

GENERAL TERMS AND CONDITIONS OF PURCHASE

一般采购条款和条件

**1. Definitions**

In these general terms and conditions of purchase (“**Terms and Conditions**”), the following definitions apply:

**Affiliate:** means, with respect to either party, any corporation, enterprise or entity Controlling, Controlled by, or under common Control with, such party, whereby “**Control**” means the power to direct the management of a corporation, enterprise or entity, whether through contract, ownership of voting securities, or otherwise, for so long as such power exists.

**Agreement:** means any agreement, contract and/or purchase order between the Buyer as buyer and the Seller as seller on the purchase of goods and/or services (“**Products**”).

**Buyer:** means any Affiliate of Umicore that has its registered office in Hong Kong.

**Hong Kong:** means the Hong Kong Special Administrative Region of the People's Republic of China.

**Seller:** means any party that supplies goods to the Buyer, provides services to the Buyer or has agreed with the Buyer to do so.

**Umicore:** means a limited liability company (“**Société Anonyme**”) organized under the laws of Belgium, with its registered address at Rue du Marais 31, 1000 Brussels, Belgium, and registered number as 0401 574 852.

**2. Acceptance**

The Seller has read and understood these Terms and Conditions, and agrees that either the Seller's written acceptance hereof or the Seller's commencement of any work or services under these Terms and Conditions shall constitute the Seller's acceptance of these Terms and Conditions, which shall apply to the exclusion of all terms and conditions, specifications, quotations, offers, letters, advises of dispatch, confirmations, invoices and other documents of the Seller, whether or not contained or referred to in the Agreement.

**3. Price**

The price payable for the Products (“**Price**”) and any other terms and conditions of purchase shall not be less favorable to the Buyer than what has been stated in the Agreement and, the Price, unless otherwise stated in a document expressly accepted by the Buyer, shall be:

- a. inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading/off-loading, carriage, insurance and delivery of the Products to the delivery address; engineering, testing, inspection, warranty, training, consultancy, management and supervision of relevant personnel, and documents and materials related to the supply of the Products, and any duties, imposts, levies or taxes (including any sales or use tax); and
- b. fixed for the term of the Agreement.

The Seller covenants that if it should at any time prior to the delivery of the Products sold hereunder sell (including but not limited to promise to sell or actually sell) similar products to the Products in similar quantities to any third party (whether or not in the same country or region as the Buyer) at lower prices, it will promptly notify the Buyer in writing of such lower prices, and the Buyer will receive the full benefit of such lower prices from the date of such sale or promise to sell to such third party (whether or not the third party subsequently returned such

**1. 定义**

在本一般采购条款和条件 (“**条款**”) 中适用下列定义:

**关联方:** 指由对应的一方控制、被控制或被共同控制的任何公司、企业或实体, 此处 “**控制**” 指通过合同、对表决权证券的所有权或其他形式的权力, 在其权力存续期限内指导公司、企业或实体管理的权力。

**协议:** 指买方 (作为买方) 和卖方 (作为卖方) 就货物和/或服务 (“**产品**”) 的采购所订立的任何协议、合同和/或采购订单。

**买方:** 指优美科旗下注册的营业地点位于香港的任何关联方。

**香港:** 指中华人民共和国香港特别行政区。

**卖方:** 指买方的货物提供方、买方的服务提供方、或同意向买方提供货物或服务的一方。

**优美科:** 指一家依照比利时法律组建的有限责任公司 (“**Société Anonyme**”), 其注册地址为 Rue du Marais 31, 1000 Brussels, Belgium, 注册号为 0401 574 852。

**2. 接受**

卖方已阅读且理解本条款, 并同意卖方对本条款的的书面接受或依照本条款开始任何工作或或服务应构成卖方对本条款的接受, 从而排除所有卖方的条款和条件、规格、报价、要约、信函、发运通知、确认、发票、和其他文件, 不论其是否包含在协议中, 或在协议中提及。

**3. 产品价格**

产品的应付价格 (“**产品价格**”) 以及任何其他采购条款和条件, 应不低于协议中所约定的对买方有利的条款和条件, 并且除非另有规定且买方书面明示同意, 产品价格应:

- a. 包含所有费用, 包括但不限于包装材料费、打包费、运输费、装卸费、集装箱以及将协议产品交付至交付地点的保险费和运费; 与产品供应相关的工程设计、测试、验收、保证、培训、咨询、相关人员管理和监督与文件资料等费用; 以及任何关税、捐税、课税或税费 (包括任何销售税或使用税); 且
- b. 在适用的协议期限内维持不变。

卖方承诺, 如果在交付本条款项下所有协议产品之前, 其以较低价向任何第三方 (不管是否与买方为同一国家或地区的企业) 销售 (包括但不限于许诺销售或实际销售) 相近数量的类似品, 其应立即书面通知买方该等较低价格。自卖方以较低价格向任何第三方销售或许诺销售该等类似品之日起 (不管该第三方是否发生退货或取消交易), 买方将同样享受该等较低价格。如卖方已经收取了买方较高价格的, 卖

products or cancelled the sale). If the Seller has charged the Buyer for the Products at higher prices already, the Seller shall promptly refund the balance to the Buyer. No variation in the Price nor extra charges can be made (whether on account of increased material, labor or transport costs, fluctuation in exchange rates or otherwise) without the prior written consent of the Buyer.

#### 4. Payment

Payment terms shall be as agreed to by the Buyer and the Seller in writing and set forth in the Agreement. Unless otherwise stated in the Agreement, the Seller shall invoice the Buyer for each Product on or after delivery of such Product to the Buyer and the Buyer shall arrange the payment in due course from the date of receipt of the invoice if the Buyer raises no objection to the invoice. In any event, in case of any objection by the Buyer against the Products supplied or the relevant collateral obligation rendered by the Seller, the Buyer shall be entitled to the suspension of the partial or all of the payment.

Without prejudice to any other right or remedy of the Buyer, the Buyer reserves the right to offset any amount owing at any time from the Seller or its Affiliates to the Buyer or any Affiliate of the Buyer against any sums payable by the Buyer or its Affiliates to the Seller or any Affiliates of the Seller under the Agreement or any other agreement or circumstance.

