



General Selling and Delivery Terms

一般销售及交付条款

of

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§ 1 Scope

- (1) These selling and delivery terms (hereinafter also referred to as the "terms") shall be valid exclusively in relation to companies, legal persons under the applicable laws of People's Republic of China, which for the purpose of this Agreement excludes Hong Kong SAR, Macau SAR and Taiwan ("hereinafter also referred to as the "Applicable Laws"). Any type of business terms of our customers (hereinafter also referred to as the "Customer" or "Customers") or third parties shall not be applicable, including if we do not contradict their validity in an individual case. Even if we refer to a letter that contains the business conditions of the Customer or a third party or refers to such, or if we unconditionally accept the orders in the knowledge of existing business terms, this does not substantiate any acceptance on our part of the validity of such business terms.
- (2) In their respective version, these terms shall also apply as a master agreement for all future business with the Customer, to the extent that they relate to legal transactions of a related type, even if they have not yet been separately agreed, and without us requiring to refer to them again in each individual case. The respective current version can be downloaded from www.va-q-tec.com.
- (3) Rights to which we are legally entitled above and beyond these terms shall remain unaffected.
- (4) The Chinese translation to these Terms, no matter provided by us alongside with the English text or separately, should be read for reference purposes only. In case of contradictions between the Chinese translation and the English version of these Terms, the English version shall prevail.

§1 范围

- (1) 本销售及交付条款（以下称为“条款”）仅针对中华人民共和国法律（为本协议之目的，不包括香港特别行政区、澳门特别行政区及台湾）项下的公司及法人有效（以下亦称为“适用法律”）。我方客户（以下亦称为“客户”）或第三方的任何类型的商业条款均不适用，即便我方在个别情况下不反对该等条款的有效性。即使我方引述载有客户或第三方商业条件的函件或引述该等条款，或即使我方在知晓已有商业条款的情况下无条件接受订单，上述情况亦不构成我方对该等商业条款有效性的接受。
- (2) 即使各方没有单独同意本条款，本条款及其各个版本将作为未来与和客户的主协议，适用于所有相关类型的法律交易。我方也无须在每一个案中再次引述本条款。该条款的各版本可从 www.va-q-tec.com 下载。
- (3) 我方依法享有的高于该等条款的权利将不受影响。
- (4) 本条款的中文翻译，无论与英文文本共同或单独提供的均应仅作参考之用。如该等条款的中文翻译与英文文本之间有矛盾，应以英文文本为准。

§ 2 Offer and contractual arrangement

- (1) All of our offers shall be non-binding and without any obligation unless by way of exception they are expressly designated as binding offers in writing.
- (2) The written concluded agreement including these terms shall alone be decisive for the legal relationships between us and the Customer. This shall reproduce in full all arrangements between the contractual parties in relation to the contractual object. Verbal commitments given by us before the contract is concluded shall not be legally binding to the extent that they do not form part of the content of the written contract.
- (3) Supplements and amendments to this contract, including these terms, shall require written form of the parties executed by their authorised representatives to be effective. Apart from the Management Board or expressly nominated and correspondingly authorised individuals with managerial functions, our employees are not entitled to enter into verbal arrangements that diverge from this.
- (4) Communication by telecommunications, especially by telefax or email, shall satisfy the requirement for written form, to the extent that the copy of the signed declaration is forwarded.
- (5) Our information about the object of the delivery or service (e.g. weights, measures, consumption levels, load-bearing capacity, tolerances and technical data) as well as our related presentations of the same shall provide only an approximate reference, unless the usability for the contractually intended purpose presupposes a precise consistency. They shall not comprise guaranteed characteristics, but shall instead comprise descriptions and designations of the delivery or service. Expressly standard trade differences as well as those occurring based on legal regulations or representing technical improvements or the replacement of components and substances with equivalent components and substances shall be permissible.

