

万益特中国订单条款与条件

VANTIVE CHINA PURCHASE ORDER TERMS AND CONDITIONS

- 一、 **合同**:本订单系买方向卖方发出的要约, 卖方认可接受或开始履行之时, 本订单根据载明的条款与条件, 成为具有约束力的合同。卖方对本订单任何条款或条件有异议的, 需立即与买方联系。买方拒绝接受任何未经其书面同意的补充、例外或者修改, 无论该等变更包含在卖方或者任何其他来源的印刷文件中。为明确起见, 任何未经买方书面同意的补充、例外或者修改与本订单所载条款与条件有任何不一致, 以本订单为准。如果卖方另有与买方签署的供应或服务协议, 且与本订单条款与条件有任何不一致, 以该供应或服务协议中规定的条款和条件为准。本订单适用于万益特中国各法律实体签发的订单, 包括但不限于:

AGREEMENT: This order is Buyer's offer to Seller and becomes a binding contract, subject to the terms and conditions hereof, when accepted by acknowledgement or commencement of performance by Seller. Seller shall contact Buyer if disagree with any terms or conditions hereof without delay. Buyer objects to all additions, exceptions, or changes, whether contained in any printed form of Seller or elsewhere, unless approved by Buyer in writing. To the extent there are any inconsistencies between these additions, exceptions, or changes and those in this order, the latter will prevail. If Seller has concluded with Buyer any additional supply or service agreements, and to the extent there are any inconsistencies between these supply or service agreements and the terms and conditions hereof, the stipulation in the supply or service agreements will prevail. This order applies to Vantive China legal entities, including but not limited to:

百特（中国）投资有限公司（将更名为“万益特（中国）投资有限公司”）

BAXTER (CHINA) INVESTMENT CO., LTD. (its name to be changed to “VANTIVE (CHINA) INVESTMENT CO., LTD.”)

百特医疗用品贸易（上海）有限公司（将更名为“万益特医疗用品贸易（上海）有限公司”）

BAXTER HEALTHCARE TRADING (SHANGHAI) CO., LTD. (its name to be changed to “VANTIVE HEALTHCARE TRADING (SHANGHAI) CO., LTD.”)

苏州万益特医疗用品有限公司

VANTIVE HEALTHCARE (SUZHOU) CO., LTD.

天津万益特医疗用品有限公司

VANTIVEHEALTHCARE (TIANJIN) CO., LTD.

广州万益特医疗用品有限公司

VANTIVE HEALTHCARE (GUANGZHOU) CO., LTD.

金宝医疗器材（上海）有限公司

GAMBRO MEDICAL PRODUCTS (SHANGHAI) CO., LTD.

金宝任（上海）贸易有限公司

GAMBRO SHANGHAI TRADING CO., LTD.

- 二、 **价格**:除非另有规定, 本订单所列价格包含所有包装、装运、仓储、运输至交货地点的费用及税费。卖方保证本订单所报价格不高于其向任何其他买方在同期就类似数量的货物或服务所提供的价格。在交货前卖方给予他人的任何降价买方也应享有。

PRICE: Unless otherwise specified, the prices stated on the order include all charges for packing, hauling, storage, transportation to point of delivery, and taxes. Seller warrants that the prices quoted in this order are no greater than those currently charged any other buyer for similar quantities of goods or services. Any price reduction extended to others by Seller prior to delivery shall also be extended to Buyer.

- 三、 **付款**: 买方将在下列日期中较晚日期起算九十(90)日内就满足所有适用要求的货物和服务支付无争议的款项:

PAYMENT TERMS: Buyer will make undisputed payments for goods and services **that meet all applicable requirements** within ninety (90) days after the later of:

1. 收到订单载明的货物或服务,和
receipt of the goods or completion of performance of the services identified in this order; and
2. 收到完整的发票。
receipt of a complete invoice.

