

1 Scope of Application

适用范围

1.1 The terms and conditions of Services set forth herein shall apply to and be deemed to be incorporated by reference into each Purchase Order and resulting contracts or other arrangements, including all offers agreed between SCHMOLL's CUSTOMER and SCHMOLL for Services provided by SCHMOLL. "Purchase Order" within the sense of these Terms and Conditions shall mean each Purchase Order issued by CUSTOMER to SCHMOLL as agreed by SCHMOLL's written order confirmation to CUSTOMER. In the event of any conflict or ambiguity between these Terms and Conditions and the Purchase Order, the final Purchase Order which is confirmed by both parties in written will take precedence.

The CUSTOMER's placement of orders as well as the conclusion of contracts with SCHMOLL shall be regarded as awareness and acceptance of these General Terms and Conditions.

本服务条款和条件应适用于金富宝的客户与金富宝就金富宝提供的服务所达成的每一份采购订单以及由此产生的合同或其他安排, 包括所有报价, 并应将其作为参考纳入其中。本条款和条件所指的“采购订单”是指客户根据金富宝的书面订单确认书向客户发出的每一份采购订单。如果这些条款和条件与采购订单之间有任何冲突或歧义, 应以经双方书面确认的最终采购订单为准。

客户签署订单以及与客户签订金富宝合同应视为知晓并接受这些通用条款和条件。

1.2 Terms or conditions requested by either Party that are contrary to, inconsistent with, or additional to the terms and conditions set forth herein shall be void and of no effect unless specifically agreed to in writing by both Parties. Such agreement in writing shall take the form of an exchange of writings between the Parties.

任何一方要求的条款和条件, 若与本协议中规定的条款和条件相反、不一致或作为其补充, 则应无效, 除非双方以书面形式同意。该书面同意应采用双方之间书面交换的形式进行。

1.3 Verbal statements made in connection with any Purchase Order, or invoice, including any oral advice or assurance, shall not be binding unless and until confirmed in a writing duly executed by the Party making the statement.

做出的有关任何订单或发票的口头声明, 包括任何口头建议或保证, 只有在做出声明的一方以有效签署的正式书面方式确认的情况下才具有约束力。

2 Quotation

报价

2.1 Unless otherwise set forth in the quotation, SCHMOLL's quotations shall be considered as non-binding. SCHMOLL's written order confirmation shall be decisive for the scope of services.

除非报价中另有规定, 否则金富宝的报价应视为无约束力。金富宝的书面订单确认将对服务范围起决定性作用。

2.2 SCHMOLL reserves ownership and copyright to all quotation documents, such as (but not limited to) estimates, diagrams, and other documents. CUSTOMER shall not make accessible such documents to third parties without SCHMOLL's prior written consent.

金富宝保留对任何和所有报价文件的所有权和版权, 例如(但不限于)估算、图表和其它文件。未经金富宝的事先书面同意, 客户不得向第三方提供此类文件。

3 Scope of Services

服务范围

SCHMOLL agrees to perform the Services (including the provision of goods, if any) as described in the Purchase Order. The Services to be provided under any Purchase Order are part of enabling the continued operation of the installed Equipment but shall not be construed in any way to be a guarantee of a continual failure-free operation and does not alter or infringe in any way the rights, responsibilities, duties, or benefits of the warranty attached to the installed Equipment.

金富宝同意履行采购订单中所述的服务(包括提供货物, 如有)。根据采购订单应提供的服务是保证已安装设备持续运行的一部分, 但不应以任何方式被解释为连续无故障运行的保证, 并且不得以任何方式变更或侵犯已安装设备所附带的权利、责任、职责或担保权益。

4 Pricing and Invoicing

定价和发票

4.1 CUSTOMER will pay SCHMOLL the rates and prices set forth in the relevant Purchase Order as the sole compensation for the Services performed thereunder. Unless otherwise agreed in the applicable Purchase Order, CUSTOMER and SCHMOLL acknowledges and agrees that the rates and prices reflected in the Purchase Order are exclusive of applicable sales taxes including VAT. All other taxes, fees, duties, and other charges which are levied on SCHMOLL in connection with the performance of the Agreement in the country of destination of the Equipment or recipient of Service (if any) shall be solely borne by the CUSTOMER and the CUSTOMER agrees to pay or reimburse SCHMOLL for any such taxes which SCHMOLL is required to pay.

