited to, drawings, layout details, and specifications, computer programs and their contents which have been furnished by Seller to Customer shall belong to and remain the property of Seller. All intellectual property and results of the work, including software, models, designs, drawings, documents, inventions and know-how, conceived or developed



by Seller in connections with the sale of Goods and Services to Customer are the sole property of Seller.

13.4 No right, title, or interest to any of Seller's intellectual property will be transferred to Customer under these Terms, including intellectual property that existed prior to, or is created during or independent of, the performance of any work by Seller on behalf of Customer.

13.5 In the event any Goods furnished hereunder are determined to have infringed any copyright or patent with respect to which Seller has an obligation to indemnify, Seller may, at its option and expense: (i) procure for Customer the right to continue to use the Goods; (ii) replace or modify the Goods so that it becomes non-infringing; or (iii) grant Customer a credit for such Goods, less a reasonable deduction for use, damage, and obsolescence.

13.6 Each party's liability in the aggregate for damages under this paragraph is limited to the total value of the order hereunder.

14. CONFIDENTIALITY

"Confidential Information" means information, whether of a technical, business or other nature, disclosed by or on behalf of Seller to Customer which (i) is not generally known to the public; (ii) is identified by Seller as proprietary or confidential or (iii) by the nature of the circumstances surrounding the disclosure ought to be treated as proprietary or confidential. Customer shall hold all Confidential Information of Seller, whether disclosed by Seller to Customer in connection with Seller's provision of Goods or Services hereunder or otherwise, in confidence and shall not reproduce, use, or disclose such Confidential Information in whole or in part to any third party without the prior written consent of Seller and shall take reasonable precautions to safeguard the secrecy thereof.

15. EXPORT COMPLIANCE

15.1 The fulfillment of the contract is subject to the proviso that there are no obstacles due to national and/or international legal provisions, in particular (US-RE) export control law, embargo regulations or other export restrictions of a national or international nature. When reselling and transferring the goods to third parties, the Customer shall comply with the applicable provisions of national and international (in particular US RE) export control law. In any case, when reselling the goods to third parties, he shall observe and comply with the export control regulations of the Federal Republic of Germany, the European Union and, to the extent applicable, the United States of America.

15.2 Before reselling and passing on the goods to third parties, the Customer shall in particular check and ensure by appropriate measures that

15.2.1 the Terms and Conditions of all relevant and currently applicable sanctions lists of the European Union and, where applicable, of the United States of America concerning legal

transactions with companies, persons or organizations listed therein are complied with;

15.2.2 it does not violate any embargo of the European Union, the United States of America and/or the United Nations - also taking into account any restrictions on domestic transactions and any prohibitions on circumvention - by selling or transferring the goods or providing services related thereto to third parties; and;

15.2.3 the goods are expressly not delivered to third parties for military, prohibited or authorized armaments-related, nuclear or weapons-related use, unless a possibly required authorization has been obtained and the delivery does not violate other currently valid international sanctions regulations. Any further delivery of products by the Customer to a third party, with or without Seller's knowledge, shall simultaneously require the transfer of the export license conditions. The Customer shall be fully liable in the event of non-compliance with the relevant regulations.

15.3 The Customer shall ensure that the goods and services are not intended for a prohibited or authorized use relevant to armaments, nuclear technology or weapons technology, unless any required authorizations have been obtained.

15.4 In order to carry out export control inspections at the Seller's premises or upon request by external authorities, the Customer shall, upon corresponding request by the Seller, immediately provide the Seller with all information and/or documentation available to the Seller regarding the final recipient, the final destination and the intended use of the Seller's goods delivered by the Buyer to third parties and services provided by the Seller in this context.

15.5 The Customer shall immediately and without delay fully indemnify the Seller against all claims asserted against the Seller by authorities or other third parties due to the Customer's failure to comply with or breach of the aforementioned export control obligations and undertakes to reimburse the Seller for all damages and expenses (including attorney's fees) incurred by the Seller in this connection.

15.6 Insofar as the Seller incurs costs for the performance of export control inspections, the Seller shall be entitled to demand compensation for the same from the Customer in advance. Delivery deadlines shall be postponed until these costs have been settled in full.

15.7 A violation of the aforementioned provisions entitles the Seller to immediately withdraw from the contract.

16. DISPUTE RESOLUTION & GOVERNING LAW

Exclusive legal venue, for any and all disputes resulting directly or indirectly from the contractual relationship shall be Jing An District Shanghai China and shall exclusively be governed by China law. Mandatory statutory provisions remain unaffected by this clause.

