

**资本设备采购订单条款和条件****TI FLUID SYSTEMS****CAPITAL EQUIPMENT PURCHASE ORDER TERMS AND CONDITIONS**

1. **CONTRACT:** The Purchase Order, Term Sheet, Global Supplier Requirements Manual together with these Terms and Conditions and any addendums or other documents incorporated or referred to in the Purchase Order or herein and any paper or electronic releases issued to Seller hereunder, (collectively, the “Order”) constitutes the entire contract between the TI Fluid Systems legal entity named on the Purchase Order (the “Buyer”) and Seller for the equipment ordered and any related services (collectively, “Equipment”), and supersedes any previous oral or written representations, including but not limited to provisions in Seller’s quotations, proposals, acknowledgments, invoices or other documents. These Terms and Conditions will apply to the Order except as expressly modified or waived on the face of the Order. Captions in these Terms and Conditions are for convenience only. Any references in the Order to Seller’s quotation or other Seller document(s) are for information only and Buyer hereby rejects all terms and conditions proposed by Seller therein.

**合同:** 《采购订单》、《条款清单》、《全球供应商要求手册》，连同本条款和条件，以及采购订单或本订单中包含或提及的任何附件或其他文件，以及本文件项下向卖方发出的任何纸质或电子版本（以下统称“订单”）构成采购订单上指定的 TI Fluid Systems 法律实体（以下简称“买方”）与卖方之间就所订购的设备及相关服务（以下统称“设备”）签订的完整合同，并取代先前所做的任何口头或书面陈述，包括但不限于卖方报价、建议、确认、发票或其他文件中的条款。本条款和条件将适用于订单，但在订单中明确修改或放弃的除外。本条款和条件中的说明仅为方便而设。订单中对卖方报价或卖方其他文件的任何引用仅供参考，买方在此拒绝卖方在其中提出的所有条款和条件。

2. **ACCEPTANCE:** A contract is formed on the date that Seller accepts the offer of Buyer. Each Order shall be deemed accepted upon the terms and conditions of such Order by Seller by shipment of goods, performance of services, commencement of work on goods, written acknowledgement, or any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter hereof. Additionally, each Order shall be deemed accepted five business days after Buyer delivers the Order to Seller, if Seller fails to object to the Order. Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the face of the Order. No purported acceptance of any Order on terms and conditions which modify, supersede, supplement or otherwise alter these Terms and Conditions shall be binding upon Buyer and such terms and conditions shall be deemed rejected and replaced by these Terms and Conditions unless Seller’s proffered terms or conditions are accepted in a physically-signed writing by an authorized representative of Buyer (a “Signed Writing”), notwithstanding Buyer’s acceptance of or payment for any shipment of goods or similar act of Buyer. In the event of a conflict between the Order and any prior or contemporaneous agreement or document exchanged between Buyer and Seller, the Order governs.

**接受:** 合同自卖方接受买方的要约之日起成立。卖方作出货物装运、执行服务、开始对货物进行工作、书面确认或其他确认就本文件标发出的合同存

在的行为, 即视为接受本条款和条件。此外, 如卖方未对订单提出反对意见, 则每一份订单在买方向卖方递交后五 (5) 个工作日内应被视为已接受。接受明确限于本条款和条件, 以及订单中另行明确引用的此类条款和条件。以修改、替代、补充或其他方式改变本条款和条件的方式声称对任何订单的接受对买方不具约束力, 该等条款和条件将被视为拒绝接受, 并由本条款和条件所取代, 除非卖方所提议的条款或条件由买方授权代表以书面形式签署接受 (“书面签署”), 无论买方是否接受或支付任何货物装运或存在类似行为。如该订单与买卖双方之前或同时期达成的任何协议或文件发生冲突, 则以该订单为准。

3. **SELLER'S STATUS:** Seller and Buyer are independent contracting parties and nothing in the Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

**卖方状态:** 买卖双方为独立缔约方, 无论出于何种目的, 本订单中的任何内容均不得使任何一方成为另一方的代理或法定代表, 也不授予任何一方以另一方的名义或代表另一方承担或创建任何义务的权限。

4. **PRODUCTION SCHEDULE:** Seller and Buyer agree a manufacturing, runoff and delivery schedule as set forth as the Equipment Delivery Schedule in the Term Sheet. Thereafter, Seller will provide Buyer with progress reports on request.

**生产进度:** 卖方和买方同意《条款清单》中的“设备交付进度”所述的生产、试运行和交货计划。此后, 卖方应买方要求向其提供进度报告。

5. **CHANGE REQUESTS:** If Buyer desires to change the Equipment Specifications or the Parts Specifications (as defined in the Term Sheet), it will propose such changes to Seller in writing and Seller will promptly respond in writing, stating the effect (if any) that the proposed change will have on the Purchase Price, Delivery Date or other provisions of the Order. If the Equipment cannot be made so as to accommodate the proposed change, Seller will explain the reason. If the change is feasible and Buyer elects to amend the Equipment Specifications or the Parts Specifications and agrees to the effects (if any) noted by Seller, Buyer will send Seller a written “Change Order” in evidence thereof, signed by Buyer's duly authorized representative. Upon Seller's written acceptance, such Change Order will amend the Order and any affected Schedule.

