

机器和配件供应合同通用条款

GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF MACHINERY AND SPARE PARTS

1. GENERAL

总则

- 1.1 The contract shall be deemed to have entered into upon receipt of supplier's written acknowledgement stating its acceptance of the order. Tenders which do not stipulate an acceptance period shall not be binding. All agreement and official statements must be notified in writing.
在收到供应商接受订单的书面确认函后，应视为合同已签订。未按规定中标期限的投标书不具有约束力。所有协议和官方声明必须以书面形式通知。

- 1.1 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by the supplier in writing.
如果在投标书或订单确认函中声明适用该通用条款，那么该通用条款将具有约束力。对于客户规定的任何与本通用条款相矛盾的条款，只有在供应商明确书面确认的情况下才有效。

2. SCOPE OF SUPPLIES AND SERVICES

供货与服务范围

- 2.1 The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto. The supplier is allowed to undertake works, so far it does not involve any price increase.
供货和服务内容在订单确认函及其附录中详细说明。在无价格上涨的前提下，供应商可承接工作。

3. TECHNICAL DOCUMENTS

技术文件

- 3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided in technical documents are only binding in so far as having been expressly stipulated as such.
除非另有约定，宣传册和产品目录不具有约束力。技术文件中提供的数据只有在明确规定的情况下才具有约束力。
- 3.2 Each party to the contract retains all rights to technical documents provided to the other. The party receiving such documents recognizes these rights and shall, not without previous written consent of the other party, make either in whole or in part, nor use them for purposes other than those which they were handed over.
合同各方保留其为另一方提供的技术文件的所有权利。收到该等文件的一方承认此类权利，且在未经另一方事先书面同意的情况下，不得全部或部分使用该等文件，也不得将该等文件用于交付文件的原目的以外的其他目的。

4. REGULATIONS IN FORCE IN THE COUNTRY OF DESTINATION AND SAFETY DEVICES

目的国的现行法规和安全装置

4.1 The customer shall, at the latest when placing the order, draw the attention of the supplier to the standards and regulations applicable to the execution of the supplies and services, and to the operation of the plant as well as to the health and safety of personnel.

客户最迟应在订货时提请供应商注意适用于货物配置与服务、工厂运行以及人员的健康与安全的标准和法规。

4.2 Unless otherwise agreed upon, the supplies and services shall comply with those standards and regulations at the place of business of the customer about which the supplier has been informed under clause 4.1. Additional or other safety devices shall be supplied as having been expressly agreed upon.

除非另有约定，货物和服务应符合客户营业地点的标准与规定，此类标准与规定已根据第 4.1 条告知供应商。附加或其他安全装置应按明确约定的条件提供。

5. PRICES

价格

5.1 All prices shall be deemed to be net ex works, excluding packing, in freely available Chinese Yuan (RMB), without any deductions whatsoever. Any and all additional charges, such as, but not limited to, freight charges, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer.

Likewise, the customer shall bear any and all taxes, fees, levies, custom duties and the like which are levied out of or in connection with the contract, or shall refund them to the supplier against adequate evidence in case the supplier is liable for them.

The packing is billed separately by the supplier and will not be taken back. But if it has been designed as property of the supplier, it must be sent back by the customer free of charges to the supplier.

Any insurance costs for the transport damages the responsibility of the customer.

所有价格应视为出厂交货价，不含包装费，不作任何扣减，以不受限制的人民币报价。所有额外费用，包括但不限于运费、出口、过境、进口费用和其他许可证费用以及认证费用，均由客户承担。

同样，客户应承担因本合同而征收的或与本合同有关的所有税费、规费、征费、关税等，如果有充分证据显示供应商须承担，客户应将此等费用退还供应商。

包装由供应商单独计费，不会回收。但如果包装在设计时被视为供应商的财产，客户必须将包装免费寄回给供应商。

任何针对运输损害的保险费用应由客户承担。

5.2 The supplier reserves the right to adjust the prices in the event that the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance. In such case the adjustment shall be made according to the wage rates and material prices variations. In addition, an appropriate price adjustment shall apply in case.

- the delivery time has been subsequently extended due to any reason stated in clause 8.2, or
- the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete.

如果在提交标书和合同约定的履约期间，工资水平或原材料价格发生变化，供应商保留调整价格的权利。在这种情况下，应根据工资水平和材料价格的变化调整价格。

此外，适当的价格调整应适用于以下情况：

- 由于第 8.2 条中所述的任何原因，交货时间随后被延长，或
- 因客户提供的文件不符合实际情况或不完整，导致材料或配置发生变更。

6. TERMS OF PAYMENT

付款条款

6.1 Payments shall be made by the customer at supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like. Unless otherwise agreed upon, the price shall be paid in the following instalments:

- Half as advance payment within one month after receipt of the order acknowledgement by the customer,
 - The remainder within one month after supplier's advice that the supplies are ready for dispatch.
- Payment shall be deemed to be effected as far as Chinese Yuan (RMB) have been made freely available to the supplier at supplier's domicile.

