

## I. Scope and general provisions

### 范围和一般规定

1. Every offer and every performance (including deliveries, purchases, service provisions and work productions) by either EDAG Engineering and Design (Shanghai) Co., Ltd. and its registration address at 5/F, Building 3, No.2377 Shenkun Road, Minhang District, Shanghai, 201106 P.R. China (jointly referred to as „**Contractor**“) towards a business professional, a legal entity under public law or a special fund under public law („**Principal**“) are made exclusively on basis of these General Terms and Conditions of Sale and Delivery being part of the Contractor's General Terms and Conditions („**GTC**“).

爱达克车辆设计(上海)有限公司(注册地址:上海市闵行区申昆路 2377 弄 3 幢 5 层,邮编 201106)或其任何关联企业(合称为“**承包商**”)向商务专业人士、公法项下的法人实体和特别基金(“**委托方**”)提供的每一份要约和每一项履行(包括交付、采购、服务提供和工作成果)均是排他性地根据本销售和交付的通用条款和条件作出,本销售和交付的通用条款和条件(“**通用条款**”)是承包商通用条款和条件的组成部分。

For the purpose of this GTC,

在本通用条款中,

- a) business professional means a natural or legal person or a partnership with legal personality (i.e. that has the capacity to acquire rights and to incur liabilities) who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession;  
商务专业人士指在进行法律交易时,在其贸易、业务或者职业行为中采取行动的自然人、法人或者具有法人资格的合伙企业(即有能力取得权利和承担责任的合伙企业);
- b) merchant is a person who carries on a commercial business meaning any commercial enterprise unless, by reason of its nature or size, such enterprise does not require a commercially organized business operation;  
商人指从事商业业务的人员,意指任何商业企业,除非因其性质或规模该企业无需进行任何商业组织经营;
- c) affiliated companies are such companies in which EDAG Engineering and Design (Shanghai) Co., Ltd., either holds the majority of shares or is entitled to the majority of the voting rights (*majority interest*).  
关联企业指爱达克车辆设计(上海)有限公司持有其大部分股份或享有其多数投票权(多数权益)的公司。

2. Unless otherwise agreed individually, these GTC – in the version valid at the time of conclusion of a respective contract or, in any case, in the version last notified to the Principal in text form – shall also apply as a framework agreement for all future similar contracts between the Contractor and the Principal, without the Contractor having to point to, or refer to, this GTC in each individual case.

除非另有单独约定,否则本通用条款——以其在各个合同签署时有效的版本,或在任何情形下,以最近一次以文本形式通知委托方的版本,将作为承包商和委托方在未来所有类似合同的框架协议,且在每个单独的情况下,承包商均无需指出或参考本通用条款。

3. Principal's general terms and conditions which are either in conflict with or supplementary to or deviating from this GTC shall only become part of a contract if and to the extent that Contractor has expressly consented to their validity in written form. This requirement of consent shall apply in any case, for example also if the Contractor unconditionally executes his performance, accepts payments without objecting and/or remains silent to a declaration of inclusion issued by the Principal.

只有在承包商以书面形式明确认可其有效性的情况下,与本通用条款相冲突、补充或偏离的委托方的一般条款和条件方可成为合同的一部分。前述承包商的书面同意在任何情况下均是必需的,例如,即使承包商无条件地履行其义务,接受付款而不提出反对和/或对委托方发布的包含某条款和条件的声明保持沉默,均不应视为承包商接受委托方的一般条款和条件。

4. Individual agreements entered individually between Contractor and Principal (including side-agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof of the contrary, the content of such individual agreements shall be determined by a written contract or by written confirmation by Contractor.

承包商与委托方之间单独签订的个别协议(包括附加协议、补充协议和修订协议)在任何情况下均优先于本通用条款。除非有相反证据,此类个别协议的内容应以书面合同或承包商的书面确认函的形式予以确定。

5. Legally relevant declarations and notifications given by Principal – in particular setting deadlines as well as giving notifications of defects, revocations and/or price reductions – must be made in writing i.e. in written or in text form (e.g. letter, email, fax, etc.). Legal formal requirements and other evidence, in particular in the event of doubt as to the legitimacy of the declarant, remain unaffected thereof.

委托方作出的法律相关声明和通知,特别是设定最后期限以及就瑕疵、撤销和/或降价发出的通知,必须采用书面形式,即书面或文本形式(如信件、电子邮件、传真等),做出。对法律形式的要求和其他证据,特别是在对声明人的合法性存疑的情况下,不受本条规定影响。

6. References to the applicability of statutory provisions only serve for clarification. Even without such clarifications, the statutory provisions shall therefore apply to the extent they are not directly amended or expressly excluded in this GTC.

提及法令规定的适用性仅作参考之用。即使没有该等说明,只要法令规定未在本通用条款中被直接修改或明确排除的,法令规定将适用。

7. Regarding Contractor's informational obligation under the GDPR please note the privacy statement which is available under the following internet address: <http://www.edag.de/en/privacy-protection.html>

关于承包商在《通用数据保护条例》(GDPR)下的信息义务,请参照隐私声明,该隐私声明可于下列网址获取: <http://www.edag.de/en/privacy-protection.html>。

## II. Offer and accompanying documents

### 要约和随附文件

1. Verbal offers made by the Contractor are always non-binding and subject to confirmation; they only become binding upon confirmation in written or text form. This written or text form requirement shall also apply to any side agreements and/or amending agreements. The conclusion of a contract cannot be brought about by the Principal by means of unilateral reference to contract negotiations that have taken place. A silence on the part of the Contractor shall in no case be deemed consent.

承包商所做的口头要约通常不具约束力,须经确认;只有在经书面或文本形式确认后,其方可具有约束力。对书面或文本形式的要求也适用于任何补充协议和/或修订协议。委托方不能通过单方面引用已进行的合同谈判来订立合同。承包商的沉默在任何情况下都不应被视为同意。

2. The binding period for offers in writing or in text form – as well as for verbal offers confirmed in writing or in text form – shall be thirty (30) days from the issue date as stated in the offer itself, irrespective of the date of receipt unless a differing date regarding the validity of the offer is stated therein

书面形式或文本形式的要约,以及通过书面或文本形式确认的口头要约的有效期应是从该要约自身载明的发布日期起三十(30)日,而无论对方于何等日期收到该要约,除非该要约中另行规定了其他有效期。

3. The information either contained in the offer letter itself, in any additional document described as annex to the offer letter and being used for the purpose of determination of contractually owed characteristics, functions and/or quality features of Contractor's performance ("**Offer Documents**") must be checked by the Principal for their suitability for the purpose intended by the Principal as well as for customary use. In the event of discrepancies, the Contractor shall be notified within ten (10) days of receipt of the offer documents, otherwise the Principal shall be responsible for any resulting defects and deviations.

委托方务必就要约书本身,或任何被描述为要约书附件的、用于确定承包商为履行合同需具备的特征、功能和/或质量特征的任何额外文件(“**要约文件**”)中包含的信息进行检查,以确认该等信息是否符合其拟定目的及使用习惯。如果出现不符合的情况,委托方应在收到要约文件后的十(10)日内对承包商发出通知,否则,由此产生的任何瑕疵和偏差应由委托方负责。

4. Information and data contained in documents (e.g. in catalogues, technical documentations, calculations, worksheets, DIN standards, data sheets, etc.) which are provided in connection with the offer documents („**Accompanying Documents**“), whether such information or data are technical descriptions, drawings, illustrations, specifications, programs or performance details, are non-binding and in particular do not constitute an agreement on the quality in accordance with section 12 clause 2 of this GTC.

因与要约文件相关而被提供的文件(例如目录、技术文件、计算表、工作表、DIN 标准、数据表等)(“**随附文件**”)中包含的信息和数据,无论该等信息或数据是技术说明、图纸、插图、规格说明、程序还是履约细节,均不具有约束力,尤其不构成基于本通用条款第 12 条第 2 款的有关质量的约定。

# General Terms and Conditions of Sale and Delivery

## 销售和交付的通用条款和条件



5. Contractor reserves all rights of ownership, use and exploitation in relation to the Offer Documents and to the Accompanying Documents as well as to the information contained therein. Additionally, each and every piece of information contained therein constitutes a trade and/or business secret of the Contractor. Principal is prohibited from unauthorized exploitation or unauthorized disclosure to third parties.

