

一般销售条款

General Conditions of Sale

1. 序言

1. Preamble

上海金马的一般销售条款适用于所有的金马产品系列，并且与所有同客户签订的销售合同内在统一。这些条款也同时适用于将来可能发生的没有明确说明需要参考这些条款的交易。

These general conditions of sale of Gema Shanghai apply to the entire product range of Gema and are an integral part of all sales contracts concluded with its customers. They also apply to future transactions even if these do not explicitly reference these general conditions of sale.

根据销售合同的最终结论，客户应当接受这些条款。

With the conclusion of the sales contract, at the latest, the customer accepts these general conditions of sale.

客户订单在获得金马书面确认或是订购的商品已经发货以后才具备约束力。金马保留无理由拒绝任何订单的权利。

Customer orders become binding only when they are confirmed in writing by Gema, or when the ordered goods are shipped. Gema reserves the right to reject any orders without disclosing the reasons.

2. 技术规格和文件

2. Technical specifications and documents

金马公司根据销售合同中具体约定的商品或服务描述供货，不属于合同附件内容的图

纸、描述、插图及任何尺寸或者重量规格等技术文件仅作参考用途。金马保留随着技术工艺进程的变化而对技术文件进行修改的权利。

Gema supplies all goods and services in accordance with the sales contract, technical documents such as drawings, descriptions, illustrations as well as any dimension, performance or weight specifications, which are not attachments of the sales contract, are only for information purposes. Gema reserves the right to make changes as technical progress may warrant.

所有技术文件属金马公司拥有之知识产权，仅能用于由金马公司规定或经金马公司同意之用途。

All technical documents remain the intellectual property of Gema and may only be used for the purposes specified by or agreed to by Gema.

3. 适用于安装场所的规定

3. Regulations applicable at the place of destination

采购者应提供给金马所采购的商品及服务最终应用的场所的相关规定和标准等信息，这些信息还要确保与相关安全规定相符。

With the order, at the latest, the purchaser shall supply Gema with information on the regulations and standards applicable at the place of destination to the extent that these are relevant to the supply of goods and services as well as to the conformance with safety and approval regulations.

在没有其他规定情况下，金马提供的商品和服务首先需要满足买家提供的指定场所的规则和标准。

In the absence of any other stipulations the supplied goods and services shall conform to the regulations and standards applicable at the domicile of the purchaser as specified by the latter to Gema.

4. 价格 4. Prices

除了有其他相反的规定，否则所有的价格都视作净价，离岸价（f.o.b）。其中整机进口设备从圣加伦出发，不包括包装费用和任何费用扣除。其他所有的额外费用诸如运费，保险费，出口准许证，运输费，进口费等以及所需的所有证明费用都由买家承担。买家同时需要负担发货过程中产生的其他任何 税费。由上海发货的标准设备的价格不包含运费，非标设备的价格包含运费。如有其它费用，由买家承担。如果报价或交货价格包含包装费，运费，保险费，税费和其他额外费用的，或者这些费用条目单独罗列在报价或订购确认单中的，金马保留根据费用变化对价格进行相应调整的权利。

Save for any stipulations to the contrary, all prices are deemed to be net, f.o.b. whole set imported machines delivered from plant in St.Gallen, excluding packing, and without any deductions. All extra costs such as freight, insurance, permits for export, transit, import etc., as well as any certificates, shall be borne by the purchaser. The purchaser is also responsible for any taxes, fees, and custom duties imposed on the delivery. Prices of standard machines delivered from Shanghai are excluding freight cost; prices of non-standard machines delivered from Shanghai are including freight cost, all extra costs shall be borne by the purchaser. If the costs for packing, freight, insurance, taxes, duties and other extra costs are

included in the offer or delivery prices, or if they are itemized separately in the offer or on the order confirmation, then Gema reserves the right to adapt the rates to any changes in the tariffs.

