

Sales Conditions

1. General

- 1.1. The Sales Conditions of Schweizer Electronic Jiangsu Co., Ltd. ("SEC") shall be exclusively applicable for sales contracts between SEC as the seller and the customer as the buyer unless otherwise agreed. Any customer conditions to the contrary or any conditions which deviate from SEC's Sales Conditions will not be accepted, unless SE explicitly agreed in writing to the applicability thereof. SEC's Sales Conditions shall also be applicable if SE delivers to the customer without any reservations, although SEC is aware of the customer's conditions to the contrary or any conditions which deviate from SE's Sales Conditions.
- 1.2. SEC's Sales Conditions shall only be applicable in dealing with commercial enterprises.
- 1.3. SEC's Sales Conditions shall also be applicable to all future business transactions with the customer.
- 1.4. All contracts and their amendments entered into between SEC and the customer shall be made in writing and are a part of these SEC's Sales Conditions.

2. Prices and Payment

- 2.1. Unless specified otherwise in the final order confirmation and the contract, SEC's prices are quoted ex works, plus the respectively applicable statutory value added tax. Costs of packaging, transport, insurance and all other additional expenses will be invoiced separately.
- 2.2. Invoices are due thirty (30) days after the invoice date unless otherwise agreed by the parties. Payment shall be deemed to have been made if SEC can dispose of the amount received. If checks or bills of exchange are received, payment shall be deemed to have been effected when they have been honored.
- 2.3. The customer shall not offset any claims against SE's claims or apply a right of retention unless his counterclaim is uncontested or has been finally adjudicated.
- 2.4. In case of delayed payments, SE is entitled to charge default interest at a rate of 9 percentage points above the base interest rate.
- 2.5. If services or goods are to be executed or delivered within a period of more than three months after the order has been confirmed, SE shall be entitled to adjust the price in accordance with any increase in costs that occurred during that period.
- 2.6. The customer is in default of payment if he does not settle the claim on the agreed due date. In the event of default in payment, SEC shall, without prejudice to other rights that SEC has under these SEC's Sales Conditions, the contract or the law, be entitled to (i) suspend or cancel the respective delivery and any or all further deliveries until and unless such payment has been made; and (ii) charge interest for any outstanding payment at the rate of [0.04% per day] of the outstanding amount. Further legal claims remain unaffected.
- 2.7. In the event of default in payment on the part of the customer, SEC shall also be entitled, after prior reminder, to demand immediate payment of all other outstanding invoices. This does not apply if the overdue amount may be deemed insignificant in relation to the claims that are not due. This is the case if the amount is less than [5%] of the receivables not yet due. All rebates, bonuses, discounts and other remunerations granted become null and void with the justified total due date of the invoice claims. Furthermore, SE reserves the right to terminate the existing contracts if the customer still does not meet his payment obligation within a period of [14 (fourteen) days] after being urged to do so by SEC.
- 2.8. In the event that after conclusion of the contract, SEC becomes aware of circumstances concerning the financial circumstances of the customer which endanger the fulfilment of SEC's claims (credit unworthiness according to corresponding credit information, exceeding the credit limit by calling off the goods etc.), SEC is entitled to withhold delivery, unless the customer makes an advance payment of the agreed purchase price or provides security. If the customer does not comply with SEC's request to provide security or an advance payment within a reasonable period, SEC may terminate the contract.

