

## OLIVER HEALTHCARE PACKAGING COMPANY TERMS AND CONDITIONS OF SALE

**1. Agreement.** These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of any products or services (collectively “**Products**”) by Oliver Healthcare Packaging Company (“**Supplier**”) to the customer identified in the relevant agreement, quotation, work order, purchase order, order acknowledgment or invoice (“**Customer**”). These Terms apply to and are incorporated into any agreement to which they are attached and any quotation, work order, purchase order, or invoice accompanying these Terms (collectively, the “**Agreement**”). These Terms shall become effective upon the earliest of: (i) Supplier issuing a quotation, order acknowledgment or invoice to Customer; (ii) Customer’s receipt of the Products; (iii) Supplier’s receipt of payment in full or in part for the Products; or (iv) Customer’s and Supplier’s execution of a written agreement regarding the sale of Products into which these Terms are incorporated. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence relating to the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

**2. Acceptance.** These Terms prevail over any of Customer’s general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms. Any terms and conditions proposed by Customer in any product inquiry, purchase order or other document that are different from, conflict with, or add to these Terms shall be deemed to materially alter the offer and are hereby objected to and rejected by Supplier.

**3. Purchase Price.** Customer shall pay Supplier the purchase price for the Products as listed in Supplier’s quotation, order acknowledgment or as otherwise set forth in Supplier’s invoice. All prices are in US dollars. Supplier may change its prices at any time without notification; provided, however, that unless revoked prior to acceptance, prices set forth in Supplier’s quotation shall be valid only for the period set forth in such quotation. Supplier’s prices are exclusive of insurance, shipping, handling, and sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall have the sole responsibility for payment of all such insurance, shipping, handling, taxes, duties and charges with respect to the purchase of any Products. If Customer is a tax-exempt entity, Customer shall present all appropriate documentation for any tax exemption to Supplier prior to placing its order. Tool fees payable by Customer are for the right to have the tools used by Supplier for performance of an order; they do not convey title or right of possession of any such tools.

**4. Payment Terms.** Customer shall pay all invoices within thirty (30) days from the date of the invoice (unless specified otherwise on the invoice). If Customer fails to make any payments when due, Customer will be charged interest of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) or the maximum rate permitted by applicable law, whichever is less, on any overdue balance. Supplier is not obligated to extend credit or financing terms to Customer. Supplier may in its sole discretion revoke any credit extended to Customer and require payment in full prior to Supplier’s delivery of Products. If Supplier retains a collection agency or legal counsel or incurs any out-of-pocket expenses to collect payments from Customer, all such costs will be added to the sums due, will bear interest at the rate set forth above, and will be the responsibility of Customer. In addition to all other remedies available under these Terms or at law (which Supplier does not waive by the exercise of any rights hereunder), Supplier shall be entitled to suspend the delivery of any Products if Customer fails to pay any amounts when due hereunder. Customer agrees that, other than Supplier’s delivery of the Products, payment to Supplier is not contingent on any other occurrence, matter, or event including, without limitation, Customer’s receipt of payment from any third party. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Supplier, whether relating to Supplier’s breach, bankruptcy or otherwise.

**5. Shipment and Delivery.** Delivery of all Products shall be made F.O.B. origin and all freight and shipping charges are the responsibility of and shall be paid by Customer. Manner of shipping and routing of shipments is at the

discretion of Customer unless otherwise agreed upon in writing by Supplier and Customer. Products will be delivered within a reasonable time after receipt of Customer’s purchase order, but Supplier shall not be liable for any delays, loss or damage in transit. Supplier reserves the right to make delivery of Products in installments; all such installments will be separately invoiced and paid for when due, without regard to subsequent deliveries. Quantities that exceed or are less than the contracted quantity within 10% of the quantity ordered shall constitute fulfillment of the order.

**6. Title and Risk of Loss.** Title to the Products and any risk of loss associated with the Products shall pass to Customer at the time of delivery of the Products to the carrier for shipment to Customer. As collateral security for the payment of the purchase price of the Products, Customer hereby grants to Supplier a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. In the event Customer or its agent or representative picks up the Products at Supplier’s place of business or Supplier delivers the Products, title and risk of loss shall pass to Customer at the time of pick up by Customer, its agent or representative, or shipment by Supplier. With regard to Products that are returned to Supplier, title and risk of loss remain with Customer until receipt and acceptance of the Products by Supplier. All claims for damage and shortage in transit shall be made by Customer with the carrier, and Customer holds Supplier harmless for all such claims.

**7. Cancellation.** No order accepted by Supplier may be cancelled or modified by Customer except upon the written agreement of Supplier.