买方对发票中的部分或全部金额持有善意争议的,可以拒绝支付争议金额。买方的付款不构成对任何货物或服务的接受,发票金额可以因任何错误、短缺和缺陷进行调整。任何账单纠纷不构成卖方拒交货物或不履行服务的理由。买方有权经书面通知卖方更新支付条款。

Buyer may withhold payment of any amounts that it disputes in good faith. Payment of an invoice shall not constitute acceptance of any Products or Services, and the invoice will be adjusted for any errors, shortages and defects. Any billing dispute will not be cause for Seller's non-delivery of Goods or non-performance of Services. **Buyer shall have the right to update its payment terms upon written notice to Seller.**

- 四、 **费用报销**: 卖方主张任何费用报销必须事先获得买方书面同意。

REIMBURSEMENT OF EXPENSES: Any reimbursement of Seller's expenses must be agreed upon in advance in writing by Buyer.

- 五、 **变更**: 买方可随时变更本订单涉及的货物或服务的范围或数量,发生此情况时,订单的价格、履行时间和其他相应条款将进行适当的调整。此类调整的索赔必须在卖方收到变更通知之日起十五(15)日内提出。未经买方事先书面同意,卖方不得对数量或规格进行替换或变更。

CHANGES: **Buyer may at any time make changes in the scope or quantity of the goods or services covered by this order, in which event an equitable adjustment will be made to any price, time of performance, and other provisions of this order if appropriate. Claims for compensation for such an adjustment must be made within fifteen (15) days from the date of receipt by Seller of the notice of the change.** Substitutions or changes in quantities or specifications by Seller shall not be made without Buyer's prior written approval.

- 六、 **保证**: 卖方承诺、声明并保证:

WARRANTY: Seller covenants, represents and warrants that:

1. 其提供的货物或服务是适销的,货物的规格、图纸或其他描述与本订单载明内容以及任何买方已接受的样品一致,货物在材料和工艺上不存在瑕疵。货物设计无缺陷,除非货物由买方设计。货物能安全的满足预期目的。卖方保证,其对货物具有完全的所有权,货

物应该是新的, 未经使用或修理, 并且货物和服务交付时应不存在抵押或任何权利限制。

the goods or services ordered shall be merchantable; shall conform to this order, to specifications, drawings, and other descriptions referenced in this order, and to any accepted samples; shall be free from defects in materials and workmanship; shall be free from defects in design unless the design was supplied by Buyer; and shall be fit and safe for the intended purposes. Seller warrants that it has clear title to the goods and that the goods shall be new and not used or reconditioned, the goods and services shall be delivered free of any liens or encumbrances.

2. 货物: 1) 由不含 2,4,6-三间溴茴香醚 (TBA) 和 2,4,6-三溴酚 (TBP) 的托盘货船装运: 以及 2) 遵守与货物的制造、包装和交付有关的所有适用法律法规或其他法律要求。

the goods; (i) are shipped on pallets free of 2,4,6-tribromoanisole (TBA) and 2,4,6-tribromophenol (TBP); and (ii) otherwise comply with all applicable laws and regulations or other legal requirements concerning the manufacture, packaging and delivery of the goods.

3. 卖方将按照所有适用法律, 以称职的、专业的和熟练的方式履行合同, 并具备履行职责所需的资格和专业知识。

it will perform the contract in a competent, professional and workmanlike manner and in compliance with all applicable laws, and it has the required qualifications and expertise to perform.

4. 卖方将遵守买方指南 (及其任何今后的修改), 包括:

it will comply with Buyer's guidelines (and any future modifications thereto), including:

- 1) 卖方及卖方的员工应遵守买方的供应商道德与合规标准, 发布在买方的网站 (vantive.com), 买方可能会不时地进行修改, 卖方确认已收到、阅读并理解该修改的副本;

Seller and employees of Seller will comply with the Buyer's Ethics & Compliance Standards for Suppliers, which can be found on the Buyer's website (vantive.com) and which may be amended by the Buyer from time to time, a copy of which Seller acknowledges having received, read, and understood; and

- 2) 与数据隐私及信息安全相关的指南。

those related to data privacy and information security.

