

一般采购条款和条件

General Terms and Conditions of Purchase

1. 适用范围、形式 **Applicable scope and form**

- 1) 本一般采购条款和条件（以下简称 GTCP）适用于埃斯维机床（苏州）有限公司，埃斯维（重庆）机床有限公司（以下简称 SW）及其业务伙伴供应商（以下称“供应方”）之间的所有业务关系。
- 1) The General Terms and Conditions of Purchase (hereinafter referred to as GTCP) shall be applicable to all business relationships between SW Asia Co., Ltd., SW Chongqing Co., Ltd. (hereinafter referred to as SW) and their business partners or suppliers (hereinafter referred to as "Suppliers").
- 2) 本 GTCP 适用于所有销售和 / 或交付动产（以下简称“货物”）的合同，无论供应方是自己制造货物还是从供应商处购买货物。除非另有约定，在 SW 下达采购订单时所附的有效 GTCP 版本，或 SW 最后一次以文本形式发送至供应方的版本，同样应作为未来类似合同的框架合同适用，SW 不必在每个具体情况下重复说明。
- 2) This GTCP is applicable to all contracts for the sale and/or delivery of movable property (hereinafter referred to as "Goods"), whether the Goods are manufactured by the Supplier or purchased from its Supplier. Unless otherwise agreed, the valid version of GTCP attached to the purchase order placed by SW, or the last version sent by SW to the supplier in text form, shall also be considered as a framework contract for future similar contracts, which will not be repeated in each specific case.
- 3) 本 GTCP 应将作为唯一的一般采购条款和条件适用。任何来自供应方的，与之背离、冲突、或形成补充的一般条款和条件只有在 SW 以书面形式明确同意其有效性的情况下才成为合同的一部分。即使 SW 在知道供应方一般条款和条件的情况下毫无保留地接受供应方的交货。
- 3) This GTCP shall be considered as the only general terms and conditions of purchase. Any general terms and conditions set by the Supplier, which deviate from, conflict with, or complement this GTCP, will not constitute a part of the Contract until SW expressly agrees in writing to their validity. SW shall accept the delivery from the Supplier without reservation, even it has known the General Terms and Conditions of the Supplier.
- 4) 除非有相反的证明，书面合同或来自 SW 的书面确认，否则，SW 针对具体情况，与供应方订立的采购合同（包括附属合同、补充合同和对原合同的修改）在任何情况下，其效力均应优先于本 GTCP。
- 4) Unless there is any evidence to the contrary, a written contract or a written confirmation made by SW, SW's purchase contract concluded with the Supplier (including its subsidiary contracts, supplementary contracts and modifications to the original contract) shall, in any case, have precedence over this GTCP.
- 5) 供应方作出的，任何与合同相关的法律声明和通知（如设定最后期限、提醒或撤回等）必须以书面形式作出（如信函、电子邮件、传真）。
- 5) Any legal declarations and notifications made by the Supplier in connection with the contract (e.g. deadlines, reminders or withdrawals, etc.) must be made in writing (e.g. letters, e-mails and faxes).

2. 合同的订立 **Formation of a contract**

- 1) SW 下达的采购订单一经书面确认，即视为具有约束力。供应方有义务将订单可能出现的明显的错误（如印刷和计算错误）以及订单（包括订单文件）的任何不完整之处通知 SW，以便在订单确认前进行更正或完成；否则视为未订立合同。
- 1) Any purchase order placed by SW shall be binding upon both parties as soon as it is confirmed in writing. Supplier shall be obliged to notify SW of any apparent errors (e.g. typographical and computational errors) that may occur in the order and any incompleteness of the order (including any document attached to the order) for correction or completion prior to order confirmation; otherwise, it will be deemed that no contract has been concluded.
- 2) 供应方有义务在收到 SW 采购订单 5 个工作日内（星期六不视为工作日）以书面形式确认采购订单，尤其是对订单金额、数量和交货期进行确认，或者无保留地执行订单，例如通过发货构成对 SW 发出的要约的承诺。超期的承诺应被认为是一个新的要约，需要 SW 的承诺方能成立合同。
- 2) Supplier shall be obliged to confirm the purchase order in writing within five (5) working days after receiving the purchase order from

SW (Saturday is not considered as a working day), especially the amount, quantity and delivery date in the order, or execute the order without reservation, for example, Supplier may deliver goods to accept the offer sent by SW. Overdue acceptance shall be considered as a new offer, and a contract will not be concluded until it is accepted by SW.

