

Automation - Terms and Conditions of Sale

自动化集成——销售条款和条件

- 1. Scope.** Seller means the Lincoln Electric entity identified in the Seller Documents (defined below), and Buyer means the industrial company purchasing Goods, Services and/or Software from Seller. Any Seller proposal, acknowledgment or invoice and all documents incorporated by specific reference herein or therein by Seller (“Seller Documents”), and these terms and conditions of sale (“Terms”), constitute the complete terms and conditions governing the sale of Goods, Services and/or Software (“Agreement”). ANY AND ALL ADDITIONAL OR DIFFERENT TERMS IN THE BUYER’S REQUEST FOR PROPOSAL, PURCHASE ORDER, BUSINESS FORMS, WEBSITE OR BY ANY OTHER DOCUMENTATION ISSUED BY BUYER ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO AND REJECTION OF SUCH TERMS IS HEREBY GIVEN. No website usage agreement or any other click through agreement on a web-site will have any binding effect whether or not Seller clicks on an “ok,” “I accept,” or similar acknowledgment. Commencement of any work by Seller or Buyer's acceptance of delivery of the Goods, Services and/or Software will manifest Buyer's assent to this Agreement. Additional or different terms applicable to a particular sale may be specified in the body of a Seller Document or agreed to in a written contract signed by both parties. In the event of a conflict, the following order of precedence will apply: (a) written contract signed by both parties; (b) Seller Documents; and (c) these Terms.

适用范围。 卖方是指卖方文件（定义见下文）中确定的林肯电气公司实体，买方是指从卖方购买货物、服务和/或软件的公司。卖方的任何建议、确认书或发票以及卖方在本文以及其中引用的所有文件（以下简称“卖方文件”），以及本销售条款和条件（以下简称“本条款”），构成货物、服务和/或软件销售所适用的完整条款和条件（以下简称“本协议”）。在买方的报价邀请书、采购订单、商业表格、网站或买方签发的任何其他文件中的任何及所有其他或不同条款，均应当被视为对本协议条款的重大变更，以及拒绝和反对该等条款的通知。无论卖方是否单击“确定”、“我接受”或类似的确认，任何网站使用协议或网站上的任何其他点击协议均不具有任何约束力。卖方或买方接受交付的货物、服务和/或软件后开始任何工作，即表示买方同意本协议。适用于特定销售的其他或不同条款可以在卖方文件的正文中规定，也可以在双方签署的书面合同中约定。如果存在任何冲突，应当适用下文规定的优先顺序：(a) 协议双方签署的书面合同；(b) 卖方文件；以及(c) 本条款。

- 2. Definitions:** Unless the context otherwise requires: (a) “Goods” as used herein means Goods sold under this Agreement, as identified in the Seller Documents; (b) “End-User” is the person or entity who uses the Goods or possesses them without any intention of resale. The “initial” End-User is the first End-User; (c) “Services” as used herein means all labor, supervisory, technical and engineering, installation, commissioning, programming, support, repair, training, consulting or other services provided by Seller under the Agreement; and (d) “Software” as used herein means all software, plus software documentation, if any, licensed to Buyer by Seller under this

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Agreement.

术语定义：除非上下文另有其它含义：(a) “货物”是指卖方文件中指明的根据协议出售的货物；(b) “最终用户”是指使用或拥有货物而无意转售的个人或实体。“初始”最终用户是第一个最终用户；(c) “服务”是指卖方根据本协议提供的所有人工、监督、技术和工程、安装、调试、编程、支持、维修、培训、咨询或其他服务；以及(d) “软件”是指卖方根据本协议向买方授予许可的所有软件以及软件文档（若有）。

- 3. Prices.** (a) Proposals for Goods, Services and/or Software expire thirty (30) days from the date thereof. (b) Prices for Services are based on normal business hours. Seller reserves the right to charge Buyer overtime rates for Services rendered outside normal business hours, holiday pay for working on holidays and travel time. Prices are subject to change without notice. (c) Seller's price does not include any federal, state or local property, license, privilege, sales, value-added, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Buyer agrees to pay or reimburse any such taxes which Seller or its suppliers are required to pay or collect. If Buyer is exempt from the payment of any tax or holds a direct payment permit at the time of the placement of order, Buyer shall provide Seller a copy, acceptable to the relevant governmental authorities of any such certificate or permit. (d) Seller's price excludes customs, duties and other similar fees which may not or hereafter be applicable. Buyer agrees to pay or reimburse any such customs, duties and other fees which Seller or its suppliers are required to pay or collect. Seller neither represents nor guarantees that any of the Goods qualify as originating under the North American Free Trade Agreement, Buy America, General System of Preferences or other relevant, existing or future trade agreements or tariff preference programs. Any duties, fees, taxes, other charges or exactions on the Goods payable to any government or other entity are the sole responsibility of the Buyer. Seller's price includes standard packaging for shipment by truck, unless expressly stated otherwise in the Seller Documents. Any change after the proposal date in such rates, or additional packaging required by Buyer or required to transport the Goods or Software via another mode of transportation, shall be paid to Seller in addition to the quoted price.

价格。(a) 关于货物、服务和/或软件的报价自提交之日起三十(30)天内有效。(b) 服务价格将基于正常工作时间。卖方有权向买方收取正常工作时间以外提供服务的加班费，在节假日和差旅时间工作的假日工资。价格可以随时变更，恕不另行通知。(c) 卖方的价格不包括目前或将来可能适用的任何联邦、州或地方财产税、执照税、特权税、销售税、增值税、使用税、消费税、毛收入税或其他类似税费。买方同意支付或偿还卖方或其供应商需支付或收取的任何该等税费。如果买方在提交订单时免交任何税费或持有直接付款许可证，则买方应当向卖方提供相关政府主管部门认可的任何该等证书或许可证的复印件。(d) 卖方的价格不包括海关收费、关税和其他类似费用，该等费用在目前或将来可能不适用。买方同意支付或偿还卖方或其供应商需支付或收取的任何该等海关收费、关税和其他费用。卖方未表示或保证任何货物符合《北美自由贸易协定》、购买美国货、普遍贸易优惠制或其他相关的、现有的或将来的贸易协定或关税优惠计划的原产地条件。应当向任何政府或其他实体支付的货物的任何关税、费用、税费、其他费用或税款均仅由买方自行承担。卖方的价格包括通过卡车运输的标准包装费用，除非卖方文件中另有明确规定。在报价日期之后，上述价格的任何变更，或买方要

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求的额外包装，或通过其他运输方式运输货物或软件所需的额外包装，均应当在报价之外支付给卖方。

- 4. Payment.** (a) All payments are due upon receipt of invoice without offset by Seller. (b) Seller has no obligation to ship any Goods to Buyer or to complete future milestones until Buyer is current on all payments due. (c) If in the judgment of Seller, the financial condition of Buyer at any time prior to shipment does not justify the terms of payment originally specified, Seller may require payment in advance, payment security satisfactory to Seller, or may terminate the Agreement for default, whereupon Seller shall be entitled to receive the charges set forth in Section 18 below. If shipment is delayed by Buyer, all payments shall become immediately due and payable on the date Seller is prepared to ship. Delays in shipment or nonconformities in any installments delivered shall not relieve Buyer of its obligation to accept and pay for remaining installments. (d) Buyer shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1-1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus Seller's attorneys' fees and court costs incurred in connection with collection.

