

## General Terms and Conditions of Sale 通用销售条款和条件

【本通用销售条款和条件（下称本“**条款和条件**”）应构成销售协议的一部分，但销售协议另行约定特定的条款和条件的除外。在另行约定的情况下，该等特定的条款和条件应与以下条款和条件一并适用。】

### 1. 协议

本条款和条件意在设定，在购买者（下称“**买方**”）发出订单（下称“**协议订单**”）并被**银都拉玛（开平）高性能纤维第二有限公司**（下称“**银都拉玛公司**”）接受的情况下，银都拉玛公司向买方出售其产品

（下称“**协议产品**”）所依据的条款和条件。通过发出协议订单，买方提交一份要约，按照本条款和条件购买协议产品。在银都拉玛公司运输协议产品给买方或书面接受买方的协议订单之前（以先发生者为准），不应视为银都拉玛公司已接受任何该等要约。未经银都拉玛公司的授权主管人员以书面形式特别表示同意，银都拉玛公司不受买方提交的任何标准或格式条款的约束。除买方以书面形式向银都拉玛公司明确表示拒绝外，本条款和条件应适用于所有的要约、协议订单确认书、协议订单接受书或销售，而不论本条款和条件是否适用于买方之前的购买行为。除银都拉玛公司的授权主管人员外，银都拉玛公司的其他员工或代理无权就协议产品作出陈述。“**合同**”指本条款和条件、和/或销售协议、和/或银都拉玛公司销售协议产品的协议订单。

### 2. 价款

除银都拉玛公司与买方另行书面约定外，协议产品的购买价款（下称“**价款**”）以及任何其他销售条款和条件，应与合同或银都拉玛公司出具的确认接受协议订单的承诺函所述一致。价款应用银都拉玛公司指定的货币支付。

经适当通知买方，银都拉玛公司可以在任何时候基于正当理由提高价款。

### 3. 支付与信用

付款条件可由银都拉玛公司按照合同的规定随时确定。如果买方到期未能支付一期或多期货款，或买方的财务状况在银都拉玛公司看来很不理想，银都拉玛公司除根据本条款和条件或合同取得其他救济之外，还应有权同时选择以下壹种或壹种以上的救济办法：(a) 中止或取消之后的交付，(b) 要求买方立即以现金支付之后交付的协议产品的货款，或 (c) 在进一步交付之前，要求买方提供银都拉玛公司满意的担保。任何金额在到期日三十（30）天后仍未支付的，应自到期日起计算该金额的利息，利率以以下两者中的较高者为准：(a) 每年6%，或 (b) 适用的法律允许的最高利率。银都拉玛公司将就各协议订单项下交付的各次销售的、单个批次的

*[These general terms and conditions of sale (“**Terms and Conditions**”) shall constitute part of a sale agreement, unless the sale agreement refers to specific terms and conditions in which case those specific terms and conditions shall apply in conjunction with the Terms and Conditions below.]*

### 1. Agreement

These Terms and Conditions are intended to establish the Terms and Conditions under which **Indorama Ventures Mobility (Kaiping) No. 2 Co., Ltd., China** (the “**Company**”) shall sell its products (“**Products**”) to a purchaser (the “**Buyer**”) as and when purchase orders are placed by the Buyer and accepted by the Company (“**Order**”). By placing an Order the Buyer submits an offer to buy the Products pursuant to these Terms and Conditions. The Company shall not be deemed to have accepted any such offer unless and until it ships Products to the Buyer, or accepts the Order of the Buyer in writing, whichever comes first. The Company will not be bound by any standard or printed terms presented by the Buyer unless specifically accepted by the Authorized Officer of the Company in writing. Unless explicitly objected to in writing received by the Company, the Terms and Conditions shall apply to all offers, Order confirmations, Order acceptances, or sales whether or not they applied to a prior purchased by Buyer. No employee or agent, other than the authorized officer of the Company is authorized to make the representations of the Products. “**Contract**” means these Terms and Conditions and/or the sale agreement, and/or the Order for sale of the Products by the Company.

### 2. Payment and Credit

Payment terms shall be as established by the Company from time to time as mentioned in the Contract. If the Buyer fails to pay for any one or more installments of the Price when due, becomes unsatisfactory to the Company, then the Company shall have the right, in addition to other remedies available to it under the Terms and Conditions or the Contract, to any one or more of the following remedies: (a) suspend or agrees otherwise with the Buyer in writing. The Price shall be payable in the currency designated by the Company.

The Company at any time with due intimation to the Buyer may increase the Price for reasons justifiable.