3. 交货时间和延迟交货 Delivery time and delay of delivery

- 1) SW 在采购订单中规定的交货时间具有约束力。分批交货需获得 SW 的同意。无论出于何种原因, 如果供应方可能无法满足约定的交货时间, 供应方有义务立即以书面形式通知 SW。
- 1) The delivery time specified by SW in the purchase order shall have binding force. Partial delivery requires SW's approval. For whatever reason, the Supplier shall be obliged to notify SW immediately in writing that the agreed delivery time might not be satisfied.
- 2) 如果供应方不履行其服务或在约定的交货期内不履行服务或供应方违约, SW 的权利, 特别是关于撤回订单和要求损害赔偿的权利应根据相关法律规定确定。且本条第 3 款的规定不受影响。
- 2) If the Supplier fails to perform its services or fails to perform its service within the agreed delivery time, or the Supplier breaches the contract, SW's rights, especially the right to cancel the order and make a claim for damages, shall be specified in accordance with relevant laws and regulations. Meanwhile, the provisions specified in Paragraph 3 hereof shall not be affected.
- 3) 如果供应方延迟交货造成违约, 除了任何进一步的法律索赔外, SW 可以要求供应方一次性支付违约金。每逾期一 (1) 天, SW 可要求供应方按照订单金额的 0.5% 支付迟延履行违约金。SW 的其他法律权利 (合同解除权和要求赔偿损失的权利) 不受影响。如果 SW 的实际损失高于此处迟延履行的违约金, SW 有权利举证和主张相应赔偿。
- 3) SW may require the Supplier to pay the liquidated damages in a lump sum in addition to any further legal claims if the Supplier's delay in delivery results in breach of contract. For each one (1) day overdue, SW may require the Supplier to pay 0.5% of the order amount as liquidated damages for delay in performance. SW's other legal rights (including the right to terminate the contract and the right to make a claim for indemnification for loss) shall not be affected. If SW's actual loss is higher than the liquidated damages for delay in performance as specified herein, SW shall have the right to give evidence and make a claim for corresponding compensation.
- 4) SW 无条件接受逾期交付的货物或服务, 并不意味着放弃要求供应方承担迟逾期交付货物或服务的赔偿责任。
- 4) SW's unconditional acceptance of overdue delivery of goods or services does not mean that it has waived the Supplier's liability of compensation for overdue delivery of goods or services.

4. 履约、交付、风险转移、违约 Performance, delivery, risk transfer and breach of contract

- 1) 未经 SW 事先书面同意, 供应方无权要求第三方 (如分包商) 代为提供服务。除非在个别情况下另有约定, 供应方应承担其服务的全部风险。
- 1) Supplier shall have no right to require a third party (e.g. a subcontractor) to provide services on its behalf without SW's prior written consent. Unless otherwise agreed in specific cases, the Supplier shall bear all risks of its services.
- 2) 供应方交货应根据 DDP《2022 年国际贸易术语解释通则》向采购订单中指定的地点交货。如果采购订单中未指定目的地, 且双方未就该事项达成任何协议, 则供应方向向其下达采购订单的 SW 公司地址交货。相应的目的地也是交付和任何后续义务履行的履行地。原则上, 供应方应基于经济、质量和生态标准的基础上设计包装。包装材料应在必要范围内使用, 并应在货物交付或验收的地点免费收回。供应方应遵守 SW 收货现场关于货物运输、装卸、包装回收的指示。
- 2) Supplier's delivery shall be made to the place as specified in the purchase order in accordance with DDP Incoterms 2022. If the destination is not specified in the purchase order and no agreement is reached between the parties on such matter, the Supplier shall deliver the goods to the address of SW Company which has placed the purchase order. The corresponding destination is also the place where delivery is made and any subsequent obligations are performed. In principle, the package shall be designed for the purposes of economy, quality and ecological standards by the Supplier. Packing materials shall be used to the extent of necessity and shall be recovered free of charge at the place of delivery or acceptance of the goods. Supplier shall comply with SW's instructions on goods transportation, loading and unloading, and recycling of packaging at the site of delivery.
- 3) 货物装运通知最迟应在货物离开供应方工厂时发给 SW。供应方应将采购订单号标注在所有的货运单据上。如供应方未按照此要求履行的, 供应方应当承担由此导致的所有延迟交付责任。