**变更请求:** 如买方希望变更设备规格或部件规格 (如《条款清单》中所定义), 买方应以书面形式向卖方提出该等变更, 而卖方应立即以书面形式作出回应, 如买方拟议的变更将对采购价格、交货日期或订单的其他条款产生影响, 则买方应同时在回应中阐明。如设备的设计不能适应拟议的变更, 则卖方应说明原因。如变更可行, 买方选择修改设备规格或部件规格, 并同意卖方指出的影响 (如有), 则买方应向卖方发送一份由买方正式授权代表签署的书面“变更通知单”作为证据。经卖方书面接受后, 该变更通知单将视为对订单及受影响的计划的修改。

6. **DELIVERY:**

**交付:**

- 6.1 The Equipment will be shipped in one shipment where feasible and will be delivered to Buyer's Facility in accordance with the Equipment Delivery Schedule stated in the Term Sheet. The Services will be completed on or before the Service Completion Date stated in the Term Sheet. TIME IS OF THE ESSENCE FOR DELIVERY OF THE EQUIPMENT AND SERVICES. No extension of the above dates will be effective unless set out in a written amendment to the Order which states the new mutually agreed date(s) and is signed by Buyer.

如可行, 设备将一次装运, 并将按照条款清单中所述的“设备交付计划”交付至买方场所。服务应于“条款清单”中所述的“服务完成日期”或在此之前完成。**时间是交付设备和服务的关键。**除非由买方书面签署订单修正案, 并在修正案中阐明且规定了双方同意的新日期, 否则上述日期的延长均属无效。

- 6.2 Seller will notify Buyer in writing of the impending shipment of the Equipment at least 10 calendar days prior to shipment. On the day of shipment, Seller will confirm the same in writing, including the carrier's name, bill lading number, number of pieces (boxes) and arrival date.

卖方应在设备装运前至少十(10)个日历日书面通知买方设备即将装运。在装运当天, 卖方应以书面形式进行装运确认, 包括承运商名称、提单编号、件数(箱数)及抵达日期。

- 6.3 Except as otherwise provided in the Term Sheet, Buyer will be responsible for preparing Buyer's Facility for installation of the Equipment (including, without limitation, providing necessary electrical and other connections specified by Seller) and for unloading, placing, leveling and connecting the Equipment.

除非《条款清单》中另有规定, 否则买方应负责为设备的安装(包括但不限于卖方指定的必要电气及其他连接)以及设备的卸载、放置、调平和连接准备适当的场所。

7. TITLE, RISK OF LOSS, SECURITY INTEREST:

**所有权、灭失风险、担保权益:**

- 7.1 Title to the Equipment will remain in and with Seller until Buyer's acceptance of the Equipment as provided in Section 10 below, and will vest in Buyer at the time of acceptance. Risk of damage to or Loss of the Equipment will remain in and with Seller until delivery of the Equipment to Buyer's Facility.

设备的所有权在买方按照下文第 10 条的规定对设备进行验收之前仍归属于卖方, 在买方的验收通过之后则归属于买方。在设备交付至买方场所之前, 设备的损坏或灭失风险仍由卖方承担。

- 7.2 In consideration of and to the extent to which any installments of the Purchase

Price are paid prior to delivery and acceptance of the Equipment, Seller hereby grants Buyer a security interest in the Equipment and all accessories, attachments, substitutes, replacements, and proceeds therefrom, and authorizes Buyer and its agents to prepare, sign on Seller's behalf as its attorney-in-fact, and file such disclosure or other security documents as required in any jurisdiction (including amendments thereto) as Buyer may deem necessary to perfect its security interest in the Equipment.

鉴于买方在设备交付和验收之前某种程序上支付了一些分期付款，卖方特此授予买方对设备和所有配件、附件、替代件、替换件以及由此所得收益的担保权益，授权买方及其代理人以卖方实际代理人的身份代表卖方进行准备并签署，并根据任何司法管辖区的要求提交买方认为完善其对设备的担保权益所必需的此类披露或其他担保文件（包括对其的修订）。

- 7.3 Buyer Material to be provided to Seller under the Order shall remain under Buyer's sole ownership. When in Seller's possession, the risk of accidental loss or deterioration of such material shall lie with the Seller.