#### 5. Transfer of Ownership and Risk

Notwithstanding any terms relating to delivery and freight in the Agreement, the ownership and risk of loss in the Products shall remain with the Seller until the Products are actually delivered to and accepted at the destination designated in writing by the Buyer or the personnel designated by the Buyer.

#### 6. Insurance

The Seller shall obtain and, at all times during the term of the Agreement, maintain at its own expense, with first rank insurance companies, insurance coverage as required by law or customarily subscribed to by product supplier of businesses similar to that in which the Seller is engaged (whichever has higher requirements).

In addition, during the Agreement and the Warranty Period after the expiration of the Agreement, the Seller shall take out and maintain in force (a) a public liability insurance; and (b) an extended product and/or professional liability insurance, allowing cover up to the possible maximum amounts in line with prudent business practices.

Upon the Buyer's written request, the Seller shall provide the Buyer insurance certificates including the details of the coverage provided and the policy period. The Seller shall: (a) do nothing to invalidate any insurance policy or to prejudice the Buyer's entitlement under it; and (b) notify the Buyer if any policy is (or will be) cancelled or its terms are (or will be) subject to any substantial change.

#### 7. Delivery

Time is of the essence with respect to the Agreement. Delivery on the Agreement must be made in the quantities and on the dates specified by the Buyer. The Buyer, at its discretion, may reject the early or excessive delivery of the Products.

The Seller shall properly pack, clearly label and adequately protect the Products against damage and deterioration in transit. Unless otherwise stated in

方应立即将差价退还给买方。不管是否基于材料、人工或运输成本增加、汇率浮动的原因或任何其他原因，未经买方事先书面同意，产品价格均不得变动，也不得收取额外费用。

#### 4. 支付

支付条款应由买方和卖方书面约定，并在协议做出规定。除非协议另有规定，卖方应在每次交付时或交付后就该批次的每一项产品向买方开具发票，买方如无异议，应在收到该等发票后适时安排付款。在任何情况下，买方若对于卖方所交付产品或有关附随义务的履行有任何异议的，有权暂停部分或全部付款。

在不损害买方任何其他权利或救济的前提下，买方保留在协议或任何其他协议或其他情形下，随时以其或其关联方未付给卖方或卖方关联方的任何款项与卖方或卖方关联方应付给买方或买方关联方的任何款项相抵销的权利。

#### 5. 权属与风险转移

尽管协议中对交付和货运做出了相关规定，在产品实际交付至买方书面指定目的地并被买方或买方指定人员接受之前，产品的所有权属于卖方，且其毁损灭失的风险均应由卖方承担。

#### 6. 保险

卖方应就整个协议期间自费向一流保险公司购买并全程保有保险，保险范围依据有关法律或参照从事卖方同类业务的产品供应商所适用的惯例（以更高要求者为准）。

此外，协议期间以及协议到期后的产品质保期内，卖方应投保并保持如下保险效力(a) 公共责任险；和(b) 额外产品责任险和/或职业责任险，该等保额应满足符合审慎商业活动所需的最大可能金额。

基于买方的书面要求，卖方应当向买方提供显示投保范围和投保期限明细的保险证明。卖方：(a) 不得做出任何导致任何保单的无效或损害买方就上述保单将享有的权利的行为；且(b) 应当在保单被（或可能被）撤销或其条款发生（或将发生）实质变化时通知买方。

#### 7. 交付

就协议而言，时间至关重要。协议项下的交付应依据买方要求按时并按量完成。买方可根据需要拒收提早或超额交付的产品。

卖方应对产品进行妥善包装、标注清晰、并进行充分保护以避免运输过程中的损毁。除非协议另有规定，产品应在

the Agreement, the Products shall be delivered during normal business hours to the Buyer's place of business or other places as may be specified in the Agreement, and be accepted by the personnel designated by the Buyer. The Seller shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the Agreement number, date of Agreement, number of packages and contents.

The Seller shall supply the Buyer upon delivery of the Products with all operating and safety instruction, warning notices clearly displayed, and other information as may be necessary for their proper use and maintenance of the Products.

The Seller will repair, resupply or replace free of charge the Products damaged or lost in transit or during loading/off-loading or stacking, provided that the Buyer gives written notice to the Seller of the damage or losses within a reasonable time.

The Seller must deliver the Products to the Buyer within the time schedules as prescribed in the Agreement .

The receipt and/or payment of all or part of the Products shall not be construed as a waiver of any contractual or legal rights or remedies by the Buyer.

#### **8. Inspection and Rejection**

The Seller undertakes to deliver the Products of the quantity, quality and description which correspond strictly to the technical specifications, quantity, quality, description and any other requirements specified in these Terms and Conditions, the Agreement, and the quotation provided by the Seller to the Buyer that has been expressly accepted in writing by the Buyer, and coincide strictly with the sample accepted by the Buyer.

The Products shall be without defects and shall be new and unused. The Seller shall undertake that the Products comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Products.

The Buyer shall have right to conduct inspection at the Seller's production premises at any time.

After delivery, the Buyer shall have the right to inspect and test Products and the Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Products. Regardless of the results of the inspection and testing by the Buyer, and whether or not the Buyer inspects or tests the Products, the warranties against nonconformity which shall be provided by the Seller in accordance with these Terms and Conditions, the Agreement and relevant laws and regulations shall not be affected. The Buyer may return any nonconforming Products at the Seller's risk and expense. The right to reject shall extend to the whole or any part of a delivery.