5. 卖方及其任何员工或授权分包商均未: 1) 被任何联邦或州机构列名为禁止或限制资格参与联邦或州项目的对象, 上述公布的排除个人/实体清单 ("LEIE") 的机构包括但不限于: 监察长办公室卫生和人类服务部办公室 (OIG), 美国总务管理局 (GSA) 和/或美国食品和药物管理局 (FDA); 2) 因与任何联邦和/或州项目有关的任何犯罪而被定罪; 或 3) 被列入由美国财政部外国资产控制办公室保存的特别指定国民名单 ("SDN 名单") 或任何其他类似的国内或国外名单。

neither it, nor any of its employees, or authorized subcontractors have: i) been listed by any federal or state agency as excluded, debarred, suspended, or otherwise ineligible to participate in federal and/or state programs, including, but not limited to, exclusion, debarment, or suspension as noted by the List of Excluded Individuals/Entities ("LEIE") issued by the Office of Inspector General of the Department of Health and Human Services Office ("OIG"), the U.S. General Services Administration ("GSA") and/or the Food and Drug Administration ("FDA"); ii) been

convicted of any crime relating to any federal and/or state program; or c) been included on the Specially Designated Nationals list ("SDN List") maintained by the U.S. Department of Treasury's Office of Foreign Assets Control or any other similar list, domestic or foreign.

6. 卖方的任何官员、董事、合伙人、所有者、委托人、雇员或代理均不是政府机构或机构的雇员, 或处于有权影响有关卖方在本订单中所考虑的活动的行动或决定的职位。不管是卖家还是任何受雇于或代表卖家的人员均没有直接或间接向任何官方代表或雇员的任何政府机构, 任何政党或官员或任何公职候选人, 提供、承诺或授权, 且不得向其要约、承诺或授权支付金钱或其他有价物, 以影响其作出与本订单直接或间接相关的有利于买方或卖方的决定, 或确保买方享有不当优势, 或获取或保留业务或商业优势, 或不当履行公职职能或活动。

no officer, director, partner, owner, principal, employee or agent of Seller is an employee of a governmental agency or instrumentality is in a position to influence the actions or decisions regarding the activities of Seller contemplated by this order. Neither Seller nor any person employed by or representing it has made, offered, promised or authorized, or shall make, offer, promise or authorize, either directly or indirectly, payment of money or anything of value to any official representative or employee of any governmental agency or instrumentality, any political party or officer thereof, or any candidate for public office, for the purpose of influencing a decision by any of them to take actions favorable to Buyer or Seller on any matter related directly or indirectly to the subject of this order, securing an improper advantage for Buyer, obtaining or retaining business or a business advantage, or the improper performance of a public official function or activity.

7. 上述保证及由法律规定的其他卖方保证范围应当扩展到买家, 其继承人, 受让人, 和商品或服务的客户和用户, 且覆盖产品整个有效期, 或者如果没有规定有效期则覆盖到货物交付后一(1)年。本保证项下的索赔必须在法律规定的适用期限内提出。

All these warranties and other warranties as may be prescribed by law shall extend to Buyer, its successors, assigns, and customers and to users of the goods or services and shall run through any expiration date stated on the goods, or, if no expiration date is stated, then for a period of one (1) year after delivery. Claims under these warranties must be made within the applicable period prescribed by statute.

- 七、 **检查、检验:** 本订单下购买的货物应在买方处所接受买方合理的检查、测试和审查。如果发现任何货物或服务在材料或工艺上有缺陷, 不符合本订单的保证, 买方有权:

INSPECTION; TESTING: Goods purchased under this order are subject to Buyer's reasonable inspection, testing, and approval at Buyer's destination. If any of the goods or services are found to be defective in material or workmanship, non-conforming to the warranties made herein or not in conformity with the requirements of this order, then the Buyer shall be entitled:

1. 要求卖方在尽可能最快的情况下按照订单要求更换货物或重新提供服务, 或 to require the Seller to supply replacement goods or re-perform the services in accordance with this order as quickly as reasonably possible, or
2. 不管买家是否向卖家提出更换要求, 根据买家的单方决定拒绝接受不符合本订单的货物并向卖方退回货物, 运费由卖方承担, 或主张本订单因卖方违约而终止, 由卖方退回已收取的相关部分的费用。卖方还应赔偿买方因买方收到不合格的产品而产生的所有商业上合理的, 记录和实际发生的成本, 费用, 包括将货物退还给卖方的成本, 和因买方购买替

