



# Sonderhoff (Suzhou) Sealing Systems Co.Ltd. GENERAL TERMS AND CONDITIONS OF SALE

## 胜德(苏州)密封系统有限公司 一般销售条款与条件

Dated April 11<sup>th</sup> 2018/自 2018 年 04 月 11 日起执行

### 1. 义与解释

在解释本销售条款（见下文之定义）时，除非上下文另有要求，下列所有的词语与表达应具有如下定义之意：

**“销售条款/本销售条款”**是指本文的一般销售条款与条件，包含其任何和全部的附件，以及在执行本销售条款与条件后的任何时间由出售方（见下文之定义）自主决定执行的对本销售条款的任何或者全部补充协议或者修订。

**“出售方”**是指“胜德（苏州）密封系统有限公司”，一家根据中华人民共和国法律注册成立的公司，注册地址为：中国苏州工业园区江浦路 75 号，邮编：215126。除非与上下文或者此处定义相抵触或者被其排除，出售方应指代和包含该公司、公司的董事会、代表、管理者、继承人、指定者以及受让人。出售方以下将简称为“一方”。

**“购买方”**是指为制造之目的，或者出于自身业务需要使用产品/服务，或者（视情况而定）为在指定地域内转售产品，而从出售方处购买产品和/或服务的客户/顾客。除非与上下文或者此处定义相抵触或者被其排除，购买方应指代和包含购买方自身、其董事会、代表、管理者、继承人、指定者以及受让人。购买方以下将简称为“一方”。出售方与购买方以下将合称为“双方”。

**“产品”**是指根据具体的购销合同（见下文之定义），由出售方提供，并由购买方自担费用和以自身名义从出售方处购买的产品。

**“服务”**是指根据具体的购销合同（见下文之定义），由出售方提供，并由购买方自担费用和以其自身名义从出售方处购买的服务，无论该服务是否与销售的产品单独或同时提供。

**“购销合同”或“本购销合同”**是指双方之间就产品和/或服务的销售与购买所达成的所有合同的总称，包括订单确认函及其指明的其它相关文件（包括，但不限于：购买订单、本销售条款以及双方就相同标的达成的其它合同）。购销合同应自本销售条款项下定义的订单确认函生效之日起生效。

**“销售发票”**是指出售方在出具正式的中国发票前，于发货时向购买方提供的发票。销售发票中规定了产品名称、价格、数量、交付条款以及付款条件。开票价格

（见下文之定义）应附加产品销售有关的增值税额，并与增值税额一起在销售发票中标明；

### 1. Definitions and Interpretations

In the interpretation of this Agreement (as hereinafter defined) the words and expressions set out below must have the meaning attributed to them below unless the context requires otherwise:

**“the/this Agreement”** refers to the present General Terms and Conditions of Sale including any and all appendixes, as well as any or all duly signed addenda or amendments to the present General Terms and Conditions of Sale which may be conducted by SELLER (as hereinafter defined), at its sole discretion, at any given time following the execution of the present General Terms and Conditions of Sale.

**“SELLER”** means “Sonderhoff (Suzhou) Sealing Systems Co. Ltd.”, a company incorporated under the laws of PRC, having its registered office at 75 Jiangpu Road, Suzhou Industrial Park, 215126 Suzhou, PRC, which expression, unless excluded by or repugnant to the context or meaning hereof, shall mean and include this company, its Board of Directors, representatives, administrators, successors, nominees and assigns. SELLER shall hereinafter be referred to as a “Party”.

**“BUYER”** means the client /customer who buys the Products and/or Services from SELLER for the purpose of manufacturing or using the Products/Services for its own professional purposes, or, as the case may be, for the purpose of reselling the Products on the designated territory, which expression, unless excluded by or repugnant to the context or meaning hereof, shall mean and include the BUYER itself, its Board of Directors, representatives, administrators, successors, nominees and assigns. BUYER shall hereinafter be referred to as a “Party”. SELLER and BUYER shall hereinafter be referred to collectively as the “Parties”.

**“Products”** means products supplied by SELLER under the terms of a specific Sale Contract (as hereinafter defined), and to be purchased by BUYER from SELLER in its own name and for its own account.

**“Services”** refers to services provided by SELLER, either separately from sale of Products or together with sale of Products, under the terms of a specific Sale Contract (as hereinafter defined), and to be purchased by BUYER from SELLER in its own name and for its own account.

**“Sale Contract” or “the Contract”** is a collective name for agreements reached between the Parties with respect to the sale and purchase of the Products and/or Services as they are agreed in the Order Confirmation and other documents referred to in it (including but not limited to, Purchase Order, this Agreement and other contracts between the Parties with respect to the same subject matter). The Contract shall become effective upon the Order Confirmation's becoming effective as defined in the present Agreement;

**“Sale Invoice”** means an invoice issued by SELLER to BUYER at the time of delivery but prior to issuing of a formal Chinese fapiao, indicating the product names, price, quantity, delivery clause, and payment



“**要约**”是指出售方向购买方发出的一份书面文件，该文件表明产品的名称和描述、包装、每千克的单价、订购的产品数量、交付条款、交付时间以及付款条件。出售方向购买方发出要约时，同时提供本销售条款，以供购买方参考；

“**购买订单**”是指购买方在收到出售方发出的要约后，向出售方发出的一份书面文件，该文件在要约的基础上，详细规定了其订购的产品名称、数量、适用的价格、要求的交付日期以及其它特殊要求；

“**订单确认函**”是指由出售方签字、盖章后向购买方发出的一份书面文件，表示出售方同意购买方下达的购买订单中的条款与条件。购买方在收到该订单确认函后，应以下列方式表明其完全且不可撤销地接受订单确认函中的所有条款与条件：即在收到出售方发出的订单确认函的两（2）天内，在此确认函上合法签字/盖章并寄回给出售方；或者在前述相同期限内，未能就订单确认函的任何内容以书面形式向出售方明确地提出任何反对。此订单确认函仅在出售方合法签署/盖章，并经购买方完全接受后，方才生效并对双方有法律约束力；