5. 支付条款 5. Terms of payment

买家应根据商定的支付条款向金马付款，无诸如折扣，杂费，税费等任何扣减。
The purchaser shall tender payment at the domicile of Gema without any deductions such as discounts, expenses, taxes, and fees, in accordance with the agreed terms of payment.

如果买家付款违约，金马保留暂停其他相关订单的发货或是取消该些订单的权利。
If the purchaser defaults on his payments, Gema reserves the right to hold back deliveries relating to other orders or to cancel such orders.

只要买家付款违约或是之前的订单仍未付清，金马保留执行货到付款的权利。

Gema reserves the right to execute deliveries on C.O.D. basis for as long as the purchaser defaults on his payments or if requests for payment had to be issued for previous orders.

如果订单被受理后，买方突然破产或是延缓向金马付款，又或是买方的付款能力受到其他任何因素的干扰破坏，金马有权索取足够的担保，如果担保不足，金马可以解除合同。If after the placement of an order the purchaser becomes insolvent or if he suspends payment to Gema, or if the purchaser's ability to pay is impaired in any other way, Gema has the right to request adequate security and if none is

pledged, Gema may rescind the contract.

买方应按照合同约定付款，不得延期。如果送货中有不影响使用的非重要部件缺失，付款也应该如期完成。

The purchaser shall pay in accordance with the contract, and shall not postpone payment. In particular payment shall also be made if only insignificant parts of the delivery are missing which do not render utilization impossible.

6. 所有权保留

6. Reservation of ownership

所有商品由金马保留所有权直到买家根据合同全额付款。

All goods remain the property of Gema until Gema has received full payment from the purchaser in accordance with the contract.

买家应当采取必要措施，执行所有文件规定保护金马对商品的所有权。

The purchaser shall participate in all measures and execute all documents that are deemed necessary for protecting Gema's ownership of the goods.

合同签署后，买家同意对所有权保留通过公共登记处、文书或其他符合国家法律的形式予以登记，相应费用由买家承担，买家应签署任何与此相关的文件。

With the signing of the contract the purchaser consents that the reservation of ownership may be recorded, at his own expense, in public registers, books, or the like in accordance with the applicable national laws, and to sign any documents required for this purpose.

在所有权保留期间，买家应自行承担相应费

用对商品采取适宜的维护，并为商品购买防盗、防破损、防火、防水及防止其他风险的保险，指定金马公司为保险受益人。并且，买家应采取必要措施防止金马的所有权受损或灭失。

While the reservation of ownership is in force, the purchaser shall, at his own expense, maintain the supplied goods in proper order and insure them against theft, breakage, fire, water and other risks, with Gema designated as the beneficiary. In addition the purchaser shall take all necessary steps to prevent the impairment or nullification of Gema's ownership rights.

如果保留所有权的商品价值，连同其他给金马的担保叠加的总和超过金马要求买方支付的费用20%，金马可以应买家的需求解除部分担保。

If the value of the goods over which ownership has been reserved, together with any other securities granted to Gema exceed the claims of Gema against the purchaser by more than 20%, then Gema shall grant a partial release if this is demanded by the purchaser.

如果买家采取任何违反合同的行为，尤其是付款违约，金马在发出欠费提醒通知后仍未果的，有权收回保留所有权的商品，买家有义务归还商品。金马公司有权选择要求买家归还商品，或者有权扣留买家采购的其他商品，同时，买家应当承担违约责任。因货物收回发生的全部费用及买家或有的任何经济损失均由买方自行承担。

If the purchaser takes any action that contravenes the contract, particularly if he defaults on his payments, Gema is entitled, after having given notice, to take back the goods over which it holds reserved

ownership and the purchaser is obligated to release the goods.

Gema has the right to take back the goods or chooses to withhold other goods the purchaser bought; meanwhile, the purchaser shall be liable for breach of the contract. The purchaser shall bear all costs for taking back goods and any potential damage of him.

7. 交货

7. Delivery

供应商品和服务的范围以及执行由订购确认单内容规定。

The scope and the execution of the supply of goods and services shall be governed by the order confirmation.