§2 要约及合同安排

- (1) 我方所有要约均不具约束力，不构成任何义务，除非该等要约被以书面形式明确指定为具有约束力之要约。
- (2) 仅有经订立的书面协议，包括本条款，构成我方与客户之间的法律关系的决定性文件。该等文件完整体现合约双方之间与合同标的有关的所有安排。我方在合同订立前作出的口头承诺，只要不构成书面合同的内容，则不具有法律约束力。
- (3) 对本合同的补充及修订，包括本条款在内，需由双方授权代表以书面形式签署方为有效。除董事会或明确提名并相应授权的职权人士外，我方雇员无权签订背离该等合同的口头协议。
- (4) 通过电子通讯，特别是通过传真或电子邮件进行的通讯，视为符合书面形式要求，但前提是签署声明的副本也已经发出。
- (5) 我方关于交付或服务对象的信息（例如重量、尺码、耗电量、承载能力、公差和技术数据）以及我方对该对象的相关说明仅提供概略参考，除非实现合同预期目的必须事先假设该等信息保持精确一致。上述信息不包括对于任何特性的保证，而仅构成对交付或服务的描述和指定。明显的标准贸易误差，以及根据法律法规产生的或代表技术改进或以等同组件和物质替换组件和物质的差异均是允许的。

§ 3 Provided documents and materials

We reserve all ownership rights and copyrights to all documents or materials, such as offers, calculations, drawings, designs, prospectuses, catalogues, samples, models, tools and other documents or operating resources etc. Such documents and materials may not be made accessible to third parties unless we issue our express related written consent to the Customer. They may not be utilised or reproduced by the Customer either for the purposes of third parties or at the instigation or by third parties with the knowledge or toleration of the Customer. To the extent that we do not accept the Customer's offer, these documents and materials are to be returned to us immediately.

§ 4 Prices and payment

- (1) Unless otherwise agreed in writing, our prices shall be valid Free Carrier (INCOTERMS 2020 FCA) in each case at our TSC in Shanghai /Shanghai plant excluding packaging and plus value added tax at the respective statutory level applicable on the invoice date. Packaging costs shall be billed separately.
- (2) Our prices shall be valid for the performance and delivery scope specified in the order confirmation. Additional and/or special services shall be invoiced separately.
- (3) To the extent that the agreed prices are based on our list prices, no fixed-price arrangement was made, and the delivery is not to occur until more than four months after the contract is concluded, our list prices valid on delivery shall be applicable (in each case less any agreed percentage or fixed rebate). Equally, we shall then reserve the right to appropriate price adjustments due to changes in costs for wages, materials and distribution for such deliveries.
- (4) The payment of the purchase price is to be made exclusively to the account we specify. Deducting discounts shall be permissible only in the case of special written agreement approved by us.
- (5) Unless agreed otherwise, the purchase price is to be paid within 10 days after delivery. The payment shall be deemed to have occurred on the date on which we are able to dispose of the owed amount. Default interest payments of 9 % above the respective basis interest rate per annum shall be invoiced. The right to enforce a higher default loss shall be reserved.

§3 提供的文件和材料

我方保留对所有文件或材料的所有权和版权，如要约、计算、图纸、设计、说明书、目录、样品、模型、工具和其它文件或操作资料等。除非我方向客户发出明确的相关书面同意书，否则第三方不得获取该等文件和材料。客户不得为第三方的目的或在其唆使下或在客户知情或容忍的情况下由第三方使用或复制该等文件和材料。如果我方不接受客户的要约，该等文件和材料应立即退还给我方。

§4 价格与支付

- (1) 除另有书面约定，我方价格应为有效的货交承运人价格 (INCOTERMS 2020 FCA) 上海工厂/上海 Tempchain 服务中心(“TSC”)，不包括包装，另加发票日期适用的相应法定水平的增值税。包装费用将另行收费。
- (2) 我方的价格应在订单确认书中指定的履行和交付范围内有效。额外和/或特殊服务应单独出具账单收费。
- (3) 若双方约定的价格是基于我方的列表价格，并未作出固定价格安排，且在合同签订后超过四个月后方才交付，则应适用于交付时有效的我方的列表价格（在每种情况下均扣除任何约定的百分比或固定折扣）。同样地，我方应保留就该等交付的工资、材料和分配成本的变化而适当调整价格的权利。
- (4) 购买价格的付款应仅支付至我方指定的账户。只有在经我方批准的特别书面协议的情况下，方可允许扣除折扣。
- (5) 除非另有约定，购买价格应在交付后 10 日内支付。付款应视为在我方能够支配该款项之日发生。预期款项将加收超出相应基准年利率 9%的违约利息。我方应保留执行更高违约损失的权利。

§ 5 Rights of retention

The Customer shall be authorised to exercise the right of retention only to the extent that its counterclaim is based on the same contractual relationship, and it is undisputed or legally established.