“**交付日期**”是指在出售方的仓库装载产品的日期；

“**开票价格**”是指双方在购销合同中同意的产品价格。除非双方另有书面约定，开

票价格不包含任何税金、税收、关税、运费或者类似开支，前述所有费用应由购买方单独承担；

“**PRC**”或者“**中国**”是指中华人民共和国，在本销售条款与条件项下不包含香港特别行政区、澳门特别行政区以及台湾地区。

“**出售方的商标**”是指由出售方或其在中国或世界其它地方的任一关联方开发或已经开发，并使用的所有商标、商号、服务标记、广告语、设计、独特的广告宣传、标签、标志以及其它具有商品识别性质的符号及其中文翻译（或音译、字译），无论是否已经注册或者正在注册中。

“**知识产权**”是指由出售方或者出售方的关联方、或者其供应商享有的，附属或者包含在产品中的任何专利、商标、版权、商业秘密、文件或者任何其它智力和/或专有的财产和信息，无论是以原始或者任何衍生作品的形式，并且不论是否在中国或者其它地方注册。

“**关联方**”是指直接或者间接地控制某一实体、或者被该实体控制、或者与该实体受到共同控制的任何自然人、公司或者其它商业实体。为避免疑义，“控制”是指通过具有投票权的股份、合同或者其它形式，能够对公司或者其它实体的管理和决策做出直接指示或者产生决定性影响的权力。

## 2. 范围

当前的销售条款适用于出售方与购买方的所有业务关系。特别是，无论是否在具体

交易中明确说明，出售方与销售方之间的所有交易应排它性地严格遵守本销售条款。购买方对由其制定的购买条件

conditions. Value-added tax imposed on the sale of Products shall be in addition to Invoiced Price and shall be included together with Invoiced Price in the price indicated in the Sale Invoice;

“**Offer**” means a written document issued by SELLER to BUYER indicating the Product name & description, packing, unit price per kg, purchase order quantity, delivery term and time, and payment conditions. The present Agreement will be sent together with the Offer to BUYER for reference;

“**Purchase Order**” means a written document issued by BUYER to SELLER, further to receipt of the Offer from SELLER and based on the Offer, detailing the ordered Product names, required quantity, applicable price, requested delivery date and any other special requirements;

“**Order Confirmation**” means a written document signed and chopped by SELLER to BUYER for SELLER's confirmation on the terms and conditions of the Purchase Order placed by BUYER, and then BUYER shall fully and irrevocably accept all terms and conditions of the Order Confirmation, either by returning a duly signed/chopped copy of the Order Confirmation to SELLER within two (2) days from receipt of the same from SELLER or by failing to contradict expressly and in writing the Order Confirmation within the same period. The Order Confirmation shall only become effective and binding upon the Parties after it has been duly signed /chopped by SELLER and fully accepted by BUYER;

“**Delivery Date**” is the date of loading of the Products in the warehouse of SELLER;

“**Invoiced Price**” is SELLER's price agreed in the Sale Contract between the Parties, excluding duty, tariffs, taxes, freight costs or similar charges, which shall be solely borne by BUYER, unless otherwise agreed in writing between the Parties.

“**PRC**” or “**China**” in the present Agreement refers to the People's Republic of China, exclusive of Hong Kong Special Administrative Region, Macau Special Administrative Region, and Taiwan.

“**SELLER's Trademarks**” means those trademarks, trade names, service marks, slogans, designs, distinctive advertising, labels, logos, and other trade-identifying symbols, including all Chinese translations or transliterations of the same, as are or have been developed and used by SELLER or any of its Affiliates in the PRC or anywhere in the world, whether or not registered or subject to registration.

“**Intellectual Property Rights**” means any of patents, Trademarks, copyrights, trade secrets, documentation and any other intellectual and/or proprietary property and information pertaining to or included with the Products, whether in original form or any derivative works owned by SELLER or SELLER's Affiliates, or by its suppliers, whether or not registered in the PRC or elsewhere.

“**Affiliates**” shall mean, with respect to a party, any individual, corporation or other business entity that, either directly or indirectly, controls such party, is controlled by such party, or is under common control with such party. For the avoidance of doubt, “control” means possession of the power to direct, or cause the direction of the management and policies of a corporation or other entity whether through the ownership of voting securities, by contract or otherwise.

## 2. SCOPE

The present Agreement shall apply to all business relations of SELLER with BUYER. All transactions between SELLER and BUYER are exclusively and strictly subject to the present Agreement, whether expressly referring to it in a specific case or not. References by any BUYER to its conditions of purchase shall be null and void and are hereby expressly rejected. This Agreement also applies if SELLER does not

的任何引用均为无效，出售方在此明确排除其适用。即使出售方明知购买方制定的购买条件与本销售条款相违背、冲突或者补充，但出售方并未对前述购买条件提出明确反对或者仍然无条件地向购买方提供产品和/或服务，则在此情形下，本销售条款仍然适用。任何以往的实践、行业标准、交易习惯或者商业惯例均不得变更或者补充本销售条款中的任何规定。对本销售条款的任何修正，均应获得出售方明确的书面批准。

### 3. 要约与接受

3.1 出售方为销售产品和/或服务而发出的要约中的价格、数量及交付时间对出售方不具有约束力，并仅由出售方有权进行修订。购买方下达的未规定出售方确认期限的购买订单，应至少在三（3）天内对购买方具有约束力。

3.2 购买方下达的购买订单仅在出售方在订单确认函上合法签署和盖章，并经购买方完全接受后，方才生效。在该订单确认函生效后，若购买方对购买订单进行任何变更或者取消，应获得出售方的批准，并且出售方有可能对其批准的购买订单的变更或者取消，要求购买方支付额外的费用或者赔偿金。

3.3 若订单确认函或者其中提及的任何文件与双方之前达成的任何约定有任何变更，购买方应在收到订单确认函后的合理期间内（最晚于两（2）日内）对此种变更提出以书面形式提出明确反对，否则应视为购买方已完全接受此种变更。若购买方在订单确认函上签字/盖章或者在其收到订单确认函的两（2）日内，未以书面形式明确提出任何反对的，则应视为购买方完全且不可撤销地接受订单确认函和其中提及的任何文件项下的所有条款与条件。但是，在任何情况下，购买方均不得反对本销售条款的适用性和有效性。

### 4. 样品与目录

4.1 就出售方向购买方提供的所有出售方的手册、目录、价格单或宣传材料、或任何样品中的任何数据、量度、说明、描述、例证、照片、图样或者其它要素，出售方不保证其准确性，并仅用于对产品进行概括性地描述或描绘。除非在双方合法签署的任何书面合同或者协议中明确规定或者包含，否则不得将其作为出售方与购买方达成的任何合同或协议的一部分。

