

GÜDEL GROUP GENERAL CONDITIONS OF PURCHASE

(Edition: 1/2019)
English

1. General

- 1.1. These General Conditions of Purchase apply to each purchase order and all agreements with regard to goods or materials supplied and/or services performed (collectively the "Goods") by the "Supplier" to the GÜDEL Group, i.e. world-wide to all Affiliated Companies of Güdel Group AG, Gaswerkstrasse 26, CH-4900 Langenthal, Switzerland, (each individually a "Purchaser").
- 1.2. Additional or deviating terms proposed by the Supplier, in particular Supplier's terms and conditions of sale and delivery shall not be applicable and expressly rejected by the Purchaser, even if (1) the Supplier expressly refers to other terms and conditions during the business relationship with Purchaser or (2) they are not rejected explicitly by the Purchaser in an individual Purchase Order or (3) the Purchaser accepts and pays for the Goods delivered by the Supplier.

2. Formation of Contract, Changes and Amendments

- 2.1 Supplier's quotations and offers shall be prepared free of charge. They shall explicitly point out any deviations from Purchaser's Request for Proposal as well as any ambiguities, gaps or technical specifications contained therein which may impair the suitability of the Goods for the purpose for which they are intended or with regard to the latest state of the art or applicable laws and regulations.
- 2.2 Purchaser's orders or any changes or amendments thereto shall be binding only if made or confirmed in writing. Sketches, drawings, specifications, etc. referred to in the Order shall form an integral part thereof.
- 2.3 If an Order is not accepted by Supplier within three (3) working days, Purchaser shall be entitled to withdraw it. Such withdrawal shall not entitle the Supplier to raise any claims.
- 2.4 The Confirmation of Order shall explicitly point out any deviations from the Order. Such deviations shall only form part of the contract if accepted by Purchaser in writing.
- 2.5 The Confirmation of Order must contain at least the following information: Purchaser's order number, Purchaser's item number, country of origin, price, incoterms, and terms of payment.
- 2.6 After conclusion of the contract Purchaser shall remain entitled to request reasonable changes with regard to the specifications, the manufacture or the delivery of the Goods. To the extent such changes result in an increase or decrease of Supplier's costs or in a change of the date of delivery, Supplier shall inform the Purchaser latest within a calendar week. The resulting Variation Order shall be mutually agreed between the Parties.

3. Delivery Period

- 3.1 The agreed delivery dates and/or delivery periods are binding. The delivery periods start to run from the date the Purchaser receives Supplier's unreserved Order Confirmation. If the Goods are not received at the agreed place and date of delivery, the Supplier shall automatically be deemed to be in arrears.
- 3.2 Partial deliveries or early deliveries of more than three working days shall require Purchaser's prior consent.
- 3.3 Supplier shall inform Purchaser immediately of any circumstances occurred or likely to occur, which may impair the agreed delivery date, as well as of the estimated period of delay. The Supplier shall exert its best efforts to minimise the delay or to procure replacements from third parties.
- 3.4 Delays occasioned by missing information, documents or items to be supplied by Purchaser shall be excused only to the extent Supplier has requested the supply of said documents or

固都集团 通用采购条款

(版本: 1/2019)
中文

1. 总则

- 1.1 本通用采购条款适用于“供应商”向固都集团供应货物或材料和/或提供服务(统称为“货物”)而订立所有订单及协议。固都集团指位于瑞士朗根塔尔 CH-4900 Gaswerkstrasse 26 的固都集团股份公司在全球所有的关联企业(各单独称之为“采购方”)。
- 1.2 供应商提出的额外或不同的条款,特别是供应商的“销售和交付条款和条件”不得适用,且采购方应当明确拒绝,即使(1)供应商在与采购方的业务关系中明确提及其他条款和条件,或(2)采购方未在单独的采购订单中明确拒绝该等条款和条件,或(3)采购方接受供应商交付的货物并进行付款。

2. 合同的订立、变更、修订

- 2.1 供应商的报价不应收取费用。任何与采购方提案请求不同之处,以及其中包含的任何歧义、差异或技术规格,如果可能会损害货物符合预期用途,或者最新尖端科技,或者相关法律法规的,在该等报价中应明确指出。
- 2.2 采购方的订单或对其进行的任何变更或修订仅在以书面形式作出或确认时具有约束力。订单中提到的草图、图纸、规格等应构成订单不可分割的一部分。
- 2.3 如果供应商在三(3)个工作日内未接受订单,则采购方有权撤回订单。供应商不得基于该等撤回提出任何索赔。
- 2.4 订单确认书应明确指出与订单的不同之处。该等不同之处只有在采购方书面接受后才构成合同的一部分。
- 2.5 订单确认书必须至少包含以下信息:采购方的订单号、采购方的物品编号、原产国、价格、国际贸易术语和付款条件。
- 2.6 合同订立后,采购方仍有权要求对货物的规格、制造或交付进行合理的变更。如果此类更改导致增加或减少供应商成本或导致交付日期变更,供应商最晚应在一个日历周内通知采购方。由此产生的订单调整应由双方共同约定。

