

Suzhou SPEA Automated Testing Equipment Co., Ltd - Terms & Conditions of Sale

苏州斯贝亚自动检测设备有限公司——销售协议

These terms and conditions govern the sale of goods and the provision of services by Suzhou SPEA Automated Testing Equipment Co., Ltd and its subsidiaries or branch offices (“SPEA”), to its customer (“Customer”). The term “Products” as used herein shall mean goods and/or services, as the context allows.

如下条款适用于苏州斯贝亚自动检测设备有限公司及其子公司或分支机构 (“斯贝亚”) 向其顾客 (“顾客”) 进行的商品销售和服务提供。本协议使用的“产品”一词指的是商品和/或服务, 以具体语境为准。

1. PRICES

价格

- a) The total price for the Products is the amount indicated on the SPEA quotation or written agreement signed by an authorized representative of SPEA. Prices are valid for the period indicated on the quotation or signed agreement.

产品的总价格指的是斯贝亚报价单或者斯贝亚授权代表签署的书面协议中明确的金额。价格有效期以报价单或者签署的协议规定的日期为准。

- b) Payment shall be made in Euros (or in other currency indicated in the SPEA quotation) in Suzhou (PRC) or such other place as SPEA may designate, by check, wire transfer, or, if required by SPEA, letter of credit.

所有付款以欧元为计价货币 (或者斯贝亚规定的其他货币), 收款地为苏州 (中华人民共和国) 或斯贝亚可能指定的其他地点, 支付方式为支票、电汇, 或者信用证 (如果斯贝亚有要求)。

- c) Prices exclude any sales, value added or similar tax which will be payable by Customer in addition to the purchase price. If exemption from taxes is claimed, Customer must provide a certificate of exemption. 价格不含顾客除了货款外可能应付的任何销售税、增值税或类似税。如果有申报免税, 则顾客必须提供免税证明。

2. ORDERS

订单

- a) Product orders may require manufacture of Customer-specific configurations. Any changes to delivery dates or configurations after the initial order date may require a revised quotation and/or price change.

产品订单中可以规定顾客的具体制造规格。初始订单确认之后对交付日期或配置做的任何变动都需要有相应修改后的报价单和/或价格变动单。

3. DELIVERY, SHIPMENT AND RISK OF LOSS

交付、发货和损失风险

- a) Unless otherwise indicated on the SPEA quotation, delivery will be made EX-WORKS SPEA's designated factory per Incoterm 2010. Shipment by sea at Customer's request will be subject to additional charges and may void the Product warranty.

除非斯贝亚报价单中另有规定, 否则必须根据《2010 国际贸易术语》在斯贝亚指定的工厂交货。如果顾客有海运要求, 则可能会产生额外费用, 也可能不适用产品保证条款。

- b) Title to Products and risk of loss will pass to Customer at Delivery per the applicable Incoterm indicated on the SPEA quotation.

根据斯贝亚报价单上明确的适用“贸易术语”, 在交付时, 产品的所有权和损失风险将转移给顾客。

4. PRODUCT ACCEPTANCE

产品验收

- a) Any special acceptance procedures must be agreed to by SPEA's authorized representative in writing and may be subject to additional charges.

顾客所要求的任何特别验收程序必须经过斯贝亚的授权代表书面同意, 也可能产生额外费用。

5. PAYMENT

付款

- a) Payment terms are subject to SPEA credit approval. Unless otherwise indicated in the quotation or separate written agreement of Customer and SPEA, payment for Products is due net 30 days from SPEA's invoice date.

支付期需要满足斯贝亚的信贷审批要求。除非报价单或者顾客和斯贝亚另外签订的书面协议另有要求, 否则付款日为斯贝亚开具发票日之后的 30 天。

- b) If payment is not received in accordance with the payment terms set forth in Section 5 (a) above, then SPEA, at its sole option, may assess a late payment fee of 0.05% on a daily basis for the unpaid balance from the date of tender.

如果顾客在上述第 5(a)节规定的支付期内未完成付款, 则斯贝亚可全权决定, 从款项到期之日开始就未支付的金额按照每天 0.05%的利率收取滞纳金。

- c) SPEA may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other SPEA agreement if, after 10 days written notice, the failure has not been cured.

如果顾客未能支付到期款项, 或者未能履行本协议或者其他斯贝亚协议项下的义务, 且如果在斯贝亚发出书面通知之后 10 天内, 顾客还未采取补救措施, 那么斯贝亚可以停止履行自己一方的义务。

6. WARRANTY

保证

- a) The Product warranty is the standard SPEA Warranty in effect at the time an order is placed and is available at www.spea.com. In addition to the terms set forth in the SPEA warranty, SPEA shall not be liable for any direct or indirect damages incurred by Customer where such damages are the result of repair services, calibration or certification services performed by an unauthorized third party or a third party deemed unqualified by SPEA.