承包商保留与要约文件、随附文件以及其中所载信息有关的所有所有权、使用权。此外，要约文件和随附文件中包含的每一条信息均构成承包商的行业和/或商业秘密。委托方不得进行任何未经授权的的使用或向第三方进行任何未经授权的披露。

### III. Retention of title

#### 所有权保留

1. The tangible and intangible performance outcome owed by the Contractor ("**Performance Items**") shall remain the Contractor's property until all present and future claims of the Contractor arising from any ongoing business relationship with the Principal ("**Secured Claims**") are settled.

承包商所持有的有形和无形的履约成果 ("**履约项目**") 应属承包商持有的财产，直至承包商因与委托方的任何持续业务关系而产生的所有目前和未来的债权 ("**被担保债权**") 均被清偿。

2. The Performance Items subject to retention of title may neither be pledged to third parties, nor transferred by way of security before full payment of the Secured Claims was made. The Principal shall notify the Contractor immediately in writing if an application for the opening of insolvency/bankruptcy proceedings has been filed or if the Performance Items were seized by third parties (e.g. compulsory enforcement by means of attachment).

所有权被保留的履约项目，在被担保债权未被足额清偿前，不得向第三方质押或者以担保方式转让。如果委托方已申请启动破产程序，或履约项目已被第三方扣押(例如通过扣押方式强制执行的)，委托方应立即书面通知承包商。

3. If the Principal is in breach of the terms of the agreement, in particular default of payment, the Contractor shall be entitled to withdraw from the contract pursuant to the statutory provisions and/or to claim the return of the Performance Items on basis of the retention of title. The claim for return does not, simultaneously, include the declaration of revocation; the Contractor is, however, entitled to demand surrender only of the Performance Items subject to retention of title and to reserve the right to revoke from the contract. Upon claim of surrender, the Performance Items are subject to an unrestricted authority of exploitation by the Contractor. As far as the Performance Items involve software, upon claim of surrender all rights of use and exploitation granted to the Principal within the scope of the contract-matter shall expire. The Contractor may only assert these rights if he has previously unsuccessfully set the Principal a reasonable deadline for payment or if such a deadline is unnecessary under the statutory provisions. The Principal is entitled, unless notified otherwise, to resell and/or process the Performance Items subject to retention of title in accordance with the conditions of the following clauses within the normal course of business.

如果委托方违反协议条款，特别是拖欠付款的，则承包商有权根据法令规定退出合同，及/或根据所有权保留的规定要求退还履约项目。承包商要求退还的请求并不意味着同时取消该合同；但是，承包商仅有权要求退还所有权被保留的履约项目，并保留解除合同的权利。在提出退还要求时，承包商对履约项目拥有不受限制的使用权。履约项目涉及软件的，委托方在合同事项范围内被授予的全部使用权自承包商提出退还要求起失效。承包商只有在先前未能成功地为委托方设定合理的付款期限，或根据法令规定没有必要设定付款期限的情况下，方可主张这些权利。除另行通知外，委托方有权在正常经营过程中，按照下列条款的规定，转售和/或加工所有权被保留的履约项目。

4. In the event of processing, intermixture or combination of tangible Performance Items subject to retention of title with one or more movable items, the Contractor's retention of title shall extend to the entire emerging item; the Contractor shall be deemed the manufacturer thereof.

在所有权被保留的有形履约项目与一个或多个动产共同加工、混合或合并的过程中，承包商的所有权保留应扩展至整个新生成的项目；承包商应被视为该新项目的制造商。

5. If in case of processing, intermixture or combination of Performance Items with items of third parties, the ownership rights of these third parties remain in force. The Contractor shall acquire co-ownership in proportion to the values of the processed, intermixed or combined items. In all other respects, the same shall apply to the emerged item as is applying to the Performance Items subject to retention of title.

在履约项目与第三方项目共同加工、混合或合并的过程中，该等第三方的所有权仍然有效。承包商应按加工、混合或合并项目的价值比例取得共同所有权。在所有其他方面，新生成的项目应与所有权被保留的履约项目适用同等规定。

6. If the Principal sells Performance Items, subject to retention of title, to third parties without receiving full consideration in advance or concurrently, he must agree a retention of title with these third parties pursuant with these conditions. The Principal hereby assigns to the Contractor his claims from such resale as well as the rights from such retention of title agreed by him. The Contractor hereby accepts this assignment. The Principal's obligations under the above clause 2 shall apply mutatis mutandis in respect of these assigned claims. Furthermore, the Principal shall remain authorized to collect these assigned claims alongside the Contractor. In this respect, the Contractor will not collect the assigned claims to the extent the Principal meets his payment obligations towards the Contractor, if there is no deficiency regarding the Principal's performance and as long as the Contractor does not exercise its right to redeem the Performance Items pursuant to clause 3 above. Should this be the case, however, the Principal shall be obliged to notify his purchasers of the assignment and to provide the Contractor with the information and documents required to assert his rights against the purchasers; in such case, the Contractor shall also be entitled to revoke the Principal's authority to further sell the Performance Items subject to retention of title.

委托方将所有权被保留的履约项目出售给第三方的，在未事先或者同时收到第三方支付的全额对价的情况下，委托方应当按照本条件与该第三方约定所有权保留。委托方在此将其自该等转售中获得的债权以及与其与第三方约定的所有权保留中获得的权利转让给承包商。承包商特此接受此项转让。委托方在上述第 2 条款下的义务经适当调整后，同样适用于这些被转让的债权。此外，承包商应授权委托方一起收取这些被转让的债权。在此方面，如果委托方对合同的履行无瑕疵且承包商未根据上述第 3 条款行使对履约项目的赎回权的，就委托方已向承包商付款的部分，承包商不会收取被转让的债权。然而，在这种情况下，委托方应有义务将此等对于承包商的转让通知第三方买家，并向承包商提供向该买家主张其权利所需的信息和文件；在这种情况下，承包商还应有权撤销对委托方转售所有权被保留的履约项目的授权。

7. If the realizable value of the Performance Items subject to retention of title exceeds the Secured Claims by more than 10%, the Contractor shall, upon request of the Principal, be obliged to release securities at the Contractor's discretion within a reasonable period of time.

如果所有权被保留的履约项目的可变现价值超过被担保债权 10% 以上的，承包商有义务根据委托方的要求，在合理期限内自行解除担保。

### IV. Performance Periods and Delay in Performance

#### 履约期间和延迟履约

1. The period for rendering the performance of the Contractor ("**Performance Period**") shall either be agreed individually with the Principal or specified by the Contractor in his offer letter or in the acceptance of an order. Unless time is expressly agreed to be of the essence in the sense of a fixed date transaction, compliance with Performance Periods shall not be deemed to be an essential part of the Contractor's performance obligations, so that delayed performance shall also constitute fulfillment of the Contractor's performance obligation.

承包商履约的期间 ("**履约期间**") 应与委托方个别商定，或由承包商在其要约书或订单接受书中具体指定。除非明确约定，就某一固定交易日期而言，时间是至关重要的，否则遵守履约期间不应被视为承包商履约义务的重要组成部分，延迟履约也应构成承包商对义务的履行。

2. The Contractor's observance of performance deadlines shall be subject to the fulfillment of all obligations incumbent upon the Principal, in particular the timely receipt of all physical and immaterial provisions (including documents, plans, materials, components, software, etc.) to be supplied by the Principal, necessary approvals and releases as well as compliance with the agreed terms of payment by the Principal. If these prerequisites is not fulfilled, not completely fulfilled or not fulfilled in time, the respective Performance Period shall be extended accordingly; the statutory consequences of default shall be waived in this respect.

承包商对履约期限的遵守应以委托方履行其应尽的所有义务为前提，特别是及时向承包商提供所有有形和无形资料(包括文件、计划、材料、组件、软件等)、给予承包商必要的准许和签发，以及遵守付款条件。若上述条件未被满足、未被完全满足或者未被及时满足的，则承包商的履约期间应被相应延长；在此方面，承包商被视为违约的法定后果应予免除。

3. Should the Contractor not meet a Performance Period for reasons for which he is not responsible ("**Non-Availability of Performance**"), the Contractor shall inform the Principal without undue delay and notify the expected new Performance Period. If the Non-Availability of Performance also continues within the new Performance Period, the Contractor shall be entitled to withdraw from the contract in whole or in part. Non-Availability of Performance particularly includes the delayed delivery of the Contractor by a supplier provided the Contractor have concluded a congruent hedging transaction, if neither the Contractor nor his supplier be in default or if the Contractor is not obliged to procure the non-available goods/services in the individual case.

