

销售产品和服务的条款和条件

Terms and Conditions for Sale of Products and Services

注意事项: 产品或服务的销售, 明确以买方同意本条款和条件为前提。对卖方要约的承诺明确包括接受本条款和条件, 卖方明确拒绝任何额外的或不同的条款和条件。任何进厂表也不能构成对本条款和条件的修改, 即使进厂表有卖方代表签字。要求履行工作的定单和卖方履行工作均构成买方对这些条款和条件的同意。除非报价中另有约定, 否则卖方的报价自报价之日起**30**天期满, 并可由卖方在得到买方接受之前进行修改或撤回。

NOTICE: Sale of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.

1. 定义 Definitions

"买方"指卖方在合同项下向其提供产品或服务的实体。

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"合同"指构成买卖双方之间就产品和服务的销售双方所签订的合同协议或买方签署且卖方以书面接受的订单, 以及本条款和条件、卖方的最终报价、约定的工作范围、卖方对定单确认。如有任何冲突, 本条款和条件的效力优先于合同包括的其他文件。

"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"合同价格"指合同中规定的产品或服务的销售价格, 包括根据合同对价格的调整(如果有的话)。

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"危险材料"指有毒或有害物质、危险材料、危险废弃物、危险货品、放射性物质、石油或石油衍生产物或副产品, 或任何受美国安全(美国)或现场所在国家的全国、州、省级或地方法律、条例、命令、指令、法规或其他法律规范管制、控制或列于其中的任何其他化学品、物质、材料或放射物质。

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

"无清偿能力/破产"指一方无清偿能力、为债权人的利益转让、为其或其财产任命了接收人或受托人、或开始或已经开始破产、无清偿能力、解散或清算法下的程序。

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"产品"指在合同项下卖方同意向买方供应的设备、零件、材料、物料、软件和其他货物。

"Products" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

"卖方"指在合同项下提供产品或履行服务的实体。

"Seller" means the entity providing Products or performing Services under the Contract.

"服务"指卖方在合同项下同意向买方履行的服务。

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"现场"指使用产品或履行服务的场所, 不包括卖方履行服务的卖方场所。

"Site" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

"条款和条件"指本"销售产品和服务的条款和条件"。

"Terms and Conditions" means these "Terms and Conditions for Sale of Products and Services", including any relevant addenda pursuant to Article 18, together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

2. 支付 Payment

除非双方另行书面同意, 否则应适用下列支付条件:

2.1 对产品和服务, 买方应在收到卖方发票后**30**天内用美元向卖方支付付款通知要求支付的金额, 而且无权抵销卖方在本合同项下未到期的应付款。如果合同价格小于贰拾伍万(25 万美元), 卖方应在产品发运或完成服务时开具发票。如果合同价格为贰拾伍万(25 万美元)或超过贰拾伍万(25 万美元), 付款进度应为: 产品和服务合同价格的百分之二十五(25%)应在合同签订之日或卖方发出订单确认之日(以两者在先之日为准)开具发票, 并在预定的产品最早发运时间之前或服务完成之时应收到产品合同价格的90%(“分期付款”)。对每个月(或其中的若干天)的逾期未付款项, 买方应按照逾期未付款项的1.5%或者法律允许的最高利率, 二者之中取其较低者, 按月向卖方支付付款迟延的费用。

The following payment terms should be applied unless otherwise agreed by Seller in written:

Buyer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within thirty (30) days from the invoice date. If the Contract Price is less than U.S. Two Hundred Fifty Thousand Dollars (\$250,000), Seller shall issue invoices upon shipment of Products and as Services are performed. If the Contract Price is U.S. Two Hundred Fifty Thousand Dollars (\$250,000) or more, progress payments shall be invoiced starting with twenty-five percent (25%) of the Contract Price for Products and Services upon the earlier of Contract signature or issuance of Seller's order acknowledgement and continuing such that ninety percent (90%) of the Contract Price for Products is received before the earliest scheduled Product shipment and Services are invoiced as performed ("Progress Payments"). For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

2.2 在买方要求时, 买方应自费提供付款担保并保持其有效, 即开立不可撤销的、无条件的即期信用证或银行保函, 允许对发运的产品及完成的服务及取消或终止费用和买方在合同项下应付的所有其他款项, 按比例进行支付(“付款担保”)。该付款担保 (a) 应以卖方能接受的形式并由卖方能接受的一家银行开立或保兑, (b) 可在该可接受的银行或议付银行柜台支付, (c) 应在预定的产品最早发运时间和开始服务之日提前至少六十 (60) 天开立, 并且 (d) 在预定的产品最后发运时间和服务完成时间之后九十 (90) 天内和卖方收到合同规定的最终款项前保持有效。在卖方通知买方应进行与买方合同项下的义务有关的调整后的十(10)日内, 买方应自费相应增加该付款担保金额和/或延长其有效期, 并对付款担保作适当修改。

As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled shipment of Products and commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract

2.3 在收到付款担保之前且该付款担保可执行和有效, 且所有的分期付款已经收到之前, 卖方没有义务开始履行或继续履行其义务。对于晚收到分期付款或卖方接受的付款担保的每一日, 卖方履行义务的进度均相应延期的。在任何时候如果卖方有理由认为买方的财务状况或支付历史不能满足要求以便卖方继续履行义务, 卖方则有权要求买方提前支付全部或部分款项或调整付款安排、要求额外的付款担保、中止或终止合同。

Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify

continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

3. 税和关税 Taxes and Duties

卖方负责承担履行或为本合同规定的工作的费用进行支付而按净收入计征的所有企业税(以下称为“卖方税项”)。买方应负责承担任何政府主管部门就与合同履行规定的工作或就其支付费用有关的而向买方或卖方、其分包商征收的卖方税项之外的、所有到期和应付的、任何性质的税、关税、费用或其他收费(包括但不限于消费税、综合所得税、进口税、财产税、销售税、印花税、流转税、使用税、或增值税, 以及扣缴、损失、罚款、税金附加、利息或与此相关的税)(以下称为“买方税项”)。合同价格不包括任何买方税项。如果买方扣除或代扣代缴了买方税项, 则买方应向卖方支付额外款项, 以使卖方收到不扣除买方税项的全额的合同价格。对于扣除或代扣代缴的税项, 买方应在付款后一个月内向卖方提供有关政府主管部门出具的正式发票。

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract ("Seller Taxes"). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes ("Buyer Taxes"). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

4. 交付、所有权转移、损失的风险、储藏 Deliveries; Title Transfer; Risk of Loss; Storage

4.1 对于不需要牵涉出口的装运, 包括从一个欧盟国家运往另一欧盟国家的情况, 卖方应在其工厂或仓库按FCA条件向买方交付产品(《国际贸易术语解释通则2010版》)。对于出口装运, 卖方应在出口港按FCA条件向买方交付产品(《国际贸易术语解释通则2010版》)。买方应支付交付的费用和花费, 或支付标准的装运费用加收25%给卖方, 允许部分交付。买方可以在交付时间表安排的时间之前提前交付任何或所有的产品。交付时间取决于卖方是否不需中止而及时收到开始进行工作所必需的一切信息。如果交付的产品在数量、种类或价格方面与装运发票或文件上列出的项目不符, 买方应在收到后10日内将此情况通知卖方。

For shipments that do not involve export, including shipments from one European Union ("EU") country to another EU country, Seller shall deliver Products to Buyer FCA Seller's facility or warehouse (Incoterms 2010). For export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2010). Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges plus up to twenty-five (25%) percent. Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. Delivery times are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) days after receipt.

4.2 对于不牵涉出口的装运, 产品的所有权应在第4.1 条规定的交付时转移给买方。对从美国以外的卖方场所或仓库的出口, 产品的所有权应在第4.1 条规定的交付时转移给买方。对从美国出口到另一个国家, 产品的所有权在每批产品离开美国的领土、领海和领空后立即转移给买方。美国领海应按照1982 年《联合国海洋法公约》的规定确定。对其他情况的装运, 在(i)产品出口清关后的出口港或者(ii)每件产品离开发运国的领土、领海和领空后, 买方应有权立即转移给买方, 以二者中较早出现的时间为转移的时间。在买方安排出口或国家间发运的情况下, 买方应向买方提交有关税务和海关机关接受的出口或国家间发运的证据。尽管有前述规定, 对于卖方按本合同提供的任何软件, 卖方仅提供许可, 不转移所有权。对于租赁设备, 所有权始终属于卖方。

For shipments that do not involve export, title to Products shall pass to Buyer upon delivery in accordance with Section 4.1. For export shipments from a Seller facility or warehouse outside the U.S., title shall pass to Buyer upon delivery in accordance with Section 4.1. For shipments from the U.S. to another country, title shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S. The 1982 United Nations Convention of the law of the Sea shall apply to determine the U.S. territorial seas. For all other shipments, title to Products shall pass to Buyer the earlier of (i) the port of export immediately after Products have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the sending country. When Buyer arranges the export or intercommunity shipment, Buyer will provide Seller evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities. Notwithstanding the foregoing, Seller grants only a license, and does not pass title, for any software provided by Seller under this Contract, and title to any leased equipment remains with Seller.

4.3 损失风险应在第4.1 条规定的交付时转移给买方, 但自美国的出口发运, 所有权一经转移, 损失风险即应转移至买方。

Risk of loss shall pass to Buyer upon delivery pursuant to Section 4.1, except that for export shipments from the U.S., risk of loss shall transfer to Buyer upon title passage.

4.4 如果本合同项下待交付的任何产品或在卖方设施维修的任何买方设备已经准备好, 但是由于归因于买方或其他承包商的原因而不能运到买方或不能被买方接收, 则卖方可以把产品或设备运往仓库, 包括生产或维修地的仓库或者约定的货运代理那里。如果卖方将产品或设备存放在仓库, 则应适用以下规定: (i) 如果之前还没有转移所有权和损失风险, 则所有权和损失风险应在此时立即转移给买方, 且视为交货完成; (ii) 交付或装运时应付的款项应立即支付; (iii) 对于卖方在与仓储有关的所有费用和支出, 应由买方在卖方出示付款通知后予以支付; 以及(iv) 当条件允许时, 而且所有按本条文规定到期的费用都支付后, 卖方应使产品维修的设备处于可以交付给买方的状态。If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.