买方根据订单提供给卖方的材料应，买方享有单独所有权。当这些材料为卖方所占有时，此类材料的意外损失或变质的风险应由卖方承担。

- 7.4 Buyer Material shall not be given to any third parties as collateral or as security for any obligations of Seller. Seller shall use Buyer Material exclusively for the purposes relating to the Order specified above. Should any third party take Buyer Material in pledge, Seller shall notify Buyer in writing and without delay. In the event of rescission or cancellation of this Order, Seller agrees that at that point in time, Buyer may upon prior written notice enter the Seller's premises and collect Buyer Material.

买方材料不得提供给任何第三方作为卖方任何义务的抵押品或担保。卖方须将买方材料完全用于与上述订单有关的目的。如任何第三方将买方材料作质押，卖方应立即书面通知买方。如订单予以撤销或取消，卖方同意在此情况下，买方可在事先给予书面通知后进入卖方的场所并取得买方材料。

## 8. SELLER'S WARRANTIES:

### 卖方的保证:

- 8.1 Seller warrants that the Equipment will be delivered to Buyer free and clear of all liens, encumbrances and claims. After Buyer's acceptance of the Equipment and upon Buyer's request, Seller will provide Buyer with a clean bill of sale in form satisfactory to Buyer as a condition precedent to Buyer's obligation to pay the Purchase Price.

卖方保证将设备交付给买方时不存在任何留置权、产权留置和债权。在买方验收设备后，应买方要求，卖方应向买方提供一份令买方满意的清洁销售单据，作为买方履行支付货款义务的先决条件。

- 8.2 Seller warrants that the Equipment will conform to the Equipment Specifications as stated in the Term Sheet. Seller further warrants that the Equipment will be of good material and workmanship, free from defects, and fit and sufficient for the Intended Purpose expressly stated in the Term Sheet. This warranty will be valid for each unit of Equipment and all components as set forth in the Term Sheet, commencing on the Acceptance Date.

卖方保证设备将符合《条款清单》中所述的设备规格。卖方进一步保证，设备将具有良好的材料和工艺，无任何缺陷，适合并充分满足《条款清单》中明确规定的预期用途。本保证自验收之日起对《条款清单》中所列的每台设备及所有部件均有效。

- 8.3 During the Warranty Period set forth in the Term Sheet, Seller will promptly repair, replace or modify the Equipment or any component thereof which is defective or fails to comply with these warranties at no cost to Buyer. Buyer will give Seller prompt written notice of any such defect or failure. Upon receipt of such notice, Seller will promptly notify Buyer in writing of its schedule to correct the problem. In the event of a latent defect, the Warranty Period shall commence upon discovery of such defect.

在《条款清单》规定的质保期内，卖方应即时修理、更换或修改有缺陷的或不符合本保证的设备或其任何部件，买方对此不承担任何费用。买方将及时将任何该等缺陷或故障书面通知卖方。卖方收到通知后，应立即书面告知买方其纠正措施的时间计划。如存在潜在性缺陷，质保期应从发现此类缺陷起开始计算。

- 8.4 Buyer shall also be entitled to have necessary remedial action hereunder carried out at its own initiative and at Seller's expense as provided under applicable law where Seller has failed to promptly react to Buyer's defect notification and provide a appropriate corrective action within reasonable time. Seller will promptly reimburse Buyer for any costs actually and reasonably incurred (upon receipt of Buyer's invoice therefore). Buyer's actions to cure any warranty breach will not relieve Seller of any of its obligations hereunder.

如卖方未能及时对买方的缺陷通知作出反应，或未在合理的时间内提供恰当的纠正措施，买方则有权在合法的前提下自行采取必要的补救措施，费用由卖方承担。卖方应立即偿还买方实际合理发生的任何费用（在收到买方的相关发票后）。买方纠正任何违反保证的行为并不免除卖方在订单项下的任何义务。

- 8.5 Seller warrants that the Equipment shall fulfill all relevant regulations valid in the country where the Buyer facility is located. The required risk-analysis, covering the Equipment has or will be provided by the Seller and is one of the requirements to be allowed to place the CE level on a production cell. Seller agrees to indemnify and hold Buyer harmless from any loss, damage, fine or penalty which Buyer may incur due to a breach of this Section 8.5.

