

快利圖工業自動化有限公司銷售條款與條件（下稱“條款與條件”）

1. 總則

1.1 快利圖工業自動化有限公司（以下簡稱“Festo”）提供的所有交付物與服務（包括軟體銷售）均以下列銷售條款與條件為準。若任何客戶提交的任何訂單中包含與本處內容不一致的條款，該條款將被明確撤銷。除非上述訂單中的條款獲得 Festo 的書面同意，否則不對 Festo 享有法定約束力。

1.2 客戶下達訂單或接受 Festo 交付的貨物即代表客戶認可本銷售條款與條件。

1.3 除非另有說明，本條款與條件中常用術語含義如下：

“訂單確認函”	是指 Festo 對客戶下達的訂單確認；
“關聯公司”	就目標公司而言，是指 (a) 任何其他公司，無論在何處成立，是其子公司或控股公司，或是任何該等控股公司的同系附屬公司，或在其股本中直接或間接擁有權益，以行使或控制行使 10%或以上表決權的公司在股東大會上； (b) 目標公司或上文第 (a) 款所述其他公司直接或間接擁有權益，以便在股東大會上行使或控制行使 10%或以上表決權的任何其他公司；以及 (c) 作為上述 (a) 或 (b) 所述任何公司的子公司或控股公司的任何公司，或任何該等控股公司的同系附屬公司的任何公司；
“開發權”	的含義見 13.7 條；
“不可抗力”	是指協定雙方都無法控制的事件或一系列事件（包括但不限於天災、政府限制、戰爭、勞動糾紛、罷工、暴動、民眾騷亂、火災、洪水、爆炸、恐怖襲擊、海盜和停工）導致任何一方履行該協議是不可能或不切實際的；
“香港”	是指中華人民共和國香港特別行政區；
“智慧財產權”	是指但不限於任何商標、專利、版權、註冊外觀設計或未註冊外觀設計權利，以及任何上述權利的申請，與保密資訊有關的任何權利以及 Festo 或其附屬公司擁有的任何其他智慧財產權；
“訂單”	是指客戶向 Festo 下達的購買產品的訂單；
“產品”	Festo 按照訂單提供或生產的產品；
“領土”	是指香港地區。

2. 報價與交貨

2.1 Festo 線上商城所展示的商品和服務並不構成簽訂合同的要約，僅代表向客戶發出下採購訂單的邀請。

2.2 除非報價帶有時限，所有的報價須經確認才有效。Festo 的訂單確認函構成合同依據以及交貨範圍的確定因素。在客戶要求進行特定投標的情況中，上述規定亦適用。客戶下達的訂單對客戶享有約束力，在 Festo 提交訂單確認函後，視作訂單已被 Festo 接受。在訂購產品目錄內元件的情況中，若 Festo 連同所開具的發票以及貨物一併提交訂單確認函，也應視作 Festo 按時提交訂單確認函。

2.3 如果 Festo 需要變更設計或者修改技術資料和性能特性，且該等變化符合行業慣例，或屬於非實質性變化且客戶接受這些變化被認為是合理的，則 Festo 保留出於技術進步的目的進行修改的權利。上述權利同樣適用材料和規格的選擇。

2.4 連同招標書或訂單提交的任何檔（例如提交給 Festo 的圖紙、規格、材料、樣品、工具或類似物品）仍歸客戶所有。Festo 在編制和出具報價單時，必須以上述檔為準。若之後須對招標書以及 Festo 的報價單進行改動，必須在下達訂單時以書面方式注明改動內容。

2.5 Festo 以類似上述方式添加至報價單的任何檔，其所有權仍屬於 Festo。客戶承諾不會將此等檔用於任何其他合同或將其複製或提供給協力廠商。

2.6 任何明顯失誤、印刷錯誤、計算錯誤、拼寫錯誤或核算錯誤，不對 Festo 享有約束力，亦不得致使客戶有權要求索賠。

2.7 若 Festo 為特定產品配有相關檔（如操作說明等），客戶可通過 Festo 官網(www.festo.com)免費下載獲取。若客戶要求，Festo 可在額外收費的基礎上向客戶提供上述檔的印刷版。

3. 價格與支付

- 3.1 貨物及服務（如維修、組裝等）價格以 Festo 訂單確認函為準。該價格為不含稅的淨價，Festo 開具的發票金額將包含貨物及服務淨價金額和增值稅金額。
- 3.2 若客戶要求加急生產、加急配送、特殊包裝，或發生其他導致原定價依據變化的情況，Festo 保留調整相應價格的權利。
- 3.3 客戶負有在約定時間內付清所有到期款項的責任。不允許代扣任何款項或抵扣潛在的反索賠金額，除非該反索賠金額已被認可或依法確定。
- 3.4 若客戶逾期付款，則其所有貨款均應立即到期應付，同時，客戶應向 Festo 支付逾期付款違約金。若付款逾期超過 30 日，Festo 還有權取消授予客戶的信用期，後續客戶訂貨時，須將先前貨款全部結清並採用現金結算。全部貨款結清前，Festo 有權凍結客戶及其關聯方的任何訂單或發貨。

4. 交貨期

- 4.1 訂單確認函中規定的交貨日期僅在所有技術細節與商業細節均在交貨日期之前得以明確的前提下具有約束力。客戶按照約定正確履行其義務或保證是 Festo 遵守交貨時間的前提。客戶承諾提供一切必要的材料，以便在交貨日期前履行訂單。若交付物在上述日期之前離開 Festo 的工廠或 Festo 告知客戶其已做好發貨準備，則應視作上述發貨日期得以執行。
- 4.2 Festo 按時履約的前提是自身能夠獲得及時、足額的供貨保障。如該前提條件未能滿足，則 Festo 有權全部或部分解除合同或訂單，且不因此承擔任何違約責任，但因 Festo 自身原因導致供貨中斷的情況除外。
- 4.3 Festo 有權分批交貨或提前交貨。
- 4.4 若客戶要求延遲發貨或在雙方約定的發貨日期屆至時怠於提貨，則 Festo 有權單方交貨或在一段相應延長的期限後向客戶交貨，並向客戶收取倉儲費用；或在一段合理的期限後另行處置交付物。同時，Festo 有權決定對應貨款是否立即到期應付。

5. 接受

- 5.1 在貨抵雙方約定交貨地點 2 個工作日內，客戶應按合同及訂單確認函的規定對貨物型號、數量、包裝、外觀、規格等方面進行驗收並接受該貨物。如客戶未在前述時間內提出任何異議也未在規定期限內簽收，應視為已接受貨物並驗收合格。
- 5.2 涉及軟體銷售，在完成軟體專案部署及現場調試後，客戶應在 3 天內確認符合使用需求並接受該軟體或服務。如客戶到期未提出任何異議的，將視為已接受軟體或服務並驗收合格。

6. 風險轉移及所有權保留

- 6.1 發貨後，貨物毀損滅失的風險由客戶承擔。若客戶無正當理由拒絕或怠於提貨的，相關貨物的一切風險在 Festo 向客戶發出貨物發貨就緒通知時轉移給客戶。
- 6.2 在客戶全額結清所欠貨款（包括客戶在與 Festo 建立業務關係之前欠下的任何餘款，不論其源自何等法定來源）之前，所供貨物的所有權仍歸 Festo 所有。Festo 執行上述保留貨物所有權的行為不得被視作 Festo 退出合同。相反地，上述行為應作為 Festo 在銷售合同項下享有的各項權利的保障並且也是對財產收回權的一種補充，當然也包括獲得損害賠償和利潤損失賠償的權利。
- 6.3 儘管有前款規定，不論何種原因而導致退貨或換貨時，退換產品的所有權於該合同解除時即自動從客戶處轉移至 Festo。
- 6.4 在產品的所有權轉移至客戶後，有關產品的一切智慧財產權仍應屬於有關許可人。