4.5 如果买方设备的维修服务需在卖方的工厂履行, 则买方应负责, 并始终承担该等设备毁损灭失的风险, 除非是因为在卖方的设施中因为卖方的过失造成了设备的损害, 卖方应负责。If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

5. 保证 Warranty

5.1 买方保证: (i) 交付的产品在材料、工艺和所有权方面没有缺陷, 而且(ii)按照共同约定的规格以胜任和勤勉的方式履行服务。

Seller warrants that Products shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

5.2 产品的保证期应在发货后的一(1)年后结束, 但是软件的保证期为交付后九十(90)日。除非合同另有约定, 服务的保证期为服务完成后一(1)年, 但是与软件相关的服务保证期为完成后九十(90)日。上述保证期仅能通过合同进行修正, 或者, 有关特定产品的保证期规定如下:

•Telair 5000/8000/8131, 41,42/9000 系列: 发货后18个月

•Telair T8000 Ventostat: 发货后24个月

Amphenol

Advanced Sensors

* 各品配件: 发货后90天

The warranty for Products shall expire one (1) year from shipment, except that software is warranted for ninety (90) days from delivery. Unless otherwise stated in the Contract, the warranty period for Services shall expire one (1) year after performance of the Service, except that software-related Services are warranted for ninety (90) days. The warranty provided herein may be amended only by Contract or if a product specific warranty is listed below:

- *Telaire 5000/8000/8131, 41,42/9000 Series: 18 Months from shipment
- *Telaire TR8000 Ventostat: 24 Months from shipment
- *Spare Parts: 90 Days from shipment

5.3 如果产品或服务不符合上述保证, 则买方应在保证期结束前及时书面通知卖方。卖方则(i) 自行决定修理或更换有缺陷的零件, 和(ii) 重新履行有缺陷的服务。如果卖方经合理努力不合格产品不能修理或更换, 或不合格服务不能重新履行, 则卖方应将买方已支付的、不合格部分的产品或服务的价款予以退还或留作信用额度。对于卖方按本合同实施的修理、更换或重新履行义务, 不延长其保证期。对于其欲进行的检验缺陷是否存在的检测的标准, 买方应获得卖方的同意。

If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall (i) at its option, repair or replace defective Products and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

5.4 为卖方提供保证救济的目的, 取得缺陷产品(包括购买买方工厂里的系统、结构或其他零件和将其或放回原位)、拆卸缺陷产品、对其进行净化处理、重新安装和将缺陷产品运达卖方以及运回买方的费用均由买方承担。Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of defective Products to Seller and back to Buyer.

5.5 本合同规定的保证和救济以下列条件为前提: (a) 对产品进行妥当储存、安装、使用、操作和维护, (b) 买方保留保证期内操作与维护情况的准确完整的记录并使得卖方能够读取该等记录, 以及(c) 仅在卖方书面授权的情况下对产品或服务进行改动或修复。任何未能满足任何前述前提的情形将使保证无效。卖方对正常的磨损和损耗不负责任。

The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear.

5.6 在相关法律许可的范围内, 本条款对基于产品和服务的故障或缺陷提出的索赔规定了排他性的救济, 无论何时发生这种故障或缺陷, 也无论提起的索赔是基于合同、保证、赔偿、侵权/合同外责任(包括过失)、严格责任或其他。第5条规定的保证是排他性的, 且替代了所有其他书面、口头、默示或法定的担保、条件和保证。本质保条款不包含任何对适销性的保证或条件或适用于特定用途的保证。

To the extent permitted by applicable laws, this Article 5 provides the exclusive remedies for all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.

6. 保密 Confidentiality

6.1 买方和卖方(披露信息的是“披露方”)都可能向对方(接受信息的是“接收方”)提供与本合同有关的“保密信息”。“保密信息”是指(a)在作出书面披露时由披露方书面指定为“保密”或“专有”的信息, 以及(b)由披露方的口头披露之时口头指定为“保密”或“专有”并在作出口头或视觉披露后二十(20)日内以书面确认为“保密”或“专有”的信息。此外, 产品或服务的价格应视为卖方的保密信息。

Seller and Buyer (as to information disclosed, the “Disclosing Party”) may each provide the other party (as to information received, the “Receiving Party”) with Confidential Information in connection with this Contract. “Confidential Information” means (a) information that is designated in writing as “confidential” or “proprietary” by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as “confidential” or “proprietary” by Disclosing Party at the time of oral or visual disclosure and is confirmed to be “confidential” or “proprietary” in writing within twenty (20) days after the oral or visual disclosure. In addition, prices for Products and Services shall be considered Seller's Confidential Information.

6.2 接收方同意: (i) 只在本合同和被许可的产品和服务的使用中使用保密信息, (ii) 采取合理的措施防止保密信息泄露给第三方, 以及(iii) 不向披露方的任何竞争对手披露保密信息。虽有前述限制, 但(a) 卖方可将保密信息披露给其关联机构或与合同有关的分包商; (b) 接收方可将保密信息披露给其审计师; (c) 在有必要的情况下, 买方可将保密信息披露给其贷款方, 以获取或保留其履行本合同项下义务的融资; 和(d) 在披露方事先书面许可的情况下, 接收方可将保密信息披露给任何第三方, 但条件是接收方必须从该等分包商、审计师、贷款方或其他被许可的第三方处获得不将保密信息披露的承诺, 且对任何未经授权的对保密信息的披露, 接收方负全部责任。接收方应在被要求时将保密信息的所有版本返还给披露方将其销毁, 除非合同的某具体条款授权接收方保留某项保密信息。卖方亦可保留买方保密信息的一份副本。

Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

6.3 本第6条项下的义务对下列部分的保密信息不适用, (i) 并非由于接收方、其代表或关联机构的披露, 成为或正在变为公开可得的信息; 或(ii) 接收方通过披露方以外的来源获得的非保密信息, 而且该来源就接收方所知不受披露方要求的保密义务的约束; 或(iii) 是接收方、其代表或关联机构在没有参考保密信息的情况下独立开发的信息; 或(iv) 是由法律或合法的法律程序要求披露的, 但条件是像该等要求或程序的接收方如欲披露, 其应在披露前立即通知披露方并与合法合作对保密信息进行保密。

The obligations under this Article 6 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

6.4 披露方保证其有权披露其披露的信息。未经另一方批准, 买方和卖方不得对外公布合同, 包括本合同的存在。就保密信息的任何单项内容而言, 第6条中规定的限制在披露日之后五(5)年后失效。第6条不取代双方另行签署的任何保密协议或不透露协议。

Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Contract without prior written approval of the other party. As to any

individual item of Confidential Information, the restrictions under this Article 6 shall expire five (5) years after the date of disclosure. Article 6 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

7. 知识产权 Intellectual Property

7.1 对于任何非买方的关联方声称本合同下提供的产品或服务侵犯了美国、欧盟成员国或(与美国或欧盟成员国相对应专利的) 现场所在国家现行有效的专利, 或侵犯了著作权或在现场所在国家注册的商标权的索赔(统称“索赔”) 卖方应为买方抗辩并向买方进行赔偿; 但前提是买方(a)将索赔及时书面通知卖方; (b)不同意承担责任, 并且不采取任何对卖方不利的措施, (c) 全权授权卖方由卖方控制所有的抗辩、和解和妥协谈判; 以及(d) 买方向卖方提供抗辩此类索赔所合理必需的一切资料和协助。

Seller shall defend and indemnify Buyer against any claim by a non-affiliated third party (a “Claim”) alleging that Products or Services furnished under this Contract infringe a patent in effect in the U.S., an EU member state or the country of the Site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of the Site, provided that Buyer (a) promptly notifies Seller in writing of the Claim, (b) makes no admission of liability and does not take any position adverse to Seller, (c) gives Seller sole authority to control defense and settlement of the Claim, and (d) provides Seller with full disclosure and reasonable assistance as required to defend the Claim.

7.2 对基于下列情况提起的索赔, 上述7.1条不适用, 卖方不承担义务或责任: (a) 已经被改变、改动和修改的任何产品和服务; (b) 产品或服务与其他产品或服务组合, 而这种组合正是被声称侵权的基础; (c) 买方没有执行卖方提供的更新, 如果执行更新就可能不会被索赔; 或(d) 未经授权使用产品或服务; 或(e) 按照买方的技术规范制造的产品或服务产生的服务。

Section 7.1 shall not apply and Seller shall have no obligation or liability with respect to any Claim based upon (a) Products or Services that have been modified, or revised, (b) the combination of any Products or Services with other products or services when such combination is a basis of the alleged infringement, (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim, (d) unauthorized use of Products or Services, or (e) Products or Services made or performed to Buyer's specifications.

7.3 若有任何产品或服务或其部分成为索赔的对象, 则卖方可以选择(a) 为买方获得继续使用产品或服务或其任何相适用的权利, (b) 对其进行全部或部分修改或更换使其不构成侵权, 或(c) 在未能执行(a)或(b)时, 收回侵权产品或服务, 并将卖方从侵权产品或服务上收取的合同价款返还。

Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product or Service, or applicable portion thereof, (b) modify or replace it in whole or in part to make it non-infringing, or (c) failing (a) or (b), take back infringing Products or Services and refund the price received by Seller attributable to the infringing Products or Services.

7.4 本第7条说明了卖方对产品或服务侵犯知识产权时承担的单一赔偿责任。

Article 7 states Seller's exclusive liability for intellectual property infringement by Products and Services.

7.5 各方保有合同签订前其拥有的所有保密信息和知识产权的所有权。在履行本合同过程中买卖双方构想、创造的所有新的知识产权(无论独自或含有买方的任何贡献) 应排他性地由卖方拥有。买方同意签署和交付必要的转让文件以实现转让。

Each party shall retain ownership of all Confidential Information and intellectual property which Buyer had prior to the Contract. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

8. 赔偿 Indemnity

如卖方和买方中的任何一方(“赔偿方”) 的与本合同有关的过失造成任何第三方的的人身伤害, 或第三方有形财产的损失, 则该赔偿方应保障卖方和买方中的另一方(“被赔偿方”) 免受第三方提出的任何索赔。如果该伤害或损害是由于买方和卖方共同的过失造成的, 则引起的损失或费用应按照双方的过错的比例来分担。就卖方的赔偿责任而言, 产品和现场均不应视为第三方的财产。

Each of Buyer and Seller (as an “Indemnifying Party”) shall indemnify the other party (as an “Indemnified Party”) from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Products or Site is considered third party property.