### 3. Payment and Credit

Payment terms shall be as established by the Company from time to time as mentioned in the Contract. If the Buyer fails to pay for any one or more installments of the Price when due, or if the Buyer's financial worthiness, becomes unsatisfactory to the Company, then the Company shall have the right, in addition to other remedies available to it under the Terms and Conditions or the Contract, to any one or more of the following remedies: (a) suspend or cancel further deliveries, (b) require immediate cash payment for further deliveries, or (c) require satisfactory security before proceeding with further deliveries. Any amounts past due over thirty days will accrue interest from their due date at the higher of (a) 6% per annum or (b) the maximum rate permitted

协议产品，向买方出具收款通知书，收款通知书可通过信件、电邮或任何其他电子方式寄送。如果买方在交付运输后壹个月内未提出任何异议，应视为其对该收款通知书无异议。买方应按照银都拉玛公司的书面指示，或协议订单特别注明的信息，向银都拉玛公司支付各次交付协议产品的价款。协议产品的价款在收款通知书出具之日起三十（30）天内到期应付。买方无权以银都拉玛公司或银都拉玛公司的任何关联公司应付给买方的任何金额抵消货款。在银都拉玛公司收到全部结清款之前，不应视为银都拉玛公司已收到货款。不论买方是否随同某笔付款作出了任何注释或声明，买方支付部分货款不应构成对银都拉玛公司出具的收款通知书的解决和清偿，也不能视作买方已经以任何方式清偿全部未偿付的余额。尽管有如上规定，银都拉玛公司保留其经合理通知买方，改变约定的付款条件，和/或取消或变更任何其已授予买方的信用安排或条款的权利。对于银都拉玛公司向买方收取买方拖欠银都拉玛公司的任何应付款项所产生的费用，包括但不限于合理的律师费，买方应对银都拉玛公司进行补偿。买方不得为其声称的对银都拉玛公司进行索赔之目的，扣除或抵消任银都拉玛公司的款项。

#### 4. 税收

价款不包括任何销售税、使用税、所得税、消费税、增值税或其他税收或政府费用，前述该等税费均应由买方承担。因协议产品的销售、交付或使用而产生的、应由银都拉玛公司支付的任何税收或其他政府费用，例如但不限于销售税、使用税、零售商的开业许可税、总收入税、增值税和运输税，可由银都拉玛公司决定是否加入价款。

#### 5. 权属与灭失风险

##### A. 国内销售

所交付协议产品的所有权、灭失风险，应在银都拉玛公司将协议产品交付至约定交付地点之时，自银都拉玛公司转给买方。

##### B. 国际销售

除双方另有书面约定，或协议订单、收款通知书或任何销售协议另有说明外，协议产品的所有权应按照《国际贸易术语解释通则（2010版）》的规定自银都拉玛公司转给买方。

但是，在任何情况下，如果银都拉玛公司未收齐以下任何款项：(a) 买方全额支付的产品货款，(b) 已完成的与协议产品有关的任何工作的费用，(c) 以及买方违反协议产品销售的有关义务所引起的任何费用或损害赔偿，银都拉玛公司有权取回其对已交付或将要交付的协议产品的所有权。

#### 6. 保险

##### A. 国内销售

除合同中另有规定外，协议产品到达约定交付地点之前，应由银都拉玛公司负责购买保险，协议产品达到约定交付地点之后，应由买方负责为前述协议产品购买保险。

under applicable law. The Company will invoice the Buyer for and in respect of each sale and individual consignment of the Products delivered under each Order via regular mail, electronic mail or by any other electronic means. Any invoice not objected to by the Buyer in writing within one month of shipment will be deemed to be an undisputed invoice. The Price of each delivery shall be payable by the Buyer as directed in writing by the Company or as specifically mentioned in the Order. The Price of the Products shall be due and payable within 30 days after the date of invoice. The Buyer has no right to set-off against any amount due to the Buyer from the Company or any affiliated company of the Company. The payment is not deemed to be received unless it has been received in cleared funds. No partial payment by the Buyer shall constitute an accord and satisfaction or otherwise satisfy the entire outstanding balance of any invoice of the Company, notwithstanding any notation statement accompanying that payment. Notwithstanding anything set out above, the Buyer, to vary the agreed payment terms and/or to cancel or change any credit arrangements or terms granted to the Company reserves the right, with due intimation to the Buyer. Buyer shall reimburse the Company for the cost of collection, including, without limitation, reasonable attorney's fees, of any overdue amount owed by Buyer to the Company. Buyer may not hold back or set-off any amounts owed to the Company in satisfaction of any claims asserted by Buyer against the Company.

