

**Vertiv Tech Co., Ltd**  
**TERMS AND CONDITIONS OF SALE**

Vertiv Tech Co.Ltd. with its principal place of business at 1-4 F and 6-10 F, Building B2, Nanshan I Park, No. 1001, Xueyuan Avenue, Nanshan District, Shenzhen, People's Republic of China 518055 is herein referred to as the "Seller" (which term shall include any and all affiliates of the Seller) and the customer or person or entity purchasing goods or services hereunder ("Goods") and/or licensing software and/or firmware which are preloaded, or to be loaded into Goods ("Software") from the Seller is herein referred to as the "Buyer". For purposes of this contract, an "Affiliate" means an entity controlled by, under common control with, or which controls Seller, where control is denoted by having fifty percent (50%) or more of the equity securities entitled to vote for the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority of the applicable entity). In the case of Seller, an Affiliate shall mean all companies owned directly or indirectly by Vertiv Holdings Co.

These terms and conditions of sale ("Terms"), any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale and license of the Goods and/or license of the Software and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the contract governing the sale of Goods and/or license of Software by Seller to Buyer ("Contract"). Any discrepancies between the terms of the above-referenced documents shall be resolved by Seller. Seller's provision of the Goods and/or Buyer's acceptance of the Goods will manifest Buyer's assent to these Terms, even if Buyer sends to Seller other terms and conditions. Seller reserves the right in its sole discretion to refuse any order for the Goods and/or Software.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods shall remain in effect for thirty (30) days after the date of Seller's quotation or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment of the Goods is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods without notice to Buyer. Unless specified otherwise by Seller in writing, all prices are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices at any time and, in the event of a force majeure event, make equitable adjustments in Seller's price for the Goods, parts and/or Software prior to Seller's shipment or performance thereof.

The Seller reserves the right to alter the price versus the quoted price or agreed price list where there is a variation of +/-3 % of the reported USD exchange rate. The Buyer accepts Citibank published sell exchange rate applicable at the date of invoice as notified by Seller.

2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Seller may offer a credit facility to Buyer. Seller may, at its absolute discretion, alter or withdraw the credit facility at any time by giving notice to Buyer. Unless otherwise specified by Seller, terms are EXW (INCOTERMS 2020) net thirty (30) days from date of Seller's invoice and Buyer shall make payment in a timely manner on or before such payments are due. In the case of partial or multiple shipments, Buyer will settle Seller's invoices as they relate to the shipped Goods according to the above payment terms. Seller shall have the right, among other remedies, either to terminate this Contract or to suspend further performance under this and/or any other contract with Buyer in the event Buyer fails to make any payment when due, which other contracts Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including reasonable attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries. Seller does not in the normal course of business agree to retention of monies owing to Seller but, if a specified retention is agreed to by Seller, it must be in the form of a bank guarantee and it will be held for a period not exceeding the period of warranty for the applicable Goods.

4. **SHIPMENT AND DELIVERY:** To fulfill Buyer's order for the Goods, partial or multiple shipments may be made by Seller, and Buyer will be invoiced accordingly. Seller will endeavor to deliver the ordered Goods to Buyer by the date of delivery in the applicable purchase order but shall not be liable for failure to do so or for any damage or loss arising out of such delay. Buyer shall inform Seller in writing at least forty-five (45) days before the shipment date if any shipment of the Goods is to be postponed or delayed by Buyer for any reason, failing which Seller shall have the right at Seller's discretion to store the Goods on behalf of the Buyer and additionally invoice Buyer for storage charges which, unless otherwise agreed between the parties in writing, may amount to one percent (1%) per month of the total value of the Goods so stored ("Storage Charges"), from the date on which the Goods were first ready to be dispatched, on normal payment terms. Seller may store the delayed Goods for a period of ninety (90) days, following which Seller may invoice Buyer for the full amount of the delayed Goods and all risk in and title to the Goods shall pass to Buyer. The delayed Goods shall thereafter continue to be subject to additional Storage Charges until Buyer takes delivery of the delayed Goods.

5. **TITLE AND RISK:** Title to and the risk of loss or damage to the Goods shall pass to Buyer immediately upon delivery by Seller.

