

## General Terms and Conditions of Purchase 通用采购条款和条件

【本通用采购条款和条件（下称本“**条款和条件**”）应构成协议订单的一部分，但采购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银都温雅化工（开平）有限公司（下称“**公司**”）向卖方（下称“**卖方**”）采购产品的情形及其依据的程序，适用于公司发出的所有要约、订单（下称“**协议订单**”），以及与其中详述的公司购买的物资或材料（下称“**协议产品**”）有关的要约、订单或者协议述及的与卖方达成的约定。公司采购协议产品的前提为卖方对该等条款和条件的书面同意和完全接受。公司明确告知卖方，公司不接受卖方在协议订单、承诺或卖方出具的其他文件中提出的任何不同的和/或额外的条款，且不受卖方提交的任何标准或格式条款或条件的约束。除卖方以书面形式向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、协议订单接受书或采购，而不论本条款和条件是否适用于公司之前发出的协议订单。公司保留其在卖方接受任何协议订单之前的任何时间取消任何协议订单的权利。

“**公司**”指根据本条款和条件采购协议产品的买方。

“**国家**”为司法管辖之目的，指公司成立地所在国家。“**合同**”

指本条款和条件、和/或协议订单、和/或公司向卖方采购协议产品所依据的采购协议。

### 2. 价款

协议产品的应付价款（下称“**价款**”）以及任何其他采购条款和条件不得高于协议订单中规定的价款、条款和条件，且除非另有规定，应：

a. 包括所有费用，包括但不限于包装材料费、打包费、运输费、装货费、运送费，以及将协议产品交付至交付地点的保险费和运费，以及任何关税、捐税、课税或税费（包括任何销售税或使用税），但不包括增值税；且

[These general terms and conditions of purchase (“**Terms and Conditions**”) shall constitute part of an Order, unless the purchases 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 circumstances and procedures under which Indovinya (Kaiping) Chemical Co., Ltd. (the “**Company**”) shall purchase products from a seller (the “**Seller**”), and shall apply to all offers made by, orders placed by the Company (“**Order**”) and agreements concluded with the Seller mentioned in the relevant offer, order or agreement in relation to the purchase by the Company of the supplies or materials (“**Products**”) described therein. The Company’s purchase of the Products is expressly conditioned on the Seller’s agreement on and full acceptance of these Terms and Conditions in writing. The Company expressly notifies the Seller of its objection to any different and/or additional terms proposed by the Seller in the Order or acceptance, or other document issued by the Seller, and the Company will not be bound by any standard or printed terms or conditions presented by the Seller. Unless explicitly objected to in writing received by the Company, the Terms and Conditions shall apply to all offers, Order confirmation, Order acceptances, or purchases whether or not they applied to a prior purchase by the Company. The Company reserves the right to revoke any Order at any time before acceptance by Seller.

“**Company**” means the purchaser of the Products under these Terms and Conditions and

“**Country**” for the purpose of jurisdiction means the country in which the Company is incorporated.

“**Contract**” means these Terms and Conditions and/or the Order and/or the purchase agreement for purchase of the Products by the Company from the Seller.

### 2. Price

The price payable for the Products (“**Price**”) and any other terms and conditions of purchase shall be not higher than that stated in the Order and unless otherwise stated shall be:

a. inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Products to the delivery address and any duties, imposts, levies or taxes (including any sales or use tax) other than value added tax; and

b. 在适用的合同的期限内维持不变。卖方承诺，如果在交付本协议项下所有协议产品之前，其以较低价向任何第三方（不管是否与公司为同一国家或地区的企业）销售（包括但不限于许诺销售和实际销售）相近数量的类似产品，其应立即书面通知公司该等较低价。自卖方以较低价向任何第三方销售该等产品之日起（不论该第三方是否发生退货或解除订单），公司将同样享受该等较低价，如卖方已经收取了公司较高的价款的，卖方公司应将差价退给公司。如果卖方没有通知公司该等较低价的，对于较低价后每张公司发出的高于较低价的采购订单，卖方应当均按照采购订单中的价款与较低价的差价的叁倍赔偿给公司。不管是基于材料、人工或运输成本增加、汇率浮动的原因或任何其他原因，未经公司事先书面同意，价格均不得变动，也不得收取额外费用。卖方单方面变动价格，即使是部分变动，公司也可以酌情考虑因此部分或全部地取消相应的采购订单，且无须支付任何费用或罚金。

