

GENERAL TERMS AND CONDITIONS OF SALES

一般销售条款和条件

1. Definitions

In these general terms and conditions of sales ("Terms and Conditions"), the following definitions apply:

Agreement: any agreement, contract and/or sales transaction between the Seller as seller and the Buyer as buyer on the sale of Products.

Buyer: any party that the Seller supplies or agrees to supply Products to.

China: the People's Republic of China, excluding Hong Kong, Macau and Taiwan.

Control: in respect of a corporation, enterprise or entity, shall mean (1) the possession, directly or indirectly, of more than fifty percent (50%) of the shareholding interest of such corporation, enterprise or entity or (2) such other means to direct or cause the direction of the management and policies of such corporation, enterprise or entity (e.g., by contract).

Seller: any Subsidiary of Umicore that has its registered office in China.

Subsidiary: with respect to either party, any corporation, enterprise or entity Controlling, Controlled by, or under common Control with, such party.

Umicore: a company organized under Belgian law, with its registered address at Rue du Marais/Broekstraat 31, 1000 Brussels, Belgium, and registered with the Register of Legal Entities of Brussels under number 0401 574 852.

2. Acceptance

The Buyer has read and understands these Terms and Conditions, and agrees that either Buyer's written acceptance hereof or Buyer's acceptance of any delivery under these Terms and Conditions shall constitute Buyer's acceptance of these Terms and Conditions, which shall apply to the exclusion of all terms and conditions, specifications, letters, confirmations and other documents of the Buyer, 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 sales shall be not less favorable to the Seller than stated in the Agreement. The Price mentioned on Seller's order confirmation, if any, applies.

All taxes, imposts and/or duties (except as otherwise specified herein) imposed and/or levied by or payable to any government and/or other authority upon the Agreement, on any or all of the Products covered hereby or upon any transaction or delivery hereunder or on the Price payable shall be the responsibility of the Buyer whether such amount shall be paid or payable by the Seller or otherwise and whether now or hereafter imposed.

4. Payment

Payment terms shall be as agreed to by the Buyer and the Seller in writing and set forth in the Agreement.

The Buyer shall effect the payment strictly in accordance with the payment terms set forth in the Agreement and shall not be entitled in any way to withhold, retain or exercise any right of set-off whatsoever or howsoever in respect of the Price or any part thereof.

In the event the Buyer fails to make payment on due date, the Buyer shall be liable for the interest which will be charged at a rate of 300 basis points (3%) higher than the average interest rate in force, with respect to the corresponding period of delay that published by People's Bank of China at the due date of the payment. If the delay is over thirty (30) days, the Seller is entitled to suspend the delivery and terminate the Agreement, and the Buyer shall indemnify all the incurred loss of the Seller.

5. Transfer of Ownership and Risk

Unless otherwise stated in the Agreement, the ownership of the Products shall remain with the Seller until the Price is paid by the Buyer in full; and the risk of loss in the Products shall transfer to the Buyer once the Products are collected by the Buyer or delivered to the destination agreed in writing by both Parties.

1. 定义

在本一般销售条款和条件（“条款”）中适用下列定义：

协议：指卖方（作为卖方）和买方（作为买方）就产品销售所订立的任何协议、合同和/或购销交易。

买方：指卖方向其或同意向其提供产品的一方。

中国：指中华人民共和国，不包括香港、澳门、台湾。

控制：对一公司、企业、或实体而言，应指(a)直接或间接拥有该公司、企业、或实体百分之五十（50%）以上股权，或(b)指导或影响该公司、企业、或实体管理和政策的其他方式（例如：合同）。

卖方：指优美科公司旗下注册的营业地点位于中国的任何分支机构。

分支机构：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。

优美科：一家依照比利时法律向布鲁塞尔法律实体登记处注册设立的公司，其注册地址为 Rue du Marais/Broekstraat 31, 1000 Brussels, Belgium, 注册号为 0401 574 852。