3. 交货期

- 3.1 约定的交货日期和/或交货期具有约束力。交货期从采购方收到供应商无保留订单确认书之日开始计算。如果采购方未能在约定地点和交货日期收到货物,则供应商应自动被视为迟延。
- 3.2 部分交付或超过三个工作日的提前交付应事先征得采购方的同意。
- 3.3 如果发生了或可能发生会影响约定的交货日期的任何情况,供应商应立即通知采购方,并告知预估的迟延时间。供应商应尽最大努力减少迟延或从第三方采购替代品。
- 3.4 由于缺少应由采购方提供的信息、文件或物品导致的迟延,只有在供应商已要求采购方及时提供上述文件或物品,或已经及时提醒采购方该等文件缺失的情况下,才能予

- items in due time, or in case he has timely reminded the Purchaser that documents are missing.
- 3.5 Except in case of Force Majeure, for the rest however by the sole fact of delay and irrespective of any evidence of damages incurred by Purchaser, the Supplier shall pay a penalty of 1% for each commenced week of delay, in the aggregate however at least the equivalent of USD 1,000. The maximum penalty for each delayed delivery shall be limited to the higher of the following two amounts a) the equivalent of USD 50,000 (fifty thousand) or b) 10% of the Contract Price for the delivery concerned. Shortages of raw material or delays by subcontractors or sub-suppliers shall not exonerate Supplier, unless such delays were equally caused by Force Majeure. Purchaser's statutory right to claim damages which exceed the penalties remains reserved.
- 3.6 If the agreed date of delivery is exceeded by more than 4 weeks, Purchaser may rescind the contract forthwith.
- 3.7 If it is foreseeable that the agreed date of delivery will not be met, Purchaser may rescind the contract prematurely. In this case Supplier shall – in addition to Purchaser's rights at law - reimburse all payments already made, plus 5 % interest per annum.

4. Shipping and Packaging

- 4.1 The Supplier shall ship the Goods according to Purchaser's shipping and marking instructions. At a minimum, a list of contents is mandatory for every packaging unit. If the goods are shipped in multiple packaging units, each unit must be individually identified.
- 4.2 The packaging must be such that the Goods are effectively protected against damage and corrosion during transport and subsequent storage. The supplier is liable for damage caused as a result of improper packaging.
- 4.3 The Supplier shall be liable for all costs and expenses incurred resulting from his failure to observe Purchaser's instructions regarding transport or customs clearance.
- 4.4 The assumption of risk for accidental loss of the Goods shall pass to Purchaser pursuant to the Incoterm agreed in the Order; in the absence of an agreed Incoterm, the Goods shall be shipped [DAP named place of delivery] Incoterms 2020 or latest edition. In case acceptance tests in Purchaser's works have been agreed, passing of risk shall occur upon successful completion of said tests.
- 4.5 Each delivery has to be accompanied by a detailed delivery note containing the following data: Delivery note number, delivery date, Purchaser's Order Number, Date of Order, Item Number, Purchaser's Item Number (if applicable), Drawing number and index (if available), Quantity, Gross/Net Weight, Country of Origin, Customs Tariff Number and Type of Packing, Delivery address (including plant and gate).

5. Prices, Invoicing, Terms of Payment and Transfer of Ownership

- 5.1 The prices agreed are firm and may only be changed by mutual agreement between the Parties.
- 5.2 The prices are exclusive of statutory VAT and/or duty. Statutory VAT must be shown on the invoice as a separate item.
- 5.3 Unless otherwise agreed, a separate invoice shall be issued for each Order. Invoices are to be sent separately from each shipment.
- 5.4 Invoices must comply with applicable VAT regulations. Supplier's invoices must match the Purchaser's order and the Suppliers' Confirmation of Order concerning the items and the order value listed. In addition, the Invoices show at least the order number, item number, delivery date and also the scope of the delivery, e.g. partial or residual deliveries. In addition Supplier shall be liable for the proper indication and proof of the country of origin of the Goods.
- 5.5 Unless otherwise agreed and subject to the proper delivery of the Goods and the pertinent documents, payment shall be made within 45 days from receipt of a properly prepared invoice, (except in case of advance payments) however earliest 45 days from the receipt of the Goods.
- 5.6 Defects in the Goods shall entitle Purchaser to withhold a

以谅解.

- 3.5 除不可抗力情况外, 无论采购方是否有发生损害的任何证据, 仅由于存在迟延的事实, 每迟延一周, 供应商应支付 1% 的罚金, 总计至少相当于 1,000 美元. 每次迟延交付的最高罚金应限于以下两个金额中的较高者: a) 与 50,000 (伍万) 美元相当的金额 或 b) 该交付所对应合同价格的 10%. 分包商或二级供应商的原材料短缺或迟延不得免除供应商的责任, 除非此类迟延同样由不可抗力造成. 采购方仍然保留要求赔偿超过罚金部分损失的法定权利.
- 3.6 如果超过约定交货日期达到 4 周以上的, 采购方可立即解除合同.
- 3.7 在能够预见无法按照约定交付日期完成交付时, 采购方可提前解除合同. 此时, 除了采购方的法律权利之外, 供应商还应偿还已经支付的所有款项, 以及按照年利率 5 % 计算的利息.