客户应向金富宝支付相关采购订单中规定的费率和价格, 作为对其提供服务的补偿。除非在适用的采购订单中另有约定, 否则客户和金富宝了解并同意, 采购订单中反映的费率和价格不包括适用的销售税(包括增值税)。在设备目的国和服务接收国中向金富宝征收的履约相关的所有其它税金、费用、关税和其它收费(如有), 应当由客户单独承担, 并且客户同意向金富宝支付或偿还要求金富宝支付的任意此类税费。

4.2 Unless otherwise set forth in the applicable Purchase Order, SCHMOLL will invoice CUSTOMER on or around the last day of each month for Services provided and accepted in such month. Payment shall be made by CUSTOMER within thirty (30) days following the date of receipt of invoice. All invoices shall contain at least the following information: a reference to the applicable CUSTOMER Purchase Order; a description of the Services provided, and any other relevant information reasonably required by CUSTOMER.

除非适用的采购订单中另有规定, 否则金富宝将在每个月的最后一天或前后向客户开具当月提供和接受的服务的发票。客户应在收到发票后三十(30)天内支付款项。所有发票均应至少包含以下信息: 适用客户采购订单参考信息、所提供服务的说明, 以及客户合理要求的其它任何相关信息。

4.3 In the event of any default by CUSTOMER in the payment of any fees or charges due, or any other default by CUSTOMER, SCHMOLL shall have the right to suspend performance of any work and/or delivery of any Products until full payments (including any accrued interest) has been received and SCHMOLL may suspend, delay or cancel any credit, delivery or any other performance by SCHMOLL. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under these Terms and Conditions under the Agreement or statutory law.

如果客户未支付任何到期应付费用或收费，或客户未支付任何其他款项，金富宝有权中止履行和/或交付任何产品，直至收到全额付款（包括任何应计利息），并且金富宝可中止、延迟或取消金富宝的任何交付或任何其他方式的履行或取消金富宝给客户的任何赊账。该权利应是协议中的本条款和条件项下或法定规定项下可获得的其他权利和救济的补充而非替代。

5 Time for performance of Services

提供服务的时间

SCHMOLL shall perform the Services at such times and within such timeframes as are specified in the applicable Purchase Order. Times and timeframes for performing the Services set forth in the quotation shall be binding only if confirmed so by SCHMOLL in its confirmation of CUSTOMER's Purchase Order.

金富宝应在本协议或适用的采购订单规定的时间，以及规定的时间内提供服务。执行报价中所列服务的时间和期限，只有在金富宝确认客户采购订单后才有约束力。

6 Co-operation

合作

6.1 Both Parties agree and acknowledge that timely provision of assistance, cooperation and complete and accurate data, specifications, requirements, and other relevant information, including with respect to the Equipment, the site, and environmental and operating conditions, and, if required, granting access to the site ("Cooperation") is essential for duly and timely performance of its obligations under each Purchase Order. One Party shall not incur liability hereunder on account of any deficiency or delay in the other Party's performance of its obligations under each Purchase Order to the extent such deficiency results from the other Party's failure to provide full and timely Cooperation.

双方同意并承认为了适当和及时履行其在各采购订单下的义务，必须要及时提供协助、合作和完整与准确的数据、规范、要求和其它相关信息，包括在设备、现场和环境与操作条件方面，而且要求时，必须及时安排现场参观活动（以下简称“合作”）。若一方因另一方未充分和及时提供合作而使得另一方在各采购订单下的义务履行存在缺陷或延迟，则该方在本协议下不承担责任。

6.2 CUSTOMER shall take the necessary special precautions to protect persons and property. CUSTOMER must also inform the service supervisor of existing safety regulations if these are relevant for SCHMOLL's personnel. He informs SCHMOLL of infringement of such safety regulations by his personnel. In the event of serious infringements by SCHMOLL's personnel; CUSTOMER is entitled to may refuse access to the offender in consultation with SCHMOLL. CUSTOMER shall inform SCHMOLL immediately of any faults and damage that occurs due to SCHMOLL's personnel.

