

货物销售通用条款
(适用于位于亚洲地区的采购方)
GENERAL TERMS OF SALES
(APPLIED TO PURCHASER LOCATED IN ASIA)

1. 声明

Declaration

1.1 本货物销售通用条款制定之目的在于方便交易达成。

The intention of these Terms is to make business transactions clear and more convenient.

1.2 采购方在向EMS Group 在亚洲地区的子公司（以下简称“供货方”）（中国大陆地区除外）发出采购订单时或者接受到订单确认书后，应仔细阅读本通用条款。如有不同意见，可在发出订单时或在订单确认书中指定的时间告知供货方，双方可以进行协商，并通过书面协议对有关条款进行修改。

When the Purchaser places an Order to any subsidiary of the EMS Group located in Asia (“the Supplier”) (excluding China mainland), or upon receipt of an Order confirmation, the Purchaser shall read these Terms carefully. In case of any objection, the Purchaser shall notify the Supplier in writing. Any objection is to be sent at the same time with the order or within the period specified in the Order Confirmation to the Supplier. These Terms may be negotiable and can be revised upon mutual agreement in writing.

1.3 采购方在向供货方发出采购订单时或者在订单确认书中指定的时间未能对本通用条款提出异议，或者在提出异议但双方未能达成一致修改意见，但采购方仍确认订单有效的，视为采购方接受本通用条款。

In the event that the Purchaser has not notified the Supplier of any objection at the time when sending the Order or within the period specified in the Order Confirmation, or in the event that both parties could not reach any agreement on revising the disagreed clause(s) in these Terms, but the Purchaser still confirms the validity of the order, it is deemed that these Terms are accepted by the Purchaser.

1.4 本通用条款和供货方的订单确认书、以及对本通用条款进行修改的协议（如有）构成完整的销售合同。如订单确认书，本通用条款和其它书面修订协议存在任何分歧，以订单确认书及其书面修订协议为准。

The entire sales contract shall include the Order Confirmation, these Terms, and all written agreements on any amendment to these Terms (if any).

In case of any discrepancies between the Order Confirmation, these Terms and any written amendment, the terms of the Order Confirmation and its written amendment respectively shall prevail.

2. 价格

Prices

- 2.1 除非另有书面约定，货物的价格以美金做为计算单位。货物的价格术语采用2010版国际贸易术语解释通则中的价格。

Unless otherwise agreed in writing, Prices shall be understood to be in USD. Trade terms shall conform to INCOTERMS 2010.

- 2.2 在货物交付之前，在本通用合同条款约定的事由出现时，供货方有权按照通用条款规定的程序对价格进行调整。

Prior to the delivery of the goods, when the circumstances stipulated by these Terms occur, the Supplier is entitled to adjust the Prices in accordance with the procedures stipulated by these Terms.

3. 保证

Warranty

- 3.1 供货方保证供货方所供货物符合货物描述的品质。

Supplier warrants that the goods supplied shall comply with the product specification.

- 3.2 供货方上述保证只限于对一级品质货物的保证。对于一级品质以下的货物及特供的货物，不适用该保证。

The warranty hereinabove shall only cover the first grade goods. The lower grade or special offered goods are excluded from such a warranty.

- 3.3 在货物是按照通常的工业操作和条件进行储存和使用的情况下，供货方上述保证的期限为 8 周（以下称“保证期”），从交货之日起开始起算。

The warranty period will be eight weeks calculated from the delivery date (hereinafter “Warranty Period”), provided that the goods in question have been stored and used in accordance with standard industry practices and conditions.

- 3.4 前述明示保证不可转让且不能替代供货方对所供货物的其他保证。

The express warranties hereinbefore are not transferable and are not in lieu of any other warranties made by the Supplier with respect to the Goods.

- 3.5 供货方可以根据自己的研究工作和经验，基于最大的了解，向采购方告知有关信息。但是，供货方提供的就货物的适宜性和使用的有关任何数据和信息不带有保证，不具有拘束力，也不免除采购方自己进行测试和试验之责任。

Supplier may advise Purchaser to the best of its knowledge on the basis of research work and experience. However, any data and information that supplier provides with respect to the suitability and application of the Goods is without warranty, non-binding and shall not release Purchaser from effecting its own tests and trials.

