

## 马赫内托标准销售条款和条件

### MAGNETO Standard Terms and Conditions of Sales

#### 1. Supply Conditions 供货条件

1.1 These General Terms and Conditions of Supplies ("Terms") govern all sales of ordered products by Seller to Buyer regardless of whether Buyer purchases the ordered products through the medium of written purchase orders or electronic orders via EDI (collectively, "Purchase Orders"). In case of a conflict between these Terms and the Purchase Order, these Terms prevail except where Seller has expressly agreed to the conflicting term in the Purchase Order in its acceptance or order acknowledgment. In case of a conflict between the Purchase Order and Seller's acceptance or order acknowledgment, the acceptance or order acknowledgment prevails.

本供货一般条件（“条件”）适用于双方就订单产品的所有销售，无论买方是发送书面订单或通过 EDI 发送电子订单（统称为“订单”）。如果订单与本条件的规定有冲突，本条件应当优先适用，除非卖方在对订单的接受或确认中明确表示接受订单中的不同规定。如果订单与卖方对订单的确认或接受有冲突，则卖方的确认或接受应当优先适用。

#### 2. Takeover 接收

2.1 Upon the delivery of the ordered products, the Buyer shall immediately confirm receipt of the ordered products by signing the receipt document and not later than seven days following delivery of the ordered products ("Inspection Period") inspect the ordered products. In the event of any objections to the quality of the goods, the buyer shall notify the seller in writing within the above-mentioned specified period; otherwise, the quality shall be deemed accepted. The buyer's written notice of objection shall specify the non-conforming goods' names, model specifications, quantities, packaging, inspection methods, or inspection certificates, etc. Claims for damages due to transportation shall be made by the buyer against the carrier.

订单产品交付后，买方应立即在收货单上签字确认收到订单产品，并在订单产品交付后的七日内（“检验期”）进行验收。如对货物质量有异议的，买方应在上述期限内书面通知卖方，否则视为质量验收合格。买方的书面异议通知应说明不符合规定的货物名称、型号规格、数量、包装及检验方法或检验证明等。因运输原因造成的损坏应由买方向承运方提出索赔。

2.2 Minor defects of the Contractual Products that do not have important effect on the safety, operation, maintenance, or repair of the Contractual Products shall not impede acceptance. Seller shall correct such defects of the Contractual Products in a reasonable time and manner. In any case, the acceptance shall be deemed to have been granted if the Contractual Products are partially or in full, put into commercial operation.

订单产品的轻微瑕疵（指对订单产品的安全，操作，维护和修理不构成严重影响的瑕疵）不应当成为拒绝接收的理由。卖方应当在合理期限内以合理方式修补订单产品的瑕疵。在任何情况下，订单产品部分或全部投入商业运行时，即应视为已经通过了检验。

2.3 In case of ambiguity regarding the inspection, the parties shall seek to resolve it through negotiation. If an agreement cannot be reached on the inspection, it may be submitted to a qualified third-party inspection. If the inspection results indeed do not meet the agreed conditions, the seller shall supply the goods to the buyer once again, and the warranty period shall be correspondingly extended.

双方在验收上产生歧义，应当协商解决，如果就验收不能达成一致意见，可以提交给有资质的第三方检验，如验收结果确实不符合约定条件，卖方应重新向买方供货一次，质保期限相应延长。

2.4 All costs and expenses of Buyer or any third party with respect to inspection of the Contractual Products shall be borne by Buyer.

买方或第三人就有关检验订单产品的成本及费用应当由买方承担。

#### 3. Price 价格

3.1 Unless otherwise agreed by the Parties in writing, the price of the Contractual Products hereof, does not include any taxes levied by any governmental authority or any charges for packaging, shipping, and insurance.

除非双方另行书面同意，本订单规定的订单产品的价格不包括政府机构征收的任何税收，也不包括任何包装，运输或保险的费用。

3.2 The total price of the ordered products includes only value-added tax and the seller's standard packaging. If the buyer requests special packaging, the corresponding costs shall be borne separately by the buyer.

订单产品总价仅包括增值税和卖方的标准包装。如果买方要求采取特殊的包装方式，相应费用由买方另行承担。

#### 4、Payment 付款

4.1 Payment terms may be agreed upon as installment payments or lump sum payments, subject to the terms specified in the "Order Confirmation."

付款方式可约定分期付款或一次性付款，具体以《订单确认书》约定为准。

4.2 If the payment is not received when due, the Buyer shall bear interest at the rate of 0.7% per day. The Seller may require or demand payment or adequate assurances of performance from Buyer prior to taking any preparatory steps for performing the Contract or beginning the manufacture of the Contractual Products. 若买方未支付到期货款，买方应当按照每天 0.7% 的利率支付延迟付款的利息。卖方有权在卖方为履行订单作准备或开始生产订单产品之前要求买方支付预付款或提供一定的担保。

4.3 Unless otherwise agreed, all payments shall be made by wire transfer to the seller's designated account, as specified in the contract or order confirmation.

除非另有约定，所有款项应以电汇形式支付至卖方指定账户，账户信息见合同或订单确认书。

4.4 If Buyer delays in making such payment, the delivery date shall be extended accordingly.

如果买方延迟付款，交货日期将相应顺延，且不视为卖方违约。

#### 5、Claims 索赔

Any claim from Buyer alleging that the Contractual Products are not in compliance with the Contract and its annexes shall be made to Seller within the Inspection Period as set out in Article 2.1 of the Terms. In no event may Buyer claim for shortage of or defects in the Contractual Products after the expiration of the Warranty Period provided in Section 10.2 hereof.