客户应采取必要的特殊预防措施来保护人员和财产。如果现有的安全规范与金富宝的人员相关，客户还必须将其告知服务监理。若客户自己的人员违反这些安全规范，客户应告知金富宝。如果金富宝的人员严重违反这些安全规范，则客户有权同金富宝协商，拒绝违规人员进入。若因金富宝的人员出现任何故障和损坏，客户应立即告知金富宝。

7 Acceptance

接受

Upon the delivery of any Services by SCHMOLL, CUSTOMER reserves a reasonable amount of time (in no event more than fourteen (14) days) to inspect such Services. If CUSTOMER does not give notice of a defect, error or other issue concerning the Services during that inspection period, such Services shall be deemed accepted for the purposes of this terms and conditions, except for a defect, error or other issue that cannot be discovered without use of the Equipment. If CUSTOMER gives SCHMOLL notice of a defect, error or other issue relative to the Services, SCHMOLL shall remedy such defect, error or other issue within a reasonable period, depending of the nature of the defect, and CUSTOMER shall have a reasonable amount of time (in no event more than fourteen (14) days) to re-inspect such Services.

在金富宝交付任何服务后，客户保留合理的时间（任何情况下均不应超过十四（14）天）对该等服务进行检查。如果在检查期间，客户未发出有关服务的缺陷、错误或其它问题的通知，则除不采用设备无法发现的缺陷、错误或其它问题外，就本条款和条件而言，该等服务应被视为已经被接受。如果客户向金富宝发出有关服务的缺陷、错误或其它问题的通知，则金富宝应根据缺陷的性质，在合理的期间内对该等缺陷、错误或其它问题进行补救，并且应给予客户合理的时间（任何情况下均不应超过十四（14）天）重新检查该等服务。

8 Warranty 担保起始日期

8.1 Warranty for Spare Parts. The warranty period for spare parts will be 6 months (a) after shipping of the Spare Part; or (b) on the date on which the Spare Parts are installed and accepted by CUSTOMER whichever is earlier ("Warranty Period"). SCHMOLL warrants to CUSTOMER that during the Warranty Period Spare Parts sold to CUSTOMER shall (i) be free from defects in workmanship and materials when transported, stored, handled, used and serviced in compliance with SCHMOLL's written instructions and (ii) shall conform in all material respects with the specifications.

对零部件的保证。备件保修期为：（a）备件发货之日起或（b）客户安装并接收备件的之日起6个月，以较早者为准（质保期）。金富宝向客户保证向客户出售的零部件：（i）应在按照金富宝的书面指示运输、储存、处理、使用和维修时没有缺陷，且（ii）应符合所有材料方面的规范。

8.2 SCHMOLL's sole liability under this warranty is limited to repairing the Spare Part, furnishing a replacement Spare Part, or issuing a credit for any such Spare Part, all at SCHMOLL's sole option, provided that: (a) SCHMOLL is promptly notified in writing of the defect in any Spare Part within the warranty period as provided above by CUSTOMER; (b) such Spare Parts are returned to SCHMOLL's warehouse in a condition suitable for testing; and (c) SCHMOLL's examination of such items shall disclose to its reasonable satisfaction that the Spare Parts are defective and such defective state has not been caused by misuse, misapplication, abuse, neglect, alteration, accidents improper storage, transportation or handling, an act of God or other causes reasonably beyond SCHMOLL's control or occurring subsequent to the time of delivery of the Spare Parts to a carrier by SCHMOLL.

在本保证项下，金富宝的唯一责任仅限于维修零部件、替换零部件或为任何此类零部件开立信用证，所有这些均由金富宝自行选择，但前提是：（A）在上述规定的保证期内，客户及时以书面形式通知金富宝任何零部件的缺陷；（b）这些零部件以适合试验的条件送回金富宝的仓库；和（c）金富宝对这些物品的检查应披露其合理的满意度，即零部件有缺陷，并且此类缺陷状态未因使用不当、误用、滥用、疏忽、变更事故不适当的储存、运输或搬运、不可抗力或其他原因合理地超出金富宝的控制或在将零部件交付给金富宝的承运人之后发生的其他原因。

Modification of a Spare Part by CUSTOMER or any other party shall invalidate the above warranty. Any repair or replacement shall not extend the period within which such warranty can be asserted. The warranty herein may be asserted by CUSTOMER only and not by CUSTOMER's customers, end-users or other third persons. SCHMOLL shall notify CUSTOMER in writing if such Spare Parts are not subject to warranty adjustment and, unless disposition instructions as to such Spare Parts are received from CUSTOMER within 10 days of such notification, such Spare Parts shall be returned at CUSTOMERS cost and risk to CUSTOMER.