#### 4. Taxes

The Price does not include any sales, use, revenue, excise, value added or other taxes or governmental charges, all of which are the Buyer's sole responsibility. Any tax or other governmental charge payable by the Company due to the sale, delivery or use of the Products, such as, but not limited to, sales tax, use tax, retailer's occupational tax, gross receipts tax, value added tax and transportation tax, may, at the Company's option, be added to the Price.

#### 5. Title and Risk of Loss

##### A. Domestic Sales

The title, risk of loss for the Products delivered shall pass from the Company to Buyer the moment the Products are delivered at the agreed point of delivery.

##### B. International Sales

Unless otherwise agreed in writing or indicated on the Order, invoice or elsewhere in any sale agreement, title shall pass from the Company to the Buyer pursuant to INCOTERM version 2010.

However in any case, the Company can reclaim title to the Products delivered or to be delivered to Buyer if the Company has not received payment in full of the Price of the Products, the fees for any breach by the Buyer of its obligations in regard to the sale of the Products.

#### 6. Insurance

##### A. Domestic Sales

Unless otherwise stated in the Contract, the Company shall insure the Products up to the agreed point of delivery and thereafter it will be the sole responsibility of the Buyer to insure the Products.

## **B. 国际销售**

买方/银都拉玛公司应负责按照协议订单、收款通知书或任何销售协议中注明的《国际贸易术语解释通则（2010版）》的规定，为协议产品购买保险。

但是，如果协议产品的所有权已转给买方，但是买方尚未支付该等协议产品的货款，那么银都拉玛公司有权在其应得的范围内，代替买方从买方的承保人处取得保险金。买方须为协议产品投保全额保险，以覆盖协议产品的任何损害或灭失。

## **7. 取消或延迟**

未经银都拉玛公司书面明确同意，买方无权取消其提交给银都拉玛公司的任何协议订单，或延迟任何交付。如果银都拉玛公司同意买方取消协议订单或延迟交付，买方应支付银都拉玛公司已经产生的和之后将要产生的、与该等取消或延迟有关的所有费用，包括所有补货费用。买方与银都拉玛公司达成共识并约定：如果本条款和条件涵盖专门为买方制造（定制）的产品，无论该等协议订单因何种原因中止或终止，对于银都拉玛公司在收到中止或终止通知之日正在生产的成本或半成品，买方均应提货并支付相应货款。如果买方基于任何理由，无法接受该等定制产品，买方应支付该等产品的全部货款。在这种情况下，尽管应当视同银都拉玛公司已交付产品，但银都拉玛公司仍有权自由裁量决定，为买方之利益存储该等产品，并由买方承担相关费用，或在银都拉玛公司认为适当的情况下，销毁或处置该等产品。

## **8. 运输与交付**

除协议订单中另行明确注明外，交付时间并非关键条款。买方应合理书面通知银都拉玛公司，说明其要求的装运日和交付日。银都拉玛公司报给买方的所有运输时间表和交付日期或期限仅是银都拉玛公司预估得出，银都拉玛公司不对任何装船延误、运输延误或交付延误负责。除协议订单中另有说明外，承运人和运输路线的选定应由银都拉玛公司决定，但是银都拉玛公司不应为该等决定承担任何与运输有关的责任，而承运人也不得解释为银都拉玛公司的代理人。银都拉玛公司在任何时候都可以部分交付或中止交付任何协议产品，而无须通知买方。协议产品可按照协议订单中规定的且为银都拉玛公司的授权主管人员同意的、或合同规定的条款进行交付，或在国际销售的情况下，按照《国际贸易术语解释通则（2010版）》的规定交付。未经银都拉玛公司明确书面同意，买方无权拒绝接受银都拉玛公司交付的协议产品，和/或退回任何批次的协议产品。

## **B. International Sales**

The Buyer / the Company shall be responsible for insuring the Products as per INCOTERM version 2010 as indicated in the Order, invoice or elsewhere in any sale agreement.

However, in the event, the title of the Products passes on to the Buyer but the Buyer has not made payment for the Products, in such case the Company shall be entitled to receive the insured claim amount from the insurer of the Buyer to the extent due to the Company. The insurance provided by the Buyer must be made to cover any damages or loss on the Product for full amount of the insurable value of the Products.

## **7. Cancellation or Delay**

Other than with the express written consent of the Company, the Buyer has no right to cancel any Order it submits to the Company or to delay any delivery. If the Company allows the Buyer to cancel any Order or to delay a delivery, the Buyer shall pay the Company all costs the Company has incurred, and will incur, with respect to the cancellation or delay, including all restocking charges. It is understood and agreed between the Buyer and the Company that if this Terms and Conditions covers Products that must be manufactured especially for the Buyer (custom made) and such an Order is suspended or terminated for any reason, the Buyer shall take delivery of and make payment for such Products as have been completed and such Products as are in process on the date notice of suspension or termination is received by the Company. If the Buyer for any reason cannot accept delivery of such custom made manufactured Products, the Buyer shall make payment therefore as though delivery has been made and the Company may in its sole discretion, store such Products for the Buyer's account and at the buyer's expense or destroy or dispose of such Products as it deems appropriate.

