



# Purchase Order Terms and Conditions



**WORLD AUTHORITY  
IN ADVANCED TECHNOLOGY FOR  
MAGNETIC, VIBRATORY AND  
METAL DETECTION APPLICATIONS**

## **ERIEZ MANUFACTURING CO.**

HEADQUARTERS:

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Manufacturing Facilities in:

AUSTRALIA ■ BRAZIL ■ CANADA ■ CHINA ■ INDIA ■ JAPAN  
MEXICO ■ SOUTH AFRICA ■ UNITED KINGDOM ■ UNITED STATES

### **1. Contract Formation.**

This purchase order is an offer to purchase goods and/or services from the Seller by Eriez Manufacturing Company ("Buyer"). This purchase order does not constitute an acceptance by Buyer of any offer, any quotation, or any proposal from Seller. Buyer shall not be bound by this purchase order until Seller executes and returns to Buyer the acknowledgment copy of this purchase order which shall constitute acceptance of the offer set forth in this purchase order. Seller shall be bound by this purchase order when: (1) Seller executes and returns the acknowledgment copy of this purchase order; (2) Seller otherwise communicates to Buyer in writing its acceptance of this purchase order; or (3) Seller delivers to Buyer any of the goods, or renders to Buyer any of the services, identified in this purchase order. This purchase order expressly limits acceptance to the terms and conditions stated herein, and any additional or different terms proposed by the Seller are rejected unless expressly assented to in writing by Buyer. Buyer expressly objects to any terms contained in any of Seller's documents which are different from, or additional to, the terms of this purchase order. Buyer's execution of any document issued by Seller shall constitute only an acknowledgment of the receipt thereof, and shall not be construed as an acceptance of any of the terms therein. No contract shall exist between Buyer and Seller except as provided in this purchase order.

### **2. Entire Agreement.**

The parties agree that this purchase order, including the terms and conditions on the face and reverse side hereof, together with any documents attached hereto or incorporated herein by reference, contains the complete and final contract (the "Contract") between Buyer and Seller. This purchase order supersedes all prior understandings, agreements and negotiations between the Buyer and Seller with respect to the subject matter hereof.

### **3. Amendments.**

The Contract may not be amended or otherwise modified except by a writing which is executed by Buyer. Any acknowledgment form or other document of Seller containing terms and conditions shall not have the effect of modifying the terms and conditions of this purchase order, even if signed by Buyer, and such documents are hereby specifically rejected. Buyer shall consider a request by Seller for an amendment only if such request is in writing and is directed to specific paragraphs in this purchase order. No such amendment shall be binding upon Buyer unless specifically accepted in writing by Buyer.

### **4. Change Orders.**

The Buyer reserves the right to make, at any time, written change orders with respect to any one or more of the following: (1) specifications, drawings, and data incorporated into the Contract; (2) methods of shipment or packing; (3) place of delivery; (4) time of delivery; (5) manner of delivery; and (6) quantities. If any such change order causes an increase or decrease in the cost of, or the time required for, performance of the Contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for an adjustment under this Paragraph 4 must be approved by the Buyer in writing before the Seller proceeds in accordance with such change order. If Seller proceeds in accordance with the change order without having first obtained Buyer's written consent to an adjustment, Seller shall be deemed to have waived any claim for an adjustment and Buyer shall not be obligated to make or honor any adjustment relating to the change order in question.

### **5. Price.**

(a) Prices stated in this purchase order shall apply to all deliveries to be made or services to be rendered hereunder. Buyer shall have no obligation to pay invoices for goods or services at any increased price unless such increased price shall have been consented to in writing by the Buyer. The price set forth in this purchase order is the entire price for the goods and/or services in question. Unless specifically otherwise set forth in this purchase order, such price includes all shipping, postage, handling, packaging, containers, drayage and any other materials or services provided in connection with the performance of the Contract by Seller. Except as is otherwise provided in this purchase order, Buyer shall not be obligated to pay any fees or charges of any nature whatsoever which are in addition to the purchase price.

(b) Except as is otherwise provided in this purchase order, the purchase price includes all applicable laws and commercial taxes (including but not limited to value-added tax, urban maintenance and construction tax, education surcharge, stamp tax, consumption tax, etc.) of the People's Republic of China. Seller shall be solely responsible for the payment of any such taxes.

### **6. Payment.**

Unless otherwise provided in this purchase order, payment shall not be due until thirty (30) days following: (1) in the case of goods, delivery and acceptance of the goods; and (2) in the case of services, complete performance of the services.