4. 运输和包装

- 4.1 供应商应根据采购方的装运和标记指示装运货物. 每一包装单位至少必须有一份内容清单. 如果货物分多个包装单位运输的, 则每个包装单元必须单独进行标识.
- 4.2 包装必须有效保护货物在运输和后续储存过程中免于损坏和腐蚀. 供应商应对包装不当造成的损坏负责.
- 4.3 供应商应承担由于未能遵守采购方关于运输或清关的指示而产生的所有费用和开支.
- 4.4 货物意外灭失的风险应根据订单中约定的国际贸易术语转移给采购方; 如果没有约定国际贸易术语, 货物的运输应按照 [DAP 指定交货地点] (国际贸易术语 2010 年版或最新版本). 如果已经约定在采购方工厂进行验收测试的, 则风险将在成功完成上述测试后转移.
- 4.5 每次交货时都必须附有包含以下数据的详细交货单: 交货单编号、交货日期、采购方订单编号、订单日期、物品编号、采购方的物品编号 (如适用)、图号和索引 (如有)、数量、毛重/净重、原产国、海关关税编码和包装类型、交付地址 (包括工厂和门牌号).

5. 价格、发票、付款条件和所有权转让

- 5.1 约定的价格是确定的, 只能通过双方的合意来改变.
- 5.2 价格不含法定增值税和/或关税. 法定增值税必须作为独立项目显示在发票上.
- 5.3 除非另有约定, 每份订单应出具单独的发票. 发票应与每次装运分开寄送.
- 5.4 发票必须符合适用的增值法规. 供应商的发票必须与采购方订单和供应商就所列物品和订单价值出具的订单确认书相匹配. 此外, 发票至少显示订单号、物品编号、交货日期以及交货范围, 例如: 部分或剩余交付. 此外, 供应商应对货物原产国的适当指示和证明材料负责.
- 5.5 除非另有约定, 在适当交付货物和相关文件的情况下, 款项应在收到正确制作的发票后 45 天内支付 (预付款除外), 但不得早于收到货物后 45 天.
- 5.6 如果货物存在缺陷的, 采购方有权扣除约定价格的合理部

- reasonable part of the agreed price until the defects have been remedied.
- 5.7 Invoices failing to comply with the aforementioned requirements shall not be processed and the pertinent payment withheld until submission of a properly prepared invoice.
- 5.8 Unless otherwise agreed, advance payments shall be subject to the submission of a pertinent irrevocable guarantee, payable on first demand, of a first class bank in Purchaser's country.
- 5.9 If the Supplier has undertaken to install or assemble the Goods and no other agreement has been reached, the Supplier shall pay all charges such as travel expenses, accommodation, tool provisioning, allowances, etc.
- 5.10 Ownership of the Goods shall pass to Purchaser at the earlier of the following events
- delivery
 - advance payment in full

6. Inbound Inspections

- 6.1 Upon receipt Purchaser shall inspect the Goods only with regard to transport and other apparent defects as well as with regard to identity and quantity.
- 6.2 In the ordinary course of business, latest within one month after receipt, Purchaser shall, by random sampling, inspect the Goods to determine whether they correspond to the agreed specifications.
- 6.3 If more than 20% of the Goods of a consignment do not meet the agreed specifications and quality standards, Purchaser is entitled to reject the whole consignment. It is then Supplier's responsibility to inspect the rejected Goods and sort out the Goods of good quality.

7. Warranty

- 7.1 Supplier warrants that the Goods comply in all respects with the terms of the contract, achieve the agreed performance, are new and state-of-the-art and fit for the purpose for which they have been purchased. The Goods shall further comply with all applicable standards, laws and regulations (including, without limitation, those dealing with environmental issues, health and safety) in force at the final place of delivery indicated in the order.
- 7.2 Defects shall be notified to Supplier within two calendar weeks after detection.
- 7.3 The warranty period is 24 months and begins, unless otherwise agreed by the Parties, upon delivery of Purchaser's products to its customer, but ends no later than 48 months (60 months in the case of series defect) after receipt of the Goods by Purchaser. A series defect is assumed when - within a period of 60 months from receipt by Purchaser - more than 5 % of the Goods show the same defect caused by the same root cause.
- 7.4 The warranty period for repairs or replacements shall be 24 months from the date of replacement or successful repair, provided however that it shall not expire prior to the original warranty period for the Good in question.
- 7.5 In the event of defects, Purchaser may, irrespective of any other rights he may have at law, avail itself, at its election, of the following remedies:
- a) refuse to accept the Goods, rescind the respective order and claim the reimbursement of any advance payments and/or damages, b) request the repair or replacement of the Goods. In case of Supplier's refusal or inability to repair or replace if the repair or replacement is unreasonable or unduly burdensome: c) to have the defective Goods repaired or replaced by a third party at the Supplier's expense or d) to demand a price reduction, or e) rescind the contract, or f) to combine any of the above remedies. In any event Supplier, even without fault, shall bear or reimburse all costs associated with the repair or replacement (inspection, dismantling, reinstallation, transport, etc.).
- 7.6 Contractual claims arising from the delivery of defective products or faulty advice or instruction shall be time barred, i.e. fall under the statute of limitations, one year after expiry of the warranty period.