**8. Reliance.** Supplier may rely upon all information, data, dimensions, blueprints, schematics, diagrams, specifications, or other drawings or representations, whether oral or in writing, provided by or on behalf of Customer and shall have no responsibility to make any independent inquiry or investigation thereof. Supplier assumes no obligation or liability for any advice or assistance given or results obtained; all such advice or assistance is given and accepted at Customer’s risk.

**9. Inspection and Acceptance.** Customer shall have ten (10) calendar days from receipt of the Products to inspect the Products for conformance with the specifications set forth in Supplier’s quotation, order acknowledgment or as may otherwise be mutually agreed by the parties (the “**Specifications**”). Customer may reject Products that do not substantially conform to the Specifications (“**Non-Conforming Products**”). All rejections shall be made in writing to Supplier and shall provide sufficient detail as to the reason for such rejection.

**10. Returns.** To return Non-Conforming Products, Customer shall contact Supplier for a Return Material Authorization (“**RMA**”) number. No returns will be accepted without an RMA number. Supplier has sole discretion to determine, after examination, whether returned Products are Non-Conforming Products, and Supplier’s determination shall be binding on Customer. Customer’s sole and exclusive remedy for returned Products that have been found to be Non-Conforming Products shall be either, in Supplier’s sole discretion: (i) replacement of the returned Products; and/or (ii) reimbursement of the amount paid by Customer for the returned Products.

**11. Limited Warranty; Disclaimer of Warranties.** Supplier warrants that, upon delivery, all Products shall materially conform to the Specifications. Supplier hereby passes through to Customer any and all warranties for Products manufactured by third parties only to the extent permitted by the original manufacturer. **EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 11, ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF SUPPLIER, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE), OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE WITH RESPECT TO THE PRODUCTS ARE HEREBY EXCLUDED AND DISCLAIMED, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW.**

Supplier shall not be liable for a breach of the warranty set forth in this Section 11 if: (i) Customer makes any further use of such Products after giving such notice; (ii) the defect arises because Customer failed to follow Supplier's oral or written instructions as to the storage, handling, shelf life or use of the Products; or (iii) Customer alters or repairs such Products without the prior written consent of Supplier.

**12. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, (A) IN NO EVENT SHALL SUPPLIER, ITS AFFILIATES AND EACH OF IT AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, HAVE ANY LIABILITY OR RESPONSIBILITY ON ANY CLAIM, WHETHER GROUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), ANY THEORY OF STRICT LIABILITY OR OTHERWISE, FOR LOSS OF PROFIT OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND, WHETHER OR NOT FORESEEABLE AND REGARDLESS OF LEGAL THEORY, TO ANY PERSON OR ENTITY, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT AND (B) THE ENTIRE LIABILITY OF SUPPLIER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY THEORY OF STRICT LIABILITY OR OTHERWISE) UNDER THE AGREEMENT SHALL NOT EXCEED THE TOTAL PRICE PAID BY CUSTOMER TO SUPPLIER FOR THE PRODUCTS WHICH GIVE RISE TO THE CLAIM.

**13. Indemnity.** In addition to all other rights and remedies available to Supplier at law or in equity, Customer assumes the entire responsibility and liability for and agrees to indemnify, defend and hold harmless Supplier, its officers, directors, equity holders, agents, employees, successors and assigns from and against all and all claims, liabilities, damages, losses, and expenses, including attorneys' fees, in connection with or arising, directly or indirectly, out of: (i) any actual or alleged improper use of any Product, (ii) any negligence, omissions, or willful misconduct of Customer or any of its employees, agents or representatives, and (iii) any allegation that Products supplied pursuant to Customer's design or specifications infringe a patent, copyright, trademark, trade secret, or other proprietary right of a third party, whether such are provided alone or in combination with other products or processes. Customer shall not settle any such suit or claim without Supplier's prior written approval.

**14. Confidential Information.** Customer agrees that all information and data disclosed or submitted by Supplier under or pursuant to the Agreement, including, without limitation, that contained in drawings or specifications, is proprietary to Supplier and will not be used by Customer for any purpose other than fulfilling the Agreement, without Supplier's prior written consent.

**15. Force Majeure.** Supplier shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Supplier including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor 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, materials or telecommunication breakdown or power outage. Upon any of the above events, Supplier will have the additional right to extend the time to provide the Products under the Agreement or to cancel any open purchase orders without any resulting liability to Customer.

**16. Attorneys' Fees.** In the event of a dispute between the parties with regard to or arising out of the Agreement which results in litigation, the prevailing party shall have its attorneys' fees, professionals' fees, and costs paid by the losing party, and such sum may be added to any judgment entered in the litigation. A party's right to the foregoing shall not merge with but shall survive the entry of judgment, and shall extend to appeals and collection.

