

## 铂笙（上海）贸易有限公司— 采购条款

The Seller's attention is drawn in particular to the provisions of clauses 7 (Delivery), 10 (Warranties), 11 (Remedies) and 12 (Indemnity).

卖方应尤其注意第 7 条（交付）、第 10 条（保证）、第 11 条（救济）和第 12 条（补偿）项下的规定。

## 1. INTERPRETATION

### 释义

- 1.1 In these Conditions, the following terms shall have the following meanings: *Affiliate* means in respect of the Buyer, any entity which controls, is controlled by or is under common control with the Buyer, and control means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise; *Buyer* means Robertshaw (Shanghai) Trading Company Limited, with its place of business at Room 311, the 3<sup>rd</sup> Floor, New trade building, No.2 Taizhong South Road, Shanghai, People's Republic of China; Confidential Information means the disclosing party's information in any form whether oral, documentary, magnetic, electronic, graphic or digitised, relating to the disclosing party's business and including information relating to patents, trademarks, registered/ unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, manufacturing methods, analytical and quality control methods, sales data, anticipated sales volumes, information relating to potential or actual customers, business structure, assets, liabilities, operations, budgets and strategies; *Contract* means the contract for the sale and purchase of the Goods whether expressly in writing or through delivery of the Goods pursuant to an Order; *Goods* means any goods agreed in the Contract to be bought by the Buyer from the Seller as described in the Order; *Order* means the Buyer's purchase order to which these Conditions are annexed or to which these Conditions are applicable; *Seller* means the person so described in the Order.

在本采购条款中，以下术语应具有以下意义：“关联方”（就买方而言）系指任何控制买方、被买方控制或与买方受共同控制的实体，而“控制”系指通过拥有、合同或以其它方式（直接或间接）指导另一方事务的能力；“买方”系指铂笙（上海）贸易有限公司，注册地为中国（上海）自由贸易试验区台中南路 2 号新贸楼 3 层 311 室；“保密信息”系指披露方的与该披露方业务有关的无论是口头、书面、磁盘、电子、图表或数字化的任何形式的信息，包括与专利权、商标、已注册/未注册权利、设计权利、版权、方案、工程图纸、规范、数据、专有技术、发明创造、模型、样品零部件、方案、制造方法、分析和质量控制方法、销售数据、预期销售额有关的信息，与潜在或实际客户、业务结构、资产、负债、经营、预算和战略有关的信息；“合同”系指为销售和采购货物而达成的合同，无论是以明确的书面形式签订的，亦或是通过根据订单交付货物的方式订立的；“货物”系指合同约定的、按订单所述由买方向卖方购买的任何货物；“订单”系指买方的采购订单，本采购条款随附于或适用于该等订单；“卖方”系指订单中描述的人士。

## 2. GENERAL

### 一般规定

- 2.1 These Conditions are the only conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions submitted. No terms or conditions endorsed upon delivered or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions. These Conditions apply to all the Buyer's purchases of the Goods and any variation to these Conditions shall have no effect unless expressly agreed in writing by the Buyer.

本采购条款是买方在准备与卖方进行交易时唯一应依据的条件，并且它们应规制合同并完全排除已经提交的所有其它条款或条件。已经提交的卖方报价、对订单的承认或接受、规范或类似文件或其中包含的经背书的条款或条件概不得构成合同的部分，并且卖方放弃其可能在其它方面必须依赖该等条款或条件的任何权利。本采购条款适用于所有买方向卖方的采购，并且除非经买方书面同意，否则对本采购条款的任何变更均无效。

- 2.2 The Order shall be deemed to be an offer by the Buyer to buy the Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Order, in whole or in part accepts the offer. The Order will lapse unless accepted by the Seller within 10 days of the date of its receipt by the Seller.

订单应视为买方根据本采购条款购买货物的要约，并且在卖方通过发出接受通知方式明示或通过完成订单方式暗示全部或部分接受该报价之前，概无订单被接受。除非卖方在收到订单之日起的 10 天内接受，否则订单将失效。

- 2.3 Delivery terms used in the quotation, tender or Contract shall be interpreted in accordance with Incoterms 2010 Edition as amended or superseded from time to time.

报价、投标或合同的交付条款应根据《2010 年国际贸易术语解释通则》（经不时修订或取代）进行解释。

- 2.4 Nothing in these Conditions shall limit or exclude liability for gross negligence, wilful misconduct, fraud or fraudulent misrepresentation.

本采购条款中概无任何规定限制或免除严重疏忽、故意不当行为、欺诈或欺诈性失实陈述的责任。

## 3. SPECIFICATION/QUALITY

### 规范/质量

- 3.1 The quantity, quality and description of the Goods shall, subject to the provisions of these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Buyer to the Seller.