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- 5.7 不符合上述要求的发票不得进行处理, 并且在提交正确制作的发票之前, 相关付款将被扣留.
- 5.8 除非另有约定, 预付款的适用需要提交由采购方所在国家一流银行 开具的相关不可撤销、见票即付的担保.
- 5.9 如果供应商已着手安装或组装货物, 但未达成其他协议的, 供应商 应支付所有费用, 如差旅费、住宿费、工具供应费、津贴等.
- 5.10 货物的所有权应在以下情况发生时 (以较早的为准) 转移给采购方
- 交付
 - 全额预付款

6. 入库检查

- 6.1 在收到货物后, 采购方应仅在运输和其他明显缺陷以及标识和数量 方面检查货物.
- 6.2 在正常业务过程中, 最迟在收货后一个月内, 采购方应通过随机抽 样检查的方式, 确定货物是否符合约定的规格.
- 6.3 如果一批货物中超过 20%的货物不符合约定的规格和质量标准, 则采购方有权拒绝整批货物. 随后, 供应商应负责检查被拒收的货物 并整理出质量良好的货物.

7. 保证

- 7.1 供应商保证货物在各方面都符合合同条款, 达到约定的性能, 货物 是新的和最先进的, 并且符合购买目的. 货物应进一步符合订单中 指明的最终交货地点的所有适用且现行有效的标准、法律法规 (包 括但不限于涉及环境问题、健康和安全的标准、法律法规).
- 7.2 缺陷应在检测后的两个日历周内通知供应商.
- 7.3 除非双方另有约定, 保修期为采购方向客户交付产品时起 24 个月, 但在采购方收到货物后 48 个月终止 (批次性缺陷情况下为 60 个月). 在采购方收货后的 60 个月内, 超过 5%的货物显示出由相同根源导致的相同缺陷时, 则视为发生批次性缺陷.
- 7.4 维修或更换的保修期应为自更换或成功维修之日起 24 个月, 但是, 在相关货物的原始保修期到期之前, 该保修期不会过期.
- 7.5 如发生缺陷, 在不影响采购方其他法定权利和主张的情况下, 其可自行决定利用以下救济措施: a) 拒绝接受货物, 取消相应的订单并要求偿还任何预付款和/或损害赔偿 b) 要求维修或更换货物. 如果维修或更换不合理或过于繁琐, 供应商拒绝或无法修理或更换: c) 则由第三方维修或更换有缺陷的货物, 产生的费用由供应商承担, 或 d) 要求降价, 或 e) 解除合同, 或 f) 综合采取上述救济措施. 无论如何, 即使供应商没有过错, 也应承担或补偿与维修或更换 (检查、拆除、重新安装、运输等) 相关的所有费用.
- 7.6 基于交付有缺陷的产品或不正确的建议或指示所产生的合同索赔应在保修期满后一年到期.

8. Recalls

- 8.1 If Purchaser, in its sole reasonable judgement, intends to recall products or to replace them at its customer's premises as a preventive measure, it shall inform the Supplier as quickly as possible, provided there is no imminent danger.
- 8.2 The Supplier shall bear the costs of the product recall and exchange action any associated consequential costs, limited however to a maximum of the equivalent of USD 1,0 million per recall or exchange campaign.

9. Product Liability and Recall Insurance

- The Supplier shall take out and maintain for at least 5 years after the last delivery of Goods to Purchaser liability insurance to cover its liability for personal injury, damage to property and consequential loss with a coverage of at least the equivalent of USD 5,0 million per claim, and for other damages, such as disassembly and reassembly costs on one side and recall costs on the other side, at least in the equivalent of USD 1,0 million each per incident.
- 9.2 To the extent permitted by applicable laws, the Supplier hereby assigns any claims against the insurer to Purchaser and Purchaser hereby accepts the assignment. Also, Supplier shall perform its statutory obligations (such as issuance of assignment notification) related to such assignment under the applicable laws.
- 9.3 At Purchaser's request the Supplier shall submit a pertinent insurance certificate.

10. Quality Audits

- 10.1 Purchaser may, upon reasonable prior notice and during normal business hours, audit the manufacturing process of the Goods in Supplier's works. The Supplier shall exert its best efforts to make such audits also possible in the works of his sub-suppliers or subcontractors.
- 10.2 The Parties shall take appropriate measures to protect any business secrets of the Supplier and of its sub-suppliers or subcontractors.