3. Offers, Orders and Deliveries

- 3.1. SEC's offers are not binding and are always subject to change without notice. Unless otherwise agreed in writing by the parties, orders of the customer are subject exclusively to these SEC's Sales Conditions and shall not be subject to any standard terms and conditions given by the customer. SEC will confirm any orders immediately after having reviewed all commercial items in writing. However, SEC reserves the right to accept or reject any orders from the customer at its discretion without being liable for any loss or damage caused by its non-acceptance of the orders. As a basic principle, SEC will issue a preliminary order confirmation because at that time the contract review has not yet been performed in accordance with TS 16949 on the basis of the documentation available, and / or the documents necessary to execute the order are not yet available in their entirety in all cases. A contract between SEC and the customer shall only become effective after SEC's final written confirmation of the customer's order after the above-mentioned contract review is completed. After the contract has become effective, no variation or amendment of any term or conditions of the finally confirmed order shall be effective unless agreed in writing by the parties.
- 3.2. The order confirmation is issued subject to technical feasibility of the order. If cost- or time-relevant factors are determined before the contract review has been completed, these will be coordinated with the customer and corrected in an amended order confirmation. SEC's prices are valid as per order confirmation, subject to changes resulting from price increases for materials.
- 3.3. The delivery of lower or higher quantities is customary in the industry and does not entitle the customer to complain or refuse acceptance. The customer shall be obligated to pay for excess quantities, or to accept the delivery of a lower amount. Such deliveries of higher or lower quantities shall normally be in the range of max. 10 % of the quantity ordered, unless agreed otherwise.
- 3.4. Special agreements have to be made concerning blanket orders with calling options. Quantities made available on call will not be manufactured unless the customer has explicitly stated the delivery date. The material for manufacture shall be purchased upon prior coordination for the entire quantity, and shall be invoiced to the customer if the contract is cancelled and if it cannot be used for other purposes.
- 3.5. For prototypes and products of the pre-production batch, the customer acknowledges the following: A prototype describes a product which in its shape, design, operation and manufacture already resembles the final product. It usually is not meant to be delivered to the end customer / user and is solely used during the development process. The guarantee for prototypes is limited to the electrical function according to Gerber data as delivered. Any consequential liability for deficiencies is excluded. A product of the pre-production batch (also initial batch or pilot series) describes a product which is manufactured during the introductory phase of a series production for testing purposes. In essence, the manufacturing process of the pre-production batch corresponds to the process which is applied later on for products designated for sale. Minor process adjustments for later series productions are possible. Guarantee and liability regarding the products of the pre-production batch is limited to their electrical function in the as-delivered condition according to their Gerber data, and their mechanical function according to their dimensioned drawing.
- 3.6. SEC has the right to provide partial deliveries or partial performance at any time.

4. Rights of Third Parties

- 4.1. The customer shall be exclusively responsible to determine whether any technical documentation provided to SEC by the customer or on his behalf infringes existing copyrights, trademarks or other rights of third parties. SEC will not review such rights.
- 4.2. The customer shall be solely liable for the infringement of third-party rights by the execution of an order. He shall furthermore keep SEC indemnified against all third-party liability for such a violation of rights upon first call.

5. Proofs and Samples for Release

- 5.1. The review and release of films, drawings, data and samples shall release SEC from any liability for obvious faults not complained about.

- 5.2. No liability shall be assumed in respect of faults in the order, documents or data submitted which are caused by unclear or incomplete information. The customer shall bear all additional costs associated therewith.
- 5.3. Orders, including subsequent orders for samples, will always be scheduled for manufacturing to comply with the delivery date. The customer shall inform SEC in writing if SEC should wait for the manufacturer's release of production.

6. Facilities

- 6.1. All tools, equipment, review tools, test adapters and similar equipment manufactured or obtained in order to manufacture printed circuit boards (contractual items) according to the customer's documents, shall be charged at their proportionate cost. They will remain SEC's property.
- 6.2. SEC hereby undertakes that the contractual items will in any case
 - 6.2.1. be manufactured suitable for production and used in an appropriate manner,
 - 6.2.2. be properly stored and insured against the risk of fire, and
 - 6.2.3. be maintained and taken care of until they are used.
- 6.3. In the event of a breach of one of these duties due to gross negligence or intent of SEC, SEC shall bear the cost of repair or a substitute procurement of the contractual items. All other claims shall be rejected.
- 6.4. The natural wear of mechanical tools shall be placed to the debit of the customer. He shall bear the cost of producing a substitute tool. The minimum tool life is to be defined in advance if large quantities are involved.
- 6.5. The customer shall be appropriately notified before mechanical tools are being disposed of. If the customer fails to recover the tools within two weeks of shipping, despite repeated written and telephone requests to do so, SEC shall be entitled to dispose of them.