根据本采购条款的规定，货物的数量、质量和描述应在订单和/或买方向卖方提交或建议的任何适用规范中明确说明。

- 3.2 If a standard of performance is specified, the Goods should be capable of the required performance and where applicable, Test Certificates, Certificates of Conformity including EC Declarations of conformity regarding EMC, Low Voltage or Machinery and the relevant Installation Instructions regarding such Directives and/or material Analysis Certificates and as specified in the Order will be required to be provided by the Seller to the Buyer.

如果性能标准已明确规定，那么货物应如在订单中所指定的，应具有所需性能和（如适用）试验证书、符合性证书，包括关于 EMC、低电压或机器的 CE 符合性声明，以及有关该等指令的相关安装说明和/材料分析证书，需要由卖方提供给买方。

- 3.3 At any time prior to delivery of the Goods the Buyer shall have the right to inspect and test the Goods. The Buyer will be entitled to inspect and test the Goods during manufacture, processing and storage. The Buyer's representatives, or the agent of any government department or other customer concerned, shall be allowed to visit the Seller's premises where the Goods are being manufactured, processed or stored at any reasonable time to inspect the progress of the Goods.

在货物交付之前的任何时候买方应有权检验和测试货物。买方有权在制造、加工和存放期间检验和测试货物。买方的代表或任何政府部门的代理人或其他相关客户，应获准在任何合理时间访问卖方生产、加工或存放货物的处所，以检验货物进度。

- 3.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods do not conform, or are unlikely to conform, with the Order or to any specifications supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and the Seller shall immediately at its cost take such action as is necessary to ensure conformity. Any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract or imply acceptance of the Goods pursuant to an Order.

如果该等检验或测试的结果使买方认为货物不符合或可能不符合订单或买方向卖方提交或建议的任何规范，买方应通知卖方，而卖方应自行承担费用立即采取为确保符合所必需的措施。任何该等检验或测试均不得削弱或以其它方式影响卖方在合同项下的义务，或者根据订单暗示接受货物。

**4. COMPLIANCE WITH LAWS****遵守法律**

4.1 For the purpose of this clause 4; “Applicable Laws” shall mean all applicable laws, rules, regulations, ordinances and codes of practices including, but not limited to, the following: (i) manufacture, packaging, packing and delivery of the Goods; (ii) employment rights; (iii) all import/export laws, rules, regulations and requirements; and (iv) environmental laws; and “undertakes” shall mean represents, warrants, certifies and covenants.

就本第 4 条而言, “适用法律”系指所有适用法律、条例、法规、法令和行为规范, 包括但不限于以下内容: (i) 货物的制造、包装、打包和交付; (ii) 雇佣权; (iii) 所有进出口法律、规则、法规和要求; 以及(iv)环境法; 而“承诺”系指声明、保证、证明和立约。

4.2 The Seller undertakes that it shall fully comply with all Applicable Laws in the performance of this Contract. If the Goods are manufactured in a country other than the country in which the Goods are delivered to the Buyer, the Seller will mark the Goods “Made in (country of origin)”. Upon the Buyer’s request, the Seller shall promptly furnish any reports, required information, and/or certifications required under such Applicable Laws.

卖方承诺在履行本合同时将完全遵守所有适用法律。如果货物的生产与其交付给买方时不在同一个国家, 则卖方需要在货物上标记“(原产国)制造”。应买方的请求, 卖方应及时提供根据该等适用法律所需的任何报告、所需信息和/或证书。

4.3 The Seller undertakes that the Goods fully comply with all Applicable Laws in locations in which the Goods are likely to be used or sold and shall provide for any of the Goods, upon request, all reports and required information including, but not limited to, certifications, component natural resources, confirmation that the Chemicals Hazard and Information and Packaging for Supply Regulations 2002 (“CHIP”) and the Control of Substances Hazardous to Health Regulations 2002 (or local equivalent regulation) have been complied with as required under such Applicable Laws. The Seller shall maintain and retain sufficient documentation to enable the country of origin of the Goods to be traced within the Goods sold to the Buyer.

