

**GENERAL TERMS AND CONDITIONS OF SALE OF PRODALIM (SHANGHAI) TRADING CO., LTD.**, established in Shanghai, the People's Republic of China, registration number 91310000MA1G138F0Q, whose address is Room 202-D, 2/F, Zone B, Building 6, 255 Hongliu Road, Putuo District, Shanghai, hereinafter referred to as "**Prodalim**".

波达利(上海)贸易有限公司通用销售条款, 公司设立于中国上海市, 注册号为 91310000MA1G138F0Q, 地址为上海市普陀区红柳路 255 号 6 幢 B 区二层 202-D 室, 以下简称“波达利”。

## 1. GENERAL

1.1 All offers from and all orders to Prodalim and all agreements, whether orally or in writing, and including any amendments thereto (collectively "**Agreements**") between Prodalim and a customer of Prodalim (hereinafter: the "**Customer**") for the sale and delivery of products are subject to these general terms and conditions which are an integral part of the Agreement. Agreements are not binding on Prodalim until the receipt by the Customer of a confirmation by Prodalim which is signed by Prodalim.

1.2 The Customer may, in a respective Agreement, invoke provisions that deviate from these general terms and conditions herein or that waive or that otherwise change any of the provisions in these general terms and conditions only if and to the extent that Prodalim has accepted such provisions, deviation, waiver, change or contradiction in writing. Any conflicting terms and conditions of the Customer are hereby expressly excluded.

1.3 The Customer who has entered into an Agreement with Prodalim upon which these general terms and conditions are applicable, consents to the applicability of these general terms and conditions to Agreements concluded with Prodalim hereafter.

1.4 If for any reason any provision in these general terms and conditions is held to be invalid, illegal or unenforceable by any reason, the remainder shall remain in full force and effect; an invalid, illegal or unenforceable provision shall be deemed to be replaced by a valid, legal and enforceable provision which most closely achieves the economic purpose of the invalid, illegal or unenforceable provision as far as possible.

1.5 Any omission or forbearance by the parties with the enforcement of the correct and timely compliance with the, specific or generic, terms and conditions set forth herein, or with the exercise of any privilege under these general terms and conditions, shall not be considered a waiver or a novation, nor shall prevent the parties from exercising such rights or privileges in the future.

1.6 These general terms and conditions shall inure to the benefit of and be binding upon the parties and their respective successors and authorized assignees at any title, which shall comply with all terms and conditions set forth in these general terms and

## 1. 通用条款

1.1 波达利发出的所有要约和向波达利发出的所有订单以及波达利和波达利客户(下称“**客户**”)就产品销售和交付达成的所有协议(包括对该等协议的任何修订, 合称“**协议**”), 无论是口头或书面的, 均受限于本通用条款, 并构成协议的不可分割部分。在客户收到由波达利签署的确认之前, 协议对波达利不具有约束力。

1.2 客户可在相关协议中援引与本通用条款不同的规定, 放弃或以其他方式变更本通用条款的任何规定, 但条件是波达利以书面形式接受此类规定、偏离、放弃、变更或冲突。客户的任何条款如与本通用条款存在冲突, 应明确予以排除。

1.3 客户与波达利签订本通用条款适用之协议时, 同意本通用条款适用于其后与波达利签订之协议。

1.4 如果本通用条款的任何条款因任何原因被认定无效、违法或不可强制执行, 其余条款应继续完全有效; 无效、违法或不可强制执行的条款应被视为由最接近该条款的经济目的的有效、合法且可强制执行的条款所替代。

1.5 双方在准确和及时执行本通用条款规定的具体或一般条款或行使本通用条款项下的任何特权方面的任何不作为或不作为, 不得视为对该等权利或特权的放弃或更替, 也不得阻止双方将来行使该等权利或特权。

1.6 本通用条款适用于双方及其各自的继承人和授权受让人的利益, 并对其具有约束力, 但该等继承人和授权受让人应遵守本通用条

conditions.