7. 軟體使用

- 7.1 作為客戶支付報酬的回報，客戶應獲得使用 Festo 各類型軟體及其相關資料的非專屬、不可轉讓且具有一定期限的權利。客戶有權將上述軟體用於 Festo 的訂單確認函或其他單獨檔中指定的硬體產品上，禁止客戶在許可範圍外的其他硬體產品上安裝或使用。本條所指的使用包括以執行軟體和處理資料為目的的載入、顯示、運行、傳輸和存儲軟體等行為。Festo 仍應享有上述軟體的版權以及其他一切智慧財產權。客戶不得出於資料備份之外的其他目的複製上述軟體的任何部分。客戶不得刪除或更改軟體中的版權公告。
- 7.2 客戶有權在單獨的資料存放裝置上製作軟體和相關文檔的備份副本，這些副本應標有 Festo 的原始標籤（包括版權標識）。只有在客戶最初獲得的原始副本老化或損毀的情況下，才允許其使用備份副本，且只能將該備份副本用於軟體對應的特定硬體產品。客戶對備份副本的使用也應遵守前述規

定。除此以外，未經 Festo 同意，客戶無權進一步全部或部分複製軟體和/或相關文檔，也無權將其安裝在或用於許可範圍外的其他硬體上。

- 7.3 未經 Festo 事先書面同意，客戶無權編輯、更改或以其他方式修改軟體，不得將其與特定硬體產品以外的設備一同使用，不得以其他形式對其進行反向工程（反編譯）。客戶不得刪除、規避或修改任何複製保護機制、服務於數位版權管理（DRM）的程式元素、用於識別軟體或刪除軟體的安全代碼，或未經 Festo 事先書面同意，刪除關於製造商屬性、版權或其他財產權利的任何資訊。
- 7.4 將軟體轉讓給協力廠商之前，須獲得 Festo 明確的書面同意，且相關協力廠商必須同意本銷售條款與條件規定。無論協力廠商是否同意，若協力廠商違反規定給 Festo 造成損失的，都不妨礙客戶向 Festo 承擔連帶責任。
- 7.5 若違反本銷售條款與條件第 7 條，客戶應支付相當於十倍訂單金額的違約金。不得使用任何潛在的索賠來抵消上述違約金。一經要求，客戶應立即歸還軟體及其相關資料。
- 7.6 上述條款不適用於根據客戶提供的技術參數專門為客戶開發的專屬軟體。此類軟體由 Festo 作為按合同制造的全套控制系統的其中部分開發與定制，上述控制系統使用有來自 Festo 方面適用於一系列應用程式並按照合同性能要求進行改制的模組化軟體模組（標準軟體模組）。
- 7.7 在客戶全額付清定制軟體的採購價款後，Festo 應將軟體使用權按約定轉讓給客戶，但客戶不享有組成定制軟體的各個基礎標準軟體模組的任何權利。除非另有約定，Festo 有權為其他客戶定制並提供類似的軟體解決方案。Festo 保留將定制軟體用於內部用途的基礎使用權。
- 7.8 對於定制軟體，Festo 應保證其符合產品說明、Festo 訂單確認函、共同確定的檔資料或工作說明中規定的功能和特性。
- 7.9 對於定制軟體，還應適用以下條款：
 - 7.9.1 開發流程
 - a、客戶應提供詳細的技術參數和需求說明，作為軟體發展的基礎。
 - b、Festo 將在收到客戶的需求文檔後，制定詳細的專案計畫，包括開發時間表、實施計畫和資源配置等。
 - c、開發過程中，如果客戶有需求變更，應當提前 7 天告知 Festo，同時 Festo 會向客戶出具需求變更說明。
 - 7.9.2 變更請求
 - a、客戶在軟體發展過程中，如需對原始需求進行變更，應以書面形式向 Festo 提交變更請求。
 - b、變更請求應詳細說明所需的變更內容、理由及其對專案時間表和成本的潛在影響。
 - c、客戶對於軟體功能的新增需求不應視為變更，應作為新的軟體發展流程。
 - 7.9.3 變更評估
 - a. Festo 在收到客戶的變更請求後，應在合理時間內進行評估，並向客戶回饋變更的可行性、影響及可能產生的額外費用。
 - b. 評估結果應以書面形式通知客戶，並包括對專案進度的影響分析。
 - 7.9.4 變更確認
 - a. 客戶在收到評估回饋後，如同意變更，應簽署變更確認書。
 - b. 變更確認書應明確變更的具體內容、調整後的開發時間表及費用變更。
 - c. 只有在客戶簽署變更確認書後，Festo 才會開始實施變更。
 - 7.9.5 變更對專案進度的影響
 - i. 需求變更可能導致專案進度的延遲，不屬於 Festo 的違約情形，Festo 應及時向客戶通報變更對交付時間的影響。
 - ii. 在變更確認後，雙方應共同協商調整專案時間表，以確保專案的順利推進。
 - 7.9.6 驗收條件
 - a. 客戶應在收到初步版本後進行測試，並在規定的驗收期內（部署後 3 天內）向 Festo 回饋測試結果。
 - b. 驗收標準應包括功能完整性、性能指標、使用者介面符合性以及其他雙方共同確認的技術要求。
 - c. 若客戶在驗收期內未提出異議，則視為軟體已通過驗收。
 - d. 如發現不符合雙方事先約定的問題，Festo 應在合理時間內進行修復，並重新提交給客戶進行驗收。

7.9.7 其他條款

- a. 客戶不得將定制軟體的原始程式碼或相關文檔轉讓給協力廠商，除非獲得 Festo 的書面同意。
- b. Festo 保留定制軟體的所有智慧財產權，客戶僅享有使用權。
- c. 如需對軟體進行重大修改或升級，雙方應簽署新的合同或補充協定。

7.10 如果軟體發生錯誤，客戶有義務向 Festo 提供錯誤分析和後續執行所需的所有資訊，並授予 Festo 或其委託的人員不受限制地訪問安裝該軟體的軟體和系統的許可權。錯誤消息應包含有關錯誤類型、發生錯誤的應用程式以及為更正錯誤而做的工作的資訊。如果 Festo 應客戶要求進行錯誤分析，經分析不存在 Festo 有義務糾正的錯誤，Festo 有權根據其適用的小時費率向客戶收取相應的費用。

7.11 Festo 不對下列情形中的軟體錯誤負責：

- a) 由客戶方的應用程式錯誤引起、且可通過仔細查閱程式檔所避免的；本項也可適用於不存在備份措施或備份措施不足的情形；
- b) 由病毒或其他不由 Festo 負責的外部影響所導致的，如火災、事故、停電等；
- c) 將軟體用於 Festo 指定的硬體產品以外的硬體產品，或用於 Festo 認可的操作環境以外的操作環境的，或可歸因於客戶使用的與軟體相關的其他製造商的硬體、作業系統或電腦程式故障的；
- d) 客戶或協力廠商未經授權更改軟體的；
- e) 客戶或協力廠商通過非 Festo 官方管道獲取或升級軟體的。