只要是可送达的地方，金马都会将订单订购的所有商品送达客户。买家同意金马分批发货。对于分批发货的订单，金马可以支持分批开票。金马公司出具付款方为买家的发票，并根据买家指令发货至买家指定地点。Whenever possible, Gema will deliver the entire order of the customer. However, the purchaser agrees, to accept also partial deliveries. For partial deliveries Gema is entitled to issue corresponding partial invoices. Gema issues the invoice(s) which the payer's name keeps correspondence with the purchaser's name, and delivers the order to the place of delivery which designated by the purchaser.

交货周期在合同条款均已签订，所有政府手续如进口汇付等都获得授权，随订单支付的款项和担保已经收讫以及所有技术参数均已确定以后开始计算。

The delivery period begins when the contract has been signed, when all

government formalities such as import and payment authorizations have been obtained, the payments or securities to be delivered together with the order have been received, and all technical specifications have been clarified.

如交货期间届满时商品已准备好运输且已向买家发出相应通知的，则视为如期发货。

Delivery is deemed to have been made on schedule if on expiration of the delivery period the goods are ready for shipment and a corresponding advice has been forwarded to the purchaser.

交货周期合理延迟的情况：

The delivery period shall be reasonably extended if:

a) 金马履行订单内容时所要求获得的相关信息没有及时到位，或者是买方在订单执行中后续修改相关要求而引起的交货延迟。

a) The information required by Gema for executing the order are not received on time, or if they are subsequently modified by the purchaser and thus cause a delivery delay;

b) 金马因为不可抗因素而无法执行订单。不可抗力包括非金马责任的不可预知的且在该情况下金马无法执行订单的所有情况，不可抗力包括非金马责任的不可预知且在该情况下金马无法执行订单的所有情况，如因为分包商，罢工，政府规定，原材料或能源缺货等情况引起的延迟发货或是错误送货，经营的重大中断，举例说明，如工厂或是重要部门全线或者部分瘫痪，或关键生产设备损坏，严重的运输问题，如道路堵塞。如果这些因素的影响持续超过六个月，买卖双方均有权解除合同。但是买方无权要求获得任何赔偿。

b) If Gema is impeded by force majeure from executing the order. The term force majeure comprises all unforeseeable circumstances for which Gema is not

answerable and which make it unacceptably difficult or impossible for Gema to execute the delivery, such as delayed or faulty deliveries by its subcontractors, strike, government regulations, shortage of raw materials or energy, major interruption of operations caused, for example, by the complete or partial destruction of the plant or important departments, or by the breakdown of essential production equipment, serious transport problems, for example, caused by road blockage. If these conditions persist for more than six months, either party has the right to rescind the contract. However, the purchaser is not entitled to raise any claim for damage;

- c) 买方或第三方违反了合同规定尤其是没有如期付款。
- c) If the purchaser or third parties are in arrears with their work to be performed or the fulfillment of their contractual obligations, particularly if the purchaser fails to meet the payment terms.

如果交货周期由于金马原因超期，买方应通过书面通知，给予不少于一个月的时间宽限。该宽限时间内金马无须承担违约责任，如果超过宽限期仍然无法交货，买方可以解除合同。 If the delivery period is exceeded for reasons that must be answered by Gema, the purchaser shall, through written notification, grant a reasonable extension which shall be at least one month. Gema shall not be liable for breach of the contract within the extension period. If delivery is not made within this extension period, the purchaser may rescind the contract.

8. 商品毁损、灭失的风险转移

8. Passing of the risk of damage to or loss of goods

货物一经离开金马厂房进入运输状态，毁损、灭失的风险即刻转移至买方，即使按到岸价（c.i.f.）或类似条款交货，或包含安装，或运输是由金马组织管理的。

The risk of damage to or loss of goods passes to the purchaser as soon as the shipment has left the Gema plant, even if the delivery is made c.i.f. or under similar clauses, or including installation, or if the transport has been organized and managed by Gema.