9. 可免除责任的事件 Excusable Events

由以下事由直接或间接导致卖方履行义务延误或受阻, 卖方不应承担责任, 亦不应被认为是违反协议义务或违约: 任何卖方合理控制之外的事由、武装冲突、自然灾害、火灾、恐怖主义活动或叛乱、疫病、暴动、或买方或买方供货商或代理人的行为(或不作为)、政府当局的行为(或不作为)、罢工、劳动纠纷、或厂商不履行义务。交付或履行的日期应按相当于因延误而导致损失的时间, 加上克服这种延误所合理必需的时间进行延展。如果卖方的迟延履行是因为买方或买方的承包商或供货商的行为(或不作为)所致, 则卖方还有权对价格和履行时间表进行公平的调整。

Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

10. 终止和中止 Termination and Suspension

10.1 卖方出现下列情况, 买方可终止合同(或合同的任何部分): (i) 破产或者被清算, 或(ii) 实质性违反某项重大义务而未在合同中就此规定救济方式, 但前提是: (a) 买方事先书面通知卖方详述该违约行为和买方终止合同的意图, 以及(b) 卖方在收到这类通知后30天内, 未能开始对上述违约进行纠正并在此后努力实施该补救措施。

Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

10.2 如果买方按照第10.1条的规定终止合同, 则(i) 卖方应向买方支付适用于已终止范围的那部分合同价款与买方已经为另一供应商为该范围合理支付的实际数额之间的差额, 并且(ii) 买方还应向卖方支付(a) 已完成或部分履行的产品的价款, 和(b) 产生的租赁费, 和(c) 已履行的服务的价款。已经履行的服务的价款确定, 适用下列标准。按照各阶段的结果支付适用的价款(对于已完成的阶段), 以及按照卖方当时的标准时间和材料价格计算(如阶段成果尚未完成, 或没有相应的成果阶段表)。

If Buyer terminates the Contract pursuant to Section 10.1, (i) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Contract Price allocable to Products completed, (b) lease fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

10.3 出现下列情况, 卖方可以终止或中止合同(或受影响的合同任何部分) (i) 买方进入无偿债能力/破产; 或(ii) 买方实质性违反本合同, 包括但不限于未能或延迟提供付款担保, 未能支付到期款项或满足付款条件。Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Buyer providing Payment Schedule, making any payment when due, or fulfilling any payment conditions.

10.4 如果合同(或合同的任何部分) 因为上述第10.1条中买方过错的原因而终止, 买方应向卖方支付合同终止的生效日期之前所有完成的产品、产生的租赁费及已履行的服务的价款, 还要加上为卖方因为合同终止而发生的合理费用。对于服务, 该等费用应根据各阶段时间表来(对于已完成的阶段) 和合同中规定的费率(对于未完成的阶段或合同中未明确各成果阶段表); 或, 如合同没有各成果阶段表和/或费率的规定, 则按照卖方当时的标准时间和材料价格来确定。此外, 买方还应支付卖方取消费用, 对于定制产品, 取消费为未完成产品合同价的80%, 对其它产品, 取消费为未完成产品合同价的15%。

If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 10.1, Buyer shall pay Seller for all products completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract Price applicable to uncompleted made-to-order Products and 15% of the Contract Price applicable to all other uncompleted Products.

10.5 如果任何可免除责任的事件(如本合同第9条所述)的持续时间超过一百二十(120)天, 买方或卖方均有权通过提前二十(20)天通知来终止或部分终止本合同。在这种情况下, 买方仍需按照本合同第10.4条的要求向卖方支付相关费用, 但无须支付关于未完成产品的取消费。

Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Article 9) lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 10.4, excluding the cancellation charge for uncompleted Products.

10.6 买方应向卖方支付对于卖方发生的与中止有关的所有合理费用(包括但不限于恢复曾经中止的履行时产生的费用、收取费用时的相关费用、人员遣散/重新招募人员和中止期间的仓储费用)。卖方义务的时间表将延长一段合理的必要时间, 以便克服中止造成的影响。

Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

11. 法律、规章和标准的遵守 Compliance with Laws, Codes and Standards

11.1 卖方应遵守与其生产产品和提供服务相适用的法律。买方应遵守与应用、运行、使用和处置卖方产品和服务相适用的法律。

Seller shall comply with laws applicable to the manufacture of Products and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products and Services

11.2 卖方义务以买方遵守所适用的美国及其他国家贸易管制法律和法规为条件。买方不得对产品进行转运、再出口、转移或支配, 除了是在买方定单上注明的最终目的地国家、和/或买方方示的最终目的地国家里进行上述转运、再出口、转移或支配和将产品转运、再出口、转移或支配到上述国家。

Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

11.3 尽管有其它规定, 买方仍应及时获得法律对在现场合法提供服务或买方履行义务所要求的任何批准、许可、豁免、注册、备案或其它授权, 包括但不限于施工和环境许可、进口许可、环境影响评价和外汇许可, 并使之一直保持有效。例外是买方应获得进行一般业务活动的许可或注册, 以及卖方人员所需需要的签证或工作许可。买方应向卖方提供合理协助来获得上述签证和工作许可。

Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Buyer's obligations, except that Seller shall obtain any license or registration necessary for Seller to generally conduct business and visas or work permits, if any, necessary for Seller's personnel. Buyer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

12. 环境、健康和安全问题 Environmental, Health and Safety Matters

12.1 买方应在现场保持安全的工作环境, 包括但不限于实施有关危险物质、有限风险的进入的程序; 所有(电气的、机械的以及水力驱动的)电源系统的通电与断电均实施安全有效的断电上锁/挂签(LOTO)程序, 包括物理LOTO或双方共同商定的替代方法。

Buyer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.