卖方承诺货物完全符合货物可能被使用或出售所在地的所有适用法律, 并且应使任何货物具有(应请求)所有报告和需求信息, 包括但不限于证书、元器件自然资源, 并确认已按该等适用法律的规定遵守了《2002 年化学品(危险信息和供应包装)条例》(简称“CHIP”)和《2002 年控制危害健康物质条例》(或当地的等效条例)。卖方应维护和保留足够的文件, 以便可追踪卖给买方货物的原产国。

4.4 The Seller undertakes that the Goods have not and will not be produced or supplied (by the Seller or its suppliers) in segregated facilities or any location in which segregated facilities are maintained; or by using forced, indentured, convict or child labour; or in violation of minimum wage, hour of service or overtime laws of the country of manufacture or in any jurisdiction in which the Goods are provided; or in non-compliance (without limitation) with the following Directives and Regulations: (i) European Union Directive 2002/95/EC (27 January 2003) (RoHS Directive); (ii) European Union Directive 2002/96/EC on Waste and Electronic Equipment (WEEE); (iii) The Electronic Waste Recycling Act (California SB20/50) (where relevant); and; (iv) Regulation 1907/2006 of the European parliament and of the Council (REACH Regulation: 18 December 2006); each as amended at the time of any Contract, unless expressly agreed in writing by the Buyer.

卖方承诺货物没有且将不会在隔离设施或在保有隔离设施的任何地点; 或通过使用强迫劳动、契约劳工或童工; 或违反制造所在国家或货物提供所在任何司法辖区的最低工作年龄、服务时数或加班法律; 或不遵守(不限于)以下指令和法规: (i) 欧盟指令 2002/95/EC (2003 年 1 月 27 日) (RoHS 指令); (ii) 有关废弃物和电子设备的欧盟指令 2002/96/EC (简称“WEEE”); (iii) 《电子废弃物回收法》(加州 SB20/50) (如相关); 以及(iv) 欧洲议会和理事会条例 1907/2006 (REACH 条例: 2006 年 12 月 18 日), 由卖方或其供应商生产或供应; 除非买方以书面形式明确同意, 否则上述条例和法规应为合同订立时的最新修订版。

**5. PRICE AND PAYMENT****价格和付款**

5.1 The price of the Goods shall be stated in the Order in RMB (or other foreign currency (as the case may be)) and unless otherwise agreed in writing by the Buyer shall be inclusive of any and all taxes, duties, and all other charges. No variation in the price nor extra charges can be made without the prior consent of the Buyer in writing.

货物价格应在订单中说明, 以人民币(或其它货币(视情况而定))计价, 并且除非由买方以书面方式另行同意, 否则该价格应包括所有税款、关税和所有其它收费。未经买方的事先书面同意, 不得改变价格, 也不得收取额外费用。

5.2 Unless otherwise stated in the Order, the Buyer shall pay the price of the Goods to the Seller within 90 days after the receipt at the Buyer’s invoice address of a correctly submitted and undisputed invoice, or if later, the acceptance of the Goods by the Buyer.

除非订单中另行说明, 否则买方应于买方在自己的发票地址收到正确提交和无争议的发票或(如果更迟)买方接受货物后 90 天内, 向卖方支付货物的价格。

5.3 A separate invoice for each individual consignment of Goods shall be sent by the Seller to the Buyer as soon as it is reasonably practicable after dispatch or performance, or in accordance with the schedule of payments in the event of part or progress payments being agreed.

对于每次单独托运货物的独立发票, 卖方应在发货或履行后尽快发送给买方, 或如果商定为部分付款或按进度付款, 则应根据付款时间表发送发票。

5.4 Time for payment will not be of the essence, but if any undisputed sum under the Contract is not paid when due, that sum shall bear interest from the due date until payment is made in full at 4% per annum over the base lending rate for six months loan published by the People’s Bank of China from time to time in force during that period. The Seller acknowledges and agrees that this clause provides the Seller with a substantial remedy in respect of late payment of sums due under the Contract and any right to receive statutory interest shall not apply to any payment of sums under the Contract.

付款时间并不是十分重要, 但如果合同项下的任何无争议金额到期未予支付, 则该金额应自到期日起产生利息直到全部付清, 利息应基于该期间中国人民银行不时颁布的六个月贷款基准利率上浮年利率 4% 计算。卖方承认并同意, 此条款使卖方可就合同项下到期金额的延迟支付获得实质救济, 就合同项下任何金额收取法定利息的权利不再适用。

5.5 The Buyer may set-off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

就根据合同买方应支付给卖方的任何金额, 买方可在任何时候将卖方在合同项下应向买方支付的任何金额相抵销。

**6. DOCUMENTS/PACKING, MARKING AND DISPATCH OF GOODS****货物的单据/包装、标记和发送**

6.1 All advice notes, invoices and delivery notes shall quote the number of the Order, the date of the Order, the article number, and shall include a description of the Goods.