此处的产品保证是标准斯贝亚产品保证书, 从订单确认日开始生效, 可以在斯贝亚官网 www.spea.com 上查看。除了斯贝亚保证书中规定的条款外, 斯贝亚不负责顾客产生的任何其他由于未经斯贝亚授权的第三方或者斯贝亚认为不合格的第三方开展的维修服务、校准或认证服务导致的直接或间接损失。

- b) THE ABOVE REFERENCED WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. SPEA SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

上述引用的保证条款是排他性的, 斯贝亚未明示或暗示提供其他任何书面或口头保证。如果存在可销售性、具体目的适用性和非侵权的暗示保证, 则斯贝亚免除与之有关的一切责任。

7. SOFTWARE LICENSE

软件许可

- a) Customer's use of SPEA's and included third party proprietary software, including warranty, is governed by SPEA's Software License Agreement available at www.spea.com. In addition to the foregoing, test software licensing enablement may require transient test system access to the SPEA customer software portal account.

顾客对斯贝亚的软件以及其中包含的第三方专有软件的使用, 包括软件保证, 都适用 www.spea.com 上提供的斯贝亚的软件许可协议。除了前述条款, 如果顾客要使用测试软件许可, 斯贝亚可能要求获取顾客软件门户账户的暂时测试系统访问权限。

8. INTELLECTUAL PROPERTY CLAIMS

知识产权要求

- a) SPEA will defend or settle any claim against Customer that Products infringe an intellectual property right in the country where the Products are initially delivered, provided Customer promptly notifies SPEA in writing, assists in the investigation or defense of the claim and allows SPEA to control the defense and settlement of such claim.

如果出现了针对顾客发起的索赔, 声称产品侵犯了最初交付国内的知识产权, 倘若顾客及时书面通知斯贝亚, 协助斯贝亚开展侵权调查或者辩护, 并允许斯贝亚主导该要求的辩护和解决, 则斯贝亚会帮助顾客辩护或解决该索赔。



- b) In the event of an infringement claim under Section 8(a) SPEA will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely or is made, SPEA may, at its option, modify the Product, procure any necessary license, or replace it with a non-infringing, functionally equivalent product. If SPEA determines that none of these alternatives is reasonably available, SPEA will refund Customer's purchase price upon return of the Product.

如果发生了第 8(a)节指出的侵权法律要求, 斯贝亚会支付侵权要求辩护费和和解金额和法庭判决的赔偿金。如果有可能出现这种法律要求, 则斯贝亚可以自行决定修改产品、获取必要的许可、或用非侵权的功能等效的产品替代该产品。如果斯贝亚认为上述补救方案均不可行, 则斯贝亚会归还顾客的货款, 同时顾客要将产品退还给斯贝亚。

- c) SPEA has no liability under this Section 8 if Customer fails to comply with its obligations hereunder or for any claim of infringement arising from:

如果顾客未履行自己在本协议项下的义务, 或者发生了如下原因导致的索赔, 则斯贝亚在第 8 节项下不承担任何义务:

1. SPEA's compliance with, or use of, Customer's designs, specifications, instructions or technical information;
斯贝亚符合或者采用了顾客的设计、规格、说明或技术信息;
2. Product modifications by Customer or a third party;
顾客或第三方对产品做出修改;
3. Product use prohibited by specifications or related application notes; or
违反规格书或相关应用通知使用产品;
4. Use of the Product with products not supplied by SPEA.
将产品与非斯贝亚提供的其他产品一同使用。

- d) These terms state SPEA's exclusive liability for claims of intellectual property infringement or misappropriation of trade secrets.
这些条款声明了斯贝亚对知识产权侵权或商业秘密滥用的索赔要求应承担的排他性责任。

9. LIMITATION OF LIABILITY AND REMEDIES

责任和补救限制

- a) IN NO EVENT WILL SPEA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR MULTIPLE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF DATA, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER CLAIMS FOR SUCH DAMAGES ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

在任何情况下, 斯贝亚不承担特殊性、附带性、间接、结果性、惩罚性或倍计赔偿(包括但不限于设施或设备使用损失、数据丢失、收入损失、利润损失或商誉损失), 无论针对该赔偿的要求是基于合同、民事侵权或者其他法律理论, 即使斯贝亚之前被提醒过存在该赔偿的可能性。

- b) TO THE EXTENT THAT LIMITATION OF LIABILITY IS PERMITTED BY LAW, SPEA'S LIABILITY TO CUSTOMER IS LIMITED TO THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO SUCH CLAIM OF LIABILITY.

在法律允许的责任限制范围内, 斯贝亚对顾客的责任限于导致该索赔的产品购买价。

- c) The limitations set forth in Sections 9(a) and 9(b) above will not apply to infringement claims under Section 8, or to damages for bodily injury or death.

上述第 9(a)和 9(b)节规定的限制条款不适用于第 8 节的侵权要求, 或者人身伤亡赔偿。

- d) The remedies in these terms and conditions are Customer's sole and exclusive remedies.

