



莱茵豪森机械制造有限公司
关于产品和服务供应的一般条款

I. General Conditions

第一条 总则

1. The written order confirmation of MASCHINENFABRIK REINHAUSEN GMBH (hereinafter referred to as "MR"), including any written amendments, governs the delivery and performance of MR products and services (hereinafter collectively referred to as "Supplies").
莱茵豪森机械制造有限公司（以下简称“MR”）提供的产品和服务以 MR 以书面方式出具的订单确认函（及其书面修改）为准。
2. MR's deliveries are made and services are performed exclusively on the basis of these General Conditions for the Supply of Products and Services (hereinafter referred to as the "General Conditions Standard Sales Terms and Conditions"), which apply only if the Purchaser is an entrepreneur (§ 14 BGB, i.e. German Civil Code), a public authority or a special fund pursuant to public law. These General Conditions are also applicable to future sale of Supplies even if not explicitly agreed, unless MR bases the sale on other general conditions of sale expressly approved by MR in writing. Without MR's written agreement, Purchaser's terms and conditions are not binding on MR even if they have been included in Purchaser's order and have not been explicitly contradicted by MR, whether or not they are material. MR's performance does not constitute acceptance of Purchaser's terms and conditions. Reference to the applicability of legal regulations is intended only for clarification. Even without such clarification, the legal regulations apply to the extent they are not explicitly changed or excluded in these General Conditions.
MR 严格按照《关于产品和服务供应的一般条件》（以下简称“《一般条件》”）来提供产品和服务，《一般条件》仅适用于采购方为企业（《德国民法典》第 14 条）、政府机关或依据公法为专项基金的情形。此《一般条件》同样适用于未来销售的产品和服务而无需双方再次就此进行约定，除非 MR 自行以其他的一般供应条件作为交易基础。即使采购方在订单中指称该等不一致条件而 MR 并未提出异议，除非 MR 对此明示给予书面认可，该等条件均对 MR 不具有拘束力。MR 提供的服务和产品不构成其接受了采购方的条款及条件。本《一般条件》对法律规定适用性的指引仅有说明性意义。即使未作此类说明，法律规定仍为适用，但本《一般条件》对该等法律规定作出了直接变更或明示排除适用者除外。
3. Any documents relating to a quotation such as cost estimates, illustrations, drawings and weight details (collectively, the "Documents") shall not be binding unless specifically so agreed. MR reserves all rights, right, title and interest (including copyright) to the Documents. The Documents shall not be made available to third parties without the prior written consent of MR and they shall, upon request, be immediately returned to MR if MR is not awarded the contract. Sentences 2 and 3 shall apply reciprocally to Purchaser's Documents, but these may be made available to those third parties to whom MR may transfer Supplies and/or Services.
所有涉及成本估算、图示、图纸、重量参数的文件（统称为“文件”）均无法律约束力，但其中明示为具有法律约束力者除外。MR 对此类文件保留所有权利以及利益（包括版权）。未经 MR 的事先书面同意，不得向第三方提供文件。
订单未交给 MR 的，一经 MR 要求，应立即将文件归还给 MR。本条第 2 句和第 3 句同样适用于采购方的文件，但 MR 在被允许的前提下将产品和/或服务供应订单转委托予第三方的情形下，上述文件可以向该第三方提供。
4. Purchaser shall have the non-exclusive right to use standard software in unchanged form with the stipulated performance characteristics for the agreed Supplies. Purchaser may make two back-up copies without MR's Supplier's express consent.
就标准软件，采购方享有非独占性的权利；该权利限于将标准软件在约定的性能范围内不经修改地使用于约定的设备。
在未经明示约定的前提下，允许采购方制作二份安全备份。
5. Partial delivery of Supplies shall be permissible to the extent commercially reasonable.
如有正当的商业理由，MR 可以分批供货。

II. Prices and terms of payment

第二条 价格与付款方式

1. Prices are based on delivery ex works excluding packing plus any sales tax payable under applicable law, unless otherwise expressly agreed.
除非另有明确约定，价格为工厂交货价（不含包装费用）加上法定的增值税。。
2. Payments shall be due 30 days after date of invoice and delivery, in cash and free of all deductions, made to the address for payment specified by MR, unless other payment conditions have been expressly

agreed.