所有通知单、发票和提货单均应引述订单号、订单日期、货号, 并且应包括货物描述。

6.2 Unless otherwise specified in the Order: (i) all Goods shall be properly packed, marked and dispatched at the Seller’s expense in accordance with the requirements of the Buyer; (ii) the Seller shall mark the outside of each package with his name and with full details of the destination and include a packing note stating the contents and reference number of the Buyer’s Order; and (iii) the Buyer shall not be liable to pay for or return to the Seller any packaging or crating.

除非在订单中另行明确规定, 否则: (i) 所有货物都应根据买方的要求正确包装、标记和发送, 相关费用由卖方承担; (ii) 卖方应在每个包装的外面标记卖方名称和详细的目的地, 并且包括说明买方订单内容和参考编号的包装单; (iii) 买方无义务向卖方支付或向卖方返还任何包装或装货箱。

**7. DELIVERY**

**交付**

7.1 Unless otherwise stated in the Order, the Goods shall be delivered, DDP in accordance with the Incoterms 2010 to the delivery address stated on the Order, or to such other place of delivery as is notified in writing by the Buyer to the Seller prior to delivery of the Goods. All deliveries shall be made during the Buyer's usual business hours.

除非订单中另有规定，否则货物交付应根据《2010年国际贸易术语解释通则》的 DDP（完税后交货）（...订单中...指定目的地），交付到订单中指定的交付地址，或交付到在货物交付之前买方书面通知卖方的其它交付地点。所有交付都应在买方的正常营业时间内进行。

7.2 The date for delivery shall be specified in the Order. Time for delivery shall be of the essence.

交付日期应在订单中指明。交付时间至关重要。

7.3 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, in addition to the requirements set out in clause 6, the number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

卖方应确保每次交付时都附带有提货单，提货单显示（除第 6 条规定的要求外）包装数量和内容，以及（如果是分期交付）待交付的剩余数量。

7.4 If the Goods are not delivered by the due date then, without prejudice to any other rights which the Buyer may have, the Buyer reserves the right to: (i) cancel the Contract or any outstanding Order in whole or in part; (ii) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; (iii) deduct from the price of the Goods or if the Buyer has already paid the price, to request a full refund for the relevant Goods by the Seller; (iv) to claim from the Seller by way of liquidated damages for delay, 1% of the purchase price for every week's delay and claim damages for any costs, loss or expenses incurred by the Buyer and not compensated by the liquidated damages, which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

如果货物未按期交付，在不影响买方可能拥有的任何其它权利的情况下，买方保留以下权利：(i)全部或部分取消合同或任何剩余订单；(ii)拒绝接受随后卖方尝试交付的任何货物；(iii)从货物价格中扣除，或如果买方已经支付价格，则要求卖方全额退还相关货物的买方付款；(iv)要求卖方按每周采购价格的 1%就每周延迟支付违约金，并且就买方遭受的由于卖方未能在到期日交付货物所致的且违约金未能弥补的任何成本、损失或开支提出损害赔偿。

7.5 If the Buyer receives any early delivery of the Goods, it may return them to the Seller at the Seller's expense.

如果买方收到了货物的任何提前交付，买方可以将其退还给卖方，由卖方承担费用。

7.6 Where an Order is for scheduled deliveries over a specific period, the Buyer may on reasonable notice to the Seller, amend the design or specification of the Goods ordered for any remaining deliveries.

如果订单安排在具体时间段内交付，买方可在合理通知卖方的情况下，修改任何剩余交付订单货物的设计或规格。

7.7 The Buyer shall be entitled to reject Goods that are not in accordance with the Contract and shall not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. The Buyer shall also have the right to reject the Goods at any time during the warranty period if any latent defect in the Goods is discovered.

买方应有权拒绝不符合合同规定的货物，且在交付后有 14 天的检验期，在此之前不得被视为已经接受货物。如果发现货物有任何潜在缺陷，买方还有权在保证期限内的任何时间拒绝货物。

**8. RISK AND PROPERTY**

**风险与所有权**

8.1 Without prejudice to any right of rejection which may accrue to the Buyer under these Conditions, the Goods shall remain at the risk of the Seller until delivery to the Buyer in compliance with clause 7 is completed (including off-loading and stacking) at which point ownership and risk of the Goods shall pass to the Buyer. If there is any conflict between this clause and the applicable Incoterms, this clause shall prevail unless the parties have otherwise agreed in writing.