7. Delivery Times, Transfer of Risk

- 7.1. The delivery times and periods, which can be agreed upon as binding or nonbinding, will only be valid upon SEC's written confirmation. The beginning of the delivery time confirmed by SE is conditional upon the clarification of all technical matters, the timely receipt of all documents, approval and releases to be provided by the customer, as well as compliance with the agreed terms of payment and other obligations of the customer. If these conditions are not met in time, the time limits shall be extended accordingly unless SEC is responsible for the delay.
- 7.2. Any later requests for amendments or changes by the customer shall lead to a reasonable prolongation of agreed terms and deadlines, as well as an invoicing of the additional expenditures.
- 7.3. In the event of force majeure and other unforeseeable, extraordinary and undebted circumstances, e.g. interruption of operations, strikes, lock-outs, interventions by the authorities, disturbance in energy supply, material shortage etc., even if occurring at the presupplier, the delivery time shall be extended by the duration of such circumstances, if SEC is thereby prevented from meeting SEC's obligation in time. If the delivery or performance becomes impossible or unacceptable due to the above mentioned circumstances, SEC shall be exempted from its obligation to deliver. If the delivery time is extended, or if SEC is exempted from its obligation to deliver, the customer shall not be entitled to any damage claims resulting therefrom.
- 7.4. In the event that an agreed delivery time has been culpably delayed, default in delivery shall not be present unless an adequate additional period of time has been granted and expired in vain.
- 7.5. Default shall only be deemed to have occurred if the customer has met all his contractual obligations.
- 7.6. If the customer incurs damages due to a delay resulting from SEC's fault, he shall be entitled to claim damages for default to the exclusion of any other claims. The damages for default shall amount to 0.5 % for each full week of delay, but no more than 5 % of the value of that part of the total delivery that cannot be used in time because of the delay.
- 7.7. The customer's claim for damages for delayed delivery as well as claims for damages in lieu of performance, which are in excess of the limits specified in section 7.5, shall be excluded in all cases of delayed delivery as defined in Article 7.4. This does not apply where liability is mandatory in cases of intent, gross negligence or injury to life, body or health. The customer may only rescind the contract within the scope of statutory regulations to the extent that SEC is held responsible for the delayed delivery. No change of burden of proof to the disadvantage of the Buyer is connected with the preceding provisions.
- 7.8. The customer is obliged to state upon SEC's request within an adequate period of time whether he wants to cancel the contract because of the delay, or whether he insists on the delivery.
- 7.9. If at the customer's request the shipment or delivery is delayed by more than one month after the consignment is ready for shipment, the customer may be charged storage fees in the amount of 0.5 % of the price of the items to be delivered, but not more than 5 % in total, for each month or part thereof. The parties reserve the right to evidence higher or lower storage cost.
- 7.10. Unless otherwise agreed by SEC in writing, deliveries shall be made at the customer's risk EXW (Incoterms 2010) and at SEC's place: [No. 2268 Baita Road, Jintan, Changzhou City, Jiangsu Province, the People's Republic of China]. Risk of loss and damage of the goods shall pass to the customer when the goods are handed over to the persons carrying out the transport, if applicable. Shipment is at the customer's cost. If dispatch of the goods becomes impossible through no fault of SEC or the customer is in delay of receipt, the risk shall pass to the customer upon notification of readiness for dispatch. In such case SEC will store the goods but at the expense and risk of the customer and will not be liable for loss or damage of the goods except that it has caused the loss or damage due to a wilful act or gross negligence.