### **7. Delivery.**

Time of delivery and time of performance by the Seller is of the essence. Unless otherwise specified in this purchase order, delivery of all goods shall be at the buyer's factory or other location designated by the buyer. Seller shall be responsible for arranging transportation of the goods and the insuring of the goods while in transit and prior to acceptance of the goods by Buyer. Seller shall be solely responsible for the cost of such transportation and insurance. If the delivery of the goods is not made at the times specified in this purchase order, or the rendering of services is not completed at the times specified in this purchase order, Buyer reserves the right, without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (1) direct expedited routings of the goods (the difference in cost between the expedited routing and the purchase order routing shall be paid by Seller); and/or (2) terminate the Contract as provided in Paragraph 15, below. If Buyer terminates the Contract, Buyer may, at its option, purchase substitute goods or services elsewhere and charge the Seller with any losses and expenses incurred by Buyer in connection therewith. Buyer will have no liability for payment for goods delivered to Buyer which are in excess of quantities specified in the Contract and the applicable delivery schedules. Such goods shall be subject to rejection and return at Seller's expense, including (but not limited to) transportation charges both ways. The foregoing remedies are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies Buyer may have under applicable law or under the terms of the Contract.

### **8. Inspection and Acceptance of Goods.**

(a) Except as is otherwise provided in this purchase order, final inspection and acceptance of goods shall be made as promptly as practical after delivery. Notwithstanding the foregoing, the failure of Buyer to promptly inspect and accept or reject goods, or to detect defects by inspection, shall not: (1) relieve Seller of any liability for the failure of the goods to conform to the requirements of the Contract; and (2) result in the imposition of any liability whatsoever upon Buyer.

(b) In the event that any goods are defective in design, materials or workmanship, or otherwise not in conformity with the requirements of the Contract, Buyer shall have the right to: (1) reject the goods and, in accordance with Paragraph 15, below, terminate the Contract for default as to the rejected goods; (2) reject the goods and require correction by the Seller; (3) reject the goods and return the goods to Seller at Seller's expense; (4) accept the goods and deduct from the amount due Seller the cost of remedying the defects; and/or (5) accept the goods and deduct from the amount due the Seller the greater of (i) any damages incurred by Buyer as a result of the defect or non-conformity in question, or (ii) the difference in value of the goods as delivered and the purchase price under the Contract. If Buyer elects to reject the goods and require their correction, Seller shall at no expense to Buyer promptly correct or replace them with goods conforming to the requirements of the Contract in accordance with Buyer's instructions. If Seller fails to do so promptly Buyer may either: (1) replace or correct such goods and charge Seller the costs incurred to do so; or (2) terminate the Contract for default in accordance with Paragraph 15, below.

(c) Acceptance of all or part of the goods shall not be deemed to be a waiver of Buyer's right to revoke acceptance, to reject the goods, and to return all or any portion of the goods because of a failure of the goods to conform to the requirements of the Contract (including, but not limited to, any breach of warranty).

(d) Seller shall be solely responsible for the cost of returning any rejected goods to the Seller, including (but not limited to) handling and transportation charges.

(e) Buyer shall not be liable for failure to accept any part of the goods, if such failure is the result of any cause beyond the control of Buyer. Such causes include (but are not limited to): (1) fires; (2) floods; (3) Acts of God; (4) strikes; (5) differences with employees; (6) casualties; (7) delays in transportation; (8) shortages of transport; (9) inability to obtain necessary materials or machinery; and/or (10) total or partial shutdown of Buyer's plant for any cause.

(f) Payment for any goods shall not constitute acceptance of the goods.

(g) The remedies of the Buyer which are set forth in this Paragraph 8 are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies which Buyer may have under applicable law or under the terms of the Contract.

### **9. Title and Risk of Loss.**

Unless otherwise provided in this purchase order, title and risk of loss with respect to goods to be furnished pursuant to this Contract shall remain with Seller until actual delivery of the goods to, and acceptance thereof by, the Buyer, at which time title and risk of loss will pass to Buyer.



# 采购订单 条款和条件



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## 1. 合同构成

本采购订单是艺利磁铁公司(“买方”)向卖方购买货物和/或服务的要约。本采购订单不构成买方接受卖方的任何要约、报价或建议。在卖方签署并向买方返还本采购订单的确认副本之前,买方不受本采购订单的约束,该确认副本构成对本采购订单中规定的报价的接受。卖方在以下情况下受本采购订单约束:(1)卖方签署并返回本采购订单的确认副本;(2)卖方以书面形式通知买方接受本采购订单;或(3)卖方向买方交付本采购订单中规定的任何货物或向买方提供任何服务。本采购订单明确限制接受本合同规定的条款和条件,除非买方明确书面同意,否则拒绝卖方提出的任何附加或不同条款。买方明确反对卖方文件中包含的与本采购订单条款不同或附加的任何条款。买方签署卖方出具的任何文件仅构成对收到该文件的确认,不应被解释为接受其中的任何条款。除本采购订单中规定的合同外,买方和卖方之间不存在任何合同。