**17. Assignment.** Customer shall not assign, delegate, or otherwise transfer any of its rights or obligations under the Agreement without the prior written approval of Supplier. Any such assignment, delegation, or transfer without Supplier's prior written consent shall be void. Supplier may assign, delegate, or transfer any and all of its rights and obligations under the Agreement at any time and without prior written consent of Customer.

**18. Severability.** If one or more of the provisions of the Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such provision shall be modified or amended to the extent necessary to remove the invalidity, illegality, or unenforceability. If the amendment or modification of such provision is impossible, the Agreement shall be construed as if it never contained the invalid, illegal, or unenforceable provision, and such provision shall not affect any other provision of the Agreement.

**19. No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

**20. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**21. Governing Law.** The Agreement shall be construed and enforced exclusively in accordance with the substantive and procedural laws of the State of Michigan, without regard to principles of conflicts of law, and without regard to rules of construction relating to which party drafted the Agreement. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**22. Exclusive Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Michigan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**23. Waiver.** No claim or right arising out of a breach of these Terms by Customer may be discharged in whole or in part by a waiver of the claim or right, unless the waiver is in writing signed by an authorized representative of Supplier. Supplier's waiver or acceptance of any breach by Customer of any provisions of the Agreement shall not constitute a waiver of, or an excuse for, nonperformance as to any other provision nor as to any prior or subsequent breach of the same provision.

**24. Entire Agreement.** The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The Agreement constitutes the complete and exclusive statement of the terms of the contract between the parties and the final expression of the terms of such contract, and shall supersede all prior and contemporaneous agreements, inducements or conditions, express or implied, oral or written. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term in the Agreement. Supplier's acceptance or acquiescence in a course of performance rendered by Customer pursuant to the Agreement shall not be relevant to determine the meaning of this contract even though Supplier has knowledge of the nature of the performance and opportunity for objection.

**25. Commercial Transaction.** Customer acknowledges, agrees, represents and warrants that the provision of Products to Customer by Supplier and the transactions contemplated by the Agreement are commercial transactions and not for personal, family or household use.

# OLIVER HEALTHCARE PACKAGING (SUZHOU) CO., LTD. TERMS AND CONDITIONS OF SALE

## 奥力拓医用包装材料（苏州）有限公司销售条款和条件

### Definitions:

#### 定义

**Accepted Order** means the Buyer's Order that has been accepted in writing by Seller, and which specifies the price, Delivery Method, Delivery Date and payment terms for the order.

**已接受的订单** 指已经卖方书面确认接受的买方订单，该等订单列明了订单价格、交付方式、交付日期以及支付条款。

**Business Day** means any day except Saturday, Sunday or any other day on which commercial banks located in the PRC are authorized or required by the PRC laws to be closed for business.

**工作日** 指除星期六、星期日或其他任何位于中国的商业银行被中国法律授权或要求关闭的日期之外的其他日期。

**Buyer** means the purchaser specified in the Buyer's Order.

**买方** 指买方订单中列明的购买方。

**Buyer's Order** means the order from Buyer that specifies the name, type, and quantity of the Product as well as the Delivery Date, requested Delivery Method and requested Delivery details.

**买方订单** 指由买方出具的订单，列明了产品名称、型号和数量以及交付日期、要求的交付方式和要求的交付详情。

**Delivered at Place** means the Delivery Method whereby Seller loads and transports the Products to the location nominated by Buyer and accepted by Seller in the Accepted Order. Buyer does not assume any carriage risk of damage or loss for the Products until the Products arrive at the Buyer's nominated location. Once the Products arrive at the location, the Buyer is responsible for, and assumes all risk from that Delivery Date, including unloading the Products from the Seller's carrier. If the Products cannot be delivered at the agreed time and location due to any reason attributable to the Buyer, the Buyer shall assume all risks of damage or loss for the Products from the agreed Delivery Date.

**目的地交货** 指卖方将产品装载并运输至已接受的订单中由买方指定并由卖方接受的场所的一种交付方式。产品抵达买方指定场所之前，买方就产品不承担任何有关运输的毁损、灭失的风险。产品一旦抵达指定场所，买方负责并承担自交付日期起的所有风险，包括将产品从卖方承运工具上卸下。如因买方的原因致使产品不能按照约定的时间和地点交付，买方应当自约定的交付日期起承担所有产品毁损、灭失的风险。

**Delivery Date** means the date carriage risk for the Product detailed in the Accepted Order is transferred to Buyer.

**交付日期** 指已接受的订单中详细规定的产品的运输风险已转移至买方之日。

**Delivery** means the transfer to Buyer of the Product carriage-risk of damage or loss, pursuant to one of the Delivery Methods as specified in writing by Seller in the Accepted Order.