代货物或服务相关的成本、费用、买方赔偿给客户的赔偿金、替代产品的培训成本、为适配替代产品或服务而对设施进行返工和重新设计的成本、加速运输成本、召回和现场纠正成本、产品重新测试成本、客户和监管机构通知成本以及销毁成本等。本订单下为任何货物的付款不应被视为接受该货物。

at the Buyer's sole option and whether or not the Buyer has previously required the Seller to supply any replacement goods or re-perform the services, to reject and return such goods at Seller's expense or to treat this order as terminated by Seller's breach and require the repayment of any part of the price which had been paid. Seller shall also reimburse Buyer for all commercially reasonable, documented and actually incurred costs and expenses incurred by Buyer as a result of receiving nonconforming goods, including the cost of returning the non-conforming goods to the Seller, the costs, fees and penalties payable by Buyer to a customer, costs and expenses related to or arising from Buyer's purchase of substitute goods or services, incremental training costs for substitute goods and costs to rework and redesign facilities to accommodate substitute goods or services, expedited shipping costs, recall and field correction costs, product re-testing costs and customer and regulatory authority notification costs and costs of destruction. Payment for any goods under this order shall not be deemed acceptance of the goods.

- 八、 **召回**: 由于产品缺陷、未能符合适用法律的规定, 或卖方无法控制的其他任何原因导致产品召回的情形下, 卖方应当承担与召回相关的所有成本和费用, 包括但不限于通知客户费用, 客户退款, 退回商品的成本、利润损失、以及其他由于对第三方所承担的义务而产生的费用。

RECALL: In the event that a recall of the goods is necessitated by a defect, a failure to conform to the specifications, applicable laws, or any other reason within the Seller's control, Seller shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, costs of returning goods, lost profits, and other expenses incurred to meet obligations to third parties.

- 九、 **交货时间表**: 货物的装运或交货应按照订单中规定的时间表进行。如果卖方未能或者有迹象显示其不能遵守时间表, 在无损于买方在法律或者本订单项下的其他权利或救济的前提下, 买方可以要求卖方加速发运以符合上述时间表要求或者弥补买方损失的时间, 由此产生的额外费用由卖方承担。卖方应赔偿买方因延迟交货而遭受的一切商业上合理的、有文件证明的和实际发生的费用和开支, 包括买方应付给客户的费用和罚款。当卖方在三十(30)日内延迟交货超过三(3)次时, 买方有权要求卖方就提供供应商纠正行动计划(SCAR), 就如何解决延迟交货问题向买方进行书面陈述。

SHIPMENT OR DELIVERY SCHEDULES: Shipment or delivery of goods shall be in accordance with the schedule specified in this order. If Seller does not, or it appears that Seller will not, meet such schedule, Buyer may, in addition to any other rights or remedies provided by law or this order, require that Seller ship the goods via expedited routing to meet the schedule or to recover the time lost and Seller shall pay the difference in shipping costs. Seller shall reimburse Buyer for all commercially reasonable, documented and actually incurred costs and expenses incurred by Buyer as a result of late delivery of goods, including the costs, fees and penalties payable by Buyer to a customer. At any such time that Seller exceeds three (3) late deliveries in a thirty (30) day period, Buyer has the right to request a written action plan, normally in the form of a Supplier Corrective Action Plan ("SCAR") from the Seller on how late deliveries are being resolved.

十、 **超额装运**:发生超额装运的情况下,货物超过总订单价格的 10%或 500 美元(以较少者为准) 未经买方书面批准的,货物将被退回,费用由卖方承担。

OVERSHIPMENT: Over-shipment of goods not approved by Buyer in writing will be returned, at Seller's expense, if such over-shipment exceeds 10% of the total order price or \$500.00, whichever is smaller.

十一、 **替代、修改**:未经买方事先书面同意,卖方不得对任何货物、部件、工具、原材料来源、工艺或制造地点进行替代或修改。

SUBSTITUTION, MODIFICATION: No substitution or modification of any goods, component parts, tooling, sources of raw materials, processes, or manufacturing sites may be made without Buyer's prior written consent.