### 3. 支付

支付条款应由公司和卖方约定，并在协议订单中作出规定。卖方应分别就其根据各协议订单交付的、各次采购的和各批次的协议产品向公司出具收款通知书。

除协议订单或采购协议中另有规定外，卖方应在向公司交付各协议产品之时或之后，就该等协议产品向公司出具收款通知书，公司在收到收款通知书后如果没有异议的，应当在收到收款通知之日起45天内支付该收款通知书的金额。在不损害公司任何其他权利或救济的前提下，公司保留随时以其根据本协议或其它协议或其它情形中未付给卖方或卖方的关联公司的任何款项，与卖方或卖方的关联公司按照合同规定应付给公司的任何款项相抵销的权利。

### 4. 权属、灭失风险和购买条款

#### A. 国内采购

尽管协议订单中对交付和运费作出了相关规定，在协议产品实际交付至公司的办公地点，或公司在合同中以书面形式指定的其他目的地并被公司接受之前，协议产品的所有权属于卖方，且灭失的风险应由卖方承担。

#### B. 国际采购

除协议订单中另有书面约定外，所有权应按照《国际贸易术语解释通则（2010版）》的规定自卖方转给公司。

### 5. 保险

#### A. 国内采购

除合同中另有规定外，协议产品到达约定交付地点并被公司接受之前应由卖方负责购买保险，协议产品达到约定交付地点并被公司接受之后，应由公司负责为前述协议产品购买保险。

#### B. 国际采购

卖方/公司应负责按照《国际贸易术语解释通则（2010版）》的规定为协议产品购买保险。

b. fixed for the duration of the applicable Contract. Seller covenants that if it should at any time prior to the delivery of the Products sold hereunder sell (including but not limited to promise to sell or actually sell) similar Products in similar quantities to any third party (whether or not in the same country or region as the Company) at lower prices, it will promptly notify the Company in writing of such lower prices, and the Company will receive the full benefit of such lower prices from the date of such sale to any third party (whether or not the third party returned the products or canceled the order). If the Seller has charged the Company for the Products at higher Prices, the Seller shall refund the balance to the Company. No variation in the Price nor extra charges can be made (whether on account of increased material, labor or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company. Any unilateral change of the Price by Seller, even partial, may therefore cause the partial or total cancellation of the corresponding purchase Order as the Company considers appropriate without charge or penalty.

### 3. Payment

Payment terms shall be as agreed to by the Company and the Seller and set forth in the Order. The Seller will separately invoice the Company for and in respect of each purchase and consignment of the Products delivered under each order.

Unless otherwise stated in the Order or the purchase agreement the Seller shall invoice the Company for each Product on or after delivery of such Product to the Company and the Company shall pay such invoice net 45 days from the date of receipt of the invoice if the Company raises no objection to the invoice. Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller or associated company of the Seller to the Company against any sums payable by the Company to the Seller or associated company of the Seller under the Contract or any other agreement or circumstance.

### 4. Title and Risk of Loss and Buying Terms

#### A. Domestic Purchases

Notwithstanding any terms relating to delivery and freight on the Order, the title and risk of loss in the Products shall remain with Seller until the Products ordered are actually delivered to and accepted at the Company's offices or other destination designated in writing by the Company in the Contract.

#### B. International Purchases

Unless otherwise agreed in writing in the Order, title shall pass from the Seller pursuant to INCOTERM version 2010.

### 5. Insurance

#### A. Domestic Purchases

Unless otherwise stated in the Contract, the Seller shall insure the Products up to the agreed point of delivery and the acceptance by the Company and thereafter it will be the Company's responsibility to insure the said Products.