客户应按照约定的付款条款在供应商所在地支付款项，不得因现金折扣、费用、税费、征费、规费、关税等做任何扣减。

除非另有约定，货款应当按下列方式分期支付：

- 在收到客户订单确认函后一个月内支付一半的货款作为预付款；
- 在供应商发出待运通知后一个月内付清余款。

只要在供应商所在地向供应商支付不受限制的人民币，则视为客户已付款。

6.2 The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over the supplies or services is delayed or prevented due to reasons beyond supplier's control, or if unimportant parts are missing, or if post-delivery work is to be carried out without the supplies being prevented from use.

如果由于超出供应商控制范围的原因导致货物的运输、交付、安装、调试或接收、服务的提供受到延误或阻碍，或者非重要部件的缺失，或者如果在不妨碍货物使用的情况下进行交货后的工作，则应遵守付款日期。

6.3 If the customer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile but not less than 4% over the current discount rate of the "The People's Bank of China".

如果客户未遵循约定的付款条件导致付款延迟，则无需提醒，应当承担自应付款之日起所产生的利息。利率应根据客户所在地的现行利率计算且至少应比中国人民银行现行贴现率高 4%。

7. RESERVATION OF TITLE

所有权的保留

7.1 The supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract. The customer shall cooperate in any measures necessary for the protection of supplier's title. In particular upon entering into the contract it authorises the supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at customer's cost. During the period of the reservation of title, the customer shall, at its own cost, maintain the supplies and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that the supplier's title is in no way prejudiced.

在按照合同收到全部货款之前，供应商仍是所有货物的所有人。客户应配合采取任何必要措施以保护供应商的所有权。特别是一旦合同生效，将授权供应商根据相关国家法律在公共登记册、账簿或类似记录中按要求填写或通知所有权的保留，并履行所有相应的手续，费用由客户承担。

在所有权保留期间，客户应自费维护货物，并以供应商为受益人针对盗窃、故障、火灾、水灾和其他风险购买保险。客户应进一步采取一切措施，确保供应商的所有权不受任何损害。

8. DELIVERY TIME

交货时间

8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time the supplier has sent a notice to the customer informing that the supplies are ready for dispatch.

交货时间应在合同签订、所有正式手续（包括但不限于进出口、过境手续和付款许可证）已办妥、订单应付款项已付清、任何约定的保证金已支付和主要技术问题解决后开始。

如果供应商已向客户发出通知，告知货物已准备好待发货，则应视为已遵守交货时间。

8.2 The delivery time is reasonably extended:

a) If the information required by the supplier for performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;

b) If hindrances occur which the supplier cannot prevent despite using the required care, regardless of whether they affect the supplier or the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, revolution, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes, acts of God;

c) If the customer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to observe the terms of payment.

如出现以下情况，则交货时间应合理地延长：

a) 供应商未能及时收到履行合同所需要的信息，或者客户随后更改了该等信息，从而导致货物或服务的延迟交付；

b) 供应商尽管采取了必要的措施但仍未能避免阻碍交货的事件发生，无论此类事件是否影响到供应商、客户或第三方。此类事件包括但不限于流行病、动员、战争、革命、严重故障、事故、劳动冲突、分包商原材料、半成品或成品的交付延迟或不足、重要工件需要报废、官方行为或任何政府部门或公共机构的疏忽、自然灾害、不可抗拒的自然力；

c) 客户或第三方未能如期完成其必须完成的工作，或未能按时履行其合同义务，特别是客户未能遵守付款条款。

8.3 The customer shall be entitled to claim liquidated damages for delayed delivery in so far as it can be proved that the delay has been caused through the fault of the supplier and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay.

Damages for delayed delivery shall not exceed ½ % for every full week's delay and shall in no case whatsoever altogether exceed 5 % of the contract price of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay.