## 2. 完整协议

双方同意,本采购订单,包括本合同正面和背面的条款和条件,以及本合同所附的或在本合同中引用的任何文件,包含了买方和卖方之间完整的最终合同(“合同”)。本采购订单取代买卖双方之前就本合同标的达成的所有谅解、协议和谈判。

## 3. 修正

本合同不得修改或以其他方式修改,除非以买方签署的书面形式。卖方的任何包含条款和条件的确认表格或其他文件,即使由买方签署,也不具有修改本采购订单条款和条件的效力,并且在此明确拒绝此类文件。买方只有在卖方以书面形式提出并针对本采购订单中的特定段落提出修改请求时,才应考虑该修改请求。除非买方明确书面接受,否则上述修改对买方不具有约束力。

## 4. 变更订单

买方保留在任何时候就下列任何一项或多项内容发出书面更改命令的权利:(1)合同中包含的规格、图纸和数据;(2)运输或包装方法;(3)交货地点;(4)交货时间;(5)交付方式;(6)数量。如果任何此类变更导致合同履行成本或所需时间的增加或减少,则应对合同价格或交货时间表或两者进行公平调整。卖方根据本第4款提出的任何调整索赔必须在卖方按照该变更命令进行之前得到买方的书面批准。如果卖方在未事先获得买方对调整的书面同意的情况下继续按照更改命令进行,则卖方应被视为已放弃对调整的任何索赔,买方没有义务作出或履行有关更改命令的任何调整。

## 5. 价格

(a) 本采购订单中规定的价格适用于在本合同项下交付的所有货物或提供的所有服务。买方没有义务以任何增加的价格支付货物或服务的发票,除非该增加的价格已得到买方的书面同意。本采购订单中所列的价格是有关商品和/或服务的全部价格。除非本采购订单另有明确规定,该价格包括卖方为履行合同而提供的所有运输、邮资、搬运、包装、集装箱、拖运和任何其他材料或服务。除本采购订单另有规定外,买方无义务支付采购价格之外的任何性质的任何费用或收费。(b) 除本采购订单另有规定外,采购价格包括所有适用的中华人民共和国法规及商业税(包括但不限于增值税、城市维护建设税、教育费附加、印花税、消费税等)。卖方应全权负责支付任何该等税款。

## 6. 付款方式

除非本采购订单另有规定,付款应在以下三十(30)天内到期:(1)货物的交付和验收;而且(2)在服务的情况下,完成服务的履行。

## 7. 发货

交货时间和卖方履约时间至关重要。除非本采购订单另有规定,所有货物均应在买方工厂或买方指定的其他地点交货。卖方应负责安排货物的运输,并在运输途中和买方接受货物之前为货物投保。卖方应全权负责运输和保险费用。如果货物的交付不了在这个采购订单中指定的时间,或呈现服务仍未完成在这个采购订单中指定的时间,买家有权,没有责任,除了其他权利和补救措施,采取以下的措施:(1)直接加快货物的工艺路线(加快路由之间的成本差异和采购订单路由应由卖方支付);和/或(2)按照下文第15条的规定终止本合同。如果买方终止合同,买方可以自行选择在其他地方购买替代货物或服务,并向卖方收取买方因此而遭受的任何损失和费用。对于交付给买方的货物超过合同和适用的交货时间表规定的数量,买方不承担任何责任或付款。该等货物应接受拒收和退回,费用由卖方承担,包括(但不限于)双向运输费用。上述补救措施是买方根据适用法律或合同条款享有的任何其他权利和/或补救措施的补充,而不是代替或限制。

## 8. 货物的检验和验收

- 除本采购订单另有规定外,货物的最终检验和验收应在交货后尽快进行。尽管有上述规定,买方未能及时检查和接受或拒绝货物,或未能通过检查发现缺陷,不得:(1)免除卖方因货物不符合合同要求而承担的任何责任;而且(2)导致买方承担任何责任
- 如果任何货物在设计、材料或工艺上有缺陷,或在其他方面不符合合同要求,买方有权:(1)拒收货物,并根据下文第15条,因拒收货物违约而终止合同;(2)拒收货物并要求卖方改正;(3)拒收货物并将货物退回卖方,费用由卖方承担;(4)接受货物,并从卖方应付的金额中扣除弥补缺陷的费用;和/或(5)接受货物,并从卖方应得的金额中扣除(i)买方因有关缺陷或不符合规定而造成的任何损害,或(ii)交付的货物价值与合同规定的购买价之间的差额。如果买方选择拒收货物并要求改正,卖方应遵照买方的指示及时改正或更换符合合同要求的货物,而买方不承担任何费用。如果卖方未能及时这样做,买方可以:(1)更换或纠正该等货物,并向卖方收取由此产生的费用;或(2)因违约按照下文第15条规定解除合同。
- 接受全部或部分货物不应被视为买方放弃因货物不符合合同要求(包括但不限于违反保证)而撤销接受、拒收货物以及退回全部或部分货物的权利。
- 卖方应全权负责退回任何拒收货物给卖方的费用,包括(但不限于)装卸和运输费用。(e) 如果买方不能接受货物的任何部分是由于买方无法控制的原因造成的,买方不承担责任。这些原因包括(但不限于):(1)火灾;(2)洪水;(3)天灾;(4)罢工;(5)与员工的差异;(6)人员伤亡;(7)运输延误;(8)交通短缺;(9)没有必要的材料或者机器的;和/或(10)买方工厂因任何原因全部或部分关闭。
- 任何货物的付款不构成对货物的接受。
- 或限制买方根据适用法律可能享有的任何其他权利和/或救济,或限制买方根据适用法律或合同条款可能享有的任何其他权利和/或补救。