**交付** 指产品有关运输的毁损、灭失的风险已按照卖方在已接受的订单中书面列明的交付方式之一转移至买方。

**Delivery Method** means one of the following delivery methods specified in writing by Seller in the Accepted Order (to be interpreted in accordance with INCOTERMS 2010):

**交付方式** 指卖方在已接受的订单中书面列明的下列任一交付方式（根据 2010 年版《国际贸易术语解释通则》进行解释）：

- (i) Ex Works;  
工厂交货；
- (ii) Free Carrier; or  
货交承运人；或
- (iii) Delivered at Place.  
目的地交货。

**Force Majeure Event** means any event that is directly or indirectly due to acts of God or of the public enemy, governmental actions, fires, floods, or other accidents or casualties, quarantine restrictions, strikes, or other labor disputes, unusually severe weather, shortages or problems with the supply of materials or services, acts or omissions of carriers or other transportation difficulties, or other causes beyond Seller's or Buyer's reasonable control.

**不可抗力事件** 指直接或间接归因于天灾或公敌、政府行为、火灾、洪水，或其他事故或意外、检疫限制、罢工、或其他劳资纠纷、非正常恶劣天气、原料或服务短缺或其他问题，承运人行为或不作为或其他运输问题，或者其他超出买方或卖方合理控制的原因的事件。

**Invoiced** means the Seller's issue of a Product invoice in a form that satisfies all PRC Tax requirements.

**开具发票** 指卖方开具符合所有中国税款要求的产品发票。

**PRC** means the People's Republic of China, excluding Taiwan (China) and the Special Administrative Regions of Hong Kong and Macau.

**中国** 指中华人民共和国，不包括台湾省以及香港、澳门特别行政区。

**Products** means those physical goods to be supplied by Seller that are the subject of any Buyer's Order.

**产品** 指作为任何买方订单中确定为标的物的由卖方供应的实物。

**Sale Agreement** means the combination of the Terms and the Accepted Order, in aggregate, that constitutes one agreement.

**销售协议** 指条款和已接受的订单的组合，一并构成一份协议。

**Seller** means Oliver Healthcare Packaging (Suzhou) Co., LTD.

**卖方** 指奥力拓医用包装材料（苏州）有限公司。

**SHIBOR** means the Shanghai Interbank Offered Rate published on the website: [http://www.shibor.org/shibor/web/html/index\\_e.html](http://www.shibor.org/shibor/web/html/index_e.html).

**SHIBOR** 指 [http://www.shibor.org/shibor/web/html/index\\_e.html](http://www.shibor.org/shibor/web/html/index_e.html) 该网站上公布的上海银行间同业拆放利率。

**Taxes** mean any taxes, duties or levies imposed by any governmental agency in relation to the Products.

**税款** 指任何政府机关就产品征收的任何税费、关税或赋税。

## 1. Terms

### 条款

The terms and conditions of this document (“**Terms**”) apply to the sale of Products by Seller to Buyer. Buyer acknowledges that the issuance by Buyer to Seller of any Buyer’s Order shall constitute Buyer’s acceptance of and agreement to, these Terms (including the amendments thereto from time to time) available on the website [www.oliverhcp.com/terms](http://www.oliverhcp.com/terms). Any terms and conditions proposed by Buyer in any product inquiry, purchase order or other document that are different from, conflict with, or add to these Terms are hereby objected to and rejected by Seller. Buyer and Seller agree that the Seller may amend the Terms from time to time without notice to the Buyer and Buyer would accept such amendment.

本文件的条款和条件适用于卖方向买方销售产品（“**条款**”）。买方承认，买方向卖方出具任何买方订单构成买方对显示于 [www.oliverhcp.com/terms](http://www.oliverhcp.com/terms) 的本条款（包括其不时修订）的接受和同意。买方在任何产品询价、采购订单或其他文件中提出的与本条款不同、冲突或增加的任何条款和条件均在此被卖方反对和拒绝。买方和卖方同意卖方可能会对本条款不时进行修订，且无需就该等修订通知买方。

In the event of any inconsistency between the Terms and the Accepted Order, the Accepted Order shall prevail.

如条款与已接受的订单有任何不一致，以已接受的订单为准。

## 2. Purchase and Sale

### 采购和销售

Seller will sell to Buyer, and Buyer will accept and pay for, all Products ordered by Buyer pursuant to an Accepted Order. Seller may accept a Buyer’s Order in whole or in part and Seller’s shipment of less than all Products ordered will constitute acceptance only as to those Products shipped.

