

TOOLING TERMS AND CONDITIONS 模具合同条款

1. General Guidelines 总则

- a. These “Tooling Terms and Conditions” shall apply to all tooling purchase orders and shall be construed, to the extent possible, as consistent with the Nexteer General Terms and Conditions and as cumulative. In the event of an inconsistency between these Tooling Terms and Conditions and the Nexteer General Terms and Conditions, these Tooling Terms and Conditions shall control as to all Tooling. Capitalized terms used in these Tooling Terms and Conditions, but not defined, shall have the meanings given such terms in the Nexteer General Terms and Conditions.

该“模具合同条款”适用于所有可能的与耐世特公司其他合同条款相一致的模具订购。若本合同条款中出现与耐世特公司的总合同条款不一致的地方，则本合同条款适用于所有与模具相关的合同与条款。如无特别指明，在本合同条款中出现的固定术语含义与耐世特公司总合同条款中一致。

- b. “Tooling” means any die, jig, machine, fixture, mold, pattern, template, samples, models, gage, testing device, equipment, supplies, materials or other item which is purchased by Buyer or specially constructed for Buyer’s use or the use of its outside suppliers on Buyer’s behalf in the manufacture of parts for specific models, assemblies, or products and which has a normal physical life of one year or more. The determination of what constitutes “Tooling” is based on the item’s physical aspects and use, the specific characteristics of the production and service parts or assemblies to be produced, and upon its intended life which is generally limited (without substantial modification or alteration) to the production and service life of specific models, assemblies or products.

“模具”指任何由买方购买、为买方使用而铸造的冲模、夹具、机械、固定装置、铸型、样式、样板、样品、模型、规格、测试设备、装备、替代品、材料及其他物品，或指由代表买方的外部供应商生产的特殊型号、流水线之部分或产品，且其有通常一年或以上的实用寿命。所谓“模具”是指基于产品的物理特性、使用及将投入使用的生产线的产品及服务部分，其实用寿命通常限于（在无重大修订或改变的情况下）指特殊型号、生产线或产品的生产及服务寿命。

- c. The Supplier is expected to invest in and own its facilities, machinery, and other capital equipment. However, to the extent that any Contract between Buyer and Supplier covers Buyer’s purchase of, reimbursement to Supplier for, or other ownership of, any Tooling to be used in connection with Supplier’s actual or anticipated supply of goods to Buyer, the Buyer will own the Tooling that is used with the Supplier’s equipment to make parts for the Buyer. Buyer may file any legal notices or documents to protect its ownership interest, including but not limited to a UCC-1 financing statement. It is therefore essential that the Tooling be clearly identified and marked, in a durable and legible manner, as the property of the Buyer. The Supplier may not take any action concerning the tooling that is inconsistent with the Buyer’s ownership of the tooling. Supplier shall assign to Buyer any contract rights or claims in which Supplier has an interest with respect to such Tooling. Supplier shall establish a reasonable accounting system that readily enables the identification of Supplier’s costs.

供应方将投资于并拥有其设备、机械及其他固定设备。但就任何在买方与供应方间签订的涉及买方的购买、或对供应方的补贴、或其他与供应方实际及预期的向买方提供的与模具有关的拥有权问题上，买方将拥有与供应方设备一起使用来为买方生产部分产品的模具。买方可能就保护其所有者权益而提出法律告示或文件，包括但不限于《美国统一商法典1》。因此，以持久且合法的方式清

晰地阐明及标记作为买方财产的模具是很有必要的。供应方不可以采取任何与买方对模具的拥有权相违背的行动。供应方应该向买方阐明与供应方的权益或发布表明供应方与模具相关联的声明。供应方应建立一种合理的记账系统以记录其花费。