货物交付后，货款须于自发票开具日期之日起 30 日内以金钱形式支付至 MR 指定的付款地址，不得作任何扣减；另有明示约定其他付款条件的情况除外。

3. If payment is not made when due, MR shall be entitled to interest on amounts in arrears at 9 percentage points p. a. over the base lending rate as published by the German Federal Reserve Bank but not more than the highest rate permitted by law. MR reserves the right to claim further damages in the case of late payment.

逾期未付款者，MR 有权对拖欠款项收取利息。利率以德意志联邦银行规定的基本贷款利率每年上浮 9 个百分点计算，但不得超出法律允许的最高利率。在延迟付款的情况下，MR 保留要求进一步要求赔偿的权利。

4. Purchaser may set off only claims that are undisputed or have been determined in a legally binding manner. In the case of any defects, counterclaims of the Purchaser, including but not limited to claims arising from Article VII No. 5 of these General Conditions, shall remain unaffected.

在债权无争议或债权已通过有法律约束力的方式得到确认的情况下，采购方可享有抵销权。在存在瑕疵的情况下，采购方提出的反索赔，包括但不限于因本一般条款中第 7 条第 5 款引起的索赔，不受影响。

III. Retention of title

第三条 所有权保留

1. MR shall retain title to the Supplies (Secured Goods) which shall remain the property of MR until all contract claims against Purchaser have been satisfied. If the realizable value of MR's collective security rights exceeds the amount of all secured claims by more than 10 %, MR shall, on Purchaser's request, release a corresponding part of the retained rights.

在采购方清偿全部合同之债前，MR 保留对产品（所有权保留物）的所有权。在 MR 的担保物权可变现价值超出所担保债权金额的 10% 以上的前提下，若采购方提出要求，则 MR 将放弃其针对超出部分享有的担保权利。

2. For the duration of the retention of title, Purchaser may not give any of the Supplies in pledge or as security and release of Supplies shall be permissible only to resellers in the ordinary course of business and only on condition that the reseller receives payment from its customer or retains title so that the property is transferred to the customer only after fulfillment of the customer's obligation to pay.

在所有权保留期间，采购方不得在所有权保留物上设置质押权或者担保。采购方转让供货的，只允许在符合惯常商业流程的条件下转让予经销商，且经销商必须从其顾客取得支付或者保留货物所有权，即货物所有权仅得在顾客履行支付义务后方可转移至顾客。

3. Purchaser shall immediately inform MR in writing of any seizure, confiscation or other acts or interventions by third parties.

若发生查封、罚没或第三方侵权，采购方须毫不延迟地以书面形式告知 MR。

4. If Purchaser materially breaches a contractual obligation, including but not limited to a delay in payment, MR shall be entitled to terminate the contract and/or take back the Supplies. Purchaser shall be obliged to return the purchased Supplies. If MR retakes the Secured Goods or asserts other rights pursuant to the retention of title, the contract shall nevertheless not terminate unless expressly stated by MR.

在采购方严重违反合同义务（包括但不限于付款迟延）的情形下，MR 有权解除合同和/或取回其所交付的货物；采购方则有义务返还货物。MR 取回产品或依其所有权保留而主张所有权的，非为合同解除，除非 MR 明示声明解除合同。

IV. Time for delivery; delay

第四条 交付期限；交付迟延

1. Delivery periods are approximate target times and not binding. Observance of the stipulated time for delivery is conditioned upon the timely receipt of all documents, necessary permits and releases, including plans to be provided by Purchaser, as well as fulfillment of the agreed terms of payment and other obligations by Purchaser. If these conditions are not fulfilled on time, the time for delivery will be extended accordingly except if MR is responsible for the delay. MR will inform Purchaser accordingly without delay.