2. 接受

买方已阅读且理解本条款，并同意买方对本条款的书面接受或对本条款项下任何交付的接受应构成买方对本条款的接受，从而排除所有买方的条款和条件、规格、信函、确认和其他文件，不论其是否包含在协议中，或在协议中提及。

3. 价款

产品的应付价款（下称“价款”）以及任何其他采购条款和条件，其对卖方的有利标准不得低于协议规定。如在卖方订单确认中指定价款的，应适用该价款。

除双方另有书面特殊约定外，一切由任何政府和/或其他当局按照协议、协议所包括的任何或一切产品、协议包括的任何交易或交付的产品、或应付的价款、附加或征收的或应付的捐税、进口税和/或关税都为买方责任，无论该等金额是否须卖方支付或是卖方应付的，亦无论该等金额是当前或未来所征收。

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。

买方应严格按照协议约定支付价款，无权以任何方式扣留、保留或对协议的全部或部分价款实施抵销。

如买方未能按期付款，应从付款到期日开始计算，按照对应逾期期间的中国人民银行公布的贷款月基准利率加 3%向卖方支付利息。逾期付款达三十（30）天的，卖方有权暂停发货并终止协议，且对于卖方因此受到的损失，买方应予以赔偿。

5. 权属与风险转移

除非协议另有规定，在买方全额支付产品价款之前，产品的所有权属于卖方；且在产品由买方提货或交付至双方书面约定地点时，产品灭失的风险应由卖方转移至买方。

6. Delivery

Delivery on the Agreement shall be made in the quantities and on the dates agreed by both Parties.

The Products shall be properly packed, labeled and protected in a reasonable manner. Unless otherwise stated in the Agreement, the delivery is deemed completed upon Buyer's collection of the Products or Seller's shipment of the Products to a location agreed by both Parties. Upon delivery, the Buyer shall receive such Products immediately.

In the event that the Buyer fails to receive the Products immediately or fails to provide the Seller reasonable instructions for the delivery of the Products, the Seller shall have the right to take the measures set forth below, and such action shall not influence the exercise or use by the Seller of any other rights or remedial measures: (a) store the Products until they are delivered or collected and, prior to delivery or collection, claim from the Buyer all expenses due to the storage and insurance of the Products; or (b) sell the Products at the current market price at the Seller's sole discretion, and use the proceeds to cover the amount the Buyer should have paid for the Products, as well as storage charges, insurance premiums and any other costs of sale. If the resale proceeds are insufficient to cover the aforementioned items, the Buyer shall pay the difference to the Seller.

7. Changes

The Buyer may 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. Any request or adjustment proposed by the Buyer must be approved by the Seller in writing before such proposed requests or adjustments become binding on the Seller. If such changes result in additional charges, the Buyer shall compensate the Seller accordingly.

8. Warranty

The Seller represents and warrants to the Buyer only that the Products shall conform to the specifications agreed to in writing between the Seller and the Buyer. In addition to this, no other warranties of the Products, whether express or implied, are made by the Seller to the maximum extent permitted by applicable laws.

The warranty provided in this section 8 will not apply to the circumstances set forth below: (a) The Seller shall not be liable for defects in the Products resulting from modifications or changes in specifications if the aforementioned modifications or changes were requested by the Buyer; (b) the Seller shall not be liable for defects caused by normal wear and tear, willful damage, negligence, improper usage, failure to follow the Seller's instructions, incorrect usage without the Seller's approval, modification or repair; (c) the warranty does not extend to parts, accessories, materials or equipment that was not manufactured by the Seller. With regard to any one part, accessory, material or piece of equipment, the Buyer shall only have the right of benefit with respect to the corresponding warranty provided by the manufacturer to the Seller.

Unless otherwise stated in the Agreement, the Buyer shall submit any claim to the Seller in writing within three (3) days from the date of collection or delivery by the Seller. In the event that the Buyer claims to the Seller for a compensation for the defects of the Products based on this Section 8, the Seller may choose to replace the Products free of charge, or may elect to refund all or a portion of the Price of the Products to the Buyer.