买方因订单产品与订单及其附件不符合而向卖方提出异议或任何索赔要求应当在本条件第 2.1 条规定的检验期内提出。无论如何，买方不得在本条件第 10.2 条规定的质量保证期期满后就不再就订单产品数量或质量问题提出索赔。

#### 6、Shipment 装运

6.1 Subject to Section 3 hereunder, Seller will arrange the shipment of Contractual Products according to its standard commercial practice. If special packing or shipping instruction is agreed, additional charges thereof, if any, will also be born by Buyer.

根据本条件第 3 条的规定，卖方将按照其通常的标准装运订单产品。如果双方同意采取特别的运输或包装方式，买方还将承担由此产生的额外费用。

6.2 The seller is responsible for delivering the goods to the agreed place of delivery, and the buyer bears the cost of loading and unloading the goods.

卖方负责将货物交至订单约定的提货地点，买方承担装卸货物费用。

#### 7、Transfer of Risk 风险的转移

All risk of loss of or damage to the Contractual Products shall be transferred from Seller to Buyer upon delivery according to the Incoterms 2010. If Contractual Products are ready for delivery but can not be shipped for the reasons beyond Seller's reasonable control, transfer of risk shall be deemed to have taken place upon Seller's written notice to Buyer of readiness for delivery of the Contractual Products concerned.

订单产品发生灭失或损坏的一切风险，应根据 2010 年国际贸易术语解释通则自交付时起由卖方转移至买方。如果订单产品可供交付，但由于卖方无法合理控制的原因不能交付，则自卖方书面通知买方订单产品可供交付之日起，相关订单产品灭失或损坏的风险应当自卖方转移至买方。

#### 8. Title of Contractual Products 订单产品所有权

Seller retains the ownership to the Contractual Products until Buyer has paid 100% of the Total Contract Price in full.

卖方享有订单产品的所有权，直至买方付清百分之一百（100%）的订单总价。

#### 9. 交货方式及延期交货

9.1 Delivery methods include one-time delivery/installment delivery, as determined in the "Order Confirmation"; if no delivery conditions are selected, it will be deemed as one-time delivery.

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交货方式分为：一次性交货/分批交货,可在《订单确认书》中确定；如果未选择交货条件，将视为一次性交货。

9.2 Delivery of Contractual Products by Seller is subject to Buyer's fulfillment of its obligations under the Contract in a timely manner, including but not limited to i) making down payment (if any); and ii) obtaining all necessary licenses and approvals (if any). If the foresaid conditions are not satisfied, the Time of Delivery shall be postponed accordingly for the same days delayed due to the reason above, and Seller is not responsible for such delay in delivery, and Seller shall be reimbursed by Buyer for the additional costs and expenses arising therefrom, including but not limited to fees for storage and freight.

卖方按照规定时间交货将基于以下条件：买方及时履行了其订单下的义务，包括但不限于 i) 支付订单预付款项(如有)，以及 ii) 及时提供所有必须的许可证及批文(如有)。如果上述条件未能及时得到满足，交货期应当延长由于上述原因耽误的相同天数并且卖方毋须承担延期的责任，买方应支付卖方因此发生的额外费用和开支，包括但不限于仓储和运输费用。

9.3 If any delay is attributable to Force Majeure as defined hereof or any other causes beyond the reasonable control of Seller, the date of delivery shall be postponed accordingly.

如果延期归咎于本条件规定的不可抗力，或其他卖方无法合理控制的原因，交货期应相应延长。

9.4 In the event that Seller fails to deliver the Contractual Products within the Time of Delivery as set forth in the Contract, or within any agreed extension period for reasons solely attributable to Seller, Buyer may claim liquidated damage in the amount of 0.5% of the value of the Contractual Products in delay per every full calendar week of delay. When calculating the liquidated damages for delay, period less than one week shall not be calculated. The liquidated damage in total is limited to 5% of the value of the Contractual Products in delay. Such liquidated damages shall be the sole and exclusive remedy of Buyer in the event such delay in delivery occurs.

如果因完全归咎于卖方的原因而导致交货期超过订单规定的日期，或未能在其他经双方同意的任何推迟之后的交货期内交货，则买方可就每个完整日历星期，请求延期交付的订单产品之价款的 0.5% 作为损害赔偿。计算延期损害赔偿时，不足一个日历星期部分不予计算。该等损害赔偿最高不得超过延期交付订单产品价款的 5%。该等损害赔偿是买方在卖方延期交货时可获得的唯一和所有的救济。

## 10. Warranty 保证

10.1 The seller warrants that the ordered products will meet the specifications as described in this contract, its annexes, and accompanying documents. Unless expressly stated in the contract, seller disclaims all representations and warranties of any kind (whether arising by implication or by operation of law) with respect to the contractual products, including, without limitation, any warranties or representations as to merchantability, fitness for particular purpose or any other matter. This section survives the termination or cancellation of the contract.

卖方保证订单产品符合本合及附件、随货文件所述的产品规格。除非卖方在订单中明确表示，卖方未就订单产品作任何其他陈述或保证（无论是隐含的或法定的），包括但不限于任何有关订单产品适销、适用于特殊的目的或其他事项的保证。本条款在订单终止或撤销后继续有效。

10.2 如果没有其他约定，产品保证期为自订单产品交付后 18 个月或自设备安装调试之日起 12 个月，以先到者为准。

10.3 If Contractual Products are ready for delivery and the Seller has sent the notice of "Readiness for Shipment" or other similar notice showing readiness for delivery, but the Contractual Products are not delivered due to reasons attributable to the Buyer, the warranty period of the Contractual Products shall start fifteen (15) days upon the issuing date of this notice by the Seller.