交付时间仅为近似参考时间，不具有法律约束力。采购方将所有应当交付的文件、必要的许可证和批准及时提供予 MR，并按约定完成付款及其他义务，是供货方按照约定期限完成交付的前提条件。若该等条件未获及时满足，则交付期限应适当顺延；MR 对该等条件未获及时满足而造成迟延负有责任者除外。MR 须毫不延迟地通知采购方。

2. If MR's non-observance of the time for delivery is due to an event of Force Majeure (as defined below), such time shall be extended accordingly. MR will inform the Purchaser accordingly without delay. "Force Majeure" means an event beyond the control of MR which prevents MR from complying with any of its obligations, including but not limited to: (a) Act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo; (c) rebellion, revolution, insurrection, or military or usurped power, or civil war; (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other

hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; (e) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Supplier or of his Subcontractors; or (f) acts or threats of terrorism.

若 MR 因不可抗力无法按时交付, 则交付期限相应顺延。MR 须毫不延迟地通知采购方。“不可抗力”指 MR 不可控并导致其无法履行义务的事件, 包括但不限于: (a) 自然因素 (包括但不限于火灾、爆炸、地震、干旱、海啸及洪水); (b) 战争、敌对状态 (无论是否宣战)、侵略、外敌行动、动员备战、政府征用或贸易禁运; (c) 叛乱、革命、暴动、兵变、篡权或内战; (d) 核燃料、核燃料燃烧后产生的废料、放射性有毒爆炸物导致的放射性污染, 或易爆核装置或其核部件的其他危险特性; (e) 暴乱、骚动、罢工、怠工、失序, 但这些事件仅在供货方或其分包商方面发生的情况除外; (f) 恐怖主义行动或威胁。

3. If MR is responsible for a delay in delivery, Purchaser - provided it can credibly establish that it suffered a loss from such delay - may claim compensation of 0.5 % of the purchase price for every full week of delay but in no event more than a total of 5 % of the net price of the delayed Supplies.

MR 交付迟延的, 在采购方能够可信地证明自己确因该等迟延而遭受损失的前提下, 可以要求获得赔偿; 赔偿金额以该迟延交付部分的货物 (服务) 的购买价款为基数, 按照每迟延一周赔偿 0.5% 的标准计算, 但总赔偿金额不超过迟延交付部分的货物 (服务) 的购买净价的 5%。

4. Except as otherwise required by applicable law (such as in cases of wilful misconduct or bodily injury), Purchaser's claims for damages as a result of delayed delivery and claims for damages instead of performance which exceed the limits specified in No. 3 shall be excluded in all cases of delayed delivery, including after expiry of an extension of time for delivery that MR may have granted. Purchaser may terminate the contract only as provided by law and only if the delay in delivery was MR's responsibility.

在任何迟延交付情形下 (包括 MR 在可能已获同意延期交付而延期届满仍未能交付的情形下), 采购方因 MR 迟延交付而主张损害赔偿, 或要求以赔偿代替履行的, 赔偿金额均以前款即本条第 3 款规定的额度为限。前述之责任排除不适用于 MR 故意或重大疏忽行为的情形, 亦不适用于其依强制性法律规定必须对人身伤害、生命或健康损害而担责的情形。仅在 MR 须对迟延承担责任的前提下, 采购方才有权依法律规定解除合同。

5. Upon request by MR, Purchaser shall state within a reasonable length of time if it is terminating the contract as a result of the delay in delivery and/or demanding a claim for damage in lieu of performance or insisting on delivery.

经 MR 要求, 采购方应在合理期限内作出声明, 说明其是否决定因交付迟延而解除合同并/或要求以赔偿代替履行, 或决定要求继续履行交付。

6. If, at Purchaser's request or for reasons for which it is responsible, dispatch or delivery is delayed by more than one month after notice is given that goods are ready for dispatch, MR may charge Purchaser storage costs for each month thereafter in the amount of 0.5 % of the gross price of the Supplies, but in no event shall the aggregate storage charges exceed a total of 5 % of the price. The parties may nevertheless furnish proof of higher or lower storage costs. Legal claims of MR (including but not limited to indemnification for any additional costs and expenses incurred, termination) shall not be affected. Any such storage costs shall, however, be credited towards any further pecuniary claims.