客户或任何其他方对零部件的修改将使上述保证失效。任何修理或更换不得延长可主张该等保证的期限。本保证只能由客户主张,不能由客户的客户、最终用户或其他第三方主张。如果这些零部件不受保证调整的影响,则应以书面通知客户,除非在通知后10天内收到客户关于这些零部件的处置指示,否则这些零部件应按客户的成本和风险退还给客户。

8.3 Warranty of Services. SCHMOLL represents and warrants that the Services provided under each Purchase Order will be performed in accordance with the terms hereof with reasonably skilled and appropriately trained personnel and in a workmanlike manner. SCHMOLL is not responsible for any failures caused by (i) misuse, accident, unsuitable environment or unauthorized modification of the Equipment for which SCHMOLL is not responsible, or (ii) operation outside of SCHMOLL's specifications (including, but not limited to, CUSTOMER's failure to conduct regular maintenance as to SCHMOLL's specifications); (iii) environmental or stress testing, misuse, neglect, improper installation, improper repair, alteration, modification, improper storage, improper transportation or other failures due to the causes which are not attributable to SCHMOLL.

对服务的保证。金富宝声明并保证各采购协议下提供的服务将由具有合理技能并且经过相关培训的人员按照本协议的条款提供。若因以下原因出现任何故障,金富宝不承担任何责任:(i) 误用、事故、不当环境或未经授权的设备改动;或(ii) 未按照金富宝的规范进行操作(包括但不限于客户未能按照金富宝的规范进行定期维护);(iii) 环境或压力测试、使用不当、疏忽、安装不当、不适当的修理、改装、修改、存储不当、运输不当或其他非因金富宝原因引起的故障。

8.4 CUSTOMER must report any deficiencies in the Services (or in the provided goods, if any) within thirty (30) days of the later of the completion of the Services or the date that such deficiencies were reasonably discoverable by CUSTOMER, in no event, however exceeding 180 days from the date of completion of such Services. CUSTOMER's sole remedy for the breach of any warranty by SCHMOLL under each Purchase Order shall be the re-performance of the Services or (if applicable) the rectification or replacement of provided goods. SCHMOLL will have a reasonable time to repair or replace. The non-conforming or defective Products shall become SCHMOLL's property as soon as they have been replaced.

若服务(或提供的商品,如有)存在任何缺陷,客户必须在自服务完成之日起或客户合理发现该缺陷之日起(以时间在后者为准)30天内报告,但任何情况下均不应超过自该服务完成之日起的180天。若违反金富宝在各采购订单下的任何保证,客户获得的唯一补救措施应为重新提供服务或(如适用)修复或更换提供的商品。金富宝将有一个合理的时间修理或更换。不合格或有缺陷的产品一经更换,即成为金富宝的财产。

8.5 The express warranties contained herein and in the Purchase Order are SCHMOLL's exclusive warranties. The express warranty above shall extend directly to CUSTOMER and not to CUSTOMERS' customers, agents or representatives. SCHMOLL disclaims all implied warranties, including the implied warranties of merchantability or fitness for a particular purpose, and any warranty of non-infringement with respect to intellectual property. All other warranties and hereby specifically disclaimed by SCHMOLL.

本合同和采购订单中包含的明示保证是金富宝的唯一保证。上述明示保证应直接适用于客户,而不是客户的客户、代理人或代表。金富宝放弃所有的暗示保证,包括具体目的的适销性或适合性暗示保证,以及有关知识产权的任何非侵权保证。金富宝在此明确拒绝所有其他保证。

9 Software

软件

If the Purchase Order provides for delivery of software, SCHMOLL grants to CUSTOMER, as of the delivery date of the software to CUSTOMER's site, a non-assignable, non-transferable, non-exclusive, royalty free right to use, in object code form, any software and related documentation furnished under the Purchase Order. This grant shall be limited to use with the equipment for which the software was provided. SCHMOLL has independent copyright in the software products and related documents involved. CUSTOMER shall not commit any act that may infringe the above intellectual property rights. CUSTOMER may make a single archive copy of this software, provided that any copy must contain the same copyright notice and proprietary markings as the original software. Use of SCHMOLL's software on any equipment other than that for which it was provided, any other material breach of the Purchase Order, or any breach of copyright law with regards to CUSTOMER's use of the software, shall automatically terminate this license. SCHMOLL's other rights and remedies provided by this Purchase Order and/or applicable governing law shall remain unaffected.