### 5. 价格

5.1 在订单确认函生效日有效的出售方价格应作为开票价格。开票价格不得包含税金、关税、运费或者其它类似费用，除非另有书面约定，前述费用应由购买方承担。特别是，购买方应单独负责承担增值税，该增值税应附加在开票价格上，并与开票价格一起在销售发票中标明。

5.2 在订单确认函的生效日与交付日的期间内，若出售方的价格大幅上涨，则应以交付日有效的出售方价格为准。在此情形下，购买方有权在出售方公布价格大幅上涨后的十五（15）日内解除购销合同，并无需承担进一步的责任。

5.3 若可适用，应由出售方最终决定与价格计算有关的产品重量。

explicitly oppose any conditions of purchase provided by BUYER or provides Products and/or Services unconditionally while being aware of deviating, opposing or supplementing conditions of purchase provided by BUYER. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein. Any modification to this Agreement requires the express written approval of SELLER.

### 3. OFFER AND ACCEPTANCE

3.1 Offers to sell Products and/or Services by SELLER are non-binding with respect to price, quantity, delivery time and subject to modification solely by SELLER. Purchase Orders not containing a deadline for confirmation shall bind the BUYER for at least three (3) days.

3.2 Purchase Orders from BUYER shall only become binding upon the Parties after an Order Confirmation has been signed and duly chopped by SELLER and fully accepted by BUYER. After its confirmation, any and all changes or cancellations made to a Purchase Order shall be subject to approval of SELLER and moreover an additional fee or compensation shall be paid by BUYER for any approved change or cancellation.

3.3 Any deviations in the Order Confirmation or the documents referred to in it, from any prior declarations by the Parties shall be considered as irrevocably accepted if BUYER does not contradict the deviation in question expressly and in writing, within a reasonable period of time, latest within two (2) days from the receipt of the Order Confirmation. After the Order Confirmation is signed and chopped by BUYER or is not contradicted expressly and in writing by BUYER within two (2) days from the receipt of the same, all terms and conditions of the Order Confirmation and of the documents referred to in it shall be deemed as fully and irrevocably accepted by BUYER. In any case the BUYER shall have no right to contradict the applicability and validity of the present Agreement.

### 4. SAMPLES AND CATALOGUES

Any figures, measurements, statements, descriptions, illustrations, photographs, drawings, or any other matters contained in SELLER's brochures, catalogs, price lists, or advertising literature, or any samples provided to BUYER by SELLER are not guaranteed to be accurate and are intended merely to represent a general description or depiction of the Products and shall not form part of any contract or agreement between SELLER and BUYER, unless expressly specified and incorporated into any written contract or agreement duly signed by and between the Parties.

### 5. PRICES

5.1 SELLER'S price valid on the effective date of the Order Confirmation shall be the Invoiced Price. The Invoiced Price does not include duty, tariffs, taxes, freight costs or similar charges, which shall be borne by BUYER, unless otherwise agreed in writing. In particular, the value-added tax, which is solely for BUYER's account, shall be in addition to the Invoiced Price and shall be included together with the Invoiced Price in the price indicated in the Sale Invoice.

5.2 Should there be a significant increase in SELLER'S prices in the period between the effective date of the Order Confirmation and delivery, then the prices valid on the date of delivery shall be applied. In the case of such a significant increase in prices, BUYER may terminate the Sale Contract without further obligation within fifteen (15) days after the announcement of such significant price increase.

5.3 If applicable, the final determination of weight in connection with the calculation of the price shall be performed by the SELLER.





## 6. 支付

6.1 出售方的销售发票在发出后的三十（30）日内到期应付，且其规定的价格不得扣除、扣留或者抵消，并应以人民币支付。双方之间达成的所有有关价格折扣的协议应书面做出，并经出售方签署。在出售方从购买方处收到销售发票中规定的全部款项（以立即可得资金形式）后，支付视为完成。出售方应在购买方支付所有款项后，立即向其出具正式的中国发票。

6.2 出售方有权用购买方支付的款项抵扣最先到期但购买方未付的销售发票中的款项、任何应计的违约利息以及开支，并按下列顺序进行抵扣：开支、违约利息和到期未付的销售发票款项。

6.3 购买方在销售发票到期之日未支付其规定款项的行为，构成对本销售条款的违约。

6.4 若根据出售方自主判断，购买方履行购销合同的经济能力减弱，则除其它权利或救济外，出售方有权(i)暂停任何产品交付和/或服务，并且(ii)规定一段合理期间要求购买方提前支付全部或部分款项。若购买方明确拒绝支付或在前述期间内仍未支付的，出售方有权解除购销合同，并向购买方提出索赔。

6.5 若购买方未能履行支付义务，出售方有权：按照7%的年利率，就所有未付款项自该笔款项到期日后的第一天起征收滞纳金，或者要求其支付人民币 1,000(壹仟)元的违约金（以高者为准）。若此种违约持续超过七（7）天的，出售方于第八（8）日向购买方发出支付提醒，并每周提醒一次，并且出售方向购买方收取每次人民币 100（壹佰）元的提醒服务费。若购买方明确拒绝支付，或者在出售方最后支付提醒中规定的期限内购买方仍未支付拖欠款项的，出售方有权解除购销合同，并向购买方提出索赔。

6.6 购买方仅能抵消无争议的款项/索赔或者已由法院/仲裁庭在管辖权内做出最终判决的索赔。

## 7. 交付

7.1 交付应严格遵守适用的订单确认函中的交付条款的规定与要求。

7.2 除非双方另有书面约定，出售方的所有价格均为在出售方的主要营业地或者（视情况而定）装船地的 EXW 工厂交货价（不含包装和装卸费用）。前述术语应根据 2000 年国际商会《国际贸易术语通则》进行解释。

7.3 除非另有书面规定，产品的包装应为出售方的标准包装。前述标准包装所需的费用已包含在开票价格中。

7.4 出售方应尽量准时交付产品。但是，所有约定的交付日均是以完成生产并备运为前提的，仅代表出售方的最佳预期。出售方有权以向购买方发出通知的方式变更交付日，但出售方与购买方在此期形下应在诚信善意的基础上协商确定有可能采取的且双方均满意的合理措施。除非出售方交付延迟二十一（21）天以上且无任何正当理由，出

## 6. PAYMENT

6.1 SELLER'S Sale Invoices are due and payable within thirty (30) days after the issuance date of such Sale Invoices without any deductions, hold back or offset, and payments shall be made in RMB. All agreements between the parties concerning cash discounts must be in a writing signed by SELLER. Payment shall be considered complete when SELLER receives from BUYER the full amount indicated in the Sale Invoice in readily available funds. A formal Chinese fapiao will be issued by SELLER to BUYER immediately after full payment by BUYER.