十二、 **赔偿**:对于因下列原因引起的,或者与下列原因有关的任何索赔、责任、损害、损失及开支(包括律师费),卖方应向买方及其继承人、受让人、员工、客户、商品或服务的用户进行赔偿,为之辩护,并保证其免受损害:

INDEMNIFICATION: Seller shall defend, indemnify and hold Buyer, its successors, assigns, employees, customers, and users of the goods or services harmless with respect to all claims, liability, damage, loss, and expenses, including attorney's fees, incurred relating to or caused by:

1. 购买、出售或者使用本订单项下的商品或服务所产生的实际或声称的专利、著作权或商标侵权或其他专有权利侵权:

actual or alleged patent, copyright, or trademark infringement or violation of other proprietary right, arising out of the purchase, sale, or use of the goods or services covered by this order;

2. 实际或声称的服务或者产品设计、制造或者材料的缺陷:

actual or alleged defect in the services or in the design, manufacture, or materials of the goods;

3. 实际或声称的对保证的违反:

actual or alleged breach of warranty;

4. 卖方未能及时提供商品或服务:或

failure of Seller to deliver the goods or services on a timely basis; or

5. 卖方提供的货物或服务不满足任何适用法律的要求。

failure of the goods or services to meet the requirements of any applicable law.

在发生索赔的情况下,买方除可获得的任何和所有其他权利和补救外,买方可单方选择终止本订单或延迟接受订单的剩余货物或服务,直至索赔解决。如果买方被禁止使用货物,根据买方的选择,卖方应当确保买方有权继续使用货物,提供实质等同的替换货物,修改商品使之符合买方的用途,或以订单价格回购货物。本条不应解释为赔偿买方因买方的设计、规格或疏忽而遭受的任何损失。

In the event of a claim under this Section 12, and in addition to any and all other rights and remedies available to it, Buyer may at its option terminate this order or defer acceptance of the balance of the goods or services ordered until the claim is resolved. If Buyer is enjoined from use of the goods, Seller shall at Buyer's option, either procure for Buyer the right to continue using the goods, replace the goods with substantially equivalent goods, modify the goods so as to be usable by Buyer, or repurchase the goods at the price set forth in this

order. This Section 12 shall not be construed to indemnify Buyer for any loss to the extent it is attributable to Buyer's design, specification, or negligence.

- 十三、 **保险**: 如果本订单下的服务须在买方的处所内提供, 卖方应取得物业运营、人身伤害和独立保护责任的保单背书, 并应进一步取得涵盖劳工赔偿、雇主责任和机动车责任的买方接受的保险金额的保险。如果卖方可以接触买方财产、计算机系统和/或数据, 卖方还应取得第三方忠诚/犯罪保险。应买方要求, 卖方应向买方提供保险证明。

INSURANCE: If services are performed under this order on Buyer's premises, Seller shall obtain Premises-Operations, Personal Injury, and Independent Contractors Protective Liability endorsements, and shall further obtain Workers' Compensation, Employer's Liability and Automobile Liability Insurance coverage in amounts acceptable to Buyer, and if Seller will have access to Buyer property, computer systems and/or data, Third Party Fidelity/Crime Coverage. If requested, Seller shall furnish Buyer with a certificate evidencing the required insurance.

- 十四、 **损失风险**: 本订单下货物送达并被买方接受前, 卖方应承担货物损失或损害风险。

RISK OF LOSS: Seller shall bear the risk of loss or damage to the goods covered by this order until they are delivered to and accepted by Buyer.

- 十五、 **责任限制**: 买方不向卖方或任何第三方承担因本订单项下的任何交易产生的任何间接、特殊、附带、结果性或惩罚性损害(包括时间损失、利润损失或销售损失)的责任。

LIMITATION OF LIABILITY: BUYER WILL NOT BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST TIME, LOST PROFITS OR LOST SALES) ARISING FROM ANY TRANSACTIONS UNDER THIS ORDER.