## 2. PRICE

2.1 Unless expressly indicated or agreed otherwise, the prices quoted or agreed upon by Prodalim shall be net prices, exclusive of VAT and exclusive of any import or export duties, costs of insurance, adequate packaging, unloading, inspections, tests, certifications and the like, and prices are only valid for delivery Ex Works Incoterms (2010) as may be amended, at the location of Prodalim. The prices are subject to adjustment for any changes to the products or the specifications on which the parties agreed or which are required by applicable regulations or standards. Notwithstanding anything to the contrary herein or in the Agreement, to the extent that any particular Agreement provides that the prices thereunder are inclusive of import duties, then (i) the rate of such import duties shall be deemed to refer to and reflect the rate of import duties known on the date on which such particular Agreement is signed by Prodalim and the respective Customer (hereinafter: the "**Known Import Duties Rate**"); and (ii) to the extent that, at any time after the date on which said particular Agreement is signed by Prodalim and the respective Customer, the rate of such import duties is increased above the Known Import Duties Rate, then the prices under such particular Agreement shall be adjusted automatically so as to reflect the updated import duties rate and the payment of the difference between the Known Import Duties Rate and the updated import duties rate shall be at the Customer's sole expense and responsibility.

## 3. DELIVERY AND DELIVERY TIME

3.1 Prodalim shall deliver the products to the location designated in the Agreement or if the Agreement does not contain such a location, to the location designated by the Customer and accepted by Prodalim in writing (hereinafter: the "**Location**"). Delivery takes place Ex Works Incoterms (2010) as may be amended, the moment on which Prodalim or a third party on behalf of Prodalim has the products ready to be loaded on the vehicle used for transport to the Location (either by Prodalim itself, by a transporter engaged by Prodalim, by a transporter engaged by the Customer or by the Customer itself). The costs of transport will be paid solely by the Customer, even if Prodalim organizes the transport. In case of a difference between these general terms and conditions and the Incoterms (2010) as may be amended, these general terms and conditions shall prevail. Notwithstanding anything to the contrary herein or in the Agreement, where products are delivered Delivered Duty Paid (DDP) (Incoterms (2010) as may be amended) then (i) any costs of carrier's waiting times starting immediately upon arrival of the products at the Location and up to 2 hours thereafter shall be at

款中的所有条款。

## 2. 价格

2.1 除非另有明确说明或约定，波达利报价或约定的价格应为不含增值税的净价，且不含任何进口或出口关税、保险费用、适当包装、卸货、检验、测试、认证及类似费用，价格仅适用于按照《国际贸易术语解释通则(2010)》及其修订版规定的“工厂交货”术语在波达利所在地交货。如果双方约定的产品或规格发生变更或适用法规或标准要求的任何变更，则价格将进行调整。即使本通用条款或协议中有任何相反规定，如果任何特定协议规定该等协议项下的价格包含进口关税，则(i)该等进口关税税率应视为指代的是波达利和相关客户签署该等协议之日已知的进口关税税率(下称“**已知进口关税税率**”);及(ii)如果在波达利和相关客户签署该等协议之后的任何时间，进口关税税率提高至已知进口关税税率之上，则该等协议项下的价格应自动调整，以反映最新的进口关税税率，已知进口关税税率与最新进口关税税率之间的差额的支付应由客户自行承担费用和责任。

## 3. 交付和交付时间

3.1 波达利应将产品交付至协议指定的地点，如果协议没有指定该等地点，则交付至客户指定并经波达利书面同意的地点(以下简称“**地点**”)。交货按照《国际贸易术语解释通则(2010)》及其修订版规定的工厂交货术语进行，在波达利或代表波达利的第三方已将产品备妥可供装载在运往地点的交通工具上之时即交付完成(由波达利自行、或由波达利聘请的运输商、或由客户聘请的运输商、或由客户自己安排运输)。即使由波达利安排运输，运输费用也将由客户自行承担。如果本通用条款与可能修订的《国际贸易术语解释通则(2010)》存在差异，则以本通用条款为准。即使本通用条款或协议中有任何相反规定，如果产品按照完税后交货(《国际贸易术语解释通则(2010)》及其修订版)交付，则(i)承运人在产品抵达地点后即开始等候的时间及其后 2 小时以内的任何费用应由波达利承担，而(x)在上述 2 小时之后的；和/或(y)在上述 2 小时之后的等候时间相关的任何费用、罚金、责任