如果采购订单规定了交付软件,则自软件交付至客户现场之日起,金富宝向客户授予不可转让、不可转移、非排他以及免专利费的使用权利,以目标代码的形式使用采购订单下提供的任何软件和相关文档。该授予应仅限于用于提供软件的设备。金富宝对涉及的软件产品及相关文档拥有独立版权。客户不得做出可能侵害上述知识产权的行为。客户可以对该软件制作单个存档副本,但条件是该副本必须包含与原软件相同的版权通知和专有标记。若将金富宝软件用于对应设备以外的其它任何设备、出现严重违反采购订单的情况,或违反有关客户软件使用的版权法,本许可将自动终止。本采购订单和/或适用法律中规定的金富宝的其它权利和补救措施应不受影响。

10 Termination

终止

10.1 Either party may terminate any Purchase Order in the event the other party is in breach of any material term of the Purchase Order or these Terms and Conditions, effective upon delivery of written notice to the breaching party; provided that the breaching party shall have a period of twenty (20) business days following receipt of written notice within which to cure such breach. In addition, and notwithstanding any other right to termination provided in this Section, either party may terminate any Purchase Order upon delivery of written notice to the other party if the other party is insolvent or has a petition in bankruptcy filed against it; the other party is adjudicated a bankrupt; the other party makes a general assignment for the benefit of its creditors; the other party has a receiver, trustee or agent appointed with respect to its business or any significant portion thereof; or the other party otherwise ceases to do business in any manner for any reason.

如果另一方严重违反各采购订单或这些条款和条件的规定,任何一方均可向违约方发出书面通知,终止本协议;但条件是违约方在收到通知后应有二十(20)个营业日的期限对该违约进行补救。此外,尽管本节中规定有其它任何终止权利,但如果另一方破产或针对该方提出破产申请、另一方被裁定为破产、为了其债权人的利益而进行一般转让、就其业务或任何重大业务部分指定接收人、受托人或代理人,或若另一方因任何原因,以任何方式终止营业,则任何一方均可向另一方发出书面通知,终止任一采购订单。

10.2 Termination Consequences. On the date of termination or expiration of any Purchase Order for any reason, with respect to the portion of the Services terminated or expired, SCHMOLL shall (i) stop the Services being performed by SCHMOLL, (ii) cancel orders for materials, if any, with SCHMOLL's sub-suppliers and cease ordering any such materials, (iii) cancel services being performed by SCHMOLL's sub-suppliers, (iv) fully cooperate with CUSTOMER to minimize any adverse effect on CUSTOMER, and (v) perform those other obligations set forth in these Terms and Conditions and the applicable Purchase Order upon its termination or expiration. In case CUSTOMER terminates any Purchase Order according to Section 10.1, all payments to be made by Customer under the Purchase Order shall become immediately due and payable. CUSTOMER shall pay to SCHMOLL (i) a portion of the agreed payments set forth in the Purchase Order corresponding to costs related to all goods delivered and those Services performed by SCHMOLL until the effective date of such termination, (ii) all wind down costs and expenses reasonably incurred by SCHMOLL as a result of termination.

终止的后果。在任何采购订单因任何原因终止或到期之日,关于终止或到期的部分服务,金富宝应(i)停止金富宝提供的服务;(ii)取消向金富宝的分供应商下达的材料订单(如有),并停止订购任何该等材料;(iii)取消金富宝的分供应商提供的服务;(iv)与客户充分合作尽量减少对客户造成的不利影响;以及(v)在合同终止或到期时,履行合同条款和条件以及适用的采购订单中规定的其它义务。如果客户依照第10.1条终止任一采购订单,则客户在采购订单项下支付的所有款项应立即到期应付。客户应向金富宝支付(i)采购订单中约定的与金富宝提供的所有交付货物和服务相关费用相对应的预定付款,直至该终止生效之日;(ii)金富宝因终止而合理发生的所有降低成本和费用。

11 Liability

责任

11.1 In no event shall SCHMOLL be liable to CUSTOMER or to any other person or entity with respect to any subject matter of this terms and conditions, under any law or theory, for any (a) incidental, special, consequential or indirect damages or (b) damages resulting from loss of sale, business, profits, data, opportunity or goodwill or reputation or saving, whether or not such damages are based on tort, warranty, contract or any other legal theory, even if the remedies provided for in this terms and conditions fail of their essential purpose and even if SCHMOLL has been advised of the possibility of any of the foregoing damages.

