

TERMS AND CONDITIONS OF PURCHASE

Date: []

To: [Name of PRC Supplier]

1. In these Terms and Conditions of Purchase ("**Conditions**") the following expressions shall unless the context otherwise requires have the following meanings:
 - 1.1 "**Buyer**" means the entity named on the Order;
 - 1.2 "**Group**" means in relation to the Buyer its subsidiaries, its holding company and any other subsidiary of such holding company (as those terms are defined in the Companies Ordinance of Hong Kong (as amended));
 - 1.3 "**Order**" means an Order for Products made by the Buyer in accordance with these Conditions;
 - 1.4 "**Price**" means the price for the Products [(including without limitation all costs of carriage and packaging pursuant to these Conditions)] as set out in the Order;
 - 1.5 "**Products**" means the products which are the subject of an Order; and
 - 1.6 "**Seller**" means the supplier of the Products.
2. These Conditions shall apply to the exclusion of any terms and conditions stipulated, referred to, or purported to be stipulated or referred to by the Seller, and shall supersede all previous conditions of purchase of the Buyer. Acceptance of any Order placed by the Buyer or despatch or delivery of the Products or the fulfilment of an Order by the Seller to the Buyer shall be deemed to be conclusive acceptance of these Conditions by the Seller. These Conditions shall apply to any Orders as may be placed with the Seller from time to time.
3. An Order shall only be valid if given on the Buyer's official order form or as otherwise provided in any other written agreement between the Buyer and the Seller. No addition to, or variation or exclusion of any term set out in such official order form, or of these Conditions, shall be binding unless in writing and signed by an authorised signatory of the Buyer.
4. All representations, statements or warranties made or given by the Seller, its servants or agents (whether orally, in writing [or in any of the Seller's brochures, catalogues or advertisements]) regarding the quality and fitness for purpose of the Products shall be deemed to be express conditions of the contract for sale of the Products.
5. The Seller warrants that:
 - 5.1 the supply of the Products to the Buyer and the sale of the Products by the Buyer to consumers or any persons will not infringe the intellectual property rights ("**Intellectual Property Rights**") of any third party. "**Intellectual Property Rights**" means, and shall be deemed to include, but is not limited to, any patent, trademark, copyright, registered or unregistered design right (and any application for any of the foregoing) any rights in respect of confidential information or trade secrets, proprietary information and any other intellectual property right;
 - 5.2 it shall comply with all applicable Buyer policies made known to the Seller by the Buyer from time to time;
 - 5.3 the Products shall:
 - 5.3.1 comply with any quality, quantity, design capacity, dimensions, description and standard of performance requirements set out in the Order and/or as may be communicated by the Buyer from time to time;
 - 5.3.2 be identical in all respects to any product sample previously provided by the Seller to the Buyer and comply with any other general requirements, instructions or specification made known by the Buyer to the Seller from time to time;
 - 5.3.3 be undamaged and free from defects and failures of workmanship and continue to be free from defects and failure of workmanship for [twelve (12) months] after the date of shipment;
 - 5.3.4 be of satisfactory quality and be fit for the purpose for which they are normally applied;