17. MISCELLANEOUS



17.1 These Terms shall be binding upon and/or inure to the benefit of Seller, Customer, and their respective successors and assigns. Neither Seller nor Customer hereto shall be relieved of obligations hereunder by any assignment of any interest in any agreement between them. In case of any doubt of interpretation, the Chinese version of these Terms and Conditions shall prevail.

17.2 Any contract of which these Terms form a part and the terms of Seller's corresponding invoice, represent the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between them with respect to the subject matter. Any representations, promises, warranties or statements by any representative or agent of Seller that differ from the Terms shall be given no force or effect. Any change, amendment, or modification of any of these Terms must be made in writing and signed by Seller. Titles incorporated herein are for reference purposes only and do not have any legal effect.

17.3 Seller shall inform Customer on changes of these Terms, that may become necessary due to changes in statutory law, jurisdiction or market circumstances. If Customer does not contradict within 30 days, these new terms shall be understood as agreed.

17.4 If a provision of these Terms is or becomes invalid or unenforceable in any jurisdiction, that shall not affect: (i) the validity or enforceability in that jurisdiction of any other provision of these Terms; or (ii) the validity or enforceability in other jurisdictions of that or any other provision of these Terms. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects as closely as possible result in the economic objective intended by the contracting parties with the invalid or unenforceable provision. The above provisions shall apply in the event that the contract proves to be incomplete.

17.5 Seller reserves the right to correct clerical, arithmetic or typographical errors or omissions in quotes, invoices, price schedules, Order Confirmations, acknowledgements or other relevant documents.

17.6 The Place of Performance or subsequent performance for all obligations arising out of the agreement shall be as specified in the Contract, unless agreed otherwise. Should the Seller also be responsible for the installation or the delivery, the Place of Performance is the location at which the installation and the delivery respectively takes place.

17.7 The offsetting with counterclaims of the Customer or the retention of payments due to such claims shall only be permitted if the counterclaims are uncontested or legally effective.

17.8 The Customer shall not assign, charge, sub-contract or in any way dispose of its rights or obligations under the Contract without the prior written consent of Seller. Seller may at any time subcontract, assign, transfer, mortgage, charge or deal with in any manner any or all of its rights and obligations under the Contract to any of its affiliates, meaning any entity

that directly or indirectly, by minimum 25% shareholding, controls Seller or is controlled by Seller, or is under common control with another entity of Seller's group, be it as parent, sister company or as a subsidiary. For the avoidance of doubt, in case of assignment or transfer, no liability shall vest with Seller, to the extend legally possible.

02/2023 These terms and conditions will now exclusively be used.



1. 通用条款

1.1. 本条款和条件("条款")适用于汉斯昆腾(上海)贸易有限公司("卖方")向商业客户("客户")进行商品 B2B 销售和提供包括维修在内的服务。即使双方没有再次明确约定,本条款仍应包括卖方和客户之间所有此类当前和未来合同的组成部分。

1.2. 本条款版本应以订单发出时卖方网站上公布的版本为准。

1.3. 任何对条款的修改,特别是个别声明、建议、保证或任何承诺,尤其是关于回扣、奖金、期限或维修的承诺,都需要由授权的卖方代表,即任何卖方的法定代表、总经理或销售总监签署书面确认。

1.4. 除非卖方以书面形式接受,否则卖方特此明确拒绝客户的任何与本合同相互矛盾的、背离的以及附加的条款和条件。

2. 报价、订单与订单确认

2.1 根据客户的要求,卖方应提供包括所要求的货物或服务(以下简称"货物"或"服务")的规格的报价单("报价单")。客户可选择自行使用卖方的配置软件"Güntner Product Configurator"(GPC)对货物或服务进行配置。

2.2 除非另行说明,否则卖方报价单中的价格是基于客户接受本条款的前提下给出的,且不具有约束力的。同时,该价格将受卖方在报价时收到的数量、规格和条件的限制,也会受到因新冠疫情或任何未来可能出现的大流行病,以及地缘政治风险的实现而产生的任何紧急状况的限制。