- 3) Notice of shipment shall be sent to SW at the latest when the goods leave the Supplier's plant. Supplier shall indicate the purchase order number on all shipping documents. If the Supplier fails to comply with this requirement, the Supplier shall bear all responsibilities for delay in delivery caused thereby.
- 4) 交货时应附有交货单, 说明发货日期、交货日期、交货内容(货号 and 数量)和 SW 订单日期和编号。如果交货单丢失或不完整, SW 不对其可能会导致的任何后续流程和付款的延迟负责。
- 4) A delivery order shall be enclosed for delivery, indicating date of shipment, date of delivery, delivery content (item number and quantity) and SW order date and number. If the delivery order is lost or incomplete, SW will not be responsible for any possible delay in subsequent processes and payment caused therefrom.
- 5) 货物灭损的风险应在指定交货地点交付货物且验收检查完毕时转移至 SW 公司。
- 5) The risk of loss of the goods shall be transferred to SW Company upon delivery of the goods at the designated place of delivery and completion of the acceptance inspection.
- 6) 如果供应方需要交付货物或提供服务, 必须要经过 SW 的正式验收。SW 有权选择在供应方工厂或合同履行地进行验收。SW 的无条件付款不得视为其验收和认可了供应方提供的货物或服务, 亦不得视为其放弃针对产品或服务缺陷的索赔。
- 6) Any goods delivered or services provided by the Supplier shall be officially accepted by SW. SW shall have the right to choose the Supplier's plant or the place where the contract is performed for acceptance. SW's unconditional payment shall not be considered to have accepted and approved the goods or services provided by the Supplier, or to have waived its claim for defects found in the products or services.
- 7) SW 出于降低或减少损失的考虑, 接受供应方存在瑕疵的货物的行为, 并不意味着对要求损害赔偿的权利的放弃。
- 7) SW's acceptance of defective goods from the Supplier for the sake of reducing or mitigating losses does not imply a waiver of the right to claim for damages.

5. 价格和付款条件 Price and payment terms

- 1) 采购订单中所列价格具有约束力。除非在个别情况下另有约定, 所有价格都为未税价格。
- 1) The price listed in the purchase order shall have binding force. Unless otherwise agreed in specific cases, all prices shall be those before tax.
- 2) 除非在个别情况下另有约定, 否则采购订单上的价格包括供应方的所有服务和辅助服务(如组装、安装等)以及所有辅助费用(如适当包装、运输费用, 包括可能需要的任何运输和责任保险)。
- 2) Unless otherwise agreed in specific cases, the price on the purchase order shall cover all services and backup services (such as assembly, installation, etc.) provided by the Supplier, as well as all ancillary costs (such as proper packaging, transportation costs, including any possible transportation and liability insurance).
- 3) SW 将在在完成交货(包括完整和正确的技术文件的交付)和性能验收, 并收到正确开具的全额发票后支付货款。
- 3) SW will pay for the goods upon completion of delivery (including delivery of complete and correct technical documentation) and performance acceptance and receipt of the correct invoice in full amount.
- 4) SW 不承担支付应付货款到期日后利息的责任。逾期付款应遵守相关法律规定。
- 4) SW shall not be liable to pay interest on the payment payable after the due date. Late payment shall be made in accordance with relevant laws and regulations.
- 5) 在法律规定的范围内, SW 享有抵销权和留置权, 以及以对方不履行合同为由进行抗辩的权利。SW 有权因供应方不完全或有缺陷的履行而对供应方提出索赔, SW 有权扣留到期的应付款。
- 5) To the extent prescribed by law, SW shall be entitled to the right of set-off and lien, as well as the right to defend against the other party's non-performance of the contract. SW shall have the right to lodge a claim against the Supplier for incomplete or defective performance by the Supplier, and shall have the right to withhold the due and payable payment.
- 6) 只有在法律上成立或双方协商一致的情况下, 供应方才享有抵销权或留置权。
- 6) Supplier shall be entitled to the right of set-off or lien only when it is legally established or agreed by both parties.