6. **LIMITED WARRANTY:** Seller warrants that the Software will execute the programming instructions provided by Seller and that the Goods manufactured by Seller will be free from defects in material and workmanship and meet Seller's published specifications at the time of shipment under normal use and regular service and maintenance by Seller for a period of one (1) year from the date of start-up of the Goods or eighteen (18) months from the date of delivery ex-works in the location of Seller, whichever period expires first, unless otherwise specified by Seller in writing. Seller does not warrant that the operation of the Software will be uninterrupted or error free. Goods purchased by Seller from a third-party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. **THE WARRANTIES SET**

**FORTH IN THIS SECTION 6 AND THE WARRANTY SET FORTH IN SECTION 8, ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents has supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

If within thirty (30) days of Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and as Buyer's exclusive remedy, exercise one of the remedies, in the case of Goods: (i) the replacement of the Goods or the supply of equivalent goods; (ii) the repair of the Goods; (iii) the payment of the cost of the replacing the Goods or of acquiring equivalent goods; (iv) the payment of the cost of having the Goods repaired. In the case of services: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again. Failure by Buyer to give such written notice within the applicable period may, to the extent permitted by law, amount to a waiver of Buyer's claim for such defects. All costs of dismantling, reinstallation and freight and the time and expense of Seller's personnel and representatives for travel to site and diagnosis under this warranty shall be borne by Buyer. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer.

To the maximum extent permitted by law, Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

Clauses 6 and 7 shall apply to any entity or person who may buy, acquire or use the Goods, including any entity or person who obtains the Goods from Buyer, and such persons and entities shall be bound by the limitations herein, including this clause 6. Buyer agrees to provide such subsequent transferee conspicuous, written notice of the provisions of clauses 6 and 7 of these Terms.

**7. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT OF THE NON-CONFORMING GOODS.**

**SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS CONTRACT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION, WHETHER BASED ON CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER THEORY OF LAW, SHALL SELLER'S AGGREGATE LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.**

**BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** In these Terms "consequential damages" includes without limitation, loss of anticipated profits, loss of profits, business interruption, loss of use, loss of revenue, loss of reputation and loss of data, costs incurred, including without limitation, for capital, fuel, power and for loss or damage to property or equipment even if such loss, cost or damage arises naturally, according to the usual course of things, or either party has been advised of the possibility of such loss, cost or damage.

**Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Contract in reliance upon the limitations of liability and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.**

**Nothing in this Contract or any collateral contract shall exclude or in any way limit Seller's liability (i) for death or personal injury caused by Seller's negligence, or (ii) for any other liability to the extent that such liability may not be limited or excluded as a matter of law.**

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

**8. PATENTS AND COPYRIGHTS:** Buyer must promptly notify Seller of any claim or suit against Buyer alleging an infringement of China patent, copyright or trademark or any other intellectual property rights. In that event Buyer shall fully cooperate with Seller and permit Seller to have sole control of the defense and/or settlement of any such alleged infringement claim. In the event the Goods the subject of a non-appealable claim are held to infringe China patent or copyright, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using the Goods, or to replace them with non-infringing Goods, or to modify them to make them non-infringing, or to issue Buyer a credit for the depreciated value of the Goods and subject to the same being returned to Seller. In foregoing event, Seller may also, at its option, terminate any contract for the future delivery of such Goods, without liability to Buyer or any third party. Any liability of Seller under this clause 8 is subject to the limitations in clause 7 paragraphs 2 and 3 above.

9. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for non-performance or for delays in performance due to acts of God, acts or omissions of Buyer, war, viral outbreaks, disease, pandemic, widespread sickness, epidemic, fire, flood, weather, sabotage, strikes or labour disputes, civil disturbances or riots, governmental decisions, directives or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses), requests, restrictions, allocations, laws or regulations, orders or actions, unavailability of or delays in transportation, unavailability of or delays in the supply of materials, components, parts or labor required for the design and/or manufacture of Goods, parts or Software or the performance by Seller hereunder, default of suppliers, or any unforeseen circumstances, events or causes beyond Seller's reasonable control. Deliveries or other performance of Seller's obligations hereunder may be suspended or cancelled by Seller upon written notice to Buyer in the event of any of the foregoing, but the remainder of the Contract shall remain unaffected. If Seller determines that its ability to supply the ordered Goods, parts and/or Software in full, or to obtain material for the manufacture of the Goods, parts and/or Software is hindered, limited or otherwise made impracticable due to any cause or combination of causes set forth in this paragraph, Seller may delay or cancel performance, make equitable adjustments in Seller's price for the Goods, parts and/or Software and/or allocate its available supply of the Goods, parts and/or Software or such material (without obligation to acquire other supplies of any such Goods, parts and/or Software or material) among its purchasers on such basis as Seller determines to be equitable without liability to Buyer or any third party including in respect of any failure of performance which may result therefrom.

Seller reserves the right to withdraw any personnel assigned to on-site services that are within the scope of this Contract, if such person is in a potentially hazardous situation due to a natural disaster, an absence or potential absence of public safety, client or work disruptions such as strikes and occupations, or any other force majeure event that could endanger the health and safety of Seller's personnel.

10. **SUPPLEMENTAL AGREEMENT:** An Affiliate may, at Buyer's election, be engaged by Buyer to furnish Goods and/or perform services that are mutually agreed by such Affiliate and Buyer as specified in a Statement of Work, Participation Agreement, Purchase Order or similar document executed by such Affiliate and Buyer that references this Contract (each, a "Supplemental Agreement"). Any Supplemental Agreement entered into by an Affiliate is a separate contract between Buyer and such Affiliate and Seller has no liability whatsoever for or under any Supplemental Agreement. An Affiliate that executes a Supplemental Agreement with Buyer shall be entitled to the same rights and benefits bestowed upon Buyer under this Contract and under the Supplemental Agreement to which such Affiliate is a party, and such Affiliate shall be responsible for the performance of its obligations under this Agreement and the Supplemental Agreement applicable to such Affiliate. Notwithstanding anything to the contrary herein, under no circumstances shall the liability of Seller and any Affiliate be considered joint and several. Seller and Affiliate are each responsible for its own acts and/or omissions under this Contract and any applicable Supplemental Agreement, and the responsibilities, obligations, and liabilities that each has separately undertaken in connection with this Contract. Seller is and shall at all times be and remain a direct beneficiary of this Contract, with the right to enjoy the benefits and enforce the terms of this Contract and any Supplemental Agreement.

11. **CANCELLATION:** Unless otherwise agreed in writing by Seller, an order for Goods may not be cancelled by Buyer in the absence of any legal right to do so. In the event of such order cancellation by Buyer the provisions of clause 29 below shall apply.

12. **DEFAULT:** If Buyer defaults under this or any other contract with Seller and the default is not cured within two (2) weeks of Seller's written notice to Buyer to do so, Seller may at its option, in addition to any other rights available to Seller under this Contract or at law, (a) withhold Seller's performance under this or any other contract (s) with Buyer, which other contract are hereby amended accordingly, until a reasonable time after all of Buyer's defaults have been cured; (b) declare all sums due or to become due under this and/or any other contract (s) to be immediately due and payable; and/or (c) recover possession of any Seller materials in Buyer's possession or under Buyer's control.

13. **CHANGES:** (a) Buyer may request changes or additions to the Goods and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price of such Goods or Software and their dates of delivery. (b) Seller reserves the right to change designs and specifications for the Goods and/or Software without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer. Seller shall have no obligation to install or make changes to any Goods manufactured prior to the date of such change.

14. **SOFTWARE<sup>1</sup>:** Notwithstanding any other provision herein to the contrary, Seller or applicable third-party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, non-transferable, royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the applicable licensor's) standard license contract, the terms of which are incorporated herein by reference.

15. **INSPECTION:** Unless otherwise agreed in writing by the Seller, Buyer shall be responsible for receiving, inspecting, testing, storing, installing, starting up and maintaining all Goods.

16. **DOCUMENTATION:** Seller shall provide Buyer with any data/documentation which is specifically identified in Seller's quotation to Buyer. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. **DRAWINGS:** Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Contract are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request.