如果卖方已备好订单产品并向买方发出“货物备妥通知”或其他表明订单产品可供交付的通知，但由于买方的原因未交付，则订单产品的保证期自卖方发出“货物备妥通知”或其他表明订单产品可供交付的通知十五（15）日之后起算。

10.4 During the warranty period, if the ordered products do not conform to the warranty contained herein and the warranty is not excluded by Section 10.5 hereof, then Buyer shall promptly notify Seller in writing about such defects within 10 days from the date of first discovery. Upon receipt of a claims report, Seller shall ask Buyer for a sample of the defective Contractual Products or schedule an inspection of the defective Contractual Products. If Seller determines that the ordered products do not comply with the warranty provided in Section 10.1, then Seller shall repair or replace (at its sole discretion) the defective ordered

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products at no cost to Buyer. However, the seller is not responsible for removing the non-conforming products or installing the replacement products. The buyer shall bear the round-trip transportation costs. If the buyer refuses the seller's request for cooperation, it shall be deemed as a waiver of the buyer's warranty rights.

在保证期内，如果发现订单产品不符合保证并且也不属于本条件第 10.5 条规定的除外情况，买方应当自第一次发现之日起 10 日内书面报告卖方有关订单产品的瑕疵。在收到买方的报告后，卖方应当要求买方提供瑕疵订单产品的样品或安排检查瑕疵订单产品。如果卖方认为订单产品不符合本 10.1 条的保证，则卖方应自费修理或更换（由卖方自行决定）订单产品，但卖方不负责拆除不符合要求的产品及安装替换的产品，买方应承担来回的运输费用，买方拒绝卖方的要求提供配合的，视为买方放弃质保的权利。

**10.5 Buyer shall assist Seller in inspecting, repairing and replacing the Contractual Products. For such purpose, Buyer shall grant Seller access to the non-conforming Contractual Products for disassembly and reassembly.**

买方应当协助卖方检查，修理或更换瑕疵订单产品。为此目的，买方应当为卖方拆卸或重新安装瑕疵订单产品提供便利。

**10.6 Seller shall not be liable for defects which result from 1) natural wear and tear, 2) damages arising after the transfer of risk, or 3) damages from faulty or negligent handling, excessive strain, use of unsuitable appurtenances, defective installation or erection not carried out by Seller, inappropriate storage or any other external impact on the Contractual Products not explicitly assumed by Seller hereunder.**

卖方不对以下情况引起的瑕疵承担责任：1) 订单产品正常的损耗，2) 风险转移后产生的损害，或 3) 由于处理中的故意或过失，过分的压力，使用不适当的机械设备，非卖方进行的不适当安装，不合适的存放或其他卖方在本订单中没有明确表示负责的外力对订单产品造成的损害。

**10.7 The remedies provided for in this Section 10 are the exclusive remedies available to Buyer for breach of warranty by Seller.**

本第 10 条款规定的补救是买方可获得的因卖方违反质量保证的唯一的救济措施。

## **11. Limitations of Liability 责任限制**

**11.1 Seller shall be liable for any damage of Buyer, including but not limited to loss of or damage to Contractual Products or property, caused directly by negligence or wrongful act (breach of contract and/ or tortious conduct) on the part of Seller, its personnel or its subcontractors engaged in carrying out the Contract. In the event that such negligence or wrongful act constitutes breach of contract and tortuous act at the same time, Seller shall only be liable for breach of contract.**

由于卖方、其雇员或分包商在履行订单中的疏忽或错误行为(违反订单和/或侵权行为)直接造成的买方的损失，包括但不限于订单产品或财产的灭失或损坏，卖方应负责任。如果该等卖方、其雇员或分包商在履行订单中的疏忽或错误行为既违反订单又构成侵权行为，卖方仅承担违约责任而不承担侵权责任。

**11.2 All the liabilities of Seller in whatever kind relating to the Contract shall not, unless in case of gross negligence or willful act, exceed the Contract Price or RMB One Million, whichever is less.**

除非卖方有重大过失或故意行为，在其它任何情况下，卖方与本订单相关的全部各类责任不应超出订单总价或人民币 1,000,000 元，以价值较小者为准。

**11.3 In no event is Seller responsible for any loss of use, production, profit, interest, revenues, loss of information or data or any indirect or consequential damages or losses, regardless of whether those damages are foreseeable.**

在任何情况下卖方对使用、生产、利润、利息以及收入损失、信息或数据的丢失或任何间接的或后果性的损坏或损失都不承担责任，无论该等损失是否可以预见。

**11.4 This Section 11 shall also apply to Seller's personnel, subcontractors and licensors and their personnel.**

本第 11 条应同样适用于卖方的人员、分包商和许可方及他们的人员。

## **12. FAILURE TO PERFORM 不能履行订单**

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12.1 Pre-delivery. If Buyer repudiates, gives notice of cancellation, or otherwise breaches this Contract prior to delivery of Contractual Products, Buyer shall pay Seller as liquidated damages 30% of the purchase price. Seller may retain the Advance Payment made by Buyer as set-off against the liquidated damages. If the liquidated damages are not sufficient to compensate the actual loss of the Seller, the Seller is entitled to make a further claim against the Buyer, including but not limited to any labor, material or other expenses incurred in connection with the Contract.