## **8. Shipment and Delivery**

Unless otherwise expressly stated in the Order, time of delivery shall not be of the essence. The Buyer shall give the Company reasonable written notice of requested shipment and delivery dates. All shipment schedules and delivery dates or periods quoted by the Company are estimates only and the Company is not liable for any delay in shipment, transportation or delivery. Unless stated otherwise in the Order, selection of carrier and routing of shipment shall be at the Company's option, but the Company will not, by exercising such option to select the carrier and routing, assume any liability in connection with shipment, nor shall the carrier in any way be construed to be the agent of the Company. The Company may make partial deliveries or may discontinue deliveries of any Products, at any time, without notice. The Products shall be delivered on the terms as set out in the Order and accepted by the authorized officer of the Company or contract, or on the basis of INCOTERM version 2010, in case of international sales. Without the express written consent of the Company, Buyer shall not be entitled to refuse to accept delivery and/or return any consignment of the Products delivered by the Company.



## 9. 重量、尺寸与数量

如果买方未在提货之日起七（7）天内就所交付协议产品的重量和/或尺寸向银都拉玛公司提出书面异议，应以银都拉玛公司提供的重量和/或尺寸为准，且视为买方已接受该等协议产品的重量和/或尺寸。

如通过海上船舶散装运输，对于净重短缺1%以内的情况，买方不得提出索赔。如通过油罐车、罐式车散装运输，或通过包装运输，对于净重短缺0.5%以内的情况，买方不得提出索赔。虽然银都拉玛公司应尽一切努力足量地、按照协议订单注明的批次和间隔，交付买方购买的协议产品，但该等交付将受限于可获得性，且如果实际交付与协议订单规定的不同，银都拉玛公司无须对买方承担任何责任。如果协议产品是以散装方式交付，银都拉玛公司有权决定实际交付数量是否在协议订单数量基础上上下浮动百分之五（5%），且所交付数量应视为协议订单数量。

## 10. 集装箱与交付设备

买方应在货物抵达交付地点之后四十八（48）小时内卸载，并将银都拉玛公司提供的交付设备退还给承运人。买方应承担该等交付设备损坏所产生的费用，以及该等设备滞留或被扣押所产生的费用。如果运输/交付中需要用到可退还的集装箱，无论在任何时候，银都拉玛公司仍享有该等集装箱的所有权。自交付运输之日起六十（60）天内，买方应将该等集装箱退还银都拉玛公司，且所退还集装箱的情况应为良好，且买方应承担该等集装箱损失所产生的费用，以及该等集装箱滞留或被扣押所产生的费用。

## 11. 协议产品的特性

买方陈述：其具备妥当存储、测试、使用和处置协议产品所需的专业知识、设施和设备。买方及其全部员工和其他全部处理协议产品的人员应熟悉协议产品的特性，并遵守所有适用于协议产品的占有、处理、加工或使用的法律、法规和标准。买方应遵循银都拉玛公司的安全建议，但是尽管银都拉玛公司提供了产品说明书，买方仍应负责确保协议产品严格按照银都拉玛公司的指导，以及任何适用的与健康、安全、环境、土地使用有关的其他指导方针、标准、法律或法规进行存储、测试、使用、销售和/或处置。

## 12. 协议产品的适用性

买方应单独负责确定协议产品是否适用于买方及其他人预期的用途和应用。银都拉玛公司未就协议产品适用于买方的预定用途的适用性作出任何陈述或保证。银都拉玛公司就协议产品的使用或应用提出的任何建议或推荐均被认为是可信赖的，但是由于买方以及其他人使用和应用协议产品的条件可能各有不同且超出了银都拉玛公司的控制，所以银都拉玛公司不对可能取得的结果作出任何保证或担保。

## 9. Weights, Measurements and Quantities

The Company's weights and/or measurements shall govern and be deemed to be accepted by the Buyer if the Buyer has not complained in writing, of any discrepancy in weights and/or measurements, to the Company within 7 days of taking delivery.