付款。 (a) 所有付款应当在收到发票后到期，卖方不予抵消。(b) 在买方付清所有到期款项之前，卖方无义务向买方发运任何货物或完成未来的里程碑事项。(c) 如果卖方认为，买方在装运前的任何时间的财务状况不能证明最初指定的付款条件是合理的，则卖方可以要求提前付款、支付令卖方满意的保证金、或者由于违约情形终止本协议，因此卖方有权收取下文第18条规定的费用。如果买方延迟装运，所有款项应当立即到期，并且在卖方准备装运之日支付。延迟装运或任何分期付款中的不合格，均不免除买方接受和支付剩余分期付款的义务。(d) 除逾期付款外，买方还应当按照每月百分之一点五（1-1/2%）的月利率或者适用的法律准许的最高利率（两者以较高者为准），支付逾期款项利息，以及与催款相关产生的卖方律师费和法院费用。

- 5. Changes.** (a) Every change order shall reflect modifications to the Agreement, the delivery schedule and the price. A change order is not binding on either party mutually agreed to in writing. Seller has no obligation to perform any changes until the change order is mutually agreed in writing. (b) Seller may make such changes in the Goods, Services and/or Software as it deems necessary, in its sole discretion, to conform the Goods, Services and/or Software to the applicable specifications. If Buyer objects to any such changes, Seller shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

变更。 (a) 变更请求应当反映对本协议、交货时间表和价格的修改。变更请求对协议双方书面同意的一方不具有约束力。在协议双方书面同意之前，卖方无义务履行任何变更。(b) 卖方有权自行决定对货物、服务和/或软件进行其认为必要的更改，以使货物、服务和/或软件符合可适用的规格。如果买方反对任何该等变更，则卖方应当在适用性可能受到该等异议影响的范围内，免除其遵守可适用规范义务。

- 6. Shipment & Delivery.** (a) Goods are shipped on a domestic basis: FOB, point of

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shipment (UCC) and on an international basis: FCA: Seller's facility (Incoterms 2010) unless otherwise stated in the Sellers Documents. (b) Buyer shall be responsible for any and all demurrage, detention, customs broker and freight forwarder fees, warehouse and terminal charges, insurance, inspection, storage, special notifications, and special equipment/handling charges shall be at the Buyer's additional expense unless otherwise agreed in writing by Seller. (c) Shipping and delivery dates are estimates only, and are contingent upon Buyer's timely approvals and delivery by Buyer of any documentation required for Seller's performance hereunder. Seller shall not be liable for any penalties or damages of any kind if anticipated shipment dates are not met. Delivery times shall be automatically extended as needed to resolve any technical matters between the parties with respect to the delivery, installation or use of the Goods and/or Software. (d) If the scheduled delivery of Goods, Services and/or Software is delayed by Buyer, Seller may store in its facility or move the Goods and/or Software to storage, at Buyer's sole cost, expense and risk, whereupon the Goods and/or Software are deemed to be delivered and accepted by Buyer and all payments shall be accelerated and come immediately due and payable on the date Seller is prepared to make delivery - notwithstanding any terms to the contrary stated in Sellers Documents. (e) Seller may make partial deliveries.

装运和交付。 (a) 货物将采用国内运输：FOB，装运点（UCC），以及采用国际运输：FCA：卖方的经营场所（《国际贸易术语解释通则》2010年版），除非卖方文件中另有其他规定。(b) 买方应负责支付任何和所有滞期费、滞留费、报关费和货运代理费、仓库和码头费、保险费、检查费、仓储费、特殊通知费和特殊设备费/装卸费，除非卖方另有其他书面约定，否则应当由买方承担额外费用。(c) 装运和交付日期仅为估计日期，并且取决于买方是否及时批准和交付卖方履行本协议所需的任何文件。如果未达到预期的装运日期，卖方将不承担任何形式的罚款或损害赔偿。交货时间应当根据需要自动延长，以解决协议双方之间有关货物和/或软件的交付、安装或使用的任何技术问题。(d) 如果买方延迟了货物、服务和/或软件的预定交付时间，卖方可以在其经营场所存放或移动货物和/或软件至仓库，相关费用和 risk 由买方承担，因此，货物和/或软件将被视为由买方交付和验收，并且所有付款应当加速并在卖方准备交付之日到期应付——尽管卖方文件中存在任何相反规定。(e) 卖方可以部分交货。

- 7. Title & Risk of Loss.** Title and risk of loss for the Goods shall transfer to Buyer upon delivery of the Goods to the first carrier for shipment. Seller retains a purchase money security interest on and in such Goods until Seller receives payment in full, and Buyer will cooperate with Seller to perfect any such interest as deemed reasonably necessary by Seller.

所有权和损失风险。 货物的所有权和损失风险应当在货物交付给第一承运人进行装运后转移给买方。在卖方收到全额付款之前，卖方将保留该等货物上的购货款担保权益，并且买方将与卖方合作实现卖方认为合理必要的任何该等权益。

- 8. Buyer's Obligations.** (a) Buyer must provide required inputs and approvals on a timely basis. Buyer must complete site preparation work prior to shipment of the Goods and/or Software and performance of the on-site acceptance test, if applicable.

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Seller will not be liable for any delays caused by Buyer's failure to complete its site preparation obligations. (b) With respect to all of the Buyer's tools, equipment, material, or other property such as parts and test samples that are used in the design, assembly, manufacture, or testing of the Goods and/or Software (collectively "Buyer's Property") provided to Seller, Buyer agrees that Seller shall have the right to use Buyer's Property without payment of consideration, and if Buyer requires return or scrap of Buyer's Property, it will be at Buyer's direction and expense. Seller is not liable for any damages to Buyer's Property or any other parts and test samples supplied by Buyer during the manufacturing / testing process. Buyer must timely provide a sufficient number of test samples that meet the agreed upon specification in connection with the Goods, Services and/or Software being purchased by Buyer. If there are too few test samples or the test samples do not meet the agreed upon specifications, Seller may, in its sole discretion and at Buyer's sole cost and expense: 1) require Buyer to submit a sufficient number of test samples or to provide test samples that meet the specifications; 2) create additional test samples, or rework / modify existing test samples to meet the specifications; 3) be released from every obligation to test the Goods and/or Software, accelerate payment in full for the Goods, Services and/or Software then owing to Seller, and ship the Goods and/or Software as-is upon receipt of payment in full; or 4) terminate the Agreement for cause, whereupon Seller shall be entitled to receive cancellation charges set forth in Section 18 below. (c) Notwithstanding any other provision contained herein or any other obligation of Buyer hereunder, Buyer, upon acceptance of Goods, Services and/or Software that are the subject of this Agreement, warrants that Buyer, its employees, agents, customers, representatives, successors and assigns are industrial users of such Goods, Services and/or Software and possess the knowledge and expertise to use the same in accordance with (i) accepted industry standards, including, but not limited to, those promulgated by the American National Standards Institute, the American Welding Society, the Robotic Industry Association standards and the Laser Institute of America standards, (ii) all applicable laws, including, but not limited to, OSHA's Hazard Communication Standard; (iii) prudent safety practices, and (iv) operating manuals, safety data sheets, warning labels and other written instructions provided by Seller, if any. In addition to other obligations stated herein, Buyer assumes all risk and liability for loss or damage resulting from the handling, use, or application of the Goods, Services and/or Software. Buyer agrees that it has an independent duty to familiarize itself with and keep informed of any safety and/or health hazards to persons and/or property involved in handling and using such Goods, Services and/or Software. Buyer shall advise its employees, customers, agents, distributors, consultants, independent contractors and others who may foreseeably handle or use such Goods, Services and/or Software of any hazards. (d) Buyer agrees to indemnify, defend and hold harmless Seller, its subsidiaries and affiliates and their respective directors, officers, shareholders, customers, employees, agents, successors and assigns of each from and against any and all liabilities, losses, costs or damages, including reasonable attorneys' fees, resulting from claims (unless finally determined to be the result of the gross negligence or willful misconduct of Seller) that arise from (i) use or handling of the Goods, Services and/or Software by Buyer or any third party, whether or not the Goods, Services and/or Software are combined with any other materials, substances or equipment or is used in any manufacturing process; (ii) failure by Buyer to disseminate safety and health information as required above; and (iii) failure of Buyer to comply with Section 26.