卖方保证设备应符合买方场所所在国家现行有效的所有相关规定。所要求的风险分析，涵盖卖方已经或将要提供的设备，是生产单位取得 CE 级别



认证的要求之一。卖方同意, 若买方因卖方不满足本第 8.5 条而导致任何损失、损害、罚款或处罚, 需进行赔偿并使买方免受任何影响。

- 8.6 Seller warrants that the Equipment, does not infringe the valid claims of any patent, patent application, copyright, trade secret or any other property right of any third party, except where Buyer used the Equipment together with other products not delivered by Seller or modified the Equipment such that infringement would not occur but for such combined use or such modification. For the avoidance of doubt, Seller shall not be liable for the infringement of third party rights with reference to the design or functionality of the items produced by Buyer with the Equipment delivered by Seller hereunder. If Seller breaches the foregoing warranty and an infringement claim is made against Buyer arising from a breach or alleged breach of this warranty, Seller will, at its own expense, either procure for Buyer the right to continue to use the Equipment or replace or modify the Equipment or affected components with functionally equivalent non-infringing equipment or components. If neither of these alternatives is reasonably available, Seller will remove the Equipment and refund the Purchase Price to Buyer. Seller will also defend any suit or proceeding brought against Buyer arising from such claim and indemnify and will hold Buyer harmless from any liability, cost, recovery, or expense resulting there from; provided, that Buyer gives Seller prompt written notice of the claim and full authority, information and assistance, at Seller's expense, for the defense of such claim.

卖方保证设备没有侵犯任何第三方的任何专利、专利申请、版权、商业秘密或任何其他财产权利的有效主张, 除非买方将设备与并非由卖方交付的其他产品一起使用, 或擅自对设备进行了修改, 前提是如果未进行该等混合使用或修改, 就不会发生侵权问题。为避免疑义, 卖方不应应对买方使用卖方在订单项下交付的设备生产的产品的的设计或功能侵犯第三方权利的行为承担责任。如果卖方违反了上述保证, 并因违反或所谓的违反上述保证而导致买方被提起侵权索赔, 卖方应自费为买方取得继续使用设备的权利, 或将设备或受影响的部件替换或修改为功能等同的非侵权设备或部件。如上述两种方案均不合理可行, 卖方应移走设备, 并将货款退还给买方。卖方还应应对因该等索赔和赔偿而对买方提起的任何诉讼或程序进行辩护, 并使买方免于由此而产生的任何责任、费用、追偿或支出; 买方应及时书面通知卖方该等索赔, 并给予卖方充分的权利、信息和协助, 以便卖方对该等索赔进行辩护, 费用由卖方承担。

- 8.7 Seller agrees to defend and indemnify Buyer from and against all claims, losses, damages or costs arising from Seller's breach of this warranty, regardless of any limitations of remedies contained elsewhere in these Terms and Conditions or in any other agreement between the parties. This provision will survive the expiration or termination of the Order. Seller's indemnification and defense obligation herein is conditioned upon (a) Buyer providing prompt notice of any indemnifiable claim to Seller, (b) Buyer permitting Seller to assume sole control of the defense and settlement of such claim or action provided that Seller does not prejudice Buyer's position by admitting liability for Buyer for which Seller has no obligation to indemnify Buyer or cause Buyer to incur any costs for which Seller has no obligation to indemnify Buyer (in such case, Buyer must provide consent for the settlement, such consent not to be unreasonably withheld or

delayed), and (c) Buyer reasonably cooperating (at Buyer's expense) in the defense and settlement thereof. The statutory limitation period that would ordinarily apply in respect of cause of actions initiated by third parties shall not be extended under the foregoing indemnities. With respect to Seller's indemnification or defense obligations stated above, Buyer must use its commercially reasonable best efforts to mitigate claims and losses.

卖方同意就卖方违反本保证而引起的所有索赔、损失、损害赔偿或费用对买方进行辩护和赔偿, 无论本条款和条件中的其他条款或双方之间的任何其他协议中是否包含有任何救济限制。本规定在订单期满或终止后仍然有效。卖方在订单中的赔偿和抗辩义务基于以下条件: (a) 买方就任何应赔偿的索赔及时通知卖方, (b) 买方允许卖方全权控制此类索赔或诉讼的抗辩及和解, 前提是卖方不因承认买方的责任 (对此卖方没有义务赔偿买方或使买方承担任何费用) 而损害买方的地位 (在此情况下, 买方必须就和解给予同意, 且该等同意不得被无理拒绝或拖延), 以及 (c) 买方在对其的抗辩和解过程中给予合理配合 (费用由买方承担)。通常适用于第三方提起的诉讼事由的法定时效期在上述赔偿项下不得延长。关于上述卖方的赔偿或抗辩义务, 买方必须尽其商业上合理的最大努力来减轻索赔和损失。

- 8.8 Seller shall, within the scope of applicable legislation, be liable to Buyer and to any third parties, for any bodily injury or property damage as may be caused by breach of these Terms and Conditions or in case of any acts constituting an offense against the law. Seller shall also be liable for any acts and omissions on the part of its vicarious agents. Seller's responsibility and obligations with respect to warranty and liability are not diminished or annulled, even in the case of Buyer or a third party's participation in design layout, selection of materials or their machining, treatment or processing.