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- 5.3.5 comply with all legal and regulatory requirements in the country of manufacture and in the country in which the Products are to be sold by the Buyer, including without limitation specific requirements relating to the technology, chemicals or any other materials used in the Products, production and workplace safety, data protection and environmental protection;
- 5.3.6 comply with all applicable product safety laws, regulations and standards of the country of manufacture and of the country in which the Products are to be sold by the Buyer, including without limitation, [California Proposition 65 and the standards prescribed by Underwriters Laboratories Inc., Electronic Testing Labs and Federal Communications Commission];
- 5.3.7 be sold free from all liens, charges, encumbrances and other restrictions, claims or adverse rights and together with the full beneficial interest in and legal title to them;
- 5.3.8 be available to the Buyer in a period of thirty (30) days from the date of the Order (unless otherwise specified in the Order); and
- 5.3.9 be marked, labelled and packed in accordance with the Buyer's requirements and instructions as set out in the Order or otherwise communicated to the Seller from time to time and in accordance with all applicable legal requirements in the country of manufacture and in the country in which the Products are to be sold by the Buyer or the requirements of the carrier, and in any event shall be packed so as to reach their destination in an undamaged condition.
- 5.4 it shall comply with all applicable laws, rules and regulations and obtain all permits, licences and authorisations or certificates that may be required in connection with its supply and production of Products under these Conditions;
- 5.5 the premises in which the Products are manufactured are at all time suitable for their purpose, safe and secure from unauthorised intrusion;
- 5.6 it shall ensure that its employees and the employees of its subcontractors (if permitted by the Buyer to engage subcontractors) are employed and treated in accordance with all applicable laws and regulations during the course of their employment and shall not contravene any applicable laws and regulations in the country of manufacture and the country in which the Products are to be sold by the Buyer concerning employment of child labour, bonded workers, prisoners or illegal workers. The Buyer reserves the right to audit compliance with this obligation;
- 5.7 it shall ensure that its employees shall not make or offer any payment or provide to actual or potential customers, suppliers, competitors, consultants, agents, brokers or governmental agencies, any benefit (including complementary merchandise or services) of a value or nature that might be considered to influence the decisions of the aforementioned parties, and that it shall comply with all respects of the anti-bribery laws and regulations in the Seller's country and anti-bribery policy as may be required by the Buyer;
- 5.8 it shall ensure that no payment, gifts or benefit from any third party (including agents or brokers) of value shall be received by or solicited to its employees or under such circumstances that might be considered an attempt to influence that employee's decisions or actions;
- 5.9 it shall not commit any crime of money laundering, including but not limited to participating in or aiding, abetting, facilitating, or counselling the commission on the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to the ownership of property, knowing that such property is derived from criminal activity.
6. The Price shall be as stated in the Order and the payment terms shall be [] days open credit unless otherwise stated in the Order. Save and except with the Seller's and Buyer's written consent, the Price as stated in the Order shall not be changed or altered after the acceptance of the Order by the Seller. Any change to Price quotation by the Seller shall not be applicable to the Buyer or take effect unless the Seller gives the Buyer no less than [60] days of written notice in advance.
7. The Buyer shall not be liable to pay interest on any monies which are overdue for payment to the Seller.
8. Where any sum is due from the Seller to the Buyer the Buyer shall be entitled to set off such sum against any monies due from it to the Seller.
9. Prior to delivery of the Products the Seller will, at its own cost, conduct and/or facilitate all reasonable inspection, testing and auditing of the Products as is required to ensure that they comply with all requirements set out in these Conditions. Where the Seller discovers any defects or other non-compliances of the Products with any of the applicable requirements, the Seller will at its cost replace the affected Products with Products which meet all applicable requirements, and will notify the Buyer where this will result in a delay in the shipment of the Products.
10. Upon request of the Buyer, the duly authorised representatives of or any person designated by the Buyer shall be given opportunity to carry out inspection, examination and testing of the Products or any sample thereof or the materials used in and the processes of manufacture or storage and packaging of the Products. Any such inspection, examination or testing shall not absolve the Seller from responsibility or liability under these Conditions nor imply acceptance of the Products by the Buyer. If the Buyer is not satisfied that the Products or their manufacture or storage or processing or packaging comply in all respects with these Conditions the Seller, without extra cost to the Buyer, shall take all steps necessary to ensure due compliance and no Products shall be dispatched or shipped until written approval of the Buyer has been granted.