此外，Festo 不對其他製造商免費提供的元件或模組（協力廠商軟體）提供任何保證，尤其是能夠與 Festo 提供的軟體一起使用的開源軟體。

7.12 雙方確認，各項軟體及服務費用的支付，均須嚴格遵循本銷售條款與條件及銷售合同既定的費用類別與支付流程開展。若客戶希望享有現場部署及培訓服務，除已支付的許可費用外，還需另行支付相應的部署服務費用。該部署服務費用的具體金額和支付時間，由雙方另行協商確定，並通過簽署書面協定予以明確；在書面協定未成功簽署前，Festo 有權拒絕提供現場部署與培訓服務。

7.13 軟體更新及升級

- a) 基於許可續費的更新升級：軟體的更新升級服務存在不同情形。在許可續費的情況下，客戶有權獲取與之對應的標準軟體更新升級服務，不再額外收取費用。此更新升級服務涵蓋軟體常規功能性優化、安全性提升等一般性反覆運算內容，具體更新事項以 Festo 發佈的官方說明或通知為準。
- b) 客戶定制化軟體的更新升級：基於客戶需求的客戶定制化軟體的更新升級，客戶需根據實際開發工時另行支付費用。客戶提出針對客戶定制化內容的修改、優化、升級需求時，Festo 將評估可行性、開發工時等，並在評估完成後向客戶出具費用明細清單，雙方協商一致並簽署書面協定後，Festo 即開始相關更新升級工作。

8. 退貨

8.1 除非經 Festo 事前書面許可，客戶不得退貨。退貨金額以退貨時或發票日期上現行的產品價格為準。當發生退貨時，Festo 保留對退貨商品收取退貨的所有運輸費用、最低手續費、重檢費以及為恢復商品的適合銷售性而產生的任何額外費用，具體由 Festo 確定。未經 Festo 事先書面許可，擅自退貨產生的風險和費用由客戶自行承擔。

8.2 對於軟體銷售，除非雙方另有約定，Festo 對客戶已訂購的軟體、服務及已支付的費用不接受任何退訂或退款申請。客戶應在使用、服務期限內使用軟體、服務，Festo 並不因客戶未實際使用提供其他替代或退款。

9. 保修申請

Festo 保證其產品在向客戶交貨之日後 12 個月內不會出現任何材料缺陷和工藝缺陷。除非另有約定，Festo 不對產品的（客觀）預期性能（如耐用性、功能性、相容性）或某一特定用途的適用性做出進一步保證。客戶應負責核查所購買的產品是否符合預期用途。依照本銷售條款與條件第 15 條的規定，Festo 應對貨物的品質缺陷、所有權的合法性及品質擔保負責（但不對任何其他要求負責），具體如下：

9.1 品質缺陷：

- a) 因風險轉移之前的情況產生的所有缺陷零件，一經發現，應由 Festo 酌情進行維修或（通過提交無故障的零件）更換。但零件的磨損不享受保修。
- b) Festo 軟體被設計用於 Festo 指定的硬體產品。Festo 將通過換貨的方式滿足保修申請。除非協議

雙方另有書面約定，Festo 並未擔保軟體及其資料結構不存在任何缺陷。

- c) 若涉及定制軟體，Festo 應擔保定制軟體符合技術參數、訂單確認函、相關資料或 Festo 與客戶制訂的工作/程式說明規定的各項功能與特點。Festo 並未擔保上述程式被用於客戶指定的各項應用程式時不會出現任何缺陷，尤其是 Festo 在開發或驗收時並不知曉的或並未進行測試的應用程式。
- d) 客戶應立即以書面方式通報所有缺陷，但最晚不遲於收到貨物後 8 日。
- e) 若客戶提交的缺陷投訴有合理理由，Festo 將承擔相關的直接費用—前提是該缺陷投訴成立—包括替換件的成本、替換件的運輸成本以及合理的卸載與重新安裝費用，前提是上述程式並未導致客戶向 Festo 提出不合理要求。
- f) 客戶應向 Festo 提供進行維修或換貨的時間和機會，否則 Festo 無須承擔因此產生的後果。若情況緊急，操作安全性存在危險，為防止出現重大損害，在獲得 Festo 的事前許可後，客戶有權自行或委託協力廠商糾正產品缺陷，並向 Festo 報銷必要成本。若客戶或某一協力廠商進行的維修作業不合格，Festo 無須對此產生的任何後果承擔責任。
- g) 其他保修申請應按照本銷售條款與條件第 15 條的規定進行裁定。
- h) 此外，Festo 不對基於以下理由的任何損害承擔責任：客戶或協力廠商不適宜或不適當地使用、儲存產品或錯誤安裝產品的行為、未經授權的維修及改裝行為、自然磨損、錯誤的或疏忽的操作行為、Festo 能力外的化學效應與電場效應等以及將產品用於非設計用途或不按照 Festo 相關資料（例如使用手冊、產品目錄表）中包含的資訊和詳細說明使用產品的行為（無論上述資訊以何等方式提供），尤其是與 Festo 產品的使用條件相關的資訊（例如潤滑說明、壓縮空氣品質/其他操作要求、環境條件等）。另外，若客戶或協力廠商在未經 Festo 事前許可且不具備任何其他正當理由的情況下擅自改動操縱裝置/軟體，保修服務將無效，即使是某一未經改動的部件發生錯誤。

9.2 權利瑕疵：

- a) 若使用交付物的行為侵犯他人的工業產權或版權，Festo 應自費為客戶取得可大體上繼續使用交付物的權利，或按照客戶的要求對交付物進行改造，以消除上述侵權行為。
- b) 若無法以經濟合理性的方式或在合理的期限內實現上述工作，客戶有權退出合同。同樣，Festo 也有權退出合同。
- c) 另外，Festo 應保障客戶免責於相關的版權所有人提出的任何無爭議索賠或依法可主張的索賠。
- d) 依照本銷售條款與條件第 15 條的規定，在侵犯產權或版權的情況中，Festo 的上述義務是最終的。上述義務的適用前提是客戶及時向 Festo 通報協力廠商提出的任何產權或版權侵權索賠且客戶合理支援 Festo 進行上述索賠的答辯工作或允許 Festo 對產品進行改造；Festo 有權自行處理所有的答辯活動（包括庭外和解）；上述權利瑕疵或侵權行為並非因客戶下達的某一指示產生並且也並非因客戶未經授權改造交付物的行為或未經授權使用交付物的行為造成。

10. 轉售

除 Festo 事先書面同意外，客戶從 Festo 採購的貨物，僅限用於生產製造客戶自身的產品，不得向任何協力廠商直接或間接轉售（包括將產品的部件拆下轉賣）。如客戶違反此保證或 Festo 有合理依據懷疑客戶將違反此保證，Festo 有權拒絕接受該客戶發出的訂購資訊並取消或中止客戶及其關聯方名下的全部或部分訂單且無需承擔任何賠償責任，客戶應還承擔 Festo 由此遭受的一切損失。在此情況下，非經 Festo 書面明確，客戶對 Festo 已發貨物仍需承擔付款義務。

11. 進出口限制

11.1 雙方同意，貨物的交付受限於任何地區或機構或國家（包括中國、聯合國、歐盟和美國）對技術和產品實施的、可在 Festo 所在司法管轄區內強制執行的所有適用的進出口管制或限制。客戶確認，貨物及所有相關的技術資訊、檔和材料均不得違反上述管制或限制而直接或間接進口或出口、再出口、轉運、交易、轉移或轉讓。