9. Limitation on Seller's liability

The Seller's liability and the Buyer's recovery, for any injuries, losses, damages, expenses, costs or other liabilities arising out of any breach of the Agreement by the Seller, or the Seller's other acts or omissions (including negligence) shall be limited to the lesser of (a) the actual and direct costs incurred by the Buyer due to such Seller's breach, or other acts or omissions, or (b) the Price received by the Seller. In no event shall the Seller be liable to the Buyer for lost profits, punitive, special, consequential, indirect, exemplary or incidental damages.

6. 交付

协议项下的交付应依据双方约定的要求按时并按量交付。

卖方应对产品应进行妥善包装、标注、并进行合理保护。除非协议另有规定，买方提货或卖方将产品运至双方约定地点即完成交付。卖方交付后，买方应立即接收产品。

如果买方未能立即接收产品或者没有就交货向卖方作出合理指示，卖方有权采取以下措施，而且这并不影响卖方可行使或采取的任何其他权利或补救措施：(a) 保管产品直至交货或提货，并向买方收取此前由于仓储、保险所发生的费用；或者 (b) 以卖方自行决定的当时的市场价格出售产品，并将收益用于弥补买方应支付的价款、仓储费、保险费及其他任何销售费用。如果转售所得不足以支付上述款项，买方还应向卖方支付差额部分。

7. 变更

买方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。买方的任何要求或调整必须经卖方书面批准后方可对卖方具有约束力。如有关变更造成费用增加，买方应对卖方予以补偿。

8. 保证

卖方向买方的申明和保证仅限于，产品应与买卖双方书面约定的规格相符。除此之外，在适用法律规定允许的最大限度内，卖方不对产品做任何其他明示或默示的保证。

卖方在本第 8 条所做保证不适用于如下情形：(a) 对于应买方的要求而对货物规格作出的变更和改动所导致的货物瑕疵；(b) 对于任何由于合理磨损、有意损坏、疏忽大意、使用不当、不遵循卖方指导、未经卖方同意对货物进行错误使用、改动或修理而造成的瑕疵；(c) 保证范围不包括非卖方制造的零部件、材料或设备，在此类情况下，买方将仅有权从该零部件、材料或装备的制造商对卖方所作的保证中受益。

除非协议另有规定，就任何索赔，买方应于提货或卖方交货之日起三 (3) 日内书面向卖方提出。如果买方根据本第 8 条之约定向卖方提出了产品瑕疵，卖方无偿更换货物，或者向买方退回货物的全部或部分价款。

9. 卖方责任限制

因卖方违反协议规定或其他行为或疏漏（包括主观疏忽）而引起的伤害、损失、损害、费用、成本或其他责任，卖方所担责任和买方所受补偿应限于以下两者较低者(a)买方因该等违约、或其他行为或疏漏发生所受的实际直接损失，或(b)卖方已收悉价款。在任何情况下，卖方均不对买方的利润损失、罚金、特别损害、后果性损害、间接损害、惩罚性损害赔偿、或附带损害负责。

10. Warning Clause

The Buyer is hereby informed that the Products may have been classified as a hazardous substance.

Owing to its industrial and commercial activities, the Buyer acknowledges it has sufficient knowledge, experience and relevant permit/qualification issued by authorities to properly handle, store, condition and use the Products and the Buyer shall observe all general and personal preventive and safety measures required by applicable laws, regulations, instructions, and provide the Buyer's employees and customers with appropriate information regarding the hazards of such Products. In the event the Buyer fails to do so and, as a result, claims of damage or injury are made against the Seller or the Products by an employee of the Buyer or a user of the Buyer's products, the Buyer agrees to hold the Seller harmless from any such claims and related defense costs.