卖方将按照已接受的订单向买方销售买方订购的所有产品，同时买方亦将按照已接受的订单接受该等产品并支付款项。卖方可以接受全部或部分买方订单，而且未包含全部订购产品的卖方装运单将仅构成接受该部分产品的订单。

## 3. Delivery

### 交付

Seller will use commercially reasonable efforts to meet the Delivery Dates specified in the Accepted Order, but will not be liable for any failure to meet such Delivery Dates. Title to the Products passes to Buyer upon the payment of all the prices and related charges by Buyer for such Products. Seller reserves the right to make Delivery in installments; all such installments will be separately Invoiced and paid for by Buyer when due.

卖方将尽其合理商业努力满足已接受的订单中规定的交付日期，但就未能满足该等交付日期不承担责任。产品的所有权将买方付清该等产品所有价款和相关费用后转移至买方。卖方保留分批交付的权利，并且每一批货物单独开具发票，并在到期时由买方支付。

#### **4. Prices and Taxes**

##### **价格和税款**

Buyer will pay Seller the prices specified in the relevant Accepted Order. All prices are in Chinese Renminbi (unless agreed otherwise by Buyer and Seller in writing and permitted by law) and do not include any Taxes. Buyer will pay, or reimburse Seller for, all Taxes related to the Products.

买方应向卖方支付相关已接受的订单中规定的价格。所有价格均为人民币（除非经买、卖双方另行书面约定且被法律允许）且不包括任何税款。买方将就所有与产品有关的税款对卖方进行偿付。

#### **5. Payment**

##### **付款**

Buyer will pay the price and related charges specified in the Accepted Order and as Invoiced by Seller. Unless otherwise provided in the Accepted Order, payment terms shall be 30 days from date of invoice rather than the Delivery Date. If Buyer fails to pay any amount when due, Seller may suspend or cancel deliveries of any ordered Products. Seller shall charge interest on any amount not paid commencing on the due date at a rate of 1.5 (one and a half) times the SHIBOR 3-month rate (which will be compounded monthly), as published on that Business Day immediately prior to the date when the sum was due (“**SHIBOR Date**”), provided that the rate shall not exceed the upper limit stipulated by applicable laws and regulations. Further, Buyer will reimburse Seller for any costs or expenses, including (without limitation) reasonable attorney’s fees, incurred by Seller to collect any amount not paid when due. If Buyer fails to pay any amount due for more than 30 days, Seller shall have the right to terminate the Accepted Order upon written notice to Buyer, and Buyer shall indemnify Seller for all losses caused thereby.

买方应根据卖方出具的发票支付已接受的订单中规定的价款和相关费用。除非在已接受的订单中另行约定，支付期限为自开票之日而非交付日期起 30 日。如果买方未能支付到期款项，则卖方可以延缓或取消交付所订购的任何产品。卖方应就任何到期未付款项按款项到期前一工作日（“**SHIBOR 日**”）公布之 SHIBOR3 月期利率的 1.5 倍自到期之日起收取利息（每月复利一次），但利率不超过适用法律法规规定的上限。另外，买方应偿还所有卖方因要求买方支付到期未付之款项而产生的任何费用或开支（包括但不限于合理的律师费）。如果买方未能支付到期款项超过 30 日的，卖方有权经书面通知买方后解除已接受的订单，买方应赔偿卖方因此遭致的一切损失。

#### **6. Cancellation**

##### **取消**

No Accepted Order may be cancelled or modified either by Buyer or Seller except upon terms and conditions acceptable to Seller or Buyer as evidenced by written consent signed by a duly authorized representative of Seller or Buyer.

买方和卖方都不可单方取消或变更已接受的订单，除非卖方或卖方的授权代表正式签署书面同意接受该等条款和条件。

#### **7. Overruns**

##### **超量**

Seller produces the Products in standard production quantities. Invoiced Product quantities that either exceed or fall short of the quantity specified in the Accepted Order by no more than 10% of the quantity ordered shall constitute fulfillment of the order. Products will be Invoiced in delivered quantities.

卖方按照标准产量生产产品。开具发票的产品数量不超过或低于已接受的订单中的订购数量的10%即构成订单履行完成。产品将按照实际交付数量开具发票。

## **8. Storage**

### **存储**

If, due to Buyer's failure to provide Seller detailed Delivery instructions by the Delivery Date specified in the Accepted Order or Buyer requested suspension or delay or refusal to accept Delivery of any Products, Seller elects to store such Products at Buyer's risk in a suitable warehouse, then Buyer shall, from the Delivery Date specified in the Accepted Order, be responsible for all handling, transportation and storage charges at the prevailing commercial rates.