11.2 一經 Festo 要求，客戶應按 Festo 規定的格式和內容，向 Festo 提供所有與進出口管制法律、法規和限制有關的相關證明，例如（但不限於）最終用戶證明。

12. 資料和個人資訊保護

Festo 與客戶均應遵守適用於本銷售條款與條件、不時生效的有關網路安全、資料安全、個人資料與隱私保護的法律、法規及國家標準。如果客戶向 Festo 提供任何資料，尤其是個人資料資料，客戶應保證在提供給 Festo 之前已經取得了必要的同意及授權。Festo 確認僅得基於本銷售條款與條件之目的合理需求，而使用或處理所提供之資料。Festo 收集、處理及儲存客戶提供的資料和個人資料的方式詳見 Festo 官網 (www.festo.com) 《Festo 資料保護聲明》。

13. 智慧財產權

13.1 客戶或其代理和關聯公司侵犯 Festo 及其關聯公司智慧財產權的行為，客戶應承擔賠償責任。

13.2 未經 Festo 書面同意，客戶不得使用、授權或允許使用智慧財產權。

13.3 未經 Festo 書面同意，客戶不得：

- a) 對產品進行任何修改；
- b) 更改、移除或篡改產品上或與產品相關的任何商標、數位或其他識別標識；
- c) 以任何可能損害智慧財產權獨特性或有效性、Festo 商譽的方式使用智慧財產權；
- d) 在產品上使用除 Festo 或其附屬公司以外的任何商標；或者
- e) 在領土內使用與 Festo 或其附屬公司的商標相似的商標或商品名稱，以免造成混淆或構成欺騙。

13.4 除第 13.1 條規定外，客戶對 Festo 在產品和商譽方面所使用的智慧財產權並不享有任何權利。同時，客戶在此承認，除了雙方另明確約定外，不獲得任何額外的權利，因為這些權利和商譽是屬於 Festo 或其關聯公司。

13.5 Festo 應根據 Festo 的要求在香港地區或其他地區使用註冊使用者協定或許可。

13.6 客戶不得也不能授權協力廠商做出侵犯 Festo 智慧財產權行為，不得忽視也不得允許協力廠商忽視任何侵犯智慧財產權的行為。

13.7 客戶同意，Festo 提供產品的版權、專利權、品牌權益、商標、智慧財產權或資料庫，以及客戶根據本協定的產品發明或產品開發的（統稱為“開發權”）應屬於 Festo，且由 Festo 享有其利益。客戶承諾，若在執行協議、合同或其他必要檔的過程中損害了 Festo 的權利，客戶將所有已開發權利轉讓給 Festo。

14. 無法履約及違約

14.1 若 Festo 在風險轉移前喪失履約能力，客戶有權退出合同。若類似商品的訂單無法得以履行、部分貨物的交付無法進行並且客戶有拒絕分批交貨的合法理由，客戶亦可解除合同。若客戶選擇不解除合同，客戶有權享有相應的減價。

14.2 若出現僅可歸責於 Festo 的原因導致的延遲履約行為，且 Festo 未能在客戶向 Festo 授予的合理延期內履約，客戶有權在法律規定的範圍內退出合同。若因客戶過錯而導致收貨或驗收延遲，客戶應承擔驗收合格的後果和責任。

14.3 若客戶因歸咎 Festo 的延遲情況蒙受損失，客戶有權提出違約索賠。每延遲一周（不考慮進一步索賠），針對延遲的部分貨物，Festo 應向客戶支付相當於上述遲延貨物部分價值 0.5% 的違約金，違約金累計最高不超過該批遲延貨物價值的 3%。

14.4 因延遲交貨而提交的進一步索賠在此予以明確排除。

14.5 對於因客戶違反本銷售條款與條件而使 Festo 所遭受之任何損失、損害、費用、開銷、債務或索賠，客戶同意就此向 Festo 賠償並保證不使 Festo 遭受損害。

15. 責任

15.1 客戶不得修改或刪除產品上因不當使用而產生危險的警告標籤。如果客戶修改產品或將產品用於預期用途以外的目的，則應自行承擔風險。

15.2 如果客戶違反第 15.1 條第 1 句所約定的義務，並且如果客戶根據第 15.1 條第 2 句修改產品或將產品用於非預期用途，致使協力廠商向 Festo 索賠的，則無論法律依據如何，客戶均應向 Festo 賠償全額索賠費用，除非客戶的行為沒有任何過錯。

15.3 如果 Festo 因產品缺陷而召回產品或發出警告，或者 Festo 認為出於安全原因需要召回產品，客戶應最大程度上配合 Festo 並採取其認為必要和可取的支持措施，特別是配合 Festo 確定必要的客戶資料。

15.4 客戶有義務立即以書面形式告知 Festo 其在使用產品中發現的潛在風險以及可能存在的產品缺陷。

- 15.5 在任何情形下且不論出於何種訴訟理由，Festo 根據本協定對客戶所負的最高責任總額（包括支付罰金、違約金的義務，且不論起因、過錯程度、過失、違約或其他情況）應限於僅與 Festo 須承擔責任的單筆訂單價款的三分之一（1/3）。
- 15.6 在任何情況下 Festo 均不對任何依據本協議產生的間接或從屬性損失負責，包括但不限於任何收入損失、利潤損失、預期利益及節省損失、生產運營中斷或停產停線損失、合同或商業機會損失、商譽損失、資料丟失或損壞、因使用軟體生成資料而產生的損失、投資及機會成本損失、協力廠商申索及所有相關及附帶成本及費用等。
- 15.7 除承擔交付物的缺陷之外，Festo 僅在 Festo 或其管理人員出現蓄意、重大過失或產品存在危害生命、人身或健康的可治罪缺陷且 Festo 惡意隱瞞該缺陷或擔保不存在上述缺陷的情況中承擔責任，前提是上述責任為產品責任法中規定的與該產品使用相關的人身傷害與財產損失責任。
- 15.8 任何進一步的索賠在此予以明確排除。

16. 保密義務

客戶承諾對訂單履行工作涉及的一切資訊、技術訣竅和其他工業機密進行保密，在獲得 Festo 的明確許可之前，客戶不得將任何資訊、單據、資料、圖紙、草圖或其他檔轉移或提供給任何協力廠商。Festo 也有義務對客戶的所有資訊進行保密。

17. 不可抗力

- 17.1 如果不履行或者不完全履行義務是由於簽訂合同時無法預見的情況造成，並且 Festo 無法通過合理手段補救的，構成不可抗力，Festo 不承擔任何不履行或不完全履行義務的責任。在任何情況下，以下事件均應視為不可抗力：罷工、暴亂和內亂、戰爭（已宣佈或未宣佈）、海盜、恐怖威脅、破壞行為、火災、洪水、地震和自然災害、傳染病和全球性流行病、政府行為等，以及 Festo 供應商受到上述不可抗力影響的情形。
- 17.2 如果發生不可抗力事件，Festo 在相關合同下的義務應暫停，暫停期間包括不可抗力的影響持續期以及此後一段合理的重新啟動期。如果不可抗力事件持續時間超過 90 天，Festo 有權解除合約或訂單。

18. 法律適用及爭議解決

本銷售條款與條件的效力、解釋、履行及爭議解決均適用香港法律。因本銷售條款與條件引起或與之相關的任何爭議，雙方應先友好協商解決；若協商未果，任何一方均有權將該爭議提交至香港法院通過訴訟解決。