11. Infringement of Third Party Rights

- 11.1 Supplier shall indemnify, defend and hold Purchaser harmless from and against all liabilities, costs, damages, claims and expenses (including court costs and legal expenses and any settlement of such claim or action) incurred by Purchaser in respect of any claim or action brought by a third party against Purchaser or its customer alleging that the Goods or their use by Purchaser or Purchaser's customer infringe the intellectual property rights of such third party. Notwithstanding the foregoing, Supplier shall not be liable to the extent that the infringement results from the manufacture of the Supplies in accordance with instructions received from Purchaser and Supplier (having taken all reasonable precautions) could not have known that following these instructions would result in an infringement of a third party's intellectual property rights.
- 11.2 The Parties will inform each other forthwith of all actual or alleged infringements of third party rights of which they become aware. Supplier will assist Purchaser in its investigation, defence or handling of any such claim, including the provision any documents needed by Purchaser to defend the action.
- 11.3 If Purchaser selects its own legal counsel, Supplier's indemnification extends to the reasonable costs and fees associated with such representation. If Purchaser does not select its own legal counsel, Purchaser will give Supplier sole conduct of the defence of any such claims or actions
- 11.4 In the event of a claim of infringement of any third party rights that is communicated to Supplier, Supplier shall take the needed steps to ensure for Purchaser a non-infringing source of supply, which may involve securing the needed licenses (if any), redesign of the Goods, or other steps Supplier deems necessary to ensure that a non-infringing product is delivered to Purchaser.

8. 召回

- 8.1 如果采购方在自行合理判断后, 打算召回产品或在客户的场所更换产品作为预防措施的, 在没有紧迫危险时, 应尽快通知供应商.
- 8.2 供应商应承担召回产品和更换行为产生的成本和任何相关的后续成本, 但每次召回或更换活动最高成本应限于相当于 1,000 万美元的金额.

9. 产品责任和召回保险

- 9.1 在最后一批货物交付给采购方后, 供应商应购买并维持至少 5 年的责任保险, 以覆盖其人身伤害, 财产损失和间接损失责任, 每项索赔的保险覆盖范围至少相当于 5,000 万美元。针对其他损害, 例如, 一方面, 拆卸和重新组装成本以及另一方面, 召回成本, 每次事故的保险覆盖范围至少相当于 1,000 万美元。
- 9.2 在适用法律允许的范围内, 供应商将针对保险公司的任何索赔转让给采购方, 采购方接受该转让。且, 供应商应履行适用法律项下法定的有关转让的义务 (例如发出转让通知)。
- 9.3 根据采购方的要求, 供应商应提交相关保险凭证。

10. 质量审核

- 10.1 经合理的事先通知, 在正常营业时间内, 采购方可在供应商工厂审核供应商货物的制造过程。供应商应尽最大努力使得该等审核能够在其二级供应商或分包商的工厂中进行该等审核。
- 10.2 双方应采取适当措施保护供应商及其二级供应商或分包商的任何商业秘密。

11. 侵犯第三方权利

- 11.1 若第三方针对采购方或采购方的客户提起索赔或诉讼, 主张货物或采购方及采购方客户对货物的使用侵犯了该第三方的知识产权, 此时, 供应商应赔偿采购方, 为采购方进行抗辩, 并使采购方免于承担所有责任、成本、损害赔偿、索赔和费用 (包括法院费用和法律费用以及此类索赔或诉讼的和解款)。尽管有上述规定, 如果该等侵权是由于供应商按照从采购方收到的指示制造产品而导致的, 而且供应商 (已采取所有合理的预防措施) 也无法知道遵循该等指示会导致侵犯第三方的知识产权的, 供应商不应当承担责任。
- 11.2 双方将立即相互通知他们发现的所有实际或涉嫌侵犯第三方权利的行为。供应商将协助采购方调查、抗辩或处理任何该等索赔, 包括提供采购方在诉讼中进行抗辩所需的任何文件。
- 11.3 如果采购方选择自己的法律顾问, 供应商的赔偿金额将包括与此类代理相关的合理成本和费用。如果采购方未选择自己的法律顾问的, 则采购方将让供应商全权对任何该等索赔或诉讼进行抗辩。
- 11.4 当有侵犯任何第三方权利的主张向供应商提出时, 供应商应采取必要措施, 保证对采购方供货源无侵权问题, 该措施可能涉及获得所需的许可证 (如有)、重新设计货物或供应商认为为确保交付给采购方是非侵权产品而必要的其他措施。

12. Ownership in Documents, Software, Tools and Patterns, Escrow for Source Code, etc.

- 12.1 Documents, such as drawings, software, and all means of production, such as tools, samples, patterns and the like, placed by Purchaser at Supplier's disposal or sourced or manufactured by Supplier at Purchaser's cost, remain respectively become Purchaser's property as soon as sourced or produced. Purchaser shall own all rights in them. If no longer used for the execution of Purchaser's orders, they shall, at Purchaser's election, be either returned to Purchaser free of charge or disposed of, such disposal to be confirmed by Supplier in writing.
- 12.2 They must not be duplicated, sold, pledged, assigned as collateral, be disposed of or in any other way be encumbered, made available to third parties or used for the manufacture of products for third parties.
- 12.3 Such tools, samples and patterns shall be properly, marked, insured against theft and natural hazards, stored and maintained by the Supplier. The Supplier waives all statutory rights of retention.
- 12.4 Unless otherwise agreed, the Supplier, upon fulfilment of the pertinent contract, must, at Purchaser's request, return to Purchaser all documents, software or means of Production being Purchaser's property and any copies made thereof, or in case of documents or software confirm to Purchaser their destruction or deletion. The Supplier, however, shall have the right to retain one set of copies of the documents or software received for the strict purpose of legal records only, provided such copies are treated as classified documents.
- 12.5 Purchaser shall be entitled to use software falling under the scope of supply, including its documentation to the extent required for the use of the Goods or any other purpose provided for in the contract and Purchaser may make backup copies of the software supplied by Supplier.
- 12.6 At Purchaser's request, the Supplier shall conclude a source code escrow agreement. Purchaser will submit a contract template for this purpose.