- d. All Tooling and Materials which Buyer furnishes, either directly or indirectly, to Supplier or which Buyer buys from, or gives reimbursement to, Supplier in whole or in part (collectively, "Buyer's Property") will be and remain the property of Buyer and be held by Supplier on a bailment basis. Title to all replacement parts, additions, improvements and accessories purchased by Supplier will vest in Buyer immediately upon attachment to or incorporation into Buyer's Property. Supplier releases, discharges and waives any lien, action, suit, debt due, sum of money, account, claim and demand whatsoever in law or in equity or other rights that Supplier might otherwise have on or in any of Buyer's Property for work performed on, or utilizing, such property or otherwise.
所有买方直接或间接向供应方提供、由买方购买或给予供应方补贴的部分及全部模具及材料（总称为“买方财产”）将持续作为买方财产并交由供应方委托保管。所有由供应方购买的零部件、附加、改进及配件将作为附件即刻属于买方财产。供应方可基于普通法或衡平法发布、免除、放弃和使用任何与为买方工作或买方财产相关的留置权、诉讼、起诉、债务到期、资金、账号、索赔和声称的其拥有的其他权利。
- e. Tool models and tool prints are considered part of the Tooling and are also the property of the Buyer.
模具模型和模具图案被认为是模具的一部分，因此它们也是属于买方的。
- f. Unique computer software required to operate the Tooling is considered part of Tooling and is also the property of the Buyer.
用以操作模具的特殊电脑软件被认为是模具的一部分，因此它们也是属于买方的。
- g. Unless otherwise agreed in writing between the parties, the Supplier will be paid in full for the Production Tooling after Part Submission Warrant (PSW) full approval is submitted and provided along with the proper documentation which is further described in section 2 herein.
除非在双方间有书面形式约定，买方将在供应方提交已通过的零件提交保证书（PSW）后一次性支付模具生产的全部费用。此外，供应方还需提交一些文件，这部分内容将在下面的第2部分提到。
- h. The Supplier is responsible for ensuring that its sub-supplier(s) adhere to these Terms and Conditions, when Tooling is located at sub-supplier facilities. The Supplier is responsible for the quality of and payment for all subcontracted Tooling and outsourced components and to ensure conformity of subcontracted Tooling with the Tooling Purchase Order.
供应方有责任确保模具被安装在次级供应方处时，次级供应方也能遵守本合同

条款。供应方有责任确保所有转包模具及外包配件的质量且与订购模具一致，并承担其费用。

- i. Tooling should be designed and manufactured to last for the life of the part it was designed and manufactured to produce, including post-production Service Parts.
模具应被设计与制造成拥有与其生产功能及工作部件中规定的后期生产相一致的使用寿命。
- j. If Tooling is designed specifically for the Supplier's own equipment and facilities, it should be able to be modified for use by another supplier with similar equipment and facilities. In the event that there are any costs associated with such modification, those costs will be reimbursed by the Supplier.
若模具是为供应方自身的设备及设施而特别设计，则它也应可被改装成可在其他有相似设备及设施的供应方处使用。若由类似改装产生任何费用，则该费用需由供应方承担。

2. Tooling Process 模具流程

- a. The Supplier may not fabricate or acquire Tooling unless a Tool Order has been issued by the Buyer authorizing the fabrication or acquisition of the Tooling.
供应方不能制造或购买任何模具，除非收到买方签发的授权制造或购买模具的模具订单。
- b. The Buyer has the authority, at its discretion, to select a Tooling source and issue Tool Orders directly to the Tooling Supplier, e.g. tool shop/toolmaker. The Supplier will work with the Tooling Supplier (tool shop) to complete the Tooling, which the Supplier will use to demonstrate compliance with Phased PPAP and produce parts.
买方有权自主选择模具来源和向模具制造商直接进行模具订购，如模具店或模具制造商。供应方将和模具供应方（模具店）一起完成模具装备，该模具装备可由供应方用来展示其与定向的生产件批准程序(PPAP)一致，且可用于生产。
- c. All Tooling requested on a Tool Order must be new tooling not previously used by any party, unless otherwise specified and approved by the Buyer.
除非有特别注明及经买方批准，所有模具订单要求的模具必须是崭新的，未由任何一方使用过的。
- d. Production Tool Orders and Amendments to Production Tool Orders must be quoted, written and placed such that each Tool Order (and any Amendment) includes sufficient detail and itemization to enable the Buyer-owned Tooling to be visually identified at the Supplier location.
模具生产订单及附件必须是书面形式，附有报价；每份这样的模具订单（及任何附件）必须足够详细，并可使买方拥有的模具在供应方处经由图形辨认出。
- e. All rights, title, and interest in and to any part of Tooling to be paid for by the Buyer will vest immediately in Buyer as soon as the Tooling is acquired by the Supplier or fabricated by the Supplier in accordance with a Production Tool Order, and such Tooling shall be held as Buyer's property by Supplier. In the event a court of competent jurisdiction determines Buyer has not retained or obtained ownership of any Tooling, Supplier agrees to be deemed to have granted Buyer a security interest

giving Buyer all the rights of a secured creditor as to such items under the Uniform Commercial Code as in effect in that jurisdiction.