On bulk marine vessel shipments, claims may not be made for shortages of less than 1.0% of the net weight. On bulk tank trucks, bulk tank cars, or packaged shipments, claims may not be made for shortages of less than 0.5% of net weight. While the Company will make best endeavors to deliver the full quantities purchased by the Buyer, and in such consignments and intervals as indicated in the Order, such deliveries will be subject to availability and the Company has no liability to the Buyer in the event that the actual deliveries differ from those set out in the Order. Where delivery of the Products is to be made in bulk, the Company reserves the right to deliver up to five per cent (5%) more or five per cent (5%) less than the quantity ordered, and the quantity so delivered shall be deemed to be the quantity ordered.

## 10. Containers and Delivery Equipment

The Buyer shall unload and return delivery equipment furnished by the Company to the carrier within forty-eight (48) hours after arrival. The Buyer shall be responsible for the cost of any damage to such delivery equipment and shall further be responsible for the costs of any demurrage or detention charges on such equipment. If shipment/delivery requires use of returnable containers, title to such containers shall remain in the Company at all times. Such containers shall be returned in good condition to the Company within sixty (60) days from the date of shipment, and the Buyer shall be responsible for the cost of any damage to such containers and/or the costs of any demurrage or detestation charges with respect to such containers.

## 11. Product Characteristics

The Buyer represents that it has the requisite expertise, facilities and equipment to properly store, test, use and dispose of the Products. The Buyer and all its employees and others that handle the Products shall familiarize itself with the characteristics of the Products and shall comply with all laws, regulations, and standards applicable to the possession, handling, processing or use of the Products. The Buyer shall follow the safety recommendations of the Company provided that, notwithstanding any product instructions given by the Company, the Buyer shall be responsible to ensure that the Products shall be stored, tested, used, sold and/or disposed of strictly in compliance with instruction of the Company and any applicable health, safety, environmental, land use or other guidelines, standards, laws or regulations.

## 12. Product Suitability

Determination of the suitability of the Products for the uses and applications contemplated by the Buyer and others shall be the sole responsibility of the Buyer. The Company makes no representations or warranties with respect to their suitability for any use for which the Buyer may intend them. Any suggestions or recommendations made by the Company concerning uses or applications of the Products are believed to be reliable, but the Company makes no warranty or guarantee of the results to be

### 13. 保证与免责

除以下款项规定的、对材料缺陷作出的有限保证外，银都拉玛公司并未作出任何其他明示的或默示的保证。

银都拉玛公司保证：协议产品应符合银都拉玛公司在交付日实行的标准书面规格。

本有限保证明确代替任何其他明示的或默示的保证，包括但不限于对适销性或特定目的适用性的任何默示保证。

根据合同交付的协议产品不保证适用于买方特有的任何特定目的。协议产品是否适用于买方特有的特定目的由买方自主决定。银都拉玛公司不负责选择或提供适于买方单独需要和单独目标的协议产品。

对银都拉玛公司提出的任何索赔均不得超出已按照合同实际支付给银都拉玛公司的产品货款；此外，任何索赔的金额也不得超出买方提出索赔所依据的特定协议订单的价款，和/或索赔所涉的、实际交付的协议产品的价款。此处规定的救济应为买方的唯一的、独有的救济；特此排除买方索要利润损失或任何特殊性、间接性、附带性、惩戒性、惩罚性或结果性损害赔偿的权利。未经银都拉玛公司的授权代表书面同意，买方的任何索赔均不得附带索要任何附带性的费用或成本。

### 14. 责任限制

买方承担使用协议产品所产生的所有风险和责任，而无论协议产品是单独使用还是与其他材料一并使用。

买方负责分析协议产品。如果买方使用的协议产品不符合银都拉玛公司在交付日实行的标准书面规格，银都拉玛公司无须承担责任。买方必须在其发现协议产品出现不合格情况之日起五（5）天内，书面通知银都拉玛公司该等不合格情况。银都拉玛公司应有合理机会检验所涉协议产品。对于任何被银都拉玛公司认定为不符合规格的协议产品，买方所能取得唯一的、单独的救济应由银都拉玛公司自由裁量决定，银都拉玛公司可替换不合格产品，也可将买方已实际支付给银都拉玛公司的、该等不合格协议产品的货款退还给买方，而无论在何种情况下，银都拉玛公司对任何索赔所承担的责任均不得超过前述货款的金额。有关不合格协议产品的索赔应在发现协议产品不合格之日起三十（30）天内提出。任何其他索赔应在收到索赔所涉协议产品之日起三十（30）天内提出，如果协议产品并未交付，则应在预定交付日起三十（30）天内提出。如果买方未能在适用的期限内以书面形式向银都拉玛公司提出索赔，则构成买方对该等索赔权绝对的、无条件的弃权。无论在何种情况下，买方均不得在诉因出现之日起九十（90）天后对银都拉玛公司提起任何诉讼。

obtained since the conditions of the use and application by the Buyer and others may vary and are beyond the Company's control.