6. 保密和所有权保留 Confidentiality and retention of ownership

- 1) 为了生产订购的货物和 / 或提供服务之需要, SW 以任何形式向供应方提供的任何文件、绘图、计划和草图以及其它专有技术都应视为 SW 财产。以上内容均属 SW 的商业秘密并应严格保密。供应方承诺将谨慎处理上述文件, 确保只有为执行合同所需的员工才能获知其内容, 确保该等员工也应对该内容保密, 不得让第三方获取该文件, 并仅为执行订单之目的而进行复制。在供货和服务完成后, 供应方应将所有文件及复印件交还 SW, 或者应 SW 的要求, 将其全部销毁。保密义务只有在所提供的文件中所包含的信息已经被公众知晓的情况下才终止, 不受采购合同期限的约束。
- 1) Any documents, drawings, plans and sketches and other know-how provided by SW to the Supplier in any form for the purpose of manufacturing the ordered goods and/or providing services shall be regarded as SW's property. All the above contents are trade secrets of SW and shall be kept strictly confidential. Supplier undertakes to handle the above documents carefully and ensure that only the employees required for the execution of the contract can have access to its contents, and that such employees should also keep the contents confidential, keep any third party from access to the documents, and only copy the contents for the purpose of execution of the order. Upon completion of the goods supply and service provision, the Supplier shall return all documents and copies to SW or, upon request of SW, destroy them in their entirety. The obligation of confidentiality will be terminated only if the information contained in the provided documents has become known to the public, which will not be bound by the term of the purchase contract.
- 2) 上述规定也应适用于物质和材料(如软件、成品和半成品)以及 SW 为生产目的提供给供应方的工具、模板、样品和其他物品。这些物品在未加工期间应单独存放, 费用由供应方承担, 并在合理范围内投保防止损坏和丢失。
- 2) The above provisions shall also be applicable to substances and materials (e.g. software, finished and semi-finished products) and tools, templates, samples and other items provided by SW to the Supplier for production purposes. These items shall be stored separately at the supplier's expense when they are not machined and insured against damage and loss to a reasonable extent.
- 3) 供应方对 SW 所提供物品的任何加工、混合或组合(进一步加工)均应视作代表 SW 进行, SW 应被视为最终制造商。如果 SW 对供应方交付的货物做进一步处理, 则该条款同样适用。基于此 SW 将根据法律规定, 最迟在进一步处理后被视作产品的制造商从而获得产品的合法所有权。
- 3) Any machining, mixing or combination (further machining) of the goods which are supplied by SW shall be deemed to be carried out by the Supplier on behalf of SW, and SW shall be regarded as the final manufacturer. This clause shall also apply if SW makes any further processing to the goods delivered by the Supplier. For this reason, SW will be regarded as the manufacturer of the product at the latest after further processing according to the law, so as to obtain the legal ownership of the product.
- 4) 任何由供应方提供或生产的、或由供应方为 SW 的订单之目的而特别订购的模具和工具应属于 SW 财产。供应方应细心处理, 只能将其用于生产 SW 订单约定的货物, 供应方应将其标记为 SW 的财产, 如条件允许, 将其和供应方的其他产品分开存放。供应方应自付费用对该模具和工具投保火灾、水灾、盗窃、遗失或其它毁损险。供应方承诺会根据实际情况及时对该模具和工具进行保养和维护, 并自行承担相关的维保费用。未经 SW 书面允许, 不得转售经该模具和工具生产的产品。
- 4) Any molds and tools supplied or manufactured by the Supplier, or specially ordered by the Supplier for the purpose of SW's order, shall be the property of SW. Supplier shall handle them carefully and use them only for the production of the goods agreed in the SW's order. Supplier shall mark them as the property of SW and store them separately from other products of the Supplier whenever possible. Supplier shall insure the molds and tools against fire, flood, theft, loss or other damage at its own expense. Supplier shall undertake to maintain the mold and tools in time based on the actual situation, and undertake the relevant maintenance costs. Any products manufactured with such molds and tools shall not be resold without the written permission of SW.
- 5) 货物的所有权随货物的交付而转让给 SW, 不考虑货款的支付情况。但是, 如果在特殊情况下, SW 接受了供应方基于购买价款的所有权转让条款, 则供应方保留所有权最迟应在交付货物的购买价款支付后失效。SW 仍然有权在正常经营过程中转售货物, 甚至在支付购买价款之前预先转让。SW 不接受除此之外的任何其他形式的所有权保留。
- 5) The ownership of the goods shall be transferred to SW with the delivery of the goods, regardless of the payment for the goods. However, if, in some special cases, SW accepts the Supplier's clause on transfer of ownership based on the purchase price, the Supplier's retention of ownership shall lapse at the latest after payment of the purchase price for the delivered goods. SW shall still reserve the right to resell the goods in the ordinary course of business, even prior to payment of the purchase price. SW shall not accept any other form of retention of ownership.

7. 质量保证 Quality assurance

- 1) 供应方承诺，通过适当的质量保证体系，如 ISO 9001 或类似体系来持续监督其产品质量，并且根据 SW 要求的或其他适当的质量检测方法，对生产过程中和生产完成后的产品进行检查。供应方应当记录所有检查内容并保留相关文件十年。
- 1) Supplier shall undertake to continuously monitor the quality of its products through an appropriate quality assurance system, such as ISO 9001 or similar system, and to inspect the products during and after production according to SW requirements or other appropriate quality inspection methods. Supplier shall record all inspection contents and keep relevant documents for ten (10) years.
- 2) SW 或 SW 聘用的人员有权要求供应方提供能够证明其交付的产品及其所使用的质量保证体系与合同约定质量标准相符合的证据，以保证产品不存在质量问题并确保在供应方或供应方分包商工厂所进行的产品检测方法是充分有效的。供应方承诺在供应方或供应方分包商的工厂开展检验和审计活动并自行承担相关费用。
- 2) SW or the personnel employed by SW shall have the right to require the Supplier to provide evidence that the products delivered by SW and the quality assurance system used by SW conform to the quality standards agreed in the contract, so as to ensure that the products are free of quality problems and that the product inspection methods carried out at the plants of the Supplier or its subcontractors are fully effective. Supplier undertakes to carry out inspection and audit activities at the plants of the Supplier or its subcontractor at its own expense.
- 3) 供应方所加工材料的成分或者其货物或服务在设计上发生变更的，供应方应立即以书面形式及时告知 SW，即便 SW 未对此做出要求。任何变更均需获得 SW 的书面许可。
- 3) Supplier shall promptly notify SW in writing of any change in the composition of materials machined by the Supplier or in the design of its goods or services, even though such change is not required by SW. Any changes must be approved by SW in writing.