Prodalim's expense, while any costs, fines, liabilities, expenses either (x) starting immediately upon the lapse of the aforementioned 2 hours; and/or (y) related to carrier's waiting times being beyond the aforementioned 2 hours, shall be at the Customer's sole cost and expense; and (ii) any costs, fines, liabilities, expenses related to the cancellation of delivery by the Customer on the designated delivery day shall be at the Customer's sole cost and expense.

3.2 A failure to make a timely delivery shall in no event entitle the Customer to additional or substitute compensation or to non-compliance with any of its own obligations arising from the Agreement. However, if the failure to provide a timely delivery solely results from a circumstance that can be reasonably attributed to Prodalim and subsequently, if and insofar as Prodalim still fails to deliver within a reasonable period of time after the Customer has informed Prodalim thereof in writing, the Customer shall be entitled to terminate the Agreement by means of a written statement.

3.3 Prodalim has the right to make partial deliveries.

#### **4. RISK AND TRANSFER OF OWNERSHIP**

4.1 After the products have been delivered as per Article 3.1, the products are for the Customer's sole expense and risk.

4.2 If the Customer is not able to timely pick-up the products in accordance with Article 3.1, for whatever reason, such products are for the Customer's sole expense and risk as of the moment that such products were ready for transport or as of the moment the Customer was informed that the products were ready to be picked-up, whichever is earlier. As of that moment, loading, dispatching or transport, unloading and insuring such products shall be effected for the sole expense and risk of the Customer.

4.3 The industrial or intellectual property rights to or in connection with the delivered products or any materials delivered in connection therewith, including without limitation any product specification, formulation produced or supplied, shall remain at all times exclusively with Prodalim or with third party title owners and shall in no event be transferred to the Customer.

#### **5. RETENTION OF TITLE**

5.1 All products sold by Prodalim shall remain the sole and exclusive property of Prodalim until the Customer has paid in full all prices and other sums that it owes to Prodalim for the products or otherwise in connection with the underlying Agreement and/or in connection with prior or subsequent Agreements of the same nature, including, without limitation, payment obligations, damages, costs, charges, expenses and interest. If applicable laws do not allow the retention of title, but allow Prodalim to reserve other security rights, Prodalim may exercise these rights. The Customer has no right of retention in respect of those products.

和支出应由客户自行承担；及(ii)在指定交货日客户取消交货相关的任何费用、罚金、责任和支出应由客户自行承担。

3.2 在任何情况下如未能及时交货，客户均无权获得额外或替代补偿，或不遵守协议项下的任何义务。但是，如果未及时交付货物完全是由可合理归因于波达利的情形所导致，并且在客户书面通知波达利后的合理期限内，如果波达利仍未能交货，则客户有权通过书面声明的方式解除协议。

3.3 波达利有权进行部分交付。

#### **4. 风险和所有权转移**

4.1 在根据第 3.1 条交付产品后，产品的费用和 risk 由客户独自承担。

4.2 如客户因任何原因未能根据第 3.1 条及时提货，则自该等产品备妥待运之时起或自客户获知该等产品已备妥待提之时起(以较早发生者为准)，该等产品的相关费用及 risk 由客户自行承担。自该时起，该等产品的装载、派送或运输、卸货及保险应由客户自行承担费用和 risk。

4.3 交付的产品或与之相关的任何材料(包括但不限于生产或供应的任何产品规格、配方)的工业产权或知识产权应始终归属波达利独家拥有或由第三方所有权人拥有，在任何情况下均不会转让给客户。