2.3 客户应参照报价单以书面或电话方式下订单("订单")。该订单应被视为卖方订立合同的要约。只有当卖方收到所有必要的信息时,订单才会被处理。

2.4 订立合同时,卖方将出具订单确认书("订单确认书")以订立合同。

2.5 为免生疑问,货物或服务的任何书面报价、预估价和/或广告价格均应作为提交报价的邀请("要约邀请"),在卖方向客户发送订单确认书或(如果更早)卖方将货物交付给客户之前,在卖方网站上或以其他方式下订单不构成有约束力的合同。客户对货物或服务的接受应构成客户对卖方的报价、订单确认书和本条款的完全和无条件的同意。

2.6 如果客户在卖方确认订单或开始制造后要求更改订单,卖方需要书面批准此类更改,并且卖方将单独为客户开具与此相关的额外成本和/或费用的发票。

2.7 除第 8 条规定的经批准的保证索赔外,货物或服务不予退换。

2.8 卖方关于货物或服务的信息(如插图、图纸、重量和尺寸の詳細信息、设计和性能数据)及其表述只是粗略描述。这些信息不是保证质量的特性,而是对供应或服务的描述或特征。贸易中习惯的偏差和基于法律规定或构成技术改进的偏差以及用等效部件替换部件是允许的。

3. 价格和付款

3.1 除非另有说明,否则卖方的价格、建议和报价均为现金净价(不扣减)加增值税和运费。

3.2 价格视新冠疫情或未来任何大流行病或地缘政治风险的发生而定,并且在疫情或任何未来可能发生的大流行病结束之前,卖方有权在不另行通知的情况下改变价格,除非另有书面协议。

3.3 如果从订单日期到交货日期之间有四个月以上的时间,货物的价格应是交货日期的价格表上所标明的价格,但也要考虑到前句中所指出的相同的意外情况和限制条件。

3.4 除非卖方以书面形式确认付款条件,否则,订单须预付货款。

3.5 付款应以人民币支付给卖方的银行账户。如果买方延迟付款,则需要按现行的贷款市场报价利率(LPR)支付逾期利息。

3.6 如果之前的订单有超过 30 天的未偿余额,后面的订单将不予处理。特殊定制设备可能需要押金,取消此类订单将产生工厂规定的费用。

4. 交付

4.1 卖方提供给客户的任何交付日期都是不具约束力的估计,卖方保留修改交付日期的权利,恕不另行通知。

4.2 卖方应通知客户其发货准备情况,客户应在收到通知后的 30 天内确认交货日期。客户知悉并承认,未在上述期限内告知交货日期的行为将视为客户默示接受本次交货日期。

4.3 任何发生的惯例费用,特别是储存费用,以及卖方物流公司收取的最低费用,无论是在卖方场所还是在第三方储存公司,应在收到发票后 14 天内偿还给卖方,尽管卖方有权要求进一步的损害赔偿。

4.4 如果卖方以书面形式约定了具体的交货或运输时间表,(i)该时间表应从卖方的订单确认书日期开始,但不得早于客户交付其他必要文件之前,包括任何约定的担保(如果有)和(ii)至卖方将货物交付给承运人的日期结束。

4.5 卖方有权在合理范围内进行部分装运。卖方也可以选择对部分货物进行结算。卖方将根据第 4.2 条的规定在准备好后进行部分装运并开具发票。

4.6 延迟交付任何部分货物并不能解除客户对延迟交付前收到的货物的付款义务或接受剩余货物的义务。

4.7 如果客户在货物交付时无法接收货物,客户应对卖方因此而引起或遭受的任何损失、损坏或额外费用承担责任。

4.8 由于新冠疫情或任何未来的大流行病以及由此产生的任何相关的可预见或不可见的情况,包括但不限于政府法规、劳动力短缺、供应链中断或为保护卖方劳动力的健康和采取的措施,可能会影响到订单交货时间。任何所报交货期均应被视为基于卖方在作出估计时可获得的最佳信息所作的估计,且可在不另行通知的情况下进行更改。



4.9 如果卖方出现延误，客户应向卖方发出提醒邮件，说明履行义务的合理期限。

4.10 如果客户因卖方的轻微疏忽而造成延误而遭受损害，客户应避免损失扩大，并有权在不包括因延误而造成的进一步损害赔偿的情况下，每一整周索赔百分之五(0.5%)，但总体不超过总交货量中因延误而不能及时使用的部分价值的5%。如果延迟是由卖方故意或重大过失造成的，或构成对卖方重大义务的违反，则应负法定责任。卖方保留证明客户遭受的损失小于上述总金额的权利。