在交货前。如果买方在订单产品交付之前终止订单，发出取消通知或以其它方式违约，买方应支付卖方相当于订单产品总价 30%的金额作为违约金。卖方可以保留买方支付的预付款以抵扣违约金。如上述违约金不足以赔偿卖方损失，卖方有权向买方提出进一步索赔，包括并不限于卖方为履行订单已投入的人员费用、材料和其他开支。

12.2 Failure to Take Delivery. If the Buyer fails to make payment for the outstanding amount under the Contract and/or take delivery within seven (7) days of receipt of Seller's "Notice of Readiness of Shipment", in addition to other rights the Seller may have hereunder, the Seller shall be entitled to liquidated damages amounting to 0.5% of the total contract price of the delayed part per day. And the Seller shall be reimbursed by the Buyer for the additional costs and expenses arising therefrom, including but not limited to fee for storage and freight. If, after three (3) weeks of receipt of the Seller's "Notice of Readiness of Shipment", the Buyer fails to make payment for the outstanding amount under the Contract and/or take delivery, the Seller will issue a reminder notice to the Buyer giving additional one week to pay the outstanding amount and take delivery. If the Buyer still fails to make the payment and/or take delivery after the one-week period, the Seller is then entitled to terminate this Contract and keep the Advance Payment as liquidated damages. If the liquidated damages are not sufficient to compensate the actual loss of the Seller, the Seller is entitled to make a further claim against the Buyer.

不收货或不提货。如果在收到卖方发出的“货物备妥通知”后的七（7）日内，买方仍未付清本订单余款和/或提货或收货，除本订单下卖方享有的其他权利外，买方应按照每日迟延部分订单总价的 0.5% 向卖方支付违约金。此外，买方应补偿卖方因此发生的额外费用和开支，包括但不限于仓储和运输费用。如果在收到卖方发出的“货物备妥通知”的三（3）周后，买方仍未付清本订单余款和/或提货或收货，卖方会向买方发出提醒通知并再给买方一周时间付清本订单余款并提货或收货。如果买方在上述一周期满后仍未付清余款和/或提货或收货，卖方有权终止本订单并保留买方的预付款作为违约金。如上述违约金不足以赔偿卖方损失，卖方有权向买方提出进一步索赔。

12.3 Post-delivery. If the Buyer breaches the Contract after delivery, Seller, may, in addition to any other remedies available to Seller, (a) declare all sums due and payable immediately; (b) discontinue discount to Contractual Products; (c) cease installation of Contractual Products until amounts due are paid; and (d) retake possession of Contractual Products.

交货或提货后。如果买方在交付之后违反本订单，在卖方其它救济之外，卖方还可以（1）宣布所欠款项立刻到期应支付；（2）停止给予订单产品任何折扣；（3）停止订单产品安装，直至全部欠款付清；并（4）重新取得订单产品占有权。

### 13. Force Majeure 不可抗力

13.1 Neither Buyer nor Seller shall be liable for failure of performing the Contract when such failure results from the occurrence of Force Majeure, which is hereby defined as an event unforeseeable, beyond reasonable control of the Party to whom such Force Majeure occurs, including but not limited to: Acts of God, natural disasters, labor disputes, lock out, war or warlike situation, riot, sabotage, fire, breakdown of equipment critical to perform the Contract, transportation delays or accidents, acts of government (such as but not limited to change of laws and revocation of import permits), and outbreak of epidemic.

双方因不可抗力不能或延迟履行订单的义务时，均不承担责任。不可抗力应指遭受不可抗力方无法预见的且超出其合理控制的事件，包括但不限于：自然力、自然灾害、劳工纠纷、封锁、战争或类似战争状态、暴乱、阴谋破坏、火灾、履行本订单的关键设备瘫痪、运输阻滞或交通事故、政府行为(例如但不限于修改法律规定和取消进口许可)以及疫情的爆发。

13.2 Any delay in delivery by Seller as a result of the occurrence of any Force Majeure event to its suppliers or subcontractor shall be deemed as a Force Majeure event occurring to Seller.

因卖方的分包商或供应商遭受不可抗力导致卖方延迟交付，应当视为卖方遭受不可抗力。

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13.3 The Party affected by Force Majeure shall inform the other Party in writing without any delay of the force majeure event as well as the impact of such event on the performance of the Contract. The Parties shall continue fulfilling obligations of the Contract upon end or removal of the force majeure event or its effect. Term (e.g. delivery time) relevant to performance shall be extended accordingly. The Party shall immediately notify the other Party about the end or removal of the force majeure event.

受不可抗力影响的一方应毫不延迟地将不可抗力事件以及不可抗力事件对订单履行的影响通知另一方。双方应在不可抗力事件结束或其影响消除后继续履行其订单义务，与履行相关的期限（例如：交货期）也应相应延长。但该订单方应尽快将不可抗力事件结束或消除的情况通知订单另一方。

#### 14. Adaptation of Contract 订单的调整

14.1 If the occurrence of Force Majeure events substantially changes the economic implications or content of the contract or has a substantial impact on Seller's business, the contract shall be adapted appropriately and in good faith. Where this is not economically reasonable, Seller shall have the right to terminate the contract. Notwithstanding any other provision in this contract, Seller shall be entitled to terminate the contract when a Force Majeure event has continued for more than 180 days. If Seller exercises the right of termination, he shall notify the Buyer in writing immediately after Seller determines to terminate the contract. This notification requirement shall apply even where at first an extension of the time for delivery had been agreed between the Parties.