如果承包商因不可归咎于承包商的原因未能满足履约期间(“**无法履约**”)时, 承包商应及时通知委托方, 并通知预期的新的履约期间。如果在新的履约期间内, 无法履约的情形持续存在的, 则承包商应有权整体或部分退出合同。无法履约的情形尤其包括当承包商与其供应商就相应标的物已达成一笔同等的交易时, 供应商对承包商延迟交货, 并且承包商和其供应商均没有违约, 或者在个别情况下某些货物/服务是无法取得的且承包商无义务采购该等货物/服务。

- The occurrence of default on the part of the Contractor ("**Delay in Performance**") shall be determined in accordance with the statutory provisions, whereby a warning notice from the Principal to the Contractor setting a reasonable deadline shall be required in any case. Liquidated damages and/or contractual penalties shall in any case require an express written agreement between the Principal and the Contractor. If liquidated damages were agreed upon, the Principal shall in any event be responsible to prove that the Principal has incurred damages that equals to the liquidated damages. Otherwise, the liquidated damages of default shall not apply.

承包商的违约情形(“**延迟履约**”)应根据法令规定确定, 且在任何情况下均须先由委托方向承包商发出一份载有合理期限的警告通知。在任何情况下, 委托方和承包商均应就违约金和/或合同罚款达成明确的书面协议。约定违约金后, 委托方在任何情形下均仍应有责任证明承包商导致委托方遭受的损害等值于违约金金额。否则, 违约金不适用于该等情形。

- The rights of the Principal under section 12 of these GTC and the statutory rights of the Contractor, in particular in the event of exclusion of the obligation to perform (for example due to impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected by the above provisions.

本通用条款第 12 条规定的委托方的权利和承包商的法定权利, 特别是在排除履约义务(例如由于履约和/或后续履约是不可能或不合理的)的情况下, 不受上述规定的影响。

#### V. Passing of risk and default in taking performance

##### 风险转移和未能提取履约

- Each performance by the Contractor shall be ex works, where the place of performance for deliveries (including deliveries of Performance Items) and any supplementary performance to bring the original performance into conformity with the contract by Repair or Replacement ("**Subsequent Performance**") shall be. Deliveries are to be made available ready for loading without packaging. Shipment to another destination shall only be effected at the expense of the Principal and on the basis of a corresponding agreement. Subject to a deviating agreement, the Contractor shall be entitled to determine the type of dispatch (in particular transport company, dispatch route and packaging) at his own discretion.

承包商的每一次履约均为工厂交货, 交付(包括履约项目的交付)的履约地点及补充履约(通过维修或更换方式使初始履约与合同相符(“**后续履约**”))地点均为工厂交货。交货应准备就绪, 以备装运, 无需包装。装运至其他目的地时, 仅可基于相应的协议, 并在委托方承担费用的情形下进行。承包商有权自行决定派送的类型(特别是运输公司、派送路线和包装), 但有相反约定的除外。

- The risk of accidental perishing or deterioration shall pass to the Principal at the latest upon handover. In the event of collection by the Principal, this risk shall pass to the Principal upon notification of completion and provision of the service in conformance with the contract at the Contractor's premises. In the case of data transmission, the risks shall pass to the Principal upon dispatch of the data. In the case of shipment, the risk and the risk of delay shall pass to the Principal upon delivery to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment.

意外毁坏或变质的风险最迟应在交付时转移给委托方。如果由委托方负责收的, 则风险应在承包商发出有关在承包商处完成并提供符合合同规定的服务的通知时转移至委托方。在数据传输的情况下, 风险应在数据发送时转移给委托方。货物发运时, 风险和延迟风险应在货物被交付给货运代理、承运人或者经指定进行装运的其他发运人或者机构时, 转移给委托方。

- Acceptance of the performance as being in conformity with the contract ("**Acceptance**"), if either agreed or required by law, shall be decisive for the transfer of risk. The statutory provisions regarding contracts to produce a work shall apply mutatis mutandis to a contractual agreed Acceptance. Handover or Acceptance are deemed equivalent if the Principal is in default of Acceptance.

对符合合同规定的履约的验收(“**验收**”), 无论是约定的还是法律要求的, 应对风险的转移起决定性作用。如合同目的是制作某项作品, 相关关制作作品的合同的法定规定法令规定应在作了适当变更后, 适用于合同约定的验收。如果委托方违反验收规定, 交付即为验收。

- Should the Principal be in default of taking performance/Acceptance or fail to co-operate, or should the performance of the Contractor be delayed for other reasons for which the Principal is responsible, the Contractor shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). In such case, the Contractor may charge a liquidated damages amounting to 0.5% of the performance value per commenced calendar week, beginning with the Performance Period, respectively with the notification of the readiness for collection of the performance. The evidence of a higher damage and the statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) by the Contractor shall remain unaffected; the liquidated damages shall, however, be set off against further monetary claims. The Principal shall be entitled to prove that the Contractor has incurred no damage at all or only substantially less damage than the above described liquidated damages.

如果委托方未能提取履约/进行验收或未能合作, 或因可归咎于委托方的其他原因延误了承包商的合同履行, 则承包商有权就此造成的损害, 包括额外费用(如仓储费用), 要求赔偿。在这种情况下, 承包商可在发送履约准备就绪的通知后, 按从履约期间开始的每个日历周, 分别收取相当于履约价值 0.5%的违约金。承包商提出的有关更高金额的损害赔偿和法定索赔(特别是对额外费用、适当赔偿、终止的赔偿)的证据不受本条规定的影响; 但是, 违约金应用于抵销之后的货币债权。委托方应有权证明承包商没有遭受任何损害, 或只遭受比上述违约金少得多的损害。

#### VI. Terms of payment and default of payment

##### 付款条件和拖欠付款

- The prices of the Contractor are net prices and are ex works excluding transport, insurance and packaging, except agreed otherwise. Value added tax shall be invoiced to the Principal in addition and be borne by the Principal; a statutory change in the amount of value added tax shall not entitle the Principal to terminate the contract. Should dispatch be agreed, the Principal shall bear all transport costs and ancillary transport costs ex works, including the costs of packaging and transport insurance. In addition, the Principal shall bear any customs duties, fees, taxes and other public charges.

承包商的价格为净价, 不包括运输、保险和包装在内的工厂交货价, 但另有约定的除外。此外, 承包商应向委托方开具增值税发票, 增值税应由委托方承担; 增值税金额发生法定变更时, 委托方无权因此解除合同。如果双方同意发货, 委托方应承担所有的运输费用和工厂交货的辅助运输费用, 包括包装和运输保险的费用。此外, 委托方应承担任何关税、费用、税金和其他公共费用。

- Performances which were not included in the Contractor's offer, or in an order of the Principal accepted by the Contractor, but which the Principal has nevertheless requested the Contractor to render in the course of a business relationship ("**Additional Services**") may be invoiced to the Principal separately at regular market conditions. Any differing, extra or supplementary services of the Contractor resulting from change request by the Principal shall be deemed as Additional Services without specific or additional notifications to the Principal.

对于委托方在业务关系中要求承包商提供的, 但并不包含在承包商要约或经承包商接受的委托方订单中的履约(“**额外服务**”), 承包商可按照正常的市场条件, 单独向委托方开具发票。因委托方要求变更而引起的承包商的任何不同的、额外的或补充的服务均应视为额外服务, 承包商无需向委托方发出特定的或额外的通知。

- The Contractor shall be entitled to invoice his performances on a monthly basis unless except when agreed otherwise. The respective invoice amount shall be due and payable by the Principal within fourteen days of invoicing, unless otherwise stated on the invoice ("**Payment Period**"). The Contractor shall be entitled – also within the framework of an ongoing business relationship – at any time to perform a service in whole or in part only against advance payment. The Contractor declares a corresponding reservation at the latest within an order confirmation

除非另有约定, 否则承包商应有权每月就其履约情况开具发票。除非发票上另有规定, 否则委托方应在发票开具后的 14 天内(“**付款期限**”)支付发票金额。同样地, 在持续业务关系的框架内, 承包商有权在任何时候提供全部服务或仅就预付款提供部分服务。承包商最迟在订单确认函中声明相应的权利保留。

- Upon expiry of the Payment Period, the Principal shall be in default of payment without the need for a warning notice. The invoice amount shall bear interest during the time of default at the interest rate of 0.5% per calendar week.