买方的义务。(a) 买方必须及时提供所需的资源和批准。买方必须在装运货物

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和/或软件之前完成现场准备工作，并进行现场验收测试（如果适用）。对于因买方未履行其场地准备义务而导致的任何延误，卖方概不负责。(b) 对于买方的所有工具、设备、材料或其他财产，例如在设计、组装、制造或测试向卖方提供的货物和/或软件时使用的零件和测试样品（以下合称“买方财产”），买方同意，卖方有权使用买方财产而无需支付任何对价，并且如果买方要求退还或废弃买方财产，则应当由买方指示并承担费用。在制造/测试过程中，卖方对买方财产或买方提供的任何其他零件和测试样品的任何损坏概不负责。买方必须及时提供足够数量的测试样品，以符合与买方购买的货物、服务和/或软件有关的商定规格。如果测试样品太少或测试样品不符合约定的规格，则卖方可以自行决定采取下述措施，并由买方承担相关费用：1) 要求买方提交足够数量的测试样品或提供符合规格的测试样品；2) 创建其他测试样品，或返工/修改现有测试样品以符合规格；3) 免除测试货物和/或软件的所有义务，加速全额支付应向卖方支付的货物、服务和/或软件费用，并在收到全额付款后按原样装运货物和/或软件；或者4) 有因终止本协议，则卖方有权收取下文第18条规定的取消费用。(c) 尽管本协议存在任何其他规定或买方承担本协议项下的任何其他义务，买方在接受本协议项下的货物、服务和/或软件后，在此保证，买方、其员工、代理人、客户、代表、继任者和受让人是该等货物、服务和/或软件的工业用户，并且根据(i) 公认的行业标准，包括但不限于美国国家标准协会、美国焊接学会、机器人工业协会标准和美国激光学会标准；(ii) 所有可适用法律，包括但不限于OSHA的《危害通信标准》；(iii) 谨慎的安全规范；以及(iv) 卖方提供的操作手册、安全数据表、警告标签和其他书面说明（若有），持有知识或经验使用该等货物、服务和/或软件。除本协议项下规定的其他义务外，买方应当对因处理、使用或应用货物、服务和/或软件而造成的损失或损害承担全部风险和责任。买方同意，其有独立的责任熟悉和掌握有关处理和使用该等货物、服务和/或软件、对人员和/或财产的任何安全和/或健康危害。买方应当向其员工、客户、代理人、分销商、顾问、独立承包商和其他可能可预见地处理或使用该等货物、服务和/或软件的人员告知任何危害。(d) 如果由于(i) 买方或任何第三方使用或处理货物、服务和/或软件，无论货物、服务和/或软件是否与任何其他材料、物质或设备结合在一起，或是否在任何制造过程中使用；(ii) 买方未按上述要求散布安全和健康信息；以及(iii) 买方未遵守第26条规定导致的索赔，而造成任何和所有责任、损失、费用或损害，包括合理的律师费，买方同意向卖方、其子公司和关联公司以及其各自的董事、高级管理人员、股东、客户、员工、代理人、继任者和受让人给予赔偿，并确保其免受损害。

- 9. Inspection, Testing and Acceptance.** (a) If Seller is not providing a factory acceptance test, Buyer will be deemed to have accepted the Goods and/or Software upon delivery. (b) If the Agreement provides for factory acceptance testing, Seller shall notify Buyer when Seller will conduct factory testing for compliance to Seller's specifications prior to shipment. Unless Buyer states specific objections in writing within two (2) days after completion of factory acceptance testing, completion of the factory acceptance test constitutes Buyer's acceptance of the Goods and/or Software and Buyer's authorization for shipment. If the Agreement provides for factory acceptance testing and Buyer instructs Seller to ship the Goods and/or Software without completing the factory testing, Buyer has i) waived the factory acceptance test, ii) accepted the Goods, Services and/or Software as-is through such waiver; iii) accelerate payment in full for the Goods, Services and/or Software then owing to Seller, and iv) ship the Goods

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and/or Software as-is upon receipt of payment in full. (c) If the Agreement provides for site acceptance testing, testing will be performed by Seller personnel at Buyer's site to verify compliance to Seller's specifications. Completion of site acceptance testing constitutes final acceptance of the Goods, Services and/or Software. If, through no fault of Seller, site acceptance testing is not completed within thirty (30) days after arrival of the Goods at the site, the site acceptance test shall be deemed completed. Upon completion or deemed completion of on-site acceptance testing, any final payment is immediately due and owing to Seller.

检验、测试和验收。 (a) 如果卖方未提供工厂验收测试, 则买方将被视为已在交付时验收了货物和/或软件。(b) 如果本协议中规定了工厂验收测试, 则卖方应当在装运前通知买方何时进行工厂测试, 以符合卖方的规格。除非买方在完成工厂验收测试后两(2)天内以书面形式提出异议, 否则工厂验收测试的完成即构成买方对货物和/或软件的接受以及买方的装运授权。如果协议中规定了工厂验收测试, 并且买方指示卖方在未完成工厂测试的情况下装运货物和/或软件, 则买方 i) 已放弃了工厂验收测试; ii) 通过该等放弃, 按原样验收了货物、服务和/或软件; iii) 加速应付给卖方的货物、服务和/或软件的全额付款; 以及 iv) 在收到全额付款后, 按原样装运货物和/或软件。(c) 如果协议中规定了现场验收测试, 则卖方工作人员将在买方的现场进行测试, 以验证是否符合卖方的规格。现场验收测试的完成即构成对货物、服务和/或软件的最终验收。如果并非因卖方的过错, 在货物到达现场后三十(30)天内未完成现场验收测试, 则视为现场验收测试已完成。现场验收测试完成或被视为完成后, 应当立即向卖方支付任何到期应付的最终付款。

10. Warranties and Remedies. (a) Warranty. Seller warrants that Goods shall be delivered free of defects in material and workmanship and in accordance with Seller's specifications, and that Services shall be performed in a professional and workmanlike manner, in accordance with industry standards. Any Good or major component to a Good that is manufactured by a third party is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer shall apply. Unless covered by the following two sentences, the warranty period for new Goods manufactured by Seller is 12 months from shipment. The warranty period is 3 years from shipment for new Python X (or 6000 hours, whichever occurs first), FlexCut Power Supply, Spirit II Power Supply. The warranty period is 2 years from shipment for new Torchmate 4400, Torchmate 4800. The warranty period for new spare parts manufactured by Seller shall end twelve (12) months after date of shipment. The warranty period for refurbished or repaired parts manufactured by Seller shall end ninety (90) days after date of shipment. The warranty period for Services shall end ninety (90) days after completion of Services. Warranty coverage is available only to the initial End-User and is non-transferable. Any subsequent purchaser/End-User interested in purchasing additional warranty coverage must contact Seller directly, and if agreed by Seller, will be granted via a separate written agreement. (b) Remedy. If a nonconformity to the foregoing warranty is discovered in the Goods or Services during the applicable warranty period specified above, and written notice of such nonconformity is provided to Seller promptly after such discovery and within the applicable warranty period, Seller's sole and exclusive obligation shall be, at its option, to either (i) repair or replace the nonconforming portion of the Goods; (ii) ship repair or replacement parts to Buyer; (iii) re-perform the nonconforming Services; or (iv) refund the portion of the price applicable to the nonconforming portion of Goods or Services.