12.2 买方应及时以书面形式向卖方告知所有适用于现场的有关健康、安全、保安和环境的要求和程序。卖方可不定时地对现场的健康、安全、保安和环境方面的文件、程序和条件实施审查, 但这并不影响或限制买方在本12条下的责任。

Buyer shall timely advise Seller in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures. Without limiting Buyer's responsibilities under Article 12, Seller has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.

12.3 如果卖方合理认为, 人员或者现场的健康、安全或保安正在或倾向于受到安全风险、恐怖行为或威胁、或存在危险物质或潜在暴露于危险物质、或不安全的工作条件的威胁, 则卖方在其享有的其它权利或救济之外可以将其全部或部分人员从现场撤离并中止履行合同的全部或部分, 及/或远程地履行或监督工作。所有该等事项均被视为可免除责任的事项。买方对此撤离应于合理援助。

If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. Any such occurrence shall be considered an excusable event. Buyer shall reasonably assist in any such evacuation.

12.4 买方设备的操作由买方负责。买方不应要求或允许卖方人员在现场操作买方设备。

Operation of Buyer's equipment is the responsibility of Buyer. Buyer shall not require or permit Seller's personnel to operate Buyer's equipment at Site.

12.5 买方应确保卖方的人员在需要时能使用现场的医疗设施和资源。

Buyer will make its Site medical facilities and resources available to Seller personnel who need medical attention.

12.6 卖方不对现场或买方设备的现存条件承担任何责任。买方开始任何现场工作之前, 买方将提供用于识别卖方在履行本合同中可能会遭遇的与买方现场或设备相关的危险物质。买方应向买方披露会影响卖方工作或现场人员的工业卫生和环境监测数据。买方应及时更新该等信息。

Seller has no responsibility or liability for the pre-existing condition of Buyer's equipment or the Site. Prior to Seller starting any work at Site, Buyer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Buyer's equipment or the Site that Seller may encounter while performing under this Contract. Buyer shall disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Buyer shall keep Seller informed of changes in any such conditions.

12.7 卖方应就其所知的以下情况如买方(i) 现场条件(包括但不限于买方的健康和安全管理)与买方披露的条件相比, 发生了重大的变化, 或者(ii) 现场产生了与合同中规定性质的工作固有的常见和普遍认知的条件之间有重大差异的先期未知之物理条件。如果上述何条件增加了卖方履行合同下任何部分工作的成本或所需时间, 合同价格和/或时间表应进行公正的调整。

Seller shall notify Buyer if Seller becomes aware of: (i) conditions at the Site differing materially from those disclosed by Buyer, or (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule shall be made.

12.8 如果卖方在买方的设备中或在现场遇到危险物质需要进行特别处理或处置, 卖方无义务继续进行受到危险情况影响的工作。在这种情况下, 买方应合法地消除危险条件, 以便卖方可以安全地进行合同项下的工作。并且由此导致卖方履行任何部分工作的成本或所需时间增加, 买方应得到对价格和/或时间表进行公正的调整作为补偿。买方应妥善存储、运输和处理卖方在现场工作时引发、产生或生成的所有危险物质。

If Seller encounters Hazardous Materials in Buyer's equipment or at the Site that require special handling or disposal, Seller is not obligated to continue work affected by the hazardous conditions. In such an event, Buyer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Seller's work under the Contract may safely proceed, and Seller shall be entitled to an equitable adjustment of the price and schedule to compensate for any

increase in Seller's cost of, or time required for, performance of any part of the work. Buyer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.

12.9 对于因下列情况引起的或与之有关的任何索赔、损害赔偿、损失、诉讼起因、要求、审判和费用, 买方向卖方及其员工、代表、代理商、分包商进行赔偿, 并使其免于受损, 即如果危险材质现在或曾经(i) 在买方开始工作前就出现在现场或其周边, 或(ii) 未经买方或其雇员、代理、承包商或分包商妥当处理或处置, 或(iii) 是由卖方之外的其他方带到、生成、产生或释放于现场的。

Buyer shall indemnify Seller for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about Buyer's equipment or the Site prior to the commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than Seller.

13. 变更 Changes

13.1 任何一方在任何时候都可以草拟的变更要求之形式提出变更产品或服务的时间表或范围。在双方达成书面协议之前, 卖方没有义务执行变更后的时间表或范围。如果达成协议, 则这些变更将落实为书面的变更文件, 同时对合同价格和/或时间表进行公平的调整。

Each party may at any time propose changes in the schedule or scope of Products or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

13.2 范围、合同价格、时间表以及其他内容应进行公平的调整, 以反映在卖方提案前, 由于买方现场要求和程序, 以及相适应的行业规范、标准或法律法规的变更给卖方带来的额外成本和责任。但对于因为相适应法律法规的变化而导致的卖方的生产或维修设施的一般性的改变, 不应作出上述调整。除非双方另行同意, 这些变更所带来的卖方额外工作的价格应按照卖方所花费的时间和材料费用来计算。

The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's Site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made on account of a general change in Seller's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

13.3 如双方交付的产品带有零件或版本号不同, 或取代了合同中的零件或版本号, 应是是可以接受的, 并且不应视为变更。

It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed in the Contract.