在任何情况下,金富宝都不对客户或任何其他个人或实体就本条款和条件的任何标的以下损失承担任何法律或理论下的责任:(a)偶然性、特殊性、后果性或间接性损失;或(b)因销售、业务、利润、数据、机会或商誉损失,或名誉或储蓄引起的损失,无论该等损害是否基于侵权、保证、合同或任何其他法律理论,即使本条款和条件中规定的补救措施未达到其基本目的,或被告知了上述损失的可能性,金富宝同样不承担任何责任。

11.2 The maximum liability of SCHMOLL to CUSTOMER for all damages or any other monetary claim arising under or relating to this terms and conditions and any Purchase Order or for any cause shall not in any event exceed the value of the concerned Purchase Order regardless of whether any such liability may be based on contract, guarantee, warranty, tort, negligence, strict liability, professional liability, indemnity or otherwise.

This maximum liability shall not apply in case of death or personal injury or in case of all damage based on mandatory (e.g. product liability) law or for damage caused intentionally or by gross negligence. The limitations and exclusions set forth above in this Article shall only apply to the extent permitted by applicable mandatory law.

对于在本协议项下或与本条款和条件以及任何采购订单有关的所有损害赔偿或任何其他金钱索赔,或对于任何原因,金富宝向客户承担的最大责任在任何情况下均不应超过客户有关采购订单的价值,不管该等责任是基于合同、担保、保证、侵权、疏忽、严格责任、专业责任、赔偿还是其它方面。

若出现基于强制(如产品责任)法律的死亡或人身伤害或所有损失,或对于故意或重大过失造成的损失,本最大责任不应适用。本款规定的上述限制和排除仅在适用的强制性法律允许的范围内适用。

11.3 Insofar as the liability of SCHMOLL is excluded or limited, this also applies to the personal liability of its employees, representatives, or vicarious agents.

在金富宝的责任被排除或受限的情况下,这也适用于其雇员、代表或代理人的个人责任。

12 Force Majeure

不可抗力

Neither party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from events or circumstances outside its reasonable control, including, but not limited to, general material shortage, riot, lightning, embargo, epidemic, earthquake, fire, war, military or civilian coup, rebellion, revolution, sabotage, strike, typhoons, natural disasters of all kinds, governmental regulations and/or similar acts, freight embargoes. Such delay or failure shall not constitute a breach of these Terms and Conditions or any Purchase Order and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persist for more than three (3) months nothing in this Section shall be taken to limit or prevent the exercise by either party of its rights of termination for convenience under Section 10.1.

任何一方若因超出其合理控制之外的事件或情形而延迟履行或未履行其义务,均不应承担责任,包括但不限于:一般材料短缺、暴动、雷电、禁运、流行病、地震、火灾、战争、军事或平民政变、叛乱、革命、破坏、罢工、台风和各种自然灾害、政府法规和/或类似行为、货运禁运。该延迟履行或未履行不构成对这些条款和条件或任一采购订单的违反,并且履行的时间应延长,延长期间相当于履约受阻的期间,但条件是,如果该延迟履行或不履行持续超过三(3)个月,则本条中的任何规定均不应限制或阻止任何一方行使第10.1条下的因方便终止的权利。

13 Confidentiality

保密

13.1 "Confidential Information" shall mean all information, whether written or oral, disclosed by CUSTOMER to SCHMOLL or by SCHMOLL to CUSTOMER in connection with a Purchase Order, and (i) designated by the disclosing Party as "Confidential" at the time of disclosure or within thirty (30) days thereafter, or (ii) disclosed under circumstances by which Receiving Party should reasonably understand such information is to be treated as confidential, whether or not marked "Confidential" or otherwise

“保密信息”是指客户向金富宝披露或金富宝从客户处获得的有关采购订单的,并且(i)在披露时或披露后三十(30)天内被披露方指定为“保密”的,或者(ii)在接收方应合理理解为此类信息应被视为机密信息的情况下披露的所有书面或口头信息,这类信息无论是否标有“保密”字样,都应保密。

13.2 Confidential Information shall not include any information (i) which was known to the receiving Party prior to and independent of such disclosure; (ii) which was generally available to the public prior to such disclosure; (iii) which subsequent to such disclosure is published or made generally available to the public without fault on the part of the receiving Party; (iv) which is obtained by the receiving Party from a Third Party without a breach of such Third Party's obligations of confidentiality; (v) which is independently developed by an employee of the receiving Party not in possession of the information disclosed; or (vi) which is required by law or by court or official order to be disclosed by the receiving Party, in which case the receiving Party shall provide prompt written notice to the disclosing Party of such disclosure obligation.