## 9. 所有权和损失风险

除非本采购订单另有规定,根据本合同提供的货物的所有权和损失风险仍属于卖方,直至货物实际交付买方并经买方验收,届时所有权和损失风险将转移给买方。

#### 10. Seller's Warranties.

Seller warrants that it shall have good and marketable title to all goods furnished pursuant to the Contract and that such goods shall be delivered to Buyer free and clear from all liens and encumbrances. Seller further warrants that all goods furnished pursuant to the Contract shall be free from defects in material and workmanship and shall be in conformity with the requirements of the Contract. Seller further warrants that such goods shall be merchantable and fit for the purpose for which they are purchased and shall be free from defects in design. Buyer's approval of Seller's design shall not be construed to relieve Seller of this warranty. Seller agrees that the warranties set forth in this Paragraph 10 shall survive acceptance of the goods. Said warranties shall be in addition to, and not in limitation or replacement of: (1) any warranties of additional scope given by Seller to Buyer, which warranties of additional scope are incorporated by reference in the Contract; and (2) any warranties which may exist as a matter of law. None of the warranties set forth in this Paragraph 10 and no other implied or express warranties shall be deemed disclaimed, limited or excluded unless evidenced by an amendment to the Contract executed by the Buyer in accordance with the provisions of Paragraph 3, above. In the event of a breach of any of the foregoing warranties, Buyer shall have such remedies as are provided under this Contract and as are provided by law. Any remedies specified in the Contract for a breach of warranty shall be in addition to, and shall not be in lieu of or otherwise limit, any remedy which Buyer may have under applicable law, including (without limitation) claims for damages.

#### 11. Confidentiality of Information.

(a) All information disclosed by Buyer to Seller in connection with the negotiation, execution and performance of the Contract (the "Confidential Information") shall be considered confidential to Buyer. Confidential Information includes, but is not limited to: (1) technical information (including, but not limited to, designs, blueprints, specifications and engineering data); and (2) business information relating to Buyer (including, but not limited to, the existence, terms and conditions of the Contract, the intended use of the goods and services covered by the Contract, the business plans of the Buyer, information relating to customers of the Buyer, and so forth). Seller shall: (1) hold all Confidential Information in strict confidence; (2) take all necessary and appropriate precautions to maintain the confidentiality of the Confidential Information; and (3) use the Confidential Information solely for the purpose of fulfilling Seller's obligations under the Contract. Seller shall require its employees, agents, representatives and subcontractors to maintain the confidentiality of the Confidential Information. Seller shall be liable to Buyer for any breach of such obligations by Seller's employees, agents, representatives and subcontractors.

(b) Unless otherwise agreed by the Seller and Buyer in writing, any information which the Seller has disclosed or may hereafter disclose to the Buyer in connection with the negotiation, execution and performance of the Contract shall not be deemed to be confidential or proprietary information to Seller, and Buyer may use such information without restriction.

#### 12. Indemnifications.

Seller agrees to defend, indemnify and save harmless Buyer, its officers, agents, successors, assigns and customers against all claims, demands, damages, costs, expenses, attorneys' fees or liability of any kind which arise from, or are related in any way to: (1) the actual or alleged infringement of any trade name, trademark, copyright or patent, or the misappropriation of any trade secrets or confidential information arising in connection with the possession, sale or use of the goods delivered, or services rendered, to Buyer under the Contract; (2) injuries or damages to any person or property arising from the performance of services for Buyer, if the Contract calls for the performance of such services; (3) the performance of the Contract by Buyer or any agent or subcontractor of Buyer; and/ or (4) the claims of third parties relating to or arising in connection with services performed and/or the goods delivered under the Contract. Seller further agrees, upon receipt of notification from Buyer, to promptly assume full responsibility for the defense of any and all such claims, suits, actions or proceedings for which Seller is obligated to provide indemnification under this Paragraph 12.