§ 6 Deliveries and delivery period

- (1) Unless agreed otherwise, our deliveries shall be made Free Carrier (INCOTERMS 2020 FCA).
- (2) Periods and deadlines for deliveries and services to which we refer shall always be non-binding unless a fixed period or fixed deadline has been agreed expressly in writing.
- (3) The start of the delivery period that we state as well as a stated delivery deadline shall presuppose the timely and proper satisfaction of the obligations of the Customer, especially including all collaboration obligations incumbent on the Customer, in other words, for example, the complete submission of all documents and information in each case to the requisite quality, as well as all licenses and approvals and the receipt of any agreed prepayment. The right to complaint concerning an unsatisfied contract shall be reserved.
- (4) Modification or supplementation requests agreed subsequently with us shall lead – including without specific reservation or specification – in all cases to an appropriate extension of agreed delivery deadlines or delivery periods.
- (5) We are entitled, but not obligated, to make partial deliveries and render partial services deemed reasonable for the Customer. Equally, we are entitled to execute deliveries and services early, unless expressly agreed otherwise.
- (6) We shall not be liable for an inability to deliver or for delivery delays, to the extent that they have been caused by force majeure or other unpredictable events as of the date when the contract was arranged (e.g. operational interruptions of all types, difficulties in procuring materials or energy, transportation delays, strikes, accidents), for which we are not responsible.

§5 留置权

客户仅在其反诉基于相同合约关系，且无争议或合法成立的情况下，方可被授权行使保留权。

§6 交付和交付期间

- (1) 除非另有约定，我方应以货交承运人方式交付（INCOTERMS 2020 FCA）。
- (2) 我方提及的交付和服务的期间和截止日期应始终不具约束力，除非双方已明确书面约定固定期间或固定截止日期。
- (3) 我方声明交付期的开始以及声明交付期限应以客户及时和适当地履行义务为前提，特别是包括客户承担的所有合作义务，例如，在每种情况下，完整地提交所有文件和信息，并达到必要的质量，以及获得所有许可证和批准，并收到所商定的预付款。我方应保留对未履行的合同的诉权。
- (4) 任何后续与我方达成的修改或补充要求在所有情况下，包括在无明确保留或规范的情况下，将引起适当延长约定的交付截止日期或交付期间的结果。
- (5) 我方有权但无义务，履行或提供可认为对客户而言合理的部分交货和部分服务。同理，除非另有明确约定，我方有权提前履行交付和提供服务。
- (6) 对于由不可抗力或截至合同订立之日其他不可预见事件（例如所有类型的运营中断、获取材料或能源困难、运输延迟、罢工、意外事件）造成，且我方对此不负有责任的无法交付或交付延迟，我方无需承担任何责任。

(7) If the Customer is delayed in acceptance or is to blame for infringing other collaboration obligations, we are entitled to demand the replacement of damages we incur to this extent, including any additional expenses. Further-reaching claims shall remain reserved. If the aforementioned preconditions are met, the risk of the adventitious perishing or the adventitious deterioration of the purchased item shall transfer to the Customer at the time when the Customer defaults in acceptance or other delay regarding this Paragraph.

(8) If we default on delivery or performance of the service, or if a delivery or service becomes impossible for us for whatever reason, our liability shall be restricted according to Paragraph 8 of these terms. Mandatory statutory regulations shall be hereby unaffected.

§ 7 Transfer of risk in the case of dispatch

If the goods are sent to the Customer at the Customer's request and by express written agreement, the risk of adventitious perishing or the adventitious deterioration of the goods shall transfer with the dispatch to the Customer, at the latest when the goods leaves the works/warehouse. This shall apply irrespective of whether the dispatch of the goods occurs from the place of satisfaction, or irrespective of which party bears the freight costs.

§ 8 Liability for damage compensation due to fault, restriction of liability

(1) Our liability for damage compensation, irrespective of legal grounds, especially due to incapacity, delay, defective or incorrect delivery, contractual infringement, infringement of obligations in contractual negotiations and impermissible action, to the extent that in this context it relates to fault in each case, shall be restricted according to Paragraph 8.