- 十六、 **审计**: 为核实卖方合规执行订单, 买方及其代表有权在合理的时间和地点, 经合理通知:

AUDIT: To verify Seller's compliance with this Order, Buyer and its representatives will have the right, at reasonable times and places and upon reasonable notice, to

1. 检查卖方在制造或提供货物和服务中使用的所有设施、资源和程序; 及
inspect all facilities, resources and procedures employed by Seller in manufacturing or providing the goods and services; and
2. 检查与货品及服务有关的所有帐簿及记录。
examine all books and records relating to the goods and services.

- 十七、 **买方提供材料**: 未经买方事先书面同意, 卖方不应向买方以外的任何人使用、复制、拨付或透露任何材料、工具、模具、图纸、设计或其他买方提供的财产或信息。所有材料所有权始终属于买方, 在可行的情况下, 材料应被明确标注或指明其所有权。在材料返还买方之前, 卖方承担损失或损害风险。所有材料无论是否损坏或使用, 除非买方另有指示, 在本订单终止或届满时应返还买方。

BUYER-FURNISHED MATERIAL: Seller shall not use, reproduce, or appropriate for or disclose to anyone other than Buyer, any material, tooling, dies, drawings, designs, or other property or information furnished by Buyer ("Material") without Buyer's prior written approval. Title to all Material shall remain in Buyer at all times, and where practicable the Material shall be clearly marked or tagged to indicate this ownership. Seller shall bear the risk of loss or damage to the Material until it is returned to Buyer. All Material, whether or

not spoiled or used, shall be returned to Buyer at termination or completion of this order unless Buyer shall otherwise direct.

十八、 **提及买方**: 未经买方事先书面批准, 卖方不得对仅为买方提供的商品或服务有关的、或可能识别买方的作品进行演讲、公布、出版或提交出版。未经买方事先书面同意(买家有权依据其独立意愿决定是否授权或拒绝), 卖方不得在任何广告、文章、新闻稿、社交媒体、宣传材料或网站广告援引买方, 或向任何第三方披露本订单的条款或卖家向买家提供商品或服务事实。

REFERENCES TO BUYER: Seller shall not present, nor publish, nor submit for publication, any work specifically resulting in relation to goods or services supplied solely for Buyer or that identifies or may identify Buyer without Buyer's prior written approval. Seller shall not use Buyer's name in any advertising, articles, press release, social media, promotional materials or website advertising, or disclose to any third party the terms of this order or the fact that Seller is supplying goods or services to Buyer, without Buyer's prior written consent (which is in its sole discretion to grant or withhold).

十九、 **使用卖方信息**: 所有关于本订单透露给买方的信息是买方签发本订单的一部分对价。 这些信息不应视为保密或专有的, 买方、其受让人或者客户不会因透露或使用该些信息而面临任何索赔。

USE OF SELLER'S INFORMATION: All information disclosed to Buyer in connection with this order is furnished as part of the consideration for Buyer's placement of this order. This information is not to be treated as confidential or proprietary, and no claim will be asserted against Buyer, its assigns, or customers, for its disclosure or use.

二十、 **终止**:

TERMINATION:

1. 发生以下情况, 买方可以向卖家发出书面通知的方式终止全部或部分订单, 并不承担任何责任。本订单自卖方收到卖方终止通知之日起全部或部分终止:

Buyer may terminate this order by notice to Seller in writing, in whole or in part, without liability, this order is deemed terminated in whole or in part upon Seller's receipt of the notice:

1) 如果买方合理预见到卖方将违反本订单, 且卖方在买方提出要求后的十(10)日内未能提供履行该订单的充分保证:

if Buyer anticipated Seller's breach of this order and Seller does not provide adequate assurance of its performance within ten (10) days of Buyer's request;

2) 卖方未按规定的时间或数量交付, 或卖方未能在约定的期限或者买方书面同意延长的期限内履行义务:

if deliveries are not made at the time or in the quantities specified, or if Seller fails to perform within time specified or extension agreed to in writing by Buyer;

3) 卖方违反或未能履行订单的其他条款:或

in the event of a breach or failure by Seller to meet other terms of this order; or

4) 如果卖方破产或者根据相关法律规定陷入破产清算程序。

If Seller becomes insolvent or is subject to proceedings under any law relating to bankruptcy, insolvency, or relief of debtors.