只要有证据证明延迟交货是由于供应商的过错造成的，并且延迟交货已使客户遭受损失，客户有权就延迟交货要求供应商支付违约金。如果供应商可以提供替代材料以满足客户需要，则客户无权因延迟交货而获得任何违约金。

每延迟一周的延迟交货违约金不应超过延迟交货部分货物合同价的百分之零点五，而在任何情况下延迟交货违约金总额都不应超过延迟交货部分货物合同价的百分之五。对于最初两周的延误，无需支付任何违约金。

8.4 In case a specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; clauses 8.1 to 8.3 apply by analogy.

如果确定了具体交货日期而非交货期，该日期应是交货期的最后一天；8.1至8.3条款同样适用。

8.5 Any delay of the supplies or services does not entitle the customer to any rights and claims other than those expressly stipulated in this clause 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

除第 8 条明确规定的权利和索赔外，货物或服务的任何延误均不赋予客户任何权利和索赔的权利。然而，此限制不适用于供应商的非法意图或重大过失，但适用于供应商为履行其义务而雇用或指定的人员的非法意图或重大过失。

9. PASSING OF BENEFIT AND RISK

利益和风险的转移

9.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works. 货物的利益和风险应在货物离开工厂之日转移给客户。

9.2 If dispatch is delayed at the request of the customer or due to reasons beyond supplier's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

如果因客户要求或供应商无法控制的原因而延迟发货，则货物的风险应在最初预计离开工厂时转移给客户。自该时刻起，货物的储存和保险费用由客户承担，风险也由客户承担。

10. FORWARDING AND TRANSPORT

转运与运输

10.1 The supplier shall in time be notified of special requirements regarding forwarding, transport and insurance.

对于转运、运输和保险方面的特殊要求，应及时通知供应商。

10.2 Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

客户如就转运或运输有任何异议，应在收到货物或货运单据后立即向最后一家承运人提出。

11. INSPECTION AND TAKING-OVER OF THE SUPPLIES AND SERVICES

货物与服务的检查和接收

11.1 As far as being normal practice, the supplier shall inspect the supplies before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for the customer.

按照惯例，供应商应在发货前对货物进行检验。如果客户要求进一步检测，则客户须提前与供应商进行约定并支付相应的费用。

11.2 The customer shall inspect the supplies and services within a reasonable period and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been taken over.

客户应在合理期限内检查货物和服务，如有任何缺陷，应立即书面通知供应商。如果客户未能照此行事，则应视为已接收货物和服务。

- 11.3 Having been notified of the deficiencies the supplier shall as soon as possible remedy them according to clause 11.2, and the customer shall give the supplier the possibility of doing so.
在收到缺陷通知后， 供应商应根据第 11.2 条尽快对缺陷进行补救， 而客户应为供应商进行补救提供可能性。
- 11.4 The carrying out of taking-over test as well as laying down the conditions related thereto needs a special agreement.
双方应就验收检测以及相关条件签订特别协议。
- 11.5 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in clauses 11.4 and 12 (guarantee, liability for defects).
除第 11.4 条和第 12 条（质保和缺陷责任）中明确规定的权利和索赔外， 任何类型的货物或服务缺陷均不应赋予客户任何权利和索赔的权利。

12. GUARANTEE, LIABILITY FOR DEFECTS

质保和缺陷责任

- 12.1 The guarantee period is 12 months, or 6 months in case of 24-hour operation. It starts when the supplies leave the works or at the taking-over of the supplies and services should such takingover have been agreed upon before, or if the supplier undertakes the erection upon completion thereof. If dispatch or taking-over or erection is delayed due to reasons beyond supplier's control, guarantee period shall end not later than 18 months after supplier's notification that the supplies are ready for dispatch. For replaced or repaired parts the guarantee period starts anew and lasts 6 months after replacement or completion of the repair or taking-over, but not longer than the expiry of a period being double to the guarantee period stipulated in the preceding paragraph.
The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take appropriate steps to mitigate the damage and give the supplier the possibility of remedying such defect.
质保期为 12 个月， 如果机器 24 小时运转， 则质保期为 6 个月。质保期在货物离开工厂时开始计算； 若此前已就货物接收达成协议， 则质保期在货物和服务接收后开始算； 若供应商承担机器的安装任务， 则质保期在安装完成后开始计算。如果由于超出供应商控制范围的原因而延迟发货、接收或安装， 质保期应在供应商发出待运通知后不迟于 18 个月结束。
对于更换或修理过的零件， 其质保期重新开始计算， 自更换或修理完成或移交之日起六个月后结束， 但不得超过前项规定的质保期的两倍之长。
如果客户或第三方对产品进行不适当的改动或修理， 或客户在产品存在缺陷时没有立即采取适当措施减轻损害并给予供应商补救缺陷的可能性， 则该质保期将提前结束。
- 12.2 Upon written request of the customer, the supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship.
如客户提出书面要求， 供应商承诺在质保期届满前， 如证明因材料不良、设计不良或工艺不良而导致产品任何部件存在缺陷， 供应商将根据自己的选择， 尽快修理或更换该等部件。
- 12.3 Express warranties are only those which have been expressly specified as such in the order acknowledgement or in the specifications. Any express warranty is valid until the expiry of the guarantee period at the latest.
明示保证仅指在订单确认函或说明书中明确规定的保证。任何明示保证有效期最迟至质保期满之日结束。

12.4 Excluded from supplier's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by the supplier, or resulting from other reasons beyond supplier's control.