11. The Products shall be delivered to the Buyer's designated warehouse specified in the Order (or other place nominated by the Buyer). The Seller shall promptly notify the Buyer in writing that the Products have been delivered. Without prejudice to any right of rejection of the Products (or any of them) which may accrue to the Buyer under these Conditions, title of the Products shall pass to the Buyer upon such delivery being effected and risk will pass to the Buyer upon receipt of the Products by the Buyer. Unless otherwise specified in the Order, the Seller shall be responsible in maintaining insurance for the Products prior to the receipt of the Products by the Buyer.
12. The Seller shall at its own cost and within any time limit set out in the Order (or as may otherwise be specified by the Buyer):
 - 12.1 provide to the Buyer all licences, certificates, permits, consents and approvals including without limitation original shipping and clearance documents in respect of the Products as may be required by the Buyer;
 - 12.2 take all steps required to enable the Products to be delivered to the Buyer as specified under these Conditions, including without limitation the payment of all applicable taxes and duties; and
 - 12.3 provide a full technical specification for all Products including (without limitation) full details of the weights of all packaging by type.
13. The Buyer shall indicate any under delivery to the Seller as soon as is reasonably practicable following delivery. The Seller shall make good any shortfall as soon as reasonably practicable but in any event within [thirty (30)] days of notification by the Buyer of any under-delivery.
14. Time for delivery of the Products stated in the order is of the essence of these Conditions. If the Seller fails to deliver all of the Products in accordance with the terms of the Order on such time of delivery, then without prejudice to the Buyer's rights for the breach of these Conditions:
 - 14.1 The Buyer may terminate the Order and reject the Products. In this event, without prejudice to the Buyer's other remedies, the Seller shall at its expense and risk promptly collect any Products which have been delivered and the Buyer shall not be obliged to pay the Price for such Products;
 - 14.2 Where delivery of a quantity of the Products which is less than the agreed quantity has been tendered, and the Buyer has not exercised its rights of termination under clause 14.1 above, the Buyer may accept the Products which correspond to the terms of these Conditions and the Seller shall indemnify the Buyer against any additional costs, losses and expenses reasonably incurred by the Buyer (or a member of the Buyer's Group) in obtaining other replacement products or loss arising from the fact that the Buyer is out of stock of the Products which the Seller failed to deliver on time; or
 - 14.3 The Buyer may require the Seller promptly to deliver sufficient Products which correspond to the terms of these Conditions to comply with the quantity required by whatever means requested by the Buyer at the Seller's cost and expense, and the Seller shall be liable for any costs or losses suffered by the Buyer caused by such delay in delivery.
15. The Seller agrees to give to the Buyer reasonable notice of any prospective or actual delay in delivery.
16. Where the Products are to be delivered by instalments the failure or delay in delivery of any one instalment shall entitle the Buyer to reject the whole or any instalment of the Products.
17. The Buyer shall not be deemed to have accepted any part of the Products until after the Buyer has (or the Buyer's sub-buyers have) actually inspected the Products and ascertained that they are in accordance with the terms of these Conditions. If the number of Products which are not in accordance with the terms of these Conditions exceed the proportion (expressed as a percentage) agreed with the Buyer for any consignment supplied under the Order, the Buyer may by notice to the Seller reject such consignment of Products either in whole or part:
 - 17.1 before or after inspection at any time up to [six (6) months] after delivery notwithstanding that all or some of the Products may have already been accepted by the Buyer; or
 - 17.2 prior to acceptance of the Products by the Buyer.
18. In respect of any Products rejected by the Buyer under clauses 14 and 17 above ("**Rejected Products**"):
 - 18.1 the Buyer will at the request of the Seller either return the Rejected Products to the Seller at the Seller's cost or dispose of them in such manner as the Buyer shall think fit;
 - 18.2 the Buyer shall not be obliged to pay the Price for any Rejected Products and shall be entitled to recover from the Seller within [thirty (30)] days of the Buyer notifying the Seller of the rejection any sums already paid to the Seller in respect of the Rejected Products together with all loss incurred by the Buyer in relation to the Rejected Products including, without limitation, the right to charge the Seller for reasonable storage costs in respect of Rejected Products awaiting collection by the Seller.
19. The Buyer's right to reject the Products under these Conditions shall not be prejudiced by either payment for or the issuing of the Buyer's official receipt for the Products.
20. The Seller shall ensure that the Buyer's brand and/or trade marks and logos (and/or any brand, trade mark, or logo of any member of the Buyer's Group) (if any) are erased or removed from any Rejected Products (and their packaging) or Products which have been manufactured or are in the course of being manufactured but which have not been delivered to the Buyer and are surplus to the Buyer's requirements. For the avoidance of doubt, the Seller shall not dispose of or re-sell to any third party

any Products bearing the brand and/or trade marks and logos of the Buyer (and/or any brand, trade mark, or logo of any member of the Buyer's Group) without the prior written consent of the Buyer.

21. All drawings, labels, specifications, manufacturing data, plans, designs, patterns, descriptions, information, components, product barcodes and item level identification codes (including without limitation UPC (Universal Product Codes) and EAN (European Article Numbers)) supplied by or on behalf of the Buyer ("**Proprietary Information**") to the Seller in connection with an Order (or specifically produced by the Seller for the Buyer), together with all Intellectual Property Rights therein:

21.1 shall remain or become when created the property of the Buyer;

21.2 shall not be disclosed to any third party without the Buyer's consent;

21.3 shall be used only for the purposes of fulfilling the Order; and

21.4 shall be returned to the Buyer immediately on demand.