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If any portion of the Goods or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to Seller promptly after discovery and within the original warranty period applicable to such Goods or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, Seller will repair or replace such nonconforming Goods or re-perform the Services. The applicable warranty period shall not otherwise be extended. (c) Software. Seller warrants that, except as specified below, the Software will, when properly installed, execute in accordance with Seller's published specifications. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment, and written notice of such nonconformity is provided to Seller promptly after such discovery and within the warranty period, including a description of the nonconformity and complete information about the manner of its discovery, Seller shall correct the nonconformity by, at its option, either (i) modifying or making available to the Buyer instructions for modifying the Software; or (ii) making available at Seller's facility necessary corrected or replacement programs. Seller shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software and/or (ii) Buyer-supplied software or interfacing. Seller does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Buyer, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs". (d) Exceptions. Seller has no liability under this Section 10 for any of the following: (i) components that get consumed and replaced on a regular basis through normal use and operation of the Goods, including but not limited to contact tips, weld wire, conduit, etc.; (ii) Buyer's failure to provide Seller working access to the nonconforming Goods including disassembly and re-assembly of non-Seller supplied equipment, and for shipment to or from any repair facility - or the opportunity to examine the Goods - prior to expiration of the warranty period; (iii) improper installation, repair or alteration by Buyer or a third party not under Seller's control and supervision; (iv) misuse, negligence or accident; (v) Buyer's failure to meet its obligations in Section 8; (vi) failure as a result of materials provided by or a design specified by Buyer; (vii) failure as a result of ordinary wear and tear; (viii) failure as a result of Buyer's failure to comply with the law; (ix) any failure submitted after expiration of the applicable warranty period; and/or (x) if the Goods, Services and/or Software have not been paid for in full. (e) Disclaimers. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED. ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE AND AGAINST INFRINGEMENT ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE BUYER'S EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR ANY WARRANTY CLAIMS OR MATTERS. (f) Customer Assistance Policy. The business of Seller is manufacturing and selling high quality welding equipment, automated welding systems, consumables, and cutting equipment. Our challenge is to meet the needs of our customers and to exceed their expectations. On occasion, purchasers may ask Seller for information or advice about their use of the Goods, Services and/or Software. Seller's employees respond to inquiries to the best of their ability based on information provided to them by the customers and the knowledge they may have concerning the application. Seller's employees, however, are not in a position to verify the information provided or to evaluate the engineering requirements for the particular weldment or application.

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Accordingly, Seller does not warrant or guarantee or assume any liability with respect to such information or advice. Moreover, the provision of such information or advice does not create, expand, or alter any warranty on our Goods, Services and/or Software. Any express or implied warranty that might arise from the information or advice, including any implied warranty of merchantability or any warranty of fitness for Buyer's particular purpose is specifically disclaimed. Seller is a responsive manufacturer, but the selection and use of specific Goods, Services and/or Software sold by Seller is solely within the control of, and remains the sole responsibility of Buyer. Many variables beyond the control of Seller affect the results obtained in applying these types of fabrication methods and service requirements.

保证和救济。 (a) **保证。** 卖方保证, 应当按照卖方的规定交付不存在材料和制造工艺等方面缺陷的货物, 并且按照行业标准, 以专业和熟练的方式提供服务。由第三方生产的任何货物或货物的主要组成部分, 仅在制造商保证的范围内得到保证, 并且仅适用制造商提供的救济(如有)。除非下述两条规定另有规定, 否则卖方生产的新货物的保修期为装运后的12个月。新的Python X、FlexCut电源、Spirit II电源的保修期为装运后3年(或6000小时, 以时间在先者为准)。新的Torchmate 4400、Torchmate 4800的保修期为装运后2年。卖方制造的新备件的保修期应当为自装运之日起十二(12)个月。卖方制造的翻新或维修零件的保修期应当为自装运之日起九十(90)天。服务的保修期应当为自服务完成后九十

(90)天。保修范围仅适用于最初的最初用户, 并且不可转让。任何有兴趣购买额外保修范围的任何后续购买者/最终用户必须直接与卖方联系, 并且在获得卖方同意的情况下, 将通过单独的书面协议授予。(b) **救济。** 如果在上文规定的保修期内, 在货物或服务中发现与上述保证不符的情况, 并且在发现该等情况后并在适用的保修期内, 立即将该等不合格情形书面通知卖方, 则卖方的唯一和排他性义务为: (i) 修理或更换货物的不合格部分; (ii) 将维修或更换零件运送给买方; (iii) 重新履行不合格的服务; 或 (iv) 退还适用于货物或服务不合格部分的部分价格。如果该等修理、更换或重新履行的货物或服务的任何部分发现与上述保证不符的情况, 并且在发现该等情况后, 立即在适用于该等货物或服务的原始保修期内, 或者该等维修、更换或重新履行完成后的30天(以时间较晚者为准)书面通知卖方, 卖方将维修或更换该等不合格货物或重新履行服务。可适用的保修期限不得以其他方式延长。(c) **软件。** 卖方在此保证, 除下述规定外, 在正确安装后, 软件将按照卖方发布的规范执行。如果在装运日期后一

(1)年内发现与上述保证不符的情况, 则在发现该等情况后并在保修期内立即将不符情况书面通知卖方, 包括不符情况的说明以及有关发现方式的完整信息, 卖方应当自行选择通过以下方式纠正不符情况: (i) 修改或向买方提供修改软件的说明; 或者 (ii) 在卖方的经营场所内提供必要的纠正或更换程序。对于

(i) 未经授权对软件的修改和/或 (ii) 买方提供的软件或界面造成的任何不合格, 卖方不承担任何责任。卖方不保证软件中包含的功能可以按买方选择的组合方式运行, 也不保证软件产品不存在计算机行业通常归类为“bugs”的错误。

(d) **例外情形。** 根据本第10条规定, 卖方无须对下述情形承担任何责任: (i) 通过货物商品的正常使用和操作而定期消耗和更换的组件, 包括但不限于触头、焊丝、导管等; (ii) 买方未能向卖方提供对不合格货物的工作通道, 包括非卖方销售的设备的拆卸和重新组装, 以及在保修期到期之前发货至任何维修设施或从维修设施发货——或有机会检查货物; (iii) 买方或不受卖方控制和监督的第三方进行的不当安装、维修或变更; (iv) 滥用、疏忽或意外; (v) 买方未履行第8条中规定的义务; (vi) 由于买方提供的材料或买方指定的设计而导致的

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故障；（vii）由于普通磨损而导致的故障；（viii）由于买方未遵守法律而导致的故障；（ix）可适用保修期到期后提交的任何故障；和/或（x）如果尚未全额支付货物、服务和/或软件的费用。（e）免责声明。上述保证事项具有排他性，将替代所有其他书面、口头或默示的质量和履行保证。协议双方在此声明并未作出任何其他保证，包括对适销性、特定目的的适用性或贸易用途以及对侵权的任何明示或默示保证。本协议中规定的救济构成买方的排他性救济，并且卖方对任何保修索赔或事项承担全部责任。（f）客户协助政策。卖方的业务是制造和销售高质量的焊接设备、自动化焊接系统、消耗品和切割设备。我们的挑战是满足客户的需求并超越他们的期望。购买者有时可能向卖方询问有关其使用货物、服务和/或软件的信息或建议。卖方的员工将根据客户提供给他们的信息，以及他们对应用程序的了解，尽力回复客户提出的问题。但是，卖方的员工无法验证所提供的信息，也无法评估特定焊件或应用的工程要求。因此，卖方并未对该等信息或建议作出任何保证或承担任何责任。此外，提供该等信息或建议不会产生、扩展或改变货物、服务和/或软件的任何保证。我们在此明确否认由于信息或建议可能产生的任何明示或暗示的保证，包括任何隐含的适销性保证或适用于买方的特定目的的保证。买方是一家快速响应的制造商，但是卖方出售的特定货物、服务和/或软件的选择和使用完全在买方的控制之下，而且由买方自行承担全部责任。卖方无法控制的许多变数会影响应用这些制造方法和服务要求所获得的结果。