付款期限届满, 委托方不履行付款义务的, 无需出具警告通知。违约期间发票金额应计息, 利率为每日历周 0.5%。

- The Contractor shall be entitled to first set off payments of the Principal against older debts of the Principal and to first set off incoming payments of the Principal against costs, interest and then against the main performance.

承包商有权首先用委托方的付款抵消其过去发生的债务, 并有权先用委托方的付款抵销成本、利息, 然后再抵销主要履约。

6. In the event of an apparent danger to the Contractor's price claim after conclusion of the contract due to the Principal's lack of ability to pay (e.g. due to an application to open insolvency proceedings, rejection of an important loan, surrender of unfunded cheques, etc.), the Contractor shall be entitled to refuse performance in accordance with statutory provisions. This right to refuse performance shall lapse if the Principal fulfills the price claim or provides a security acceptable to the Contractor for it. The Contractor may specify a reasonable period of time within which the Principal shall, at the Contractor's discretion, fulfill the price claim concurrently with provision of the performance, or provide security. The Contractor may withdraw from the contract if the Principal fails to meet such deadline.

在合同订立后, 如因为委托方缺乏支付能力(例如, 由于申请启动破产程序、拒绝一笔重要贷款, 放弃空头支票, 等等), 明显危及承包商的付款要求时, 承包商有权按照法令规定拒绝履约。如果委托方满足了付款要求或提供了承包商可以接受的担保, 则该等拒绝履行的权利将失效。承包商可以规定一个合理的期限, 在此期限内, 承包商可自行决定是否应由委托方在承包商履约的同时付款, 或是由委托方提供担保。若委托方逾期不履行合同的, 承包商可以解除合同。

7. The Principal is only entitled to set-off or retention for legally established or undisputed claims. In the event of defects in the Contractor's performance, the Principal's counter rights – in particular pursuant to section 12 clause 1.5 sentence 2 of these GTC – shall remain unaffected.

委托方仅有权对依法成立或无争议的债权进行抵销或保留。如果承包商履约有瑕疵的, 则委托方的反向权利, 尤其是本通用条款第 12 条第 5 节第 2 句中规定的权利, 将不受影响。

## VII. Acceptance for performances to produce a work 对生产作品履约的验收

1. To the extent, Acceptance is possible according to type or quality of the performance, the Principal shall immediately accept a work upon production by the Contractor ("ready-for-Acceptance"). The performance shall be deemed ready for acceptance if it possesses the essential characteristics of the agreed quality. Regardless, the Principal may accept the work before ready-for-Acceptance.

如果根据履约的类型或质量可以进行验收的, 则委托方应立即验收承包商生产的作品(“验收就绪”)。如果履约物具有约定质量的基本特征的, 则视为履约物已验收就绪。虽然有前述规定, 但委托方可以在验收就绪前接受作品。

2. When the Contractor's obligation to produce a work can be divided into several partial work performances which can be used independently by the Principal, the Principal's obligation to accept shall apply to each partial work performance.

如果承包商生产作品的义务可以被分为若干个部分工作履约且每部分均可由委托方单独使用时, 则委托方的验收义务应适用于各个部分的工作履约。

3. The Principal reports the Acceptance in writing to the Contractor without undue delay. Should the Principal fail to comply with this obligation, a work performance ready for acceptance shall be deemed to have been conclusively accepted if (i) its suitability and faultlessness can be ascertained by the Principal through an external inspection and the Principal accepts it without rejecting it within fourteen (14) days, (ii) the Principal finally puts it into use after a fourteen-day trial phase, or (iii) the Principal unconditionally pays the corresponding price to the Contractor.

委托方应以书面形式向承包商报告验收情况, 不得无故拖延。如果委托方不履行此项义务, 则验收就绪的工作成果在以下情况下应视为已被最终接受: 如果(i)委托方可以通过外部检查确定其适用性和无过错性, 且委托方在十四(14)天内未提出异议的, 或(ii)经过 14 天的试运行, 委托方终于将其投入使用的, 或者(iii)委托方无条件地向承包商支付相应价款的。

4. The Principal may not refuse Acceptance in the event of non-material defects in the work performance ("Acceptability"). Acceptability shall be deemed to exist in particular if the fitness for use of the work performance for the Principal is not, or not significantly, impaired, e.g. in the case of cosmetic defects. Additionally, the absence or incompleteness of documentation, design papers or source code shall not impair the Acceptance of the work.

作品履约中未出现非重大瑕疵时, 委托方不得拒绝验收(“可验收性”)。特别是在作品对委托方而言的适用性未受到损害或重大损害一例如仅存在外观瑕疵一的情形下, 可验收性应被视为成立。此外, 文件、设计文件或源代码的缺失或不完整, 不得影响作品的验收。

5. The work performance shall also be deemed to have been accepted if the Contractor has set the Principal a fourteen-day (14-day) period for Acceptance after production of the work and the Principal has not refused Acceptance within this period stating at least one defect.

如果承包商在作品完工后给委托方设定了十四天(14 天)的验收期限, 且委托方未在此期限内以至少一项瑕疵为由拒绝验收, 则作品履约也应被视为通过验收。

6. The transmission of an invoice for the corresponding work performance to the Principal shall also be deemed to be the setting of a deadline for Acceptance by the Contractor to the Principal within the meaning of section 7 clause 5 of this GTC, whereby the payment deadline for the invoice amount shall be deemed to be the deadline for Acceptance.

承包商发送与作品履约相对应的发票也应被视为承包商向委托方设置本通用条款第 7 条, 第 5 节项所定义的验收期限, 发票金额的付款期限应被视为验收的最后期限。

## VIII. Effects of force majeure 不可抗力的影响

Force majeure of any kind, in particular unforeseeable operational, traffic or shipping disruptions, fire damage, floods, unforeseeable labor, shortages of energy, raw materials or auxiliary materials, strikes, lockouts or official orders, or other obstacles for which the Contractor is not responsible, which delay, prevent and/or make unreasonable the manufacture, shipment or Acceptance, shall release the obligor from the obligation to deliver or accept for the duration and extent of the disruption. If the delivery and/or Acceptance is exceeded by more than eight (8) weeks as a result of the disruption, both parties shall be entitled to withdraw from the contract.

任何性质的不可抗力发生时, 特别是不可预见的经营、交通或航运中断、火灾、洪水、不可预见的劳动力、能源、原材料或辅助材料短缺、罢工、停工或官方命令, 或其他不可归咎于承包商的延迟、妨碍制造、运输或验收的障碍及/或使制造、运输或验收变得不合理的障碍, 应当免除债务人在不可抗力期间和不可抗力程度内交付或者验收的义务。如果由于不可抗力而造成交付和/或验收时间超过八(8)周, 双方均有权解除合同。

## IX. Rights to Tools for the provision of the performance 提供履约时工具的权利

1. The trade secrets, practical knowledge, know-how, industrial property rights, (software) copyrights as well as any combination thereof used by the Contractor within the scope of his performance for the Principal ("Intangible Tools") shall remain the sole property of the Contractor. The Principal shall not be granted any rights of use or exploitation to these Intangible Tools.

承包商在其为委托方履行职责的范围内所使用的商业秘密、实用知识、专有技术、工业产权、(软件)著作权及其任何组合(“无形工具”)仍为承包商的唯一财产。委托方不具备这些无形工具的任何使用权。

2. The aids, appliances, assistive devices, auxiliary models, work equipment, utensils, models, molds, etc. manufactured by the Contractor within the scope of his performance for the Principal ("Tangible Tools") shall not form part of the subject matter of performance of the Contractor without express agreement and shall remain the sole property of the Contractor; the Contractor shall also be entitled to all rights of use and exploitation of these Tangible Tools.