19. 合規

客戶保證已知悉 Festo《商業夥伴行為準則》，該準則可通過 Festo 官網 (www.festo.com) 下載，並要求公司管理人員和員工遵守該準則。為保證合作順利進行，客戶應採取一切必要措施以避免發生任何非法行為，尤其是對 Festo 造成不利影響的。因此，客戶應在公司和/或集團內採取一切必要的，尤其是對於避免腐敗或其他犯罪行為至關重要的行動，以監督其管理人員和員工對 Festo《商業夥伴行為準則》的遵守情況。

Terms and conditions of sale (“Terms and Conditions”), Festo Limited

1. General

- 1.1 Unless otherwise specified hereinafter, capitalized terms used herein shall bear the same meanings as defined in this Agreement as signed between Festo and the Customer.
- 1.2 All deliveries and services from Festo, including the sale of software, are subject to the Terms and Conditions hereunder. Any conditions in any Order given by any Customer which are inconsistent with the Terms and Conditions hereunder are expressly revoked. Such conditions in any Order shall not be legally binding for Festo unless they have been agreed to in writing by Festo.
- 1.3 The use of Festo’s software and customised software is subject to separate software user conditions.
- 1.4 The placing of an Order or acceptance of goods delivered by Festo shall constitute the Customer’s agreement to our Terms and Conditions.
- 1.5 In this Agreement, unless the context otherwise requires:

“Acknowledgement of Order” means an acknowledgement issued by Festo to the Customer confirming the Order placed by the Customer;

“Affiliate” means, with respect to a subject company,

- (a) any other company, wherever incorporated, which is its subsidiary or holding company or is a fellow subsidiary of any such holding company or one in the equity capital of which it and/or such other company or companies taken together are directly or indirectly interested so as to exercise or control the exercise of 10% or more of the voting power at general meetings;
- (b) any other company in the equity capital of which the subject company or such other companies referred to in (a) above are directly or indirectly interested so as to exercise or control the exercise of 10% or more of the voting power at general meetings; and
- (c) any company which is a subsidiary or holding company of any of the companies referred to in (a) or (b) above or a fellow subsidiary of any such holding company;

“Developed Rights” shall have the meaning ascribed in Clause 12.7;

“Force Majeure” means any event or series of events beyond the control of any of the Parties (including but not limited to any acts of God, government restrictions, wars, industrial disputes, strikes, riots, civil commotion, fire, flood, explosion, terrorist

attack, acts of piracy and lockouts) rendering performance of this Agreement by either Party impossible or impracticable;

“Hong Kong” means Hong Kong Special Administrative Region of the People’s Republic of China;

“Intellectual Property Rights” means and includes without limitation any trademark, patent, copyright, registered design or unregistered design right and any application for any of the foregoing, any rights in respect of confidential information and any other intellectual property right owned by Festo’s or its Affiliates;

“Order” means each purchase order placed by the Customer with Festo for purchase of the Products;

“Products” means the products to be supplied and / or manufactured by Festo in accordance with each Order from time to time;

“Territory” means Hong Kong.

2. Quotation and delivery

- 2.1 The goods and services displayed on the Festo Online Shop do not constitute an offer to conclude an agreement, but only represent an invitation to the customer to place a purchase order.
- 2.2 Unless a quotation carries a time limit, all quotations shall be subject to confirmation. Festo’s written order confirmations shall form the basis of the contract and determines the scope of the delivery. The foregoing also applies where the customer requests a specific tender. Orders placed by the customer are binding on the customer and shall be deemed accepted by Festo upon Festo’s issuance of an order confirmation. This shall be deemed to have been presented in due time in the case of catalogue components if presented together with the issued invoice and the delivery.
- 2.3 Festo reserves the right to vary the design and make changes to technical data and performance characteristics for the purpose of technical progress insofar as these deviations are in accordance with industry practice, or if the changes are not substantial and it is reasonable for the customer to accept them. The above right shall apply to the selection of materials and specifications.
- 2.4 Any documentation submitted with the request for tender or an order, such as drawings, specifications, material, samples, tools, models or similar and made available to Festo, shall remain the property of the customer. These are binding for the preparation and issue of the Festo quotation. Any subsequent variations relating to the initial request for tender and the Festo quotation must be specified in writing when ordering.
- 2.5 Any documentation added by Festo to a quotation in a manner similar to that mentioned above shall remain the property of Festo. The customer undertakes not to use this documentation for the purpose of any other contracts or to reproduce or make it available to third parties.
- 2.6 Any apparent mistakes, printing, computational, spelling or calculation errors shall not be binding on Festo and shall not give the customer the right to claim for damages.

2.7 Insofar as Festo have documentation (e.g. manuals, etc.) for particular products, this will be available to customers as a free download from the Festo website (www.festo.com). If requested by the customers, Festo may provide a printed version of such documentation at an additional cost.

3. Prices and payment

3.1 Prices for goods and service (e.g. repair, assembly, etc.) shall be set forth in Festo's order confirmation, which are net and exclusive of tax. Applicable VAT shall be included in the invoice.

3.2 If the customer requests urgent production, urgent delivery, special packaging, or if other circumstances arise that result in a change to the basis of the original price, Festo reserves the right to adjust the price accordingly.

3.3 The customer is obligated to make full payment within the agreed period. The withholding of payments or offsetting of potential counterclaims is not permissible other than in the case of recognised or legally determined counterclaims.

3.4 In the event of overdue payment by the customer, all outstanding amounts shall become immediately due and payable, and the customer shall pay Festo liquidated damages for delayed payment. If the payment remains overdue for more than 30 days, Festo shall further have the right to cancel the credit period granted to the customer. All debt shall be fully paid up before subsequent orders. Festo shall also be entitled to suspend all orders or deliveries for the customer and its affiliates until full payment is made.

4. Delivery period

4.1 The date specified in Festo's order confirmation is binding only if all the technical and commercial details have been clarified by that time. The proper performance by the customer of its obligations or guarantees as agreed is the prerequisite for Festo's compliance with delivery times. The customer undertakes to provide the materials essential for the order to be executed on time. The delivery date is deemed to have been adhered to if the object of delivery has left the Festo works by the said date or if the customer has been advised of its readiness for shipment.

4.2 Festo's performance of its obligations on time is upon its ability to obtain timely and adequate supplies. If the preconditions are not met, Festo shall have the right to terminate the contract or order in whole or in part without being liable for any breach of contract, except where the supply disruption is caused by Festo itself.

4.3 Partial and early deliveries by Festo are permissible.

4.4 If the customer requests delivery postponement or fails to take delivery upon agreed delivery date, Festo shall be entitled to deliver unilaterally or to deliver to the customer after a reasonable period and to charge the customer storage costs; or, after a reasonable period to dispose otherwise the delivery item. Festo shall also be entitled to determine whether the corresponding payment shall become immediately due and payable.

5. Acceptance

- 5.1 Customer shall inspect the type, quantity, package, surface quality, specification etc. within 2 working days after the goods arrive the place agreed by both parties according to the provisions of the contract and order, and accept the goods. If customer raises no objections or fails to accept the goods within the aforementioned period or to sign for acceptance within the specified time, it shall be deemed that the goods have been accepted.
- 5.2 Regarding the sale of software, the customer shall confirm within 3 days that the software or service meets the usage requirements and accept it after the completion of the software project deployment and integration. If customer raises no objections within the specified time, it shall be deemed that the software or service has been accepted.