8. 有缺陷的交付 Defective delivery

- 1) 在如下情况下：材料存在缺陷、货物所有权存在瑕疵（包括不正确、不及时的交货，不当或错误的组装，有缺陷的装配或操作或说明手册缺失和错误等），或供应方有其他违反义务的行为，除另行约定，SW 应有权根据法定的权利索要全额赔偿。
- 1) Under the following circumstances, SW shall, unless otherwise agreed, be entitled to claim for full compensation in accordance with its statutory rights for defects in materials, defects in the ownership of the goods (including incorrect or late delivery, improper or incorrect assembly, defective assembly or operation or absence of or any incorrect contents in the instruction manuals, etc.), or for any other breach of obligations by the Supplier.
- 2) 根据法律规定，供应方应确保货物在风险转移给 SW 时符合双方约定的质量。在任何情况下，无论产品描述来自 SW、供应方还是制造商，作为合同重要条款的产品描述，特别是 SW 采购订单中特别指定或引用的关于产品的描述，均为双方关于产品质量达成的一致意见。如 SW 告知供应方所供货物和服务的用途和使用地，供应方应保证其所供货物和服务适于此用途和使用地。
- 2) As stipulated in the laws, the Supplier shall ensure that the goods conform to the agreed quality when its risk is transferred to SW. In any case, whoever makes the product description, SW, the supplier or the manufacturer, the product description as an important clause of the contract, especially the product description specially specified or quoted in SW's purchase order, is the agreement between both parties on product quality. If SW informs the Supplier of the purpose and place of use of the Goods and Services to be supplied, the Supplier shall ensure that the Goods and Services to be supplied are applicable for such purpose and place of use.
- 3) 在不影响正常经营的情况下，SW 应检查所收货物的数量是否正确、运输中是否造成损伤以及是否有明显缺陷。SW 将在发现缺陷后及时通知供应方。供应方就此放弃对 SW 迟延履行缺陷告知义务的抗辩权。SW 保留对后续货物进行更为详细检查的权利。
- 3) Without prejudice to normal business operations, SW shall check whether the quantity of goods received is correct, whether damage has been caused during transportation and whether there are obvious defects. SW will notify the supplier in time of any defects found thereafter. Supplier hereby waives the right of defense against SW's delay in fulfilling its obligation of defect notification. SW shall reserve the right to carry out more detailed inspection of subsequent goods.

- 4) 原则上, SW 有权选择补救方式。SW 提出补救要求后, 如果供应方未能按照合同约定随即开展补救措施 (例如改正缺陷或交付替代品), 在此情况下, SW 有权为了防止危险或避免 / 控制损失, 以 SW 选定的方式自行或由第三方进行补救, 所发生之费用由供应方承担。供应方未能改正缺陷或未能发送替代品的, 或其改正或替代品不被接受的, SW 享有同样的权利。
- 4) In principle, SW shall have the right to choose the remedy. If the Supplier fails to take immediate remedial actions (such as correcting defects or delivering substitutes) as agreed in the Contract after SW's request for remediation, SW shall have the right to remedy it by itself or by a third party in the manner selected by SW in order to prevent danger or avoid/control losses, at the expense of the Supplier. SW shall be entitled to the aforesaid rights if the Supplier fails to correct the defects or deliver any substitutes, or if its correction or substitute is not accepted.
- 5) 供应方需承担所有因供货 / 履行瑕疵所产生的安装、拆除费用以及往返使用地的运输费用。
- 5) Supplier shall undertake all installation and removal costs and transportation costs to and from the place of use due to defects in supply/performance.
- 6) 如因供应方提供的货物 / 服务导致 SW 遭受第三方的侵权索赔, 供应方应在收到初次书面要求后立即对 SW 遭受的索赔予以赔偿。供应方对 SW 的赔偿应包含 SW 因第三方索赔所产生或相关的一切必要费用。
- 6) If SW suffers a third party's claim for tort due to the goods/services provided by the Supplier, the Supplier shall compensate SW for the claim immediately after receiving the initial written request. Supplier's indemnification to SW shall include all necessary expenses incurred by or related to the third party's claims against SW.
- 7) 除非供应方有意欺诈, 否则产品缺陷索赔权在法定时效届满后失效, 时效应从 SW 获知缺陷或应该获知缺陷之时开始计算。如供应方以提供替代品的方式履行了补救缺陷的义务, 对该替代品的索赔时效自其交付后重新开始计算。
- 7) Unless with intent to defrauds, the claim for product defects shall invalidate after the expiration of the statutory period which shall be calculated from the time when SW becomes aware of or should have been aware of the defects. If the Supplier has fulfilled its obligation to remedy the defects by providing substitutes, the time limit for claiming for such substitutes shall be restarted after their delivery.