14. 责任的限定 Limitations of Liability

14.1 在相关法律允许的范围内, 卖方对于因合同的签订、履行或违约、使用产品或服务而产生或与之相关的一切索赔承担的全部责任总额不应超过(i) 合同价格, 或者(ii) 在本合同作为某个框架协议或主协议之下的一切, 且买方通过该等框架协议或主协议向卖方发出订购产品或服务的情况下, 不得超过索赔所涉及的特定产品或服务以其为提供或履行之特定订单的最终价格, 或一万美元(10,000美元), 如果该等索赔并非某特定订单的一部分的话。

The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, shall not exceed the (i) Contract Price, or (ii) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and ten thousand US dollars (US \$10,000) for all claims not part of any particular order.

14.2 卖方不承担买方利润或收入的损失、产品损失、有关产品或服务或相关设备之使用方面的损失、业务中断、资本成本、保险成本、重置成本、停工期间损失、额外运营成本、或任何特殊的、后果性的、偶然的、间接的、或惩罚性或警戒的损失, 或买方客户就上述任何损失提出的索赔。

Seller shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.

14.3 在相关法律允许的范围内, 适用的保证期届满后, 卖方责任即行终止。但就该日期届满前买方已经发出通知索赔的, 买方仍可不论本合同的规定, 在诉讼时效届满之前提起诉讼或提出仲裁继续索赔, 但不可任何情况不能超过该保证期届满后一年。

All Seller liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.

14.4 如果卖方提供的任何建议或帮助不是合同项下工作范围之内, 则卖方对此不承担责任。

Seller shall not be liable for advice or assistance that is not required for the work scope under this Contract.

14.5 如果买方向某第三方提供产品或服务或在第三方的设施使用产品或服务, 则买方应(1) 就超越本合同第14条中的限制和排除类规定而由该第三方提出而引发的, 或应向第三方承担的任何及所有责任对卖方进行赔偿、为其抗辩并使其免于损害; 或(2) 要求该第三方同意, 为卖方的利益, 接受本14条的限制。

If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 14, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 14.

14.6 为本第14条的目的, "卖方"一词应指卖方、其关联机构、分包商和任何层级的供货商及其代理人 and 雇员, 无论是个人还是群体。无论某项权利主张是基于合同、保证、赔偿、侵权/合同外责任(包括过代履行)、严格责任还是其它而提出的, 本第14条中的限制和排除类规定均适用。买方和卖方因产品或服务产生或与之相关的权利、义务和救济仅限于本合同中规定的那些权利、义务和救济。本合同中如有任何冲突或不一致的条款, 应以第14条的规定为准, 除非这些条款进一步限制了卖方的责任。

For purposes of this Article 14, the term "Seller" means Seller, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Article 14 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Seller's liability.

15. 法律适用和纠纷解决 Governing Law and Dispute Resolution

15.1 任何因合同产生的或与合同有关的争议, 包括合同中的存续、有效或终止方面的问题, 均应按照本段规定予以解决, 并在可能的情况下通过双方协商予以解决。如若某个争议未能通过协商解决, 则任何一方可在发出书面通知的情况下将该争议提交至各方适当的更高级管理层会议上, 该等会议须在通知发出后二十(20)个工作日内召开。如果该争议未能在上述更高级管理层的会议召开之日三十(30)个工作日或双方可能同意的其它更长期限内得以解决, 则(a)若卖方买方均注册于中华人民共和国(为本条之目的, 不含香港、澳门及台湾), 则任何一方将其提交中国国际经济贸易仲裁委员会, 按照申请仲裁时该会现行有效的仲裁规则进行仲裁, 仲裁庭应有三名仲裁员, 仲裁地为北京, 仲裁裁决是终局的, 对双方均有约束力; (b)若卖方买方中至少有一方注册于中华人民共和国(为本条之目的, 不含香港、澳门及台湾)以外, 则该争议应根据提交仲裁通知时有效的《香港国际仲裁中心机构仲裁规则》, 在香港仲裁解决。仲裁员人数为三名, 仲裁语言为英语。

All disputes arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 15. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, the following process should be followed:

(a) if both the Buyer and the Seller are incorporated in the People's Republic of China (for purpose of this article excluding Hong Kong, Macau and Taiwan), the dispute shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in Beijing in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The number of arbitrators shall be three. The arbitral award is final and binding upon both parties;

(b) if any one or both of the Buyer and the Seller are incorporated outside of the People's Republic of China (for purpose of this article excluding Hong Kong, Macau and Taiwan), the dispute shall be settled by arbitration in Hong Kong under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three. The arbitration proceedings shall be conducted in English.

15.2 合同应适用中华人民共和国法律，按照该法律解释；但是，如果任何事项没有已经颁布的中国法律可以适用，则适用于类似情况下适用的国际法律规则和惯例。如果合同包含产品销售且买卖双方在不同国家，则适用《联合国国际货物销售合同公约》。双方明确同意，在合同的条款和条件与《联合国国际货物销售合同公约》适用的条款不一致时，以合同的条款和条件为准。

This Contract shall be governed by and construed in accordance with the laws of the People's Republic of China. If there is no specific law of the People's Republic of China that is applicable to a certain matter, the international business practice and rules shall apply. If the Contract includes the sale of Products and the Buyer is outside the Seller's country, the United Nations Convention on Contracts for the International Sale of Goods shall apply. The Seller and the Buyer agree and confirm that, in case of discrepancy between these Terms and Conditions and the United Nations Convention on Contracts for the International Sale of Goods, the Terms and Conditions shall prevail.