#### **5. 所有权保留**

5.1 波达利出售的所有产品应始终是波达利的独有财产，直至客户已全额向波达利付清所有款项以及与产品或与基础协议和/或先前或后续相同性质的协议有关的所有其他款项(包括但不限于付款义务、损害、成本、收费、支出和利息)。如果适用法律不允许所有权保留，但允许波达利保留其他担保权，波达利可行使该等权利。客户对该等产品不享有所有

5.2 The Customer will store products that have not yet been fully paid for separately and in such a way that they are recognizable as Prodalim's property.

5.3 The Customer grants Prodalim an irrevocable authority to: (i) take such measures which are necessary to maintain the property rights to the products by Prodalim, including, without limitation, to take actions in the name and on behalf of the Customer, and (ii) to enter any premises controlled by the Customer to re-take possession of the products which are still subject to the retention of title.

## 6. FORCE MAJEURE

6.1 Prodalim shall be entitled to invoke force majeure if the implementation of the Agreement is, in whole or in part, temporarily or not, prevented or impeded by circumstances reasonably out of its control, including (but not limited to): (a) acts of war or the commencement or escalation of hostilities, (b) pandemics, (c) site or building blockades, (d) fire, (e) strikes, (f) faults on the part of suppliers, (g) stock shortages, (h) price increases by suppliers, (i) delayed delivery of parts, products or services by third parties to Prodalim, (j) accidents and (k) interruptions of business operations.

6.2 In the event of force majeure on the part of Prodalim, its obligations are suspended, and if the force majeure situation is not lifted within three months after the occurrence hereof, both parties are entitled to terminate the part of the Agreement that was not yet fulfilled or can no longer be fulfilled by means of written notice to the other party. In such case, neither the Customer, nor third parties shall have a claim against Prodalim for any compensation.

## 7. LIABILITY AND INDEMNIFICATION

7.1 The Customer shall examine the products immediately on receipt. Any obvious defects to the delivery shall immediately be reported back to the carrier on the bill of delivery or to Prodalim itself, as applicable. Any hidden defect shall be reported within 5 days of receiving the products, by e-mail, fax and/or in writing, giving full details of the alleged complaint. If the Customer does not fulfil these obligations, any damages which may result from such defects shall be borne by the Customer. After said timeframes, as applicable, any defects may no longer be asserted.

7.2 The liability of Prodalim in connection with the products or any defects of the products that it has delivered is limited to (at Prodalim's discretion) replacement of or crediting the defective products.

7.3 Prodalim is not and shall not be liable for any damages (such as but not limited to substitute, additional, consequential, direct damages or loss of profits) other than as set out in Article

权保留。

5.2 客户应将尚未全额付款的产品单独存储且使得上述产品可被识别为波达利的财产。

5.3 客户授予波达利一项不可撤销的授权,以 (i)采取必要措施以维护波达利对产品的财产权,包括但不限于以客户的名义并代表客户采取行动,及(ii)进入客户控制的任何场所以重新占有仍受所有权保留限制的产品。

## 6. 不可抗力

6.1 如果协议的全部或部分履行受到波达利合理控制之外情况的阻碍或者影响,无论是否是临时性的,则波达利有权援引不可抗力。前述情形包括但不限于:(a)战争行为或敌对行动的开始或升级,(b)流行病,(c)场地或建筑物封锁,(d)火灾,(e)罢工,(f)供应商违约,(g)库存短缺,(h)供应商涨价,(i)第三方延迟向波达利交付零件、产品或服务,(j)事故及(k)业务经营中断。

6.2 如果波达利发生不可抗力,则其可中止履行义务,并且如不可抗力情况在发生后三个月内没有消除,则双方有权通过书面通知对方解除协议中未履行或不能履行的部分。在此情况下,客户或第三方均不得向波达利索赔。