13. Re-Supplies of Goods and Supply of Spare Parts

- 13.1 Supplier undertakes to re-supply to Purchaser - based on individual purchase orders, at competitive conditions and for a period of at least ten (10) years following delivery of the Goods - identical Goods and /or spare parts required therefor.
- 13.2 Should Supplier intend to discontinue the manufacture of the respective Goods or spare parts, he shall notify Purchaser forthwith, latest however three (3) months prior to the shutdown of their production. Within one month following receipt of such notice, Purchaser shall be entitled to place a final order for the delivery of the Goods or spare parts at customary market conditions, and Supplier is obliged to accept such final order within three (3) working days after the receipt thereof. If Supplier fails to do so within the said period, the acceptance shall be deemed to have been made by Supplier.
- 13.3 Purchaser shall be entitled to procure spare parts to the Goods, not covered by Supplier's industrial property rights, also directly also from Supplier's sub-supplier or any third parties.
- 13.4 Supplier shall exert his best efforts to bind its subcontractors and sub-suppliers accordingly.

14. Confidentiality

- 14.1 The Parties shall not disclose to third parties and shall use solely for the execution of an order all confidential information of which they have gained knowledge in the course of their dealing with the other Party, in particular technical information, drawings, business secrets and details of the order, such as quantities, technical specifications, commercial terms of an order, etc. as well as any knowledge derived from said information. However, the Purchaser is entitled to disclose all confidential information within the scope of the order to all of its affiliated companies.
- 14.2 The Supplier shall ensure that any subcontractors or sub-suppliers to whom confidential information is disclosed for the purpose of executing the subcontract or sub-order, agree to

12. 文档、软件、工具、图案的所有权以及源代码的托管等

- 12.1 由采购方交给供应商处理的, 或者采购方承担费用而由供应商获得的或生产的文档(比如图纸、软件)以及所有生产方法(比如工具、样品、图案等), 在获得或生产时就分别属于采购方的财产. 采购方对其享有所有权利. 一旦不再用于执行采购方的订单, 此类物品应当根据采购方的选择, 退回给采购方而不收取任何费用, 或经供应商书面确认后予以处理.
- 12.2 该等物品不得被复制、出售、质押、作为担保进行转让、处置或以任何其他存在妨碍的方式处理, 提供给第三方或用于制造第三方产品.
- 12.3 该等工具、样品和图案应由供应商妥善标记、确保免于盗窃和自然危害, 并进行妥善储存和维护. 供应商放弃所有法定的保留权利.
- 12.4 除非另有约定, 否则供应商在履行完毕相关合同后, 必须根据采购方的要求, 将所有采购方所有的文档、软件或生产方法及其任何副本返回给采购方, 或者针对文档或软件, 向采购方确认其被销毁或删除. 但是, 供应商有权仅为严格的法律记录之目的保留一套其收到的文档或软件的副本, 但该等副本应作为机密文件对待.
- 12.5 在使用货物, 或合同所约定的任何其他目的所需的范围内, 采购方有权使用在供货范围内的软件, 包括其中的文档, 采购方对供应商提供的软件可以制作备份副本.
- 12.6 在采购方的要求下, 供应商应签订源代码托管协议. 采购方将为此目的提供合同模板.

13. 货物再供应和备件供应

- 13.1 供应商承诺根据个别采购订单, 以有竞争力的条件, 在货物交付后至少十(10)年期间, 再次向采购方供应相同货物和/或所需备件.
- 13.2 如果供应商打算停止生产相关货物或备件, 其应立即、且不晚于停产前三(3)个月通知采购方. 在收到该等通知后一个月内, 采购方有权以惯常的市场条件就交付货物或备件下达最终订单, 供应商有义务在收到之日起三(3)个工作日内接受该最终订单. 逾期未接受的, 视为供应商已作出接受.
- 13.3 采购方有权采购未被供应商的工业产权所涵盖的货物备件, 也可直接从供应商的二级供应商或任何第三方采购.
- 13.4 供应商应尽最大努力分别约束其分包商和二级供应.