The Seller shall not file any patent application, utility model or design application based on the Proprietary Information. [If product barcode and/or item level identification code of any Product is provided by the Seller to the Buyer, the Seller shall be responsible for all relevant and necessary compliance and/or registration procedures and requirements.]

22. The Seller hereby agrees to accept full responsibility for and to indemnify the Buyer against all or any losses and damages whatsoever suffered or incurred by the Buyer or a member of the Buyer's Group resulting directly or indirectly from:

22.1 a breach by the Seller of any of these Conditions;

22.2 any claim by a third party arising out of or in connection with the manufacture, purchase, use or sale of the Products, including without limitation in relation to death, personal injury or damage to property caused by defective, non-compliant or unsafe Products supplied by the Seller;

22.3 any claim that the Products infringe, or their importation, use or resale infringes, any Intellectual Property Rights or other rights of any person save to the extent that such infringement arises as a direct result of the use by the Seller of any specification supplied by the Buyer for the manufacture of the Products or as a direct result of the application by the Seller of any brand required by the Buyer; and

22.4 a recall of defective (or potentially defective), non-complaint, unsafe or non-performing Products as the Buyer may at its sole discretion implement.

23. The Seller may not without the prior written consent of the authorised signatory of the Buyer either wholly or in part sub-contract the manufacture of Products which are the subject of an Order or assign, charge or transfer to any other person any of its rights under these Conditions.

24. The Seller shall treat all Product, Buyer or business information and Proprietary Information as confidential and shall not disclose it to any third party without the Buyer's prior written consent or use it for any purpose except where authorised to do so by the Buyer. This clause 24 does not apply to information which:

24.1 is at the date of disclosure or becomes at any time after that date publicly known other than by the Seller's breach of this clause;

24.2 can be shown by the Seller to the Buyer's satisfaction to have been known by the Seller before disclosure by the Buyer to the Seller;

24.3 is or becomes available to the Seller otherwise than from the Buyer and free of any restrictions as to its use or disclosure; and

24.4 is required to be disclosed by law or court order. If the Seller is required by applicable law or court order to disclose any Product, Buyer or business information and Proprietary Information, the Seller shall immediately upon becoming aware of its obligation to disclose such information, inform the Buyer of such obligation. The Seller may disclose only that portion of the Product, Buyer or business information and Proprietary Information required to be disclosed.

25. If the Seller becomes insolvent or if a petition under any chapter of the bankruptcy law is filed by or against the Seller or if the Seller makes a general assignment for the benefit of creditors or if a receiver is appointed for the Seller, the Buyer may, at its sole discretion, terminate any Order and take possession of the Products in whatever stage of completion they may be, immediately obtain custody of all Proprietary Information and all other relevant properties, and contract with or employ any other person or persons to finish the Products and collect from the Seller any additional expenses or damages that the Buyer may incur. The Seller shall be liable for all costs incurred by the Buyer therefrom.

26. The Buyer may assign any benefit or obligation under any Order upon written notice to the Seller.

27. If any provision of these Conditions shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of these Conditions in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of these Conditions shall not be affected in any other jurisdiction.
28. These Conditions shall be governed and construed in accordance with Hong Kong law. All disputes, controversy or claim arising from these Conditions should be settled through friendly negotiations. Should no settlement be reached through negotiation, the case shall be submitted to the Hong Kong International Arbitration Centre for settlement by arbitration in accordance with UNCITRAL arbitration rules then in effect by one (1) arbitrator. The arbitration shall take place in Hong Kong. The award of the arbitration shall be final and binding upon both parties.

For and on behalf of
[]

Name: []

Position:[]

We, as the Seller, hereby agree and accept the above Terms and Conditions of Purchase in relation to all the Orders placed by the Buyer.

[Name of PRC Supplier]

Name: []

Position: [Legal Representative /
Authorised Representative]

Date:

***[Note: For execution, the Legal Representative
or the Authorised Representative of the PRC
Supplier should sign and imprint the company
chop]***