### 13. Warranties and Disclaimers

There are no warranties, express or implied, made by the Company herein, except for the limited warranty against defects in materials set forth in the following paragraph.

The Company warrants that the Products shall meet the standard written specifications of the Company in effect as of the date of delivery.

This limited warranty is expressly in lieu of any other warranties, express or implied, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose.

The Products subject to the Contract are not warranted as suitable for any particular purpose particular to Buyer. The suitability of Products for any purpose particular to Buyer is for Buyer, in Buyer's sole judgment, to determine. The Company assumes no responsibility for the selection or furnishing of Products suitable to the individual needs and purposes of Buyer. No claim of any kind against the Company shall exceed the Price of the Products that has actually been paid to the Company under the Contract; provided further that the size of any claim shall be limited in amount to the Price of the particular Order of Products and/or the Price of the actual quantity of Products delivered for which the Buyer is making a claim. The remedy hereby provided shall be the sole and exclusive remedy of Buyer; and any right of the Buyer to loss of profits or for special, indirect, incidental, exemplary, punitive or consequential damages of any kind is hereby excluded. No charges or expenses incident to any claims will be allowed unless approved in writing by an authorized representative of the Company.

### 14. Liability Limitations

The Buyer assumes all risk and liability resulting from the use of the Products, whether alone or in combination with other materials.

Buyer assumes responsibility to analyze the Products, and the Company shall have no liability if Buyer uses the Products that do not conform to the standard written specifications of the Company in effect as of the date of delivery. The Buyer must give the Company written notice of any failure of the Products to comply with the Company's specifications within five days after the Buyer identifies any non-compliance. The Company shall have a reasonable opportunity to inspect the Products at issue. For any Products that the Company determines do not conform to the specifications, the Buyer's sole and exclusive remedy shall be for the Company, at its sole discretion, to replace the non-conforming Products or refund the amount of the Price that the Buyer has already actually paid to the Company for the non-conforming Products, and in no event shall the Company's liability for any claim exceed that amount. Claims related to non-conforming Products shall be made within thirty (30) days after discovery thereof. All other claims shall be made within thirty (30) days after receipt of the Products to which the claim relates, or if for non-delivery, after the scheduled delivery date. The Buyer's failure to give the Company written notice of any claim within the applicable time period shall constitute an absolute and unconditional waiver of such claim. In no event shall the Buyer commence any action against the Company later than 90 days after the cause of action has accrued.

## 15. 赔偿

买方陈述：其熟悉协议产品的特性，对处理、使用或占有已交付给买方的协议产品导致的，并就该等人身伤害、死亡或财产损失、灭失负责对银都拉玛公司因此所承担的损失进行赔偿以使银都拉玛公司免受该等损害。对与以下协议产品所产生的任何和所有人身伤害或财产损失负责事项有关的任何和所有索赔、责任、判决、损失、财产损失或人身伤害、经济损失或费用（包括合理的律师费），买方应为银都拉玛公司及银都拉玛公司的员工进行辩护、作出赔偿、使之免受损害，该等事项包括但不限于：

- (a) 银都拉玛公司履行本合同，
- (b) 买方使用协议产品，
- (c) 买方、买方的员工、代理人或客户以任何方式加工或改变协议产品，
- (d) 买方、买方的员工、代理人在使用、销售、经销或处理协议产品的过程中，故意或过失违反任何法律或法规，或在未经授权的情况下进行代表行为，和
- (e) 违反或侵犯任何第三方的任何专利权、商标权、著作权、商业秘密或其他财产利益。

经银都拉玛公司要求，对于针对银都拉玛公司提出的任何该等索赔，买方应自费为银都拉玛公司进行辩护。

## 16. 不可抗力

如果银都拉玛公司未能交付协议产品、迟延履行合同、迟延交付或装运协议产品，是由银都拉玛公司无法合理控制的事件和原因，直接或间接导致的或以任何方式引起的，银都拉玛公司不应对该等未能交付协议产品或迟延的行为负责，也不对买方因该等迟延而遭致的任何损失或损害赔偿负责。此处的事件和原因包括但不限于事故、天灾、任何政府机关的作为和不作为、宣战或不宣而战、恐怖行动、爆炸、罢工或其他劳动争议、火灾和自然灾害（包括洪水、地震、暴风雨和瘟疫）、法律变更，以及银都拉玛公司以正常价格通过其正常来源迟延取得（或未能取得）劳力、材料或服务，暴乱，以及禁运燃料、电力、材料或供给，公共承运人延迟或违约，交通延误，或在不限前述事件和原因的前提下，银都拉玛公司无法控制的任何其他原因，且不论该等原因的性质是否与前述事件或原因的性质相似。除此之外，在发生前述任何事件的情况下，银都拉玛公司应有权自主决定是否取消任何协议订单或协议订单的任何部分，而无须承担任何责任，或是否将交付期限延长，延长的时间等同于因迟延所实际丧失的时间。此外，在银都拉玛公司未能生产足够的协议产品以履行所有未完成的协议订单的情况下，银都拉玛公司保留其自由裁量决定如何在各客户之间分配其产品的权利。