#### **9. Changes**

The Buyer may at any time by written notice to the Seller request changes to the Agreement including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. In response to such request, if such changes result in additional charges, the Seller agrees to provide in three (3) working days written quotations, including any changes to the Price,

正常工作时间交付至买方营业场所或协议规定的其他场所，并由买方指定人签收。卖方应保证在每次交付时随附显著标识的发货通知，其应特别说明协议编号、协议日期、包裹和内容数量。

卖方在产品交付时应向买方提供所有操作和安全指示、显著标识的警告提示、以及对正确使用和维护产品所需知悉的其他信息。

卖方就运输或装卸或码垛过程中毁损或遗失的产品予以免费维修，重新供应或替换，只要买方在合理时间内书面通知卖方有关损毁或遗失情形的即可。

卖方必须在协议规定的进度要求内将产品交付买方。

对全部或部分产品的接收和/或付款，不应被诠释为买方放弃任何约定或法定的权利或救济。

#### **8. 检验和拒收**

卖方保证所交付的产品的质量、数量和描述应当与在本条款、协议、和卖方向买方提供并经买方书面明示同意的报价单中规定的技术规格、质量、数量、描述和其他任何要求严格符合，并与经买方同意的样品严格一致。

产品不得有缺陷，并应为全新且未经使用的。卖方应确保产品符合所有适用的有关产品制造、包装、包装物、以及交付的相关标准、法律法规和/或其他法律要求。

买方有权随时进入卖方生产场所进行检查。

交付后，买方有权检验和测试产品，卖方不得无故拒绝买方进行该等产品的检验和检测。不论买方检验和测试产品之结果如何，亦不论买方是否检验和测试产品，均不影响卖方依据条款、协议及相关法律法规所应承担的瑕疵担保责任。买方可退还任何检测不合格的产品，相关风险和费用由卖方承担。该等拒收权适用于每个交付批次的整体或部分。

#### **9. 变更**

买方在任何时候均可通过书面通知卖方要求变更协议，包括对图纸或规格、运输方式、数量、包装或交付时间或交付地点的变更。作为对该等要求的回应，如有关变更造成费用增加，卖方同意在三（3）个工作日内提供书面报价，并说明任何产品价格、发货日期或交付日期的变化，但是如买

shipment or delivery dates, however if no written quotations are received by the Buyer from the Seller within the above period, it shall constitute the unconditional acceptance by the Seller to the Buyer's change requests and such changes to the Agreement shall be effective upon the expiration of the above period.

Any claim or adjustment proposed by the Seller must be approved by the Buyer in writing before such proposed claims or adjustments become binding on the Buyer, otherwise, the Seller shall perform in accordance with the original Agreement.

The Seller shall notify the Buyer in writing of any changes during the term of the Agreement at least three (3) months (unless otherwise requested by the Buyer) prior to the occurrence of these changes, including but not limited to the changes of working places, technician modifications, raw materials, or any other changes that may affect the quality of the Products.

## 10. Warranty

The Seller represents and warrants to the Buyer that the Products shall be of satisfactory quality, material and workmanship, and be merchantable, free of defect in design, material and workmanship, and fit for any purpose for which they are intended and shall conform to the specifications set forth in the Agreement. In addition, the Seller represents and warrants that (a) the Products shall be adequately contained, packaged or labeled and shall conform to the affirmations of fact stated thereon; (b) the Products will comply with all statutory requirements, applicable laws and regulations, and industry standard relating to the Products and their sale, use and supply; (c) in performing its obligations under these Terms and Conditions and the Agreement, the Seller shall fully comply with all applicable laws and regulations and the Seller and its concerned Affiliates and agents, subcontractors and their personnel shall obtain and remain all the necessary qualifications and licenses for the performance of the obligations by the Seller; (d) the Products or the intended use thereof do not infringe the intellectual property rights or trade secrets of any third party; (e) any services included in the Products shall be performed in a professional manner, and at least in accordance with the most stringent applicable industry standards, and shall conform to the requirements and specifications set forth in the Agreement; and (f) according to the intended use and/or the Buyer's requirements, the delivered Products and their components, parts, accessories, packing and manufacture process shall be compliant with all the applicable laws, regulations and industrial standards (including their amendments and updates) regarding to the hazardous substances, including without limitation to the Restriction of the Use of Certain Hazardous Substances (RoHS) (Directive 2011/65/EU and its amendment Directive (EU) 2017/2102) and, the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) (Regulation (EC) No. 1907/2006). The Seller further represents and warrants that it is able to transfer, and upon the Buyer's acceptance thereof does transfer, to the Buyer good and marketable title to the Products free from any encumbrances. All the representations and warranties set forth in this Section 10 shall be in addition to any other warranties, expressed or implied, available to the Buyer. Neither inspection nor acceptance of the Products shall impair any of the foregoing warranties.

Unless otherwise agreed by the parties in the Agreement, the Seller undertakes a Warranty Period ("**Warranty Period**") for the supplied Products of one (1) year, starting from the acceptance by the Buyer of such Products upon delivery. However, (a) a longer term of warranty shall be prevailingly applied as Warranty Period once recommended by the applicable laws, regulations and

方未在前述期限内收到卖方的书面报价, 应视为卖方无条件同意买方的变更要求, 该等协议变更自前述期限到期后生效。

卖方的任何要求或调整必须经买方书面批准后方可对买方具有约束力, 否则卖方仍应按照原有协议内容履行。

卖方应就协议期间内任何可能影响产品质量的变更, 包括但不限于工作场所、技术人员变动、原材料或其他变更, 在该等变更发生前至少提前三 (3) 个月 (买方另有要求除外) 书面通知买方。

## 10. 保证

卖方向买方声明并保证, 产品应满足质量、材料、工艺、适销性要求, 不存在设计、材料、工艺缺陷, 符合其目标用途, 并应当与协议规格相符。此外, 卖方声明并保证 (a) 产品应充分填充、包装或贴标, 且其上述内容应与事实相符; (b) 产品应符合与产品及其销售、使用和供应相关的所有法定要求、适用法律法规和行业标准; (c) 为履行本条款和协议项下义务, 卖方应全面遵守所有适用法律法规, 卖方及其有关的关联方、代理、分包商以及他们的人员应取得并保持因卖方履行义务所需的所有资质和许可; (d) 产品或其目标用途不会侵害任何第三方的知识产权或商业秘密; (e) 与产品相关任何服务应以专业方式履行, 且应至少符合所适用的最严格的行业标准, 并应符合协议规定的要求和规格; 且 (f) 根据产品的目标用途和/或买方的要求, 所供产品及其组件、零部件、配件、包装、制造工艺等应符合所有适用的涉及有害物质使用的法律法规及行业标准和其修正案和更新版本, 包括但不限于: 限制使用某些有害物质指令 (RoHS) (指令 2011/65/EU 和其变更案指令 (EU) 2017/2102) 以及化学品注册、评估、许可和限制法规 (REACH) (法规 (EC) 1907/2006)。卖方进一步声明并保证其能够向买方转让, 并能够经买方同意后实施向买方转让, 有效的并可流通的所有产品的所有权, 且产品不存在任何权利负担。在第 10 条项下的所有的声明和保证的基础上, 买方可以一并适用其他明示或默示的保证。对产品的检验或接受均不得损害任何前述保证。