如果因不可抗力事件的发生，实质性地改变了本订单的经济意义和内容或对卖方的业务产生了实质性的影响，双方应当秉诚适当地修改订单。但如果修改订单在经济上已不合理了，卖方有权终止本订单。即使订单中的其他条款有约定，卖方有权在不可抗力事件持续 180 天以上时终止订单。如果卖方行使该终止权，应在作出终止订单决定后立即书面通知买方。即使卖方根据本第 13 条规定终止订单之前双方同意延长交货期，卖方终止订单时也应适用前述通知要求。

14.2 Any change to the Contract requested by the Buyer, such as change to scope of delivery and specifications, shall not take effect unless confirmed in written form by the Seller. Change may result in price increase and delivery postponement or other change. The Buyer shall bear the related cost due to its change request and the Seller shall not be responsible for any delay and other loss or damages (if any) arising from such change request.

未经卖方书面确认，买方提出的对订单的任何变更（如变更供货范围或规格）均无效。变更可能导致价格增加和交货期延长或其他变更。买方将承担因其变更请求而产生的费用，卖方对因该变更请求导致的任何迟延和其他损失（如有）不承担责任。

#### 15. Software 软件

15.1 Unless otherwise provided in the Contract, Buyer may only use the software delivered with the Contractual Products for the purposes stated in the manual of the Contractual Products.

除非订单另有规定，买方只可就产品说明书中列明之目的使用订单产品所带之软件。

15.2 With regard to standard software - even if it is modified for Buyer's purposes, the Buyer shall have the non-exclusive right to use the software in unchanged form and with the agreed performance specifications on the agreed equipment. The Buyer is allowed to make two back-up copies unless otherwise agreed or noted differently on the media or in the software documentation.

对于标准软件，即使是为了买方而修改的，买方应有非排他性的权利在不改变软件的形式、在约定的设备上按照约定的履行参数使用软件。除非另有约定或在介质或软件文件上有不同标注，买方可以制作两份复制件用作备份。

15.3 With regard to software modules specifically developed for the Buyer, the Buyer shall have the exclusive right to use the software modules in un-changed form and with the agreed performance specifications on the agreed equipment. Seller shall, however, be entitled to use the ideas and concepts free of charge, on which the software modules are based as it sees fit.

对于特别为买方开发的软件模块，买方应有排他性的权利在不改变其形式、在约定的设备上按照约定的履行参数使用软件模块。卖方应有权在其认为合适的情况下免费使用创制软件模块所基于的创意和概念。

15.5 The use of the software (standard software and software modules) on hardware other than the agreed equipment requires the written permission by Seller, except in the event where the Buyer uses the software temporarily on a replacement hardware while the agreed equipment is proved defective.

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在除约定设备之外的硬件上使用软件（标准软件和软件模块）需要得到卖方的书面批准，但在约定的设备经证实出现故障后，买方在替换的硬件上临时使用软件的情况除外。

15.5 Unless otherwise agreed the software shall be provided in machine readable form (object code) only.

除非另有约定，软件应只以可机读的形式（目标代码）提供。

## 16. Industrial Property Rights and Copyright 工业产权和版权

16.1 Unless otherwise agreed upon in writing between the Parties, Seller shall provide the Contractual Products free from any infringement of third party's industrial property right or copyright, including but not limited to patents, trade secrets (hereinafter called "Intellectual Property Rights") in the country of the place of destination. In the event a third party asserts legitimate claims against the Buyer based on an infringement of an Intellectual Property Rights with respect to the Contractual Products provided by Seller and then used in compliance with this Contract, Seller shall be liable to the Buyer within the period provided in Section 10.2 hereof as follows:

除非双方另有书面约定，卖方提供的订单产品应当在目的地国家不侵犯第三方的工业产权或版权，比如但不限于专利权、商业秘密（以下简称“知识产权”）。如果有第三方向买方提出订单产品（由卖方提供并且按照本订单的规定使用）侵犯了其知识产权的合法主张，在本条件第 10.2 条规定的期限内，卖方应对买方承担如下义务：

a. Seller shall at his own option and expenses either acquire the legal right to use the Contractual Products, modify the Contractual Products so as not to infringe the Intellectual Property Rights or replace the relevant Contractual Products. If Seller fails to correct the infringement, the Buyer is entitled to terminate the contract whereupon Seller shall take back the relevant Contractual Products and refund Buyer the Contract Price for such Contractual Products.

卖方应自行承担费用并自行决定是取得使用订单产品的权利、修改订单产品以使之不侵犯知识产权亦或是替换相应的订单产品。如果卖方未能补救上述侵权，买方应有权终止本订单且卖方应收回有关订单产品并返还买方这部分订单产品的货款。

b. Seller's aforesaid obligations shall apply only if the Buyer 1) has immediately notified Seller in writing of the claims asserted by the third party; 2) has not acknowledged an infringement; and 3) authorize Seller to defend against and/or reach a settlement with the third party. If the Buyer stops using the Contractual Products to reduce the damage or for other important reasons, he shall make it clear to the third party that such suspension does not constitute an acknowledgment of Intellectual Property Rights infringement.