## 17. 弃权

如果银都拉玛公司对买方违反本条款和条件的任何规定的行为为放弃索赔、迟延或未行使任何权利或救济，银都拉玛公司的该等弃权不应解释为对随后发生的同性质的违约或对任何其他条款或条件的违反的弃权。本条款和条件的任何规定，均不得限制在买方违反本条款和条件的任何规定的情况下银都拉玛公司所享有的任何救济。

## 15. Indemnity

The Buyer represents that it is familiar with the characteristics of the Products and assumes all responsibility and liability for and will indemnify and hold the Company harmless from any and all loss or injury to persons or property arising out of handling use or possession of the Products delivered to it. The Buyer shall defend, indemnify and hold the Company and its employees free and harmless from and against any and all claims, liabilities, judgments, losses, damage to property or bodily injury, economic losses or expenses (including reasonable attorneys fees) in connection with, without limitation, (a) the performance of fulfillment of this Contract by the Company and (b) Buyer's use of the Products, (c) any processing or modification of the Products in any manner by the Buyer, its employees, agents or customers, (d) any violation of law or regulation by, intentional or negligent act of, or unauthorized representation by the Buyer, its employees or agents in their use, sales, distribution or handling of Products, and (e) any violation or infringement of any patent, trademark, copyright, trade secret or other property interest of a third party. At the Company's request, the Buyer shall defend the Company, at the Buyer's expense, against any such claims made against the Company.

## 16. Force Majeure

The Company shall not be liable for any failure to deliver or delay in the performance of the Contract or in the delivery or shipment of the Products, or for any loss or damages suffered by Buyer by reason of such delay, if such delay is, directly or indirectly caused by, or in any manner arises from events and causes beyond the Company's reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, materials or services through the Company's usual sources at normal prices, riots, embargoes, fuel, power, materials or supplies, delay or default of common carriers, transportation delays, or without limiting the foregoing, any other cause or causes, whether or not similar in nature to any of these herein before specified or which are beyond its reasonable control. The Company shall have the additional right, in the event of the happening of any of the above contingencies, at its sole option, to cancel any Order or any part thereof without any resulting liability or to extend the date of delivery for a period equal to the time actually lost by reason of the delay. Further, in the event that the Company is not able to produce enough Products to satisfy all outstanding Orders for any reason, the Company retains the right, in its sole discretion, to allocate its products amongst its customers.

## 17. Waiver

No waiver by the Company of any breach by the Buyer of any of the Terms or Conditions contained herein, or delay or failure of the Company to enforce any right or remedy, shall be construed as a waiver of any succeeding breach of the same or any other terms or conditions. Nothing contained herein shall limit any of the remedies of the Company in the event of the Buyer's breach of any Terms and Conditions contained herein.



## 18. 转让

未经银都拉玛公司事先书面同意（应完全由银都拉玛公司独立地决定），买方不得向任何个人或实体转让其在本条款和条件项下的全部或部分权利或义务；此外，未经该等同意，买方的任何试图转让的行为亦归为无效。如果银都拉玛公司实行或拟实行重组，与任何其他个人、合伙企业、组织或其他实体进行兼并或合并，或将其全部或绝大部分财产或资产转让给任何其他法人、合伙企业、组织或其他实体，银都拉玛公司可转让其在任何协议订单或本条款和条件项下的权利，而无须买方同意。此外，在任何其他情况下，银都拉玛公司经通知买方，可按照合同的条款转让其权利。

## 19. 可分割性

如果本条款和条件的任何规定被主管机关认定为无效或不可执行，本条款和条件的其他规定不应受到影响。

## 20. 通知与通信

各方根据协议订单或任何销售协议作出的任何通知或其他通信，应以书面形式作出，并由专人、或通过一级挂号信、传真或电子邮件，寄送至事先指定的、经授权的个人，或通过其他电子方式发送。