如果运输因为非金马责任的因素而被耽误 延迟，毁损、灭失风险自买方被告知货物已经准备好运输时转移至买家，风险转移后发生的所有储存或保险等费用均由买方承担，风险亦由买方承担。

If shipment is delayed due to circumstances for which Gema is not answerable, the risk passes to the purchaser as soon as he has been advised that the goods are ready for shipment. From this moment the goods are stored and insured at the expense and risk of the purchaser.

由上海发货的非标设备的毁损、灭失风险自金马交货至买家指定地点时转移。

For non-standard equipment delivered from Shanghai, the risk of damage to or loss of goods passes to the purchaser after delivering to the place of delivery which designated by the purchaser.

9. 运输和保险

9. Transport and insurance

在无任何其他特殊规定的情况下，货物运输的费用和风险由买方承担。

In the absence of any stipulations to the contrary the goods are shipped at the expense and risk of the purchaser.

运输中的损坏赔偿保险由买方要求发起，由金马代为落实办理，所有费用和风险均由买方承担。

Insurance against damage in transit shall be arranged by the purchaser. Even if this insurance is arranged by Gema it is deemed to have been concluded on behalf and on the account and risk of the purchaser.

关于运输和保险的特殊要求需要及时与金马沟通协商。否则金马将基于快捷经济的原则选择运输和保险方式，但金马并不对此选择承担责任。

Special requests concerning shipment and insurance shall be communicated to Gema on time. Otherwise the fastest and most economical transport will be arranged at the discretion of, but without responsibility, by Gema.

按到岸价（c.i.f）交货由金马安排运输，如果买方提出任何特殊需求，由此产生的额外花费买方自行承担。

For c.i.f. deliveries the transport is arranged by Gema. If any special requests are made by the purchaser the additional costs will be charged to him.

如果货物在运输中丢失或者损毁，买方应当在交货单据上做相应异议登记并立即交由运输公司进行调查。

If any goods are lost or damaged in transit,

the purchaser shall enter a corresponding exception on the delivery documents and have the damage immediately surveyed by the forwarding company.

无法立刻发觉的运输损失必须在交货后八天内汇报给运输公司。

Transport damages that were not immediately detectable must be reported to the forwarding company within eight days from the delivery of the goods.

10. 货物和服务的检查及接受

10. Inspection and acceptance of the supplied goods and services

金马在生产时在常规范围内检查所有商品。如果买方要求进行额外的测试和检查，买方需要书面提出要求并自行承担费用。

Gema inspects all goods during production within the normal scope. If the purchaser requires additional tests and inspections, these shall be agreed upon in writing and will be conducted at the expense of the buyer.

买方可以在到货后合理期间内，不过应在双方商定的保修期内，对货物进行检查，一旦发现有任何问题，应立即向金马书面汇报。无书面投诉的视为对货物的接受。

The purchaser shall examine the delivery within a reasonable time and report any defects to Gema immediately in writing after they have been detected, however, within the agreed warranty period. In the absence of any written complaint the delivery is deemed to have been accepted.

11. 保修

11. Warranty

金马一旦收到买方的书面报修会根据自身判断决定对明显因低劣工艺、或错误的操作指南或安装指南导致毁损或不能使用的部件进行维修或者更换。

On written request by the purchaser Gema shall, at its own discretion, either repair or replace as quickly as possible such parts of the delivered products that evidently became damaged or unusable due to poor workmanship, or incorrect operating instructions or installation instructions.

更换下来的零部件归金马所有。

The replaced parts become the property of Gema.

在如下情况中，买方有权选择是解除合同还是要求降价。

The purchaser is entitled to rescind the contract or demand a price reduction if

- a) 维修或是替换零部件无法修复损毁。
- a) Repair or replacement is impossible;
- b) 金马无法在合理的期限内修复损毁，金马拒绝或是故意拖延修复。
- b) Gema is unable to remedy the defect within a reasonable time, or if Gema refuses or culpably delays remedy of the defect.