如果因买方未能于已接受的订单中载明之交付日期之前向卖方提供详细交付指示或买方要求暂停或延迟或拒绝接受任何产品的交付，卖方选择将该等产品存储于适当的仓库（风险由买方承担）的，买方应承担自己接受的订单明确的交付日期起按市价计算的所有处理、交通和存储费用。

## **9. Limited Warranty**

### **有限保证**

Seller warrants that, upon Delivery, each Product it sells to Buyer shall conform in all material respects to the applicable specifications set forth in Seller's quotation, Accepted Order or as may otherwise be mutually agreed by Seller and Buyer (the "Specifications"). Except for this express warranty, Seller makes no other warranty. Buyer assumes all risk and liability for results obtained by the use of the Products, whether used singly or in combination with other products. ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE), OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, WITH RESPECT TO THE PRODUCTS ARE HEREBY EXCLUDED AND DISCLAIMED, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW. ANY AND ALL REMEDIES ASSOCIATED WITH OR ARISING OUT OF ANY IMPLIED WARRANTIES OR OTHER WARRANTIES THAT ARE DISCLAIMED HEREIN ARE ALSO HEREBY EXCLUDED AND DISCLAIMED.

卖方保证，在交付时其向买方销售的每一产品应在所有重要方面符合在卖方报价中、已接受的订单中规定的适用规格或买卖双方另行约定的适用规格（“规格”）。除本明确保证，卖方不对产品作任何其他保证。买方承担因使用产品（且不论系单独或与其他产品一起使用）所产生的所有风险和责任。在法律允许的范围内，任何和所有其他明示或暗示、根据法律或以其他方式（包括但不限于任何有关适销性、质量或符合特定目的的保证）、或因交易、使用或贸易惯例而产生的与产品有关的陈述与保证均在此被排除和免责。与任何默示保证或在此被免责的其他保证相关或产生的任何和所有救济亦在此被排除和免责。

## **10. Claims; Limitation of Liability**

### **索赔；责任的限制**

Seller's liability and Buyer's remedies for any breach of these Terms or otherwise by Seller in the delivery of any Products is limited, at Seller's option, to either the replacement of the affected Products returned to Seller or to a refund of the purchase price of the affected Product (or if not paid, to a credit in the amount of the purchase price). Failure to give notice of claim within one (1) year from the Delivery Date shall constitute a waiver by Buyer of all claims in respect to such Products. Products shall not be returned to Seller without Seller's written permission and return authorization number. No charges or expenses incident to any claims will be allowed unless approved by an authorized representative of Seller.

No claim will be allowable after the Products have been treated or processed in any manner. The remedy hereby provided shall be the exclusive and sole remedy of Buyer. In no event will Seller be liable for any loss or damages other than as set out in these Terms. EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY SELLER'S GROSS NEGLIGENCE OR FRAUD, (I) SELLER'S LIABILITY IS EXCLUDED FOR LOSS OF PROFIT OR FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES; AND (II) THE ENTIRE LIABILITY OF SELLER TO BUYER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE) IN CONNECTION WITH OR ARISING OUT OF THE SUPPLY, PERFORMANCE OR USE OF THE PRODUCTS SHALL NOT EXCEED THE PRICE PAID TO SELLER BY BUYER FOR THE PRODUCTS WHICH GIVE RISE TO THE CLAIM.

就任何产品的交付，按照卖方的决定，卖方的责任和买方因违反本条款或卖方的其他规定所作的救济限于替换退还给卖方的受影响的产品，或者退还受影响的产品价款（或者，如果尚未付款，则计入购买款项中）。如果自交付日期起一（1）年内未发出索赔通知，则构成买方放弃对相关产品的索赔。未取得卖方书面允许以及返还授权号的，则不应将产品退还给卖方。除非经卖方授权代表批准，否则不能产生与索赔相关的任何费用或开支。不得对经过任何方式处理或加工过的产品进行索赔。此处规定的救济应为买方排他性和唯一的救济。在任何情况下，卖方就本条款规定外的任何损失或损坏不承担责任。除因卖方重大过失或欺诈造成的人身伤亡外，(I)卖方的责任不包括利润损失或间接、附带、特殊或结果性损失或损害；且(II)卖方对买方与供应产品、履行义务、适用产品有关或由其引起的全部责任（无论是合同、侵权（包括过失）、严格责任或其他），不超过买方向卖方就引起索赔的产品支付的价格。

#### **11. Force Majeure**

##### **不可抗力**

In case of failure to perform the Sale Agreement due to a Force Majeure Event, the Seller or the Buyer may be exempted from liabilities in part or in whole depending on the impact of the Force Majeure Event. Either party suffering from the Force Majeure Event shall notify the other party and provide evidence thereof within 7 days after its occurrence and continue to perform the Sale Agreement immediately after the elimination of the Force Majeure Event.