除非双方在协议中另有约定, 卖方就所供产品承诺为期一 (1) 年的质保期 ("**质保期**"), 自产品交付并经买方接受之日起算。但是, (a) 如适用法律、法规或行业标准另有推荐适用更长的责任期限的, 质保期应从其规定; 且 (b) 如有替换、补充或重新供应的产品的, 其质保期应自该等替换、补

industrial standards; and (b) in case of any replacement, replenishment or resupply of any Products, their corresponding Warranty Period shall be restarted upon the acceptance thereof by the Buyer. During the Warranty Period, the Seller shall warrant to arrange professional personnel to solve quality issue notified by the Buyer on site, within one (1) working day upon receiving such notice by the Seller.

#### 11. Limitation on Damages

The Buyer's liability and the Seller's recovery, for any injuries, losses, damages, expenses, costs or other liabilities arising out of the cancellation of the Agreement by the Buyer, any breach of these Terms and Conditions and the Agreement by the Buyer, or the Buyer's other acts or omissions (including negligence) shall be limited to the lesser of (a) the actual and direct losses incurred by the Seller for its manufacture and/or delivery of the Products in question prior to such cancellation, breach, or other acts or omissions, or (b) the Price of the concerned Products. In no event shall the Buyer be liable for any lost profits, punitive, special, consequential, indirect, exemplary, incidental damages and relevant expenses.

#### 12. Remedy and Indemnity

If the Seller fails to deliver the Products on the due date, including without limitation failure or impossibility deemed by the Buyer to perform the obligations of replacement, replenishment or resupply by the Seller within the period required by the Buyer, or delay in implementing the agreed warranty obligations, then, without prejudice to any other legal and contractual rights and remedies which the Buyer may have, the Buyer shall have the right to:

- a. Charge the Seller a liquidated damage in the amount of 0.1% of the total amount of the purchase order for each day of delay in delivery; and/or
- b. Cancel the Agreement in whole or in part by a written notice with immediate effect and require the Seller to refund all or part of the Price that has been paid; and/or
- c. Reject any subsequent delivery of the Products which the Seller attempts to make; and/or
- d. Require the Seller to perform and/or rectify within the designated term; and/or
- e. Require the Seller to replace, replenish or resupply the Products nonconforming to the requirements under the Agreement within the designated term; and/or
- f. Purchase or otherwise acquire the Products ordered under the Agreement elsewhere on such terms or in such manner as the Buyer may deem appropriate, with any excess Loss and Expense (defined as below) borne by the Seller; and/or
- g. Require the Seller to compensate any additional Loss and Expense incurred by the Buyer within the designated term.

Except for the above-mentioned remedies, the Seller will indemnify, hold harmless and, upon the Buyer's request, defend at the Seller's sole cost and expense, the Buyer, its agents, officers, directors and employees, the Buyer's distributors, dealers and all entities which purchase the Products or goods into which the Products are incorporated, and their respective customers, against any suit, arbitration, action, administrative penalty, proceeding, judgment, liability, and Loss and Expense occasioned by, arising out of, relating to or alleging any claim for injury, death, damage or loss to any person or any property or any consequential or incidental damages resulting from, caused or contributed to by (a) any fault, defect or alleged defect of the Products, (b) the Seller's breach of any provision of these Terms and Conditions or the Agreement, (c) any act, fault,

充或重新供应经买方接受后重新起算。质保期内, 卖方应保证在接到买方质量问题通知后一 (1) 个工作日内安排专业人员上门解决。

#### 11. 损害限制

因买方取消协议、买方对本条款和协议的违约、或买方的其他行为或疏漏 (包括主观疏忽) 而引起的任何伤害、损失、损害、费用、成本或其他责任, 买方所担责任和卖方所受补偿应限于以下两者中的较低者: (a) 在该等取消、违约、或其他行为或疏漏发生前, 卖方因制造和/或交付问题产品所发生的实际直接损失, 或(b) 涉事产品的产品价格。在任何情况下, 买方均不对任何的利润损失、罚金、特别损害、后果性损害、间接损害、惩罚性损害赔偿、附带损害及相关费用承担责任。

#### 12. 救济和赔偿

如卖方未能在约定时间向买方交付产品, 包括但不限于卖方未能或买方认为卖方不可能在买方要求时间内依约履行替换、补充或重新供应义务, 或卖方逾期履行约定质保责任的, 则在不影响买方享有的任何其他法定和约定的权利和救济的情况下, 买方有权:

- a. 每延迟交付一天, 向卖方收取采购订单总金额 0.1% 的违约金; 和/或
- b. 通过书面通知立即部分或全部取消协议并要求退还部分或全部已支付产品价格; 和/或
- c. 拒收卖方试图交付的任何后续批次的产品; 和/或
- d. 要求卖方在指定期限内履行和/或整改; 和/或
- e. 要求卖方在指定期限内对不符合合同要求的产品予以替换、补充或重新供应; 和/或
- f. 根据买方认为合适的条件或方式, 从其他渠道采购或以其他方式获取协议项下的产品, 因此发生的额外的损失和费用 (定义见下) 由卖方负责; 和/或
- g. 要求卖方在指定期限内赔偿买方所受的任何额外的损失和费用。