#### B. International Purchases

The Seller / the Company shall be responsible for insuring the Products as per INCOTERM version 2010.

但是，如果在协议产品所有权转给公司之前协议产品发生损失，公司有权在其应得的范围内，代替卖方从卖方的承保人处取得保险金。卖方须为协议产品全额投保，以覆盖协议产品的任何损害或灭失。

## 6. 运输与交付

依协议订单交付必须按照公司规定的数量和日期进行交付。公司可自由裁量决定是否接受提前交付的协议产品。交付时间为订单的关键条款。

协议产品应妥当包装、明确标记，并应对其进行适当的保护以免其在运输过程中遭受任何损失和破坏。除协议订单中另有规定外，应在正常营业时间将协议产品交付至公司的营业场所，或协议订单中注明的其他地址。卖方应确保每次交付协议产品时，均附上交付通知，并将其置于明显位置。交付通知除其他内容之外，应注明协议订单号、协议订单日期、件数、所装物品。在收到卖方所交付协议产品之后十五（15）日，或在协议产品的潜在缺陷已经变得很明显之后一段合理时间（以后发生者为准）为公司的检验期，未经过前述期限，不应视为公司已接受该等协议产品。在交付协议产品的同时，卖方应以清楚可视的方式，向公司提供所有的使用说明书、安全说明书和警示通告，以及正确使用、维护和维修该等协议产品可能必须的信息。如果协议产品是以散货的方式交付，公司有权决定是否接受实际交付数量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。如果公司在合理期限内书面通知卖方，告知其协议产品在转运、卸货（无论是否由公司进行作业）或堆放的过程中发生灭失或损坏，卖方均应在接到通知的合理时间内维修或替换该等协议产品。

如若是国际采购，应按照协议订单中所规定的条款或按照《国际贸易术语解释通则（2010版）》的规定交付协议产品。

## 7. 协议产品特性与适用性

卖方保证向公司交付数量、质量和描述严格符合技术规格数量和描述，且符合协议订单和/或公司接受的样品，和/或公司向卖方提供的任何适用的规范、或卖方向公司提供的报价中的明细和/或规格的协议产品。所交付协议产品应无任何瑕疵，且应是新的并未经使用的，但另有规定的除外。卖方应遵守所有适用的、与协议产品的制造、包装、打包和交付有关的，且符合所有法律规定和国家、社区规程的标准、法规和/或其他法律规定。经合理事先通知卖方，公司有权检验、检测协议产品，卖方不得无理拒绝公司检验、检测协议产品的要求。公司可以退还任何不合格产品，风险和费用由卖方承担。退还不合格产品的权利应延伸至整批货物或其中任何一部分。公司因退还不合格产品而实际产生的所有成本、损失、损害赔偿和费用，和/或公司为取得其他产品以替代不合格产品而实际产生的任何额外开支，均应由卖方负责偿还。

However, in the event of any damage to the Products before the title passes to the Company, the Company shall be entitled to receive the claim from the Seller's insurer to the extent the Company is entitled.

The insurance provided by the Seller must be made to cover any damages or loss of the Products for full amount of the Products insurable value.

## 6. Shipment and Delivery

Delivery on the Order must be made in the quantities and on the dates specified by the Company. The Company, at its discretion, may reject the early delivery of the Products. Time is of the essence with respect to the Order.

The Products shall be properly packed, clearly labeled and adequately protected against damage and deterioration in transit. Unless otherwise stated in the Order, the Products shall be delivered during normal business hours to the Company's place of business or other place as may be specified in the Order. The Seller shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the Order number, date of Order, number of packages and contents. The Company shall not be deemed to have accepted the Products until the Company has had fifteen (15) days to inspect them following delivery or within a reasonable time after any latent defect in the Products has become apparent (whichever occurs later). The Seller shall supply the Company on delivery of the Products with all operating and safety instructions, warning notices clearly displayed, and other information as may be necessary for their proper use, maintenance and made in bulk, the Company reserves the right to accept 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. The Seller will repair or replace the Products damaged or lost in transit or during off-loading, whether or not by the Company, or stacking free of charge, provided the Company gives written notice to the Seller of the damage or loss within a reasonable time. In case of international purchases, the Products shall be delivered on the terms as set out in the Order or on the basis of INCOTERM version 2010.