卖方承担前述义务的前提是：1）买方应在第三方提出主张后就立即书面通知卖方，2）买方未曾对侵权进行任何形式的承认，3）买方授权卖方进行抗辩和/或与第三方和解。如果买方为减少损失或其他重要原因而停止使用订单产品，买方应向第三方澄清该暂缓使用并不意味着承认了侵犯知识产权。

16.2 Claims of the Buyer shall be excluded if he is responsible for an infringement of Intellectual Property Rights.

如果买方应对侵犯知识产权的行为负责，则买方不能提出权利主张。

16.3 Claims of the Buyer shall also be excluded if the infringement of Intellectual Property Rights was caused by 1) specific demands of the Buyer, 2) use of the Contractual Products unforeseeable by Seller or 3) the Contractual Products being altered by the Buyer or being used together with products not provided by Seller.

如果知识产权的侵犯是由于 1）根据买方的特别要求供货，2）以卖方不可预见的方式使用订单产品，或 3）买方修改了订单产品或将订单产品与非卖方提供的货物一起使用而造成的，买方无权提出索赔。

16.4 Further rights and remedies of the Buyer other than those as per this Article 16 based on an infringement of third parties' Intellectual Property Rights, in particular the Buyer's right to claim damages, shall be excluded.

除了本第 16 条项下规定的权利和救济之外，买方不享有其他基于侵犯第三方知识产权的进一步权利和救济，尤其是要求赔偿损失的权利。

16.5 The Buyer may use the plans and drawings provided by Seller only for the intended purpose. The Buyer shall not be entitled to use these plans and drawings for other purposes, especially not for the reproduction of the Contractual Products or parts of the Contractual Products.

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买方可以按预定的目的使用卖方提供的设计和图纸。买方无权为其他目的而使用这些设计和图纸，尤其是不能出于再生产订单产品或其部件之目的而使用。

### 17. Warranties of the Buyer 买方的保证

17.1 The Buyer acknowledges and confirms that it is against the Chinese law and a material breach of the Agreement to sell, install or use any fake MAGNETO products or otherwise infringe the intellectual property right of MAGNETO.

买方知晓并确认销售、安装、使用假冒马赫内托产品或以任何其他方式侵犯马赫内托的知识产权违反中国法律，并严重违反本协议。

The Buyer commits not to sell, install or use any fake MAGNETO products or any product unfairly competing with MAGNETO equivalent or like products or infringe the intellectual property right of MAGNETO in any other way. These products which are prohibited from being sold include, but not limited to the products infringing MAGNETO trademarks, patents, know-how or other intellectual property rights or any compatible products unfairly substituting MAGNETO equivalent or like products. Unless the Seller otherwise agrees, the Buyer shall not integrate the products being prohibited above among the original MAGNETO products into an installation that is sold in the name of MAGNETO.

买方保证不销售、安装、使用任何假冒马赫内托产品或对马赫内托同类或类似产品构成不正当竞争的任何产品或以任何其他方式侵犯马赫内托的知识产权。这些禁止的产品包括但不限于侵犯马赫内托商标、专利、技术诀窍或其他知识产权的产品或者以不正当的方式取代马赫内托同类或类似产品的兼容产品。除卖方另行同意，买方不得将上述禁止的产品与原产马赫内托产品安装集成为成套设备，这些成套设备以“马赫内托”的名义进行销售。

17.2 The Buyer shall maintain complete MAGNETO products' sales documents, invoices and records of product source and agrees that Seller shall be entitled to conduct inspections especially on the aforesaid documents to verify its compliance with the commitment above. The Buyer further agrees to reasonably cooperate in any inspection conducted.

买方应当保管马赫内托产品完整的销售文件、发票和产品来源记录并同意卖方检查上述有关文件以核实其是否遵守上述承诺。买方同意积极配合此类检查。

17.3 The Buyer shall pay the Seller at least RMB 200,000 (in words: RMB Two Hundred Thousand) per event as liquidated damages in case of any breach of this Section 17. In addition, the Seller is entitled to immediate termination of the Agreement and any other remedies available under the Agreement or at law.

如违反本第 17 条任何规定，买方应当就每次事件向卖方支付至少人民币 20 万元（大写：人民币贰拾万元）违约金，此外卖方有权立即终止本协议并依据法律或本协议行使其他权利。

### 18. Confidentiality 保密

18.1 Any information made available to one Party ("Receiving Party") by the other Party ("Disclosing Party") in connection with this Contract shall be treated as confidential. The Receiving Party shall use the information only for the purposes specified in this Contract. This confidentiality obligation shall not apply to information which Receiving Party can demonstrate,

信息接收方应对任何信息披露方提供的与本订单有关的信息保密。信息接收方应只为本订单目的而使用信息。本保密义务不适用于信息接收方可以证明的下列信息，

(i) is already in the public domain or becomes available to the public through no breach by Receiving Party of this confidentiality undertaking or  
非由于信息接收方违反应承担的保密义务而已被公开、或已被公众所知的信息，或

(ii) was in Receiving Party's possession prior to receipt from Disclosing Party without a confidentiality undertaking or  
信息接收方在信息披露方向其披露之前就已拥有的信息并且无需承担相应的保密义务，或

(iii) has thereafter been legally obtained without confidentiality obligation from others or

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已从其他方处合法获得且无相应的保密义务，或

- (iv) is independently developed by the Receiving Party without reference to the information received hereunder.

信息接收方未借助本订单的信息而独立开发的信息。

- 18.2 The obligations set forth in this Section 18 (Confidentiality) shall survive any termination or expiration of the Contract.