#### 13. Insurance.

The Seller shall ensure the production safety, abide by the relevant safe production operation specifications, and get on the job with the certificate; otherwise, production is not allowed. The Seller shall take out industrial injury insurance and necessary commercial insurance for its production personnel. The Seller shall be fully liable for industrial injury and other accidents occurring during the production process. At the same time, the seller must abide by the management of civilized production and site management regulations.

#### 14. Termination by Buyer for Convenience.

Buyer may, for the convenience of Buyer and at Buyer's sole option and discretion, terminate the Contract, in whole or in part, by written notice of termination. Upon receipt of such notice, Seller shall terminate, pursuant to the notice, the work started under the Contract. Seller will promptly advise Buyer of: (1) the quantities of work in process and material on hand or purchased specifically for the Contract prior to termination; and (2) the most favorable disposition that Seller can make thereof. Seller shall comply with Buyer's instructions regarding disposition of such work and material. Unless otherwise directed by Buyer, finished work shall be delivered to Buyer by Seller in accordance with the terms of the Contract. Within thirty (30) days after receipt of the notice of termination, Seller shall submit its claims, if any, relating to the termination. Buyer shall have the right to verify such claims at any reasonable time by inspecting and auditing the records, facilities, work or materials of Seller relating to the Contract. In the event of a timely claim, Buyer shall pay Seller: (1) the purchase order price, pro rata, for finished work; and (2) the cost to Seller (excluding profit, overhead or losses) of work in process and raw material, based on any audit Buyer may conduct and generally accepted accounting principles. Such amount shall be reduced by the following: (1) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (2) the value of any defective, damaged or destroyed work or material; and (3) the amount received, or which may reasonably be expected to be received, by Seller for usable and/or saleable raw materials or work in process which can be used or disposed of by Seller in a commercially reasonable manner in mitigation of its claim. Buyer shall make no payment for finished work, work in process or raw material fabricated or procured by Seller in excess of Buyer's written releases. Payment as provided under this Paragraph 14 shall constitute Buyer's only liability in the event the Contract is terminated under this Paragraph 14. Seller's acceptance of such payment shall constitute acknowledgment that Buyer has fully discharged such liability. In no event shall Buyer be responsible for any lost profits, loss of use of capital, or any other form of direct, indirect, incidental or consequential damages with respect to any termination of the Contract pursuant to this Paragraph 14. Except as otherwise provided in Paragraph 15, below, the provisions of this Paragraph 14 shall not apply to any termination by Buyer for default by Seller or for any other cause allowed by law or under the Contract.

#### 15. Termination For Default.

Buyer may terminate for default all or any part of the undelivered portion of the Contract if Seller: (1) does not make timely delivery of conforming goods as specified in the Contract; (2) materially breaches any of the terms and conditions of the Contract; or (3) so fails to make timely progress as to make it unlikely that Seller will be able to perform under the Contract. In addition, Buyer may terminate the Contract if any of the following events occur: (1) insolvency of Seller; (2) appointment of a receiver or trustee for Seller; or (3) execution by Seller of an assignment for the benefit of creditors. The exercise by Buyer of the right of termination hereunder shall not result in any liability to Buyer nor have the effect of waiving any remedies or damages to which Buyer might otherwise be entitled. The remedies set forth in this Paragraph 15 are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies Buyer may have under applicable law or under the terms of the Contract. In the event that a court of competent jurisdiction should determine that Buyer wrongfully terminated the Contract for default by the Seller, such termination shall be deemed to be a termination for convenience by Buyer pursuant to Paragraph 14, above, and the liability of Buyer therefor shall be limited as provided in Paragraph 14, above.

#### 16. Compliance With Applicable Laws.

Seller agrees that, in the performance of the Contract, it will comply with all applicable laws, regulations and orders of the People's Republic of China, includes Product quality law, Consumer protection law etc.

#### 17. No Waiver.

No waiver of any right of the Buyer under the Contract or under law shall be effective unless executed in writing by Buyer. Buyer's failure or delay in enforcing strict compliance with any provision of the Contract shall not be construed as a waiver of such provision or right. The obligations of Seller with respect to any such provision or right shall continue in full force and effect, and may subsequently be enforced by Buyer at any time.

#### 18. Performance By Seller.

This purchase order is issued to Seller in reliance upon Seller's personal performance, and Seller agrees not to assign the Contract or to delegate the performance of its duties without the prior written consent of Buyer. Any such assignment or delegation which is attempted without the prior written consent of Buyer shall be void, and shall constitute a material breach of the Seller's obligations under the Contract.