14. 保

- 14.1 对于所有在与另一方交易过程中获知的保密信息, 特别是技术信息、图纸、商业秘密和订单细节(例如数量、技术规格、订单的商业条款等), 以及从上述信息中衍生出的任何信息, 双方不得向第三方披露, 并且应仅用于执行订单. 但是, 采购方有权在订单范围内向其所有关联企业披露所有保密信息.
- 14.2 为了执行分包合同或子订单而向任何分包商或二级供应商披露保密信息的, 供应商应确保该分包商和二级供应商

be bound by these terms

- 14.3 Without our prior consent, Supplier shall not publish the fact that he has contracted with Purchaser or to use Purchaser's Order for publicity purposes.
- 14.4 If either Party or one of its agents, sub-suppliers or subcontractors infringes the aforementioned confidentiality obligations, it shall pay to the other Party a penalty equivalent to USD 50,000 (fifty thousand) unless it can prove that neither the Party itself nor the sub-supplier or subcontractor in breach was at fault.
- 14.5 The aggrieved Party may assert claims for higher damages as well as to seek injunctive relief for cease and desistance or enjoinder. Payment of the penalty shall not relieve the breaching Party from the further performance of its obligations hereunder.

15. Protection of Personal Data

- 15.1 The Parties may exchange Personal Data such as names, phone numbers, e-mail addresses and other personal related information in the course of their contractual relationship. In such case, both Parties shall use such Personal Data in accordance with applicable laws on the protection of personal data, in particular, to the extent applicable, the requirements of the General Data Protection Regulation of the European Union of 4th May 2016 (EU 2016/679; "GDPR") and ensure that no unauthorized third parties will have access to such Personal Data without the consent of the affected individuals or based on another legal reason to proceed such data.
- 15.2 The Parties shall keep Personal Data of the other Party strictly confidential and process such data solely for contractual purposes. The Party that processes Personal Data is responsible for the lawfulness of its processing as well as for ensuring the rights of the data subjects.

16. Compliance with Laws and Regulations

- 16.1 If not otherwise agreed, the Supplier shall meet the quality standards ISO 9001, ISO 14001 and ISO 45001 (OHSAS 18001). The Supplier further warrants that the Goods supplied conform to all applicable laws, regulations and standards in the country to which the Goods are delivery.
- 16.2 The Goods shall comply in particular but not exclusively with the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding "Conflict Minerals" as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act pertaining to "Conflict Materials".
- 16.3 The Goods shall further comply with all applicable laws, regulations and standards, environmental regulations and requirements regarding critical and hazardous material and substances, in particular to Regulation (EC) No 1907/2006 (REACH) and Directive (EU) 2011/65 respectively Directive (EU) 2017/2102 (RoHS).

17. Social Responsibility

- 17.1 The Supplier shall comply with the laws of the legal system(s) applicable in connection with the performance of the contract. He will, in particular, not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor.
- 17.2 Moreover, the Supplier will take responsibility for the health and safety of its employees; he will act in accordance with the applicable environmental laws and will use best efforts to promote these undertakings of good conduct among its suppliers.
- 17.3 In addition to other rights and remedies he may have, Purchaser may terminate the contract and/or any purchase order issued thereunder in case of breach of these undertakings. However, provided that Supplier's breach of contract is capable of remedy, Purchaser's right to terminate is subject to the proviso that such breach has not been remedied by the supplier within a reasonable grace period set by Purchaser.

同意受这些条款的约束。

- 14.3 未经我方事先同意，供应商不得公布其与采购方签订合同这一事实 或使用采购方订单进行宣传。
- 14.4 如果任何一方或其代理人、二级供应商或分包商违反上述保密义务，则应向另一方支付相当于 50,000（伍万）美元的罚金，除非其能证明违约的该方当事人、二级供应商或分包商没有过错。
- 14.5 受害方可以主张要求更高的赔偿金，并寻求停止、中止或禁止侵害 的禁令救济。罚金的支付不免除违约方继续履行义务。

15. 个人数据保护

- 15.1 双方可以在合同关系过程中交换姓名、电话号码和电子邮件地址等 个人数据和其他个人相关信息。此时，双方应根据适用的个人数据保护法，特别是在适用的范围内，根据 2016 年 5 月 4 日《欧盟通用数据保护条例》（欧盟 2016/679；“GDPR”）的要求使用此类个人数据，并确保未经相关个人同意，未经授权的第三方不得访问此类个人数据，或基于其他法律原因处理该等数据。
- 15.2 双方应严格保密另一方的个人数据，并仅为合同目的处理此类数 据。处理个人数据的一方负责其处理该数据的合法性以及保护数据 主体的权利。

16. 遵守法律法规

- 16.1 如果没有另行约定，供应商应符合质量标准 ISO 9001，ISO 14001 和 ISO 45001 (OHSAS 18001) 的要求。供应商进一步保证所提供的货物符合交货地所在国家所有适用的法律，法规和标准。
- 16.2 货物应特别但并非只遵守《多德 - 弗兰克华尔街改革和消费者保护法》在第 1502 条关于“冲突材料”中定义的“冲突矿物”的规定。
- 16.3 货物应进一步遵守所有适用的与重要、有害物质相关的法律、法规 和标准、环境法规和要求，特别是依次为法规 (EC) No 1907/2006 (REACH) 和指令 (EU 2011/65、指令 (EU) 2017/2102 (RoHS)。