8. Reservation of Title

- 8.1. SEC reserves title to the items purchased until receipt of all payments from the business relationship with the customer ("**Reservation of Title**"). In the event of the customer's behavior contrary to the contract, in particular, if payment is delayed, SEC shall be entitled to take back the purchased items under Reservation of Title ("**Retained Goods**") after setting a deadline, and the customer shall be obliged to surrender them. Taking back the Retained Goods does not require and is not to be interpreted as cancellation of the contract, unless SE has expressly cancelled the contract in writing. The attachment of the Retained Goods by SEC is always to be interpreted as a cancellation of the contract. After having taken back the Retained Goods, SEC is entitled to realize them. The proceeds from the realization of such items are to be offset against the customer's liability, less adequate costs of realization.
- 8.2. The customer shall treat the Retained Goods carefully; in particular, he shall adequately insure them for their reinstatement value at his own expense against the risk of fire, water and theft. The customer shall store the Retained Goods for SEC free of charge. He shall mark them as property of SEC and stock them separately so that they will not be mixed or commingled with other products. The Retained Goods shall be stored in warehouses suitable to prevent any harm from the goods.
- 8.3. The customer shall not sell, transfer, pledge or otherwise dispose of the Retained Goods as security to any third party. In the event of a third-party accessing the Retained Goods, the customer shall point out SEC's property rights relating thereto, and notify SEC in writing without delay. To the extent that the third party is not able to reimburse SEC for any cost paid in and out of court in connection with the protection of SEC's rights, the customer shall be liable in respect thereof.
- 8.4. The customer shall be entitled to resell the purchased items in the ordinary course of business. This entitlement ends if the customer is in default of payment or request to initiate bankruptcy or insolvency proceedings against the customer's assets has been made, or the customer has suspended all payments.
- 8.5. The Retained Goods will in any case be processed or converted by the customer on behalf of SEC. If the Retained Goods are processed together with other items, which do not belong to SE, and become an integral part of another object by combination or mixing of if a new object is produced by processing or remodeling, the customers hereby transfers its ownership or co-ownership of the new items to SEC. If co-ownership arises, SEC's share shall correspond to the portion resulting from the ratio of the value of the processed Retained Goods to the value of the new items. Furthermore, the item resulting from the process shall be subject to the same Reservation of Title as the purchased items. The customer shall keep the items of which SE is owner or co-owner on behalf of SEC free of charge with the diligence of a prudent businessman.