一旦供应方取得或制造与模具生产订单相一致的模具后，买方即取得其将为之付费的与任何模具（或部分）相关的所有权利。且这样的模具应作为买方财产由供应方使用。若经由管辖权的法院裁定买方没有取得或保留任何模具的所有权，则供应商将同意被视为已给予买方一项担保权益，且根据统一商法典等有效法律文件给予买方有担保债权人的一切权利。

- f. Unless otherwise agreed to in writing between the parties, the Production Tool Order price will be paid to Supplier after Buyer is satisfied that certain conditions have been fulfilled including, but not limited to, the following:
除非另有双方已由书面形式所做的约定外，模具生产订单的费用将在买方对包括但不限于以下条件满意后，支付给供应方：
- i. The Tooling has been fabricated or acquired by the Supplier;
供应方已生产或取得模具；
 - ii. Requested tooling documentation requirements have been provided to and approved by Buyer.
买方已核准提供的模具文件材料要求；
 - iii. The Supplier has produced acceptable samples meeting all the requirements and PPAP specifications;
供应方已生产出可被接受的符合所有要求及生产件批准程序规格的样品；
 - iv. The Part Submission Warrant (PSW) has been appropriately approved; and,
零件提交保证书已完全通过；且
 - v. The tooling invoice has been submitted with the appropriately approved PSW, and photographic evidence.
模具发货单已被批准，且附有通过批准的零件提交保证书和照片资料。
- g. Supplier shall not invoice for tooling until supplier's receipt of full PPAP approval, and Tooling invoice date shall not be earlier than the PPAP Warrant approval date. Supplier shall attach an approved PPAP Warrant to the tooling invoice and send via e-mail to the Buyer. Failure to comply with these requirements will result in Supplier's invoice being rejected and returned.
供应方应在其收到完整的生产件批准程序通过书后再为模具开具发票，且模具发票开具日期不应早于生产件批准程序通过当日。供应方应将已通过的生产件批准程序附在模具发票一起电邮给买方。若不遵从这些要求将导致供应方的发票被拒绝或退回。
- h. The Buyer has the right to verify the actual cost of the Tooling by auditing all books, records, facilities, work, material, inventories, invoices, purchase orders, proofs of payment, and any other information the Buyer deems relevant and reasonably necessary.
买方有权通过审计所有账簿、记录、设备、工作、材料、库存、发票、订购单、付款证明或其他买方认为有关或必要的任何信息来核实模具的实际费用。

- i. The Supplier is responsible for notifying the Buyer of any movement of Buyer Tooling to a new location. The Supplier must notify the Buyer using the Supplier Suggestion Change Request (SSCR). The Supplier must obtain prior written consent and approval from the Buyer before moving Tooling. Tooling movements also require that PPAP is conducted and the submission of PSW approval documentation for the new location. The Supplier may move Tooling for not more than 2 business days for cleaning and routine maintenance.

若买方的模具搬到新地点，供应方有责任通过使用供应商建议变更请求（SSCR）通知买方。在将买方的模具搬到新地点前，供应方必须取得买方的书面许可与批准。同时，模具搬动到新地点也必须遵照生产件批准程序（PPAP）和提交已获批准的零件提交保证书。供应方可在两个工作日内搬走模具，以做清理和常规保养。

3. Tooling Costs 模具费用

- a. The Buyer's contractual obligation is to reimburse actual Tooling costs incurred up to the amount authorized on the Tool Order. The Buyer will not reimburse the Supplier for Tooling costs in excess of the amount authorized or for any Tooling costs that were not specified (and authorized) on the Tool Order or an Amendment.

买方的合同义务是补偿不超过在模具订购单中授权的模具实际费用。若模具费用超出模具订购单中授权的最高金额，或产生了任何在模具订购单或附件中未指明（及授权的）费用，买方将不会对供应方进行补偿。

- b. **Acquired Tooling:** If the Supplier acquires the Tooling from a third party, such as an outside tool shop/toolmaker, the Supplier may not add any markups, surcharges or the like to the Tooling beyond its cost. Tooling acquired by a third party must be supported by purchase order(s), invoices, and proofs of payment. The Supplier should not make any profit on Tooling or prototype Tooling manufactured by an outside tool shop.