在 MR 通知货物备妥待发后, 若发货或交付依采购方要求或因基于采购方的其他原因被推迟一个月以上的, MR 可以按照每推迟一个月 (含不足一个月) 收取交付货物总价款 0.5%、但总额不超过 5% 的标准向采购方收取仓储费用。双方可就实际仓储费用是否高于或低于前述标准进行举证。MR 所享有的法定权利 (包括但不限于就额外发生的费用和开支要求赔偿, 终止) 应当不受影响。对于发生的仓储费, 可以作为进一步的金钱债权进行索赔。

V. Transfer of risk

第五条 风险转移

1. All risk shall pass to Purchaser, including if "carriage paid" delivery has been agreed, when the Supplies (or partial shipment of the Supplies) leaves the factory, regardless of whether further services such as commissioning or start-up remain to be performed following delivery. At the written request and expense of Purchaser, shipments will be insured by MR against usual transport risks.

货物风险于货物交付发运或提货之时转移至采购方; 包括约定“运费已付”的情形, 不论该货物在交付后是否需要进行调整或者启动等服务。若应采购方书面请求, 并由采购方承担费用, MR 可就货物的普通运输风险进行投保。

2. If the dispatch or the delivery is delayed for reasons for which Purchaser is responsible, or if Purchaser has failed for other reasons to accept delivery, the risk shall pass to Purchaser as soon as MR has given notice that the goods are ready to be dispatched.

因采购方的原因而导致发货或交付迟延, 或采购方因其他原因迟延收货的, 一经 MR 发出货物备妥待发通知, 所有风险即立即转移至采购方。

3. With respect to Supplies which are services, all risk shall pass to Purchaser upon completion of those

services.

关于 MR 提供的服务，所有风险在相关分项服务完成后即转移至采购方。

VI. Taking delivery

第六条 收货

Deliveries shall be accepted by the Purchaser, regardless of minor defects.

货物（或服务）一经交付（提供），采购方即须接受，即使该等货物（或服务）存在不明显的瑕疵。

VII. Limited Warranty for defect of quality

第七条 质量瑕疵有限质量保证

MR hereby warrants the Supplies to be free from defects in workmanship and materials and to conform to any specially agreed specifications for a period of twenty-four months (the "limitation period") from the date of shipment or completion of services.

In the case of breach of warranty, MR shall be liable as follows:

MR 兹保证其产品和产品在工艺和材质方面无质量瑕疵，并符合相关规定的具体要求，该保证的时效期为自发货之日或服务完成之日起 24 个月（“质保期”）。如有违反上述保证，MR 承担以下责任：

1. MR shall, at its option and expense, repair, replace or provide parts or services for those that prove to be defective within the limitation period - irrespective of operating time - provided that the cause of the defect occurred prior to the time at which the risk passed to the Purchaser. 凡产品部件（或服务）在质保期限内被证明存在质量瑕疵，且该瑕疵的原因产生于风险转移给采购方之前，则 MR 有权依其自行选择，决定是否予以免费维修或者更换（或重新提供服务），而无论该等部件（服务结果）的使用期限为何。
2. For services, MR's liability for defect of quality shall be limited to exchanged parts and work performed. 就 MR 对其提供的服务承担质保责任而言，该等责任仅限于由其更换的部件和提供的操作服务。
3. Claims for defects of quality expire after the limitation period, i.e. within twenty-four months unless otherwise provided by law. The special provisions of law regarding time limits (in particular §§ 438(1) no. 1 and no.2, §§ 444 and 445b of the German Civil Code) shall remain in effect.

采购方要求 MR 承担质保责任的期限为 24 个月，除非相关法律强制性地规定了更长的期限。关于期限的法律特殊规定（特别是德国民法典第 438（1）条第 1 款和第 2 款，第 444 条和第 445b 条）仍然有效。

4. A condition to the Purchaser's claim for defects is that the Purchaser has fulfilled its legal obligations to inspect for and give notice of such defects. Any inspection of parts or components that are integrated into other products must be carried out prior to installation. If defects are apparent either in the inspection or thereafter, the Purchaser is to give MR prompt written notice. Notice will be deemed to have been given promptly if given within two weeks, whereby for purposes of meeting this deadline, sending the notice within that period is sufficient. In addition to this duty of inspection and notice, the Purchaser shall give written notice of any readily apparent defect (including delivery of the wrong product or quantity) within two weeks of delivery, whereby also in this case sending the notice within the period is sufficient.