- 8.6. SEC undertakes to release the securities to which SEC is entitled at the customer's request to the extent that the value of SEC's security exceeds the claims to be secured by more than 20 %; however, SEC reserves the right to select the claims to be released.
- 9. Warranty**
- 9.1. The customer has to examine and accept the goods delivered right after delivery according to the quality, quantity and specifications agreed in the contract. Obvious defects in the quality, quantity and specification of the goods have to be notified to SE in writing within 5 working days from delivery and hidden defects, which cannot be discovered upon a reasonable inspection of the goods, immediately after the defect was discovered, however, in any case not later than 12 months after the date of the delivery ("**Warranty Period**"). If the customer fails to conduct the inspection and to raise a complaint to SEC regarding the quality, quantity and specifications of the goods within the above time limits, the goods shall be deemed in conformity with the contract and the customer shall be deemed having finally accepted the goods. In such a case SEC shall not be liable for any claims raised by the customer thereafter unless otherwise required by mandatory laws.
- 9.2. Any warranty claim shall be limited to the specifications of SEC's printed circuit board standard. The optical and electrical final testing shall be carried out on the basis of the latest state of the art and shall be subject to the specification of all functional features by the customer. To the extent that the purchased items are defective in a way for which SEC is responsible at the time of passing of risk, SEC shall, at its sole discretion, either repair or replace the items. In the event of a repair, SEC shall bear all expenses in connection therewith, in particular, all transport, travel, labor and material cost, provided that these have not been increased by the fact that the purchased items were taken to a place other than the place of performance. No liability shall be assumed for defects or faults of parts or documents supplied by the customer. To the extent that damages are produced by parts supplied by the customer, such damages shall be borne by the customer.
- 9.3. In the event that SEC is not prepared or not able to provide subsequent performance, or if this performance is delayed beyond an adequate additional period of time granted by the customer for reasons for which SEC is responsible, or if subsequent performance fails for 2 times consecutively, the customer shall be, at his sole discretion, entitled to either cancel the contract or demand an appropriate reduction of the purchase price.
- 9.4. In the event of complaints about defects duly raised according to item, 9.1, the payments may be retained by the customer in an amount that is adequate in proportion to the defects occurred. The customer may only withhold payments if a complaint about a defect has been submitted which is beyond doubt as to its justification. If the complaint about defects was not justified, SEC shall be entitled to demand reimbursement by the customer for the expenses incurred by him.
- 9.5. Warranty claims are excluded in the event of insignificant deviations from the agreed condition, of insignificant impairment of the usefulness, of natural wear and tear or damages produced after the passing of risk resulting from faulty or negligent treatment or processing, excessive stress (e.g. soldering temperature on PCB above 260 °C), unsuitable electrical components, inappropriate storage (storage conditions as defined in PERFAG standard items 3c and 2e concerning PCBs) or special external influences not provided for in the contract, non-reproducible software errors as well as in case of sale of demonstrators. If the customer or third parties perform inadequate changes or repair works, the consequences arising therefrom shall not be subject to claims for defects.
- 9.6. The customer's claims for any expenses incurred for subsequent performance, in particular, transport, traveling, labor and material costs, are excluded if the expenses are increased because the items purchased were subsequently taken to a place other than the customer's branch office, unless they were taken there for their intended purpose.
- 9.7. If the customer asserts claims for recourse, he must be treated as if he had implemented all legally permissible contractual possibilities vis-à-vis his contractual partner (e.g. refusal of subsequent performance due to disproportion or limitation of reimbursement of expenses to an appropriate amount), SE is entitled to reject claims for recourse with the exception of claims for new delivery of the goods, provided that SE grants the customer equivalent compensation for the exclusion of his right.
- 9.8. Unless provided otherwise below, any other claims of the customer - for any legal reason whatsoever -, especially for the infringement of obligations resulting from the obligation and from tort, shall be excluded.
- 9.9. This does not apply where liability is mandatory, e.g., according to the product liability law, in cases of intent, gross negligence, injury of life, body or health, the non-performance of fundamental contractual obligations. The claim for damages resulting from the non-performance of fundamental contractual obligations shall nevertheless be limited to typical, foreseeable damages, unless it involves intent or gross negligence, injury to life, body or health. The burden of proof is not reversed to the customer's disadvantage by the above provisions.
- 9.10. As far as SEC is negligently in breach of fundamental contractual obligations, SEC's liability for damages to property and personal injury shall be limited to the coverage provided by SEC's product liability insurance. The customer may review SEC's insurance policy on demand.
- 9.11. The claims for real defects shall only vest in the direct customer and cannot be assigned. Claims for real defects shall be time-limited after 12 months from passing of risk. The same time limit also applies to claims for reimbursement for consequential damages, unless claims for tort are asserted. The statutory provisions concerning suspension of expiration of prescription, suspension and restart of time limits shall not be affected.