## 7. Product Characteristics and suitability

The Seller undertakes to deliver the Products of the quantity, quality and description which corresponds strictly to the technical specifications quantity and description, with the particulars and/or specifications in the Order and/or the sample accepted by the Company and/or in any applicable specification supplied by the Company to the Seller or the quotation provided by the Seller to the Company. The Products shall be without fault and shall be new and unused unless otherwise specified. The Seller shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Products and conforming with all legal requirements and national and community regulations. Upon reasonable prior notice, the Company shall have the right to inspect and test the Products and the Seller shall not unreasonably refuse any request by the Company to inspect and test the Products. The Company may return any rejected Products at the Seller's risk and expense. The right to reject shall extend to the whole or any part of a consignment. To the Company of all costs,

## 8. 协议产品规格/采购订单的变更

公司可在任何时间书面通知卖方，要求对协议订单进行变更，包括变更设计图、规格、运输方式、数量、打包或交付的时间或地点。如果该等变更会产生额外的费用，作为对该等变更要求的答复，卖方同意向公司提供书面报价，报价中应说明价格、运输和交付日期等的变更。除双方另行书面约定外，任何变更要求均应视为单独的协议订单。未经公司书面批准，卖方提出的任何要求或调整均不得对公司产生约束力。

## 9. 保证

卖方向公司陈述并保证：协议产品的质量、材料和工艺符合要求、适销，其设计、材料和工艺没有任何缺陷，且符合预定目的，并符合协议订单中所规定的规格。此外，卖方陈述并保证：  
(i) 协议产品应适当放置、包装或标记，且应与协议产品上标明的的事实保持一致；(ii) 协议产品符合所有与协议产品及其销售、使用和供应有关的法定要求、适用的法律和法规以及自愿的行为准则；(iii) 在履行其在本条款和条件项下的义务时，卖方应完全遵守所有适用的法律和法规；(iv) 协议产品或其预定用途不侵犯任何第三方的知识产权；和 (v) 协议产品所包含的任何服务，均应按照适用的行业标准，以专业方式履行。卖方进一步陈述并保证：其能够，且经公司接受，确实向公司转让了其协议产品的有效且可销的所有权。本第9条中作出的所有陈述和保证在协议产品被接受之后仍应有效，且不应影响公司可取得的任何其他明示的或默示的保证。对协议产品的任何检验或接受均不应影响前述任何保证。

## 10. 损害赔偿限制

对于因公司取消协议订单、违反合同，或由公司其他作为或不作为（包括疏忽大意）所引起的任何伤害、灭失、损害赔偿、费用、成本或其他责任，公司所应承担的责任以及卖方可获得的补偿不应超过以下两个金额中较低者：

(i) 在该等取消、违约或其他作为或不作为发生之前，卖方生产所涉协议产品所实际产生的直接费用；或(ii) 所涉协议订单显示的采购价款。无论在何种情况下，公司均不对卖方的利润损失、惩罚性、特殊性、结果性、间接性、惩戒性或附带性损害赔偿负责。

losses, damages and expenses whatsoever actually incurred by the Company due to rejection of the Products and/or any additional expenditure actually incurred by the Company in obtaining other products to replace the rejected Products.

## 8. Changes to Product specification / Purchase Order

The Company may at any time by written notice to Seller request changes to the Order including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. In response to such request, if such changes result in additional charges, Seller agrees to provide written quotations, including any changes to the prices, shipment or delivery dates. A request for change shall be treated as a separate Order, unless otherwise agreed by the parties in writing. Any claim or adjustment proposed by the Seller must be approved by the Company in writing before such proposed claims or adjustments become binding on the Company.