(7) 若客户延迟验收或违反其他合作义务，我方有权要求补偿我方就此导致的包括任何额外开支在内的损害赔偿金。我方进一步的索偿将予以保留。若上述前提条件获得满足，所购买货物意外灭失或意外变质的风险将于客户就验收发生违约或发生本段其他延迟之时转移至客户。

(8) 若我方未能交付或履行服务，或我方因任何原因而不能交付或履行服务，我方的责任应以本条款第 8 条的规定为限。强制性法律规定在此不受影响。

§7 发货情况下的风险转移

若货物已应客户要求且经明确书面协议发送给客户，则货物意外灭失或意外变质的风险应在发货转移至客户，最晚应于货物离开工厂/仓库之时转移。无论货物是否从满足条件的地点发运，无论哪一方承担运费，本条款均应适用。

§8 因过失造成损害赔偿的责任，责任限制

(1) 我方就损害赔偿承担的责任，无论法律依据为何，尤其是由于交付不能、延迟交付、有缺陷或不正当交付、违反合同、违反合同谈判中的义务和禁止行为，只要在本条中与每一情形中的过错有关，均应根据第 8 条予以限制。

- (2) We shall not be liable in the instance of slight negligence on the part of our directors, legal representatives, appointed staff or other vicarious agents, to the extent that it does not concern an infringement of significant contractual obligations. Significant contractual obligations shall include the obligation to deliver the delivery item on time, its lack of legal defects or such quality defects that diminish its merchantability or usefulness on a more than minor basis, as well as advisory, protective and duty of care obligations that should enable the Customer to use the delivery object in accordance with the contract, or serve to protect life and limb of the Customer's personnel or to protect its property against considerable damages.
- (3) To the extent that we are liable for damage compensation based on grounds pursuant to this Paragraph 8, such liability shall be limited to damages that we have foreseen as a potential consequence of a contractual infringement when the contract was concluded, or which we should have foreseen in application of reasonable care.
- (4) Any liability of us shall be limited to RMB 100,000 per case and calendar year.
- (5) Indirect damages and subsequent damages that are the consequence of defects to the delivery object are hereby explicitly under exclusion of any liability.
- (6) The above liability exclusions and limitations shall be valid in the same extent to the benefit of our directors, legal representatives, appointed staff and other vicarious agents.
- (7) To the extent that we provide any technical information or act in an advisory capacity and such information or advice does not form part of the contractually agreed scope of service for which we are liable, this shall occur on a non-pecuniary basis and under exclusion of any liability.
- (2) 若我方的董事、法定代表人、指定员工或其他接受委托的代理人存在轻微过失，且不涉及违反重大合同义务，则我方无须承担责任。重大合同义务应包括按时交付应交付物的义务，保证其没有法律上的缺陷或此类质量缺陷使其适销性或实用性减弱超过轻微程度，以及咨询、保护和注意义务，等应使客户能够按照合同使用交付物的义务，或旨在保护客户人员的生命和人身或财产免受重大损害等义务。
- (3) 若我方根据第 8 条承担损害赔偿责任，该等责任应仅限于我方在订立合同时已预见到的合同侵权的潜在后果，或我方采取合理谨慎措施应当预见到的损害赔偿。
- (4) 我方的任何责任应限于在每个案件和每日历年 100,000 元人民币。
- (5) 间接损失和由于交付物的缺陷而造成的后续损失，在此明确地被排除在任何责任之外。
- (6) 上述责任的免除和限制对我方的董事、法定代表人、指定工作人员和其他接受委托的代理人在同等有效。
- (7) 如果我方提供意见或以顾问身份提供任何技术信息，而该等信息或意见并不构成我方应承担责任的合同约定服务范围的一部分，则该等信息或意见应在非金钱的基础上发生，并在排除我方任何责任的情况下发生。