承包商为委托方履约的范围内所制造的辅助器具、装置、辅助设备、辅助模型、工作设备、厨具、模型、模具等(“有形工具”), 在没有明确约定的情形下, 不得构成承包商履约标的物的一部分, 有形工具是承包商的唯一财产; 承包商享有有形工具的一切使用权。

3. The Tangible Tools shall be kept by the Contractor for a period of six (6) months after Acceptance of the parts by the Principal without recognition of a legal obligation. After expiry of this period, the Contractor may scrap the Tangible Tools unless the Contractor and the Principal have agreed on further storage of the Tangible Tools or transfer of ownership against payment of an appropriate remuneration.

在委托方接受零件后, 承包商应保留有形工具六(6)个月, 但不意味其需就此承担任何法律上的义务。此期间届满后, 除非承包商和委托方一致同意进一步存储有形工具或委托方在支付适当报酬后获得其所有权, 否则承包商可以销毁有形工具。

#### X. Rights to Performance Results and inventions 履约成果和发明的权利

1. The rights of the Contractor to the owed intangible or intellectual Performance Items ("**Performance Results**"), shall become the property of the Principal in accordance with the following provisions upon elimination of the reservation of title under section 3 of these GTC, to the extent it is legally possible.

承包商对其待交付的无形或知识产权履约项目的权利 ("**履约成果**"), 在法律允许的范围内, 以及在解除本通用条款第 3 条项下的所有权保留后, 应按照规定成为委托方的财产。

2. Upon discontinuation of the retention of title according to section 3 of these GTC, the Principal is granted the right to use copyright-protected Performance Results in all known types of use without restriction in terms of time, place and content ("**Right-to-use**"). This Right-to-use includes the right of reproduction, to right of distribution, the right to exhibition, the right of recitation, performance and presentation, the right of making works available to the public, the right of broadcasting, the right of communication by video or audio recordings as well as the right of communication of broadcasts and of works made available to the public. The Right-to-use is granted in a transferable and sub-licensable form. The Contractor retains a right of use for his own scientific research and development purposes. As far as legally possible both for the Contractor and in general, the Contractor waives the right of naming the author.

在本通用条款第 3 条项下的所有权保留被终止后, 委托方被授权在不受时间、地点和内容限制的情况下, 就所有已知的使用类型使用受版权保护的履约成果 ("**使用权**"). 这种使用权包括复制权、经销权、展览权, 及朗诵、表演和演示的权利、向公众提供作品的权利、广播权、通过视频或录音进行传播的权利、以及传播已为公众知悉的广播和作品的权利。使用权可以转让及可再许可的形式授予。承包商保留为满足自身科学研究和开发目的的使用权。在法律允许的范围内, 无论是对于承包商而言还是一般来说, 承包商将放弃命名权。

3. To the extent that Performance Results contain inventions capable of being protected by industrial property rights, and no deviating contractual agreement has been made, the Contractor shall be entitled to the rights to these inventions. The Contractor is not obliged to file an application for industrial property rights. The Principal shall be granted a simple right to use such Performance Results, which shall be unlimited in terms of space, time and content, transferable and sub-licensable and shall be deemed to be settled with the total remuneration. In return for this grant, the Principal shall be obliged to bear any costs incurred by the Contractor (in particular for employee invention remuneration). At the Principal's request, which must be asserted against the Contractor in text form within one year of existence of the corresponding Performance Results, the Contractor shall transfer the exclusive rights to these performance results to the Principal in return for reasonable and customary remuneration; after such transfer, the Principal shall be entitled, but not obliged, to file an application for industrial property rights.

如果履约成果中含有受工业产权保护的发明, 并且双方无其他约定时, 则承包商享有对该发明的权利。承包商无义务申请工业产权。委托方应被授予使用该履约成果的简单权利, 该权利在空间、时间和内容上不受限制, 可被转让和再许可, 并应被视为与总报酬一并结算。作为对该授予的回报, 委托方有义务承担承包商产生的任何费用(特别是员工发明报酬)。应委托方的要求(必须在相应的履约成果生成一年以内以书面形式对承包商提出), 承包商应将这些履约成果的专有权利转让给委托方, 作为对合理和惯常报酬的回报; 转让后, 委托方有权但无义务申请工业产权。

4. Should inventions be created within the framework of contractual cooperation involving employees or agents of the Principal and of the Contractor, the corresponding employer or principal shall be entitled to these inventions.

如果委托方和承包商的员工或者代理人参与合同合作框架内的创造发明的, 这些发明应由相应的用人单位或者委托方享有。

#### XI. Third-party rights 第三方权利

1. The Contractor shall endeavor, using the care customary in the industry, to ensure that the Performance Items are free from third-party industrial property rights, which exclude or impair the use of the service by or for the Principal in the country of the place of performance ("**Conflicting Industrial Property Rights**"). This effort does not include a search for Conflicting Industrial Property Rights or their evaluation ("**Industrial Property Right Search**").

承包商应尽力采取业内惯常的谨慎态度, 确保履约项目不受第三方工业产权的影响, 该等第三方工业产权将排除或妨害委托方在履约地所在国提供或使用服务 ("**相互冲突的工业产权**"). 这种努力不包括检索相互冲突的工业产权或对其进行评估 ("**工业产权检索**").

2. In individual cases, the Principal may agree with the Contractor to commission the performance of an Industrial Property Right Search with regard to the Performance Items. The client must specify the scope (in terms of content and territory) as well as the budget in advance and bear all costs incurred. Any affected Performance Periods shall be extended by the duration of the property right search. The client acknowledges that even if a search is carried out with the greatest thoroughness, it is impossible to find all relevant conflicting industrial property rights of third parties and that the evaluation of a possible infringement will always be burdened with uncertainties due to the necessary interpretation of conflicting industrial property rights found.

在个别情况下, 委托方可同意承包商就履约项目委托第三方进行工业产权检索。客户必须提前明确范围(内容和区域)和预算, 并承担由此产生的所有费用。任何受影响的履约期间, 应当按照产权检索的时间相应延长。客户确认, 即使进行最彻底的检索, 也是不可能找到所有相关的、第三方的相互冲突的工业产权的, 以及由于对发现的相互冲突的工业产权的必要解释, 对可能的侵权行为的评估总是充满不确定性。

3. If the Principal becomes aware of Conflicting Industrial Property Rights, either through notification of the results of an Industrial Property Right Search carried out according to paragraph 2 above or through other means, the Principal may, at his discretion, (i) ask the Contractor to, at the Principal's expense, develop a technical solution which does not make use of the specifically designated Conflicting Industrial Property Rights (ii) order the Contractor to temporarily suspend performance against reimbursement of costs, in order to take action against the Conflicting Industrial Property Rights or to acquire a license thereto, or (iii) terminate the contract with the Contractor with the consequences in accordance with section 16 clause 2 of this GTC.

如果委托方经通知知晓根据上文第 2 段进行的工业产权检索结果或以其他方式知悉相互冲突的工业产权, 则委托方可酌情决定, (i) 请承包商制订一项技术方案, 以使该方案无需使用指定的相互冲突的工业产权, 费用由委托方承担, (ii) 命令承包商暂停合同履行, 并补偿其费用, 以便对相互冲突的工业产权采取行动或取得相应的许可, 或(iii) 根据本通用条款第 16 条第 2 款终止与承包商的合同, 并承担相应的后果。

4. If claims are asserted against the Principal by third parties due to an alleged infringement of intellectual property rights by Performance Items, the Principal shall inform the Contractor of this immediately in text form, not acknowledge an infringement and reserve all means of defense for himself as well as for the Contractor. If the use of such Performance Items is discontinued, the Principal shall inform the third party that this discontinuance does not imply any acknowledgement of the infringement of industrial property rights.