9. 供应商追索权 Recourse against the Supplier

- 1) 除针对缺陷的索赔外, SW 有权在供应链中不受限制地享有法律确定的追索权。特别是在个别情况下, SW 有权就其客户对其要求的损害赔偿向供应方提出追偿。
- 1) Except for claims against defects, SW shall have the right of recourse without restriction in the supply chain as determined by law. In particular, in some special cases, SW shall have the right of recourse against the Supplier for damages claimed by its customers.
- 2) 在 SW 承认或履行其客户提出的缺陷索赔之前, SW 应通知供应方, 并要求供应方书面陈述其立场, 并就缺陷进行解释。如供应方未在合理期限内作出有根据的陈述, 或双方没有达成一致的结论, SW 实际承担的缺陷索赔可向供应方追偿。
- 2) SW shall notify the Supplier and require the Supplier to state its position in writing and explain the defects before SW acknowledges or fulfills the defect claims made by its customers. If the Supplier fails to make a substantiated statement within a reasonable period of time, or both parties fail to reach an agreed conclusion, the defect claims actually undertaken by SW can be recovered from the Supplier.
- 3) 供应商追索权的索赔也适用于有缺陷的货物已由 SW 或其他企业进一步处理的情况, 例如将供应商产品并入其他产品。
- 3) The right of recourse against the Supplier shall also be applicable to the cases where defective goods have been further processed by SW or other enterprises, such as incorporation of the Supplier's products into other products.

10. 产品责任 Product liability

- 1) 供应方承诺遵守其注册地址所在地及合同履行地的相关法律规定。
- 1) The Supplier undertakes to comply with the relevant laws and regulations of the place where its registered address is located and the place where the Contract is performed.
- 2) 因产品责任对 SW 和 / 或任何第三方造成损害的, 由供应方负全部责任。第三方根据产品责任有关的法律向 SW 要求损害赔偿的, 如该损害属于供应方之责任, 供应方应在收到 SW 赔偿要求后即时给予赔偿。
- 2) Supplier shall be fully liable for any damage caused to SW and/or any third party due to product liability. Where a third party claims

damages against SW in accordance with the laws relating to product liability, the Supplier shall immediately make compensation to SW upon receipt of SW's claim for damages if the damages are within the responsibility of the Supplier.

- 3) 上述规定的责任还包括：供应方必须补偿 SW 因发布产品警告或召回产品所产生的一切费用。
- 3) The aforesaid liabilities shall also include: all expenses incurred to SW by issue of product warnings or product recall which shall be compensated by the Supplier.
- 4) SW 应尽可能并合理地将预备采取的措施的内容与范围告知供应方，并就其与供应方进行协调。产品责任有关的法律规定的其它权利不受影响。
- 4) SW shall, as far as possible and reasonably, inform the Supplier of the content and scope of the measures to be taken and coordinate with the Supplier. Other rights stipulated by laws related to product liability shall not be affected.
- 5) 供应方承诺购买产品责任险，覆盖单个索赔的保险金额应不低于一（1）千万元人民币。上述保险不妨碍 SW 要求供应方赔偿更多额外损失的权利。
- 5) Supplier shall undertake to arrange product liability insurance with the amount of not less than RMB 10 million for each single claim case. The above insurance is without prejudice to SW's right to claim additional damages from the Supplier.