在不影响根据本采购条款可能赋予买方的任何拒绝权的情况下，在货物根据第 7 条完成对买方的交付（包括卸载和堆放）时货物的所有权和风险转给买方，在此之前，货物风险始终由卖方承担，此时。如果此条与适用的国际贸易术语解释通则之间存在任何冲突，则以此条为准，除非双方另行书面议定。

8.2 If the Goods are rejected by the Buyer, ownership and risk shall re-pass to the Seller within 48 hours of notice of such rejection being given by the Buyer to the Seller.

如果货物遭到买方拒绝，则在买方将该拒绝通知给卖方后的 48 小时内所有权和风险应转回卖方。

**9. SPARE PARTS**

**备件**

9.1 The Seller shall supply the Buyer with spare parts for the Goods, or provide equivalent sources of supply, for a period of 10 years.

卖方应在 10 年期间向买方供应货物的备件或提供相当的货源。

**10. WARRANTY**

**保证**

10.1 The Seller warrants that the Goods supplied shall, under normal conditions of use, be: (i) free from defects in design, material and workmanship; and (ii) be new; not refurbished or reconditioned; (iii) conform to the specification in the Contract, and if provided, any parts per million quality levels; and (iv) are appropriate in form, fit, and function for the purpose intended; for a period of 24 months from delivery. Seller also warrants that any services performed in the provision of the Goods shall be rendered in a good and workmanlike manner by skilled personnel.

卖方保证供应的货物（在正常使用条件下）应：(i)在设计、材料和工艺方面没有任何缺陷；和 (ii)是全新的，并非翻新或再修复的；(iii)符合合同中的规范，且如果提供，则质量水平要达到百万分率的缺陷率；和(iv)就拟定目的而言在形式、适合性和功能方面是适当的；自交付起的 24 个月期间。卖方还保证提供货物时履行的任何服务应由技术熟练人员以良好且熟练的方法提供。

10.2 Seller extends to Buyer any and all warranties received from Seller's sub-suppliers and subcontractors and agrees to enforce such warranties on Buyer's behalf. All of Seller's warranties shall run collectively and separately to Buyer, its successors, assigns, customers, and users of Buyer's Goods sold by Buyer. The above warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Buyer.

卖方将来自其分供应商和分包商的任何及所有保证的适用范围扩展到买方，并且同意代表买方强制实施该等保证。卖方的所有保证应共同和单独适用于买方、其继任人、受让人、客户以及买方卖出货物的用户。上述保证是法律暗示的或卖方以其它方式做出的任何保证的补充，且在买方接受和付款后继续生效。

10.3 The Buyer shall on discovery of a defect in the Goods notify the Seller without undue delay, however, the Buyer shall normally not be obliged to inspect the Goods upon delivery.

买方应在发现货物存在缺陷后毫不延迟地通知卖方，然而，正常情况下买方没有义务在交付时检验货物。

**11. REMEDIES**

**救济**

- 11.1 Without prejudice to any other right or remedy which the Buyer may have and regardless whether or not any part of the Goods have been accepted by the Buyer; if any of the Goods are not supplied in accordance with the Contract, or the Seller fails to comply with any of the terms of the Contract, the Buyer at its discretion is entitled to avail itself of any one or more of the following remedies: (i) to require the Seller to repair the Goods or to supply replacement Goods (at Seller's cost and expense) within 14 days of receipt of notice from the Buyer; (ii) to refuse to accept any further deliveries of the Goods but without any liability to the Seller, (unless the Seller can prove that the further deliveries fully comply with the Contract); (iii) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller; and (iv) to claim damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

在不影响买方可能拥有的任何其它权利或救济的情况下，并且无论货物的任何部分是否已经被买方所接受；如果任何货物未根据合同提供，或卖方未能遵守合同的任何条款，买方有权自行决定使自己享有以下一种或多种救济：(i)要求卖方修理货物或在接到买方通知后 14 天内供应替换货物（由卖方承担费用和开支）；(ii)拒绝接受任何进一步的货物交付，但不卖方承担任何责任（除非卖方可以证明进一步交付完全符合合同规定）；(iii)拒绝接受货物（全部或部分）并将其退还给卖方，相关风险和费用由卖方承担，且以卖方应立即全额退还货物款项为基础；以及(iv)就因卖方违反合同而遭受的损害提出索赔。

**12. INDEMNITY**

**补偿**

- 12.1 The Seller will keep the Buyer fully indemnified and hold the Buyer harmless against all actions, proceedings, claims, demands, damages, costs, charges and expenses whatsoever brought or made against the Buyer or sustained or incurred by the Buyer in respect or as a result of: (i) any defective workmanship, quality, design or materials, including any product recall or corrective action procedure; (ii) infringement or alleged infringement of any form of intellectual property right by the use or sale of any article, Goods or materials supplied to the Buyer unless to the extent that the infringement is solely due to the Seller having followed the Buyer's design or instruction; (iii) any injury loss or damage to persons or property caused by the act, default or negligence of the Seller, sub contractors or agents or by faulty design, workmanship or materials unless to the extent that the injury, loss or damage is caused by the negligence of the Buyer; (iv) any failure by the Seller to comply with the provisions of clause 4; (v) all claims which at any time be made upon the Buyer and which arise out of accidents to the Seller's employees or the employees of the Seller's sub-contractors; and (vi) all liabilities of whatever nature which may at any time result from the wrongful acts or omissions of the Seller's employees or the employees of the Seller's sub-contractors.