17. 社会责任

- 17.1 供应商应遵守与履行合同有关的司法体系中的法律，特别是，不会 积极或消极、直接或间接地参与任何形式的贿赂，参与任何违反雇 员基本人权或雇佣童工的行为。
- 17.2 此外，供应商将对其员工的健康和安全负责；将按照所适用的环境法律行事，并将尽最大努力在其供应商中推广承诺该等良好企业行 为。
- 17.3 除了其可能拥有的其他权利和补救措施外，如果供应商违反这些承 诺，采购方可以终止合同和/或其在该合同项下签发的任何采购订 单。但是，如果供应商的违约行为能够进行补救的，则采购方终止 合同的权利应以供应商未能在采购方设定的合理宽限期内对该等违 约行为进行补救为前提。

18. Final Provisions

- 18.1 Any subcontracting of the design or manufacture of the Goods, in whole or to a significant extent, as well as the subcontractors chosen by the Supplier, shall require Purchaser's prior approval. Such subcontracting shall not relieve Supplier from its liability for the proper fulfilment of the Contract.
- 18.2 Without the prior written consent of Purchaser Supplier shall not, in whole or in part, assign the rights and obligations under a supply or service contract, or subcontract a substantial portion thereof, to any third party.
- 18.3 Material placed at Supplier's disposal in connection with the execution of an order shall, irrespective of any machining or processing, remain Purchaser's property. It shall be marked as such and be stored separately until processed, assembled or installed.
- 18.4 Unused or remaining material, scrap and the like shall, at Purchaser's request, be either returned or, at market prices, credited towards the Contract Price.
- 18.5 If a provision hereof or any partial provision is held by any competent court or authority to be invalid or unenforceable, such provision or partial provision will be deemed null and void, the remaining provisions hereof continuing to be in full force and effect. If required, the Parties shall replace such invalid or unenforceable provision with a valid and enforceable provision having similar economic consequences, provided that the content of these terms and conditions is not materially altered. The same applies should any gaps or loopholes be found.
- 18.6 In case of deviation between the English and the Chinese language, the Chinese language shall prevail.
- 18.7 No delay or omission of Purchaser to exercise any right or remedy granted under the contract and these terms and conditions shall operate as a waiver of such rights, and every right and remedy of Purchaser provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.

19. Place of fulfilment

- 19.1 Unless otherwise agreed, the place of fulfilment for delivery and payment shall be Purchaser's place of business.

20. Applicable Law and Place of Jurisdiction

- 20.1 Cross-border contracts with the Purchaser are subject to the UN-Convention on Contracts for the International Sale of Goods (CISG) and for matters not governed by the CISG to the substantive laws in force at Purchaser's place of business.
- 20.2 If Parties are located in the same country, the exclusive place of jurisdiction for all actions ("subject-matter in dispute") arising out of or in connection with a Purchase Order or another agreement between the Parties shall be Purchaser's place of business. If Parties are located in different countries, the Purchaser and/or Supplier are/is entitled to bring the subject-matter in dispute before the competent court(s) where either Party's place of business is located.

Effective as of January 1, 2019

18. 最后条款

- 18.1 任何货物设计或制造的分包（无论是全部还是相当一部分），以及 供应商选择的分包商，都应获得采购方事先批准。此类分包不得免除 供应商适当履行合同的责任。
- 18.2 未经采购方事先书面同意，供应商不得将供应或服务合同下的权利 和义务全部或部分转让给任何第三方，或将其中的主体部分分包给任何第三方。
- 18.3 交由供应商处置的与执行订单有关材料，无论进行了何种处理或 加工，均为采购方的财产。该等材料应相应进行标记并单独存放， 直至其被加工、组装或安装。
- 18.4 未使用的或剩余的材料、废料等，应在采购方要求时进行退换，或 以市场价格记入合同价格。
- 18.5 如果本协议的条款或任何部分条款被任何有管辖权的法院或政府部 门认定为无效或不可执行，则该等条款或部分条款将被视为无效， 其余条款仍然继续完全有效。如果有需要，双方应将此类无效或不 可执行的条款替换为具有类似经济后果的有效且可执行的条款，前 提是该等条款和条件的内容未发生重大变更。如果发现任何差异或漏洞 的，此方法同样适用。
- 18.6 如果英文和中文语言之间存在差异的，以中文为准。
- 18.7 采购方迟延或遗漏行使合同项下以及相关条款和条件下授予的任何 权利或救济的，不构成对该等权利的放弃，并且此处授予采购方的 每项权利和救济应当是并行适用、同时存在的，且附加于法律或衡 平法下享有的任何其他权利和救济。

19. 履行地点

- 19.1 除非另有约定，交付和付款的履行地点应为采购方的营业 地。

20. 适用法律和管辖地

- 20.1 与采购方签订的跨境合同受《联合国国际货物销售合同公 约》（《销售公约》）约束，对于不受《销售公约》约束 的事宜，受采 购方营业地现行有效的实体法律约束。
- 20.2 如双方位于同一国家，因订单或双方之间的其他协议而产生 的或与之相关的所有诉讼（“争议标的”）应由采购方 营业地进行专属管辖。如双方位于不同国家，采购方和/ 或供应商有权向对争议标的有管辖权的任何一方营业地法 院提起诉讼。

自 2019 年 1 月 1 日起生效