采购模具：若供应方从第三方（如外部模具店 / 模具制造商）处采购模具，则供应方不得在约定的模具费用外涨价、收取附加费等费用。从第三方处采购的模具必须有订购单，发票和支付证明为证。供应方不可从外部模具店处采购或制造的模具及模具原型中牟利。

- i. Any additional costs associated with acquisition of the Tooling are considered to be part of the Supplier's overhead and therefore will not be charged to Buyer.
任何额外的与获得模具有关的费用都属于供应方的开支范围，因此不由买方承担。
- ii. The Supplier is responsible for the quality of, and payment for, all Tooling and outsourced components acquired from the tool shop/toolmaker and for ensuring conformity of sub-contracted Tooling with the Tool Order.
供应方有责任确保所有模具与从模具店/模具制造商处得到的外包配件的质量，并承担其费用。供应方有责任确保外包模具与模具订单相一致。

- c. **In-House Tooling:** If the Supplier fabricates the Tooling, the Supplier may request, in writing, in advance, reimbursement for only the actual cost of fabricating the Tooling, including material costs, labor hours and labor rates for, plus allowable and agreed upon one-time only costs, if appropriate, which must be itemized on a Tool Order or an Amendment. The Supplier must maintain a reasonable accounting

system to segregate, accumulate, and document expenditures for Tooling. The Supplier's accounting system must ensure that all eligible costs are documented adequately and include the following:

自行生产模具：若供应方自行生产模具，其可以提前以书面形式要求得到制造模具实际费用的补偿。补偿范围包括材料费、工时、人工费，以及在模具订购单或附件中清晰列明的在双方许可范围内的一次性费用。供应方必须拥有一个合理的、持续运作的记账系统，可对模具费用进行分隔、累加及记录。供应方需确保所有合格的费用都正确的登记在其记账系统内，这些费用包括：

- i. **In-House Material:** Material costs must be supported by documentation that indicates the quantities used and unit cost for each Tool. Material will be reimbursed at actual costs based on material invoices. If the Tool is not completed due to program or part cancellation, scrap value should be documented.

自行生产材料：材料费必须有资料记录，包括每个模具的用料量和单价。材料费可根据以材料费发票为准的实际费用进行补偿。若由于项目或部分撤销导致模具无法完成，应记录废料价值。

- ii. **In-House Labor Rate:** All overhead costs and profit associated with the design, development, and manufacture of the Tooling should be included in the fully accounted Tooling labor rates. This rate should be comprised of direct labor, indirect labor, fringe benefits, payroll taxes and overhead. The fully accounted labor rate shall be included in the Supplier's Tooling quotation.

自行生产人工费：所有与模具设计、开发和生产有关的日常费用和利润都应包括在完全报账的模具人工费中。模具人工费中应包含直接人工、间接人工、附加福利、工资税和日常费用。完全报账的模具人工费应包括在供应方模具报价中。

1. **Hours:** All direct hours worked to design and fabricate the Tooling must be supported by a time reporting system that identifies hours worked on each Tool specified on the Tool Order and the employee(s) who performed the work.

工时：所有和模具设计与制造直接相关的工时都应记录在工时预算系统中。该系统应写明模具订单中包括的每个模具的设计与制造直接相关的工时，及完成这些工作的工人数量。

2. **Cost:** Labor costs should be calculated by applying the fully accounted labor rates to the direct hours worked to design and fabricate the Tooling. A reasonable profit may be included if the tool shop is operated as a separate profit center.

费用：人工费应按照完全报账的人工费与和模具设计及制造直接相关的工时计算。如模具店作为独立利润中心运作，费用中可包含合理的利润。

4. Tool Order Cost Audit 模具订单费用审计

a. Audit Process 审计过程

All Tool Orders placed are subject to audit and recovery by the Buyer. If an audit of Tooling costs reveals that the Buyer was overcharged, the Supplier will repay the

overcharge through a debit against its accounts or by direct payment to the Buyer or by a combination of these methods, at the Buyer's discretion.

买方有权管理所有与模具订购有关的费用审计。若经审计发现买方为模具支付了额外费用，买方根据其自由裁量权可要求供应方通过银行记账、直接偿还或这两种方式的组合归还额外费用。

b. Validation Audit Process有效的审计流程

Tooling Orders that achieved their targets are nonetheless subject to audit in order to ensure that no capital equipment is included on the Tool Order. If capital equipment is included on any Tool Order, it will be amended to remove the capital equipment, and the cost will be reallocated to non-capital equipment line items.

模具订单需经过审计，以确保在该订单内不包含固定设备。若固定设备被包含在任何模具订单内，则该订单需经修订，以扣除该固定设备，且该笔费用会被转移到非固定设备生产线产品中。

c. Documentation Required for Buyer Tooling Audit买方要求的模具审计记录

If the Tooling costs are audited by the Buyer, the Supplier must make available all documents supporting the actual and reasonable costs associated with the Tool Orders selected for audit. Furthermore, if the initial (or base) Tooling was sourced by the Buyer on a competitive basis, but the Supplier's records do not segregate costs for the competitively sourced Tooling from Amendments (which are not quoted on a competitive basis), the Buyer's auditor will verify all costs supporting the Tool Order and the cost of Amendments.