因不可抗力事件不能履行销售协议的，根据不可抗力事件的影响，卖方或买方可部分或者全部免除责任。但遭遇不可抗力事件的一方应在事件发生后 7 日内通知对方并提供书面证明，并在不可抗力事件消除后立即继续履行销售协议。

#### **12. Mitigation of Product Liability**

##### **产品责任的减轻**

In circumstances where the Buyer ascertains, after the Delivery Date, that the delivered Products are in any way defective, then the Buyer shall take all steps necessary to mitigate any loss or damage resulting from such defective Product, regardless of whether any such loss or damage is experienced by the Buyer or any other party.

在交付日期后买方知悉的情况下，买方应当采取所有的必要措施以减轻已经交付的产品因存在任何缺陷而造成的损失或损害，无论买方或他方是否经历过此等损失或损害。

#### **13. Indemnity**

##### **赔偿**

Buyer shall indemnify Seller, its officers, directors, equity holders, affiliates, agents, employees, successors and assigns from all liability and any loss, including (without limitation) reasonable attorney's



fees, arising out of (i) any claim of infringement or misappropriation of any trademark, copyright or other intellectual property or proprietary right of any third party relating to any Product, artwork or other design element requested by Buyer or (ii) the incorporation of any Product with or into any Buyer finished device or good .

买方应就任何责任和任何损失，包括但不限于(i)因产品或任何其他买方指定的作品或设计元素而产生的侵权或滥用任何商标、著作权或任何其他第三方的其他知识产权或专有权利或(ii)将任何产品与买方已完成的设备或产品结合相关之索赔的合理律师费，向卖方、其管理人员、董事、权益持有人、关联方、代理、雇员、继承方及受让方进行赔偿。

#### **14. Technical Advice**

##### **技术建议**

Upon Buyer's request, Seller may furnish Buyer with technical advice or assistance as Seller has available in reference to the use of Products by Buyer. All such technical advice or assistance is given gratis and Seller, in the absence of gross negligence, assumes no obligation or liability for any advice or assistance given or results obtained; all such advice or assistance is given and accepted at Buyer's risk.

经买方要求，如果卖方有可用于买方在使用产品参考的信息，卖方可以向买方提供技术建议或协助。所有该等技术建议或协助的提供均为免费，而且在卖方无重大过失的情况下，卖方就其提供的任何建议或协助或其获得的任何结论不承担任何责任；买方须承担提供和接受所有该等建议或协助的风险。

#### **15. Intellectual Property**

##### **知识产权**

Any patent, trademark, copyright and any other intellectual property rights and proprietary rights developed by the Seller in any Product sold hereunder and its manufacture will be and remain the sole property of the Seller and the Seller may use them for any purpose.

本条款项下销售的任何产品及其生产过程中卖方开发的任何专利、商标、著作权及任何其他知识产权和专有权利将始终为卖方的独有财产，并可将其用于任何目的。

#### **16. Design**

##### **设计**

All structures and designs of and copy on the Products shall be approved by Buyer prior to manufacture. Any errors in design, copy and structure so approved shall be Buyer's responsibility. Changes in copy after approval shall be subject to additional charge. Tool fees payable by Buyer are for the right to have the tools used by Seller for performance of an order; they do not convey title to or right of possession of any tools.

在生产前，产品的所有结构、设计和复制应经买方批准。经买方批准的设计、复制和结构上的任何错误由买方负责。对经批准的复制件的任何修改应另外收费。买方应付的工具费只是为让卖方使用该等工具履行某一订单，而不是转移工具的所有权或占有任何工具。

#### **17. Confidential Information**

##### **保密信息**

(1) Buyer agrees that all information disclosed by Seller pursuant to any Sale Agreement, including (without limitation) that contained in Seller generated drawings or specifications, is proprietary to Seller and will not be used by Buyer for any purpose other than fulfilling the Sale Agreement. Buyer agrees to

protect and keep confidential all trade secrets and other confidential information and data disclosed or furnished by Seller, and to protect the same against disclosure to unauthorized persons. (2) The above obligations regarding use and disclosure do not apply to information and data which Buyer can demonstrate (a) is already in the public domain or later becomes part of the public domain through no fault of Buyer, or (b) is disclosed to Buyer on a nonconfidential basis by a third party having legitimate possession thereof and the independent right to make such disclosure. (3) Buyer agrees to return to Seller or destroy all information and data as requested by Seller at the termination of the Sale Agreement or any other contract which may be entered into between Seller and Buyer at a future date, or in the event that no contract is consummated, at the termination of negotiations between the companies. (4) Any information which is proprietary to Buyer and which is disclosed in the Products or documents furnished under the Sale Agreement shall be deemed to have been disclosed as part of the consideration of the Sale Agreement and Seller shall have full rights to its use as it sees fit.