采购方要求质量保修的前提是，采购方已尽到检查和告知产品瑕疵的法律义务。任何集成到其他产品的零件和部件的检查都必须在安装前进行。如在检查中或其后发现存在瑕疵，采购方应及时以书面形式通知 MR。若该通知在两周内发出则视为及时，即在两周内发出通知就足以满足上述期限要求。除检查和通知的义务外，采购方应当在交付之后两周内将明显的瑕疵情况（包括发货错误与发货数量不足）同样以书面送达的形式通知 MR，在该情况下准时发出通知即遵守了及时性要求。

The Purchaser shall immediately notify MR in writing of any breach of warranty.

如有违反质量保证的情况发生，采购方应立即以书面形式告知 MR。

5. Purchaser may withhold payment based on claims of breach of warranty only in an amount that is commensurate with the actual defect(s). Purchaser may withhold payment only if a claim of breach of warranty is made and MR does not dispute it.

仅在采购方提出存在质量瑕疵且 MR 无异议的情况下，采购方可以存在质量瑕疵为由拒付部分款项，但拒付的数额需与实际瑕疵价值一致。

6. Purchaser shall give MR a reasonable period to rectify a defect. In the case of replacement, Purchaser shall return the defective part or component to MR pursuant to relevant provisions of law. Rectification of defects shall include neither removal of the defective part or component nor reinstallation if MR was not originally responsible for installation. MR shall bear, or reimburse the Purchaser for, costs incurred in connection with corrective work, including for materials, labor, shipment and travel. If costs are increased because the products or devices on which services were performed have been transferred to some place other than the agreed upon place of delivery, Purchaser shall bear such additional costs. Purchaser shall also pay the costs of sending the defective item to MR. MR reserves the right to require indemnification for costs incurred in connection with an unwarranted request for rectification of a defect unless the absence of a defect could not have been ascertained by the Purchaser.

采购方须首先允许 MR 在合理期限内修复瑕疵。如需更换，采购方应当按照相关法律规定将有瑕疵的零件或部件返还给 MR。如果 MR 最初不负责安装，则修复瑕疵工作既不包括拆除有瑕疵的零件或部件，也不包括重新安装。因修复瑕疵而发生的相关费用，包括材料费，人工费，运费和路费，由 MR 承担或者补偿给采购方。如交付的货物（或由 MR 提供了服务的设备）已自原约定交付地点移至其他地点，则由此而造成 MR 增加支出的修复费用由采购方承担。将瑕疵产品发送至 MR 的运费同样由采购方承担。对于因无理要求修复瑕疵而发生的费用，MR 保留要求赔偿的权利，除非采购方无法确定不存在瑕疵。

7. If MR's attempted remedy of any warranty breach fails, Purchaser - irrespective of any claims for damage with respect to Article X - may terminate the contract or decrease the remuneration by a commercially reasonable amount.

如果 MR 经过尝试仍不能修复瑕疵，采购方可解除合同或适当减少支付款项。第十条规定的索赔权不受影响。

8. Claims for breach of warranty shall not include minor deviations from the quality or condition agreed upon, minor impairment of usability, or natural wear and tear or damage arising - after the transfer of risk - from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil, chemical, electrochemical, electrical or other external influences not assumed under the contract, or from non-reproducible software errors. Claims for defects of quality do not cover modifications or repairs (and the consequences that result) carried out improperly by Purchaser or by third parties.

在以下情形下，采购方无权向 MR 主张质保责任：与约定的质量或条件存在细微偏差，正常损耗；风险转移后因使用过程中的错误或疏忽而造成的损坏；因过度使用而造成的损坏；因不当使用生产资料而造成的损坏；因安装或建造瑕疵而导致的损坏；因地基不当而造成的损坏；因未被合同设定为产品使用前提条件的化学、电化学、电气或其他外在因素或者无法修复的软件故障而导致的损坏。采购方或第三方对产品（服务）进行不适当更改或维护，因此而造成后果的，采购方对该等更改、维护和后果均不享有主张质保责任的权利。

9. Purchaser's claims for legal recourse against MR are valid only to the extent that the Purchaser has not made any agreement with its customer beyond those imposed by law. Moreover, the provisions of No. 8 apply to and restrict Purchaser's claims under this No. 10.