15.3 尽管有上述条款的规定，各方仍有权在合法情况下随时单方选择在某个具有管辖权的法院，按照本合同的要求，开始进行诉讼或其它程序以寻求临时性或保全措施，禁令，以实施本合同第6条中保密条款和/或第18.1条中的涉核使用的限制，或为了寻求临时性或保全措施。但金钱上的赔偿应仅能通过上述15.1条的方式来寻求。

Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Article 6 and/or the nuclear use restrictions set forth in Section 18.1, or to seek interim or conservatory measures. Monetary damages shall only be available in accordance with Section 15.1.

16. 检查和工厂检测 Inspection and Factory Tests

卖方制造产品时实施的质量控制应符合卖方正常的质量控制制度、程序和惯例。卖方应尽量满足买方的要求，在不延误工作的前提下，并受限于适当的访问限制，见证卖方对产品实施的工厂检测。

Seller will apply its normal quality control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

17. 软件、租赁设备、远程诊断服务、PCB 服务 Software, Leased Equipment, Remote Diagnostic Services, PCB Services

如果卖方向买方提供任何软件，则“软件许可附录”应适用。如果卖方向买方提供卖方设备租赁或相关服务，包括将卖方设备置于买方现场以提供远程服务，则“租赁附录”应适用。如果卖方向买方提供远程诊断服务，则“远程诊断服务附录”应适用。如果卖方向买方提供的任何PCB 服务，则“PCB 服务附录”应适用。如果本条款和条件如与任何按照本第17条适用附录的条款有冲突，则附录的条款应优先适用。

If Seller provides any software to Buyer, the Software License Addendum shall apply. If Seller leases any of Seller's equipment or provides related Services to Buyer, including placing Seller's equipment at Buyer's site to provide remote Services, the Lease Addendum shall apply. If Seller provides remote diagnostic services to Buyer, the Remote Diagnostic Services Addendum shall apply. If Seller provides PCB Services to Buyer, the PCB Services Addendum shall apply. If there is any conflict between these "Terms and Conditions for the Sale of Products and Services and the terms of any addendum incorporated pursuant to this Article 17, the terms of the addendum shall take precedence with respect to the applicable scope.

18. 一般条款 General Clauses

18.1 卖方销售的产品和服务不能被用于与核设施或活动相关的用途。除非有卖方书面同意，否则买方保证它不为此类目的使用、或允许他人使用此类目的使用产品或服务。如果违反该规定，出现任何上述使用情况，则卖方（及其母公司、关联公司、供货商和分包商）不对任何核损害或其他损害、伤害或污染承担责任，且除了卖方享有的权利之外，买方还应就所有此类责任对卖方（及其母公司、关联公司、供货商和分包商）进行赔偿并使其免于受损。卖方对此作出书面同意的前提条件是，双方达成卖方认为可以接受的与核责任有关的保护而制定的特别条款和条件。

Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, without the advance written

consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

18.2 不需经买方同意，卖方即可向其任何关联公司转让或更新其在合同项下的全部或部分权利和义务或将其在本合同项下对应收账款权利转让给任何第三方。买方同意签署为实现卖方的转让或更新可能必需的任何文件。卖方可将工作部分分包给他方，只要卖方保留对其负责。在未经卖方事先书面同意的情况下，买方授予或转让其在合同项下的任何或所有权利和义务的行为是无效的，但卖方不应不合理地拒绝作出该等同意。

Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

18.3 买方投票权发生超过百分之五十（50%）之所有权改变或买方控制权发生任何改变时，买方应立即通知卖方。如果买方未能按此规定行事或卖方反对该等变更，则卖方可（a）终止合同，（b）要求买方提供确保履行的充足证据（包括但不限于付款方面），和/或者（c）就卖方的保密信息制定特别控制措施。

Buyer shall notify Seller immediately upon any change in ownership of more than fifty percent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or (c) put in place special controls regarding Seller's Confidential Information.

18.4 如果发现合同的任何条款是无效和不可执行的，则合同的其他条款不受影响。双方将尽力用一个可以在实质上达到同样的实际和经济效果、且为有效和可执行的新条款取代上述无效或不可执行的条款。

If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

18.5 合同终止或取消后合同附件2及本附件第2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17 和18 条仍然有效。

The following Articles shall survive termination or cancellation of the Contract: Annex 2, and article 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 17 and 18 of this Annex.

18.6 合同代表双方之间达成的完整协议。在本合同之外任何的口头或书面的陈述或保证对双方均无拘束力。买卖双方对于本合同下的产品和服务相关的权利、救济以及责任，均以本合同中规定的权利、救济以及责任为限。除非有双方书面表示同意，否则任何修改、修订、取消或弃权对任何一方均无约束力。

The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.

18.7 除第14 条（责任限制）中的规定以及上述18.1 条（有关核应用的限制）方面的规定以外，本合同是仅为双方的利益，任何第三方均不应有权实施本合同中的任何条款。

Except as provided in Article 14 (Limitations of Liability) and in Section 18.1 (no nuclear use), this Contract is only for the benefit of the parties, and no third party shall have a right to enforce any provision of this Contract.

18.8 本合同可以签署多份副本，共同构成一个协议。

This Contract may be signed in multiple counterparts that together shall constitute one agreement.