如果第三方因履约项目涉嫌侵犯知识产权而向委托方提出索赔主张的, 委托方应立即以文本形式通知承包商, 不承认侵权并为自己和承包商保留一切辩护手段。如果停止使用该履约项目的, 委托方应告知第三人, 该停止使用并不意味着承认侵犯工业产权。

#### XII. Rights of the Principal in case of defects 瑕疵情形下的委托方权利

1. The statutory provisions shall apply to the rights of the Principal in the event of material and defects in title (including incorrect and reduced delivery as well as improper assembly or defective assembly instructions), unless otherwise specified in the GTC. Statutory special provisions shall remain unaffected in all cases of final delivery of an unprocessed goods to a consumer, even if the consumer has further processed them. Claims arising from supplier recourse shall be excluded if a defective performance has been further processed by the Principal or by another business professional (e.g. installation in another product).

除非本通用条款另有规定, 否则在所有权发生重大瑕疵时(包括不正确交付和少交付以及不正确的组装或有瑕疵的组装指令), 委托方的权利将适用法令规定。在未经加工的货物最终交付给消费者的所有情形下, 法律特别规定不受影响, 即使消费者已经进一步加工前述货物。如果由委托方或其他商务专业人士(例如在另一产品中安装)进一步处理了有瑕疵的履约, 则由供应商追索权引起的索赔应被排除。

2. The basis of the Contractor's liability for defects is the agreement reached on the quality of the performance. All descriptions of performance which are the subject of the individual contract shall be deemed to be an agreement on the quality. If the quality has not been agreed, it is to be evaluated according to the legal regulation whether a defect is present or not. The Contractor shall not be liable for public statements (e.g. advertising statements) made by a supplier or sub-supplier or other third parties, including statements of the Principal vis-à-vis its customers. Irrespective of this, the Principal shall be obliged to notify the Contractor immediately upon becoming aware of any case of recourse occurring in the supply chain.

承包商承担瑕疵责任应以双方就履约质量达成的协议为基础。对作为单独合同标的的履约的所有描述均应被视为质量协议。未就质量达成约定的，应按照法令规定对其是否存在瑕疵进行评估。承包商不应对供应商或次级供应商或其他第三方的公开声明(如广告声明)负责，包括委托方对其客户的声明。尽管如此，在了解到供应链中发生的任何追索权情况后，委托方有义务立即通知承包商。

- All claims based on the Contractor's statutory liability for defects (*warranty*) brought by the Principal presuppose that the Principal inspects the Performance Items immediately upon receipt, to the extent this is feasible in the ordinary course of business, and notifies the Contractor immediately in text form if a defect becomes apparent. If the Principal omits such notification, the Performance Items are considered approved to the extent defects are recognizable during such inspections. Without prejudice to other sections set forth in this GTC, if a non-recognizable defect becomes apparent later, the notification must be made immediately, in any event within ten (10) working days, after discovery; otherwise the Performance Items shall be deemed to have been approved even in view of this defect. If the Principal accepts a performance with knowledge of a defect, he shall only be entitled to claims based on this defect if he expressly reserves the right to do so in writing at the time of approval.

委托方根据承包商的法定责任对瑕疵提出的所有索赔(质保)的前提是，委托方收到履约项目后，在正常业务过程的可行范围内，立即进行检查，并在出现明显瑕疵时立即以文本形式通知承包商。如果委托方遗漏该等通知，则在该等检查过程中可发现的瑕疵范围内，视为该等履约事项已被认可。在不影响本通用条款中其他条款的情况下，如果稍后出现无法识别的瑕疵，则委托方在任何情形下务必在发现瑕疵后的十(10)个工作日内立即发出通知；否则，即使有此瑕疵，履约项目也应视为已被认可。委托方在明知有瑕疵的情况下接受履约的，只有在对履约项目予以认可时，以书面形式明确保留权利的情况下，其才有权就该瑕疵提出索赔。

- If Contractor's performance is defective and claims for defects are not excluded, Contractor may initially choose whether to provide Subsequent Performance by remedying the defect ("Repair") or by delivering a defect-free item ("Replacement"). The Contractor's right to refuse Subsequent Performance under the statutory conditions shall remain unaffected.

如果承包商的履约有瑕疵且委托方对瑕疵的索赔未被排除的，承包商最初可选择是否通过修补瑕疵(“修理”)或交付无瑕疵项目(“更换”)来提供后续履约。承包商拒绝法定条件下后续履约的权利不受影响。

- The Contractor shall be entitled to render Subsequent Performance owed thereafter dependent on the Principal paying the amount due. However, the Principal shall be entitled to retain a reasonable part of this price in proportion to the defect.

承包商有权根据委托方的付款情况来决定是否随后提供后续履约。但是，委托方有权按瑕疵的比例保留该价款的合理部分。

- The Principal shall grant the Contractor the necessary time and opportunity for Subsequent Performance; in particular, the Principal shall hand over the objected performance for inspection purposes. If Subsequent Performance is provided by Replacement, the Principal shall return the defective performance to the Contractor pursuant to statutory provisions. The Principal's demand for Subsequent Performance shall neither include the removal of a defective performance nor the reinstallation thereof, if installation was not part of the Contractor's original performance duties.

委托方应给予承包商后续履约所需的时间和机会，特别是，委托方应移交受争议的履约以供检查。如果后续的履约是通过更换提供的，委托方应按照法令规定将有瑕疵的履约归还承包商。如果安装工作不属于承包商原有的履约内容，委托方不得就后续履约事宜要求承包商移除有瑕疵的履约或重新安装。

- Any expenditure necessary for the purpose of inspection and Subsequent Performance, in particular transport, travel, labor and material costs as well as dismantling and (re-)installation costs, shall be borne or reimbursed by the Contractor in accordance with statutory provisions if a defect actually exists. Otherwise, the Contractor may demand reimbursement from the Principal for the costs incurred as a result of the unjustified demand of the defect (in particular testing and transport costs), unless the Principal could not recognize the lack of defectiveness. Without express agreement, this cost bearing rule does not establish any claim on the part of the Principal to demand an advance payment from the Contractor to cover transport, travel, labor, material, installation or removal costs, even if the existence of the claimed defect has not yet been clarified.

如果确实存在瑕疵的，为检查和后续履约所必需的任何开支，特别是运输、旅费、人工费和材料费以及拆除和(重新)安装的费用，应由承包商按照法令规定承担或偿还。相反，如果不存在瑕疵，承包商可要求委托方偿还不正当要求而产生的费用(特别是测试和运输费用)，除非委托方不认可履约是无瑕疵的。在没有明确约定的情况下，即使瑕疵存在与否尚未得到澄清，前述费用承担规则未赋予委托方要求承包商预付运输、差旅、劳工、材料、安装或移除费用的权利。

- In an emergency (e.g. when operational safety is jeopardized or to prevent disproportionate damage), the Principal has the right to remedy the defect himself and to demand compensation from the Contractor for the objectively necessary expenses incurred. The Contractor shall be notified immediately, if possible in advance, of any such measures carried out by the Principal. The right of self-remedy does not apply, if the Contractor would be entitled to refuse Subsequent Performance pursuant to statutory provisions or if there was no defect at all which the Contractor would have been obliged to remedy.

在紧急情况下(例如作业安全受到危害或为防止不相称的损坏)，委托方有权自行修复瑕疵，并要求承包商赔偿其客观上发生的必要费用。如果可能的话，委托方应立即将其采取的任何此类措施提前通知承包商。如果承包商有权根据法令规定拒绝后续履约，或者如果承包商没有任何瑕疵需要补救，则自力救济权利不适用。

- After the Contractor's second unsuccessful attempt of Subsequent Performance or after unsuccessful expiration of a reasonable deadline for Subsequent Performance set by the Principal, or if such deadline is dispensable according to statutory provisions, the Principal may withdraw from the contract or reduce the amount due. If the defect is insignificant, the Principal as no right of withdrawal.

承包商第二次后续履约未果或者委托方设定的后续履约的合理期限届满而无相应履约的，或者依照法令规定委托方无需设置期限的，则委托方可以解除合同或者减少应付款项。如果瑕疵不显著，则委托方无权解除合同。

- Claims of the Principal for damages or for reimbursement of futile expenses – even in the case of actual defects – shall only exist in accordance with section 13 of this GTC and are otherwise excluded.

委托方有关损害赔偿或无效费用报销的主张，即使是在实际存在瑕疵的情况下，应仅根据本通用条款第 13 条的规定存在，并在其他情况下予以排除。

### XIII. General liability of the Contractor

#### 承包商的一般责任

- Unless otherwise stated in these GTC, including the following provisions, the Contractor shall be liable in the event of a breach of contractual or non-contractual obligations in accordance with the statutory provisions.