卖方应在适用法律的范围内, 就违反本条款和条件可能造成的任何人身伤害或财产损失, 或构成违法的任何行为, 对买方及任何第三方承担责任。卖方还应对其代理的任何作为和不作为负责。即使买方或第三方参与设计布局、材料选择或其机加工、处理或加工, 卖方在质保及赔偿责任方面的责任与义务亦不会减少或取消。

9. PRE-SHIPMENT RUNOFF: A Pre-shipment Runoff will be performed at Seller's Facility in accordance with the procedures and criteria stated in the Term Sheet. If the Equipment successfully completes this runoff, Seller will arrange to ship the Equipment to Buyer. For this purpose, Seller will advise Buyer of the start of such tests or trials each time two weeks in advance. Should any defects be found during runoffs as above said or should the manufactured machinery/equipment not conform to the conditions of the Order, then Seller shall promptly remedy such defects or non-conformities at its expense, without being entitled on this account to extend the delivery deadlines provided for in the Term Sheet. Following such remedial action, the machinery/equipment concerned shall undergo renewed checking, if Buyer so requests. Tests, trials or checks conducted as herein provided shall not be deemed to constitute acceptance of the Equipment involved and have no influence whatsoever on Seller's warranty obligations; regardless of Buyer's presence during such tests, trials or checks. In order to comply with this clause, the results from the Pre-shipment Runoff should be documented and approved and

signed by Buyer.

**装运前试运行:** 装运前试运行应按照《条款清单》中规定的程序和标准在卖方场所进行。如果设备成功地完成了试运行, 卖方将安排运送设备给买方。有鉴于此, 卖方应在每次测试或试验前提前两(2)周通知买方测试或试验的开始时间。如在试运行过程中发现任何缺陷, 或生产的机器/设备不符合订单的条件, 卖方应立即对此类缺陷或不符合之处进行补救, 费用自行承担, 同时无权因此延长《条款清单》中规定的交货期限。在该等补救措施之后, 如买方要求, 须对有关机器/设备进行重新检查。按订单规定执行的测试、试验或检查不应被视为对所涉设备的验收, 也不对卖方的保证义务产生任何影响; 不论买方在此类测试、试验或检查期间是否在场。为了符合这一规定, 装运前试运行的结果应由买方记录在案, 并由买方批准和签署。

10. **ACCEPTANCE RUNOFF:** An Acceptance Runoff will be performed by Seller at Buyer's Facility in accordance with the procedures and criteria stated in the Term Sheet. If the Equipment successfully completes this runoff, Buyer will provide written notice of acceptance to Seller; the date of the notice will be the "Acceptance Date." Minor deficiencies, with no influence to the general functions of the Equipment, shall not affect the Equipment passing the Acceptance. Buyer's acceptance of the Equipment will not release Seller from any of its warranty or other obligations under the Order. Should any defects be found during runoffs as above said or should the manufactured machinery/equipment not conform to the conditions of the Order, then Seller shall promptly remedy such defects or non-conformities at its expense, without being entitled on this account to extend the delivery deadlines provided for in the Term Sheet. Following such remedial action, the machinery/equipment concerned shall undergo renewed checking, if Buyer so requests. If this is not accomplished within 30 days after the Equipment Delivery Date, Buyer will be entitled to cancel the Order immediately by written notice to Seller with no further obligation hereunder and to elect from the remedies provided for in these Terms and Conditions. In order to comply with this clause, the results from the Acceptance Runoff should be documented and approved and signed by Buyer.

**验收试运行:** 验收试运行将由卖方按照《条款清单》中规定的程序和标准在买方场所进行。如设备成功地完成了试运行, 买方将向卖方提供书面验收通知; 通知日期为“验收日期”。轻微缺陷如不影响设备的一般功能, 不影响设备验收合格。买方对设备的验收不应免除卖方在订单项下的任何保证或其他义务。如上所述, 在试运行过程中发现任何缺陷, 或生产的机器/设备不符合订单的条件, 卖方应立即对此类缺陷或不符合之处进行补救, 费用自行承担, 同时无权因此延长《条款清单》中规定的交货期限。在该等补救措施之后, 如买方要求, 须对有关机器/设备进行重新检查。如在设备交付日期后三十(30)天内未能完成此项工作, 买方有权立即以书面形式通知卖方取消订单, 而无需履行订单项下的任何其他义务, 并有权选择本条款和条件中规定的补救措施。为了符合这一规定, 验收试运行的结果应由买方记录在案, 由买方批准和签署。