5. 装运

5.1 如果没有其他约定，所有货物都按照 FCA 贸易术语运输并由卖方指定的承运人进行运输。客户应负责向卖方提供所有必要的运输指示，以确保按照约定进行交货。

5.2 客户应自费向信誉良好的保险公司为货物投保，并应卖方要求提供保险证明。

5.3 卖方努力确保客户的订单能够顺利交付；但是，所有的货物都必须在交货点进行检查，以确认是否有货物损坏。任何损坏都必须在提单上注明并由司机签字。为了方便货运索赔，客户必须自行保留一份提单副本。出现上述情况应该拍照留证。所有货运索赔必须由客户提交。卖方将在必要时提供协助，以帮助解决运输损失索赔。

5.4 所有货物在交付时应立即进行检查和清点，以确任货物是否与承运人的提单一致。在卡车离开交货地点之前，任何运输短缺或损坏都必须在交货单上注明。

5.5 对于交付给客户的任何货物中的任何不符合要求的情况，必须在客户收到这些货物后的五（5）天内以书面形式向卖方在发票上指定的办公室提出。如果客户未能在该期限内提出此类索赔，则视作对该批货物的接受。

5.6 装运受限于罢工或其他劳工纠纷、卖方未能交货、运输中断或延误、禁运、战争、暴乱、火灾、事故、政府的命令或规定、大流行病、流行病、天灾或任何其他不可避免或卖方无法控制的延误。

6. 所有权保留

6.1 交付给客户的货物在全额支付所有担保债权之前仍属于卖方的财产（“所有权保留”）。客户应免费为卖方储存保留货物。

6.2 在货品正式清算之前，客户有权在正常的业务过程中加工和销售保留的货物。不允许以质押和转让作为担保。

6.3 如果客户对保留货物进行加工，双方同意，加工应代表作为制造商的卖方进行，并且卖方应直接获得财产。或者如果加工是通过几个所有者提供的材料完成的，又或者加工物品的价值大于保留货物的价值，应按照保留货物的价值与新制造货物的价值的比例，来确认新创造物品的共同所有权（部分份额的所有权）。如果卖方无法获得该等所有权，客户在此

将客户未来的所有权或客户对新创造的货物的共同所有权按照前述比例作为抵押转让给卖方。如果保留货物与其他物品连接或不可分离地混合成一件统一物品，其中其他物品被认为是主要物品，那么，当主要物品属于客户时，客户应按照第 1 句中指定的比例将统一物品的共同所有权转让给卖方。

6.4 如果保留货物被转售，客户在此通过担保的方式将由此产生的对客户的索赔权——在保留货物的共同所有权的情况下，根据共同所有权份额按比例转让给卖方。

6.5 如果第三方获得了保留货物，特别是通过扣押获得，客户应立即告知第三方卖方的所有权情况，并应通知卖方，以便使卖方能够行使财产权。如果第三方无法偿还卖方在这方面产生的司法和法外费用，客户应向卖方承担这些费用。

6.6 如果保留的货物的价值超过被担保的索赔额的50%，卖方应根据卖方的要求释放保留的货物以及所有的索赔或替代货物。如果卖方因属于客户的原因而终止协议，特别是延迟付款，客户有权要求将保留的货物交出。

7. 备件

7.1 可以通过电话、电子邮件或在昆腾公司网上商店提供卖方要求的信息来进行备件订购。

7.2 如果没有其他约定，卖方没有义务在保修期外提供备件。

7.3 所有替换保修部件将按照 FCA 2020 国际贸易术语解释通则的正常使用方式运输，运费由客户承担。

7.4 备件不予退换。

8. 保修

8.1 客户在实际收到货物后，应在合理的期限内（3 个工作日）对货物进行合理和完整的检查。

8.2 客户必须在意识到缺陷并提供卖方要求的信息后，在合理的范围内尽快向卖方发出书面通知，最好是卖方的表格，要求修理或更换有缺陷的部件。所有对交付给客户的货物缺陷的索赔都应说明据称有缺陷的货物的序列号，包括受影响设备的序列号和有缺陷部件的序列号（如有）。