6. Passage of risk and retention of title

- 6.1 Upon delivery, the risk of loss or damage to the goods shall pass to the customer. In case the customer refuses or fails to take delivery without justifiable reason, all risks related to such goods shall transfer to the customer upon Festo's issuance of the goods readiness notice.
- 6.2 The goods supplied shall remain the property of Festo until all debts owed by the customer are settled in full including any balances existing from the business relationship with the customer irrespective of statutory source. The enforcement of our right to retain title should not be regarded as a withdrawal from the contract. On the contrary, it ensures our rights from the contract of sale in addition to Festo's entitlement to the return of Festo's property, in particular to the reimbursement of damages and lost profits.
- 6.3 Notwithstanding the provisions of the preceding paragraph, the ownership of the changed and returned goods shall automatically be transferred to Festo from the customer regardless of the cause.
- 6.4 All relevant intellectual property rights related to the goods shall still be owned by the licensor after the ownership of the goods has been transferred to the customer.

7. Use of software

- 7.1 In return for remuneration, the customer shall be granted a non-exclusive, non-transferrable and time-limited right to use Festo's all types of software and any relevant documentation. The customer is licensed to use the aforementioned software solely on the hardware products specific in Festo's order confirmation or other separate documents, while any installation on or use for other hardware product outside the licensed scope is not permitted. The term "use" as referred to herein includes such acts as loading, displaying, running, transferring and storing the software for the purpose of executing the software and processing data. Festo shall retain the copyrights and all other intellectual property rights in the aforementioned software. The customer may not duplicate any part of the software for purposes other than data backup. Copyright notices in the software shall not be removed or altered.
- 7.2 The customer is authorised to make a backup copy of the software and the corresponding documentation on separate data storage devices, which shall be labelled with the original labelling from Festo (including the copyright mark). Use of the backup copy is only permitted in the case of deterioration or destruction of the copy originally acquired by the customer and only for the specific

hardware product to which the software is assigned. The customer is also subject to the above provisions with regard to the use of the backup copy. In other respects, the customer shall not be entitled, without Festo's consent, to make further copies of the software and/or documentation or parts thereof, to install them on and/or use them for other hardware outside the scope of the license.

7.3 Without the prior written consent of Festo, the customer shall not be entitled to edit, change or otherwise modify the software, use it in conjunction with devices other than the specific hardware product, reverse engineer (decompile) it in another form of representation, remove, circumvent or modify any copy protection mechanisms, program elements serving digital rights management (DRM), security codes or features serving to identify the software or to remove any information in the software and the associated documentation about the manufacturer's properties, copyrights or other property rights of Festo without the prior written consent of Festo.

7.4 Any transfer of the software to a third party requires Festo's explicit prior written consent and the relevant third party must agree to comply with these Terms and Conditions. In any case the customer shall be jointly and severally liable to Festo for the losses caused by such third party's breach.

7.5 In the event of a violation of Section 7 of these Terms and Conditions, the purchaser shall pay a contractual penalty amounting to ten times the order value. This contractual penalty shall not be set off against any potential claims for compensation. The software and associated documentation must be returned immediately on request.

7.6 The conditions described above do not apply to exclusive customer-specific software developed on the basis of specifications provided by the customer. This software is developed and customised by Festo as part of a contractually produced complete control system making use of modular software modules (standard software modules) from Festo suitable for a wide range of applications and adapted to the contractual performance requirements.

7.7 Upon full payment by the customer for the customised software, Festo shall transfer the right to use the software as agreed upon, but the customer shall have no rights to the individual basic standard software modules forming the basis of the customised software. Unless otherwise agreed, Festo retains the right to develop and offer similar software solutions for other customers. Festo retains a basic right to use the customised software for internal purposes.

7.8 For customised software, Festo shall warrant compliance with the functions and features stipulated in the specifications, the Festo's order confirmation or acceptance letter, documentation or the jointly defined work/procedure descriptions.

7.9 For customised software, the following provisions shall also apply:

7.9.1 Development process

- a Customer shall provide a detailed description of the technical parameters and requirements as a basis for software development.
- b Festo will develop a detailed project plan including a development schedule, implementation plan and resource allocation upon receipt of the customer's requirements document.
- c During development, if the customer requests changes, the customer should inform Festo 7 days in advance, and Festo will issue a statement of change in requirements to the customer.

7.9.2 Change request

- a If the customer needs to make change to the original requirements during the software development, the customer shall submit a written change request to Festo.
- b The change request shall detail what changes are required, the rationale for the changes, and the potential impact on the project schedule and cost.
- c Any additional requirement for software functionality by the customer shall not be treated as a change, but shall initiate a new software development process.

7.9.3 Change assessment

- a Upon receiving a change request from customer, Festo shall assess it within a reasonable period of time and provide feedback to customer on the feasibility, impact and any additional costs that may be incurred.
- b The assessment results should be notified to the customer in writing and include an analysis of the impact on the project schedule.

7.9.4 Confirmation of change

- a If the customer agrees to the change after receiving the assessment results, a written confirmation letter of change must be signed.
- b The confirmation letter of change shall identify the specific content of the change, the adjusted development schedule, and the change in cost.
- c Festo will only start implementing the change after the customer has signed the confirmation letter of change.

7.9.5 Impact of change on project schedule

- a Change in requirements that may cause delay in the project schedule shall not be considered a breach of contract by Festo. Festo shall notify the customer in a timely manner about the impact of the change on the delivery time.
- b After the change has been confirmed, both parties shall jointly agree to adjust the project schedule to ensure the smooth progress of the project.

7.9.6 Conditions of acceptance

- a Customer shall test the initial version of the software upon receipt and provide feedback to Festo on the test results within the specified acceptance period (within 3 days of deployment).
- b Acceptance criteria shall include functional integrity, performance indicators, user interface applicability, and other technical requirements mutually recognized by both parties.
- c If the customer raises no objections within the specified acceptance period, it shall be deemed to have accepted the software.
- d If any non-conformity with prior agreement of the parties is identified, Festo shall fix it within a reasonable time and resubmit the deliverable to the customer for acceptance.

7.9.7 Other provisions

- a The customer may not transfer the source code or related documentation of customised software to a third party, except with the written consent of Festo.
- b Festo retains all intellectual property rights in the customised software. The customer is granted a right to use it only.
- c If major modifications or upgrades to the software are required, a new contract or supplemental agreement shall be signed by both parties.

7.10 In the event of error occurring, the customer shall be obliged to provide Festo with all necessary information for error analysis and subsequent performance and to grant Festo or the persons commissioned by Festo unrestricted access to the software and the system of the customer on which it is installed. An error report shall contain information about the type of error, the application in which the error occurred, and the work performed to correct the error. If Festo carries out an error analysis at the customer's request and it turns out that there is no error which Festo is obliged to remedy, Festo reserves the right to charge the customer based on Festo's applicable hourly rates.

7.11 Festo shall not be liable for any error in the software,

- a) which have been caused by application errors on the part of the customer and which could have been avoided if the program documentation had been consulted carefully; this also applies to non-existent or insufficient backup measures;
- b) which have been caused by a virus or other external influences beyond Festo's responsibility, such as fire, accidents, power failure, etc.;
- c) which are based on the fact that the software was used in connection with a hardware product other than that specified by Festo or in an operating environment other than that approved by Festo, or are attributable to faults in the hardware, the operating system or computer programs of other manufacturers which the customer uses in connection with the software;
- d) which are based on the fact that the software was changed by the customer or a third party without authorization;
- e) which are based on the fact that the software was obtained or upgraded by the customer or a third party through non-official Festo channels.