11. **CONFIDENTIALITY:** In connection with the Order, Buyer has disclosed or may disclose to Seller certain confidential and proprietary information with respect to Buyer parts,



including, without limitation, specifications, know-how and technical drawings. Such information will be deemed "Confidential Information" hereunder when marked "Confidential" or "Proprietary" (if disclosed in written form) or when identified as such (if disclosed in oral form) and thereafter reduced to writing, marked as "Confidential" or "Proprietary" and delivered to Seller. Seller acknowledges and agrees that the Confidential Information is Buyer's sole property and that the Order does not convey or grant to Seller any title or rights to or any interest in same, or any license with respect to same under any intellectual property including, but not limited to, patents and trade secrets, now or hereafter owned by Buyer. Seller agrees and warrants that it will disclose the Confidential Information only to those of its officers, employees and subcontractors who have a need to know it and who have agreed to maintain its confidentiality and to adhere to the provisions of this section; will take all steps necessary to prevent any unauthorized disclosure of the Confidential Information; will not produce, sell, offer for sale or otherwise commercially exploit or make any use of the Confidential Information without Buyer's prior written consent; and will promptly deliver the Confidential Information and all copies thereof to Buyer upon the completion, termination or cancellation of the Order. The confidentiality obligations will survive the completion, termination or cancellation of the Order.

**保密:** 就本订单而言, 买方已向卖方披露或可能向卖方披露与买方部件有关的某些保密和专有信息, 包括但不限于规格、专有技术及技术图纸。当该等信息在本订单项下标记为“保密”或“专有”(如以书面形式披露)或确认为“保密”或“专有”(如以口头形式披露)时应被视为“保密信息”, 如以口头形式披露的, 其后应以书面形式标记为“保密”或“专有”并交付给卖方。卖方承认并同意, 保密信息属于买方的独有财产, 本订单没有向卖方让与或授予保密信息的任何所有权、权利或任何利益, 或与保密信息有关的任何知识产权许可, 包括但不限于买方现在或今后拥有的专利和商业机密。卖方同意并保证, 卖方将仅向其有必要了解保密信息且已同意维持保密信息的保密性并遵守本条之规定的管理人员、雇员和分包商披露保密信息; 将采取一切必要措施来防止保密信息的任何未经授权的披露; 未经买方事先书面同意, 将不会生产、销售、要约销售或以其他方式进行保密信息的商业开发或利用; 并将在订单完成、终止或取消后立即将保密信息及其所有副本交付给买方。保密义务在本订单完成、终止或取消后仍然有效。

12. **SPARE PARTS:** During the period stated in the Term Sheet, Seller will make available to Buyer all spare parts required for the operation and maintenance of the Equipment, at prevailing catalog prices and delivery and payment terms. Furthermore, Seller commits itself to provide a service technician for the execution of repairs within 24 hour after notification by Buyer (except Sundays and bank-holidays). Beyond this, Seller shall provide a telephone hotline which will be available 24 hours a day and seven days a week free of charge. If Seller ceases or fails to support the Equipment during this period, Seller will supply Buyer with all manufacturing drawings and software source codes so that Buyer can operate and maintain the Equipment. Seller warrants a general spare parts availability of at least 10 years.

**备件:** 在《条款清单》规定的期间内, 卖方将按现行目录价格以及交货和付款条件, 向买方提供运行和维护设备所需的所有备件。此外, 卖方

承诺在收到买方通知后二十四（24）小时内派出维修服务技术人员进行维修（星期日及国定假日除外）。除此之外，卖方还应提供每天 24 小时、每周 7 天的免费电话热线。如卖方在此期间停止或无法为设备提供技术支持，卖方将向买方提供所有制造图纸及软件源代码，以便买方操作和维护设备。卖方保证通用备件供应至少十（10）年。

13. **INSURANCE:** During any period when Seller's employees or agents are working on or about Buyer's facility, Seller will maintain workmen's compensation and employer's liability insurance as required by law; comprehensive public liability insurance (bodily injury and property damage) in amounts of not less than \$5 million per person and occurrence (of which, \$1 million may be primary and \$4 million may be excess coverage); and automotive liability insurance (bodily injury and property damage) in amounts of not less than \$5 million per person and occurrence (of which, \$1 million may be primary and \$4 million may be excess coverage). Such insurance will be secured with a reputable insurance carrier reasonably acceptable to Buyer and Seller will provide Buyer with certificates of insurance evidencing the coverage. Such certificates will name Buyer as an additional insured. In the event of any material change in or cancellation of the coverage, Seller will give to Buyer at least 15 days' prior written notice.

**保险:** 在卖方雇员或代理人在买方场所工作的任何期间，卖方将按法律规定为其相关人员提供劳工补偿金和雇主责任保险；综合公共责任保险（人身伤害及财产损失），保险金额不低于 500 万美元/人/事故（其中 100 万美元可能是基本保险，400 万美元可能是超额保险）；以及汽车责任保险（人身伤害及财产损失），保险金额不低于 500 万美元/人/事故（其中 100 万美元可能是基本保险，400 万美元可能是超额保险）。此类保险将由信誉良好且被买方合理接受的保险公司担保，卖方应向买方提供证明保险范围的保险凭证。该等凭证应指定买方为附加被保险人。如保险范围发生任何重大变化或取消，卖方应至少提前十五（15）天书面通知买方。

14. **COMPLIANCE WITH LAWS:** The parties will perform their obligations hereunder in accordance with all applicable laws, regulations and orders now and hereafter in effect, including, but not limited to, applicable import and export laws.