除上述救济外, 卖方应基于买方要求并自担成本和费用, 就下列情形造成、引发、或导致的伤害、死亡、侵害、或损害提起的任何人身、财产、或任何后果性或附带性损害所偶然引起的、引发的、或相关的或声称的任何诉讼、仲裁、司法程序、行政处罚、程序、审判、责任和损失和费用, 对买方及其代理、高管、董事、雇员、买方的分销商、经销商、和所有采购产品或含产品的商品的实体、及其相应的客户进行赔偿、为其辩护、并使其免于任何索赔: (a) 任何产品的故障、缺陷或声称的缺陷; (b) 卖方对条款或协议的违约; (c) 卖方或其代表人员或代表实体的任何行为、过失、或疏忽, 或(d) 因产品的任何制造、销售、或使用而引

or negligence of the Seller or any person or entity acting on its behalf or (d) any infringement, misappropriation or other violation of the patent, trade secret, trademark, trade name, or other intellectual property right of any other person, firm, corporation or other entity arising from the manufacture, sale or use of any of the Products. In connection with the Products or otherwise, if the Seller's employees, agents, subcontractors or other representatives are present at any premises of the Buyer, the Seller shall be responsible for the acts and omissions of such persons within or about the Buyer's premises and agrees to indemnify and hold the Buyer harmless against liability for damage to property or injury to or death of persons arising out of acts or omissions of such persons. In the event of a claim by a third party against the Buyer which may be the subject of indemnification, the Buyer shall provide written notification thereof to the Seller. The Seller shall provide the Buyer with such reasonable assistance in the prosecution of any defense as the Buyer may request. The Seller will, in respect of any third party claim or suit, reimburse the Buyer for the attorney fee and other actual defense expenses paid by the Buyer and /or the Buyer's insurance carriers, and for the actual amount of any settlement or final judgment award paid by the Buyer and/or the Buyer's insurance carriers.

**"Loss and Expense"** in the Section 12 and hereunder shall mean all losses, costs, damages, expenses (including without limitation to legal fees such as litigation and arbitration fees, investigative and evidentiary fees, attorney fee, etc.), taxes, fines, charges, penalties, liabilities and/or settlement or judgement amounts incurred under these Terms and Conditions and under the Agreement.

Both parties acknowledge and agree that any computation (and the resulting accrual) of any liquidated damage serves as a genuine pre-estimate of the Buyer's losses in circumstances where such liquidated damages are to be computed and accrued in accordance with these Terms and Conditions.

### 13. Recall

If the Seller becomes aware that the Products or any component of the Products is or may become harmful to persons or property, or that the design or construction of the Products is defective in any manner which is or may become harmful to persons or property, or if the Seller otherwise breaches any of its warranties to the Buyer hereunder, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer, and the Seller shall indemnify, defend and hold the Buyer and any Affiliates of the Buyer, and their successors, clients, distributors, dealers, agents, directors, shareholders, officers, employees, and those using the Products, harmless from and against any and all suit, arbitration, action, administrative penalty, proceeding, judgment, liability, and Loss and Expense paid or incurred by them arising out of, or relating or incidental to such Products provided by the Seller, including, without limitation, any costs associated with recalling such Products. The Buyer may, at its option, be represented by and actively participate through its own counsel in any suit, action, or administrative proceedings against the foregoing persons and entities.

### 14. Quality and Audits

The Seller undertakes to and shall cause its Affiliates, agents and subcontractors (if any) undertake to: (a) establish and maintain a quality control system acceptable to Umicore for the Products ("**QC System**"); and (b) keep and maintain complete and accurate books and records regarding the manufacture and supply of the Products ("**Books and Records**"). Umicore and/or the Buyer may, at any time during normal business hours within the term of all the

起的, 对任何其他个人、公司、企业、或实体的专利、商业秘密、商标、商号、或其他知识产权的任何侵权、滥用、或违法行为。无论是否与产品相关, 当卖方雇员、代理、分包商、或任何代表出现于买方的任何场所时, 卖方应当对在买方场所区域内或周围的该等人员的行为和疏忽负责, 并同意就该等行为或疏忽赔偿买方、并使买方免于对财产损害或人身伤害或死亡承担责任。如有第三方向买方索赔并且买方可能成为赔偿主体的情形, 买方应就此向卖方提供书面通知。卖方应基于买方可能的要求在诉讼中对买方予以合理的辩护协助。就任何第三方索赔或诉讼, 卖方将赔偿买方律师费和其他由买方和/或买方保险人支出的实际辩护费用, 以及买方和/或买方保险人实际支出的任何解决或最终裁判金额。

第 12 条以及下文的 **"损失和费用"** 指本条款和协议项下产生的所有损失、成本、损害、费用 (包括但不限于诉讼仲裁费、调查取证费、律师费等法律费用)、税收、罚款、收费、处罚、责任和/或和解或裁判金额等。

在上述违约金将根据本条款计算并累积的情况下, 双方确认并同意对上述违约金的计算 (及其累积) 将作为买方损失的真正预估。

### 13. 召回

如卖方知悉产品或产品的任何组成部件存在或可能构成对人体或财产的侵害, 或产品的设计或构造存在缺陷且该等缺陷将以某种方式存在或可能构成对人体或财产的侵害, 或卖方以其他方式违反其对买方的保证, 卖方应立即就此向买方发出通知, 通知应包含所有相关信息, 且卖方应就此对买方及其关联方, 及他们的继任者、客户、分销商、经销商、代理、董事、股东、高级管理人员、雇员和其他产品使用者做出赔偿、为其辩护、并使上述对象免于卖方提供的产品引起、或产品相关或附带的任何和所有诉讼、仲裁、司法程序、行政罚款处罚、程序、审判、责任和损失和费用, 包括但不限于有关产品召回相关的任何成本。买方可据其所需由其自己的律师代表并主动参与任何就上述个人和实体提起的诉讼、司法程序或行政程序。

### 14. 质量和审核

卖方承诺履行并应当使其关联方、代理和分包商 (如有) 承诺履行如下要求: (a) 建立并维持优美科可接受的产品质量控制体系 ("**质量控制体系**") ;和 (b) 保存和维护有关产品制造和供应的完整准确的账簿和记录 ("**账簿和记录**") 。优美科和/或买方可不经通知, 自行或通过其代理或咨询方, 在所有协议有效期内及最后一份协议到期或终止

Agreements and before the expiration or termination of the last Agreement, exert without prior notice by itself or its agents or consultants on-line or on-site audit and inspection of the QC System and the Books and Records of the Seller and its Affiliates, agents and sub-contractors and for the purpose of such audit and inspection interview their relevant personnel, to determine the compliance of the Seller and its Affiliates, agents and sub-contractors with the Agreement and these Terms and Conditions. The Seller shall coordinate with Umicore and/or the Buyer during such audit and inspection, including without limitation providing Umicore with the equipment, facilities, access to the concerned premises, personnel, and documents and other conveniences necessary to complete any such audit and inspection.