采购方只有未与客户达成超出法律规定之外的索赔约定的前提下，才对 MR 享有法定范围内的追索权。在本条所规定的索赔，本条第 8 款之规定一并适用。

10. Article X also applies to damage claims ("Other damage claims"). Furthermore, MR hereby excludes Purchaser's claims against MR and its agents concerning warranties for quality defects except as permitted by this Article VII.

此外，就损害求偿权之主张，第十条（其他损害求偿权）一并适用。除本条即第七条约定范围之外，采购方无权对 MR 及其履行协助人主张任何质量保证责任。

VIII. Industrial property rights and copyrights; defects of title

第八条 工业产权、版权与权利瑕疵

1. Unless otherwise agreed, MR shall furnish the Supplies free of third party industrial property rights and copyrights (hereinafter referred to as "Property Rights") only in the country of delivery. If a third party, because of an alleged infringement of Property Rights, asserts legitimate claims against Purchaser for products furnished by MR and used in conformity with the contract, MR shall be liable to the Purchaser within the limitation period as follows:

除非另有约定，仅在交付地所在国内，MR 提供的产品和服务不得对第三方工业产权及版权（以下简称“产权”）构成侵权。若有第三方以由 MR 提供且按合同使用的产品对由该第三方所有的产权造成侵犯为由，向采购方提出得以获得支持的侵权主张，则 MR 在质保期内对采购方负有以下责任：

- a) At its own option and expense, MR shall either obtain a right to use the relevant products, modify them so as not to infringe upon the Property Rights, or replace them. If this is not possible on terms acceptable to MR, Purchaser may terminate the agreement or reduce the purchase price by a commercially reasonable amount.

MR 应依其自行选择采取措施，取得相应产品的使用权、修改产品使其不侵犯第三方产权，或者更换产品，并承担费用。若 MR 无法在合理条件下采取上述措施，则采购方有权解除合同或适当减少支付价款。

- b) Any obligation of MR to honor a claim for damage is limited by Article X below.

MR 仅按第十条所示条件承担赔偿责任。

- c) The obligations of MR described above are applicable only if Purchaser immediately notifies MR in writing as to the claims lodged by a third party, an infringement is not acknowledged, and all counter-measures and settlement negotiations are reserved by MR. If Purchaser ceases to use any of the Supplies in order to reduce damage or for other material reasons, it shall advise the third party that the cessation of use is not an acknowledgement of an infringement of Property Rights.

MR 仅在下述条件下承担上述义务，即采购方在第三方提出索赔请求后立即书面告知 MR；采购方不得承认由第三方

所声称的侵权行为，且由 MR 保留采取应对措施及开展和解谈判的全部权利。如采购方为减少损害或其他重要原因停止使用产品或服务，其必须告知第三方，其停止使用的举措并不构成对侵权事实的承认。

2. Claims of Purchaser against MR shall be excluded if the Purchaser is responsible for the infringement of Property Rights.

若因采购方的原因导致侵权，则其无权向 MR 提出索赔。

3. Claims of Purchaser shall also be excluded if the infringement of Property Rights was caused by specific demands of the Purchaser, by a use of the product not foreseeable by MR or by the product being altered by Purchaser or being used together with products not provided by MR.

采购方在下列情形中同样无权向 MR 提出索赔：侵权是由采购方特殊要求导致的；是由 MR 无法预见的产品使用方式导致的；由采购方替换的产品导致的；或由于与非 MR 提供的产品一起使用导致的。

4. In the case of Property Right infringements, the provisions as defined in Article VII, Nos. 6, 7 and 11 apply to those claims by Purchaser cited in No. 1a).

此外，在发生侵犯产权行为，订购方依本条本条第 1 款 (a) 项的规定提出的索赔，第七条第 6、7、11 款规定一并相应适用。

5. For other defects of title, the provisions as defined in Article VII apply.

其他权利瑕疵问题适用第七条的规定。

6. Further claims or any claims made by Purchaser against MR and its agents other than those dealt with in this, Article VIII, concerning a defect of title are excluded.