In the event the Buyer alters the physical state, appearance, form, nature or property of the Products (including but not limited to compounding, blending, dissolving, alloying or otherwise mixing it with one or more other substances to form a new product) under circumstances and procedures over which the Seller has no control, then the Buyer shall be responsible for the new products it has made and all elements or components thereof and to hold harmless, including defense cost, the Seller and the Products from any claims of damage or injury the new product or any of its elements or components caused or allegedly caused any employee of the Buyer or user of the new product.

11. Intellectual Property Rights

Unless otherwise agreed in writing by both Parties, any intellectual property or industrial property in relation to the Products shall belong to the Seller.

In the event the Seller makes available to the Buyer any means in respect of which the Seller 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 Buyer acknowledges that the Seller is and shall at all times remain the owner of such means and that the Buyer shall not obtain any intellectual property rights or title as regards such means. The Buyer shall manage all means referred to in this paragraph at its own risk and expenses and keep them strictly confidential. The Buyer commits himself not to use the means or have the means used by third parties except to the extent the Buyer has been authorized in writing by the Seller to do so.

The Buyer guarantees that no right or claim will be raised by any third party of intellectual property or industrial property based on the Products resulting from the Seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the Buyer.

12. Termination and Remedies

The Seller may terminate all or any part of this Agreement at any time or times by written notice to the Buyer: (a) if the Buyer fails to observe or comply with any covenants, terms or conditions contained in this Agreement; (b) if the Buyer fails to make payment in accordance with this Agreement and its nonperformance continues after receiving the demand for performance from the Seller; or (c) in the event of any proceeding by or against the Buyer in bankruptcy or insolvency. Upon termination, the Seller may sell the Products under this Agreement elsewhere on such terms or in such manner as the Seller may deem appropriate, and the Buyer shall be liable to the Seller for any excess costs or the expenses incurred by the Seller and compensate the Seller for the difference between the aforesaid sales price and the Price (if any). In addition, the Seller shall have all other rights and remedies provided by law and under this Agreement, and all of Seller's rights and remedies shall be cumulative and none shall be considered exclusive.

13. Force Majeure

Either Party may suspend performance during the occurrence of an event of force majeure, which shall mean any delay or impossibility 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, strikes or other labor disputes

10. 警告条款

买方知晓本协议的产品可能被归类为危险物品。

鉴于其工业和商业的活动，买方承认其对于正确地搬运、储藏、调节和使用产品具备足够的知识和经验以及相关主管部门颁发的许可/资格，并且买方应遵守一切适用的法律法规、规则和知识所规定的一切一般的和个人的防护及安全措施，以及向其职员与客户提供关于产品危险性的适当信息。若买方未能如上述内容行事，而其职员或使用产品的客户向卖方主张损害或伤害的赔偿的，买方同意保持卖方和卖方产品免受该等索赔并对此相关的抗辩费用予以赔偿。

如买方在卖方无法控制的情况和程序下改变产品的物理状态、外形、形式、性质或特征（包括但不限于通过化合、掺和、溶解、合金或其他方式将产品与其他一种或多种物质混合从而构成新产品），买方应对其制成的新产品与一切元素或组成部分负责，保持卖方和卖方产品免受任何其职员或新产品用户对于遭受或声称遭受该新产品或该新产品的任何元素或组成部分的损害或伤害的索赔，包括抗辩费用及所导致的损害。

11. 知识产权

除双方另有书面约定的，与产品相关的任何知识产权或工业产权应归属于卖方。

如卖方允许买方接触其拥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，买方承认卖方是且应当在任何时候是该等介质的所有人，且买方不得获得该等介质相关的任何知识产权或所有权，买方对该等介质不享有任何知识产权或所有权。买方应自担风险和费用管理所有本条所涉及的介质，并且对其严格保密。买方有义务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，除非在买方已获得卖方的书面授权的范围內。