### 15. Intellectual Property Rights

The Seller warrants that its Products or the intended use thereof does not infringe any patent, copyright, registered design, trademark, trade name, trade secret and other intellectual property right of a third party. Without affecting other rights of the Buyer, the Buyer, at its option, may require the Seller (a) to procure at the Seller's expense for the Buyer and the Buyer's customers the right to use the Products, (b) to take such action to alter, modify or replace the Products, such that it no longer infringers, provided however that this does not cause any adverse effect on the Products or its intended use, or (c) to refund the Price or the corresponding part thereof, with interest, upon the return by the Buyer of the infringing Products.

The Seller grants to the Buyer a non-exclusive, eternal, irrevocable, global and transferable right to use any intellectual property rights regarding the Products, and to transfer or sublicense such right of use to (possible) purchasers or other third parties with whom the Buyer has relations in respect of the running of its business.

Insofar as the Buyer makes available to the Seller any means in respect of which the Buyer possesses an intellectual property right, such as but not limited to samples, drawings, sketches, diagrams, specifications, computation notes, engineering documents and other documents relating to the Agreement, the Seller acknowledges that Umicore and/or the Buyer is and shall at all times remain the owner of such means and that the Seller shall not obtain any intellectual property rights or title as regards such means. The Seller shall manage all means referred to in this paragraph at its own risk and expenses and keep them strictly confidential. The Seller commits itself not to use the means for or have the means used by third parties except to the extent the Seller has been authorized in writing by Umicore and/or the Buyer to do so.

If the Seller, within the scope of the Agreement, develops Products, in the largest possible sense of the word, for the Buyer, then any intellectual property rights to be derived shall accrue exclusively to the Buyer. Any fee for this shall be deemed to be included in the agreed Price. Insofar as necessary, the Seller shall render full assistance in the creation, the registration in the name of the Buyer, or the transfer to the Buyer of such rights.

Without prior written permission of Umicore, the Seller and its Affiliates shall not by itself or allow others to (a) use, change or remove any trademark, trade name, trade dress, logo or other marks in which Umicore or its Affiliates may have interests; (b) use any opinion of Umicore or its Affiliates or its abbreviation, its excerpts for publicity; or (c) in any way advertise the transaction or the existence of the transaction between the Seller and Umicore or its Affiliates.

前，在正常营业时间内的任何时间，远程或进入卖方及其关联方、代理和分包商的场所审核和检查质量控制系统以及账簿和记录，并为审核和检查之目的访问他们的有关人员，以确定卖方及其关联方、代理和分包商是否遵守协议和本条款的要求。卖方应配合优美科和/或买方对于卖方及其关联方、代理和分包商进行审核，包括但不限于为完成该等审核和检查提供必要的设备、设施、场所出入和接触有关人员和文件的权限以及其他便利。

### 15. 知识产权

卖方保证其提供的产品或其目标用途不会侵犯任何第三方的专利权、著作权、经登记的设计、商标、商号、商业秘密及其他知识产权。在不影响买方其他权利的同时，买方还有权自行决定是否要求卖方(a) 由卖方自付费用，为买方和买方的客户获取使用该产品的权利；或(b) 采取行动变更、修改或替换涉及的产品，以确保其不再侵犯他人的权利，但前提是上述行动不应对产品或其使用造成任何不利影响；或(c)在买方退回侵权产品时，向买方返还产品价格或其对应部分，并加计相应利息。

卖方授予买方非独占性的、永久性的、不可撤销的、全球性的且可转让的产品相关知识产权的使用权、以及与向买方有业务往来的（潜在）采购方或其他第三方转让或分许可该等使用权的权利。

为此，买方允许卖方接触其占有知识产权的相关介质：包括但不限于样品、图纸、草图、图表、规格、计算注解，工程文件和其他与协议有关的文件，卖方承认优美科和/或买方是且应当在任何时候是该等介质的所有人，且卖方不得获得该等介质相关的任何知识产权或所有权，卖方对该等介质不享有任何知识产权或所有权。卖方应自担风险和费用管理所有的介质，并将其严格保密。除非是在卖方已获得优美科和/或买方的书面授权的范围，卖方承诺不将该等介质用于第三方，也不得允许第三方使用该等介质。

如卖方在协议范围内，为买方开发产品（此处适用于该词语的最大可能含义进行解释），由此衍生的任何知识产权应归买方独占所有。与此相关的所有费用应视为已计入约定的产品价格。因此，卖方应就买方名义创设和注册该等权利或向买方转让该等权利提供全面协助。

除非经优美科的事先书面同意，卖方及其关联方不得自行或许可他人：(a)使用、修改或移除优美科或其关联方享有任何利益的商标、商号、商业外观、或其他标记符号；(b)不得将优美科或其关联方的任何意见书或其节略、摘选片段做任何宣传使用，(c)也不得以任何方式宣传与优美科或其关联方的交易和交易关系存在的事实。

For any breaches of the aforesaid by the Seller and its Affiliates, Umicore and its Affiliates are entitled to the termination of the transactions with the Seller and its Affiliates by sending written notice and compensation of all the Loss and Expense caused thereby or in relation thereto. However, in no event, this term will cause any limitation to the contractual or legal rights and remedy entitled by Umicore and its Affiliates.

#### **16. Termination**

The Buyer may terminate all or any part of the Agreement at any time or times by written notice to the Seller: (a) if the Seller fails to observe or comply with any covenants, terms, conditions or warranties contained in these Terms and Conditions and the Agreement; (b) if the Seller, in the Buyer's opinion, fails to make progress so as to endanger performance or shipment in accordance with these Terms and Conditions and the Agreement; or (c) if there is any proceeding by or against the Seller in bankruptcy or insolvency.