- 3.6 供货方不承担其他保证责任，无论是明示还是默示。在任何情况下，如果由于原料和生产原因导致，货物在外表和品质上有微小瑕疵，供货商所供货物仍视为符合合同条件。

Supplier shall not grant any other warranties, either express or imply. The Goods shall be deemed to be compliant with the Contract if only minor discrepancies in appearance and characteristics due to conditions of raw materials and manufacture are found.

4. 交货和验收

Delivery and Inspection

- 4.1 除非另有书面约定，交货时间及/或期间对供货方不具有最终约束力。如果供货方迟延交付货物，只有在采购方向供货方发出书面通知，要求在指定合理时间内履行交货义务而供货方未能按照通知的指定时间交付货物时，供货方才承担违约责任。

Unless otherwise agreed in writing, delivery date and/or period shall not be binding to the supplier. In case of delayed deliveries for which a firm delivery period has been agreed by the parties hereto, then the purchaser shall require performance within appropriate time upon written notice. In case the Supplier fails to deliver the goods in the appropriate time specified in the written notice, the Supplier shall be put in default.

- 4.2 合同约定的供货数量/重量应允许±10%的短溢。除非对数量/重量有正式且明确的要求，供货方决定的数量/重量将做为计算货款的依据。

All quantities and weights agreed shall be accepted with a tolerance of $\pm 10\%$. Unless an official weighing is expressly required, the quantities and/or weights determined by the Supplier shall serve as basis for calculation the prices.

- 4.3 在采购方收到货物后，应毫不迟延地验收货物。如采购方认为货物不符合双方约定的品质或数量/重量，采购方应在收到货物后14天内向供货方发出书面通知。供货方有权要求对货物进行联合检验，或者要求采购方将货物样品寄送给供货方进行检验。如采购方未能在收到货物14天内向供货方发出货物短装或瑕疵通知，视为对货物无异议接受。

The Purchaser shall inspect the goods upon the receipt of the goods without any delay. In case of any defect in quality, quantity or weight, the purchaser shall notify the Supplier in writing within fourteen days upon receipt of the goods. The Supplier is entitled to require the co-inspection or require the Purchaser to send the sample of the goods in question for inspection. In case that the Purchaser does not notify the Supplier of such defect within such period aforesaid, it is deemed that the Purchaser accept the goods without any objection.

- 4.4 如果双方对货物数量/重量、货物品质是否合格及产生瑕疵的原因不能达成一致意见的，双方可共同指定第三方机构进行检验，并出具检验报告。该检验报告的结果对双方具有最终约束力。

In the event that no agreement in respect of whether the defects exist and/or the cause of such defects can be reached, the dispute shall be referred to the inspection institute agreed by both parties. The report issued by the inspection institute thereof shall bind both parties.

- 4.5 如果双方对第三方检验机构的指定无法达成一致的，任何一方可根据本通用条款10.1条向有管辖权的法院提起诉讼。

In the event that both parties can not reach any agreement on appointing an inspection institute, either party can lodge the claim to the court in accordance with Clause 10.1 of these Terms.

5. 所有权和风险

Title and Risk

- 5.1 根据国际贸易术语2010 (INCOTERMS 2010)决定货物毁损或灭失的风险是否应转移至采购方。

The risk of damage to or loss of the Goods shall be transferred to the Purchaser in compliance with INCOTERMS 2010.

- 5.2 供货方收到货物的所有价款后，货物的所有权才转移至采购方。

Title of the Goods shall be transferred to the Purchaser only after the Supplier has received full payment for the goods without any proviso whatsoever.

- 5.3 采购方不能以任何方式抵押供货方仍然拥有所有权的货物。如果采购方违反本条规定，不管相关的发票是否已开具或付款期限是否届满，采购方应付给供货方的所有款项均应立即支付，而且这并不影响供货方采取其他的补救措施。

The Purchaser shall not, by any means, mortgage those Goods over which the Supplier still holds title. In the event that the Purchaser breaches this provision, the Purchaser shall forthwith pay all amounts owed to the Supplier, regardless of whether a corresponding invoice has been issued or whether the payment has been due, and such action shall not affect the Supplier's right to other remedies.

6. 付款

Payment

- 6.1 除非另有书面约定，采购方应在收到供货方的订单确认书或者在双方就本通用条款的修改达成一致协议后七日内支付货款，或者在双方未能就本通用条款的修改达成一致协议，但是采购方仍然在七日之内书面确认进行采购的。

Unless otherwise agreed in writing, the purchaser shall make the payment within 7 days upon receipt of the order confirmation or upon the date when the agreement on the amendment to these Terms is reached by both parties; or within 7 days upon the confirmation in writing from the Purchaser that the order is still valid even both parties can not reach any agreement on the amendment to these Terms.