如买方要求卖方遵照买方所提供的技术图样、图案、程式或其它规格提供产品的，买方确保任何第三方不能根据工业产权或其它知识产权就产品对卖方主张任何权利或要求。

12. 终止与救济

卖方可书面通知买方在下列任何时候完全或部分终止协议：(a) 如买方未能遵守或遵照协议项下的任何契约、条款或条件；(b) 如买方未能按期履行付款义务且在卖方书面催告后继续不履行的；或(c) 存在买方提起的或针对买方的任何破产或清算程序。终止后，卖方可根据其认为合适的条件或方式，向其他客户销售本协议项下的产品，且买方应对卖方因此发生的额外成本和费用并对前述销售价格与价款之间的差额（如有）对卖方予以补偿。并且，卖方享有法律规定和协议项下的所有其他权利，所有卖方的权利和救济应是累计叠加的且不设限额的。

13. 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、罢工或其他劳动纠纷（除非存在合理规避或解决的可能）、火灾和自然灾害（如洪水、地震、风暴、和流

(unless they could reasonably be avoided or resolved), 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 Seller shall be entitled to, at its sole option, cancel any Agreement or any part thereof without any charge or penalty and/or sell the Products covered by the Agreement to other customers for the duration of the Buyer's inability to perform due to the occurrence of an event of force majeure. The Seller may also terminate, with notice to the Buyer, the total Agreement if the force majeure event has been in effect for a period beyond three (3) months.

14. Waiver

No waiver by the Seller of any breach by the Buyer of the Agreement, or delay or failure of the Seller 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 Seller in the event of the Buyer's breach of any of these Terms and Conditions or any part of the Agreement.

15. Assignment

The Buyer shall not assign to any person or entity all or a portion of its rights or obligations under any Agreement without the prior written consent of the Seller, and any attempted assignment without that consent shall be void. The Seller may assign any of its rights and obligations under Agreement without the consent of the Buyer in the event that the Seller 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.

16. 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.

17. Confidentiality

The Buyer shall keep in strict confidence all information obtained from the Seller and, without the prior written consent of the Seller, shall not use any such information for any purpose other than the performance of the Agreement. The Buyer 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 of the Products shall be deemed to be protected information for the purposes of this Section. The terms of this clause shall survive the expiration or termination of any Agreement.

The Buyer is strictly prohibited to take pictures or videos at the Seller's premises.

If the Buyer and the Seller execute a separate non-disclosure agreement, such agreement shall be deemed as a part of these Terms and Conditions.

18. Governing Law

These Terms and Conditions, the Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of China without regards to its conflicts of law provisions. All disputes shall be brought before the competent courts in China at the place where the Seller's registered office is located.

19. Language

These Terms and Conditions are written both in English and Chinese, both language versions shall be equally valid.

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。卖方有权自行决定取消任何协议或其任何部分, 和/或在买方因不可抗力情形发生而无力履行的期间内将产品销售给其他客户, 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, 卖方亦可通知买方终止协议。

14. 豁免

卖方对于买方对协议的违约的任何豁免, 或对卖方任何权利或救济的延期执行或不予实施, 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不应造成在买方发生任何条款违约或任何协议违约情形下对任何卖方救济的限制。

15. 转让

未经卖方事先书面同意, 买方不得向任何个人或实体转让其在任何协议项下的权利或义务, 任何未经同意的试图转让亦归为无效。卖方在下列情况可不经买方同意转让其在协议项下的任何权利或义务, 卖方需要实施或需要试图实施重组, 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。

16. 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。

17. 保密

买方应对自卖方处获悉的所有信息严格保密, 未经卖方事先书面同意, 不得将该等信息用于除履行协议以外的任何其他目的。买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, 产品的价款应认定为本条项下的受保护信息。本条规定在任何协议到期或终止后继续有效。

严格禁止买方在卖方场所内摄影或摄像。

如买卖双方另行签署保密协议, 该保密协议应视为本条款的一部分。

18. 管辖法律

本条款、协议、本条款与协议及其标的或成立要件引起或相关的任何争议或索赔(包括非契约性争议或索赔)应由中国法律管辖和解释, 且不适用冲突法律规范。所有争议应提交卖方注册地有管辖权的中国法院。

19. 语言

本条款由英语和中文撰写, 两种版本应具有同等效力。