本第 18 条中所述的（保密）义务在本订单终止之后继续有效。

## 19. Export Clauses 出口条款

### 19.1 Reservation Clause 保留条款

Seller shall not be obligated to fulfill this Contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

如卖方因遵守国内、国际外贸规定或海关规定或任何禁运、制裁规定而无法履行本订单，则卖方不再承担履行本订单的义务。

### 19.2 Compliance with Export Control Regulations 遵守出口管制法规

- 19.2.1 If Buyer transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Seller or works and services (including all kinds of technical support) performed by Seller to a third party, Buyer shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of goods, works and services Buyer shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

如果买方将卖方提供的货物（包括无论以何种方式提供的硬件、软件和/或技术以及相关的文件），以及卖方完成的工作和服务（包括所有种类的技术支持）转移给第三方，则买方应遵守所有适用的国内、国际的（再）出口控制法规。在任何情况下，这种货物、工作和服务的转移，买方必须遵守德国、欧盟以及美国的（再）出口控制法规。

- 19.2.2 Prior to any transfer of goods, works and services provided by Seller to a third-party Buyer shall in particular check and guarantee by appropriate measures that

在向第三方转移卖方提供的货物、工作和服务之前，买方应该特别检查并以适当的措施保证：

- There will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;

该转移,或就这些货物、工作和服务有关的订单提供经纪服务, 或向第三方提供与这些货物、工作和服务有关的其他经济资源, 将不违反欧盟、美国和联合国实施的禁运, 同时还应考虑（禁运）对国内业务的限制且不得规避禁运的规定；

- Such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;

如果此类货物、工作和服务被禁止用于与军备、核技术或核武器有关的用途, 或需要批准方可用于上述用途, 则此类货物、工作和服务将不会被用于上述用途, 除非相关批准已经获得；

- The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

所有适用的欧盟和美国制裁清单中有关与清单上列举的实体、个人和组织进行交易的规定已被考虑。

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19.2.3 If required to enable authorities or Seller to conduct export control checks, Buyer, upon request by Seller, shall promptly provide Seller with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by Seller, as well as any export control restrictions existing.

如果被要求帮助有关当局或卖方进行出口控制的审查，则买方在收到卖方的要求后应立刻提供包含有卖方所提供的特定货物、工作和服务的最终客户、最终目的地以及预期用途的所有信息，以及任何存在的出口控制限制。

19.2.4 Buyer shall indemnify and hold harmless Seller from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Buyer, and Buyer shall compensate Seller for all losses and expenses resulting thereof.

就任何由于买方不遵守出口控制规定而引起的或与之相关的索赔、诉讼、行动、罚款、损失、成本和损害，买方应补偿卖方并使其免受损害，且买方应赔偿卖方由此产生的一切损失和费用。

## 20. Termination 订单终止

20.1 Either Party may terminate this Contract immediately upon the occurrence of any of the following events: (1) materially breach of contract by the other Party and the breaching Party does not rectify within 90 days after receiving breach notice or in any time limit agreed by both Parties; or (2) bankruptcy or insolvency of the other Party. In case the Buyer fails to make advance payment within 90 days after execution of the Contract, the Seller shall be entitled to terminate this Contract immediately.

基于以下事件的发生，任何一方可以立即终止本订单：1) 另一方严重违反订单，并且违约方未在收到违约通知后的 90 天或双方约定的任何期限内加以纠正；或 2) 另一方破产或资不抵债。此外，如果买方在本订单签订后 90 天仍未支付预付款，则卖方有权立即终止本订单。

20.2 If the Contract is terminated by Seller in accordance with Section 20.1, Seller is entitled to reasonable reimbursement for any labor, material or other expenses incurred in connection with the Contract. The Seller reserves further rights including the right to claim damages hereunder. 如果卖方基于上述 20.1 条的规定终止本订单，卖方有权要求买方赔偿卖方为履行本订单已投入的人员费用，材料和其他开支。卖方保留本订单下包括要求赔偿损失在内的其他权利。

20.3 (If applicable) Furthermore, Seller shall be entitled to terminate this Contract and/or relevant Purchase Order(s) for Good Cause immediately without any liability to Buyer. "Good Cause", includes, but is not limited to, a breach of one or more of Buyer's obligations, representations or warranties specified in Section 29.

(如适用) 此外，卖方有权以正当理由立即终止本订单和/或本订单下的相关订单而无须对买方承担任何责任。“正当理由”包括但不限于买方违反了第 29 条中所规定的一项或多项买方的义务、声明或保证。

## 21. Entire Contract 订单完整

The Contract and its attachments comprise the complete and final Contract between Buyer and Seller and supercede all prior negotiations, proposals, representations, commitments, understandings or agreements between Buyer and Seller, either written or oral, on its subject. No other Contract, quotation or acknowledgment in any way purporting to modify any of the terms of the Contract is binding upon Seller unless made in writing and signed by Seller's duly authorized representatives. The Contract may not be altered or modified except by written Contract of Buyer and Seller. Any other representations or warranties made by any person, including employees or other agents of Seller, that are inconsistent with the Contract shall be disregarded by Buyer and are not binding upon Seller. The Parties are entitled only to such rights and to make such claims which are expressly provided for in the Contract.