## 21. 相互冲突的规定

如果1) 销售协议， 2) 本条款和条件， 3) 协议订单，和 4) 其他适用的文件或通信的规定之间有任何相冲突或不一致之处，应总是按下列顺序优先确定该等文件的效力：1) 销售协议， 2) 本条款和条件， 3) 协议订单，和 4) 其他适用的文件或通信中的规定。

## 22. 买方的地位

本条款和条件或任何协议订单的任何规定均不得在买方和银都拉玛公司之间创设，或解释为在买方和银都拉玛公司之间创设合伙关系、合资关系、雇佣合同或雇主与雇员的关系，或委托人与代理人的关系。

## 23. 保密

买方保证对其从银都拉玛公司获取的所有信息严格保密，不得将任何该等信息用于预定目的之外的任何目的。买方应以其保护自有保密信息的同等注意保护所有该等信息的保密性，且无论在何种情况下，该等注意均不得低于合理注意标准。为免疑义，为第 23条之目的，协议产品的价款应视为保密信息。

买方同意：因其实际违背或极可能违背其在本第23条作出的承诺的行为，而给银都拉玛公司可能造成的损害是很难计量的，且无论在何种情况下，金钱损害赔偿均不能充分救济任何该等违背行为。相应地，买方同意，除银都拉玛公司可能取得的所有其他救济外，银都拉玛公司有权取得禁令或其他适当的衡平救济或其他合法的

## 18. Assignment

The Buyer shall not assign to any person or entity all or a portion of its rights or obligations under the Terms and Conditions without the prior written consent of the Company, in its sole discretion, and any attempted assignment without that consent shall be void. The Company may assign its rights under the terms and Conditions without the consent of the Buyer in the event that the Company shall effect or intend to effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer all or substantially all of its properties or assets to any other corporation, partnership, organization or other entity. However, in any other circumstances the Company, with intimation to the Buyer, may transfer its rights under and subject to the terms of Contract.

## 19. Severability

If any of the Terms and Conditions is held by a competent authority to be invalid or unenforceable, the validity of the other provisions of the Terms and Conditions shall not be affected.

## 20. Notices and Communication

Any notice or other communication that either party gives under the Order or any sale agreement shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission or electronic mail to a previously designated authorized individual or by any other electronic means.

## 21. Conflicting provisions

In the event of any conflicting or inconsistent provisions between 1) the sale agreement, 2) these Terms and Conditions, 3) the Order, and 4) the other applicable document or correspondence, the provisions of 1) the sale agreement 2) the Terms and Conditions and 3) the Order and 4) the other applicable documents or correspondence shall always prevail respectively and take precedence with respect to any such conflicting or inconsistent provisions.

## 22. Status of the Buyer

Nothing in the Terms and Conditions or any Order shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Buyer and the Company.

## 23. Confidentiality

The Buyer shall undertake to keep in strict confidence all information obtained from the Company and shall not use any such information for any purpose other than the purposes originally intended. Buyer shall protect the confidentiality of all such information with the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable standard of care. For the avoidance of doubt, the Price of the Products shall be deemed to be confidential information for the purposes of this Section 23.

The Buyer agrees that it would be difficult to measure any damages caused to the Company which might result from any actual or threatened breach by the Buyer of the promises set forth

手段，以制止买方实际违背或极可能违背其在本第23条作出的承诺的行为，而无须证明任何实际损失，也无须公开任何约定。另外，买方同意，在这种情况下，买方应补偿银都拉玛公司的律师费。

#### **24. 准据法**

本条款和条件、销售协议、协议订单，以及因前述该等文件或其标的或其形成（包括非契约性纠纷或索赔）产生的或与之有关的任何纠纷或索赔，应受**中国**的相关法律（不适用其冲突规范）管辖，并据其进行解释。所有纠纷均应提交银都拉玛公司所在地有管辖权的法院解决。

#### **25. 语言**

本条款和条件用英文和中文书写，如果两种语言文本之间有任何差异或不一致，以中文版本为准。

in this Section 23, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Buyer agrees that the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief or other legitimate means to restrain any actual or threatened breach by the Buyer of the promises set forth in this Section 23, without the necessity of proving actual damages and without the posting of any bond. Buyer further agrees that, in such event, Buyer shall reimburse the Company for its attorneys' fees and costs.

#### **24. Governing Law**

The Terms and Conditions, the sale agreement, the Order and any dispute or claim arising out of or in connection within them or their subject matters or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the relevant laws of China without regards to its conflicts of law provisions. All disputes shall be brought before the competent courts in China at the place where the Company is located.

#### **25. Language**

The Terms and Conditions is drafted in both English language and Chinese language, if there is any discrepancy or inconsistency between English language and Chinese language, the Chinese language version shall prevail.