- 6.2 供货方在收到货款后，一个月内向采购方开具发票。

The Supplier shall issue the invoice within one month upon the receipt of the payment.

7. 合同的变更、终止和解除

Modification, Termination and Cancellation

- 7.1 对合同条款的变更，除非本合同另有约定，应经双方书面达成协议。

Any modification to the Contract, unless otherwise stipulated by these Terms, shall be agreed by both parties in writing.

7.2 下列情况下，供货方可以在交付货物之前提高合同价款：

Under the following circumstances, the Supplier is entitled to increase the prices of the Goods prior to delivery:

7.2.1 由于在合同订立后，市场因素导致原材料价格上涨，在涨幅超过3.5 - 5%的情况下，供货方在交货前三十天书面通知采购方，要求上调货物价格，但是上调幅度不得超过原材料上涨的幅度。在该书面通知中，应附有原材料价格上涨的依据。

In the event that after the conclusion of the Contract, the prices of the raw materials are rising by 3.5 - 5% due to market factors, the Supplier is entitled to increase the prices of the Goods undelivered. However, the range of the price increase shall not exceed the increase range of the raw materials and the Supplier shall notify the Purchaser in writing within 30 days prior to the delivery of such increase and the basis of such price increase shall be attached to the written notice.

7.2.2 如果采购方对货物价格上调有异议，应在收到价格上调书面通知后3日内将异议书面通知供货方。如双方不能达成一致意见的，任何一方均可以解除合同，但互不承担违约责任。

Provided there is any objection to the price increase, the Purchaser shall notify the Supplier within three days upon receipt of the written notice of the price increase. In case both parties can not reach any agreement on the price increase, either party is entitled to terminate the Contract without any liability of default to each other with immediate effect.

7.3 在下列情况下，供货方有权单方解除合同：

Under the following circumstances, the Supplier is entitled to cancel the contract with immediate effect and without any further liability of Supplier:

7.3.1 采购方在合同约定的时间未付款，经供货方书面催告后仍不付款的；采购方申请破产以及有第三方向采购方提出法律诉讼。

In the event that the Purchaser fails to make the payment on the date or within the period specified in the Contract and still fails to do so upon the demand letter issued by the Supplier.

In the event of bankruptcy of the Purchaser or if any legal actions have been introduced by third parties against the Purchaser.

7.3.2 采购方向供货方采购的货物有两批以上的，如前批货物货款未支付，且经供货方催告仍不付款的，供货方有权解除后续所有合同,无论付款时间有没有到期。

In the event that there have been two or more contracts entered between the Purchaser and Supplier, and the Purchaser has not made the payment due and payable in

accordance with the previous contract, the Supplier is entitled to cancel the subsequent contract(s), no matter whether the payment under the subsequent contract(s) is due or not.

- 7.3.3 由于在订立合同时基础发生了显著变化,包括但不限于政府价格管制、通货膨胀、原材料价格大幅上涨,原材料或能源短缺,交通阻碍,上游供货商供货迟延,导致供货方履行合同会遭受重大不利益,经和采购方协商变更合同价格未能达成一致的,供货方有权单方终止合同。

In the event that the circumstances on which this Contract is based at the time of conclusion have significantly changed, including but not limited to, price control of the government, inflation, wide increase of the raw materials, the shortage of the materials or energy, disruption of transport, delay of sub-supplier, which will put the Supplier in a significantly disadvantaged position and both parties can not reach any agreement on the adjustment of the prices under such circumstances, the Supplier is entitled to terminate the Contract.

- 7.3.4 供货方的工作人员违反公司管理制度,收受贿赂,以低于相同或类似的产品给其他客户的价格向采购方销售产品的,供货方一经查证属实,供货方有权解除未履行的合同,并有权就已经履行的合同,要求采购方及其他责任方赔偿损失。

In the event that the employee of the Supplier violates the Management Rules of the Supplier, receiving commercial bribery and selling the same or similar products to the Purchaser at lower prices than the prices offered to other purchaser(s), the Supplier is entitled to cancel the unperformed contract and is entitled to claim damage against the Purchaser and other accused parties in relation to the performed contract.