保密信息不包括以下任何信息：(i) 在披露前被接收方知晓，并且该知晓不受披露影响的信息；(ii) 在该披露之前被公众知晓的信息；(iii) 在披露后，在接收方无过错的情况下被公开，或被公众知晓的信息；(iv) 由接收方从未违反第三方保密义务的第三方处获得的信息；(v) 由不持有披露的保密信息的接收方员工独立开发的信息；或(vi) 法律或法院或官方命令要求接收方披露，在此情况下，接收方应及时将该披露义务书面通知披露方。

13.3 For a period of no less than five (5) years following disclosure of Confidential Information pursuant hereto, neither Party may disclose the other Party's Confidential Information to any Third Party without the prior written consent of the disclosing Party. For purposes of this provision, "Third Party" shall not include a subcontractor of SCHMOLL entrusted with part of the services ordered by CUSTOMER, provided that such subcontractor has been placed under an obligation of confidentiality with respect to the Confidential Information in question.

在依照本协议披露保密信息后至少五（5）年内，未经披露方事先的书面同意，任何一方均不得向第三方披露另一方的保密信息。就本规定而言，“第三方”不包括被委托客户订购部分服务的金富宝的分包商，但条件是就相关保密信息，向该分包商施加了保密义务。

13.4 All Confidential Information supplied in connection with a Purchase Order shall remain the property of the Party disclosing or supplying the same, and no ownership rights are granted to the receiving Party in the same.

所有提供的有关采购订单的保密信息均应属于披露或提供保密信息一方的财产，并且不授予接收方对保密信息的所有权。

13.5 With respect to Products, documentation, and portions thereof, CUSTOMER is not authorized to and agrees that it will not, unless with the explicit written permission of SCHMOLL: (i) reverse engineer, offer to third parties for reverse engineering, attempt to derive ideas, technology, except to the extent expressly authorized by statutory law; (ii) modify or create derivative works from the original Products or documentation; (iii) remove or alter any proprietary markings or notices. Should CUSTOMER create any modifications or derivative works of Products, documentation or a portion thereof, CUSTOMER hereby irrevocably assigns and agrees to assign all right, title and interest in any such modifications or derivative works to SCHMOLL.

就产品、文件及其部分而言，除非经金富宝明确书面许可，客户无权且同意其将不会做出下列行为：(i) 向第三方提供反向工程、试图获得创意、技术，但成文法明确授权的除外；(ii) 修改或创造原始产品或文件的衍生作品；(iii) 移除或更改任何专有标记或通知。如果客户对产品、文件或其中的一部分作出任何修改或依据产品、文件或其中一部分创造出衍生作品，客户在此不可撤销地转让且同意转让给金富宝上述修改作品和衍生作品之上的权利、所有权和利益。

13.6 To the extent that documentation is enclosed together with a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such documentation or its content nor the transfer of any intellectual property rights vested in the Products or documentation. All documentation provided with a Product is considered SCHMOLL confidential information and will be provided to CUSTOMER under strict none-disclosure obligations of CUSTOMER towards SCHMOLL.

如果文件与产品随附在一起，该等产品的销售不得构成该等文件或其内容的所有权或权属的转让，也不得构成产品或文件中包含的任何知识产权的转让。与产品一起提供的所有文件都被视为金富宝的保密信息，客户对金富宝负有严格的保密义务。

14 Statutes of limitation

法定时效

14.1 To the extent permitted by the applicable law, CUSTOMER's claims for breach of contract and tort shall be statute-barred within 24 months.

在适用法律允许的范围内，客户的违约和侵权索赔的法定时效应在24个月内。

14.2 If acceptance of the Services is foreseen in the Purchase Order, the statute of limitations on claims due to deficiencies pursuant to Section 8 shall commence upon acceptance, otherwise upon completion of performance of the Services.

如果采购订单中预计接受服务，则根据第8节的规定，由于缺陷导致的索赔时效规定应在接受后开始，否则应在服务完成后开始。

15 Governing Law and Dispute Resolution

适用法律和争议解决

15.1 These Terms and Conditions and any Purchase Order executed thereunder shall be interpreted, and the legal relations of the Parties hereunder shall be determined, in accordance with the laws of China, excluding any conflict of laws or choice of law rule or principle that might otherwise refer construction or interpretation hereof to the substantive law of another jurisdiction. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.