若买方对模具费用进行审计，供应方需提供所有与被审计的模具订单相关的实际与合理费用文件。此外，如买方以竞争采购方式提供了初始(或基础)模具，且供应方未对买方提供的以竞争方式采购的模具费用在附件（这些附件不以竞争采购方式报价）中予以划分，则买方的审计员将核实所有和模具订单及附件有关的费用。

- i. The Supplier must submit evidence of what was actually paid to sub-suppliers. If the Buyer's audits of Supplier Tooling costs result in significant cost recoveries due to a lack of compliance with these Tooling guidelines, the 8D (8 Discipline) process may be used to address significant audit findings.

供应方必须提供向次级供应方们支付实际费用的证据。若买方经审计发现供应方因违背模具规则，使得供应方的模具费用远高于实际费用，则买方将使用8D分析法（8 Discipline）来处理较大的审计问题。

5. Tooling Inventory Management模具库存管理

- a. The supplier shall furnish a Tooling Inventory of all Tooling owned by Buyer (active and inactive) in the Supplier's possession. The Tooling Inventory shall be submitted to Buyer annually by January 31, or upon request by Buyer at any time. The Tooling Inventory shall contain the following information for each piece of Tooling owned by Buyer:

供应方应提供其掌握的由买方所有的全部（包括使用和非使用的）模具库存清单。该模具库存清单应在每年的1月31日前提交给买方，或由买方在任何时候索取。模具库存清单应包括由买方拥有的全部模具的以下信息：

- i. Tool part number(s) (typed in numerical order)
模具零件号码（以数字形式标记）
 - ii. Current tool revision
对现行模具的修订
 - iii. Description of Tool
对模具的描述
 - iv. Date of last ordered of Tool
该模具最后一次订购的日期
 - v. Total cost of Tool
模具的总费用
 - vi. Quantity of parts produced from Tool
由模具生产的零件数量
 - vii. Remaining Tool life
模具的剩余使用年限
 - viii. Any previous part number if Tool has been changed to produce a new part number
之前的零件号码（若该模具已被改为新零件号码）
 - ix. Design engineer name
设计者姓名
- b. While Buyer's Property is in Supplier's possession and until Supplier delivers Buyer's Property back to Buyer, Supplier bears the risk of loss, theft and damage to Buyer's Property. Supplier will be responsible for the cost of repairing or replacing Buyer's Property if it is stolen, damaged or destroyed regardless of cause or fault. Supplier will at all times: (a) regularly inspect, maintain in good condition, and repair Buyer's Property at Supplier's own expense, (b) use Buyer's Property only for the performance of this Contract, (c) deem Buyer's Property to be personal property, (d) conspicuously mark Buyer's Property as the property of Buyer and maintain such markings, (e) not commingle Buyer's Property with the property of Supplier or with that of a third person, (f) not move Buyer's Property from Supplier's applicable shipping location (as shown by the shipping address of Supplier) without prior written approval from an authorized employee of Buyer, and (g) use Buyer's Property in compliance with Buyer's or the manufacturer's instructions and in compliance with all federal, state and local laws, ordinances and regulations.
- 当买方的财产归供应方保管时，供应方承担买方财产的丢失、盗窃、损坏风险，直到供应方归还买方财产为止。无论何种原因，若买方财产被窃、损坏或损毁，供应方均因对此承担责任，并承担相应的修理及替换费用。供应方需**能做到**：**(a)定期**对买方财产进行检测、修理，以使其保持良好状态，并承担其费用；**(b)**仅在履行本合同时使用买方财产；**(c)承认**买方财产为其私有财产；**(d)**对买方财产进行显著标示，并保持此标示；**(e)不将**买方财产与供应方或其他第三方财

产混合;(f)不在事先取得买方授权的书面许可前，将买方财产从对供应方合适的运输位置（标注的供应方运输地址）移走；和(g)在符合买方或生产方说明及遵守联邦、国家及当地法律、法规、制度的条件下使用买方财产。

- c. If Supplier is tool design responsible, reproducible tooling prints shall be completed by Supplier within 6 weeks after PPAP approval (or at start of regular production, whichever comes first) on all new program tools, tools undergoing an engineering change, and current tools that are revised. Supplier, upon request by Buyer, shall provide reproducible tooling prints for existing tools.

若供应方负责模具设计，则供应方应在通过生产件批准程序（或在常规生产前，以先发生者为准）的六周内完成所有新项目模具、需进行改进的模具及正在改进的模具的可再生产印刷品。若买方需要，供应方需提供现存模具的可再生产印刷品。

- d. Supplier will not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of Buyer's Property without Buyer's prior written consent. Furthermore, Supplier will not assert, or permit any person claiming an interest through Supplier to assert any claims of ownership to or any other interest in Buyer's Property.