除非本通用条款一包括以下规定一另有规定，承包商应按照法令规定对违反合同或非合同义务的情况承担责任。

- The Contractor shall be liable for damages regardless of the legal basis if he is to be held responsible for culpable intent and gross negligence. In the case of negligence, the Contractor shall be liable, subject to a milder standard of liability in accordance with the statutory provisions (e.g. care in his own affairs), only in the following cases:

如果承包商存在恶意和重大过失，则无论法律依据如何，其都应对该等损害负责。在存在过失的情况下，承包商仅在下列情况下负法律责任，但应以法令规定(例如对自身事务的关照)的较轻责任标准为准：

- for damage from injury to life, body or health,

对生命、身体或健康造成损害的，

- for damage arising from the not-insubstantial breach of an essential contractual obligation (obligation, the fulfillment of which enables the proper performance of the contract and the observance of which the Principal regularly relies on and may rely on); in this case, however, the liability of the Contractor shall be limited to compensation for the foreseeable and typically occurring damage.

因非轻微违反重大合同义务(重大义务指的是该义务的履行使合同得以适当履行，而且委托方依赖且经常性地依赖该等义务的履行)而引起的损害；但是，在这种情况下，承包商的责任应限于对可预见的和通常发生的损害作出赔偿，

- for damage arising from the not-insubstantial breach of the obligation to perform free of defects; in this case, however, the liability of the Contractor shall be limited to compensation for the foreseeable and typically occurring damage.

因非轻微违反无瑕疵履行义务而造成的损害；但是，在这种情况下，承包商的责任仅限于对可预见的和通常发生的损害作出赔偿。

- In the case of section 13 paragraph 2 letter b of this GTC, both Contractor and Principal agree that the foreseeable, typically the occurring damage does not exceed the sum equivalent to 100% of the amount paid by the Principal to the Contractor under the corresponding contract or agreement. The liability of the Contractor in the present case is thus limited to this sum.

就本通用条款第 13 条第 2 节 b 项而言，承包商和委托方均同意，可预见的、通常发生的损害不得超过委托方根据相应合同或协议向承包商支付的金额的 100%。因此，承包商在此情形下的责任以该等金额为限。

4. In the case of section 13 paragraph 2 letter c of this GTC, both Contractor and Principal agree that the foreseeable, typically occurring damage does not exceed the sum equivalent to 80% of the amount paid by the Principal to the Contractor under the corresponding contract or agreement. The liability of the Contractor in the present case is thus limited to this sum.  
就本通用条款第 13 条第 2 节 c 项而言, 承包商和委托方均同意, 可预见的、通常发生的损害不得超过委托方根据相应合同或协议向承包商支付的金额的 80%。因此, 承包商在此情形下的责任以该等金额为限。
5. Furthermore, in the event of loss of data, the Contractor shall only be liable should the Principal have ensured through a properly performed data backup that this data can be reconstructed at a reasonable cost and that the data backup is not part of the contractually agreed services of the Principal. Liability is limited to the amount of the effort required to restore the data.  
此外, 在数据丢失时, 承包商仅在委托方已进行适当的数据备份以确保该数据可通过合理的成本复原、且合同并未约定委托方需提供数据备份服务的情形下承担责任。承包商责任仅限于恢复数据所需的工作量。
6. Unless otherwise agreed, the Contractor shall be liable for any infringement of conflicting industrial property rights only in the event of a breach of an obligation under section 11 clause 1 of these GTC. In this case, the Contractor shall have the right, at his discretion and expense, either to obtain a right to use the Conflicting Industrial Property Rights or to modify the performance concerned in such a way that the Conflicting Industrial Property Rights is no longer infringed. Claims of the Principal shall also be excluded to the extent as such an infringement of Conflicting Industrial Property Rights is caused by  
除非另有约定, 否则承包商仅在违反本通用条款第 11 条第 1 节规定的义务的情况下, 才应对因相互冲突的工业产权产生的任何侵权承担责任。在这种情况下, 承包商有权根据自身选择取得获取相互冲突的工业产权的使用权, 或以不再侵犯相互冲突的工业产权的方式修改有关履约, 并自行承担相关费用。如对相互冲突的工业产权的侵犯是由以下原因引起的, 则委托方的索赔也应被排除:  
a) a use or application of the performance which is neither known or communicated to the Contractor nor was foreseeable for the Contractor,  
委托方对履约的使用或应用, 既不为承包商所知, 也未与承包商沟通, 并且也不为承包商所预见,  
b) a modification to the performance made by the Principal,  
委托方对履约所做的修改,  
c) a use of the performance in combination with goods not supplied by the Contractor.  
将履约与非经承包商提供的货物结合使用
7. In no event shall the Contractor's liability for damages, penalties, compensation, indemnification exceed in the aggregate the amount 100% of the contract price of corresponding contract or agreement.  
在任何情况下, 承包商对损害、罚款、赔偿、补偿的责任总和不得超过相应合同或协议的合同价款的 100%。
8. The limitations of liability resulting from section 13 clauses 2 to 7 of these GTC shall also apply in the event of breaches of duty by or for the benefit of persons whose fault the Contractor is responsible for in accordance with statutory provisions, in particular his legal representatives, executive employees and vicarious agents. They shall not apply if the Contractor has fraudulently concealed a defect, if the Contractor has assumed a guarantee for the quality of a service and if the Contractor is legally liable.  
基于本通用条款第 13 条第 2 节至第 7 节的责任限制同样适用于按照法令规定可归咎于承包商的人员违约或为其利益进行违约的情形, 前述人员尤其指承包商的法定代表人、管理人员和代理人。承包商以欺诈手段隐瞒瑕疵的, 对服务质量作出保证的, 或者需承担法定责任的, 则不适用本责任限制。
9. Under no circumstance shall the Principal be entitled with a free right of termination or termination by convenience.  
在任何情况下, 委托方均不享有擅自终止或任意终止合同的权利。

#### XIV. Liability of the Contractor in the event of impossibility of performance 承包商在无法履约时的责任

1. Should the Contractor refuse performance because the performance was already impossible at the time of conclusion of the contract or because it requires expenditure which is grossly disproportionate to the Principal's interest in performance, the Contractor shall be liable to the Principal for damages in lieu of performance to the extent he is responsible for the impossibility. A liability is excluded unless the contractor knew or should have known about the impossibility of performance. The Principal's claim for damages shall be limited to 10% of the value of that part of the performance which cannot be put to the intended use due to impossibility. The Principal's right to revoke the contract remains unaffected.  
承包商因合同签订时履约已不可能或者履约支出与委托方的履约利益极不相称而拒绝履约时, 在其就该等履约不可能所需承担责任的范围内, 承包商应对委托方由此遭受的损害承担责任。除非承包商事先知道或应当知道合同不可能被履行, 否则承包商的上述责任应予排除。委托方的损害赔偿请求, 应当以由于该等履约不可能而无法投入预期用途的该部分履约价值的百分之十为限。委托方解除合同的权利不得受影响。
2. In case the impossibility of performance or the grossly disproportionate expenditure of performance occurs after conclusion of the contract, the Contractor shall be liable for damages, unless the occurrence was not foreseeable or avoidable.  
合同订立后发生不可能履行合同或者履行费用严重不成比例的, 承包商应当承担损害赔偿, 但不能预见或者避免的除外。