8.3 卖方将为据称有缺陷的货物的任何故障分析开具发票。在任何情况下，卖方都应将产品退回进行故障检查。如果确定故障是由于客户的疏忽造成的，发票将成为到期应付。如果确定为制造中或供应商造成的缺陷，则将根据所开发票上金额进行扣减。在某些情况下，卖方可能会决定将货物在客户处现场报废，这种情况将不予开具发票，也不要求归还该部件。

8.4 客户应将任何据称有缺陷的货物退回给卖方，并在其目前所在的地方支付邮资或运费。卖方可以书面形式免除客户的这一义务。只有得到卖方书面确认后，客户才有权报废任何有缺陷的货物。客户知悉并同意，



在卖方出具检验报告两周后报废被认定为有缺陷的部件，除非客户明确通知卖方退回有缺陷的部件，并自行承担损失。

8.5 客户在未从卖方处获得跟踪号码的情况下，不得退回任何材料。跟踪号码的提供由卖方全权决定，并可随时撤销。卖方将不负责处理任何未标有 RMA 的退货材料。任何退货均须收取检查和手续费。

8.6 缺陷是指货物或服务与协商一致的规格存在偏差。

8.7 卖方应自行决定修理或更换（"后续性能"）在风险转移时有缺陷的货物的所有部件，并且在保修期内显示为有缺陷。普通自然磨损不属于缺陷范畴，并且只要不在商定规格范畴内，维修不应包含组装或拆卸有缺陷的货物的费用。

8.8 如果卖方和客户已同意由客户进行维修或更换，客户应在进行任何工程之前向卖方提交成本估算，以供批准。对于超出该批准超出该成本估算的费用，卖家不予退还。

8.9 客户应承担卖方为无理由索赔缺陷所提供的服务的所有费用。卖方应按现行价格收取这些服务费，包括费用（如差旅费）。

8.10 保修期。所有的保修应在卖方通知客户准备发货的 24 个月内完成。对于第 7 条规定的备件，所有保修要求应在风险转移后 12 个月内提出。

8.11 以下情况不属于保障范畴：a) 损耗和自然磨损；b) 动态压力的部件和产品；c) 客户或第三方未经授权的组装或调试；d) 不适合或不恰当的使用；e) 错误或疏忽的处理；f) 不遵守安装、操作和维护说明；g) 不遵守技术文件；h) 使用不合适的运行材料（液体），i) 由客户或第三方进行的未经授权的更改或维修，j) 不合适的底土或装配场地，k) 化学或电化学影响，除非该事项是由卖方负责的，l) 系统组件和管道设计不符合最先进的暖通空调实践，m) 在管道安装的钎焊过程中没有将成型气体引入管道。

8.12 如果出于任何原因，要求卖方工厂人员为服务评估或协助而进行访问，则需要客户为访问提供采购订单。在授权进行工厂访问之前，必须用尽所有形式的纠正补救措施。如果需要进行现场服务检查，则需按目前适用的日期每天收费，还需收取所有相关的旅行、住宿、饮食和附带费用。如果工作现场检查是基于一个确定的货物和服务缺陷所引起的，卖方应在公平补偿的基础上承担相应的费用。

8.13 只有在防爆环境中的组装或更换工作由客户的合格人员或第三方按照有关施工和安全操作规程持有资格的人员进行时，才能确保货物持续符合适用指南的要求。组装或更换内容：防爆风扇电机、全防爆风扇、用于爆炸危险环境的修理开关、用于爆炸危险环境的接线盒等。在这种情况下，用户必须确保进行必要的测试，以保证该装置在防爆区域的持续可接受性操作。因此，执行任何此类工作的公司应负责，客户应分别使卖方免受损害。在安装和维修卖方货物时，经认证的制冷技术人员、机械师、管工、设计工程师等必须遵守和使用行业标准的制冷操作规程。

8.14 除上述外，对于干式冷却器、冷凝器和液压喷雾系统（the HydroSpray system），应适用以下规定：风冷翅片热交换器的设计和材料组合应针对其在干空气中运行进行优化。喷洒和蒸发水可能导致钙化，导致结垢。溶解在水中的矿物质（盐等）可能导致各种形式的腐蚀。水中的石灰和矿物质的百分比可能有很大的不同，而且取决于地点。因此，在每一个工程中都必须对场地的水质进行分析。为了确保喷雾干式冷却器/冷凝器长期无故障运行，卖方已经对水质作出相应要求，这些要求应视作规范的一部分。因此，只有当客户采取适当措施满足卖方为该等系统规定的水质标准时，对喷雾式干冷却器/冷凝器和液压喷雾系统（）的任何保证才适用。适当的措施包括使用软化系统，或除软化系统外，通过反渗透法使水脱盐（取决于该设备所在位置的初始水质）。