除本条即第八条约定范围之外，采购方无权就权利瑕疵对 MR 及受 MR 委托的第三方主张任何请求权。

IX. Impossibility of performance, contract adaptation

第九条 无法履行与合同变更

1. If a delivery is not possible, Purchaser may claim damages, unless MR is not responsible for the impossibility. The Purchaser's claim for damages shall be limited to 10 % of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply (a) in cases of intent or gross negligence or (b) if there is a legally binding liability on the part of MR due to injury to life, body or health. Purchaser's right to terminate the contract remains unaffected.

如不能履行交付，则采购方有权索赔，但造成不可能履行的责任方不是 MR 的情形除外。对于因无法履行交付而无法投入计划使用的产品（或服务），采购方请求赔偿的金额不能超过该产品（或服务）的价值的 10%，但下列情况除外：(a)因故意或重大疏忽导致无法履行交货的；(b)MR 对生命、身体或健康伤害负有法律责任的。采购方解除合同的权力不受影响。

2. To the extent unforeseeable events such as are described in Article IV, No. 2. materially change the economic importance of the Supplies or materially affect MR's business, the contract shall be adapted accordingly with due regard to the principle of good faith. If this is not economically reasonable, MR may terminate the contract. MR shall not be entitled to withdraw from the contract in an event which is attributable to MR.

If MR wishes to make use of this right of termination, it shall notify Purchaser in writing immediately after becoming aware of the significance of the event. This right of MR to terminate shall apply regardless of whether MR and Purchaser have agreed to an extension of the delivery time. MR shall without delay refund any consideration already received from Purchaser.

若因第四条第 2 款所指的不可预见的事件导致交付产品（或服务）的经济价值或内容发生重大改变，或对 MR 的经营造成重大影响，则本合同应按照诚实信用的原则予以合理变更。若基于经济性的原因不适于进行该等变更，则 MR 有权解除合同。MR 无权因可归咎于其自身的原因而退出本合同关系。

MR 拟行使该等解约权的，应在认识到事件的重要性之后立即告知采购方；即使 MR 与采购方此前已就延长交付期限达成协议，MR 也应当履行上述告知义务。MR 应立即退还已经从采购方收到的款项。

X. Other claims for damages

第十条 其他索赔权

1. As to Purchaser's claims for damages and expenses (hereinafter referred to as "Claims for Damages"), including those concerning violation of contractual obligations and tort, regardless of their legal basis, MR is liable to Purchaser only in case of intent, fraud or gross negligence. The limitation of liability set forth in the first sentence of this Article X No. 1 applies also in cases of breach of duty by or to the benefit of its agents, legal representatives, employees and other entities providing fulfillment or installation services for whose fault MR is responsible by reason of applicable law. This limitation of liability does not apply to Purchaser's claims based on breach of a material contractual obligation (which means a duty, whose due fulfillment is necessary for the proper carrying out of the contract and on whose observance the contract partner regularly relies on and may rely on) or guarantees provided by MR. In cases of Article X, No. 1,

Sentence 3, however, MR's liability is limited to damages which are typical for this kind of contract and foreseeable by MR at the time of entering into the contract except to the extent MR is liable by reason of intention, fraud or gross negligence. In particular, without limitation, indirect and consequential damages which are the consequence of defects in the product delivered are subject to recovery only to the extent such damages are the consequences of defects which are normally expected in case of use of the delivered product in accordance with MR's directions.

采购方对因 MR 违反源于债务关系的义务而给采购方造成的损害或费用提出索赔（以下统称“损害求偿权”）的，MR 仅在故意、欺诈或重大疏忽的情形下对采购方承担法律责任。由本条即第十条第 1 句而产生的责任限制同样适用于 MR 的组织机构、法定代理人、雇员以及其他受 MR 委托的第三方或 MR 出于上述机构或人员的利益发生违约行为，且 MR 依据法律规定应当对此负责的情形。在本条即第十条第 1 款第 3 句所述情形下，仅当损害是此类合同中常见的且 MR 在订立合同时能够预见的前提下，MR 才负有法律责任，MR 存在故意、欺诈或重大疏忽的情况除外；其中，由于交付产品的瑕疵问题间接导致损害的，只有当瑕疵造成的损害是在按照规定使用产品时通常可预期发生的损害，方可得到赔偿。

2. The limitations of liability set forth in Article X, No. 1 above shall not apply to Purchaser's claims for loss of life, bodily injury or damage to health or if excluded by product liability laws.