6.2 SELLER reserves the right to use payments for the settlement of the oldest due Sale Invoice items plus any accrued default interest and costs and such payments shall be applied in the following order: costs, interest and outstanding balance.

6.3 The non-payment of the price on the Sale Invoice due date shall be a default under this Agreement.

6.4 If in the sole judgment of SELLER, it becomes evident that BUYER's financial ability to perform under this Agreement is diminished, then SELLER shall have the right, among any other right or remedy, to (i) suspend any delivery and/or Services, and (ii) fix a reasonable time limit for BUYER to perform full or partial advance payment. If BUYER expressly declines this or the time limit expires without required payment, SELLER shall have the right to terminate the Sale Contract and claim damages.

6.5 In the event of a payment default by BUYER, SELLER shall be entitled to receive interest on the defaulted payment at a rate equal to seven percent (7%) per annum of the defaulted amount as of the first day following the payment due date or a penalty fee of RMB 1,000 (one thousand Renminbi) for such defaulted payment, whichever is higher. If such payment default lasts more than seven (7) days, SELLER will issue to BUYER a reminding of payment once a week as of the eighth (8<sup>th</sup>) day and will charge BUYER reminding service fee of RMB 100 (one hundred Renminbi) per reminding. If BUYER expressly declines the defaulted payment or the time limit required by SELLER in its last reminding of payment expires without required payment, SELLER may terminate the Sale Contract and claim damages.

6.6 BUYER may only offset claims which are undisputed or have been finally determined by a court of law or arbitral panel acting with proper jurisdiction.

## 7. DELIVERY

7.1 Delivery shall be in accordance with the terms and conditions of the delivery clause of the applicable Order Confirmation.

7.2 SELLER's price for all Products is EXW (ex works) SELLER's principal place of business or the location of shipment (excluding packing and loading), whichever is applicable, unless otherwise agreed upon in writing. This term shall be construed in accordance with 2000 ICC Incoterms.

7.3 Unless otherwise specified in writing, packing shall be SELLER'S standard packing. The cost of SELLER's standard packing for the Products is included in the Invoiced Price.

7.4 SELLER shall endeavor to punctually deliver the Products, provided, however, all specified Delivery Dates refer to the completion of manufacture and availability for shipment and merely represent SELLER'S best estimates. SELLER reserves the right to modify the delivery dates with notice to BUYER and SELLER and BUYER shall then consult in good faith on any reasonable measures satisfactory to both parties which might be taken. Claims for compensation for change in delivery dates cannot be



售方不承担购买方就变更交付日而产生的任何责任，且不承担由此提出的任何索赔。此外，购买方确认，出售方履行本合同项下的交付义务取决于出售方的供应商正确和准时地供货。

7.5 购买方保证在下列情形下，不得改变船运的航线：  
(a)改变航线违反是任何可适用的法律的；(b)为了转售和/或转让给任何第三方的，出售方书面批准的除外；或者  
(c)运往中国（不含香港、台湾和澳门）境外或者为在境外使用的，出售方书面批准的除外。若出售方批准改变船运航线的，购买方保证遵守中国所有可适用的法律、限制和法规的规定。

## 8. 船运

8.1 出售方保留选择船运路线和运输方式的权利。因购买方的特殊运输要求而产生的额外开支应由其自身承担。此外，若双方未在先同意运费已付的交付方式，购买方应负责支付销售发票出单后上涨的运费率、因绕航可能产生的额外开支、仓储费用等。

8.2 产品的所有权自产品交付至承运人时起转移给购买方。

8.3 就运输过程中产生的损失，购买方应直接向承运人提起索赔，并不得向出售方追索前述损失。在 EXW 术语下，购买方自主选择承运人和保险人并承担相应费用。除非另有书面约定，购买方应负责遵守和履行与运输、仓储和产品使用有关的所有法律和官方规定。

8.4 若在出售方向购买方发出装船通知后的七(7)天内，因任何出售方合理控制之外的原因（包括购买方未能下达装船指示），产品仍未能被装船的，出售方有权将产品存放在其仓库、或储藏设施、或出售方所在地，由此而产生的一切风险与开支（包括但不限于，所有装卸、运输和仓储费用）应完全由购买方承担。若购买方超过十四(14)天仍未装运产品的，除购销合同和可适用的法律所赋予出售方的其它权利和救济外，出售方有权在向购买方发出通知后立即解除购销合同，并向其提起索赔。

## 9. 不可抗力

9.1 本合同任何一方对火灾、罢工、停工、禁令、政府干预或者受影响方合理控制之外的任何其它行为或者原因而引起的任何损失、损害、交付延迟或者未能交付，不承担任何责任。

9.2 若根据第 9.1 条列明的任何原因，产品的延迟交付或者接受超过九十(90)天的，任何一方均可在发出通知后立即取消具体的购销合同，并解除另一方的任何进一步义务。本合同任何一方就解除购销合同而对另一方产生的或者有关的所有费用、开支、损害、损失和责任不承担任何责任。

9.3 出售方保留在不可抗力事件发生时，自由决定以任何合适的方式，将产品公平分配给其内部和外部客户的权利。

9.4 出售方无义务购买或以其它方式获得任何因不可抗力事件而无法供应给购买方的产品。

entertained, and no compensation shall be provided by SELLER, unless the delivery exceeds twenty-one (21) days without any reasonable justification. BUYER also acknowledges that SELLER'S performance herein is subject to correct and punctual supply of SELLER by its suppliers.