11. 企业责任；行为准则；最低工资 Corporate responsibility; code of conduct; minimum wage

- 1) 供应方应承诺履行其企业责任，以确保其遵守法律规定（包括环保、劳动和员工健康安全方面的法律法规）；在生产、销售以及服务过程中，不聘用童工，不强迫劳动。自接受 SW 采购订单之日起，供应方应当进一步保证不从事且不容忍任何形式的受贿、腐败行为。
- 1) Supplier shall undertake to fulfil its corporate responsibilities and comply with legal provisions (including laws and regulations concerning environmental protection, labor and employee health and safety). In the process of production, sales and service, no child labor or forced labor is employed. Upon acceptance of the SW's purchase order, the Supplier shall further guarantee that it will neither be engaged in nor tolerate any form of bribery or corruption.
- 2) 供应方承诺其支付给自己员工的工资不得低于法律规定的最低工资标准，并凡要求其分包商亦遵守此义务。如果 SW 提出要求，供应方应当提供其已经遵守此处义务的证据给 SW。如果因供应方未能遵守此处的义务，导致 SW 因第三方索赔而承担赔偿责任或遭受罚款的，供应方应当赔偿 SW 因此遭受一切损失和费用。
- 2) Supplier shall undertake that the wages paid to its employees shall not be lower than the minimum wage prescribed by law, which its subcontractors shall also be required to comply with. If requested by SW, the Supplier shall provide SW with evidence of its compliance with the duty hereof. In the event that SW is liable for compensation or is fined as a result of a third party's claim due to the Supplier's failure to comply with the duty hereof, the Supplier shall indemnify SW for all losses and expenses incurred herefrom.

12. 其他条款 Miscellaneous

- 1) 供应方在 SW 场所或 SW 关联公司场所履行合同义务的人员，必需要遵守各自场所的工作准则。针对上述人员在上述场所发生的伤亡事故，SW 无需承担责任，应由供应方自行承担全部责任。除非证明是 SW 的人员或代理人故意或重大过失导致的。
- 1) Supplier's personnel who perform the contractual obligations at SW premises or SW's affiliate premises shall comply with the working guidelines of their respective premises. Any responsibility related to the casualties of the above-mentioned personnel in the above-mentioned premises shall be undertaken by the Supplier instead of SW, unless it is proved that it was caused by intentional or gross negligence of SW personnel or its agents.
- 2) 供应方不得将双方的询价、订单及相关往来函件用于广告宣传的目的。只有经过 SW 事先书面允许，供应方才可被允许宣传与 SW 的商业关系或公开引用 SW 的名称。
- 2) Supplier shall not use the inquiry, order and related correspondence between the two parties for advertising purposes. Supplier may only be permitted to advertise the business relations with SW or to publicly quote the name of SW with SW's prior written permission.
- 3) 供应方应当确保，在 SW 所购型号产品停产后十年内，SW 能够获得不受影响的替代方案。在上述期间内，对于用于生产备用零件的资料和图纸，供应方亦应当一并保存。供应方的上述义务在该期间到期且经过 SW 书面同意后后方可解除。除非有合适且正当的原因，否则供应方不得拒绝履行此处的义务。

- 3) Supplier shall ensure that SW will be able to obtain unaffected alternatives within ten (10) years after the production for the model products purchased by SW are ended. During the above period, the Supplier shall also keep the data and drawings used for the production of spare parts. Upon SW's written consent, the above obligations of the Supplier may be discharged after such period ends. Supplier shall not refuse to perform the obligations herein unless there are proper and justified reasons.
- 4) 除了法律规定的合同解除权外，如果供应方出现财务状况急剧恶化或供应方出现风险可能导致无法供货和提供服务或者供应方暂停对外付款或供应方或其债权人申请对其启动破产程序或类似的债务清算程序的，SW 有权利单方解除合同。如果供应方被 SW 的竞争对手控制的，SW 亦有权利单方解除合同。
- 4) In addition to the right to terminate the contract stipulated by law, SW shall have the right to unilaterally terminate the contract if the Supplier's financial situation deteriorates sharply or the Supplier is exposed to risks that may lead to its inability to supply goods and provide services, or the Supplier suspends its outward payment, or the Supplier or its creditors apply for the commencement of bankruptcy proceedings or similar debt liquidation proceedings against it. If the Supplier is controlled by SW's competitors, SW shall also have the right to unilaterally terminate the contract.