本订单及其附件(若有)作为买卖双方必须遵守的合约条件，这组成了买卖双方之间完整的、最终的订单，其效力超过买卖双方之间就本订单主题所作的任何谈判，建议，陈述，承诺，备忘录或协议，无论口头的或书面的。除非经卖方正式授权的代表书面承诺，否则卖方不受任何对本订

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单进行修改的订单、报价或确认，以及另行签订合同的制约。本订单未经买卖双方书面同意不得修改或变更。任何人，包括卖方的雇员或代理，所作的其他陈述或保证，如果与本订单条款不相符，买方都不应予以理会，卖方也不受其约束。本订单各方只能主张或提起本订单明确规定的权利或索赔。

## 22. Successors and Assigns 继承及转让

The Contract binds and inures to the benefit of Buyer and Seller and their respective successors and permitted assigns. Any Party may not assign any interest in, nor delegate any obligation under the Contract, without the other Party's prior written consent.

本订单对买卖双方及其继承者及经同意的受让者有约束力并为他们的利益所订立。除非对方事先书面同意，任何一方不得将本订单项下的任何利益或义务转让或委派给第三人。

## 23. Governing Law 适用法律

The validity, construction and performance of the Contract is governed by, and must be construed in accordance with, the law of the People's Republic of China. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall be excluded.

有关本订单的效力、解释和履行应当适用中华人民共和国法律。1980年4月11日的《联合国国际货物销售订单公约》应排除适用。

## 24. Dispute Resolution 争议解决

### 24.1 Amicable Settlement 和解

All claims, differences or disputes arising out of or in connection with this Contract, including any question regarding its existence, validity, termination or its performance, or in connection with arrangements regarding the performance of this Contract (hereinafter referred to as a "Dispute") shall be settled by an amicable settlement between the Parties. An attempt to arrive at an amicable settlement shall be deemed to have failed as soon as one Party so notifies the other Party in writing.

因本订单产生的或者与其相关的所有请求、分歧或争议，包括关于订单存在、效力、终止或履行，或者与本订单履行安排有关的任何问题（以下称“争议”），应由双方友好解决。如果一方书面通知另一方友好解决的努力已经失败，该努力应被视为已经失败。

### 24.2 Arbitration 仲裁

#### 24.2.1 In case of failure to resolve the dispute amicably, the dispute shall be submitted to the Suzhou Arbitration Commission for arbitration. If amicable settlement has failed,

The seat of arbitration shall be Suzhou. The arbitration language shall be Chinese. The arbitration award shall be final and binding on both parties.

如果友好解决失败，争议应提交苏州仲裁委员会仲裁。

仲裁地点为苏州。仲裁语言为中文。仲裁裁决是终局的并对双方具有约束力。

## 25. Severability 条款可分割性

Any provision of the Sale Contract, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event that any such provision of this Contract is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Contract as nearly as possible to its original intent and effect. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

如果本订单的任何条款在任何司法管辖区被禁止或不可执行，此种条款在该辖区内被禁止和不可执行的范围内无效，但这并不影响本订单其他条款的有效性，且此种条款在任何其它司法管辖区的有效性不受此种禁止和不可执行性的影响。如果本订单的任何此种条款被认定无效，本订单

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双方须立即秉诚协商新的条款，使本订单尽可能地恢复到能够实现其原始宗旨和效果。在法律允许的条件下，双方特此放弃适用任何使本订单任何条款被禁止或不可执行的法律条款。

## 26. Notices 通知

All notices in connection with this Contract shall be in writing and shall be effective upon dispatch if sent by fax, seven (7) days after the date of mailing if sent by registered mail and three (3) days after the date of mailing if sent by courier services. In all cases, notices shall be delivered to the other Party at the address set forth on the first page of the Contract or such other address as such Party may have provided by written notice.

所有与本订单有关的通知应为书面形式，并于如下时间生效：传真发送则即时生效；挂号信发送则在寄出七（7）天后生效；快递投送则寄出三（3）天后生效。任何情况下，给对方的通知应发送至本订单首页所述的地址或一方书面通知的其它地址。

## 27. Day 日

Unless expressly agreed by the Parties otherwise, day or days mentioned in this Contract refer to calendar day.

除非订单双方明示相反规定，本订单中所提及的日是指日历日。

## 28. Survival 终止后的适用

The terms of this Annex (General Terms and Conditions of Supplies) that by their nature are reasonably intended by the parties to survive its expiration or earlier termination, including, but not limited to, Sections 10, 11, 17, 22, 23 and this Section 27 of the Terms, survive the expiration or termination of the Contract.

本附件(供货一般条件)的条款根据其性质不因订单到期或提前终止而终止的，包括但不限于本条件的第 10、11、17、22、23 和 27 条应当在本订单到期或终止后继续有效。

## 29. Compliance with the Law 遵守法律 [Not Applicable to End-user Buyers 不适用于作为最终用户的买方]

Buyer represents and warrants that it and any party acting on its behalf (including any employees of Buyer) will comply with all applicable laws and regulations under or in relation to this Contract or any other agreement between Buyer and a company of the MAGNETO group worldwide, including, without limitation any laws and regulations relating to taxation, anticorruption, antitrust, anti-money laundering or any other criminal law, rule or regulation.

买方陈述并保证其自身及其任何代理人（包括买方的任何雇员）将遵守所有在本订单或买方与马赫内托公司全球任一公司签署的协议项下的或与之相关的适用的法律法规，包括但不限于，任何与课税、反腐败、反垄断、反洗钱相关的法律法规或任何其他刑事法律、规章或法规。

## 30. GOVERNING LANGUAGE 语言

This Contract is written in both English and Chinese languages. Both versions are equally authentic. In case of any discrepancy or conflict between the two versions, the Chinese version shall prevail. 本订单用英文和中文写成。两种文本具有同等效力。当中英文本含义冲突或不一致时，应以中文文本为准。

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