卖方就针对或由于以下情况引起的无论是对买方提出的或由买方遭受或招致的所有起诉、诉讼、索赔、索求、赔偿、成本、费用和开支，应向买方全额补偿且确保买方不受损害：(i)任何有缺陷的工艺、质量、设计或材料，包括任何产品召回或纠正行动程序；(ii)由于使用或销售供应给买方的任何物品、货物或材料，而侵犯或指控侵犯了任何形式的知识产权，除非该等侵犯完全是由于卖方遵循了买方的设计或指示所致；(iii)由于卖方、分包商或代理人的行为、违约或疏忽或错误设计、工艺或材料导致的任何人员伤亡或财产损毁，除非该等伤亡或损毁是由于买方疏忽所致；(iv)卖方未能遵守第 4 条的任何规定；(v)任何时间针对买方提出的任何索赔，且索赔是由于卖方雇员或卖方分包商雇员的故事所引起的；以及(vi)在任何时候由于卖方雇员或卖方分包商雇员的错误行为或疏忽导致的任何性质的所有责任。

**13. INSURANCE**

**保险**

- 13.1 The Seller undertakes to effect and maintain adequate insurance cover to meet the risks specified under clause 12 to the reasonable satisfaction of the Buyer, and will upon request from the Buyer, produce to the Buyer the relevant policy and evidence of payment of the current premium.

卖方承诺安排和保持充分的令买方合理满意的保险涵盖，以满足第 12 条下的具体风险，并且将会应买方的请求，向买方提供相关保单和支付当期保费的证据。

**14. LICENCE TO USE EMBEDDED SOFTWARE/INTELLECTUAL PROPERTY RIGHTS**

**使用嵌入软件的许可/知识产权**

- 14.1 Any software or firmware incorporated into Goods is supplied under licence for the use of the software only, and all other exploitation rights are retained by the Seller. The Seller grants to the Buyer a licence to use such software or firmware only in connection with those Goods and only to the extent required to use the Goods for their intended purposes. The licence shall include a right to grant sub licences to the extent required lawfully to sell the Goods. The duration of this licence shall be the life of the Goods into which the software or firmware is incorporated.

纳入货物的任何软件或固件仅可根据使用该软件的许可予以供应，并且所有其它利用权由卖方保有。卖方授予买方仅与这些货物有关使用该等软件或固件的许可，并且仅在规定的范围内将货物用于其拟定用途。许可应包括为销售货物而在合法要求的范围内授予分许可的权利。此许可的持续期间应是软件或固件纳入其中的货物的使用寿命。

- 14.2 To the extent that any Goods are created or modified in accordance with Buyer's specific requirements and/or technical or functional specifications then any intellectual property arising out of or created during the performance of the Order shall be the property of the Buyer. The Seller shall (at Buyer's reasonable expense) execute such documents as are required to give effect hereto and shall assist in the defence of any proceedings against the Buyer.

如果任何货物的设计或修订是根据买方的具体要求和/或技术或功能规范，那么由此产生的或在履行订单期间产生的任何知识产权应属于买方的财产。卖方应（由买方承担合理费用）签署据此要求执行的文件，并且应就针对买方提起的任何诉讼协助买方进行辩护。

**15. CONFIDENTIALITY**

**保密**

- 15.1 The receiving party will not divulge or communicate to any person without the prior written consent of the disclosing party any Confidential Information and shall not use the Confidential Information for any purpose other than as contemplated under the Contract.

未经披露方的事先书面同意，接收方不得向任何人员泄露或传播任何保密信息，并且不得为合同预期目的之外的任何目的使用保密信息。

- 15.2 The obligation of confidentiality will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of 5 years after the expiration or termination of the Contract but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the receiving party, or which is rightfully received by the receiving party without obligations of confidentiality, or is developed by the receiving party without breach of these Conditions. If the receiving party is required to disclose Confidential Information to a government body, court or other official department with the authorization to issue such request subject to a legal or regulatory requirement, the receiving party agrees to give the disclosing party prompt notice so that disclosing party may contest the disclosure or obtain a protective order.