**遵守法律:** 双方应按照目前及今后生效的所有适用法律、法规和法令履行其在本订单项下的义务，包括但不限于适用的进出口法律。

15. **CANCELLATION AND TERMINATION:**

**取消与终止:**

- 15.1 Except as otherwise provided in these Terms and Conditions, if Seller fails to deliver the Equipment and/or complete any services by the dates stated in the Term Sheet or otherwise agreed with Buyer, Buyer may, as liquidated damages for such delay(s), withhold and offset against any sums due to Seller under the Order the liquidated damages stated in the Term Sheet.

除非本条款和条件中另行规定，否则如卖方未能在《条款清单》中规定的日期或与买方另行约定的日期前交付设备和/或完成任何

服务, 买方可扣留并抵消订单项下应付给卖方的任何款项, 作为该等延误的违约金。

- 15.2 Except as otherwise provided in these Terms and Conditions, either party may cancel the Order upon 30 days' written notice to the other party in the event of any material breach of the Order by the other party, unless the breaching party corrects the breach or takes satisfactory steps to correct or prevent the breach prior to the expiration of the notice period.

除本条款和条件中另有规定外, 在任何一方严重违反订单的情况下, 另一方可提前三十(30)天书面通知该方后取消订单, 除非违约方在通知期限届满前纠正违约行为, 或采取令人满意的措施来纠正或防止违约行为。

- 15.3 If Buyer cancels the Order for cause, it will have no further obligation to Seller hereunder and may elect either (a) to receive a refund from Seller of all installments of the Purchase Price that were previously paid (subject to Seller's right to remove the Equipment from Buyer's facility promptly and at Seller's cost if the Equipment has already been delivered), or (b) to take or retain possession of and title to the Equipment as and where it is located at the time of cancellation in consideration of the installments of the Purchase Price that were previously paid, which the parties hereby agree will, in such circumstances, constitute full and final payment for the Equipment.

如买方因故取消订单, 则买方在本订单项下对卖方不再负有任何义务, 买方可选择(a)从卖方那里获得先前支付的所有分期付款的退款(如设备已经交付, 卖方有权立即将设备从买方场所移除, 费用由卖方承担), 或(b)考虑到先前支付的部分货款, 在取消时设备的所在地取得或保留设备及其所有权, 双方在此同意, 在此情况下, 该等货款将构成对设备的全部及最终付款。

- 15.4 Buyer may also terminate the Order for convenience at any time, upon written notice to Seller. In such event, Seller will submit an invoice or credit memo, as the case may be, to Buyer within 30 days after receipt of the notice. Seller's invoice or memo will itemize the payments received from Buyer prior to the date of termination, the costs of labor and materials incurred by Seller with respect to the Order prior to the date of termination, and the costs of non-cancelable material commitments existing at the date of termination, and will show the net amount due to Seller or Buyer, as the case may be. Any payment due to Buyer will accompany the memo. Any payment that Buyer confirms is due to Seller, will be made by Buyer within 30 days of receipt of the invoice.

为方便起见, 买方也可以在给予卖方书面通知后随时终止订单。在此种情况下, 卖方应在收到通知后的三十(30)天内向买方提交发票或付款通知(视情况而定)。卖方的发票或付款通知应逐项列出在终止日期之前从买方处收到的付款、卖方在终止日期之前就订单所发生的人工和材料费用, 以及在终止之日前存在的不可取消的材料承付费用, 并应显示应付给卖方或买方的净额(视情况而定)。任何应付给买方的款项都应随附付款通知。买方确

认应支付给卖方的任何款项应由买方在收到发票后的三十（30）天内支付。

16. **INSPECTION:** Subject to a reasonable notification period of at least 48 hours Buyer may inspect and/or test the Equipment at any time at its own expense and Seller, at no charge, will make its premises available for this purpose and provide any necessary assistance to make the procedures safe and convenient. No inspections and/or tests by Buyer will relieve Seller of its obligations to inspect and test the Equipment.

**检查:** 在给予至少四十八（48）小时的合理通知期的情况下，买方可随时自费检查和/或测试设备，卖方将为此目的免费提供其场所，并提供任何必要的协助，以确保程序的安全和方便。买方进行的任何检查和/或测试均不能免除卖方对设备进行检查和测试的义务。

17. **FORCE MAJEURE:** Neither party will be liable for any delay of less than 30 days in the performance of its obligations under this Order which is due to unforeseeable causes beyond its control (including, without limitation, war, strike or lockout, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood, or other natural disaster) ("Force Majeure Delay"); provided, that said party has notified the other in writing of the nature and anticipated duration of the delay. The foregoing notwithstanding, a failure of Seller's subcontractors or Seller's inability to obtain materials will not be considered as a Force Majeure Delay.