在未获得买方的事先书面同意前，供应方不得对买方的财产进行销售、出借、妨碍、抵押、租借、转移或展示。此外，供应方不可准许任何人通过供应商、或维护任何人声称其对买方的任何财产有所有权或其他权益。

- e. Buyer will have the right to enter Supplier's premises at all reasonable times to inspect Buyer's Property and Supplier's records with respect thereto.

买方有权在任何合理时间到供应方处查看买方财产及供应方的相关记录。

- f. Supplier, at its expense, will furnish, keep in good condition, and replace when necessary all Tooling owned by Supplier that is used to produce goods for Buyer. Supplier agrees to maintain adequate storage to ensure that all Tooling owned by Supplier is stored in useable condition and in such a location or facility to protect against theft and damage. Supplier will insure Supplier's Tooling with fire and extended coverage insurance for its full replacement value. Supplier grants Buyer an irrevocable option to take possession of, and title to, all or part of Supplier's Tooling that is specially designed or outfitted for the production of the goods for Buyer, in which event Buyer will, within 45 days following delivery of such Supplier's Tooling to Buyer, pay to Supplier of the lower of (i) the net book value of such Supplier's Tooling (i.e., actual cost less amortization) or (ii) then current fair market value of such Supplier's Tooling, in each case less any amounts that Buyer has previously paid to Supplier on account of such Supplier's Tooling. The foregoing option will not apply to the extent that Supplier's Tooling is used to produce goods that are the standard stock of Supplier and are then being sold by Supplier to other customers. Buyer's right to exercise the foregoing option is not conditioned on Supplier's breach or Buyer's termination of any underlying Contract or upon payment of any other amounts due under any underlying Contract.

为买方制造产品，供应方在必要时需提供、替换由供应方所有的模具，以使其保持良好的状态，并承担相应费用。供应方同意为供应方拥有的所有模具进行适当的存储和保管，以使其保持可使用的状态，并可防盗、防损坏。供应方将为模具投保火灾及其他确保重置价值的险种。供应方以不可撤销的选择权方式授权买方拥有全部或部分为买方特别设计、或为买方制造产品而装备的为供应方所拥有的模具。在此情况下，买方需在供应方将这些模具送达买方的45天内支付符合以下情况的较低费用：(i)供应方模具的账面净值（即实际成本减去折旧

费) ;(ii)按当时市价计算的供应方的模具费用(减去买方已为此种模具向供应方支付的费用)。前述的不可撤销选择权不适用于供应方的此种模具-该模具用来生产供应方的标准存货且出售给其他顾客。在买方终止任何根本性合同、供应方违背任何根本性合同、支付基于任何根本性合同的其他款项时,买方不可行使不可撤销选择权。

6. Tool Marking Requirements and Tool Disposal Requests 模具标记与支配要求

- a. **Tool Marking Requirements:** Unless specified otherwise by Buyer, the Buyer owns the Tooling, and it is essential that the Tooling be clearly identified and marked or tagged, in a durable and legible manner. Supplier will be contacted by Buyer on the specific tagging and documentation requirements. The Supplier may not take any action concerning the Tooling that is inconsistent with the Buyer's ownership of the Tooling.

模具标记要求:除非买家另有指出,买家对模具有拥有权。因此,模具需可持久性被清晰识别、标明或对其做好标签。买方可基于特殊标签与记录要求联系供应方。若模具与买方所拥有的模具不一,供应方不可采取任何行动。

- b. **Tool Retention:** Supplier must retain Tooling for a period of 15 years after end of production and thereafter to return, transfer to another location or to remit the proceeds of the sale for scrap to the Buyer's Director of Global Supply Management as so instructed by Buyer.

模具保留:在生产后,供应方需将模具保留15年,随后将模具返回或转移到另一个地点,也可将出售的所得款项汇给买方指定的全球供应管理采购总监或其他人员。

- c. **Tool Disposal Requests:** The Buyer has established a system for proper control and disposal of Buyer-owned Tooling at a Supplier site. In order to minimize the Buyer's costs and to ensure continuous availability of Service Parts to end-users, the Service Parts Purchasing activity must be consulted before either reworking the Tooling to a new design level or scrapping the Tooling.