7.5 BUYER warrants there will be no diversion of any shipment that is (a) contrary to any applicable law, (b) for resale and/or transfer to any third party, unless approved in writing by SELLER, or (c) for shipment or use outside of the PR. China (exclusive of Hong Kong, Taiwan and Macao), unless approved in writing by SELLER, and if so approved, BUYER warrants it will comply with all applicable laws, restrictions and regulations of the PR. China.

## 8. SHIPPING

8.1 SELLER reserves the right to choose the shipping route and the mode of transport. Additional costs resulting from special shipping requests by BUYER shall be for BUYER'S account. In addition, BUYER shall be responsible for the payment of increases in freight rates, possible additional costs for diversion, storage costs etc. which occur after the Sales Invoice has been issued, insofar as freight-paid delivery has not previously been agreed upon by the parties.

8.2 Title to the Products shall pass to BUYER upon delivery to carrier.

8.3 BUYER shall assert claims arising from damages in transit directly against the carrier and shall have no recourse against SELLER for such damages. Under the term of EXW (ex works) the choice of carrier and insurances shall be at BUYER'S discretion and expense. Unless otherwise agreed in writing, BUYER shall be responsible for the observation of legal and official regulations relating to the transportation, storage and use of the Products.

8.4 If the Products are not shipped within seven (7) days after notification to the BUYER that they are ready for shipping, for any reason beyond SELLER's reasonable control, including the BUYER's failure to give shipping instructions, SELLER may store the Products at the BUYER's sole risk and expenses in a warehouse or storage facility or upon SELLER's premises and the BUYER shall pay all handling, transportation and storage costs as of the eighth (8<sup>th</sup>) day after notification to BUYER. If BUYER fails to ship the Products for more than fourteen (14) days, SELLER has the right, among other rights and remedies available hereunder or at law, to terminate the Sale Contract upon a written notice to BUYER and claim damages.

## 9. FORCE MAJEURE

9.1 Neither party shall be held responsible for any loss, damage, delay or lack of delivery arising from fire; strikes, lockouts, injunction, governmental intervention or any other act or force beyond the affected party's reasonable control.

9.2 If, as a result of any of the disruptions listed in Section 9.1 above, the delivery or acceptance of the Product is delayed by more than ninety (90) days, either party may upon notice cancel the applicable Sales Contract and terminate any further obligation to the other party. No party shall be responsible for any costs, expenses, damages, losses and liabilities whatsoever suffered or incurred by the other party as a consequence of or in connection with the sales contract being terminated.

9.3 SELLER reserves the right to allocate and fairly apportion Product(s) among its internal and external customers during force majeure events in any manner SELLER, in its sole discretion, deems appropriate.

9.4 SELLER shall have no obligation to acquire by purchase or otherwise any Product(s) that SELLER is unable to supply to BUYER due to force majeure events.

## 10. 有限的质保义务

10.1 出售方保证：自交付日起的[六（6）个月]内，产品不会出现任何材料和工艺缺陷。出售方的前述质保义务仅限于对那些在正当使用和维护的前提下仍被证明存在材料或工艺缺陷的产品进行打折、维修或者更换。前述打折、修理或更换是本销售条款项下出售方的唯一义务和购买方的唯一救济，且须同时满足下列条件：(a) 购买方应在收到产品后的五(5)日内对产品进行验收；(b) 在购买方发现任何缺陷后的五(5)日内保证出售方收到有关此缺陷的书面通知；并且(c) 若出售方要求，购买方应退回此种缺陷产品。自发现缺陷之日起，未经出售方事先以书面形式明确同意，购买方不得对缺陷产品进行任何销售、处理或者加工，否则就缺陷产品提起的购买方的所有主张均为无效。修理或更换后的产品应在原产品剩余的质保期内享受质保。若出售方要求，购买方应立即提供缺陷产品或者其它证据，并允许出售方代表检查该缺陷产品。购买方提出产品缺陷的主张不代表可以免除其付款义务。购买方未经出售方事先书面同意，不得退回任何缺陷产品，并且，购买方同意赔偿出售方因其未经出售方授权而退回缺陷产品所产生的所有开支与费用。出售方接收或者检验退回的缺陷产品的行为不得被视为出售方对该缺陷的认可。购买方应在其能够合理预期的范围内，与出售方合作检验和消除产品的缺陷。若出售方在检验后不认可此缺陷，购买方向出售方赔偿与检验有关的所有开支。

10.2 上述第 10.1 条规定的出售方的质保义务不适用于下列任何一种情形：(a) 产品的正常损耗；(b) 产品的生命周期少于出售方在上述第 10.1 条做出的六（6）个月的质保义务期限的。在此情形下，应适用规定在这些产品的技术/安全数据表或者机器操作手册和/或产品包装上的具体质保期；或者(c)因购买方违反产品的说明书、技术数据表、操作手册、材料安全数据表或其它指示，疏忽或者错误使用、加工、保养、储藏或者装卸产品，而导致产品受到损害。

10.3 出售方或者出售方的代理人做出的有关产品的使用、安装或者适用性的任何建议不得视为出售方做出的保证，除非前述保证由出售方书面确认。

10.4 购买方应承担因其错误使用产品而产生的所有风险。

10.5 本条规定的出售方的质保义务应替代出售方做出的所有其它明示或默示、书面或口头、法定或其它方式的保证，包括，但不限于：出于特定目的而做出的适销性和适当性的默示保证；就适用或使用、非侵权与所有权方面做出的默示保证；因已经明确排除的交易习惯或商业惯例而做出的任何保证；以及出售方任何和所有的其它责任或义务。