对于那些基于买方提供的规格，图纸和模型生产制造出的产品，金马仅对原料质量及工艺提供保证。

For products that have been manufactured based on the specifications, drawings or models supplied by the purchaser, Gema's warranty is limited to the quality and workmanship of the materials.

非由低劣材料，设计错误，低劣工艺，错误的操作指南或安装指南导致的毁损不属于保修范围，例如，常规磨损，存储和维护不当，不按说明书操作，超载，使用不符合规格的媒介，使用者或第三方不专业的操作干预，使用非金马授权生产的零部件及其他非金马责任原因。

Not covered by the warranty are damages that are not clearly the result of poor material, design errors, poor workmanship or incorrect operating instructions and installation instructions, for example, due to normal wear, improper storage and maintenance, failure to follow the operating instructions, overloading, utilization of media that do not meet specifications, inexpert interventions by the user or third parties, utilization of spare parts not authorized by Gema, as well as due to other reasons for which Gema is not answerable.

对于第三方交货的情况，金马只提供原始供应商范围内的保修。

For major third-party deliveries Gema grants a warranty only within the scope of the original supplier.

保修期限在买方收货后12个月内有效，最长保修期为货物离开金马厂房后18个月内。

Warranty becomes statute-barred twelve months from the receipt of the goods by the purchaser, but no later than 18 months from the date the goods left the Gema plant.

对于那些由于不当咨询和其他类似原因或违反附属义务等造成的买方索赔，供应商只有在被证明存在违法行为或是严重疏忽的情况下需要承担责任。

For claims of the purchaser that relate to

inadequate counselling and the like, or to the violation of any ancillary obligations, the supplier is only liable if he acted unlawfully or with gross negligence.

12. 责任（排除危害）

12. Liability (Exclusion of damages)

在法律适用范围内，金马免于对任何类型的损失进行支付赔偿，这尤其适用于间接损失，延迟损失。

Gema's liability to pay damages of any kind is waived to the extent that this is permitted by the applicable law. This applies in particular to damages for delays, consequential damages.

13. 结论规定

13. Concluding provisions

如果执行合同违反美国、欧盟、瑞士或任何其他国家颁布的任何贸易合规规定或违反法律，金马保留暂时中止或终止合同的权利。

Gema reserves the right to temporarily suspend or terminate the contract if its execution would violate any Trade Compliance sanctions or Anti-Boycott laws issued by the United States, by the EU, by Switzerland or by any other country.

金马不承担因合同中止或终止而产生的任何罚款或损害赔偿。如果合同终止，金马将在扣除已经发生的费用后退还未收到的预付款。

Gema will not be liable to pay any penalty or damages that derive from the suspension or termination of the contract. In case of termination of the contract Gema will return the advanced payments that have been received, after deducting the expenses that have already been sustained.

金马不承认除此条款以外的其他任何业务条款。买方单方给出的条款无效。

Gema does not recognize any terms of business other than these. The conditions which the purchaser unilaterally invokes are invalid.

本一般销售条款或交货如有任何部分无效的，不影响本一般销售条款其他条款的效力。

If any part of these general conditions of sale or any delivery executed thereunder is deemed to be invalid, this shall in no way impair the validity of the other terms and conditions.

对本一般销售条款的修改须经金马公司书面同意后方才生效。

Changes to these general conditions of sale are only valid if they have been accepted by Gema in writing.

所有由金马与买方签订的符合一般销售条款的合同引起的或是相关的法律纠纷，应在金马公司住所地的有权管辖法院提起诉讼。金马有权在买方住所地法院提起诉讼。本一般销售条款以中文和英文拟稿，如中文意思与英文有悖，以中文为准。

Any legal disputes arising out of or in conjunction with contracts between Gema and the purchaser to which these general conditions of sale are applicable, shall be brought before a competent court at the domicile of Gema. In any action against the purchaser Gema reserves the right to institute legal proceedings at the domicile of the purchaser.

These General Conditions of Sale are written in the Chinese and English languages. In case of ambiguities the version in the Chinese language shall be controlling.