8.15 如果作为后续性能措施的一部分需要更换制冷剂，买方应承担所有费用。

8.16 考虑到船舶或船只或各物品的特殊环境要求，本合同未对客户就后续性能的补偿或与后续性能有关的缺陷造成的损害而提出的任何索赔，特别是与后续性能的提供有关的任何费用（尤其是停靠费用和拖船费用）做出相关规定。上述规定不适用于基于《产品责任法》规定的损害赔偿和/或因故意或严重过失违反合同或法定义务而造成的损害赔偿。此外，上述附加责任限制也不适用于基于违反重大合同义务和/或与已有担保相对应的损害赔偿。

9. 赔偿责任

9.1 卖方的损害赔偿赔偿责任，不论法律依据如何，特别是由于不可能、延迟、违约、有缺陷或不正确的交付、违约、合同谈判期间的侵权责任，在涉及到过错的情况下，应作如下限制：

9.2 除违反重大合同义务外，卖方在其机构、法定代表人、雇员或其他替代代理人的简单过失情况下不承担责任。本合同的重大义务是指交付无重大缺陷的货物或服务的义务。

9.3 如果卖方根据实际情况需要承担损害赔偿赔偿责任，该责任应限于卖方在签订合同时预估的实际损害，即卖方通过尽到审慎注意义务应该预料到的违反合同的可能后果。由所交付货物的缺陷引起的直接和实际损害，只有在这种损害是预期使用交付的货物时通常会发生的损害才有资格获得赔偿。此外，上述实际损害应当有相应的证据证明其真实存在并与卖方有直接的因果关系。

9.4 在简单过失责任的情况下，卖方对财产损失和所产生的额外经济损失的赔偿义务应限于每次损害事件中合同总价值的 100%，即使涉及到对合同重大义务的违反。

9.5 前述的责任免除和限制应在同样的范围内适用于卖方的机构、法定代表人、雇员和其他替代代理人的利益。

10. 变更



10.1 除非卖方特别同意，卖方已经接受的订单不受买方对规格或交货时间的改变的影响。

10.2 只有在卖方以书面形式明确批准调整的情况下，才允许对规格或交货时间进行更改。变更或修改可能会导致额外的费用，这些费用将由客户承担。规格的改变也可能导致交货时间的调整，卖方需要尽快通知客户任何此类调整。在卖方执行任何更改订单之前，必须就客户要求的任何更改而产生的额外费用和/或交货时间的更改达成一致。

10.3 卖方保留根据其货物的特性更改或修改产品规格和设计的权利。客户无权对之前销售或运输的货物提出进行相应的变更、改进、添加或替换的要求。

11. 不可抗力

11.1 如果由于本节所述的原因，卖方无法全部或部分履行其在本合同项下的义务，则在该阻碍持续期间，应暂停义务履行。同时，本条款构成的任何合同的义务应在必要时延长，以弥补因此造成的任何暂停交付。

11.2 卖方不对由于以下原因造成的延迟或未能交付或损失负责：

11.2.1 不在卖方的控制范围内的工厂条件、事故、设备故障或设备失灵；

11.2.2 罢工、与工人的分歧、停工、劳工短缺或困难；火灾、洪水、事故、检疫限制、地震、龙卷风、流行病或其他伤亡或灾害；恐怖主义行为、战争、暴乱、公民抗命或其他紧急情况，或民事、军事当局的行为。遵守政府机构或法院或仲裁员的命令、优先权或要求；禁运；卖方未能按期交货，或无论何种原因造成原材料短缺；无法或延迟获得劳动力或材料；无法或延迟获得运输所需的汽车、卡车、燃料或机器。