#### XV. Compliance responsibilities of the Principal 委托方的合规责任

1. The Principal commits himself to comply with all applicable laws, ordinances and regulations ("Legal Provisions"), in particular Legal Provisions to combat corruption, restrictions of competition and unfair acts of competition as well as Legal Provisions on export control.  
委托方承诺其将遵守所有适用的法律、条例和法规(“**法律规定**”), 特别是有关打击腐败、限制竞争和不公平竞争行为的法律规定, 以及有关出口管制的法律规定。
2. The Principal shall implement all necessary and appropriate measures to prevent corruption. In particular, the Principal commits himself neither to directly nor indirectly offer, promise or grant benefits or other advantages (e.g. money, monetary gifts or invitations, which do not have a predominantly operational character, as for example to sports events, concerts, cultural events, etc.) to employees and managing directors of the Contractor including their relatives, nor to offer, promise or have them offered in any other way by third parties. The Principal shall inform the Contractor immediately should its knowledge or a concrete suspicion of cases of corruption arise in connection with a contractual relationship with the Contractor or its performance.  
委托方应采取一切必要和适当的措施防止腐败。特别是, 委托方承诺自己不会直接或间接地向承包商的员工和管理董事(包括其亲属)提供、承诺或给予福利或其他好处(如资金、货币礼物或不以经营性为主要特征的邀请, 例如体育赛事、音乐会、文化活动的邀请函等), 亦不会通过第三方向上述人员提供、承诺或以其他方式给予其其他福利或其他好处。委托方知悉或对应由与承包商的合同关系或承包商的履行引起的腐败有具体怀疑的, 应立刻通知承包商。
3. The Principal shall take all necessary and appropriate measures to comply with European and national, and if necessary international – in particular US-American – export regulations. This applies in particular to the export of Performance Items to sensitive buyer states or end-user states. All embargos shall be observed by the Principal. The sanction lists are precisely specified and adhered to by the Principal.  
委托方应采取一切必要和适当的措施, 遵守欧洲和国家的出口规定, 必要时还应遵守国际(特别是美国)的出口规定。这尤其适用于委托方向敏感的买方国家或最终用户国家出口履约项目。委托方应遵守所有禁运规定。委托方将严格核对并遵守制裁清单。
4. If the Contractor becomes aware that the Principal violates Legal Provisions of fighting corruption or export restrictions, the Contractor is entitled to terminate all contractual relationships.  
如果承包商发现委托方违反反腐败或者限制出口的法律规定的, 则其有权终止一切合同关系。
5. The Principal shall indemnify the Contractor against all claims, fines or other sanctions which arise against the Contractor due to violations of Legal Provisions by the Principal – in particular violations against anti-corruption law and export control law – in connection with the performance of the Contractor.  
对于因委托方违反与承包商履约相关的法律规定, 特别是违反反腐败法和出口管制法而导致承包商遭受的一切索赔、罚款或其他制裁, 委托方应向承包商进行赔偿。

**XVI. Revocation and termination**  
**解除和终止**

1. Apart from the cases mentioned above in this GTC, the Principal shall not be entitled to revoke the contract due to a performance not rendered, or due to a performance not rendered in accordance with the contract, if the Contractor is not responsible for such breach of duty. This shall not apply if special agreements (e.g. when time is agreed to be of the essence) result in a right of revocation on the part of the Principal regardless of fault; in such cases the statutory provisions shall apply.  
除本通用条款中到的上述情况外，如承包商未履行合同或未按照合同规定履行合同并非承包商责任的，那么委托方无权解除合同。如有特殊协议例如当时间被约定为关键因素时)导致委托方无论承包商过错与否均有解除权，则本条规定不适用;在这种情况下，应适用法令规定。
2. If the Principal terminates the contract, the Contractor shall in principle be entitled to the agreed remuneration, taking into account any expenses saved as a result of the termination of the contract or acquired or maliciously omitted to acquire through other use of his labor force.  
委托方解除合同的，承包商原则上有权获得约定的报酬，但应当考虑到因解除合同而节省的费用，或者因另行使用其劳动力而取得的，或者通过恶意遗漏的费用。

**XVII. No solicitation**  
**禁止招揽**

1. With respect to personnel of the Contractor rendering performances for the Principal ("**Employees**"), the Principal will neither during performance nor up to two years after completion neither directly nor indirectly:  
对于为委托方提供履约的承包商人员 ("**员工**")，委托方既不会在履约期间，也不会在此后两年内直接或间接地：
  - a) entice such Employee, or cause them to give up their employment with the Contractor,  
诱使该员工放弃，或促使他们放弃其在承包商处的工作，
  - b) hire or attempt to hire such Employee, unless the employment relationship of the Employee concerned with the Contractor was terminated more than one year prior to such hiring.  
雇用或试图雇用该雇员，除非该员工与承包商的雇佣关系已经终止一年以上。
2. In the event of violation of section 17 clause 1 of this GTC, the Principal shall pay to the Contractor liquidated damages amounting to two gross annual salaries which the Employee received from the Contractor in the year prior to the year in which the contractual penalty arose. The amount is due within fourteen (14) days after the signing of the employment contract between the Principal and the Employee. Furthermore, the Contractor is entitled to terminate all contractual relations with the Principal for good cause.  
如果违反本通用条款第 17 条第 1 节的规定，委托方应向承包商支付违约金，违约金金额为员工在违约金发生前一年从承包商处领取的年度工资总额的两倍。该款项应在委托方与员工签订雇佣合同后的十四(14)天内支付。此外，承包商有权出于正当理由终止与委托方的一切合同关系。

**XVIII. Right to subcontract**  
**分包合同的权利**

Unless agreed otherwise, the Contractor shall not be obliged to render his performances in person; he may subcontract or commission the performance obligations incumbent upon him in whole or in part.  
除非另有约定，否则承包商没有义务亲自履约，承包商可以将其义务全部或部分分包或委托他人履行。

**XIX. Applicable law and place of jurisdiction**  
**适用法律和管辖地域**

1. The laws of the People's Republic of China – under exclusion of its conflict-of-laws regulations and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) – shall apply exclusively to these GTC as well as to all contracts concluded on basis thereof and all contractual relations between the Principal and the Contractor.  
本通用条款、根据本通用条款签订的所有合同以及委托方和承包商之间的全部合同关系排他性地受中华人民共和国的法律管辖，中华人民共和国冲突法以及《联合国国际货物销售合同公约》(CISG)的管辖应予排除。
2. Any dispute arising from or in connection with this GTC shall be submitted to Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center for arbitration.  
因本通用条款产生的或与之相关的所有争议应被提交至上海国际经济贸易仲裁委员会/上海国际仲裁中心通过仲裁解决。

**XX. Final provisions**  
**最后条款**

1. Place of performance for the delivery is the respective shipping point, for the payment EDAG China.  
交货地点为各自的发货点，付款地点为爱达克中国。
2. Customary clauses shall be interpreted in accordance with Incoterms 2010.  
惯例条款应按照国际贸易术语解释通则 2010 进行解释。
3. To the extent permitted by statutory provisions on the admissibility of prohibitions of assignment, the transfer of rights and obligations arising from contractual agreements shall require the consent of the Contractor in order to become effective.  
在法令规定允许的禁止转让的范围内，因合同协议产生的权利和义务的转让经承包商同意方可生效。
4. Should individual clauses of this GTC – or of any other contractual agreement between the Principal and the Contractor – be wholly or partially invalid for reasons other than due to the statutory provisions on standard business terms, or become so later, this shall not affect the validity of the remaining provisions and regulations, unless upholding the contractual relationship would constitute an unreasonable hardship for the Principal or for the Contractor. However, it is the express will of the Principal and the Contractor to maintain the validity of the remaining clauses and agreements under all circumstances and thus to totally exclude the statutory provision specifying that, in general, invalidity in total is to-be-assumed when there is invalidity on a part. In case there is a loophole or gap in the contract, the remaining clauses and agreements shall remain valid. The ineffective or unenforceable provision shall be replaced by an appropriate, lawful provision which comes as close as possible to what the Principal and Contractor intended or would have intended with the ineffective provision if they had considered this point at the conclusion of the contract or at the later commencement of the contract.  
本通用条款中的单独条款或委托方和承包商之间的任何其他合同中的单独条款因除有关标准商业条款的法律规定外的其他原因而全部或部分无效后，或在之后变得无效后，不得影响其余条款和法规的有效性，除非维持合同关系对委托方或承包商构成不合理的困难。然而，委托方和承包商明确意愿是，在所有情况下保持其余条款和约定的有效性，从而完全排除有关在某部分无效时，一般应假定全部条款无效的法令规定。本合同有漏洞的，其余条款、约定继续有效。无效或无法执行的条款应当被一个合适的、合法的条款来替代，该合适的、合法的条款应尽可能地符合委托方和承包商的拟定目的；委托方和承包商在合同签订时或之后合同生效时对该方面确有所考虑的，该合适的、合法的条款应尽可能地符合委托方和承包商原本希望通过该无效条款实现的拟定目的。