9 Reservation of title

- (1) The reservation of title agreed below shall serve to secure all our respective existing current and future receivables due from the Customer arising from the supply relationship existing between us (including balance receivables from a current account relationship restricted to this supply relationship).
- (2) The goods we deliver to the Customer shall remain our property until all secured receivables have been paid in full. The goods as well as the goods subject to retention of title that replaces it pursuant to the following provisions shall be referred to hereinafter as "goods subject to retention of title".
- (3) The Customer shall store for us free of charge the goods subject to retention of title. The Customer shall be obligated to treat with care the goods subject to retention of title.
- (4) The Customer is entitled to process and sell the goods subject to retention of title until the occurrence of the case of realisation (Paragraph 9 Figure 9) as part of normal business operations. Pledging or assigning of the goods is prohibited.
- (5) If the Customer processes the goods subject to retention of title, it shall be agreed that the processing shall occur on our behalf and for our account as the manufacturer in accordance with the Applicable Laws, and that we directly acquire the ownership or – if the processing occurs from materials of several owners or the value of the processed asset is higher than the value of the goods subject to retention of title – co-ownership (fractional ownership) in the newly created asset in the ratio of the value of the goods subject to retention of title to the value of the newly created asset. In the instance that no such acquisition of ownership should accrue to us, the Customer shall hereby transfer its future ownership or – in the aforementioned relationship – co-ownership in the newly created asset as collateral to us. If the goods subject to retention of title is combined or inseparably mixed with other objects into a combined object, and if one of the other objects is to be regarded as the main object, we shall proportionally transfer, to the extent that the main object belongs to us, to the Customer the co-ownership of the combined object in the ratio specified in this Paragraph 9 Figure 5 Clause 1.

§9 所有权保留

- (1) 下文约定的所有权保留，应用于担保我方与我方之间现有供货关系产生的所有现有及将来应付客户的应收账款（包括来自仅限于该供货关系的往来账户关系的应收账款余额）。
- (2) 我方向客户交付的货物仍为我方所有，直至所有担保应收账款被全额支付。该等货物及根据以下规定需保留所有权的货物在下文中被称为“需保留所有权的货物”。
- (3) 客户应为我方免费存储需保留所有权的货物。客户有义务谨慎对待需保留所有权的货物。
- (4) 客户有权加工及出售需保留所有权的货物，直至作为正常业务运作的一部分的变现情况（第9段图9）发生为止。禁止抵押或转让货物。
- (5) 若客户对需保留所有权的货物进行加工，应同意根据适用法律，以我方作为制造商的名义进行加工，并且所有权归我方，或–若加工是基于若干名所有人的材料进行，或加工后资产的价值高于所有权保留的货物的价值，我方将按所有权保留的货物价值与新创造资产价值的比例，直接取得对新创造资产的共同所有权（部分所有权）。若我方并未取得所有权，则客户应在此将其对作为抵押品的新创造资产的未来所有权，或在上述关系中，将其对作为抵押品的新创造资产的共同所有权转让给我方。若所有权保留的货物与其他物品组合或不可分离地混合成为组合物品，且如果其他物品之一将被视为主要物品，则在主要物品属于我方的范围内，我方将按第9段图5第1条指明的比例，将组合物品的共同所有权转让给客户。

- (6) In case of the resale of goods subject retention of title, the Customer shall hereby assign to us as security the resultant receivable due from the purchaser – pro rata according to the co-ownership share in the case of our retaining co-ownership of the goods subject to retention of title. The same shall apply for other receivables replacing the goods subject to retention of title or otherwise arising in relation to the goods subject to retention of title, such as insurance claims or claims deriving from impermissible action in the case of loss or destruction. We shall at all times irrevocably authorise the Customer to collect the receivables ceded to us in its own name. In general, we shall only revoke such a collection authorisation in the case of realisation, although we shall expressly retain the right to revoke in other justified instances at our discretion.
- (7) If third parties gain access to the goods subject to retention of title, especially through assignment, the Customer shall immediately notify the third party that the goods is our property and inform us to enable us to enforce our ownership rights. To the extent that the third party is unable to reimburse judicial or out-of-court costs incurred in this connection, the Customer shall be liable to us for this.
- (8) We shall release the goods subject to retention of title as well as objects or receivables replacing it to the extent that their value exceeds the level of the secured receivables by more than 20%. We shall be able to freely choose the objects to be released accordingly.
- (9) If we withdraw from the contract due to behaviour on the part of the Customer in contravention of the agreement – especially due to default on payment – (case of realisation), we shall be entitled to reclaim the goods subject to retention of title.
- (6) 若转售需保留所有权的货物，则客户应在此将买方应付的应收账款转让给我方，作为对需保留所有权的货物的担保—如我方保留对需保留所有权的货物的共同所有权，则将根据共同所有权份额按比例转让。此等规定亦适用于替代需保留所有权的货物的其他应收账款，或因与需保留所有权的货物有关的其他产生的索赔，例如保险索偿或在灭失或损毁的情况下因不允许的行动而产生的索偿。我方应始终以不可撤销方式授权客户以其名义收取转让给我方的应收账款。一般而言，我方应仅在变现的情况下才可撤销该收款授权，但我方应明确保留在其他合理情况下酌情撤销的权利。
- (7) 若第三方接触需保留所有权的货物，尤其是通过转让，则客户应立即通知第三方该等货物为我方财产并通知我方，以便我方行使所有权。若第三方无法偿付由此招致的司法或庭外费用，则客户应就此对我方承担责任。
- (8) 我方应解除需保留所有权的货物的所有权及替代所有权保留的物品或应收账款的价值超出担保应收账款水平 20%以上的部分。我方相应可自由选择解除担保的对象。
- (9) 若我方由于客户一方违反协议的行为（特别是由于拖欠付款）而退出合同（兑现纠纷），我方应有权在保留所有权的前提下收回货物。