## 7. 责任和赔偿

7.1 客户收到产品后应立即检查。任何明显的交货瑕疵应立即告知交付凭证所记载的承运人或告知波达利(如适用)。任何隐蔽缺陷应在收到产品后的5日内通过电子邮件、传真和/或书面形式报告,并详细说明诉称的缺陷。如果客户未履行该等义务,该等缺陷可能导致的任何损害应由客户承担。在上述时限(按适用情形)之后,不得再主张任何缺陷或瑕疵。

7.2 波达利就产品或其已交付产品的任何缺陷承担的责任限于(由波达利自行决定)更换有缺陷的产品或将有缺陷的产品价款计入客户应付款的贷项。

7.3 除第7.2条所列项目外,波达利对任何损害(包括但不限于替代性、额外、间接、直接损

7.2.

7.4 The limitation of liability shall not apply if and insofar as the damage suffered was inflicted intentionally by or was the result of gross negligence of Prodalim itself (and not any of its employees except for any directors of Prodalim).

7.5 In all cases in which Prodalim is obligated to pay compensation for damage, then the total sum of such compensation to be paid shall in no event exceed, at Prodalim's discretion, either the respective invoice value of the products in connection with which the damage was caused or, if the damage is covered by an insurance of Prodalim, the amount which is actually paid in the matter by the insurer.

7.6 Conditions that limit, exclude or establish liability, or that can be invoked against Prodalim by suppliers or subcontractors of Prodalim in connection with the products delivered, can also be invoked by Prodalim against the Customer. With respect to the products to be delivered, the Customer shall strictly observe national and international governmental export, import and user restrictions. The Customer shall and will hold Prodalim harmless with respect to any damage suffered by Prodalim as a result of any violation of these restrictions.

7.7 Customer shall and will hold Prodalim harmless against any claims of third parties related to the performance of the Agreement.

## 8. PAYMENT AND SECURITY

8.1 Unless expressly agreed otherwise in writing in the Agreement, payment shall be made in the currency and within the payment term specified on the respective invoice. Prodalim has the right to require payment in advance or demanding a security to be provided by the Customer to Prodalim, at Prodalim's discretion.

8.2 The Customer relinquishes any right to set-off amounts. Claims do not suspend the obligations of the Customer (including but not limited to the payment obligations).

8.3 If the Customer fails to pay any amount due in a timely manner, the Customer shall be in default without the need of a prior notice of default by Prodalim. As from the day following the payment due date, overdue payment interest at 1% of the outstanding amount per month shall be due for any part of a month during which the default continues.

8.4 All judicial and extrajudicial costs incurred by Prodalim as a result of the Customer being in default, shall be paid by the Customer.

## 9. TERMINATION

9.1 In the event the Customer (i) fails to partially or entirely perform one or more of its obligations, or fails to do so in a timely

害或利润损失)均不负责。

7.4 如果遭受的损害是由波达利自身(包括波达利任何董事,但不包括其他雇员)的故意或重大过失造成的,则不适用责任限制。

7.5 在波达利有义务支付损害赔偿的所有情况下,其赔偿总额在任何情况下不应超过(根据波达利自主选择)造成损害的产品相应的发票价值,或者,如果损害由波达利保险赔付,则不应超过保险人就此事项实际赔付的金额。

7.6 限制、免除或确定责任的条件,或波达利的供应商或分包商可针对波达利援引的、与所交付产品有关的条件,波达利也可对客户援引。对于交货的产品,客户应严格遵守国家及国际政府的出口、进口及用户限制。客户应并将使波达利免受因违反这些限制而遭受的任何损害。

7.7 客户应并将使波达利免受第三方提出的与协议履行有关的任何索赔。

## 8. 付款和保证

8.1 除非协议中另有明确书面约定,应按照相关发票中规定的币种在付款期限内付款。波达利有权自行决定要求客户支付预付款或要求客户向波达利提供担保。

8.2 客户放弃任何抵销款项的权利。提出索赔并不中止客户的义务(包括但不限于付款义务)。

8.3 如果客户未能及时支付任何到期款项,则客户构成违约,而无需波达利事先发出违约通知。自付款到期日的次日起,在违约持续期内,客户应按每月1%支付未付金额的逾期利息。