- 7.3.5 供货方的工作人员违反公司管理制度,向其有血缘或法律上的亲属关系的人所供职或持有股份的采购方,或向其自己持有或曾经持有股份的采购方,以低于相同或类似的产品给其他客户的价格销售产品的,供货方有权解除未履行的合同,并有权就已经履行的合同,要求采购方及其他责任方赔偿损失。

In the event that the employee of the Supplier violates the Management Rules of the Supplier, selling the same or similar products to the Purchaser which his or her relative(s) in law and/or by nature is/are working for or is/are holding the share of, or to the Purchaser which he/she is holding or has held the share of at lower prices than the prices offered to other purchaser(s), the Supplier is entitled to cancel the unperformed contract and is entitled to claim damage against the Purchaser and other accused parties in relation to the performed contract.

- 7.4 供货方单方终止或者解除合同的,应提前三十天书面通知采购方。

The Supplier may cancel or terminate the contract unilaterally, provided the Supplier shall notify the Purchaser of such cancellation or termination at least prior to 30 days.

8. 不可抗力

Force Majeure

- 8.1 因本合同订立当日所无法预见的,及在任何一方合理的控制能力范围之外的情形所造成该方延迟或无法履行本合同中的义务,则该方不被视作违反本合同,无须向另一方负责,履行相关义务的期限可以相应延长。这些情形包括,但不限于天灾、罢工、封锁、原材料或能源短缺、建筑物毁坏、战争、暴乱、火灾、爆炸、水灾、政府当局行为或行业行为。

Where circumstances, which are unforeseeable at the time this Contract is concluded and which are beyond either Party's reasonable control, cause delay in or failure of a Party's performance of its obligations pursuant to this Contract, such Party shall not be considered in breach of this Contract or be liable to the other Party, and the term of implementation of such Party's respective obligation may be extended accordingly. The aforementioned circumstances include, but not limited to natural disaster, strike, isolation, shortage in raw material or energy, building destruction, war, unrest, fire, explosion and flood, acts of the government or industry actions.

- 8.2 由于上述情形而造成延迟或无法履行本合同规定义务的一方,应立即通知另一方,并合理地尽其努力,将此类情形对其履行义务的影响降至最低,而且在此类情形结束之后,马上就此通知另一方,并继续完全履行本合同规定的义务,除非另一方明示不再要求履行该义务。

如不可抗力因素将持续超过90天,合同双方均可立即终止合同。

In the event either Party's performance of its obligations pursuant to this Contract is delayed or rendered impossible due to the aforementioned circumstances, such Party shall forthwith notify the other Party, and make all reasonable efforts to minimize the effect of the aforementioned circumstances on the performance of its obligations. Furthermore, such Party shall forthwith notify the other Party of the cessation of the respective circumstances and continue to fully perform its obligations pursuant to the provisions of this Contract, unless the other Party expressly stated that such performance is not needed.

In the event the status of Force Majeure should exceed the period of 90 days, then either Party shall be entitled to terminate this Contract with immediate effect.

9. 违约责任

The Liability of Default

- 9.1 采购方未能按照合同约定时间付款的，供货方没有解除合同的而继续供货的，采购方应向供货方支付违约金。违约金的计算方式为每逾期一天，支付未付货款的1%做为违约金。但违约金的总额不得超过未付货款总额的30%。

In the event that the Purchaser has not made the payment on the date or within the period specified in the Contract and the Supplier has not excised the right of cancellation, the Purchaser shall pay the stipulated damage by the rate of 1% per day on the base of the unpaid amount. However, the total amount of stipulated damage paid by the Purchaser shall not exceed 30% of the unpaid amount.

- 9.2 如果供货方违反本通用条款第3.1条之规定，应按照采购方的要求，负责更换不符合品质要求的货物，或者减价；并自付费用，运回被更换的货物。

In the event that the Supplier breaches the warranty stipulated by Clause 3.1, the Supplier shall replace the defect Goods or reduce the price and shall ship back the replaced Goods and pay the cost incurred.

- 9.3 在任何情况下，供货方的违约损害赔偿 responsibility 以合同价款为限，且均不包括对采购方预期收益及其他间接损失的赔偿责任。

Under any circumstances, the liability for damage taken by the Supplier due to the default shall not exceed the payment under the Contract. The Supplier shall not be liable for expectation damage and any other consequential damage claimed by the Purchaser.

10. 管辖权和法律适用

Jurisdiction and Governing Law

- 10.1 本合同的履行和解释中产生的任何争议应提交供货方住所地人民法院管辖。

Any dispute arising from the performance and construction of the Contract shall be subject to the jurisdiction of the People's Court located in Supplier's domicile.