§ 10 Warranty and notice of defect

- (1) The Customer's warranty rights shall presuppose that the Customer has properly fulfilled its investigative and complaint responsibilities within reasonable time pursuant to Applicable Laws. As a consequence, the delivered items are to be carefully investigated without undue delay after delivery by the Customer. In relation to obvious defects that would be identifiable given a careful inspection without undue delay, they shall be deemed to be approved if we have not received a written notification of defect within the reasonable time of ten working days after delivery. In relation to other defects, the delivered items shall be deemed as approved by the Customer if we have not received a notification of defects within ten working days after the date on which the defect was detected; if the defect was already identifiable for the Customer at an earlier date, this earlier date shall form the reference date for the start of the complaint period.
- (2) Defect claims shall be subject to the limitations during the 12 months after we have delivered the goods, or, if acceptance is required, from the acceptance by the Customer. The period of limitations shall apply for loss compensation claims in the case of intention and gross negligence as well as in the case of damage to life, limb and health, based on intentional or negligent infringement of obligation of the va-Q-tec. Our approval shall be obtained prior given any return of the goods. Returns that have not been coordinated with us shall be rejected, with the Customer thereby incurring the related costs.
- (3) Should, despite all of the care applied, the delivered goods exhibit a defect that already existed at the time when risk was transferred, we shall be obliged at our choice and subject to the notification of defects was provided on time, to repair the good or deliver replacement goods. We must always be given the opportunity to supplementary performance within a reasonable period of time. Any recourse claims shall be unaffected without restriction by the above regulation.

§10 保证及缺陷通知

- (1) 客户的保证权应以客户已根据适用法律于合理时间内适当履行其调查及投诉责任为前提。因此，客户应当在交付后仔细检查货物，不得有不当延迟。对于经仔细检查且无不当延误而可识别的明显缺陷，如我方在交付后合理的十个工作日内未收到书面缺陷通知，则该等缺陷应被视为已获认可。对于其他缺陷，如发现缺陷之日后十个工作日内无法未收到缺陷通知，则交付的货物应被视为已获客户认可；如该等缺陷在更早的时间已经可以被客户所识别，则该较早日期应作为声索期的起算日。
- (2) 缺陷声索的时效期限为我方交付货物后的 12 个月，或如需验收，则自客户验收起算的 12 个月。时效期限应适用于存在故意或重大过失的情况下，以及因故意或过失违反 va-Q-tec 公司义务而导致生命、人身或健康遭受损害的情况下提出的损失赔偿请求。任何退货应获得我方的批准。未经与我方协调的退货应被拒收，并由客户承担相关费用。
- (3) 在采取了所有谨慎措施后，如交付的货物仍存在缺陷，且该缺陷在风险转移时已存在，则我方有义务根据我方的选择，并在及时提供缺陷通知的前提下，修理货物或更换货物。我方应始终被给予在合理期限内补足履行的机会。任何索赔请求不因上述规定的限制而受影响。