(1) 买方同意卖方按照销售协议披露的所有信息的所有权属于卖方，包括但不限于卖方提供的图纸或规格中包含的信息和数据，并且，买方不得为完成销售协议之外的任何目的使用该等信息和数据。买方同意保护并保守所有卖方披露和提供的商业秘密和其他保密信息和数据的保密性，并且不向任何未经授权的人员进行披露。(2) 上述有关披露和使用的义务对下列信息和数据不适用，即买方可以证明(a) 已经公开或非因买方过错而成为公开信息一部分的信息和数据；或(b) 由拥有合法占有权且享有独立披露权的第三方在非保密基础上披露给买方的信息和数据。(3) 买方同意，经卖方要求，在销售协议终止或卖方和买方在将来可能签署的任何其它协议终止时，或者如果未能达成合同，则在双方谈判终止时，向卖方返还所有信息和数据，或者销毁该等信息或数据。(4) 买方享有所有权并且在产品或销售协议项下提供之文件中披露的信息应视为已作为销售协议之对价的一部分作出披露，而且在卖方认为适当时卖方有权使用。

## **18. Termination**

### **解除**

In addition to any other rights of termination granted hereunder, Seller shall also have the right to terminate all or any part of any Accepted Order upon written notice to Buyer in the event that Buyer cannot continue its normal business operations, becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors or becomes involved in any liquidation, dissolution, reorganization, or any lawsuit, arbitration or any other legal actions affecting its ability of performance of the Accepted Order.

除了本条款中被授予的解除已接受的订单的任何其他权利外，如果买方无法继续其正常的业务运营、陷入破产或无力偿债的状态，或为债权人的利益而作出概况转让，或涉及任何清算、解散、重组以及诉讼、仲裁等任何其他法律事务，影响买方履行已接受的订单能力的，卖方有权经书面通知买方解除全部或部分已接受的订单。

## **19. Assignment**

### **转让**

Neither Buyer nor Seller shall assign or transfer any rights or obligations under the Sale Agreement without the written consent of the other party. However, Seller may assign its rights and/or obligations under the Sale Agreement to its affiliates. Buyer hereby agrees to such assignment by Seller in advance during performance of the Sale Agreement.

未经另一方书面同意，买方或卖方不得让与或转让销售协议下的任何权利或义务。但是，卖方可以将其销售协议下的权利和/或义务转让给其关联方。买方特此提前同意卖方在履行销售协议期间进行该等转让。

## **20. Nonwaiver**

### **无弃权**

No failure to exercise any right provided under the Sale Agreement or by law constitutes a waiver of such right.

未能行使销售协议下或法律规定的任何权利不构成对该等权利的放弃。

## **21. Severability**

### **可分割性**

If any provision of the Sale Agreement is found by any court or governmental agency to be invalid or illegal, the other provisions of the Sale Agreement shall remain valid and in force.

如果销售协议任何条款经任何法院或政府机构认定无效或不合法，则销售协议其他条款仍应有效。

## **22. Entire Agreement and Amendments**

### **完整协议及修订**

The Sale Agreement constitutes the entire agreement, and supersedes any and all prior agreements, between Seller and Buyer with respect to the Products specified in the relevant Accepted Order(s). These Terms may be amended by Seller pursuant to paragraph 1 of the Terms. The paragraph headings in the Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of this instrument.

销售协议构成卖方和买方之间关于相关已接受的订单中列明之产品的完整协议，并取代任何和所有先前的协议。根据本条款第 1 条之规定，卖方可在任何时候修订本条款。本条款的段落标题仅为方便之目的，并且不应以任何方式影响本文件的含义或解释。

## **23. Governing Law & Language**

### **管辖法律和语言**

These Terms, any Sale Agreement incorporating these Terms and any dispute or claims arising therefrom (“**Dispute**”) shall be governed by and construed and enforced in accordance with the laws of the People’s Republic of China. The U.N. Convention on Contracts for the International Sale of Goods will not apply, if otherwise applicable, to the purchase and sale of Products or to any Sale Agreement incorporating these Terms. Buyer and Seller agree that the appropriate court which has the jurisdiction over the domicile of the Seller will have exclusive jurisdiction to determine any Dispute.

本条款、包含本条款的任何销售协议以及由此产生的任何争议或主张（“**争议**”）应受中国法律管辖并据其为解释和执行。就产品的购买和销售或包含本条款的任何销售协议，联合国国际货物销售合同公约将不适用。买方和卖方同意卖方住所地有管辖权的法院就任何争议的解决享有排他管辖权。

These Terms and Accepted Order are written in both the English and Chinese languages. In the event of any inconsistency between the Chinese language Terms and Accepted Order and the English language Terms and Accepted Order, the Chinese language Terms and Accepted Order shall prevail.

本条款及已接受的订单以中、英文书就。如果中文的条款及已接受的订单和英文的条款及已接受的订单存在任何不一致，以中文的条款及已接受的订单为准。