8.4 波达利因客户违约而产生的所有司法和其他费用,均应由客户支付。

## 9. 解除

9.1 若客户(i)未能部分或全部履行其一项或多项义务,或未能及时或适当地履行该等义

or proper manner; or (ii) files for, or has bankruptcy, receivership, judicial or extrajudicial recovery filed or declared against it; or (iii) requests a permanent or temporary suspension of payments; or (iv) proceeds to liquidate its company (or similar event), as well as if its assets are seized in part or in their entirety, then Prodalim shall be entitled to suspend the implementation of the Agreement or to terminate the Agreement with immediate effect, in part or in its entirety, by means of a written statement without the need of a prior notice of default by Prodalim, at its sole discretion, and always without prejudice to any other rights to which it is entitled to compensation of costs, damages, expenses and interest etc.

9.2 The Customer shall only be entitled to terminate the Agreement by means of a written statement in the events described in Articles 3.2 and 6.2 and in any event only after the full payment to Prodalim of all outstanding amounts at that time, including, without limitation, any payment obligations, damages, costs, charges, expenses and interest, whether or not due.

9.3 Expiration or termination of the Agreement for whatever reason shall not prejudice the provisions of these general terms and conditions, which, by their nature, must be deemed to survive such expiration or termination, including but not limited to Articles 7 and 10.

## 10. DISPUTES AND APPLICABLE LAW

10.1 All disputes between the parties relating to the Agreement, further contracts resulting therefrom or in connection therewith, shall be exclusively submitted to Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center) for arbitration in Shanghai, in the English language, in accordance with the arbitration rules in force at that time. The arbitral award shall be final and binding upon the parties.

10.2 All agreements between Prodalim and the Customer, including, without limitation, the Agreement and these general terms and conditions, are subject to the laws of the People's Republic of China. The stipulations specified in the Convention of International Sale of Goods of 11 April 1980 are not applicable.

## 11. DISPUTES AND APPLICABLE LAW

11.1 These general terms and conditions are written both in English and Chinese language. In case of discrepancies between the two language versions, the English version shall prevail.

务;或(ii)申请破产、接管或进入法院或其他偿债程序,或被他人申请或宣告破产、接管或进入法院或其他偿债程序;或(iii)要求永久或暂时停止付款;或(iv)进入公司清算(或类似事件),以及若其资产被全部或部分查封,则波达利有权自行决定通过书面声明的方式中止协议的履行或解除协议全部或部分,并立即生效,而无需波达利事先发出违约通知,且始终不损害波达利有权获得费用、损害、支出和利息等赔偿的任何其他权利。

9.2 客户仅在第3.2条和第6.2条所述事件中,并且在任何情况下,只有在向波达利全额支付了当时所有未付金额(包括但不限于任何付款义务、损害、成本、收费、支出和利息,无论是否到期)后,才有权通过书面声明的方式解除协议。

9.3 协议期满或因任何原因解除均不应影响本通用条款中按其性质在协议期满或解除后应当继续有效的条款,包括但不限于第7条和第10条。

## 10. 争议和适用法律

10.1 双方之间与协议相关的、由协议产生的或与协议相关的其他合同有关的所有争议,均应提交上海国际经济贸易仲裁委员会(上海国际仲裁中心),按照届时有效的仲裁规则,在上海以英文进行仲裁。仲裁裁决是终局的,对双方均有约束力。

10.2 波达利与客户之间的所有协议,包括但不限于协议、本通用条款,均受中华人民共和国法律约束。1980年4月11日订立的《联合国国际货物销售合同公约》应不予适用。

## 11. 争议和适用法律

11.1 本通用条款以英文和中文书写。如果两种文本存在不一致,应以英文文本为准。