11. Patent Indemnity. (a) By Seller. (1) Seller agrees to defend any suit, proceedings or counterclaim against Buyer for the infringement of any United States Letters Patent by: (1) any Goods manufactured by Seller, of whatever kind, or any parts thereof, made to Seller's design or specifications, but only in the form, state or condition supplied under the Agreement; or (2) any use of such Goods manufactured by Seller where the Goods constitute a material part of any patented method of such patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use. Such defense is conditioned only if Seller is: notified promptly in writing of any charges of infringement; (2) given authority to direct and control the defense of such charge or suit; and (3) furnished such information and assistance, at Seller's expense, as may be necessary for such defense. Seller shall pay all costs and damages awarded therein against Buyer. This Agreement does not apply to the combination of the Goods, Services and/or Software supplied under this Agreement with goods, services and/or software not supplied by Seller, nor to any process involving such combinations. If at any time, such Goods or any part thereof, or their use, are considered by the Seller to constitute infringement, Seller may, at its own expense: (1) procure for the Buyer the right to continue using such Goods; (2) modify them so they become non-infringing; or (3) remove them and refund the purchase price and the transportation costs thereof, if any. The foregoing states the entire liability of the Seller for patent infringement by such Goods or their use. (b) By Buyer. If Buyer supplies an order request to Seller for a product and/or its own specifications for the same, then Buyer represents that Buyer has ownership rights to, and/or have a license to have such product built for Buyer, and Buyer agrees to defend, indemnify and hold harmless Seller, its parent company, agents and/or affiliates from and against any claims, suits, proceedings (whether in court or out of court) of all types whatsoever against, and shall indemnify Seller, its parent company, directors, officers, employees, shareholders, affiliates and agents for all costs, damages, judgments, settlements and

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compromises (including incurred costs and attorneys' fees) for the infringement or claimed infringement of any patent, trademark, service mark, trade secret, copyright, moral rights or other claims of violation of intellectual property anywhere in the world by: (1) Buyer's request that Seller reproduce, manufacture, modify, utilize or incorporate Buyer's product idea and/or specifications into this Agreement; or (2) any misrepresentation by Buyer that it had ownership rights and/or a license to have Goods built for it when such representation was not accurate and/or resulted in claims against Seller based upon Seller's completion of a project for Buyer under such misrepresentation. Buyer shall pay all costs, damages, judgments, settlements and compromises (including incurred costs and attorneys' fees) arising out of or related to such claims, suits, proceedings (whether in court or out of court) against Seller, its parent company, directors, officers, employees, shareholders, affiliates and agents.

专利赔偿。 (a) 由卖方给予赔偿。(1) 卖方同意通过以下方式, 为针对买方侵犯任何美国专利证书而提起的任何诉讼、起诉或反诉提供辩护: (1) 卖方根据卖方的设计或规格制造的任何种类的货物、或其任何部分, 但是仅采用本协议项下提供的形式、状态或条件; 或者 (2) 卖方制造的该等货物的任何使用, 如果该等货物构成专利的任何专利方法的重要组成部分, 并且并非适合实质性非侵权用途的主流商品。该等辩护的前提条件是, 如果卖方: (1) 立即以书面形式通知任何侵权指控; (2) 有权指导和控制该等指控或诉讼的抗辩; 以及 (3) 提供该等辩护所需的信息和协助, 相关费用由卖方承担。卖方应当向买方支付由此裁定的所有费用和损害赔偿。本协议不适用于根据本协议提供的货物、服务和/或软件与并非由卖方提供的货物、服务和/或软件的组合, 也不适用于涉及该等组合的任何流程。如果卖方在任何时间认为该等货物或其任何部分或其使用构成侵权, 则卖方可以自费采取下列措施: (1) 为买方获得继续使用该等货物的权利; (2) 对货物进行修改, 以使修改后的货物不构成侵权; 或者 (3) 移除货物并退还购买价格及其运输费用 (若有)。前述条款规定了卖方对该等货物或其使用造成的专利侵权的全部责任。(b) 由买方给予赔偿。如果买方向卖方提供订购产品的要求和/或其对产品的规格要求, 则买方在此陈述, 买方拥有为其制造的该等产品的所有权和/或许可, 并且买方同意, 如果因下述原因导致产生任何索赔、诉讼、起诉 (无论是否在法院内), 买方应当向卖方、其母公司、代理人和/或关联公司给予赔偿, 提供抗辩并确保其免受损害, 以及如果因下述原因导致在全球任何地点, 关于任何专利、商标、商号、服务标记、商业机密、版权、精神权利或其他知识产权的侵权索赔, 而产生任何费用、损失、判决、和解和妥协 (包括所产生的费用和律师费), 买方应当向卖方、其母公司、董事、高级管理人员、员工、股东、关联公司和代理人给予赔偿: (1) 买方要求卖方复制、制造、修改、利用或将买方的产品构想和/或规格纳入本协议; 或者 (2) 买方对其拥有所有权和/或拥有为其制造货物的许可证的任何虚假陈述, 如果该虚假陈述不准确, 和/或导致卖方根据该虚假陈述为买方完成项目而对卖方提出索赔。买方应当向卖方、其母公司、董事、高级管理人员、员工、股东、关联公司和代理人支付由于向卖方提起该等索赔、诉讼、起诉 (无论是否在法院内) 而产生的所有费用、损失、裁决、和解和妥协 (包括所产生的费用和律师费)。

12. Limitation of Liability. (A) IN NO EVENT SHALL SELLER, ITS PARENT, SUBSIDIARIES AND AFFILIATES BE LIABLE FOR SPECIAL, INDIRECT,

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INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS, SERVICES AND/OR SOFTWARE OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, AND CLAIMS OF CUSTOMERS OF THE BUYER OR OTHER THIRD PARTIES FOR ANY DAMAGES. SELLER'S LIABILITY FOR ANY CLAIM WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR USE OF ANY GOODS AND/OR SOFTWARE COVERED BY OR FURNISHED UNDER THIS AGREEMENT, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE EXCEED THE PURCHASE PRICE ALLOCABLE TO THE GOODS, SERVICES AND/OR SOFTWARE OR PART THEREOF WHICH GIVES RISE TO THE CLAIM. (B) ALL CAUSES OF ACTION AGAINST SELLER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE YEAR OF THE TIME OF ACCRUAL THEREOF. (C) IN NO EVENT, REGARDLESS OF CAUSE, SHALL SELLER BE LIABLE FOR THE ACTS OR OMISSIONS OF BUYER OR THIRD PARTIES.

责任限制。 (A) 在任何情况下，卖方、其母公司、子公司和关联公司均不承担基于合同、保证、侵权、过失、严格责任或其他方面而产生的任何特殊损失、间接损失、或有损失和附随损失，包括但不限于利润或收入损失、货物、服务和/或软件或任何相关设备的使用损失、资本费用、替代设备、设施或服务费用、停机费用、延误以及买方或任何其他第三方提出的客户损失索赔。对于任何因本协议、本协议的履行或违反、或者由于本协议项下提供的货物和/或软件的设计、制造、销售、交付、转售、维修、更换、安装、以及安装、检查、操作或使用的技术指导、以及由于本协议项下提供的任何相关服务，而基于合同、保证、侵权、过失、严格责任或其他方面而产生的索赔责任，在任何情况下，均不得超过产生该等索赔的货物、软件和/或服务或其部分可分配的购买价格。(B) 因本协议引起或相关的或因本协议的履行或违反而对卖方提起的所有诉因应当失效，除非在该等诉因发生之日起一年内提起。(C) 在任何情况下，无论出于何种原因，卖方均应对买方或第三方的作为或不作为承担责任。

- 13. Software License.** (a) Seller owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Buyer under this Agreement. As part of the sale made hereunder Buyer hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with Goods sold by Seller; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse-engineered, or modified; (iv) The Buyer's right to use the Software shall terminate immediately when the specified Goods are no longer used by the Buyer or when otherwise terminated for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with Seller's prior written consent.

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(b) Nothing in this Agreement shall be deemed to convey to Buyer any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Buyer shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to Seller the Software and all copies thereof and shall remove all machine readable Software from all of Buyer's storage media.