买家根据本条款行使解约权不影响买方依法享有的其他救济。

This right shall be in addition to any other remedies provided Buyer by law.

2. 买方可以在任何时候单方决定并随时书面通知卖方终止本订单的全部或部分, 本订单自卖方收到买方终止通知之日起全部或部分终止。 买方行使任意解除权时, 卖方仅能向买方主张根据通知到达时完成订单的比例获得相应比例的报酬, 加上卖方为终止订单和正在进行的工作所产生的合理费用。卖方向买方主张该等索赔必须在终止之日起六十(60)日内提交给买方审核。

Buyer may terminate this order, in whole or in part, at any time for its convenience by notice to Seller in writing. This order is deemed terminated in whole or in part upon Seller's receipt of the notice. Seller's sole compensation for such termination shall be payment by Buyer of the percentage of the total order price corresponding to the proportion of work completed in filling the order prior to such notice, plus any reasonable expenses incurred by Seller in terminating orders and work in progress. Such termination claim must be submitted to Buyer within sixty (60) days of the date of termination and shall be subject to audit by Buyer.

3. 订单因本条任何原因终止的, 订单项下所有设备材料、在制品、成品、计划、图纸、规范、信息、特殊工具和其他物品的所有权归属于买方, 卖方应将上述物品及时提供给买方, 并在交付前采取必要行动以保护上述物品直至妥善交付。

Upon any termination under this Section 20, title to all equipment materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling, and any other items for which Seller may submit a claim shall vest in Buyer, and Seller shall promptly deliver these items to Buyer and take all necessary action to protect such property prior to such delivery.

4. 若卖方违约或者买方有正当权利拒绝接受货物的, 买方可以取消订单并且收回已经支付的价款和由此产生的损害赔偿金。无损于法律或者本订单项下的其他救济, 买方可以诚信地、及时地采购或者订约采购其他货物以替代由于卖方原因无法提供的货物, 通过该方式进行补偿。以上补偿方式所发生的费用和合同价款以及由此产生的损害赔偿金的差额部分由卖方负责赔偿买方。

In the event of default or breach by Seller or rightful rejection of acceptance of the goods by Buyer, Buyer may cancel the order and recover so much of the price as has been paid together with any incidental and consequential damages. In addition to any other remedy, provided by law or this order, Buyer may 'cover' by making, in good faith and without unreasonable delay, and reasonable purchase of or contract to purchase goods in substitution for those due from the Seller and shall recover from Seller as damages the difference between the cost of 'cover' and the contract price together with any incidental or consequential damages.

二十一、 抵销: 本订单项下到期货款可以抵销任何买方或其关联实体针对卖方或其关联实体的由本交易或其他任何交易产生的反诉。

SETOFF: Any counterclaim against Seller or any of its related entities by Buyer or any of its related entities which arise out of this or any other transaction may be set off against any money due Seller under this order.

二十二、 转让/分包: 未经买方事先书面同意, 卖方不得转让订单。买方可自行决定拒绝转让, 任何未经买方同意的转让企图均属无效。任何允许的受让人应书面承担卖方在本订单项下的所有义务, 但卖方仍应对该等义务负主要责任。买方可以在未经卖方同意的情况下转让订单。订单将对双方的获准受让人具有约束力并符合其利益。

ASSIGNMENT; SUBCONTRACTING: Seller shall not assign this order without Buyer's prior written consent, which Buyer may withhold in its sole discretion, and any attempted assignment without Buyer's consent will be void. Any permitted assignee shall assume in writing all obligations of Seller under this order; provided, however, that Seller shall remain primarily liable for such obligations. Buyer may assign the order without the consent of Seller. The order will be binding upon and inure to the benefit of the permitted assigns of each party.