在纳入本采购条款的任何合同持续期间和合同届满或终止后的 5 年期间的所有时间，保密义务将继续适用，但如果信息并非因接收方的过失而于披露之日为公众所知，或在接收方没有保密义务的情况下合法收到，或接收方在没有违反本采购条款的情况下开发，则保密义务对该些信息将不再适用。如果根据法律或法规要求接收方需要向有权发出该请求的政府机构、法庭或其它政府部门披露保密信息，接收方同意即时通知披露方，以便披露方可对披露提出异议或获取保护令。

- 15.3 Each disclosing party shall have the right, immediately upon expiration or earlier termination of the Contract (for any reason whatsoever), to request the receiving party to return all Confidential Information in its possession.

各披露方应有权在合同届满或提前终止（无论任何原因）之后，立即要求接收方归还由接收方持有的所有保密信息。

**16. THE BUYER'S PROPERTY**

**买方财产**

16.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods, shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

买方提供给卖方的或不是据此提供但由卖方特别为生产货物而使用的材料、设施、工具、模具、模型、版权、设计权或所有图纸、规范和数据中的任何其它形式的知识产权应始终是买方的专有财产，但由卖方持有并由卖方自行承担风险予以安全保管，维护并保持其处于良好状况，直至归还给买方，并且除根据买方的书面指令外不得进行处置，同时亦不得在买方书面授权的范围以外使用该等物件。

**17. TERMINATION**

**终止**

17.1 The Buyer shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation on a pro-rata Contract price basis for work-in-progress at the time of termination.

买方有权通过向卖方发出书面通知随时且依任何原因立即全部或部分终止合同，据此有关合同的所有工作应立即停止，而且买方应就终止时进行中的工作按合同价格比例向卖方支付公平且合理的补偿。

17.2 Either Party may immediately terminate a Contract by giving prior written notice to the other Party, if the other Party: (i) commits a material breach of the Contract which is not capable of remedy, (ii) commits a continuing breach of the Contract and fails to remedy it within 15 days of a written notice requiring the breach to be remedied; (iii) is dissolved, becomes insolvent, is over indebted, fails or is unable to or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy; has a resolution passed for its winding up or liquidation; seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets; or (iv) ceases or threatens to cease to carry on business.

如果另一方出现以下行为，任何一方均可通过向另一方发出事先书面通知立即终止合同：(i) 严重违反合同且无法补救，(ii) 持续违反合同，且未能在要求补救违反行为的书面通知发出后 15 天内补救该行为；(iii) 解散、破产、资不抵债、没有或无能力或以书面承认没有能力偿还债务；提起或已经提起法律程序，寻求得到无偿付能力或破产的裁决；就其清盘或清算通过决议；寻求就其资产委任管理人、接收人或类似官员，或成为该等人士委任的对象；或(iv) 停止或即将停止开展业务。

17.3 No notice of termination may be given by either Party except in accordance with the express provisions of these Conditions.

除非根据本采购条款的明确规定，否则任何一方均不可发出终止通知。

17.4 The termination of the Contract, however arising, shall be without prejudice to: (i) the rights and duties accrued prior to termination; and (ii) any obligations contained herein which survive the termination or expiry of the Contract.

合同的终止（不论如何产生）不得影响：(i) 终止之前产生的权利和义务；以及 (ii) 本合同包含的合同终止或届满后继续存在的任何义务。

**18. ASSIGNMENT**

**转让**

18.1 The Buyer may assign the rights and obligations of any Contract or any part of it to any of its Affiliates. Any other assignment of this Contract shall not be permitted unless the other Party consents in writing to such assignment (such consent not to be unreasonably withheld or delayed).

买方将其在任何合同项下的权利和义务或其任何部分转让给其关联方。不得进行本合同的任何其它转让，除非另一方书面同意该转让（该同意不得无理扣留或延迟）。

**19. FORCE MAJEURE**

**不可抗力**

19.1 The Buyer reserves the right (without any liability to the Seller for any expenses or loss incurred by the Seller) to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

若买方由于超过其合理控制的事件（包括但不限于：天灾人祸、政府行为、战争或国家紧急状态、恐怖主义行为、示威、暴动、国内骚动、火灾、爆炸、洪水、地震、流行病、停工、罢工或其他劳动争议（不管是否与一方自己的劳工相关），或影响运输的管制或延迟，或未能或延迟获得足够或合适的材料的供应）而未能或延迟开展其业务，买方有权要求推迟供货时间或取消合同或减少所订购货物数量，买方对卖方由此而遭受的任何费用或损失不承担任何责任。

**20. MISCELLANEOUS**

**其它规定**

20.1 Seller recognized having been made fully acquainted with Invensys Supplier Code of Conduct (which is attached hereto and can be updated from time to time) and undertakes to apply the principles set out therein with respect to the performance of the Contract. Seller recognizes that violation of such principles will not only result in Seller disqualification for future business with Buyer, but be considered as a breach of the Contract and Buyer is entitled to terminate, without any liability, any pending Order or Contract with Seller.