Except for the above, the Buyer shall be entitled to unilaterally termination of the Agreement in whole or in part for any reason upon thirty (30) days' prior notice to the Seller, and under such circumstance, the Buyer shall pay to the Seller reasonable expense occurred for the purpose of these Terms and Conditions and the Agreement with sufficient proof documents provided by the Seller under the Buyer' request. Upon termination, the Seller shall make every reasonable effort to mitigate the termination costs and the Buyer's liability to Seller shall be limited to the Price for the Products have been delivered to, inspected and accepted by the Buyer in accordance with the Agreement.

Notwithstanding the above rights to terminate the Agreement, the Buyer shall unaffectedly have all other rights and remedies provided by law, under these Terms and Conditions and under the Agreement, and all of the Buyer's rights, indemnity and remedies shall be cumulative and none shall be considered exclusive.

#### **17. Force Majeure**

Either of the parties may suspend performance during the occurrence of an event of force majeure, which shall mean any delay or impossibility of performance directly or indirectly caused by, or that in any manner arises from events and causes beyond such party's reasonable control, including but not limited to acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, riots or embargoes, or without limiting the foregoing, any other cause or causes, whether or not similar in nature to any of these herein before specified, which are beyond its reasonable control. The party claiming force majeure shall give written notice to the other party as soon as possible to mitigate the losses that may be caused to the other party, and shall provide proof of the force majeure within a reasonable period of time. The Buyer shall have right to, at its sole option, cancel any Agreement or any part thereof without any charge or penalty, and obtain the Products under the Agreement from other sources for the duration of the Seller's inability to perform due to the occurrence of an event of force majeure and to reduce the quantity of the Products against the delivery schedule specified in any Agreement without charge or penalty. The Buyer may also terminate, with notice to the Seller, the Agreement if the force majeure event has been continuous in effect for a period beyond three (3) months.

如有违反前述规定的，优美科及其关联方有权通过书面通知立即终止与卖方及其关联方的任何或全部交易，并向卖方及其关联方索赔由此引起或与之相关的一切损失和费用。在任何情况下，本条均不限制优美科及其关联方享有的任何约定和法定的权利和救济。

#### **16. 终止**

买方可书面通知卖方在下列任何时候完全或部分终止协议：(a) 如卖方未能遵守或遵照本条款和协议项下的任何契约、条款、条件或保证；(b) 如买方认为卖方未能取得进展以至于危及本条款和协议的履行或运输的；或(c)存在卖方提起的或针对卖方的任何破产或清算程序。

除前款以外，买方有权提前三十（30）天通知卖方后单方面以任何理由完全或部分终止协议，但在此情形下，买方应在卖方按照其要求提供充分证明文件后向卖方支付其为实现协议目的已经发生的合理费用。卖方应尽一切努力降低买方因终止协议需支付的费用，买方对卖方的责任以根据协议规定而已交付并验收合格予以接受的产品对应的产品价格有限。

尽管有上述终止协议的权利，买方依法享有和本条款和协议项下的所有其他权利和救济应不受影响，所有买方的权利、赔偿和救济应是累计叠加的且不设限额的。

#### **17. 不可抗力**

任何一方可以在如下不可抗力情形发生期间中止履行，即是指因超过一方合理控制的事件或原因直接或间接或以其他方式引起的任何延误或不能履行，包括但不限于天灾、政府机构的行为与疏漏、宣战或不宣而战、恐怖主义、爆炸、火灾和自然灾害（如洪水、地震、风暴、和流行病），法律变更、暴动或禁运、或不限于上述的不论性质相似与否的其他超过其合理控制的理由或事由。主张不可抗力的一方应尽快向另一方发出书面通知，以减轻可能给对方造成的损失，并应当在合理期限内提供证明。买方有权独立决定取消任何协议或其任何部分，而无需承担任何费用或赔偿，且在卖方因不可抗力情形发生而无力履行且降低协议规定交付进度内的产品量时，买方还有权独立决定从其他渠道获取协议产品，而无需承担任何费用或赔偿。在不可抗力情形持续影响达三（3）个月以上的情况下，买方亦可通知卖方终止协议。

## 18. Compliance

The Seller acknowledges that it has reviewed the following Umicore Compliance Policies (“**Umicore Compliance Policies**”) and agrees that all of its and its Affiliates’ activities shall be conducted in accordance with Umicore Compliance Policies. The Buyer may from time to time carry out an audit or other checks on the compliance of Umicore Compliance Policies either performed by itself or any third party and the Seller shall respond promptly to requests from the Buyer for information relating to compliance with the Umicore Compliance Policies by itself and its Affiliates. The contents of the Umicore Compliance Policies shall be a part of the Agreement, and shall be equally valid as the Agreement. The Umicore Compliance Policies can be accessed at the following Internet address:

- a. The Umicore Way  
<https://www.umicore.com/en/about/the-umicore-way>
- b. Code of Conduct  
<https://www.umicore.com/en/investors/governance/documents/code-of-conduct/>
- c. Umicore’s Sustainable Sourcing Policy  
<https://www.umicore.com/storage/group/umicore-global-sustainable-sourcing-policy.pdf>
- d. Umicore policy on “Responsible global supply chain of minerals from conflict-affected and high-risk areas”  
<https://www.umicore.com/storage/main/responsibleupplychainpolicy.pdf>

## 19. Waiver

No waiver by the Buyer of any breach by the Seller of these Terms and Conditions or the Agreement, or delay or failure of the Buyer to enforce any right or remedy, shall be construed as a waiver of any succeeding breach of the same or any other term or condition. Nothing contained herein shall limit any of the remedies of the Buyer in the event of the Seller’s breach of any of these Terms and Conditions or any part of the Agreement.

## 20. Assignment and Subcontracting

The Seller shall not assign or subcontract to any person or entity all or a portion of its rights or obligations under any Agreement or these Terms and Conditions without the prior written consent of the Buyer, to be granted or withheld in its sole discretion, and any attempted assignment without that consent shall be void. Even if the Seller is permitted to assign or sub-contract any part of its contractual obligations to a third party subject to prior written consent of the Buyer, the Seller shall remain the joint liability for such third party’s performance of the relevant obligations.