11.2.3 其他任何无论是否与所列举的情况相似的超出卖方合理控制范围的原因、条件或突发事件。如果出现上述任何情况，卖方有权依据公平原则在其客户之间分配货物。

11.3 由于新冠疫情或此后出现的大流行病及其潜在发展、范围和影响的不可预测性，本次疫情或未来的大流行病可能会影响卖方履行订单项下的义务。因此，如果卖方在根据任何订单履行其义务时，因为新冠疫情或此后出现的大流行病而延迟、停滞或不合理地承担责任（无论这是否构成不可抗力或被视为可预见的情形），在此类情况消失卖方能够合理履行义务之前，卖方不对未能履行其义务负任何责任。举例来说，以上情形可能包括：(i) 卖方员工受到新冠疫情或未来大流行病的影响，例如检疫、差旅或运输限制或类似情况；(ii) 卖方合理地无法购买或交付所订购的货物；(iii) 由于新冠或未来大流行导致或与之相关的价格上涨，和/或(iv) 发生上述其他新冠疫情或未来大流行情况之一或限制的情况。

12. 终止

12.1 客户取消订单须经卖方同意。任何此类取消将产生工厂手续费，对于由此产生的所有费用卖方都有权向客户开具发票，包括但不限于制造、进口、物流和仓储费用，客户应在三个工作日内将上述费用支付给卖方。

12.2 如果客户未能或拒绝接受符合要求的货物，未能及时支付应付给卖方的款项，或如果客户的财务状况在卖方的全权裁量下受损或不令人满意，或如果客户在其他方面违反了合同项下的任何义务，卖方有权终止客户的订单，并行使法律赋予卖方的所有补救措施。包括但不限于加速所有应付卖方的付款和/或寻求强制履行。

12.3 在任何此类终止的情况下，卖方可以要求客户将货物与其他设备和/或库存分开，并由客户承担费用将货物运送回卖方的费用和/或禁止客户出售该货物或以其他方式扣押该货物。

13. 知识产权

13.1 卖方为客户执行的任何工作，和/或由卖方和客户开发的工作，和/或在工作过程和范围内的所有版权、商标和所有发明，无论是可申请专利的还是不可申请专利的，均应视为卖方的财产。

13.2 客户同意并特此向卖方授予和转让与卖方代表客户的任何任务或工作有关的任何想法、发明和改进方面的任何权利、所有权和利益，以及与这些想法、发明和改进有关的任何国内外专利或其他知识产权。客户同意在任何时候执行特定的任务，并实施卖方的其他适当要求，以确保该等权利。在任何情况下，除非卖方明确书面同意，客户不得获得卖方任何知识产权的任何权利或所有权，包括需要单独支付报酬的客户独家提供的设计。

13.3 卖方向客户提供的所有规格、图纸、技术数据，包括但不限于图纸、布局细节、规格、计算机程序及其内容，均属于并保留为卖方的财产。卖方在向客户销售货物和服务时构思或开发的所有知识产权和工作成果，包括软件、模型、设计、图纸、文件、发明和专有技术，均成立为仅属于卖方的财产。

13.4 在本条款项下，卖方的任何知识产权的权利、所有权或利益不得转让给客户，包括在卖方代表客户执行任何工作之前存在的、或在工作期间创建的或独立于工作之外的知识产权。

13.5 如果在本协议项下提供的任何货物被确定侵犯了卖方有义务赔偿的任何版权或专利，卖方可以自行选择以下做法并承担费用：(i) 为客户争取继续使用货物的权利；(ii) 更换或修改货物，使其不再侵权；或(iii) 在扣除使用、损坏和报废的合理扣减后，给予客户购买该货物的抵扣额度。

13.6 双方在本款项下的损害赔偿总额不高于本合同项下订单的总价值。

14. 保密性

"保密信息"是指由卖方或卖方代表向客户披露的信息（无论是技术、商业还是其他性质的信息）。这些信息(i)一般不为公众所知；(ii)被卖方确



定为专有或机密，或(iii)根据披露情况的性质，应该被视为专有或机密。客户应保守卖方的所有保密信息，无论是卖方在提供本合同项下的货物或服务时向客户披露的，还是以其他方式披露的，未经卖方事先书面同意，客户不得复制、使用或向任何第三方披露该保密信息的全部或部分，并采取合理的预防措施来保护其机密性。

15. 出口合规性

15.1 合同的履行需满足以下前提条件：不存在国家和/或国际法律规定的障碍，特别是美国出口管制法、禁运法规或其他国家或国际性质的出口限制。转售和转让货物给第三方时，客户应遵守国家和国际，特别是美国出口管制法的适用规定。向第三方转售货物时，客户必须遵守德意志联邦共和国、欧盟以及在适用范围内的美国的出口管制规定。