- (4) Defect claims shall not apply in the case of only minor difference from the agreed characteristic, in the case of only minor diminution of usability, in the case of natural wear and tear, in the case of a change in the property of the item due to the passage of time (e.g. degradation) or wear and tear and not in the case of damages arising after the transfer of risk as a consequence of erroneous or negligent handling, excessive utilisation, inappropriate operating resources, defective construction works, inappropriate foundations or due to special external influences, which are not presupposed pursuant to the agreement. If the Customer or a third party inappropriately performs maintenance works or modifications, no defect claims shall exist for these and the resultant consequences either.
- (5) Claims on the part of the Customer due to expenses incurred for the purposes of supplementary performance, especially transportation, road, working and materials costs, shall be excluded, to the extent that the expenses increase because the goods we delivered was subsequently brought to a location other than the Customer's place of operations, unless the transfer corresponds to its intended use, as known to us.
- (6) Our liability, especially in relation to damage compensation, based on defective delivery or work or based on warranty shall be restricted in accordance with Paragraph 8 of these terms. Mandatory statutory regulations shall be hereby unaffected.

§ 11 Product liability

- (1) The Customer shall use the delivered goods as per the manual and instructions provided by us, not to use the goods for any purpose they are not intended for, and not to modify the delivered goods. If any of these obligations is infringed, the Customer shall indemnify us in the internal relationship se from product liability claims and all other loss compensation claims of third parties, to the extent that the Customer is responsible for the defect triggering the liability.

- (4) 缺陷索赔不应适用于：与约定的特性仅有细微差异的情形；仅有轻微的可用性降低的情况；由于自然磨损的情况；由于时间的推移（例如，退化或磨损）而导致的产品属性的变化的情况；由于错误或疏忽处置、过度利用、不适当的操作资源、有缺陷的建设工程、不适当的基础或由于特殊的外部影响而在风险转移后引起的损坏的情形，却该等情形并非根据本协议预先假定的情形。如客户或第三方不适当地进行维护工作或改装，则对这些工作或因此产生的后果不应存在缺陷索赔。
- (5) 客户方由于继续履行而产生的费用，尤其是运输、道路、工作和材料费用，尤其是由于我方交付的货物后来被运至客户经营地以外的地点而增加的费用，应排除索赔，除非该转移符合我方所知的其预定用途。
- (6) 我方的责任，尤其是基于缺陷交付或工作或基于保证而产生的损坏赔偿责任，应根据本款第 8 条予以限制。强制性的法律规定在此不受影响。

§11 产品责任

- (1) 客户应根据我方提供的手册和指引使用交付的货物，不得将货物用于非预期的任何目的，且不得对交付的货物进行修改。如违反任何该等义务，客户应就内部关系中的产品责任索赔和第三方提出的所有其它损失赔偿索赔向我方作出赔偿，但以客户对引发该等责任的缺陷负责为限。

- (2) If, based on a product defect in the delivered goods, we need to recall the product or to issue a warning concerning the product, the Customer shall support us and instigate all measures as we instruct – to the extent that such measures prove reasonable for the Customer. The Customer shall be obligated to bear the costs for any product recall or a warning concerning the product if and to the extent the Customer is responsible itself for the product defect and the damage that has been incurred. Any of our further-reaching claims shall be expressly unaffected.
- (3) The Customer shall inform us in each individual case concerning product defects whether occurring when using the goods or raising by any third party (with or without right to bring claims based on product liability under the applicable laws), or concerning potential product defects it assumes exist, or concerning risks that become known. It shall do this immediately and at least in textual form.
- (4) Where any third-party bringing product liability claims to the Customer:
- (a) we will have the right to participate in any defence at our own cost and expense upon written notice to Customer;
- (d) Customer will not settle, offer to settle or admit liability in any product defect claim without the written consent of our officer; and
- (c) Customer will not settle, offer to settle or admit liability as to any product liability claim in which it controls the defence if such settlement, offer or admission contains any admission of fault or guilt on our part, or would impose any liability or other restriction or encumbrance on us, without the written consent of our officer.
- (2) 若基于交付的货物中的产品缺陷，我方需要召回产品或就产品发出警告，客户应支持我方并按照我方指示采取一切措施-但该等措施证明对客户而言是合理的。如客户自身对产品缺陷和已招致的损害有责任，则客户在该等责任限度内有义务承担任何产品召回或就产品发出警告的费用。我方进一步提出的任何索赔，应明确不受影响。
- (3) 客户应就每个产品缺陷情况，或其假设存在的潜在产品缺陷或已知的风险逐个通知我方，无论其是在使用货物时产生还是由任何第三方提出（无论其根据适用法律是否有权基于产品责任提出索赔）。客户应立即采取上述行动，且至少以文本形式采取行动。
- (4) 如任何第三方向客户提出产品责任索赔：
- (a) 经书面通知客户后，我方有权自费参与任何辩护；
- (d) 未经我方管理人员书面同意，客户不得就任何产品缺陷索赔进行和解、提出和解或承担责任；且
- (c) 未经我方管理人员书面同意，如该等和解、提出和解或承担责任包含我方对过失或过失的任何承认，或将对我方施加任何责任或其它限制或负担，客户不得就任何由其控制抗辩的产品责任索赔进行和解、提出和解或承担责任。