## 11. 数量不符

11.1 购买方应在收到产品后的五(5)日内检验产品，若有任何数量不符的情形，应立即书面通知出售方，否则，产品将视为被购买方不可撤销地接受，购买方不得再提起任

## 10. LIMITED WARRANTIES

10.1 SELLER warrants that the Products, if applicable, shall be free from defects in material and workmanship for a period of [six (6) months] from the date of delivery. SELLER's obligations under the aforesaid warranty shall be discounting, repairing or replacing the Products, which if properly used and maintained, prove defective in material or workmanship. Such discount, repair or replacement shall be SELLER's sole obligation and BUYER's sole remedy hereunder and shall be conditioned upon (a) BUYER'S inspection of the Products within five (5) days of receipt by BUYER, (b) SELLER's receipt of written notice of any alleged defect within five (5) days after its discovery, and (c) at SELLER'S option, return of such defective Products. From the time of detection of the defects, any sale, treatment or processing of the Products is forbidden without SELLER's prior express written consent, otherwise all claims of the alleged defects shall be voided. Any Product repaired or replaced pursuant to this warranty will be warranted for the remainder of the original warranty period. Upon SELLER's request, BUYER shall promptly provide samples and other evidence of, and shall allow SELLER'S representative's access to the alleged defective Products. Claiming an alleged defect does not relieve BUYER of any of its payment obligation to SELLER. BUYER must not return any alleged defective Products without SELLER'S prior written consent. BUYER agrees to reimburse SELLER for all costs and expenses associated with any return of Products unauthorized by SELLER. Receipt or inspection of returned Products by SELLER shall not be deemed an admission of any alleged defect. Buyer shall cooperate with SELLER in the verification and removal of defects to the extent such cooperation can be reasonably expected from BUYER and shall especially provide information. If after verification the SELLER does not accept the defects alleged, the BUYER shall indemnify the SELLER for all costs connected with the verification.

10.2 SELLER'S obligations under Section 10.1 above shall not apply to any part of the Products sold hereunder, which (a) are consumed by normal wear and tear, (b) have a normal life time inherently shorter than the herein stated warranty period. In such case, the specific warranty period for the relevant Product, as it is eventually specified or restricted in technical/safety datasheet or machine manual and/or on the packaging of the relevant Product, shall apply, or (c) have been damaged due to negligent or faulty use, alteration, maintenance, storage or handling in contravention of the Products' specifications, technical data sheet, manuals, material safety data sheet or other instructions, or otherwise by BUYER.

10.3 Any suggestions by SELLER or SELLER'S agents regarding use, application or suitability of Products shall not be construed as an express warranty unless confirmed to be such in writing by SELLER.

10.4 BUYER assumes all risk for misuse of the Products.

10.5 THE WARRANTY EXPRESSED HEREIN SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE WHICH ARE EXPRESSLY DISCLAIMED, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART.

## 11. NON-CONFORMANCE OF QUANTITY

11.1 BUYER shall inspect the Products within five (5) days of receipt by BUYER and give notice in writing to SELLER in case of any non-



何与数量不符有关的主张。

11.2 购买方应与出售方合作核实数量不符的主张，特别是，购买方应提供相关证据。购买方不得因其提起数量不符的主张而免除其对出售方的任何支付义务。

11.3 若数量不符的主张被合理证实，出售方应在确认该主张后，向购买方提供与不符合的数量相等的相同产品，此为出售方的唯一责任和购买方的唯一救济。但是，经核实后，若出售方不接受该数量不符的主张，购买方应赔偿出售方与核实有关的所有开支。

## 12. 责任限额

尽管本销售条款中或者其它地方有相反规定：(a) 出售方在本销售条款项下的最大责任在任何时候都不应超过购买方就争议中的产品或者服务已支付的金额；(b) 出售方不应承担因任何原因、于任何时候而产生的任何形式或性质的所有特殊、附带、间接或者从属性的损失或损害，包括收入或者利润的损失。

## 13. 专有信息/保密义务

出售方向购买方提供的所有说明书、技术数据表、操作手册、安全数据表以及其它信息，包括但不限于：购销合同中的有关定价、数量或财务方面的规定，专属于出售方所有，并应严格保密。即使该产品或服务是基于购买方的说明或者其它要求，使用该说明或要求的权利仍应完全专属于出售方所有。前述所有信息花费了出售方大额的开发费用并且包含了出售方专有的商业秘密。购买方除向为履行职责而必须知晓此种信息的其雇员、董事、管理人员或者代表披露此种信息外，不得再加工或者披露此种信息，并且前述人员应受到相同的保密义务的约束。购买方的上述保密义务不包括下列信息：(a) 购买方从公开或者公布的渠道所获得的信息，但此种公布或者公开不是因违反本销售条款的规定或者因购买方的过错或疏忽而发生的；(b) 从对出售方或者购买方不负有直接或间接保密义务的渠道获得的信息；(c) 经出售方书面批准而向公众披露的信息。

## 14. 中止与解除

14.1 若购买方忽视交付指示或者未根据购销合同的规定接受交付，或者未能在到期时支付款项，或者有其他违反购销合同的行为，或者购买方与其债权人达成任何和解或安排或购买方的商品或财产被扣押或执行，或者购买方破产或一家公司被任命为其企业或资产的全部或部分的接收者，或者购买方通过停业的决议、或法院下达类似裁决、或购买方收到托管令的，则购买方有权自由选择中止或者取消任何进一步的交付和/或服务或/或在向购买方发出书面通知后解除购销合同。

conformance of quantity, otherwise the Products will be regarded as irrevocably accepted and BUYER shall not be entitled to any claim for non-conformance of quantity.

11.2 BUYER shall cooperate with SELLER in the verification of the alleged non-conformance of quantity and shall especially provide evidence thereof. Claiming an alleged non-conformance of quantity does not relieve BUYER of any of its payment obligation to SELLER.

11.3 In the event of a justified claim concerning non-conformance of quantity, SELLER will, as its sole liability and as BUYER's exclusive remedy, provide compensation only in the form of the Products of non-conformed quantity under the claim confirmed by SELLER. However, if after verification SELLER does not accept the non-conformance of quantity alleged, BUYER shall indemnify SELLER for all costs connected with the verification.

## 12. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY PROVISION IN THIS TERMS AND CONDITIONS OF SALE OR ELSEWHERE TO THE CONTRARY: (a) SELLER'S MAXIMUM LIABILITY HEREUNDER AT ANY TIME FOR ANY CAUSE WHATSOEVER SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCTS OR SERVICES AT ISSUE, (b) SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, INCLUDING LOSS OF REVENUE OR PROFIT.

## 13. PROPRIETARY INFORMATION / CONFIDENTIALITY

All specifications, technical data sheets, manuals, security and safety data sheets and other information furnished by SELLER to BUYER, including, but not limited to, pricing, volumes or the financial terms of this Agreement and the existence of this Agreement, are proprietary to SELLER and confidential. Even if a Product or Service is based on the Buyer's specification or the Buyer contributes to it in any other manner, the rights of use shall be attributed fully and exclusively to the SELLER. Such information has been developed at substantial expense and contains trade secrets that are the exclusive property of SELLER. BUYER may not reproduce or distribute such information except to BUYER'S employees, directors, administrators, or generally representatives strictly on a need-to-know basis in order to perform their duties and any such person shall be required to ensure the same confidentiality of all such information. All such information supplied by SELLER shall be received in confidence except for information that (a) was generally available to the BUYER from public or published sources, provided publication did not take place in violation of this Agreement or through fault or omission of the BUYER, (b) was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either the BUYER or the SELLER, or (c) was disclosed to the general public with the written approval of the SELLER.