<sup>1</sup> Note the definition of "Software" includes "firmware"

18. **BUYER'S COMPLIANCE WITH LAWS:** Buyer agrees that it shall comply with all applicable import, export control and sanction laws, regulations, orders and requirements as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which the parties are established or from which the Goods may be supplied ("Trade Compliance Law"). In no event shall Buyer use, transfer, release, export, or re-export any such Goods, Software, services or technology in violation of any Trade Compliance Law or the requirements of any import/export licenses. Buyer agrees furthermore that it shall not engage in any activity which might cause the Seller to breach of any law or regulation of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or their officials or candidates for public office, or to any employee of any customer or supplier. Buyer and Seller agree to observe and comply with all applicable legal, ethical and compliance requirements. Unless otherwise agreed in writing with the Seller, Buyer shall provide any information in a format requested by Seller, regarding the end-user, end use and final destination of the Goods, Software, services or technology.

19. **EXPORT/IMPORT:** Seller shall have no obligation to supply any Goods or related technology under this Contract unless and until Seller has received all necessary import/export licenses, and any information Seller has requested has been provided including by Buyer. If for any reason any such import/export licenses are denied or revoked, or if there is a change in any applicable Trade Compliance Law that would prohibit Seller from performing its obligations under this Contract, or if the execution of this Contract, in Seller's reasonable judgment, will affect Seller's reputation or otherwise expose Seller to liability risk under such Trade Compliance Law, Seller shall be relieved of Seller's obligations under this Contract without liability to Buyer or any third party.

20. **BUYER'S INSPECTION:** Unless otherwise agreed in writing by Seller, Buyer shall inspect any Goods delivered to it by Seller immediately upon receipt, and notwithstanding any prior course of dealing to the contrary, Buyer's omission or failure to notify Seller notice of any claim in relation to the Goods within thirty (30) days of receipt shall be deemed to be Buyer's unqualified acceptance of the Goods.

21. **BILLABLE GOODS:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and parts prices for any of the following: (a) any Goods not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; (b) any Goods performed at times other than Seller's normal service hours; (c) if reasonable site and/or equipment access is denied to the Seller's service representative or personnel; and (d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller's service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer.

22. **RETURNED GOODS:** Except as otherwise provided in clause 6 above with respect to warranty defects, advance written permission for any Goods to be returned must be obtained from the Seller. Such Goods must be current, unused, catalogued Goods and must be shipped, transportation prepaid, to Seller's site or warehouse, the details of which may be obtained by Buyer by contacting Seller. Returns made without Seller's written authorization may not be accepted by Seller. To the extent permitted by law, any credit or exchange for such returned Goods will be at the original invoiced price or then current price, whichever is lower, from which may be deducted an inspection and repacking charge and the cost of any reconditioning. Seller reserves the right to inspect any Goods prior to authorizing return.

23. **BUYER-SUPPLIED DATA:** To the extent that Seller has been provided by or on behalf of Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

24. **DATA COLLECTION AND USE:** By using the Goods, parts and/or Software, Buyer grants Seller, its Affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, Buyer's non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its Affiliates, subsidiaries, or service providers through the Goods, parts, and/or Software. Seller, its Affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and for marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its Affiliates, subsidiaries, and service providers to process and use Service Data as described in this clause without violating the rights of any third party or otherwise obligating Seller, its Affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its Affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its Affiliates, subsidiaries, or service providers maintain operations. By using the Goods, parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its Affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its Affiliates and subsidiaries' business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its Affiliates' and subsidiaries' behalf.

25. **SARBANES-OXLEY ACT:** The Buyer shall comply with any reasonable request of Seller or its Affiliates for information relating to the Contract that may be required by Seller or its Affiliates to enable them to comply with any general regulatory requirements applicable to Seller or its Affiliates and also in relation to the US Sarbanes-Oxley Act of 2002 (and any resultant, similar or replacement legislation, rules or guidance).

26. **NUCLEAR/MEDICAL:** GOODS SOLD HEREUNDER ARE NOT FOR USE IN OR IN CONNECTION WITH ANY NUCLEAR, MEDICALLY INVASIVE, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.