卖方承认已经完全熟悉英维思供应商行为守则（随附于本采购条款且可不时进行更新），并且承诺在履行合同时适用其中规定的原则。卖方承认违反该等原则不仅会导致卖方丧失与买方进一步开展业务的资格，还会被视为违反合同，并且买方有权终止（不承担任何责任）与卖方的任何未完成订单或合同。

20.2 Each right or remedy of a Party under the Contract is without prejudice to any other right or remedy of the Party whether under the Contract or not.

合同下合同各方的各项权利或救济不影响该合同方的任何其它权利或救济（无论是否在合同项下规定）。

20.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability, or unenforceability, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

如果合同的任何规定被任何法院、法庭或具主管司法管辖权的行政机关判定全部或部分非法、无效、失效或不可执行，在该非法、无效、失效或不可执行的条款可分割的范围内，合同的剩余条文和该条文的剩余部分应继续完全有效。

20.4 Failure or delay by a Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

合同任何一方未行使或强制行使合同赋予的任何权利，不得被视为放弃任何该权利，也不得实施为随时或其后任何时间阻止行使或强制行使该权利。

## ROBERTSHAW (SHANGHAI) TRADING COMPANY LIMITED – CONDITIONS OF PURCHASE

- 20.5 The failure by either Party to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.  
合同任何一方未能行使或强制行使合同赋予的任何权利，不得被视为放弃任何该权利，也不得作为阻止其在其后任何时间行使或强制行使该权利。
- 20.6 Notices must be in writing and delivered by hand, first class post, or facsimile to the other Party at its registered office or trading address at the date of the Contract.  
通知必须为书面形式且通过专人、一等邮件或传真发送至另一方的注册地址或合同订立之日的交易地址。
- 20.7 The Contract shall be governed by and construed in accordance with the laws of People's Republic of China. . In the event of any dispute arising out of the performance or the interpretation of the Contract, the Parties hereby agree to make every effort to reach an amicable settlement. Should a dispute could not be settled amicably, it should be submitted to China International Economic and Trade Arbitration Commission ("CIETAC") Shanghai Sub-Commission for arbitration, in accordance with the Rules and procedure of the said Commission. The arbitration shall take place in Shanghai and decision rendered by the said Commission should be final and binding upon both parties; neither Party shall seek recourse to a law court or other authorities for revising the decision. The arbitration fee shall be borne by the losing party. Both parties shall continue the fulfillment of the Contract except the parts in arbitration.  
合同应受中华人民共和国法律管辖并按其解释。如果合同的履行或释义引起任何争议，则双方据此同意尽最大努力达成友好解决。如果争议无法达成和解，则应提交中国国际经济贸易仲裁委员会（简称“CIETAC”）上海分会进行仲裁，仲裁根据该委员会的规则和程序进行。仲裁应在上海进行，上述委员会做出的判决应为终局判决，且对合同双方都具有约束力；任何一方均不得向法院或其它当局寻求修改判决。仲裁费用应由败诉的一方承担。双方都应继续完成除仲裁部分外的合同。
- 20.8 In the event that the Parties enter into a master supply agreement for the supply and purchase of the Goods, such agreement shall prevail over these Conditions to the extent that any provisions conflict.  
如果合同双方就货物的采购与供应订立主供应协议，在该协议与本采购条款产生冲突时，以该协议为准。
- 20.9 These Conditions are provided in English and Chinese. In the event that there is any conflict in the interpretation of the different language versions of these Conditions, the English version shall prevail.  
本采购条款以英文和中文规定。如果本采购条款不同语言版本的解释产生任何冲突，则以英语版本为准。
- 20.10 The United Nations 'Convention on Contracts for the International Sale of Goods' signed in Vienna in 1980 shall not apply to this Contract.  
1980年在维也纳签署的《联合国国际货物销售合同公约》不适用于本合同。
- 20.11 The Parties agree that no condition of, or benefit conferred by, the Contract will be enforceable by any third party.  
合同双方同意任何第三方不得强制执行合同的任何条件或享有合同赋予的任何权益。