## 9. Warranties

The Seller represents and warrants to the Company that the Products shall be of satisfactory quality, material and workmanship, merchantable, free of defect in design, material and workmanship and fit for any purpose for which they are intended and shall conform to the specifications set forth in the Order. In addition, Seller represents and warrants that (i) the Products shall be adequately contained, packaged or labeled and shall conform to the affirmations of fact stated thereon, (ii) the Products will comply with all statutory requirements, applicable laws and regulations and voluntary codes of conduct relating to the Products and their sale, use and supply (iii) in performing its obligations hereunder, Seller shall fully comply with all applicable laws and regulations, (iv) the Products or the intended use thereof do not infringe the intellectual property rights of any third party and (v) any services included in the Products shall be performed in a professional manner, in accordance with applicable industry standards. Seller further represents and warrants that it is able to transfer, and upon the Company's acceptance thereof does transfer, to the Company good and marketable title to the Products. All the representations and warranties set forth in this Section 9 shall survive acceptance of the Products and shall be in addition to any other warranties, express or implied, available to the Company. Neither inspection nor acceptance of the Products shall impair any of the foregoing warranties.

## 10. Limitation on Damages

The Company's liability and Seller's recovery, for any injuries, losses, damages, expenses, costs or other liabilities arising out of the cancellation of the Order by the Company, any breach of this Contract by the Company, or the Company's other acts or omissions (including its negligence) shall be limited to the lesser of (i) the actual and direct costs incurred by Seller for its manufacture of the Products in question prior to such cancellation, breach, or other acts or omissions, or (ii) the purchase price for the Order. In no event shall the Company be liable to Seller for lost profits, punitive, special, consequential, indirect, exemplary or incidental damages.

## 11. 赔偿

对于 (a) 协议产品的任何瑕疵、缺陷或声称的缺陷 (包括基于严格侵权责任产生的缺陷), (b) 卖方违反合同的任何规定,

(c) 卖方或其代表的作为、过失或疏忽大意, 或 (d) 生产、销售或使用任何协议产品而引起的侵权、侵占或侵犯其他人、公司、法人或其他实体的专利、商业秘密、商标、商号或其他知识产权的其他行为导致的或促成的任何人身伤害、死亡或财产损失、灭失、或由其造成的任何结果性或附带性损害赔偿所造成的、引起的、或与之相关的、或作出前述声称的任何诉讼、起诉、判决、责任、成本、损害、灭失、索赔和费用 (包括律师费), 卖方应对公司、公司的代理人、服务人员、高级管理人员、董事和员工、公司的经销商、代理商以及所有购买协议产品或使用协议产品制作的其他商品的实体及其各自的顾客进行赔偿, 使之免受损害, 并经公司要求, 自费为前述实体和个人进行辩护, 使之免受损害。无论是否与协议产品相关, 如果卖方的任何员工、代理人、分包商或其他代表在或出现在公司的任何经营场所, 卖方对且应对该等人员在公司的场所或与公司的场所有关的作为和不作为负责, 且同意对因卖方的员工或代表的作为或不作为所引起的财产损失、人身伤害或死亡负责。如果第三方向公司提出的索赔在卖方赔偿的范围内, 公司应书面通知卖方该等索赔。卖方应按公司要求, 合理协助公司进行辩护控诉。卖方应就任何第三方的索赔或诉讼, 对公司和/或公司的承保人实际支付的法律辩护费用和其他辩护费用, 以及公司和/或公司的承保人支付的实际结算金额或最终判决、裁定金额作出补偿。卖方应就任何实际或声称的侵犯著作权、专利权、注册设计权或其他财产权利的行为所引起的或招致的所有诉讼、索赔、要求、成本、收费、费用, 对公司进行赔偿。

## 12. 协议订单取消与合同终止

公司有权在协议产品交付之前任何时间提前通知卖方, 全部或部分地取消任何协议订单, 在这种情况下, 公司所承担的唯一责任是向卖方支付在协议订单取消之前已经交付的协议产品的约定价款。公司有权在任何时间事先书面通知卖方, 基于任何理由立即终止合同。