15.2 在向第三方转售和传递货物之前，客户应做特别检查并采取适当措施以确保：

15.2.1 遵守所有相关的和目前适用的欧盟制裁名单的条款和条件，以及在适用的情况下，遵守美国关于与其中所列的公司、个人或组织进行合法交易的条款和条件。

15.2.2 向第三方出售或转让货物或提供相关服务的过程中，其行为不违反欧盟、美国和/或联合国的任何禁运（包括对国内交易的限制和对规避行为的禁止）。

15.2.3 明确不将货物交付给第三方用于军事、禁止或授权的军备相关、核或武器相关用途，除非已经获得必要的授权，并且该交付行为不违反其他目前有效的国际制裁规定。

在卖方知情或不知情的情况下，客户向第三方进一步交付产品，应同时要求转移出口许可证条件。如未遵守相关规定，客户应承担全部责任。

15.3 客户应确保货物和服务不用于与军备、核技术或武器技术有关的禁止或授权用途，除非已经获得必要的授权。

15.4 为了在卖方场所或根据外部机构的要求进行出口管制检查，应卖方的相应要求，客户应立即向卖方提供有关买方交付给第三方的卖方货物的最终收件人、最终目的地和预期用途的所有信息（文件），以及在此情况下卖方提供的服务。

15.5 客户应立即且毫不拖延地赔偿卖方因客户未遵守或违反上述出口管制义务而被当局或其他第三方提出的所有索赔，并承诺偿还卖方因此产生的所有损失和费用（包括律师费）。

15.6 如果卖方因执行出口控制检查而产生费用，卖方有权要求客户提前支付该费用。相关货物的交付期限应推迟至该费用全部结清为止。

15.7 如出现违反上述规定的情形，卖方有权立即撤销合同。

16. 争议解决和管辖法律

由合同关系直接或间接导致的任何和所有争议的唯一法律场所是中国上海静安区，并应完全受中国法律管辖。强制性法律规定不受本条款影响。

17. 其他

17.1 本条款对卖方、客户及其各自的继承人和受让人具有约束力并符合其利益。卖方和客户在本协议下的义务均不因双方之间任何协议中的任何利益的转让而解除。如对本条款及细则的解释有任何疑问，应以中文版本为准。

17.2 本条款构成的任何合同以及卖方相应的发票条款，谨此代表双方对本条款主题的全部理解，并取代双方之前关于本事项的所有协议和理解。卖方的任何代表或代理人的任何陈述、承诺、保证或声明，如与本条款不同，则没有任何效力或作用。对本条款的任何变更、修正或修改都必须以书面形式进行，并由卖方签署。本合同中引入的标题仅作参考，不具有任何法律效力。

17.3 卖方应将本条款因法定法律、管辖权或市场情况的变化而发生的必要变更通知给客户。如果客户在 30 天内没有异议，则这些新条款应被理解为双方对此达成一致的约定。

17.4 如果本合同条款的某一条款在任何司法管辖区无效或不可执行，则不影响：(i)本条款的任何其他条款在该司法管辖区的有效性或可执行性；或(ii)该条款或本条款任何其他条款在其他司法管辖区的有效性或可执行性。无效或不可执行的条款应被有效和可执行的条款所取代，该条款的效果应尽可能接近使用无效或不可执行条款的缔约各方所预期的经济目标。合同不完备的，适用上述规定。

17.5 卖方保留纠正报价单、发票、价目表、订单确认书、确认书或其他相关文件中的文书、算术或印刷错误或遗漏的权利。

17.6 除非另有约定，协议中产生的所有义务的履行或后续履行地点应在合同中规定。如果卖方还负责安装或交付，则履约地点为安装和交付的地点。

17.7 只有在客户的反诉无争议或具有法律效力的情况下，才允许用客户的反诉抵销或保留应付此类索赔的款项。

17.8 未经卖方事先书面同意，客户不得转让、收费、分包或以任何方式处置其在本合同项下的权利或义务。卖方可随时将其在本合同项下的任何或全部权利和义务分包、转让和抵押或以任何方式处理给其任何关联公司。关联公司是指无论是作为母公司、姐妹公司还是作为子公司直接或间接持股至少 25%、控制卖方或由卖方控制的任何实体，或与卖方集团的另一个实体共同控制的任何实体。为免生疑问，在转让的情况下，卖方在法律允许的范围内不承担任何责任。

以上条款和条件专项专用，不作他用。02/2023