## 14. SUSPENSION AND TERMINATION

14.1 If BUYER shall omit delivery instructions or shall fail to accept Delivery, as required by the Sale Contract, or shall fail to make any payment when it becomes due or shall commit any other breach of the Sale Contract, or if BUYER shall enter into any composition or arrangement with its creditors or if any distress or execution is levied upon any goods or property of BUYER, or if BUYER shall commit any act of bankruptcy or, if a corporation, a receiver shall be appointed of the whole or any part of its undertaking or assets or if Buyer shall pass a resolution for winding up or if a court shall make an order to that effect or if BUYER shall have a receiving order made against it, then at SELLER's sole option SELLER may suspend or cancel any further deliveries and/or Services and/or treat the Sale Contract as terminated upon a written notice to BUYER.



14.2 若购买方违反本销售条款与条件或购销合同项下任何实质性义务，并在收到出售方发出的书面通知后的三十（30）日内，未能纠正此种违约行为的，出售方有权在向购买方发出解除的书面通知后立即解除本购销合同。购买方应负责赔偿由此而产生的一切损失或损害。

14.3 解除出售方与购买方之间的购销合同，不得影响出售方对购买方行使下列权利：要求购买方支付其提供的产品和/或服务的任何到期未付款项，或其为完成购销合同项下的工作而产生的开支；要求购买方赔偿其因解除购销合同而产生的任何和全部损失或损害。

## 15. 适用法律与仲裁

15.1 本合同应根据中华人民共和国法律进行解释并受其规制。因本合同项下双方的权利义务关系而产生、或者与其有关的所有主张，无论是因合同、侵权或者其它，均受中华人民共和国法律管辖并据其判定，不受冲突法的影响。

15.2 本合同项下的所有争议应提交上海国际仲裁中心，根据提交当时有效的仲裁规则进行。仲裁以中、英文进行。双方同意选择一位仲裁员进行审理，若未能就这位仲裁员的选择达成一致，任何一方选择一位仲裁员，选择出的两位仲裁员再共同选择第三位仲裁员。仲裁庭达成的裁决应为对双方具有约束的最终裁决。

## 16. 附加条款

16.1 本合同任何一方未经另一方事先书面同意，不得转让本销售条款与条件，但下列情形除外：(a)在向购买方发出书面通知后，出售方将其在本合同项下的权利和义务转让给关联方，和(b)在向购买方发出书面通知后，出售方将其在本合同项下的权利和义务转让给任何继承或者受让（无论是以兼并、合并、购买或者其它形式）下列资产的第三方：(1)出售方全部或者大部分的资产；或者(2)出售方的具体部门的合部或者大部分的资产。本合同对合同双方、各自的继承人及允许的受让方具有约束力，并对其生效。

16.2 购买方陈述与保证：(a)其知晓产品的性质、特性及使用过程中可能产生的任何危害；(b)充分指示和警告所有人（包括可能接触或靠近产品的任何第三方）正当使用和操作产品；(c)不会依赖于出售方或其代表或其代理做出的关于产品适用于任何目的的任何保证、陈述或者其它说明，或者其就购买方已经进行独立的调查和测试并就产品是否适用于终端使用、改变或者安装之目的已形成独立意见而做出的任何保证、陈述或者其它说明；以及(d)购买方不会就出售方提供的包括技术性建议或意见在内的任何信息、测试或设计，或者因出售方未提供技术建议或意见，而向出售方提起索赔并要求其承担责任。出售方对购买方使用本销售条款附带的任何技术性支持不承担任何义务或责任。在搬运产品时应注意的健康和安全注意事项等信息载明在随附的文字资料中。在搬运产品前，购买方同意阅读并熟知产品的危害、合理使用和搬运方面的所有可得信息。购买方可请求出售方提供额外信息。

14.2 Unless otherwise provided for under this Agreement or the Sale Contract, if BUYER is in default or breach to perform any material obligations under this Agreement or the Sale Contract after having been notified of such default or breach and has not cured the default or breach within a period of thirty (30) days of a receipt of written request from SELLER to remedy such breach or default, SELLER shall have the right to terminate the Sale Contract upon written notice to BUYER. BUYER shall also be liable to compensate for any loss or damage arising there from.

14.3 Any termination of the Sale Contract between SELLER and BUYER shall be without prejudice to SELLER's right to any unpaid price for Products and/or Services provided or cost of work done under the Sale Contract and to damages for any and all losses or damages suffered in consequence of such termination.

## 15. GOVERNING LAW; ARBITRATION

15.1 THIS AGREEMENT SHALL BE CONSTRUED, INTERPRETED AND CONTROLLED BY THE LAWS OF THE PRC, AND ALL CLAIMS ARISING OUT OF OR RELATED TO THE PARTIES' RELATIONSHIP CREATED BY THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE GOVERNED AND DECIDED PURSUANT TO THE LAWS OF THE PRC, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS.

15.2 All disputes arising under this Agreement shall be settled by final and binding arbitration made by the Shanghai International Arbitration Center in accordance with its arbitration rules then in effect. The arbitration will be conducted in English and Chinese. The parties may agree on the selection of a single arbitrator, but in the event that they cannot agree, each party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. The award by the arbitrator(s) shall be final and binding upon the parties.