软件许可。(a) 卖方拥有本协议项下交付给买方的所有软件(若有)的全部权利, 或有权授予再许可。作为本协议项下的出售的一部分, 买方在此取得使用软件的有限许可, 具体规定如下: (i) 软件只能与卖方出售的货物一同使用; (ii) 软件应当予以严格保密; (iii) 不得复制、反向工程或修改软件; (iv) 当买方不再使用指定的货物或因违约而以其他方式终止本协议时, 买方使用软件的权利应当立即终止; 以及 (v) 软件的使用权具有非排他性和不可转让, 除非事先取得卖方的书面同意。(b) 本协议的任何内容均不得视为向买方转让软件的产权或所有权, 或其中包含的全部或部分知识产权, 也不得根据《版权法》将软件指定为“职务作品”, 也不得向不属于本协议一方当事人的任何人员授予本协议项下的任何权利或救济权。在本许可终止的情况下, 买方应立即停止使用软件, 并且在不得保留其任何副本、注释或摘录的情况下, 将软件及其所有副本退还给卖方, 并应当从买方的所有存储介质中删除所有机器可读的软件。

14. Data Security/Data Access. Some Goods and/or Software may require internet access for operation. Buyer is responsible for obtaining internet access and payment for all usage charges related thereto. If Seller or Buyer requires access to the other's computer systems to perform tasks that fall under the scope of an Agreement, access shall be granted only to the extent necessary to fulfill any required tasks. Buyer represents that it has developed and implemented and covenants that it will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to: (a) ensure the confidentiality, security, integrity and availability of its computer systems and information; (b) protect against threats or hazards to their computer systems and the confidentiality, security, integrity and availability of information; and (c) protect against unauthorized access to its computer systems and information. Buyer shall promptly notify Seller of any breach of confidentiality or disclosure of confidential information, or a breach of information security policies or procedures, or unauthorized access to its computer systems. Notice shall be provided no later than twenty-four (24) hours upon discovery of a breach. Buyer agrees that it shall be responsible for all acts and omissions with respect to the unauthorized access to its computer systems and information, including the acts and omissions of its employees, agents and independent contractors. Buyer agrees to indemnify and hold Seller harmless, its parent company, directors, officers, employees, shareholders, affiliates and agents from and against any and all third party claims of damages, liabilities, expenses, fines and losses of any type, including but not limited to reasonable attorneys' fee, in connection with or arising out of, in whole or in part, of its or its representative's breach of computer system security.

数据安全/数据访问。某些货物和/或软件可能需要互联网接入才能进行操作。买方有责任获得互联网访问权限并支付与之相关的所有使用费。如果卖方或买方要

求访问对方的计算机系统，以执行本协议范围内的任务，则仅在满足任何必需任务的必要范围内授予访问权限。买方在此陈述，其已制定并实施，并承诺将维持有效的信息安全政策和程序，其中包括旨在保护以下方面的行政、技术和物理安全防范：（a）确保其计算机系统和信息的机密性、安全性、完整性和可用性；（b）防止对其计算机系统以及信息的机密性，安全性、完整性和可用性造成威胁或危害；以及（c）防止未经授权访问其计算机系统和信息。买方应当立即将任何违反保密性或泄露保密信息、违反信息安全政策或程序、或未经授权访问其计算机系统的情况通知卖方。在发现任何违约情形后，不得迟于二十四（24）小时提供通知。买方同意，对于未经授权访问其计算机系统和信息的所有行为和疏忽，包括其员工、代理商和独立承包商的行为和疏忽，买方均应承担责任。如果因买方或其代表违反计算机系统安全性，而导致第三方提起或产生损害索赔、责任、费用、罚款和任何类型的损失，包括但不限于合理的律师费，买方同意向卖方、其母公司、董事、高级管理人员、员工、股东、关联公司和代理人给予赔偿，并确保其免受损害。

15. Inventions and Information. All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks created or prepared by Seller under this Agreement, together with any and all intellectual property rights therein (collectively “Inventions”), shall belong exclusively to Seller. Buyer hereby assigns the worldwide right, title and interest in and to the Inventions to Seller. Seller shall have the right, at its option and expense, to seek protection of the Inventions by obtaining patents, copyright registrations, and filings related to proprietary or intellectual property rights. Buyer agrees to execute, and to cause its employees and/or agents to execute, such documents, applications, and conveyances and to supply information as Seller shall request, in order to permit Seller (at Seller’s expense) to protect, perfect, register, record and maintain its rights in the Inventions and effective ownership of them throughout the world. These obligations survive the expiration or termination of this Agreement. Buyer shall not, without Seller's prior written consent, copy or disclose such Inventions to a third party. Such Inventions shall be used by Buyer solely for the operation or maintenance of the Goods, Services and/or Software and not for any other purpose, including the duplication thereof in whole or in part.

发明和信息。 卖方根据本协议创建或准备的所有材料以及任何发明（无论是否具有专利权）、著作作品、商业机密、想法、概念、商品名称以及商标或服务标记，以及其中的任何和所有知识产权（以下合称“发明”），应当排他性地属于卖方。买方在此将发明以及与发明有关的全球权利、产权和利益转让给卖方。卖方应当有权选择通过获得专利、版权注册以及与专有或知识产权相关的文件，以寻求对发明的保护，相关费用由卖方自行承担。买方同意签署，并促使其员工和/或代理人签署该等文件、申请书和让与，并提供卖方要求提供的信息，以允许卖方（由卖方承担相关费用）保护、完善、注册、记录并维护其在发明中的权利，以及在全球范围内对其拥有的有效所有权。上述义务在本协议有效期限届满或终止后仍然有效。未经卖方事先书面同意，买方不得将该等发明复制或披露给第三方。买方应仅将该等发明用于货物、服务和/或软件的操作或维护，不得用于任何其他目的，包括全部或部分复制。

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16. Confidentiality. “Confidential Information” means all information, know-how, trade secrets or other material disclosed by Buyer to Seller and Seller to Buyer. Both Buyer and Seller shall treat each other’s Confidential Information as confidential; shall not use such Confidential Information except in connection with the Agreement; shall not disclose such Confidential Information to any third party who has not executed an agreement to maintain the confidentiality of the Confidential Information with restrictions at least as restrictive as those set forth herein; and shall not reverse-engineer Seller’s Goods, Services and/or Software. All technical, business, sales, distribution channel, financial, marketing, pricing, planning, competitor information and the lists of customers who have purchased Goods from Seller are considered Seller’s Confidential Information. Confidential Information does not include information that is: (i) generally known and available in the public domain; (ii) was known to recipient prior to the date of disclosure; (iii) was received from a third-party without any obligation of confidentiality; or (iv) was independently developed without reliance on Confidential Information. Given the nature of the Confidential Information and the likely consequences of its unauthorized use or disclosure, monetary damages would not be an adequate remedy and both Seller and Buyer reserve the right to seek and obtain injunctive relief, in addition to any other remedy that may be available, in any proper forum.

保密。 “保密信息”是指买方向卖方和卖方向买方披露的所有信息、专有技术、商业机密或其他材料。买方和卖方均应对彼此的保密信息予以保密；除非与本协议有关，否则不得使用该等保密信息；不得将该等保密信息透露给尚未签署协议以维护保密信息机密性的任何第三方，其限制条件至少应与本协议规定的限制条件相同；并且不得对卖方的货物、服务和/或软件进行反向工程。所有技术、业务、销售、分销渠道、财务、市场营销、定价、计划、竞争对手信息以及已从卖方购买商品的客户列表均被视为卖方的保密信息。保密信息不包括：

(i) 进入公知领域并且可以普遍获取的信息；(ii) 接收方在披露日期之前已经知悉的信息；(iii) 从无须承担保密义务的第三方中获取的信息；或者(iv) 未依赖保密信息的情况下独立开发的信息。鉴于保密信息的性质及其未经授权使用或披露的可能后果，金钱损害赔偿可能无法提供充分救济，除可能采取的其他任何救济外，买卖双方均有权向有管辖权的法院寻求和获得禁令救济。

17. Cancellation. (a) All sales are final. If this Agreement is cancelled or terminated for convenience by Buyer, Buyer shall pay Seller 100% of the sale price under the Agreement. Seller may attempt to mitigate the monetary impact of cancellation or termination, at its discretion. (c) Upon receipt of payment in full, Seller will deliver Goods, Services and/or Software to Buyer, or scrap the same at Buyer’s direction.