12 Confidentiality

- (1) The Customer shall be obligated to maintain confidentiality concerning all circumstances relating to the agreement as well as all information and documents made available to it for this purpose (except publicly accessible information) for a period of five years after the contract has been concluded, and to utilise it only for the purposes of the agreement. After the agreement has been fulfilled, the Customer shall return such information and documents to us immediately upon request.
- (2) Without our prior written consent, the Customer may not refer to our business relationship in advertising materials and brochures etc.
- (3) The liquidated damages for breaching this paragraph 12 shall be RMB 700,000. If a dedicated confidentiality agreement has been arranged between the parties, this shall take precedence over this paragraph in the respective regulated items.

§ 13 Miscellaneous

- (1) This agreement and the entire legal relationships of the Parties shall be exclusively subject to the law of China.
- (2) The place of performance and exclusive place of jurisdiction for litigation deriving from this agreement shall be our corporate seat, unless stated otherwise in the order confirmation. Any dispute arising from or in connection with this Agreement shall be submitted to Shanghai International Economic and Trade Arbitration Commission in Shanghai. The arbitration shall be conducted in accordance with the Rules of Arbitration of the Shanghai International Economic and Trade Arbitration Commission current at the time when the arbitration proceedings are commenced.
- (3) All agreements made between the Parties for the purpose of executing this agreement shall be set down in writing in this agreement.
- (4) To the extent that this agreement or these terms include loopholes in the regulations, to fill such loopholes those legally effective regulations shall be deemed to be agreed, which the contractual partners would have agreed according to the economic objectives of the agreement and the purpose of these terms, if they had been aware of the loophole.

§12 保密条款

- (1) 客户有义务对与协议有关的所有情况以及为此目的向其提供的所有信息和文件（可公开获取的信息除外）进行保密，期限为协议订立后的五年，并仅为协议的目的使用。在协议履行完毕后，客户应根据要求立即将这些信息和文件归还我们。
- (2) 未经我方事先书面同意，客户不得在广告资料和手册等上提及我方与我方的业务关系。
- (3) 违反第 12 条的违约金应为人民币 700,000 元。如双方已订立专用保密协议，则在各项规定事项中，该保密协议应优先于本条款。

§13 其他

- (1) 本协议以及双方的全部法律关系应排他性地受中国法律管辖。
- (2) 因本协议而产生的诉讼的履行地和唯一管辖地应是我方的公司所在地，订单确认书中另有规定的除外。由本协议引起的或与本协议有关的任何争议应提交上海国际经济贸易仲裁委员会。仲裁程序开始时，应按照上海国际经济贸易仲裁委员会现行有效的仲裁规则进行。
- (3) 双方为执行本协议而订立的所有协议应以书面形式记录在本协议中。
- (4) 如果本协议或本条款包含法规上的未尽事宜，为填补该等漏洞，如合同各方在知悉该等漏洞后，根据本协议的经济目标和本条款的目的将会接受该等依法有效的规定，则该等具有规定应被视为已经由合同双方接受。

Note:

The purchaser shall note that we save data from the contractual relationship and, after it became effective, for data processing purposes, reserve the right to convey such data to third parties in accordance with the Applicable Laws, to the extent required to fulfil the contract.

注:

买方应注意，我方保存合同关系产生的数据。合同生效后，我方保留在履行合同所需范围内，为处理数据之目的根据相关法律向第三方提供该等数据的权利。