#### 19. Work On Buyer's Premises.

If Seller's work under the Contract involves performance of work by Seller on the premises of Buyer, The Seller's personnel shall obtain the Buyer's permission and take all necessary precautions before entering the Buyer's site. Which to prevent: (1) the occurrence of any personal injury, including (without limitation) injury to employees of Buyer or Seller or to third parties; and (2) property damage. The Seller shall defend and indemnify Buyer against all claims which arise out of, or in any way relate to, any alleged act or omission of the Seller, its agents, employees, or subcontractors in the performance of such work. Seller shall maintain such worker's compensation, public liability and property damage insurance and employers liability and comprehensive insurance as is reasonably necessary to protect Buyer from risk and from any claims. Upon the request of Buyer, Seller shall cause Buyer to be named as an additional insured under such insurance policies. The provisions of this Paragraph 19 are in addition to, and not in lieu of, the provisions of Paragraphs 12 and 13, above.

#### 20. Buyer's Property.

Unless otherwise agreed by the Buyer and the Seller in writing, the following items (collectively, the "Buyer's Property") shall be, and shall remain, the personal property of the Buyer: (1) all tools, equipment, patterns, fixtures, drawings or materials of every description furnished to Seller by Buyer or specifically paid for by Buyer, and any replacements thereof; (2) all "Special Tooling" as defined below, and any replacements thereof; (3) all copyrights in all plans and/or drawings furnished to Seller by Buyer; and (4) all trade secrets, intellectual property and other proprietary rights encompassed within the "Confidential Information," as defined in Paragraph 11, above. The Buyer's Property, and whenever practical each individual item of the Buyer's Property, shall be plainly marked and identified by Seller as property of Buyer and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's Property and shall not use Buyer's Property except in filling Buyer's orders. Buyer's Property, while in Seller's custody or control, shall: (1) be held at Seller's risk; (2) be kept insured by Seller at Seller's expense in an amount equal to the replacement cost thereof, with loss payable to Buyer, and (3) be subject to removal at Buyer's request. In the event of removal, Seller shall prepare Buyer's Property for shipment and redeliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear expected. Seller shall permit Buyer to enter Seller's facilities at any time during Seller's hours of operation to retrieve and remove any property of Buyer. The term "Special Tooling" as used in this Paragraph 20 means all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment and manufacturing aids, and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of the Contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the goods to be produced under, or the performance of the services of the type required by, the Contract. The term does not include: (1) items of tooling or equipment heretofore acquired by Seller, or replacements thereof, whether or not altered or adapted for use in the performance of the Contract; (2) consumable small tools; or (3) general or special machine tools or similar capital items.

#### 21. Independent Contractors.

The Buyer and Seller are strictly independent contractors with respect to one another, and nothing in the Contract shall be construed as rendering a party the partner, joint venturer, agent and/or employee of the other party.

#### 22. Governing Law; Forum.

1) Any dispute arising in connection with this Contract shall be settled by both parties through friendly negotiation. If the dispute cannot be settled through negotiation within 45 days after either party's written notice to the other party, the parties shall submit the dispute to the people's court at the place where the Buyer is located for settlement.

2) This Contract shall be governed by the laws of the People's Republic of China.

#### 23. Recovery of Expenses.

The Buyer shall have the right to recover from the Seller all costs and expenses (including, but not limited to, attorneys' fees) incurred by the Buyer in enforcing the provisions of the Contract.

## 10. 卖方保证

卖方保证其对根据合同提供的所有货物拥有良好的和可销售的所有权，并且该等货物交付给买方时不存在任何留置权和产权负担。卖方进一步保证，根据合同提供的所有货物在材料和工艺上没有缺陷，并符合合同的要求。卖方进一步保证，该等货物应是适销的，适合其购买目的，并应在设计上无缺陷。买方对卖方设计的认可不应被解释为免除卖方的本保证。卖方同意本第10款中规定的保证在货物接受后仍然有效。(1)卖方向买方提供的任何额外范围的保证，该额外范围的保证已通过引用纳入本合同；(2)法律上可能存在的任何保证。本第10款中规定的任何保证以及其他默示或明示保证均不应被视为放弃、限制或排除，除非买方根据上述第3款的规定对合同进行了修改。如果违反上述任何保证，买方应享有本合同项下规定的和法律规定的救济。合同中规定的违反保证的任何救济应是买方根据适用法律可能享有的任何救济的补充，但不应取代或限制，包括(但不限于)损害赔偿。

## 11. 资料保密

(a)买方向卖方披露的与本合同的谈判、签署和履行有关的所有信息(“保密信息”)均应被视为买方的机密信息。保密信息包括但不限于：(1)技术信息(包括但不限于设计、蓝图、规范和工程数据)；(2)与买方有关的商业信息(包括但不限于合同的存在、条款和条件、合同所涵盖货物和服务的预期用途、买方的商业计划、买方客户的相关信息等)。卖方应：(1)对所有保密信息严格保密；(2)采取一切必要和适当的预防措施以保持机密信息的机密性；以及(3)仅为履行卖方在本合同项下的义务而使用保密信息。卖方应要求其员工、代理、代表和分包商对保密信息保密。如果卖方的员工、代理、代表和分包商违反上述义务，卖方向买方承担责任。