取消。 (a) 所有销售都是最终的。如果买方取消或终止了本协议，则买方应向卖方支付本协议下的销售价格的100%。卖方可以自行决定尝试减轻协议取消或终止的经济影响。(c) 在收到全额付款后，卖方将向买方交付货物、服务和/或软件，或在买方的指示下将其报废。

18. Termination for Default. (a) Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and such breach is not cured within 30 days after the non-breaching party issues written notice to the breaching

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party. Seller may terminate this Agreement immediately for cause if Buyer fails to comply with its obligations under Section 26. (b) Effect of termination. If this Agreement is terminated due to Buyer's breach, Buyer shall pay Seller 100% of the sale price under the Agreement. If this Agreement is terminated due to Seller's breach, Buyer shall pay Seller the sale price of the Goods, Services and/or Software based on percentage of work completed as of the effective date of termination, plus costs incurred from vendors as a result of early termination. Seller may attempt to mitigate the monetary impact of cancellation or termination, at its discretion. (c) Upon receipt of payment, Seller will deliver Goods, Services and/or Software to Buyer, or scrap the same at Buyer's direction.

违约终止。 (a) 如果协议任何一方严重违反本协议，并且守约方在向违约方发送书面通知后三十（30）天内没有纠正该等违约行为，守约方有权终止本协议。如果买方未遵守本协议第26条规定，卖方有权立即终止本协议。(b) 协议终止的法律效果。如果由于买方违约而终止本协议，买方应当向卖方支付本协议下的销售价格的100%。如果由于卖方违约而终止本协议，买方应根据自终止生效日期起已完成工作的百分比，向卖方支付货物、服务和/或软件的销售价格，再加上卖方因提前终止而产生的费用。卖方可以自行决定尝试减轻协议取消或终止的经济影响。(c) 在收到付款后，卖方将向买方交付货物、服务和/或软件，或在买方的指示下将其报废。

19. Insurance. (a) Buyer shall maintain general liability insurance including coverage in an amount no less than two million (U.S. \$2,000,000) dollars per claim for property damage, bodily injury, and contractual liability. Until Seller is in receipt of full payment by Buyer for the Goods, Services and/or Software, Buyer shall maintain insurance in an amount that is sufficient to cover the contract price of the Goods, Services and/or Software. Further, Buyer shall maintain insurance in an amount that is sufficient to cover the cost of any Buyer's Property in Seller's possession for the purposes of providing Goods, Services and/or Software until such time that Buyer's Property is returned to Buyer. Unless otherwise agreed to in writing by Buyer and Seller, Seller shall not maintain insurance on Buyer's Property and will not assume any liability for destruction or loss of the same. (b) Nuclear Insurance - Indemnity. For applications in nuclear projects, Buyer and its customer shall have and maintain complete insurance protection against liability and property damage resulting from a nuclear incident to and shall indemnify Seller, its parent company, directors, officers, employees, shareholders, affiliates, agents, subcontractors, suppliers and vendors against all claims resulting from a nuclear incident.

保险。 (a) 买方应当购买一般责任保险，按照单次财产损失、人身伤害和合同责任至少两百万美元（2,000,000美元）的标准投保保险。在卖方收到买方支付的货物、服务和/或软件的全额付款之前，买方应购买足以支付货物、服务和/或软件的全额付款的保险。此外，买方应当购买足以支付卖方拥有的任何买方财产成本的保险，以提供货物、服务和/或软件，直至买方财产退还给买方为止。除非买方和卖方另有其他书面约定，否则卖方无须为买方的财产购买保险，并且对财产的破坏或损失不承担任何责任。(b) 核保险——赔偿。对于核项目中的应用，买方及其客户应当投保并保持完整的保险，以防止因发生核事故而对卖方、其母公司、董事、高级管理人员、员工、股东、关联公司、代理商、分包商和供应商提起索赔所造成的责任和财产损失，并向其提供相应的赔偿。

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20. Force Majeure. Seller shall not be in default for failure to perform and shall not be liable for loss, damage, detention or delay when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, terrorism, sabotage, power, explosions, epidemics, civil disturbances, strike, labor difficulties, acts or omissions of any governmental authority, compliance with government laws or regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, raw materials, or manufacturing facilities from usual sources, equipment failure, or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. Upon the occurrence of any event or circumstance referenced above, Seller shall have the right to allocate Goods, Services and/or Software among its customers in its sole discretion. This Section supplements, and does not replace, any remedies available to Seller under applicable law.

不可抗力。如果卖方因其无法合理控制的原因，包括但不限于战争行为（无论是否宣战）、天灾、火灾、恐怖主义、破坏活动、权利、爆炸、流行疫病、内乱、罢工，劳动力缺乏、任何政府机构的作为或不作为、遵守政府法律或法规、暴动或骚乱、禁运、运输延误或短缺或无法获得必要的劳动力、原材料或生产设施、设备故障、或其供应商或分包商由于上述原因而延迟履约或存在缺陷，而无法履行其义务，卖方将不构成违约，并且不承担由此产生的任何损失、损坏、延迟或延误。在发生上述任何事件或情况时，卖方有权自行决定在其客户之间分配货物、服务和/或软件。本条款将补充，但不替代卖方根据可适用法律享有的任何救济权。

21. Assignment. Buyer cannot assign this Agreement without Seller's prior written consent. Seller can assign this Agreement.

协议转让。未经卖方事先书面同意，买方不得转让本协议。卖方可以转让本协议。

22. Entire Agreement. The Agreement constitutes the entire agreement between Seller and Buyer with respect to the Goods, Services and/or Software covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless mutually agreed to in writing.

完整协议。本协议构成卖方和买方之间关于本协议项下提供的货物、服务和/或软件之间达成的完整协议，并替代此前关于相同标的事项达成的任何协议、合意、陈述和报价。除非协议双方书面同意，否则对其进行的任何修改均属无效。

23. Waiver. In the event of any default by Buyer, Seller may decline to ship Goods or Software or to provide Services. If Seller elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, Seller's actions will not constitute a waiver of Buyer's default or any other existing or future default, or affect

Seller's legal remedies.

权利放弃。如果买方违约，卖方可能拒绝运送货物或软件或提供服务。如果卖方选择继续运输或以其他方式未要求严格遵守本协议，则卖方的行为不构成对买方违约或任何其他现有或将来违约情形的权利放弃，也不影响卖方的法律救济权。

24. Severability. If any provision of this Agreement is held to be unlawful or unenforceable, the remaining provisions shall remain in effect.

可分割性。如果本协议的任何条款被认定为违法或不可执行，本协议其余条款仍将保持法律效力。

25. Survival. Any provisions of this Agreement which, by their nature, extends beyond the completion, termination or expiration of any sale of Goods, Services and/or Software, will remain in effect until fulfilled.