The Buyer may assign any of its rights and obligations under any Agreement or these Terms and Conditions without the consent of the Seller in the event that the Buyer shall effect or intend to effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer all or substantially all of its properties or assets, or one or more of its businesses or business lines, to any other corporation, partnership, organization or other entity.

## 21. Severability

If any provision of any Agreement or these Terms and Conditions or any part thereof is held by a competent authority to be invalid or unenforceable, the validity of the other provisions of such Agreement or these Terms and Conditions or any part thereof shall not be affected.

## 22. Status of the Seller

## 18. 合规

卖方承认已审阅了如下优美科合规政策（“**优美科合规政策**”）并同意其行为和其关联方的行为应遵守优美科合规政策的要求。买方可不定期就其或任何第三方对优美科合规政策的合规情况进行审计或其他审查，卖方针对买方要求应尽快回复有关其或其关联方对优美科合规政策的合规情况相关信息。优美科合规政策的内容为协议之一部分，与协议有完全相同之效力，其可通过如下网络地址获取：

- a. 优美科之路  
<https://www.umicore.com/en/about/the-umicore-way>
- b. 行为准则  
<https://www.umicore.com/en/investors/governance/documents/code-of-conduct/>
- c. 优美科全球可持续采购政策  
<https://www.umicore.com/storage/group/umicore-global-sustainable-sourcing-policy.pdf>
- d. 优美科关于受冲突影响地区和高风险地区责任的全球矿产供应链的政策  
<https://www.umicore.com/storage/main/responsibleupplychainpolicy.pdf>

## 19. 豁免

买方对于卖方对本条款或协议的违约的任何豁免，或买方对其任何权利或救济的延期或不予实施，不应构成对任何后续同类或其他条款或条件违约的豁免。本条款所列的任何内容，在卖方发生任何条款违约或任何协议违约的情形下，均不构成对任何买方救济的限制。

## 20. 转让和分包

未经买方事先书面同意（买方有权独立决定予以同意或予以保留同意），卖方不得向任何个人或实体转让或分包其在任何协议或本条款项下的全部或部分权利或义务，任何未经同意的试图转让亦归为无效。即使卖方经买方事先书面同意，将任何约定义务转让或分包给第三方，卖方应始终对该等第三方对有关义务的履行承担连带责任。

如果买方需要实施或打算实施重组，与其他企业联合或合并形成其他企业、合伙关系、组织或其他实体，或向任何其他企业、合伙组织、组织或其他实体转让所有或绝大部分财产或资产、或一项或多项业务或业务线，则买方可不经卖方同意转让其在任何协议或条款项下的权利或义务。

## 21. 可分割性

任何协议或本条款项下的规定或其任何部分如被主管机关认定为无效或不可执行，不得影响该等协议或条款项下的其他规定或其他任何部分的效力。

## 22. 卖方状态

Nothing in these Terms and Conditions or any Agreement relating to the Products shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Seller and the Buyer.

### 23. Confidentiality

The Seller shall keep in strict confidence all information obtained from the Buyer and, without the prior written consent of the Buyer, shall not use any such information for any purpose other than the performance of the Agreement. The Seller shall protect the confidentiality of all such information with at least the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable standard of care. For the avoidance of doubt, the Price paid by the Buyer and the Agreement shall be deemed to be confidential information for the purposes of this Section.

The Seller shall refrain from using for publicity and/or other purposes the drawings, sketches, photos, or any other illustrations or documents of equipment or other assets produced on the basis of the Buyer's specifications or otherwise for the Buyer's account.

The Seller is strictly prohibited to take pictures or videos at the Buyer's premises, including from the Products that were delivered by the Seller itself.

The Seller shall ensure that all of its Affiliates, agents and sub-contractors (if any) are contractually obliged to comply with the same confidentiality requirements.

If the Buyer and the Seller execute a separate Non-disclosure Agreement ("NDA"), such NDA shall prevail when these Terms and Conditions conflicts with the NDA.

This Section shall survive the expiration or termination of any Agreement or these Terms and Conditions.

### 24. Governing Law and Dispute Settlement

These Terms and Conditions, the Agreement and any dispute arising out of or in connection with them or their subject matter or formation (including non-contractual disputes) shall be governed by and construed in accordance with the laws of Hong Kong without regards to its conflicts of law provisions. All disputes shall be submitted to China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center. The seat of arbitration shall be Hong Kong.

### 25. Language

These Terms and Conditions are written both in English and Chinese. If there is any discrepancy between the English version and the Chinese version, the English version shall prevail.

本条款或与产品相关的任何协议均不引起或构成买卖双方间的任何合伙关系、合资公司、雇佣协议或雇佣关系，或委托代理关系的设立。

### 23. 保密

卖方应对自买方处获悉的所有信息严格保密，未经买方事先书面同意，不得将该等信息用于除履行协议以外的任何其他目的。卖方应至少以其保护自有保密信息的同等注意标准保护所有该等信息的保密性，且在任何时候都不得低于合理注意要求。为避免疑义，买方支付的产品价格以及协议均应认定为本条项下的保密信息。

卖方应避免以宣传为目的和/或其他目使用基于买方规格生产或以其他方式归于买方名下的设备或其他财产所相关的图纸、草图、照片、或任何其他图示或文本。

严格禁止卖方在买方场所内摄影或摄像，包括对卖方交付产品的摄影或摄像。

卖方应保证其所有的关联方、代理和分包商（如有）就履行同等保密要求承担合同义务。

如买卖双方另行签署保密协议（“**保密协议**”），当本条款与保密协议中的规定冲突时，应以该保密协议为准。

本条规定在任何协议或本条款到期或终止后继续有效。

### 24. 管辖法律和争议解决

本条款、协议、以及由本条款与协议及其标的或成立引起或相关的任何争议（包括非契约性争议）应由香港法律管辖和解释，且不适用冲突法律规范。所有争议应提交中国国际经济贸易仲裁委员会香港仲裁中心仲裁解决。仲裁地应为香港。

### 25. 语言

本条款由英语和中文撰写。如中英文版本间存在不符，应以英文版本为准。