本协议中的补救措施是顾客的唯一和排他性补救措施。

- e) SPEA's acceptance of liability, its service obligations and/or its performance guarantees are contingent upon SPEA's authorized personnel or authorized third parties providing the required periodic service and calibration or certification of the Products.

斯贝亚对责任、其服务义务和/或其履约保证的认可, 以斯贝亚授权人员或者授权第三方提供所需的定期服务和对产品的校准或认证而定。

10. CONFIDENTIAL INFORMATION

保密信息

The Customer must keep, with the same standard of care as for its own confidential information, any information provided to it by SPEA, whether in writing or in any other form, and must use it solely for the purpose of fulfilling the agreement or any applicable purchase order.

顾客必须像对待自己的保密信息一样, 将斯贝亚提供的书面或口头信息予以保密; 而且必须只能将其用于履行协议或者适用的采购订单之目的。

11. GENERAL

通用条款

- a) SPEA will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.

斯贝亚不承担不在自己合理控制范围内的原因导致的履行延迟或者不履行。

- b) If the Customer terminates any contract/purchase order unilaterally in advance or owing to the Customer's reason any contract/purchase order is caused to be cancelled, the Customer is responsible to pay 20% of contract/order value to SPEA as cancellation fee. If the liquidated damages are not sufficient to make up for the loss of SPEA, the difference shall be made by the Customer.

如果顾客提前单方面终止任何合同/采购订单, 或者由于顾客的原因导致合同/采购订单被取消, 顾客应向斯贝亚支付合同/订单总金额 20% 的费用作为取消费。如果规定的违约金无法弥补斯贝亚的损失, 则顾客还应承担差额损失。

- c) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.

如果任何一方失去偿债能力, 无法支付到期债务, 申请破产, 成为非自愿破产的主体, 被指定了接管人, 或者其资产被转让, 则另一方可以取消任何未履行的义务。

- d) A Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. SPEA may suspend performance if Customer is in violation of applicable laws or regulations. Customer if exports, re-exports or imports any product, technology or technical data, then must comply with applicable laws and regulations, and assume the responsibility for obtaining required export and import authorizations. If Customer violates applicable laws and regulations, SPEA may suspend performance.

顾客如果出口、再出口或进口本协议项下采购的任何产品、技术或技术数据, 则必须承担遵守适用法律法规, 获取所需出口和进口权限的责任。如果顾客违反适用法律法规, 斯贝亚可以停止履行本协议。

- e) To the maximum extent permitted by law, Customer shall be solely responsible for complying with, and shall otherwise assume all liabilities that may be imposed in connection with, any legal requirements adopted by any governmental authority.

在法律允许的最大限度内, 顾客应全权负责遵守政府机构采用的任何法律要求, 并且承担与之有关的可能发生的责任。

- f) The Customer is aware of the fact that SPEA shall process the data of the Customer, either in writing or through electronic form, only for accounting or commercial purposes.

顾客确认并知悉斯贝亚应是出于会计或商业目的, 处理顾客的书面或电子数据。

- g) Disputes arising in connection with these terms and conditions will be governed by the laws of PRC. The people's court located in the SPEA's domicile shall have exclusive jurisdiction over all disputes arising hereunder or in connection with these terms and conditions hereof.

与本销售协议书有关的所有争议都将受到中华人民共和国法律管辖。斯贝亚所在地人民法院对本协议项下的所有争议或者与本协议有关的争议具有排他性司法管辖权。

- h) Neither party's failure to exercise any of its rights under these terms and conditions will be deemed a waiver or forfeiture of those rights.

一方如果未能行使本协议项下的权利, 则视为该方放弃或丧失这些权利。

- i) To the extent that any provision of these terms and conditions is determined to be illegal or unenforceable, the remainder of these terms and conditions will remain in full force and effect.

如果本协议项下任何条款被认为非法或者不可执行，除了这些条款外，其他条款仍然具备全部效力。

- j) These terms and conditions constitute the entire agreement between SPEA and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. SPEA's offer to sell or acceptance of Customer's offer to buy is expressly conditioned on Customer's assent to all of the terms and conditions herein. Customer's submission of a purchase order is deemed an acceptance of these terms and conditions, without modifications or additions. In the event of a

discrepancy between these terms and conditions and a Customer purchase order, these terms shall govern.

本协议构成斯贝亚和顾客之间的完整协议，替代之前双方就本协议项下交易达成的全部口头和书面通信、陈述或协议。斯贝亚的出售要约或者对顾客购买要约的接受都以顾客同意本协议全部条款为前提条件。顾客提交采购订单即视为接受本协议条款，且不对其做任何改动或增加。如果本协议条款与顾客的采购订单之间有冲突，以本协议为准。

- k) This Terms & Conditions of Sale is made both in English and Chinese. In case there are any discrepancies between the two languages, the Chinese version shall prevail.

本销售协议以中英文双语书写而成，如两种语言有歧义之处，以中文版本为准。