本条款和条件以及在本协议项下执行的任何采购订单均应按照中国法律进行解释，并且本合同各方的法律关系应根据中国法律确定，但不包括任何可能会使本条款和条件的理解或解释涉及其他司法管辖区实体法的存在冲突的法律或需要进行选择的法律或原则。《联合国国际货物销售合同公约》不适用。

15.2 In the event of any dispute, controversy, or claim arising out of or relating to this terms and conditions or a Purchase Order executed hereunder, or the breach, termination, performance, interpretation, or validity thereof (a "Dispute"), the Parties' respective executives shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If they do not reach settlement within a period of 30 days, then, upon notice by any Party to the other Party, any unresolved Dispute shall be determined by arbitration administered by the Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center ("SHIAC") in accordance with its International Rules of Arbitration in force on the date when the Notice of Arbitration is submitted. The tribunal shall consist of a sole arbitrator appointed by the SHIAC, which sole arbitrator shall not be a national of such country where CUSTOMER and SCHMOLL have its registered seat. The seat of the arbitration shall be in annexed territory. The arbitral proceedings shall be conducted in English. Nothing in this Section 15.2 shall preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

如遇因本条款条件或在本协议项下执行的采购订单而产生的或与之相关的任何争端、争议或索赔，或因其（“争端”）导致的违规、合约终止、履约、解释或有效性等问题，双方各自的主管应相互协商和协商。如果在30日内还未达成和解，应由其中任何一方通知另一方，由上海国际经济贸易仲裁委员会或上海国际仲裁中心（SHIAC）根据现行的国际仲裁规则，于仲裁通知提交之日对未解决的争端进行仲裁。仲裁庭应包含一名由SHIAC指定的独任仲裁员，该独任仲裁员不得是客户和金富宝公司注册所在地国家的公民。仲裁地点应在属地。仲裁程序应以英文进行。第15.2条的任何规定均不妨碍双方向具有适当管辖权的法院寻求临时补救办法以协助仲裁。

16 Miscellaneous

其他

16.1 No waiver of, no delay in the exercise of, and no omission to exercise any rights or remedies by either party shall be construed as a waiver by such party of any other rights or remedies that such party may have under each Purchase Order executed under this Terms and Conditions.

任何一方放弃、延迟行使以及因疏忽未行使任何权利或补救措施不应被解释为该方放弃在本各采购订单（根据本条款和条件执行）下可能享有的其他任何权利或补救措施。

16.2 Unless otherwise agreed, place of performance for services performed by SCHMOLL is CUSTOMER's site. Place of performance for the payment of CUSTOMER is in China. Payments shall be performed by CUSTOMER to the company bank accounts in China designated by SCHMOLL..

除非另有约定，否则金富宝提供服务的地点为客户现场。客户付款的履约地点为中国。客户应向金富宝指定的中国公司银行账户进行付款。

16.3 In case of any discrepancy between the two versions, the English version shall prevail.

两种版本如有不一致之处，请以英文版本为准。

16.4 SCHMOLL reserves the right to make any amendments or modifications to these Terms and Conditions at any time. Such amendments and modifications shall have effect (1) on all Offers, Confirmations and Agreements referring to such amended or modified Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (2) on any existing Agreement thirty (30) days from notification of such amendments or modifications by SCHMOLL to CUSTOMER, unless SCHMOLL has notified CUSTOMER within such thirty (30) days period that it objects thereto and indicating the content of its objections.

金富宝保留在任何时候对本条款和条件作出任何修改或修正的权利。上述修订和修改：(1) 自上述修订、确认书或协议之日起，对涉及该等修订或修改条款和条件的所有要约、确认书和协议有效，及(2) 自金富宝向客户发出上述修订或修改的通知之日起三十（30）日对任何现有协议有效，除非客户在该等三十（30）日期限内通知金富宝其反对该等修订或修改并说明其反对的内容。

16.5 In the event that any provision(s) of the Agreement or these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding, or action shall not negate the validity or enforceability of any other provisions thereof.

如果协议或本条款和条件的任何规定被有管辖权的法院或任何未来的立法或行政行动认定为无效或不可强制执行，该认定或行动不得否定本条款和条件的任何其他规定的有效性或可强制执行性。

16.6 CUSTOMER shall not assign any rights or obligations under these Terms and Conditions or any Agreement without the prior written consent of SCHMOLL. SCHMOLL is allowed to assign any rights or obligations under these Terms and Conditions and any Agreement to its Affiliates or to any third party in connection with a merger or a change of control.

未经金富宝事先书面同意，客户不得转让本条款和条件或任何协议项下的任何权利或义务。金富宝被允许将本条款和条件及任何协议项下的任何权利或义务转让给其关联公司或与合并或控制权变更相关的任何第三方。