27. **ASSIGNMENT:** Seller may at any time in its sole and absolute discretion and without Buyer's prior consent: (i) assign, to any third-party for any purpose, its rights over any monies due or to become due to it from Buyer under or in connection with this Contract; and/ or (ii) create any security interest over its rights to any monies due or to become due to it from Buyer under or in connection with this Contract.

Except as provided in the foregoing paragraph, this Contract may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either party without the express written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may, without such consent, assign the Contract and its rights and obligations hereunder to its Affiliate or to a purchaser of all or substantially all of the assets of such party.

28. **CONFIDENTIALITY:** The product pricing, terms of sale and other information contained in Seller's quotation or order acknowledgment or confirmation or otherwise disclosed by Seller pursuant to this Contract are confidential. Buyer may not disclose such pricing, terms or other information to any other party without Seller's prior written approval, except for any disclosures required by law or ordered by a court of competent jurisdiction. Seller reserves the right to enforce these confidentiality restrictions against any party who wrongfully discloses, receives and/or further disseminates Seller's confidential information.

29. **TERMINATION:** Seller may suspend or terminate this Contract at any time upon written notice to Buyer without penalty and without prejudice to Seller's other rights and remedies at law or under this Contract if: (a) Buyer defaults in the proper performance of its obligations hereunder and such default has either not been cured or is not capable of being cured within fourteen (14) days of Seller's written notice to Buyer to do so and setting forth the nature of such default; or (b) any of the following events has occurred: (i) the issuance of a declaration of bankruptcy of Buyer, (ii) the appointment of a curator, trustee, liquidator, custodian, provisional manager, or similar person in a bankruptcy proceeding against Buyer, which appointment has not been set aside or stayed within thirty (30) days of such appointment, (iii) the making of an order by a court having jurisdiction to wind up or otherwise confirm the bankruptcy or insolvency of Buyer, which order has not been set aside or stayed within thirty (30) days, or (iv) the voluntary application by Buyer to a court having jurisdiction for a declaration of bankruptcy to be issued against Buyer or for a suspension of payments order.

30. **GOVERNING LAW AND DISPUTE SETTLEMENT:** The validity, performance, and all other matters relating to the interpretation and effect of this Contract shall be governed by the law of China. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in China and the parties agree to submit to such jurisdiction. To the maximum extent permitted by law, no action regardless of form, arising out of transactions relating to this Contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Contract.

Any and all disputes, controversies, claims and conflicts between Seller and Buyer in connection with this Contract shall, so far as is possible, be settled amicably between Seller and Buyer. Failing amicable settlement, any and all disputes, etc. arising out of or in connection with this Contract or its performance, including disputes on its validity, conclusion, binding effect, breach, amendment, expiration and termination, sole and final resolution thereof shall be resolved by Shenzhen Court of International Arbitration ("SCIA") in Shenzhen, China in accordance with its Arbitration Rules and the Arbitration Law of the People's Republic of China. The parties agree that: (a) there shall be three (3) arbitrators; (b) the language to be used in the arbitral proceedings shall be English or Chinese; (c) the mandate of the arbitral board shall continue until the award/decision is issued; (d) the arbitral board shall be bound by strict rules of law and shall not make awards/decisions ex aequo et bono; (e) the arbitral award/decision shall be final binding and not subject to appeal to any court or other body; (f) the enforcement thereof shall be in accordance with the prevailing law and regulation in relation to the enforcement of an arbitral award/decision of the jurisdiction where the award/decision shall be executed; and (g) the costs of the arbitration, including legal and attorneys' fees, shall be determined by the arbitrator. The provisions contained in this clause 30 shall survive the termination and/or expiration of this Contract.

31. **GENERAL PROVISIONS:** (a) No waiver of any breach of these Terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed; (b) These Terms and any quotation or order acknowledgment or confirmation from Seller regarding the Goods, and any documents incorporated by specific reference therein, constitute the entire contract between the parties about its subject matter. Any previous understanding, contract, representation or warranty relating to that subject matter is superseded by this Contract and shall be of no further effect; (c) Any provision of these Terms that is determined by any competent authority to be illegal, void or unenforceable will be severed but will not affect the legality, validity or enforceability of the remaining provisions of this Contract.