继续有效。依据其性质在任何货物、服务和/或软件出售完成、终止或有效期限届满后继续有效的任何条款，应当在其完成之前继续保持效力。

26. Compliance with Laws. Buyer will comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Buyer's obligations under this Agreement and its operations or use of the Goods, Services and/or Software, including but not limited to those regarding safety, the environment, data protection, data privacy, conflict minerals, human trafficking/slavery, export/import, labor and anti-corruption. Nothing contained herein shall be construed as imposing responsibility or liability upon Seller for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Goods, Services and Software. In no event shall Seller be responsible for liability arising out of use of the Goods and/or Software in association with other equipment of Buyer, the alteration of the Goods and/or Software by any party other than Seller, or the violation of any laws relating to or caused by Buyer's design, location, operation, or maintenance of the Goods and/or Software. Buyer acknowledges that the Goods, Services and Software, if any, which are purchased or received under this Agreement may be subject to the export controls of the U.S. Export Administration Regulation, the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of State and other U.S. agencies, as well as the export control regulations of the European Union, the United Nations Security Council, and other foreign governments ("Export Control and Economic Sanctions Laws"). Buyer agrees that any export, resale, or re-export of Seller's Goods shall be in compliance with all applicable Export Control and Economic Sanctions Laws, Unless licensed to do so, Buyer agrees that it will not: (i) export, resell, re-export or transfer the Goods, Services and/or Software for end-uses that are prohibited by Export Control and Economic Sanctions Laws, including, but not limited to: maritime nuclear propulsion; nuclear, chemical and biological weapons; rocket, missile and unmanned air vehicle systems; and nuclear activities not in compliance with International Atomic Energy Agency (IAEA) safeguards; (ii) export, resell, re-export or transfer any Goods, Services and/or Software to a customer that an entity or

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person that is listed, blocked or subject to sanctions under applicable Export Control and Economic Sanctions Laws, including entities that are owned 50% or more, directly or indirectly, individually or in the aggregate, by an individual or entity that is listed, blocked or subject to sanctions; or (iii) export, resell, re-export, transfer, or conduct transactions involving the Goods, Services, Software with or to entities or individuals in countries or regions subject to comprehensive sanctions, including: Crimea, Cuba, Iran, North Korea, Syria, and Sudan. Further, none of the underlying information, software, or technology of the Goods, Services and/or Software may be transferred or otherwise exported or re-exported in violation of Export Control and Economic Sanctions Laws. Any diversion contrary to U.S. law or other applicable law is prohibited. By purchasing Goods from Seller, Buyer represents and warrants that Buyer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Buyer agrees to assume sole responsibility for obtaining licenses to export or re-export as may be required, and further represents and warrants that Buyer shall: (i) cooperate fully with Seller in any official or unofficial audit or inspection that relates to Export Control and Economic Sanctions Laws; and (ii) not export, re-export, divert, transfer, or disclose, directly or indirectly, any Goods, Services and/or Software sold hereunder or any related technical information, document, or material or direct products thereof to any country, entity, person or end-user so restricted by Export Control and Economic Sanctions Laws, as modified by time to time. Seller and Buyer are committed to fair, honest and ethical business practices. Buyer acknowledges that Seller has adopted a Code of Corporate Conduct and Ethics (a copy of which is available on Seller's website at www.lincolnelectric.com) and Buyer agrees to conduct itself in its dealings with or on behalf of Seller in a manner that is consistent with and facilitates compliance with Seller's Code.

遵守法律。 买方应当遵守适用于买方在本协议下的义务及其对货物、服务和/或软件的操作或使用的、所有联邦、州、地方和外国法规、条例、法令和法律，包括但不限于关于安全、环境、数据保护、数据隐私、冲突矿产、人口贩运/奴役、进出口/劳务和反腐败的法律。本协议中包含的任何内容均不得解释为卖方必须从与提供、安装或操作货物服务和软件有关的任何机构获得任何许可、执照或批准。在任何情况下，由于与买方的其他设备结合使用货物和/或软件，由卖方以外的任何一方对货物和/或软件的更改，或由于买方对货物和/或软件的设计、位置、操作或维护而违反任何法律，卖方均无须承担任何责任。买方在此确认，在本协议项下购买或获得的货物、软件和服务（若有）适用美国出口管理法规、美国财政部外国资产管理办公室、美国国务院和其他美国主管部门的管理，以及欧盟、联合国安理会和其他外国政府的出口管制法规（以下简称“出口管制和经济制裁法”）。买方同意，卖方货物的任何出口、转售或再出口均应遵守所有适用的出口管制和经济制裁法，除非获得许可，否则买方同意不得：（i）出口、转售、再出口或转让货物、服务和/或软件，以用于出口管制和经济制裁法所禁止的最终用途，包括但不限于：海上核推进；核、化学和生物武器；火箭、导弹和无人飞行器系统；不符合国际原子能机构（IAEA）保障措施的核活动；（ii）将任何货物、服务和/或软件出口、转售、再出口或转让给客户，该实体或个人根据适用的出口管制和经济制裁法被列入名单、禁止或受到制裁，包括由被列入名单、禁止或受到制裁的个人或实体直接或间接、单独或共同拥有50%或以上权益的实体；或者（iii）与受到综合制裁的国家或地区中的实体或个人进行出口、转售、再出口、转让或进行涉及货物、服务、软件的交易，上述国家或地区包括：克里米亚、古巴、伊朗、朝鲜、叙利亚和苏丹。此外，任何违反出口管制

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和经济制裁法的货物、服务和/或软件的基本信息、软件或技术，均不得转让或以其他方式出口或再出口。对于同美国或其他可适用的法律不相一致的法规内容，本协议在此予以明确排除适用。通过向卖方购买货物，买方在此陈述并保证，买方不在禁运国家境内，或受其控制，或属于禁运国家或指定国民的国民或居民。买方同意，自行承担获得可能需要的出口或再出口许可证，并进一步陈述和保证，买方应当：(i) 在与出口管制和经济制裁法有关的任何官方或非官方审核或检查中，与卖方充分合作；以及(ii) 不得将本协议项下出售的任何货物、服务和/或软件或其任何相关技术信息、文件、材料或直接产品直接或间接出口、再出口、转移、转让或披露给受出口管制和经济制裁法（包括其不时修订的内容）所限制的任何国家、实体、个人或最终用户。卖方和买方将致力于公平、诚实和道德的商业行为。买方在此确认，卖方已采用《企业行为准则和道德规范》（可在卖方网站www.lincolnelectric.com上找到其副本），并且买方同意以符合和促进遵守卖方行为准则的方式，代表卖方进行交易。

27. Disputes and Governing Law. In the event of any controversy, claim or dispute arising out of or relating to this Agreement (a “Dispute”), Seller and Buyer shall seek to resolve the matter amicably through diligent, good faith, mutual discussions to be initiated as promptly as possible after a Dispute arises. In the event that the Buyer is not located in the People's Republic of China, the dispute or claim shall be submitted to Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center for arbitration. In the event that the Buyer is located in the People's Republic of China, the dispute or claim shall be resolved by the people's court where Lincoln China is located. This Agreement and any transactions arising therefrom shall be governed and construed under the laws of China. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Agreement or any transactions created thereby or construed therewith. In the event of any litigation, arbitration or mediation arising from a breach of any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorneys' fees incurred during the Dispute, provided that if each party prevails in part, such fees will be allocated in the manner as the court, arbitrator or mediator determines to be equitable in view of the relative merits and amounts of the parties' claims.

争议解决及法律适用。发生因本协议引起或相关的任何争端、索赔或争议时（以下简称“争议”），卖方和买方应当在争议产生后尽快通过勤勉、善意、友好协商方式解决问题。如果买方不在中华人民共和国境内，则争议或索赔应当提交上海国际经济贸易仲裁委员会/上海国际仲裁中心进行仲裁。如果买方位于中华人民共和国境内，则争议或索赔应当由林肯中国所在地的人民法院解决。本协议以及本协议项下产生的任何交易应当适用中国法律，并且根据中国法律进行解释。本协议或本协议项下创设的任何交易不适用《联合国国际货物销售合同公约》。如果因违反本协议的任何条款而引起任何诉讼、仲裁或调解，胜诉方除获得所给予的救济权外，还有权就其在争议期间产生的律师费获得合理的赔偿，但是，如果各方均胜诉，则将按照法院、仲裁员或调解人根据当事方的是非曲直和索赔金额，确定公平的方式分配该等费用。