**不可抗力:** 任何一方对因其无法控制的、不可预见的原因（包括但不限于战争、罢工或停工、禁运、国家紧急状态、暴动或暴乱、公敌行为、火灾、水灾或其他自然灾害）（以下简称“不可抗力延误”）导致其对本订单项下义务的履行不超过三十（30）天的任何延误均不承担责任；前提是该方已书面通知另一方该等延误的性质及预期持续时间。尽管有上述规定，卖方分包商卖方未能或无法获得材料不应被视为不可抗力延误。

18. **PROMOTION LIMITATION:** Neither party will use the other party's name in its advertising or promotional materials without the other's written consent.

**宣传限制:** 未经另一方书面同意，任何一方不得在其广告或宣传材料中使用另一方的名称。

19. **NOTICES:** All notices, reports, documents and communications called for in the Order must be in writing and provided to the parties named in the Term Sheet.

**通知:** 订单中要求的所有通知、报告、文件和通信必须采用书面形式并提供给《条款清单》中指定的各方。

20. **ASSIGNMENT:** Neither party may assign the Order or any of its rights or obligations thereunder to any other third party without the other party's prior written consent. If either party consents to such assignment, unless otherwise expressly stated in the consent, the assignee will be bound by all applicable terms and conditions of the Order and the assignor will remain fully liable to the other party for the performance of any obligations so assigned in the event of nonperformance by the assignee.

**转让:** 未经另一方事先书面同意，任何一方不得将本订单或其在本订单

项下的任何权利或义务转让给任何其他第三方。如合同的任何一方同意该等转让, 除非在同意书中另有明确规定, 否则受让人应遵守订单的所有适用条款和条件, 且在受让人不履行的情况下, 转让人仍将就所转让的任何义务的履行对另一方承担全部责任。

21. **AMENDMENTS:** No amendment to this Order will be effective unless it is in writing and signed by the authorized representatives of both parties.

**修订:** 对本订单的任何修订均须以书面形式作出并经双方授权代表签署, 否则无效。

22. **SURVIVAL OF WARRANTIES:** All of Seller's representations and warranties in the Order will survive the delivery of the Equipment, the completion of the Services, and the payment of the Purchase Price.

**保证条款的续效性:** 订单中卖方的所有声明和保证在设备交付、服务完成和货款支付后应继续有效。

23. **HEADINGS:** The headings used in these Terms and Conditions are for reference only and will not be deemed to be a part of the Order.

**标题:** 本条款和条件中使用的标题仅供参考, 不应被视为订单的一部分。

24. **WAIVERS:** No term or provision of this Order will be deemed waived and no breach will be deemed excused unless the waiver or consent is in writing and signed by the party alleged to have waived or consented. Any such waiver or consent will apply only to the specific term waived or the specific breach consented to, and will not constitute a continuing waiver or consent.

**弃权:** 除非以书面形式作出任何弃权或同意, 并由声称已弃权或同意的一方签署, 否则任何行为均不得被视为对本订单的任何条款或规定的弃权, 或者对任何违约行为的免责。任何该等弃权或同意应仅适用于放弃的特定条款或同意的特定违约行为, 而不构成对其他条款的弃权或其他行为的同意。

25. **SEVERABILITY:** If any term or provision of the Order is found to be illegal or unenforceable, it will be deemed stricken and the remainder of this Order will remain in full force and effect.

**条款可分割性:** 如本订单的任何条款或规定被认定为非法或无法执行, 无效的范围仅涉及该等条款或规定, 同时本订单的其余部分仍然完全有效。

26. **GOVERNING LAW; FORUM:** This Order will be interpreted and enforced under the laws of the country (and state/province, if applicable) where Buyer is situated, without recourse to the conflicts of laws provisions thereof. In no event will the provisions of the U.N. Convention on the International Sale of Goods apply to this Order. All disputes involving this Order shall be adjudicated exclusively in the courts where the Buyer is situated or, at the discretion of the Buyer only, in the courts where the Seller is situated.

**适用法律; 法庭:** 本订单应根据买方所在国家 (和州/省, 如适用) 的法



律予以解释和执行，而不诉诸于其法律冲突规定。在任何情况下，《联合国国际货物销售合同公约》的规定均不适用于本订单。涉及本订单的所有争议均应提交买方所在地的法院进行裁决，或由买方酌情决定的卖方所在地的法院进行裁决。

***This is a translation of the English version of the Capital Equipment Terms and Conditions. In the event of any inconsistency, the English version shall prevail.***

***本版本为资本设备采购订单条款和条件的英文版本的翻译版。如果出现任何不一致，应以英文版为准。***