13. 安全生产，环境保护及冲突 **Safety production, environmental protection and conflict**

- 1) 供应方应当确保，其交付的货物和服务符合在 SW 场地或其他履行地所生效和适用的有关环保、事故预防和劳动安全的条例，通过熟悉上述与安全相关的规定，避免或减少对人员和环境造成的负面影响。为此，供应方应当建立管理体系，如遵守 ISO14001 环境管理体系或其他类似体系。SW 有权要求供应方提供其采取了管理体系的证据或在供应方场所对其进行审查。
- 1) The Supplier shall ensure that the goods and services delivered by it comply with the effective and applicable regulations on environmental protection, accident prevention and labor safety at the SW site or other places of performance, so as to avoid or reduce negative impacts on personnel and the environment after it gets familiar with the above safety-related regulations. For such purpose, the Supplier shall establish a management system, such as complying with ISO14001 environmental management system or other similar systems. SW shall have the right to require the Supplier to provide evidence that it has adopted the management system or to review it at the Supplier's premises.
- 2) 供应方有义务确保 SW 免于承担因供应方不遵守上述规定而引起的一切责任，并应当赔偿 SW 因此遭受的所有损失。
- 2) Supplier shall be obliged to prevent SW from all liabilities caused by Supplier's failure to comply with the above provisions and shall indemnify SW for all losses suffered therefrom.
- 3) 如产品对于储藏和废弃处置有特殊规定，供应方应当告知 SW 所有关于产品储藏和废弃处置的相应要求。
- 3) SW shall be informed of any special requirement for storage and disposal of the product by the Supplier.

14. 原产地和出口控制 **Place of origin and export control**

- 1) 根据 SW 的要求，供应方承诺按照法律规定的要求免费提供产品原产地证明给 SW。如果供应方为长期供应商，在单个订单生效后，如果出现原产地状况的变更，供应方应当立即书面告知 SW。产品的实际原产地应当注明在交易文件中，即使不存在任何优惠关税待遇。
- 1) As required by SW, the Supplier shall undertake to provide the certificate of origin of the products to SW free of charge according to the requirements stipulated by law. If the Supplier is a long-term supplier, the Supplier shall immediately notify SW in writing of any change in the place of origin after the individual order takes effect. The actual origin of the product shall be indicated in the transaction documents, even if there is no preferential tariff treatment.
- 2) 根据 SW 的要求，供应方应向 SW 和船运公司提供发货文件和信息及其他与出口和海关清关有关的文件和信息。供应方应当确保，所提供发货文件和信息以及其它与货物出口和海关清关有关的文件和信息是完整、准确的，并按照 SW 规定的时间提交文件以办理出口手续。
- 2) As required by SW, the Supplier shall provide shipping documents and information, as well as other documents and information related to export and customs clearance for SW and shipping company. Supplier shall ensure that the shipping documents and information provided and other documents and information related to the export of goods and customs clearance are complete and accurate, and submit the documents for export formalities according to the time specified by SW.

- 3) 如依照中华人民共和国货物出口及海关条例以及其他适用的出口及海关条例，（再）出口货物应获得相关许可，供应方有义务及时告知 SW。鉴此，除非该信息提供于供应方的报价单中，否则供应方应当在订单确认函和每张发票中提供所需信息。
- 3) Supplier shall be obliged to notify SW in a timely manner if the (re-)export of goods shall be approved in accordance with the regulations of the People's Republic of China on goods export and customs and other applicable export and customs regulations. In view of this, unless such information has already been provided in the Supplier's quotation, the Supplier should provide the required information in the order confirmation letter and each invoice.
- 4) 经 SW 要求，供应方应书面告知产品和零件方面的所有外贸数据，数据有任何变化，应立即书面通知 SW。
- 4) Upon SW's request, the Supplier shall inform SW in writing of all foreign trade data on products and parts, and shall immediately notify SW in writing of any changes in such data.

15. 法律的选择和管辖地 Choice of law and jurisdiction

- 1) 本 GTCP 适用中华人民共和国法律，但不包括香港，澳门和台湾的法律，亦不适用其法律冲突原则，《联合国国际货物销售合同公约》也不适用。
- 1) This GTCP shall be governed by the laws of the People's Republic of China, excluding the laws of Hong Kong, Macao and Taiwan, and shall not be governed by its principles of conflict of laws or the United Nations Convention on Contracts for the International Sale of Goods.
- 2) 由采购合同、采购订单或本 GTCP 引起或与之相关的任何纠纷，双方应友好协商解决。若不能在合理时间予以解决，就任何 SW 与供应方之间所发生的关于合同的法律争议的唯一及排他的管辖法院为作为采购方的 SW 公司其所在地的有管辖权的法院，但 SW 保留根据相关法律在供应商主要营业地起诉供应方的权利。
- 2) Any dispute arising from or in connection with the Purchase Contract, Purchase Order or this GTCP shall be settled amicably by both parties. If it cannot be resolved within a reasonable time, the sole and exclusive competent court in respect of any legal dispute concerning the contract between SW and the Supplier shall be the competent court at the place where the SW Company is located as the purchaser, but SW shall reserve the right to take legal action against the Supplier at the Supplier's principal place of business in accordance with relevant law.
- 3) 若本一般采购条款和条件中某条款完全或部分失效时，不影响其余条款效力。
- 3) If a clause in this GTCP is completely or partially invalid, the validity of other clauses will not be affected.