二十三、 **豁免;可分割**: 买方放弃追究卖方违反本订单的某一行为, 不应被视为买方放弃追究其后任何类似的违反本订单或任何其他条款的行为。除非弃权由受损害方书面签署同意并获得相应对价, 否则违反本订单条款和条件引起的索赔或权利不得被全部或部分放弃。如果在任何时候的任何一个或多个条款基于任何法律、法规、规则或禁令的规定而无效或失效, 或无法执行, 本订单剩余的条款不在任何方面受到影响或损害。

WAIVER; SEVERABILITY: No waiver by Buyer of any breach of this order by Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. No claim or right arising out of a breach of the terms and conditions of this order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless such waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. If at any time any one or more of the provisions contained this order is or should become invalid, illegal or unenforceable in any respect under any law, rule, regulation or ruling, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

二十四、 **适用法律**: 本订单应由中华人民共和国法律管辖、解释和执行。

CONTROLLING LAW: This order and the performance under it shall be controlled and governed and construed by the PRC law.

二十五、 **争议解决**: 由本协议引起的或与之相关的任何争议, 应当提交万益特所在地人民法院管辖。

DISPUTE RESOLUTION: Any dispute arising out of or related to this Agreement shall be governed by the People's Court where Vantive is located.

二十六、 **禁令救济**: 尽管有上述争议解决条款的规定, 买方仍可通过有管辖权的法院根据上述管辖地条款寻求禁令救济。

INJUNCTIVE RELIEF: Notwithstanding the Dispute Resolution section above, Buyer may seek injunctive relief by a court of competent jurisdiction in accordance with the Venue section above.

二十七、 **非排他性救济**: 买方在本订单下享有的权利和救济是可累积的, 非排他性的, 是法律规定的任何其他权利和补救措施的补充。

REMEDIES NOT EXCLUSIVE: The rights and remedies of Buyer provided under this order are cumulative and not exclusive and are in addition to any other rights and remedies provided by law.

二十八、 **独立缔约方**: 当事人之间的关系是独立的缔约方关系。双方不应被视为合作伙伴或合资企业, 一方也不应被视为另一方的代理或雇员。任何一方均无任何明示或默示的权利代表对方或以对方名义承担或创建任何义务, 或使对方受约束于与任何第三方的任何合同、协议或承诺, 且不作为不应被视为默许。

INDEPENDENT CONTRACTOR: The relationship of the parties is that of independent contractors. The parties will not be deemed partners or joint ventures, nor will one party be deemed an agent or employee of the other party. Neither party has any express or implied right to assume or create any obligation on behalf of, or in the name of, the other party or to bind the other party to any contract, agreement or undertaking with any third party, and no conduct of a party shall be deemed to imply such right.

二十九、 **通知:**本订单项下要求或承诺的任何通知将以书面方式作出, 该等通知内容需引述订单, 并将由公认的国家或国际快递寄送或发送注册或认证邮件, 以邮资预付且收条交回或送递订单中所列的地址。以下情况下, 订单下的通知将被视为妥为发出:

NOTICES: Any notices required or permitted under this order will be in writing, will refer specifically to the order, and will be sent by recognized national or international overnight courier or registered or certified mail, postage prepaid, return receipt requested, or delivered by hand to the address set forth in this order. Notices under the order will be deemed to be duly given:

1. 人工送达时:

when delivered by hand;

2. 在公认的国内或国际快递显示签收后两(2)日:或

two (2) days after deposit with a recognized national or international courier; or

3. 在挂号信或挂号信回执中注明的交付日期。

on the delivery date indicated in the return receipt for registered or certified mail.

一方经书面通知对方可以立即变更其联络方式。

A party may change its contact information immediately upon written notice to the other party in accordance with this section.

三十、 **修订:**对本订单的任何修订必须以书面方式作出并由各方有权签字人签署生效。

AMENDMENT: Any modification to this order must be in writing and signed by an authorized representative of each party.

三十一、 **语言:**本订单以中文和英文两种语言书就, 两种语言版本具有同等的效力。如果两种语言版本有任何不一致, 在不一致的范围内以中文为准。

LANGUAGE: This order is signed in both Chinese and English, which shall have the equal force and effect provided, however, that if there is any inconsistency between the English version and the Chinese version, the Chinese shall prevail to the extent of such inconsistency.