(b)除非买卖双方另有书面约定，卖方已经或今后可能向买方披露的与本合同的谈判、签订和履行有关的所有信息不应被视为卖方的机密或专有信息，买方可以不受限制地使用该等信息。

## 12. 赔偿

卖方同意保护、赔偿和拯救无害的买方、其高级管理人员、代理人、继承人、受让人和客户，使其免受因以下原因引起的或以任何方式与之相关的所有索赔、要求、损害赔偿、成本、费用、律师费或任何类型的责任：(1)因在本合同项下拥有、销售或使用交付给买方的货物或提供给买方的服务而实际或涉嫌侵犯任何商号、商标、版权或专利，或盗用任何商业秘密或机密信息；(2)如果合同要求为买方提供服务，则因为买方提供服务而对任何人或财产造成的伤害或损害；(3)买方或买方的任何代理或分包商履行合同的情况；和/或(4)第三方就本合同项下提供的服务和/或交付的货物提出的或与之相关的索赔。卖方进一步同意，在收到买方的通知后，立即对卖方根据本第12段有义务提供赔偿的任何和所有此类索赔、诉讼、行动或程序承担全部辩护责任。

## 13. 保险

卖方应确保生产安全，遵守有关安全生产操作规范，并持证上岗；否则，不得动工。卖方应为其生产人员投保工伤保险和必要的商业保险。在生产过程中发生的工伤和其他事故，卖方应负全部责任。同时，卖方必须遵守文明生产管理 and 现场管理规定。

## 14. 买方终止

为了买方的方便，买方可以根据其唯一的选择和自由裁量权，以书面通知的方式全部或部分终止本合同。在收到该通知后，卖方应根据该通知终止根据合同开始的工作。

卖方应及时通知买方：(1)在合同终止前，正在进行的工作数量、手头的材料数量或专门为合同购买的材料数量；以及(2)卖方所能作出的最有利的处置。卖方应遵守买方关于处置此类工作和材料的指示。除非买方另有指示，完成的工作应由卖方按照合同条款交付给买方。在收到终止通知后三十(30)天内，卖方应提交其与终止有关的索赔(如有)。买方有权在任何合理时间通过检查和审计卖方与本合同有关的记录、设施、工作或材料来核实上述索赔。在及时索赔的情况下，买方向卖方支付：(1)已完成工作的采购订单价格；以及(2)卖方在制品和原材料上的成本(不包括利润、间接费用或损失)，该成本基于买方可能进行的任何审计和公认的会计原则。(1)卖方未经买方同意使用或出售的任何物品的合理价值或成本(以较高者为准)；(2)任何有缺陷、损坏或毁坏的工作或材料的价值；以及(3)卖方为减轻其索赔而以商业上合理的方式使用或处理的可用和/或可销售的原材料或在制品而收到的或合理预期将收到的金额。对于卖方制造或采购的已完成的工作、在制品或原材料，买方不得支付超出买方书面许可的款项。如果本合同根据本第14条规定终止，买方的唯一责任是按照本第14条规定支付的款项。卖方接受该付款即构成买方已完全解除该责任的承认。在任何情况下，买方都不对任何利润损失、资金使用损失或任何其他形式的直接、间接、附带或后果性损害负责，这些损害与本第14段规定的合同终止有关。除下文第15段另有规定外，本第14段的规定不适用于买方因卖方违约或法律或合同允许的任何其他原因而终止合同。

## 15. 违约终止合同

如果卖方：(1)未按合同规定及时交付符合要求的货物，买方可以终止本合同的全部或部分未交付部分；(2)严重违反本合同的任何条款；或(3)未能及时取得进展，以致卖方无法履行合同。此外，如果发生下列情况之一，买方可以终止本合同：(1)卖方破产；(2)为卖方指定接管人或受托人；或(3)卖方为债权人的利益签署转让。买方行使本合同项下的终止权不应导致对买方的任何责任，也不具有放弃买方原本有权获得的任何补救或损害赔偿的效力。本第15段中规定的补救措施是买方根据适用法律或合同条款可能享有的任何其他权利和/或补救措施的补充，而不是代替或限制。如果有管辖权的法院裁定买方因卖方违约而错误地终止了合同，则该终止应被视为买方根据上文第14段的规定为方便而终止合同，买方为此承担的责任应限于上文第14段的规定。