无法证明因材料不良、设计不良或工艺不良造成的问题，例如因正常磨损、维护不当、不遵守操作规程、过载、使用任何不合适的材料、化学或电解作用的影响、建筑或安装工作不是由供应商完成，或因超出了供应商控制的其他原因而造成的缺陷，应排除在供应商的质保和责任缺陷范围之外。

12.5 For supplies and services of subcontractors requested by the customer, the supplier assumes guarantee and liability for defects only to the extent of such subcontractor guarantee and liability obligations.

对于客户要求的分包商的供货和服务，供应商仅在分包商承担质保和责任义务的范围内对缺陷承担质保和责任。

12.6 With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in clauses 12.1 to 12.5

对于任何材料、设计或工艺缺陷以及任何未能履行明示保证的情况，客户无权享有除第 12.1 至 12.5 条明确规定外的权利和索赔的权利。

12.7 The suppliers is only liable to the extent of unlawful intent or gross negligence as far as the claims arising out of faulty advice and the like or out of breach of any additional obligations are concerned.

对于由于错误的建议或类似的原因或因违反任何其他义务而引起的索赔，供应商仅对非法意图或重大过失承担责任。

13. NON-PERFORMANCE, BAD PERFORMANCE AND THEIR CONSEQUENCES

不履约、不良履约及其后果

13.1 In all cases of bad performance or non-performance not expressly covered by these general conditions of supply – in particular if the supplier, without valid reasons, starts execution of the supplies and services so late that punctual completion is unlikely to be foreseen, or if an execution contrary to the terms of the contract can be clearly foreseen due to supplier's fault, or if the supplies and services have been executed contrary to the terms of the contract due to supplier's fault -, then the customer shall be entitled to grant a reasonable additional period for the supplies or services affected thereby by simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to supplier's fault, the customer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services.

在该通用条款中未明确涵盖的所有不履约、不良履约情况下，——尤其是如果供应商在没有正当理由的情况下过晚开始供货和提供服务，以致不能按时完成，或由于供应商的错误而可以清晰地预见其将违反合同条款，或者由于供应商的错误致使供货和服务不符合合同条款，则客户有权针对受影响货物和服务给予合理额外期限，同时警告如不遵守则将解除合同。如果该额外期限由于供应商的错误而错过，客户有权针对已违反或预见必定违反合同条款的供货和服务终止合同，并要求供应商退还其为此等货物或服务而支付的款项。

13.2 In such cases clause 14 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 % of the contract price for the supplies and services affected by the termination.
在这种情况下，第 14 条应适用于客户方面的任何损害赔偿要求，以及任何进一步责任的免除，且任何损坏赔偿要求应当限于因合同终止而影响的供货和服务的合同价格的 10%。

14. EXCLUSION OF FURTHER LIABILITY

进一步责任的免除

14.1 Any rights and claims on the part of the customer other than those expressly stipulated in these general conditions of supply are excluded, irrespective on what ground they are based; this in particular refers to claims for damages, reduction of price or termination of the contract unless expressly stipulated therein. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damages. These exclusions, however, do not apply to unlawful intent or gross negligence on the part of the supplier, but do apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

除该通用条款中明确规定的权利和索赔外，客户不享有任何其他权利和主张的权利，不论其基于何种理由；除另有明确规定外，特指损害赔偿、降低价格或者解除合同的主张。在任何情况下，客户均无权要求除弥补货物缺陷的费用外的损害赔偿，特指但不限于生产损失、使用损失、订单损失、利润损失和其他直接或间接或随之引起的损害赔偿。然而，本除外条款并不适用于供应商的非法意图或重大过失，但适用于供应商为履行其任何义务而雇用或指定的人员的非法意图或重大过失。

15. INSTALLATION

安装

15.1 Unless otherwise agreed in writing, it is the sole responsibility of the customer to set up and connect the machine in accordance with the descriptions and instructions of the applicable Operating Instructions provided by the supplier.

除非有其它书面的协议，客户应按照供应商提供的适用操作规范中的描述和说明，独立地进行机器的就位和连接。

16. JURISDICTION AND APPLICABLE LAW

管辖权和适用法律

16.1 The place of jurisdiction for both the customer and the supplier is Guangdong. The supplier shall, however, be entitled to sue the customer at the latter's registered address. The contract shall be governed by Chinese law

客户和供应商的管辖地均为广东。

但是，供应商有权在其注册地址起诉客户。本合同适用于中国法律。