Furthermore, Festo shall not provide any warranty for components or modules supplied free of charge by other manufacturers (third-party software), in particular open source software, which can be used in connection with Festo's software.

7.12 Both parties confirm that payment for the software and services shall strictly adhere to the fee categories and payment processes set forth in these Terms and Conditions, and the sales contract. If the customer wishes to have on-site deployment and training services, the customer is required to separately pay the corresponding deployment service fees in addition to the paid license fees. The specific amount and payment schedule for such deployment service fees shall be determined by the parties through separate negotiations and confirmed in a written agreement. Festo reserves the right to refuse to provide on-site deployment and training services until a written agreement has been successfully signed.

7.13 Software updates and upgrades

- a) Updates and upgrades based on license renewals: There are different scenarios for software updates and upgrades. In the case of license renewal, the customer is entitled to receive the corresponding standard software update service without additional charge. This update service covers general iterations of the software such as routine functional optimizations, security enhancement, etc. The specific updates shall be subject to the official instructions or notifications issued by Festo.
- b) Updates and upgrades of customised software: For updates and upgrades to customised software based on customer needs, the customer is required to pay a separate fee based on the actual development hours. When the customer puts forward the modification, optimization and

upgrading requirements for the customised content, Festo will assess the feasibility, development time, etc., and issue the cost breakdown list to the customer after the assessment is completed. Festo will start the relevant updating and upgrading work only after both parties reach a consensus and signed a written agreement.

8. Returned goods

8.1 No returns for goods will be allowed without Festo's prior written acceptance. Credit will be based upon prices of products in effect at time of return or time of invoicing. In the event of return, Festo reserves the right to impose a minimum charge on returned goods which is subject to shipping, handling, re-inspection and any additional expense incurred in restoring goods to saleable condition, as determined by Festo's inspection. Unauthorized returns are at the customer's own risk and expense.

8.2 With regard to the sale of software, unless otherwise agreed, no cancellation or refund requests will be accepted for software and service ordered or paid by the customer. Customer shall use the software and services within the specified usage and service period. Festo shall not provide any substitutes or refunds for any unused software.

9. Warranty claims

Festo warrants its products to be free from defects in materials and workmanship, for a period of 12 months from the date of delivery to the customer. No further warranty with regard to (objectively) expected products (e.g. durability, functionality, compatibility) or fitness for a particular purpose, shall be granted unless otherwise agreed. The customer is responsible for checking whether the purchased products are suitable for the intended use. Subject to the provisions in Section 14 herein and excluding any further claims, Festo shall be liable for defects of quality and legality of title and warrants as follows:

9.1 Defects of quality:

- a) All parts found to be defective as a result of circumstances prior to the transfer of risk shall, at the discretion of Festo, either be repaired or replaced by delivery of a faultless part. Excluded from this warranty shall be parts subject to wear.
- b) Festo software is designed to run on hardware products specified by Festo. Warranty claims shall be satisfied by means of a replacement. Unless otherwise agreed in writing, Festo shall not warrant that the software and its data structure are free of defects.
- c) In case of customised software, Festo shall warrant compliance with the functions and features stipulated in the specifications, the order acknowledgement, documentation or the work/procedure descriptions worked out together between Festo and the customer. Festo shall not warrant that such programs are free of defects in relation to the use of said programs in all applications intended by the customer, in particular not such applications of which Festo was not aware or did not test at the time of development/acceptance.
- d) The defects shall be notified immediately in writing, however, at the latest within 8 days after receipt of goods.
- e) If the defect complaint is justified, Festo shall bear of the immediate costs – insofar as the complaint proves to be founded – the cost of the replacement part, shipping thereof as well as reasonable costs related to uninstallation and reinstallation, insofar as such procedure does not result in unreasonable demands made on Festo.

- f) The customer shall allow Festo time and opportunity to effect the repair or replacement delivery, otherwise Festo shall not be held liable for the ensuing consequences. The customer, with Festo's prior consent, shall have the right to rectify defects itself or have them rectified by a third party in such urgent cases where there is a danger to operational safety and to prevent extensive damage, and to claim reimbursement of necessary costs from Festo. Should the customer or a third party carry out unqualified repairs, Festo shall not be held liable for any consequences thereof.
- g) Other claims shall be determined as stipulated in Section 14 herein.
- h) In addition, Festo shall not be held liable for any damage on foot of the following grounds: unsuitable or improper use or storage, faulty installation by the customer or a third party, unauthorised repair attempts and modifications, natural wear, erroneous or negligent handling, chemical effects and electrical effects etc. outside our power, as well as in case of non-intended use and non-compliance with our information and details out of our documentation (e.g. user manuals, catalogue sheets), irrespective of the method of such information, in particular in relation to the conditions of use of our products (e.g. lubrication instructions, quality of pressurised air/of other operational requirements, environmental conditions). In addition, the warranty shall be voided if the customer or third parties modify the control/software without Festo's prior consent and without any other justification, even if the error occurs in an unchanged component.

9.2 Defects of title:

- a) If the use of the delivery item infringes other's industrial property rights or copyrights, Festo shall, at its cost, obtain the right to principally enable the customer to continue to use the delivery item or to modify the delivery item in a manner acceptable to the customer so that the copyright infringement no longer exists.
- b) Should this not be achievable in an economically reasonable manner or within a reasonable period of time, the customer shall be entitled to withdraw from the contract. Given the stipulated conditions, Festo also shall have the right to withdraw from the contract.
- c) In addition, Festo shall indemnify the customer in relation to any non-disputed claim or legally asserted claim raised by the relevant copyright owners.
- d) Subject to Section 14 herein, the above stated obligations of Festo shall be final in relation to cases of infringement of property rights or copyrights. The aforesaid obligations shall be applicable only if the customer advises any property or copyright infringement claims raised immediately to Festo, the customer reasonably supports Festo in the defence of such claims or enables Festo to carry out modifications, Festo has at its disposal all defence actions including out-of-court settlements, the defect of title is not based on an instruction issued by the customer and the infringement is not caused by non-authorised modifications of the delivery item by the customer or non-authorised use of the delivery item by the customer.

10. Resell

Unless Festo has given a prior consent in writing, the supplied goods can only be used to manufacture customer's own products, and the customer is not allowed to resell the supplied goods, directly or indirectly, to any third party, including resell the component(s) removed from the goods. If customer violates this term or Festo has reasonable grounds for doubt of customer's violating this term, Festo has the right to refuse to accept customer's orders and cancel all or any part of the order placed by the

customer and its affiliates without liability, Under such circumstances, customer shall compensate for all losses incurred to Festo. The customer shall remain liable for make payment for goods delivered unless expressly permitted by Festo in writing.

11. Import & export control

11.1 The parties agree that the goods shall be delivered subject to all applicable import and export controls or restrictions imposed on technology and products by any country or organisation or nation, including China, United Nations, European Union and the United States, which are enforceable in the jurisdiction of Festo. The customer acknowledges that the goods and all related technical information, documents and materials may not be imported or exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls or restrictions.

11.2 On Festo's request, the customer shall furnish Festo with all relevant certificates relating to import and export control laws, regulations and restrictions, such as, but not limited to, end-user certificates, in form and content specified by Festo.

12. Data and personal information protection

Both Festo and the customer shall comply with all applicable laws, regulations, and national standards concerning cybersecurity, data security, personal information, and privacy protection that are in effect from time to time and apply to these Terms and Conditions. If the customer provides any data to Festo, particularly personal information data, the customer warrants that it has obtained all necessary consents and authorizations prior to providing such data to Festo. Festo confirms that it will only use or process the provided data for purposes reasonably required under these Terms and Conditions. The way Festo collects, processes, and stores data and personal information provided by the customer is detailed in the "Festo Data Protection Statement" available on Festo website (www.festo.com).