## 16. ADDITIONAL TERMS

16.1 This Agreement may not be assigned by either party to any other party without the prior written consent of the other party hereto; provided, however, that (a) SELLER may assign its rights and obligations hereunder to any Affiliate of SELLER by written notice to BUYER, and (b) SELLER may assign its rights and obligations hereunder, by written notice to BUYER, to a third party successor or transferee (whether by merger, consolidation, purchase or otherwise) of either (1) all or substantially all of the assets of SELLER or (2) all or substantially all of the assets of the particular division of SELLER identified on page one of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

16.2 BUYER represents and warrants that (a) it understands the nature and characteristics of the Product(s) and any hazards associated with its use, (b) it will adequately instruct and warn all persons, including all third parties, who may come in contact with, or be in the vicinity of, the Product(s) in the proper safe use and handling of the Product(s), (c) it is not relying upon any representation, statement or other assertion made by SELLER or its representatives or agents, with respect to the suitability of the Product(s) for any purpose and that BUYER has made its own independent inquiry and testing and has formed an independent opinion concerning the suitability of the Product(s) for the end use, conversion or application intended, and (d) it will not assert any claim against SELLER or hold SELLER liable, with respect to any information, testing or design furnished, or failure to be furnished, by SELLER, including, without limitation, technical advice or recommendations. SELLER assumes no obligation or liability for the use by BUYER of any technical assistance rendered incident to this Agreement. Appropriate literature has been assembled which provides information concerning the health and safety precautions that must be observed when handling the Products. Before





16.3 购买方与其客户之间的任何类型的合同义务不应适用于出售方或要求出售方承担任何责任，无论是以“过手”方式、“移转”方式或其它方式。并且，购买方不得向其客户保证出售方会承担这些义务。购买方同意赔偿并免于出售方承担因购买方使用出售方在购销合同项下销售的产品而产生的任何损失、索赔以及损害或者责任。购买方应负责向出售方赔偿因任何调查或抗辩及类似行为而对出售方合理产生的任何法律或其它开支，并且，若出售方要求，购买方应负责就此种法律行为或索赔进行抗辩。

16.4 在下列情形下，出售方可能（但并非必须）就本销售条款项下销售的产品在(a)运输过程中以及(b)（若因出售方合理控制以外的原因导致船运延迟的）延迟期间遭受的损失或损害进行投保。除非双方另有约定，在购买方支付产品的全部价款之前，购买方应自费投保以出售方为受益人的产品损失或损害险（包括但不限于，火灾和洪涝险）。

16.5 出售方不对因将出售方产品与其它产品/服务一起使用、或者因使用出售方根据购买方的要求而制造的产品，而产生的任何专利权、著作权或其它知识产权侵权承担任何责任。购买方承认，出售方的所有商标和其它知识产权专属于出售方、或出售方的关联方所有。未经出售方事先书面同意，购买方不得对出售方的商标或其它知识产权（若有）、或从前述权利中享有或从中获得任何权利、所有权或利益。

16.6 本合同第 10 条、第 12 条、第 13 条、第 15 条及第 16 条的所有权利和义务在购销合同因任何原因终止后继续有效。

16.7 若法院或者仲裁庭判定本合同的任何部分无效的，本合同的任何其它部分应继续有效，不得因此而失效。

16.8 出售方未能行使或者延迟行使任何可用权利或者救济，不得被解释为出售方对前述权利或者救济的放弃。

16.9 除非另有明确规定，本销售条款取代购买方和出售方之前就本销售条款的标的所达成的口头或书面的所有协议、谅解或者其它文件。

16.10 出售方接受 (a)付款或者 (b)特别背书的支票的行为，不得被视为出售方放弃或者限制其任何权利或者救济。

16.11 本销售条款中的任何规定不应理解为在出售方与购买方之间成立除购买者和销售者的关系之外的合伙、合资、代理、分销或者任何其它关系。

16.12 本销售条款中的所有标题仅供参考。

16.13 本销售条款以中、英文书就，两种版本应具有同等效力。若两种版本有任何不一致处，以英文版本为准。

working with the Products, BUYER agrees to read and become familiar with the available information on the Product hazards, proper use, and handling. Additional information is available from SELLER upon request.

16.3 No type of contractual obligation between BUYER and its customer(s) shall be applicable to, or create any liability with respect to SELLER, whether via “pass-through”, “flow-down” or otherwise, and BUYER shall not otherwise represent to its customer(s) such purported SELLER liability. BUYER agrees to indemnify and hold SELLER harmless against any losses, claims and damages or liabilities, joint or several, in connection with products manufactured by BUYER using SELLER'S Products sold under this Agreement. BUYER will reimburse SELLER for any legal or other expenses reasonably incurred by SELLER in connection with investigating or defending and such actions and, at SELLER'S request and election, BUYER will assume the defense of any such actions or claims.

16.4 SELLER may, but is not obligated to, insure the Products sold hereunder against damage or loss during (a) transportation, and (b) if shipping is delayed by reasons beyond the reasonable control of the SELLER during this delay at the expense of BUYER unless the parties have agreed otherwise. Until final payment is made BUYER shall insure such Products at its expense for the benefit of SELLER against damages and loss including, but not limited to, fire and flood, and shall provide written proof thereof to SELLER.

16.5 SELLER assumes no liability as to any patent, copyright or other Intellectual Property Rights infringement by virtue of the use of the Products in combination with other goods or services, or the use of the Products manufactured to Buyer's specifications. BUYER acknowledges that SELLER's all Trademarks and other Intellectual Property Rights are solely vested in SELLER or in SELLER's Affiliates. BUYER shall not have or gain any right, title, interest in or to or from a license in SELLER'S any Trademarks and other Intellectual Properties (if any) without SELLER'S prior written consent.

16.6 The rights and obligations under Articles 10, 12, 13, 15 and 16 herein shall survive the termination of the Sales Contract for any reasons.

16.7 Should any part of this Agreement be deemed invalid by a court of law or arbitrator, it shall not constitute an invalidation of any other part of this Agreement, which shall otherwise remain in effect.

16.8 Failure of SELLER to effect, or any delay by SELLER to effect, any available right or remedy shall not be construed to operate as a waiver of same.

16.9 Except as otherwise expressly provided, this Agreement supersedes all prior agreements, understandings or otherwise, whether oral or written, between BUYER and SELLER concerning the subject matter of this Agreement.

16.10 SELLER'S acceptance of (a) payment, or (b) specially endorsed checks shall not waive or limit any right or remedy of SELLER.

16.11 Nothing contained herein is intended nor shall be construed as creating a partnership, joint venture, agency, distributorship or any other relationship except buyer and seller.

16.12 All headings herein are for reference only.

16.13 This Agreement has been drawn up in English and Chinese, both of which shall be of equal effect. In case of any discrepancy between two versions, English version shall prevail.