## 13. 迟延交付

卖方必须在协议订单或合同规定的时间内将协议产品交付给公司。如果协议产品未能在到期日交付给公司, 在不影响公司在本条款和条件下可享有的任何其他权利的前提下, 公司保留其以下权利: 全部或部分地取消所涉协议订单; 拒绝接受卖方试图延后的交付; 要求卖方补偿公司因从其他供应商处取得替代产品所产生的任何合理开支; 为公司产生的、由卖方延迟交付协议产品引起的任何额外成本、损失或费用索要损害赔偿。

## 11. Indemnity

The Seller will indemnify, hold harmless and, upon the Company's request, defend at Seller's sole cost and expense, the Company, its agents, servants, officers, directors and employees, the Company's distributors, dealers and all entities which purchase the Products or products into which the Products are incorporated, and their respective customers, harmless against any suit, action, proceeding, judgment, liability, cost, damage, loss, claim and expenses (including attorneys' fees and costs) occasioned by, arising out of, relating to or alleging any claim for injury, death, damage or loss to any person or any property or any consequential or incidental damages resulting therefore, caused or contributed to by (a) any fault, defect or alleged defect of the Products (including by reason of strict liability in tort), (b) the Seller's breach of any provision of this Contract, (c) any act, fault, or negligence of Seller or anyone acting on its behalf or (d) any infringement, misappropriation or other violation of the patent, trade secret, trademark, trade name, or other intellectual property right of any other person, firm, corporation or other entity arising from the manufacture, sale or use of any of the Products. In connection with the Products or otherwise, if Seller's employees, agents, sub-contractors or any premises of the Company, the Seller shall be and is responsible for the acts and omissions of such persons within or about the Company's premises and agrees to indemnify and hold the Company harmless against liability for damage to property or injury to or death of persons arising out of acts or omissions of the Seller's employees or representatives. In the event of a claim by a third party against the Company which may be the subject of indemnification, the Company shall provide written notification thereof to the Seller. The Seller shall provide the Company with such reasonable assistance in the prosecution of any defense as the Company may request. The Seller will, in respect of any third party claim or suit, reimburse the Company for the legal and other actual defense expenses paid by the Company and/or the Company's insurance carriers, and for the actual amount of any settlement or final judgment award paid by the Company and/or the Company's insurance carriers. The Seller shall indemnify the Company against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other property right.

## 12. Cancellation and Termination

The Company shall be entitled to cancel any Order in whole or in part by giving notice to the Seller at any time prior to delivery of the Products in which event the Company's sole liability shall be to pay to the Seller the agreed price for such Products as have already been delivered at the time of cancellation. The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith for any reason.

## 13. Delay in delivery

The Seller must deliver the Products to the Company within the schedules as prescribed in the Order or as agreed in the Contract. If the Products are not delivered on the due date then, without prejudice to any other rights which it may the Company reserves the right to: cancel the Order in whole or in part; refuse to accept any subsequent delivery of the Products which the Seller attempts to make; recover from the Seller any expenditure

#### 14. 不可抗力

如若发生不可抗力事件，在事件发生的过程中，任一方可以中止履行义务。不可抗力事件应指该中止方无法合理控制的任何事件和原因，所直接或间接引起的，或以任何方式引发的延迟。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，以及该方以正常价格通过其正常来源延迟取得（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，该方无法控制的其他原因，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。在卖方因不可抗力的发生或不可抗力事件无法履行合同义务的过程中，自由裁量决定取消任何协议订单或协议订单的任何部分，而无须支付任何费用或罚金，且/或可从其他来源获取所涉协议的协议产品，并减少任何协议订单中规定的协议产品数量，而无须支付任何费用或罚金。如果不可抗力事件持续超过3个月，公司也可以终止所有协议订单，而无须通知卖方。

#### 15. 弃权

如果公司对卖方违反本条款和条件的任何规定的行为放弃索赔、迟延或未行使任何权利或救济，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公司在卖方违反本条款和条件的任何规定的情况下所享有的任何救济。

#### 16. 转让

未经公司事先书面同意（由公司自由裁量），卖方不得向任何个人或实体转让其在任何协议订单、采购订单或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，卖方的任何试图转让的行为亦归为无效。如果公司实行或拟实行重组，与任何其他法人、合伙、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、组织或其他实体，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，而无须卖方同意。公司也可以转让其在合同项下的权利，而无须通知卖方。

reasonably incurred by the Company in obtaining the Products in substitution from another supplier; and claim damages for any additional costs, losses or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Products on the due date.