第十条第 1 款对赔偿责任的限定，不适用于采购方就生命、身体或健康受到损害而提出的索赔，以及不包含在产品责任法内的情况。以及依产品责任法规定应当承担的责任。

3. If the Purchaser is entitled to claims for damage under this Article X, the duration of liability of these claims corresponds to the time as set forth in the applicable limitation period regarding claims for defects of quality pursuant to Article VII, No. 3. The statute of limitations applies to claims for damages based on loss of life, personal injury or injury to health or based on applicable product liability laws. The statute of limitations also applies to claims for damages in case of gross negligence or intent.

采购方根据本条享有的索赔权的有效期，与第七条第 3 条规定的质量瑕疵索赔权的有效期一致。就生命、人身或健康伤害提出的损害赔偿请求、基于产品责任法规定提出的损害赔偿，以及因故意或重大疏忽提出的损害赔偿适用法定时效。

XI. Governing law

第十一条 适用法律

The laws of the Federal Republic of Germany to the exclusion of its conflict of law provisions of German International Private Law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be applicable.

德意志联邦共和国法律为适用法，但排除其德国国际私法的法律冲突规范及《联合国国际货物销售合同公约》（CISG）的适用。

XII. Settlement of Disputes concerning national Supplies

第十二条 国内争议解决

The following arbitration clause shall apply to contracts by and between MR and Purchaser whose business address is in the Federal Republic of Germany:

All disputes arising in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) (German Institution for Arbitration) without recourse to the ordinary courts of law. The place of arbitration is Munich. The number of arbitrators is three. The arbitral proceedings shall be conducted in English. The laws of the Federal Republic of Germany shall be exclusively applicable to this arbitral proceeding, except for its rules regarding the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG), both of which are hereby excluded.

对于 MR 与营业地址位于德意志联邦共和国境内的采购方订立的合同，适用下示仲裁条款：

所有因本合同及其有效性而产生的争议，均提交至德国仲裁委员会（DIS）终局解决，而不诉至普通法院。仲裁地点为慕尼黑；仲裁由三名仲裁员进行。仲裁程序使用语言为英语。仲裁程序排他性地适用德意志联邦共和国法律，但其冲突法规范不予适用；《联合国国际货物销售合同公约》（CISG）亦同样排除适用。

XIII. Settlement of Disputes concerning international Supplies

第十三条 国际争议解决

The following arbitration clause shall apply to contracts by and between MR and Purchaser whose business address is outside the Federal Republic of Germany:

All disputes arising out of or in connection with this contract including questions regarding the legal validity of this contract and this arbitration clause be finally settled out of court and shall be referred to arbitration

under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Zurich, Switzerland. The language of the arbitral proceedings shall be English. The laws of the Federal Republic of Germany shall be exclusively applicable to this arbitral proceeding, except for its rules regarding the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG), both of which are hereby excluded.

对于 MR 与营业地址位于德意志联邦共和国境外的采购方订立的合同，适用下示仲裁条款：

所有因本合同（包括其有效性及本仲裁条款）而产生的争议，应非以诉讼途径，而是根据《国际商会（ICC）仲裁规则》，依前述规则指定三名仲裁员，通过仲裁程序终局解决。仲裁地点为瑞士苏黎世。仲裁程序使用的语言为英语。仲裁程序排他性地适用德意志联邦共和国法律，但其冲突法规范不予适用；《联合国国际货物销售合同公约》（CISG）亦同样排除适用。

XIV. Validity of the contract

第十四条 合同效力

In case of the legal invalidity of individual terms, the remaining parts of the contract shall remain binding. The parties shall undertake to replace the invalid provision by a new one which as far as possible shall meet the economic purpose intended by the invalid provision save where adherence to the contract would mean an undue hardship on one of the parties.

若本合同任何一部分无效，其他部分仍有法律约束力。无效条款应以尽可能接近原无效条款经济目的的条款取代之。但若继续依约履行合同将对一方造成无法承受的严苛后果的，不适用前句规定。