13. Intellectual Property Rights

13.1 The Customer shall indemnify Festo against any infringement of Festo's and its Affiliates' Intellectual Property Rights by the Customer or any agents and Affiliates of the Customer.

13.2 The Customer shall not use, authorize or permit the use of the Intellectual Property Rights without the express prior written consent of Festo.

13.3 The Customer shall not, without prior written approval of Festo: -

- (a) make any modifications to the Products;
- (b) alter, remove or tamper with any trademarks, numbers, or other means of identification used on or in relation to the Products;
- (c) use any of the Intellectual Property Rights in any way which might prejudice their distinctiveness or validity or the goodwill of Festo therein;
- (d) use in relation to the Products any trademarks other than the trademarks of Festo or its Affiliates; or
- (e) use in the Territory any trademarks or trade names so resembling any of the trademarks of Festo or its Affiliates as to be likely to cause confusion or deception.

- 13.4 Except as provided in Clause 12.1, the Customer shall have no rights in respect of any Intellectual Property Rights used by Festo in relation to the Products or of the goodwill associated therewith, and the Customer hereby acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and shall remain, vested in Festo and/or its Affiliates.
- 13.5 The Customer shall at the request of Festo execute such registered user agreements or licences in respect of the use of the Intellectual Property Rights in the Territory and/or other territory(ies) on the terms as Festo may require.
- 13.6 The Customer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 13.7 The Customer agrees and acknowledges that any copyrights, patent rights, brand rights, trademarks, intellectual property rights or database invented, created or developed by the Customer in relation to the Products under this Agreement (collectively “**Developed Rights**”) shall belong to and inure to the benefit of Festo. The Customer undertakes, at the expense of Festo to execute all agreements, contracts and such necessary documents for the effective transfer and assignment of all the Developed Rights to Festo.

14. Impossibility of performance, default

- 14.1 The customer may withdraw from the agreement should performance by Festo become impossible before the risk is passed. The customer shall also be entitled to withdraw from the agreement should, in the case of an order for similar goods, execution of part of the delivery become impossible and the customer has a legitimate interest in refusal of a partial delivery. Should this not be the case, the customer may reduce the consideration accordingly.
- 14.2 In the event of a delay of performance attributable solely to Festo, where the customer guarantees Festo a reasonable extension, the customer shall be entitled to withdraw from the agreement, within the scope of the statutory provisions, should the extension not be complied with. Should there be a delay of acceptance through the fault of the customer, the customer shall remain obliged to render a return service.
- 14.3 Should the customer incur damage caused by a delay for which Festo is responsible, the customer shall be entitled to claim liquidated damages for default. This liquidated damages shall amount to, for each full week of the delay and to the exclusion of further claims, 0.5 % and aggregately no more than 3 % of the value of the delayed part of the delivery.
- 14.4 Further claims as a result of late delivery shall be expressly excluded.
- 14.5 The customer hereby agrees to fully compensate Festo and hold Festo harmless from any losses, damages, costs, expenses, liabilities or claims arising out of customer’s violation of these Terms and Conditions.

15. Liability

- 15.1 The customer shall not modify or remove existing warnings about dangers arising from improper use of the products. If the customer modifies the product or uses the product for purposes other than those for which it was intended, this shall be at the customer's own risk.
- 15.2 In the event of a breach of the obligation according to Section 14.1 sentence 1 and if the customer modifies the product or uses the product for purposes other than those for which it was intended according to Section 14.1 sentence 2, the customer shall indemnify Festo internally against all resulting claims by third parties, irrespective of the legal grounds, unless the customer has acted without fault.
- 15.3 Festo is prompted to recall or warn of a product due to a product defect in the products, or if Festo deems a product recall to be indicated for safety reasons, the customer shall cooperate to the best of his or her ability in the measures which Festo considers necessary and expedient and which support Festo in this, in particular in determining the necessary customer data.
- 15.4 The customer shall immediately inform Festo in writing of any risks that become known to him or her when using the products and of possible product defects.
- 15.5 In any event, and whatever the cause of action, Festo's maximum total liability to the customer pursuant to and in connection with this Agreement – including the obligation to pay penalties, liquidated damages and regardless of cause, degree of fault, negligence, breach of contract or otherwise – shall be limited to one third (1/3) of the individual order value in respect of which the cause of Festo's liability has arisen.
- 15.6 In no event shall any pursuant to this Agreement Festo be liable to any party for any indirect or other consequential damages including but not limited to, any loss of revenue, loss of profits, loss of anticipated benefits and savings, loss of production or operation interruption or shutdowns, loss of contracts or business opportunities, loss of goodwill, loss or corruption of data, losses arising from the use of software-generated data, loss of investment and opportunity cost, claims of third parties and all associated and incidental costs and expenses etc.
- 15.7 Festo shall not be liable for defects other than to the delivery item, for whatever legal reasons, only in case of intent, gross negligence of bodies or executives, culpable violation of life, body, health, defects whose presence was not disclosed by Festo or its managerial personnels maliciously or their absence guaranteed by Festo, as well as in case of delivery item defects to the extent as liability is provided under the product liability law for personal injury and property damage in relation to privately used items.
- 15.8 Any further claims shall be expressly excluded.

16. Confidentiality

The customer undertakes to treat all information, know-how and other industrial secrets in connection with the execution of the respective order in strict confidence and not to pass on or make available any information, documents, documentation, drawings, sketches or other papers to third parties without the express permission of Festo. Festo shall also treat all customer documentation in confidence.

17. Force majeure

17.1 Festo shall not be liable for any partial or total non-performance of its obligations if such non-performance is due in whole or in part to circumstances which could not have been foreseen at the time of the conclusion of the purchase contract and which cannot be remedied by Festo by reasonable means ("Force Majeure"). In any case, the following events shall be considered as Force Majeure: strikes, riots and civil commotions, war (declared or undeclared), piracy, terrorist threats, acts of sabotage, fires, floods, earthquakes and natural disasters, epidemics and pandemics, acts of government or if the above circumstances affect subcontractors of the Festo.

17.2 In the event of a Force Majeure Event, the obligations of Festo under the relevant purchase contract shall be suspended for as long as the effect of the Force Majeure event lasts plus a reasonable restart period thereafter. If the Force Majeure event last for a period longer than 90 days, Festo is entitled to withdraw from the contract.

18. Governing law and dispute settlement

The validity, interpretation, performance and dispute resolution of these Terms and Conditions shall be governed by the laws of Hong Kong. Any dispute arising from or in connection with these Terms and Conditions shall first be settled through friendly negotiations between both parties. If such negotiations fail to settle the dispute, either party shall have the right to submit the dispute to the jurisdiction of the courts of Hong Kong.

19. Compliance

The customer warrants that he or she has been informed of the Festo Code of Conduct for Business Partners, which can be downloaded from Festo website (www.festo.com), and has instructed his or her managers and employees to comply with it. To secure this good conduct the customer shall undertake any necessary step to avoid any illegal actions, especially to avoid illegal actions which would adversely affect Festo. Therefore within his or her company and/or group the customer shall take any necessary actions needed to monitor compliance with the Festo Code of Conduct for Business Partners by his or her managers and employees, especially such actions which are essential to avoid corruption or any other criminal acts.