#### 14. Force Majeure

Either of the parties may suspend performance during the occurrence of an event of force majeure, which shall mean any delay directly or indirectly caused by, or in any manner arises from events and causes beyond the such party'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 such party'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 which are beyond its reasonable control. The Company shall be entitled to, at its sole option, cancel any Order or any part thereof without any charge or penalty and/or obtain the Products covered by the Order from other sources for the duration of the Seller's inability to perform due to the occurrence or an event of force majeure and to reduce the quantity of the Products specified in any Order without charge or penalty. The Company may also terminate, with intimation to the Seller, the total Order if the force majeure event has been in effect for a period beyond 3 months.

#### 15. Waiver

No waiver by the Company of any breach by the Seller of any of these Terms and Conditions, 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 term or condition. Nothing contained herein shall limit any of the remedies of the Company in the event of the Seller's breach of any of these Terms and Conditions.

#### 16. Assignment

The Seller shall not assign to any person or entity all or a portion of its rights or obligations under any Order, purchase order or these 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 any Order or these Terms and Conditions without the consent of the Seller 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. The Company, with intimation to the Seller, may also transfer its rights under and subject to the terms of Contract.

## 17. 可分割性

如果任何协议订单或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，该协议订单或本条款和条件的其他规定不应受到影响。

## 18. 通知与通信

各方作出的、与公司采购协议产品有关的任何通知或其他通信，应以书面形式作出，并由专人、，或通过一级挂号信或电子邮件，寄送至事先指定的、经授权的个人，或通过传真发送。

## 19. 相互冲突的规定

如果特定采购协议的规定与本条款和条件的规定相冲突或不一致，应始终以特定采购协议的规定为准，同时，在与任何该等相互冲突或不一致的规定有关的事项中，特定采购协议的规定应优先适用。

## 20. 卖方的地位

本条款和条件、任何协议订单或与协议产品相关的采购协议中的任何规定均不得在卖方和公司之间创设，或解释为在卖方和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。

## 21. 保密

卖方保证对其从公司获取的所有信息严格保密，未经公司事先书面同意，不得将任何该等信息用于预定目的之外的任何目的。卖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21条之目的，协议产品的采购价款应视为保密信息。卖方应确保所有的分包商均订立合同，按照合同规定，遵守同样的保密要求。在任何协议订单、本条款和条件以及合同期满或终止后，本条的规定仍应继续有效。

## 22. 准据法

本条款和条件、采购协议、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。所有纠纷均应提交公司所在地有管辖权的法院解决。

## 23. 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。

## 17. Severability

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

## 18. Notices and Communication

Any notice or other communication that either party gives relating to the purchase of the Products by the Company shall be made in writing and given either by hand, first class recorded postal delivery, or electronic mail to a previously designated authorized individual or facsimile transmission.

## 19. Conflicting provisions

In the event of any conflicting or inconsistent provisions between the specific purchase agreement and these Terms and Conditions, the provisions of the specific purchase agreement shall always prevail and take precedence with respect to any such conflicting or inconsistent provisions.

## 20. Status of Seller

Nothing in these Terms and Conditions or any Order or purchase agreement relating to the Products 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 Seller and the Company.

## 21. Confidentiality

The Seller 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 without the prior written consent of the Company. Seller 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 purchase price of the Products shall be deemed to be confidential information for the purposes of this Section 21. The Seller shall ensure that all subcontractors are contractually obliged to comply with the same confidentiality requirements. The terms of this clause shall survive the expiration or termination of any Order, the Terms and Conditions, and the Contract.

## 22. Governing Law

The Terms and Conditions, the purchase agreement, the Order and any dispute or claim arising out of or in connection with them or their subject matter 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.

## 23. 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.