模具支配要求:买方已为在供应方处的由买方所有的模具制定了一套体系,该体系可较好的对此进行管控。为将买方开支减少到最低及确保可向终端使用者持续的提供零件,在重新设计或废弃模具前需对零部件的购买活动进行协商。

- d. **Return of Buyer's Tooling:** Supplier agrees that Buyer has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Buyer-owned Tooling. Without further notice or court hearings, which rights, if any, are hereby waived, Buyer or its designee(s) will have the right to enter Supplier's premises and take possession of any and all of Buyer's Tooling. Upon Buyer's request and in accordance with Buyer's instructions, Buyer's Tooling will be immediately released to Buyer or delivered to Buyer by Supplier, either (i) Ex Works (IncoTerms 2010) at Supplier's plant properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property or (ii) to any location Buyer designates, in which event Buyer will pay Supplier the reasonable costs of delivering Buyer's Property to the location Buyer designates. If Supplier does not release and deliver any Buyer's Tooling in accordance with this Article, Buyer may obtain an immediate writ of possession without notice and without the posting of any bond and/or enter Supplier's premises, with or without legal process, and take immediate possession of Buyer's Tooling.

退回买方模具：供应方同意买方有权在任何时候、有依据或无依据、并不在支付任何费用的情况下收回或要求退回买方所有的模具。在没有进一步通知或举行法院听证会的情况下，若买方拥有的上述权利可予以豁免，但买方或其指定人员将有权进入供应方处，并占有任何或全部买家所有的模具。在下列与买方说明相一致的情况下，供应方应在收到买方要求时立即将模具交付或运送给买方：(i)供应方在其工厂内将包装好的且与买方指定的运输标记要求相一致的买方财产以任何运输方式运送(Ex Works-根据国际贸易术语通则Incoterms2010)或(ii)买方可指定任意运输地点，并支付给供应方合理的将买方财产运送到此一指定地点的费用。根据该条规定，如果供应方不交付或运送买方的任何模具，买方可在不另行通知、约定的前提下，采取或不采取任何法律行动，直接来到供应方处，取得财产的归有令状，或立即获取属于买方的模具。

- e. To initiate a disposal request the Supplier must contact the designated Buyer.
要签发废弃要求，供应方必须与指定的买方联系。
- i. If the Supplier receives a Part Termination Notice, it should contact the Buyer immediately to request directions for tooling disposition. By certifying that the Tooling may be disposed of, the Supplier verifies that it has diligently investigated past and current use of the Tooling to ensure that there is no further need for the Tooling. If it is determined that the Supplier has improperly or incompletely conducted this investigation and the Tooling was scrapped in error, the Supplier will be responsible for reimbursing the Buyer for the cost of replacement Tooling.
若供应方收到部分终止通知，应马上联系买方以获得对模具废弃的要求。供应方在核实模具被废弃后，应确认供应方已彻底调查了模具过去和现在的使用情况，以保证不会在将来需要此种模具。若发现供应方错误的或不完整的进行了上述调查，且模具被误毁，供应方需负责向买方赔偿模具的替代费用。
- f. **Prototype Tool Disposal:** Supplier must obtain written authorization from the Buyer prior to prototype Tooling disposal.
原型模具废弃：供应方需事先取得买方对原型模具废弃的书面许可。
- g. Questions should be directed to the person listed on the Tool Order as representing the Buyer.
进行问题咨询时应联系模具订单上的作为买方的代表者。

7. Disclaimer of Warranties免责声明

Supplier acknowledges and agrees that (i) Buyer is not the manufacturer of Buyer's Tooling nor the manufacturer's agent nor a dealer therein, (ii) Buyer is bailing Buyer's Tooling to Supplier for Supplier's benefit, (iii) Supplier is satisfied that Buyer's Tooling is suitable and fit for its purposes, and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF BUYER'S TOOLING OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer shall not be liable to Supplier for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by Buyer's Tooling, including, without limitation, the use or maintenance thereof, or the repair, service or adjustment thereof, or by any interruption of service or for any loss of business whatsoever or

howsoever caused, including, without limitation, any loss of anticipatory damages, profits or any other indirect, special or consequential damages and/or personal injury or death.

供应方知道且同意：(i)买方不是买方模具的生产者、也不是模具生产者的代理或经销商，(ii)买方是买方模具的出资方，以使该模具供供应方使用，(iii)供应方认可买方模具对于其

目的合适，和(iv)买方对买方模具的合适度、状况、商品材、设计、操作或对任何目的的合适

度从未做过且不会做任何担保或代表。买方不因买方模具对供应方造成的任何直接或间接的损失、损害、人员伤害等费用承担责任。买方的免责范围还包括但不限于模具的使用或维修，或由模具的使用、维修、调整产生的费用，或由任何原因引起的服务及业务的任何程度的中断，任何预期损失、利润或其他任何间接的，特殊的或因果性的损害和/或人身