## 16. 遵守适用法律

卖方同意，在履行本合同时，将遵守所有适用的中华人民共和国的法律、法规及条款，包括《产品质量法》、《消费者权益保护法》等等。

## 17. 非弃权

买方在本合同项下或法律项下的任何权利的放弃，除非经买方书面签署，否则无效。买方未能或延迟严格遵守合同的任何条款，不应被解释为对该条款或权利的放弃。卖方就任何该等条款或权利所承担的义务应继续完全有效，并可在随后由买方随时强制执行。

## 18. 卖方履约

本采购订单是根据卖方的单方表现向卖方发出的，卖方同意未经买方事先书面同意，不转让合同或委托他人履行其职责。未经买方事先书面同意而进行的任何此类转让或委托均为无效，并构成卖方对合同义务的重大违约。

## 19. 在买方场所工作

如果卖方在本合同项下的工作涉及卖方在买方场所进行的工作，卖方人员进入买方现场前需得到买方的许可并采取一切必要的预防措施，以防止：(1)任何人身伤害的发生，包括(但不限于)对买方或卖方的员工或第三方的伤害；(2)财产损失。卖方应就因卖方、其代理人、雇员或分包商在执行该等工作时的任何行为或不作为而引起的或以任何方式与之相关的所有索赔为买方辩护和赔偿。卖方应维护工人赔偿、公共责任和财产损失保险以及雇主责任和综合保险，以合理地保护买方免受风险和任何索赔。应买方要求，卖方应使买方被指定为该等保险单下的附加被保险人。本第19款的规定是对上文第12款和第13款的规定的补充，而不是代替。

## 20. 买方的财产

除非买方和卖方另有书面约定，以下物品(统称为“买方财产”)应是并将继续是买方的个人财产：(1)买方提供给卖方或买方专门支付的所有工具、设备、图案、固定装置、图纸或各种规格的材料，以及任何替代品；(2)下文定义的所有“专用工装”及其任何替换；(3)买方提供给卖方的所有计划和/或图纸中的所有版权；(4)上文第11段所定义的“保密信息”中包含的所有商业秘密、知识产权和其他专有权利。买方的财产，以及买方财产中的每一项物品，应由卖方清楚地标记和识别为买方的财产，并应与卖方的财产分开安全地存放。卖方不得用任何财产代替买方的财产，也不得使用买方的财产，除非是为了履行买方的订单。在卖方保管或控制下，买方财产应：(1)风险由卖方承担；(2)由卖方以相当于其更换成本的金额投保，费用由卖方承担，损失应由买方承担；(3)应买方要求予以撤除。在拆除的情况下，卖方应准备好买方的财产以便装运，并将其重新交付给买方，其状况与卖方最初收到的相同，预期有合理的磨损。卖方应允许买方在卖方工作时间的任何时间进入卖方设施，取回和移走买方的任何财产。本第20款中“专用工装”一词是指为履行合同而获得、制造或使用的所有夹具、模具、夹具、模具、图案、专用刀具、专用量规、专用测试设备、其他专用设备和制造辅助设备，以及上述产品的图纸和任何替代品，这些工具具有如此专业的性质，无需进行实质性修改或变更，其使用仅限于生产根据本合同将生产的货物或履行合同所要求的类型的服务。该术语不包括：(1)卖方迄今获得的工具或设备，或其替代品，无论是否为履行合同而改变或调整使用；(2)消耗性小工具；(3)通用、专用机床或者类似的资本项目。

## 21. 独立承包人

买方和卖方彼此是严格独立的承包商，本合同中的任何内容均不应被解释为使一方成为另一方的合伙人、合资企业、代理人和/或雇员。

## 22. 适用法律；争议解决机构

- 1) 如发生与本合同有关的争议，双方应首先通过友好协商进行解决。如在一方书面通知另一方45天内，争议仍无法通过协商解决，双方应将此争议提交甲方所在地人民法院处理。
- 2) 本合同适用中华人民共和国法律。

## 23. 收回费用

买方有权向卖方追索买方为执行本合同条款而发生的一切费用(包括但不限于律师费)。

**Seller Company Name :**

**卖方公司名称:**

**Eriez Magnetics (Tianjin) Co., Ltd**

艺利磁铁（天津）有限公司

**Eriez Magnetics (Qinhuangdao) Ltd**

艺利磁铁（秦皇岛）有限公司

日期

**Date:** \_\_\_\_\_

*Authorized Signature* 授权签名

\_\_\_\_\_

*Printed Name* 印刷体名字

\_\_\_\_\_

*Title* 职务

\_\_\_\_\_

日期

**Date:** \_\_\_\_\_

*Authorized Signature* 授权签名

\_\_\_\_\_

*Printed Name* 印刷体名字

\_\_\_\_\_

*Title* 职务

\_\_\_\_\_