伤害或死亡的任何损失。

8. Indemnification保护

Supplier will defend,, hold harmless and indemnify Buyer, Buyer's affiliates, Buyer's customers, and their respective successors, assigns, directors, officers, employees and agents (collectively, "Buyer Indemnified Parties") from and against any and all lawsuits, actions, claims, demands, judgments, fines, costs (including attorney and other professional fees and disbursements), expenses, losses, liabilities and damages, including any special, incidental, consequential, punitive and exemplary damages that any Buyer Indemnified Party may suffer or sustain or be in any way subjected to on account of: (a) Seller's failure to perform its obligations under these Tooling Terms and Conditions or applicable law, including claims based on Supplier's breach of warranty (regardless of whether the alleged damages arise under tort, negligence, contract, warranty, strict liability or any other legal theories); (b) infringement or alleged infringement, including patent, trademark, copyright, moral, industrial design or other proprietary rights, or misuse or misappropriation of trade secrets relating to the Tooling (Supplier expressly waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications); (c) the performance of any service or work by Seller or its employees, agents, representatives and subcontractors on Buyer's or Buyer's customer's premises or the use of the property of Buyer or any customer of Buyer, except to the extent such liability arises out of the gross negligence or willful misconduct of Buyer or Buyer's customer; and (d) any third-party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of the Tooling supplied by Supplier (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories).

供应方将捍卫，保护和保障买方、买方的附属公司、买方的客户，以及他们各自的继承人、受让人、董事、管理人员、雇员和代理人（以下统称“买方保护方”）免受任何及所有诉讼、法律诉讼、索赔、要求、判决、罚款、花费（包括律师及其他专业费用及支出）、费用、损失、负债、损害赔偿，包括任何特殊的、偶然的、间接的、任何买方补偿方可能承受、持久承受、或将以任何可能方式被指控的惩罚性和惩戒性的损害赔偿：(a)

卖
方无法履行基于本模具合同条款或现行法律的义务，包括基于供应方违约保证的要求（无论所称损失是否因侵权、疏忽、合约、保证、严格责任或任何其他法律条款而产生）；

(b)
与模具相关的侵权或涉嫌侵权，包括专利、商标、版权、道德、工业设计或其他专有权利、误用或盗用有关模具的商业秘密（供应方明确放弃基于任何与买方说明不相一致的此

类侵权而产生的后果，向买方提出任何要求)；(c) 由卖方或其雇员、代理人、代表和分包商在买方或买方客户的所在处或利用买方的财产或买方的任何客户提供的任何服务或工作，除这种责任有重大疏忽或买方或由买方客户故意的不当行为产生；及(d) 任何对由供应方提供的模具造成的第三方索赔或要求承担的人身伤害或死亡赔偿、财产损失或经济损失（无论所称损失是否因侵权、疏忽、合约、保证、严格责任或任何其他法律条款而产生）。

9. Force Majeure 不可抗力

Neither party shall be liable to the other if it cannot perform its contractual obligations due to circumstances beyond the control of the parties, such as fire, explosion, labor dispute, or a failure to act by authority or government. Such excuse from performance shall only continue for the duration of the event described above. In such cases, the Buyer shall have the right to purchase products or services covered by the Contract elsewhere for the duration of said circumstances. The Buyer shall be allowed to reduce its purchases in the context of the Contract accordingly, without incurring liability to the Supplier. If Supplier fails to provide adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts more than thirty (30) days, Buyer may terminate this Contract without any liability to Supplier or obligation to purchase raw materials, work-in-process or finished goods.

任何一方均不对另一方承担无法履行合同义务的责任，若该问题因火灾、爆炸、劳资纠纷、或由主管部门或政府问题导致。无法履行合同义务的表现仅可持续于上述事件发生期间。在这种情况下，于上述事件发生期间，买方有权向他者购买合约所涉及的产品或服务。买方将被允许在相应合同内扣除其购买费用，亦不对供应方承担法律责任。如果供应商未能提供足够的保证，任何延误不得超过30日；或延误超过30日，买方有权终止本合同，亦不对供应方或购买原材料、半成品或成品承担任何责任。

10. Severability Clause 合同可分割性条款

If one or more parts of these Tooling Terms and Conditions should be ineffective, the parties shall agree to a replacement or addendum for such provisions that most closely resembles the existing version and is legally effective. The effectiveness of the remaining conditions shall be unaffected.

如果本模具合同条款的一个或多个部分无效，合同各方应当同意更换或增补最接近现有版本的这些规定，并承认该更换或增补在法律上是有效的。其余条款的有效性将不受影响。