- 10. Total liability, Limitation of Liability**
- 10.1. Either party failing to fulfill any or part of its obligations under the contract shall bear the losses caused by such failure. The defaulting party's liability for damages shall equal the actual loss suffered by the other party resulting from the breach, but such liability shall not exceed the losses which were foreseeable by the party in breach at the time of conclusion of the contract. Should such failure be attributable to the fault of both parties, both parties shall be liable according to their respective degree of fault.
- 10.2. Notwithstanding item 10.1 or anything to the contrary herein, SEC shall in any event only be liable for damages and losses arising out of or in connection with the contract to the extent as caused by SEC's intentional or grossly negligent misconduct and to such reasonable amount actually incurred and proven by the customer. In no event whatsoever shall SEC be liable for any consequential and/or indirect loss or damages, including loss of profit, downtime costs, loss of revenue, loss of use, loss of production, loss of business opportunity and costs of business interruption. Further, the aggregate liability of SEC arising out of or in connection with the contract shall not exceed 100 % of the total value of that contract.
- 10.3. The above limitation shall not apply in case of personal injuries caused by SEC and in case of property damages which are caused by SEC's gross negligence or intention.
- 11. Observance of Export Laws, Compliance**
- 11.1. The customer shall not export or re-export, directly or indirectly, the goods delivered by SEC without the authorization required under export control laws and/or regulations of any countries claiming jurisdiction over the contracting parties. The customer shall not export or re-export, directly or indirectly, the goods delivered by SEC to any country against which any sanction is imposed under certain resolutions of the Security Council of the United Nations for as long as such resolutions remain valid and effective and as far as the goods delivered by SEC remain prohibited to be exported to such country.
- 11.2. In the event the customer breaches any provision of this section 11, the customer shall be liable to SEC for all direct and indirect damage sustained by SEC due to such breach. SEC shall in such an event have the right to terminate the contract with the customer forthwith without any liability towards the customer. Furthermore, SEC shall not be obliged to accept or fulfill any orders which might contravene any export control laws, rules and/or regulations of any relevant countries or provisions of this section 11.
- 11.3. The customer shall strictly observe applicable laws and regulations including anti-money laundering and anti-corruption laws throughout the entire term of the contract.
- 12. Place of Performance and Venue**
- 12.1. SEC's principal place of business shall be the place of performance.
- 13. Confidentiality**
- 13.1. The customer shall treat all commercial or technical information in connection with the goods and the business operation of SEC, which SEC makes available to him in connection with the contract and which is recognized confidential or which is marked by SEC as confidential, as confidential without restriction and to use it exclusively for the fulfillment of the contract. The customer undertakes to oblige employees or other third parties to whom information is disclosed with SEC's consent to maintain confidentiality in the same manner and to limit disclosure to the extent necessary to fulfill the purpose of the contract.
- 13.2. The duty of confidentiality does not apply to information which
(a) are already publicly known when the contract is concluded or become publicly known at a later date without breaching the duty of confidentiality;
(b) were already in the possession of the customer before disclosure without any obligation to maintain secrecy; or
(c) must be disclosed on the basis of an official or judicial order or mandatory legal provisions.
The burden of proof for the existence of one of the aforementioned exceptions lies with the customer. In the case mentioned under lit. c), the customer must inform SE in advance of the disclosure and limit it to the necessary extent.
- 13.3. The customer undertakes not to analyze the composition of the goods, samples and specimens received from SEC, in whole or in part, or to have them analyzed by third parties, without SEC's prior written consent, for the purpose of developing a product of the same or similar composition.
- 14. Intellectual Property Rights, Third Party's Infringement Claims**
- 14.1. All designs, specifications, drawings, inventions, trade secrets, patents, patent applications, know-how, trademarks and other intellectual property or proprietary information developed, made or acquired by SEC and provided by SEC to the customer in connection with SEC's Sales Conditions and the contract and all SEC's rights therein are and shall remain the sole property of SEC.
- 14.2. Without limiting the generality of item 14.1 above, SEC further reserves any intellectual property rights, including copyrights, pertaining to its cost estimates, drawings and any other documents (hereinafter the "**Documents**"). The Documents shall not be made accessible by the customer to any third parties without SEC's prior written consent and shall, upon request of SEC, be returned without undue delay to SEC if the contract is not awarded to SEC. The above 1st and 2nd sentences shall apply mutatis mutandis to the customer's Documents; these may, however, be made accessible by SEC to those third parties to whom SEC has rightfully subcontracted the provision or the manufacture of the goods.
- 14.3. For a period of 1 (one) year upon conclusion of the last contract, the customer will inform SEC immediately of potential intellectual property infringements by a third party with respect to SEC's intellectual property or any other proprietary rights. The customer shall provide reasonable assistance in case that SEC decides to take action against such third party.
- 15. Termination**
- 15.1. The respective contract may be terminated at any time by mutual written agreement of the parties.
- 15.2. SEC shall be entitled to terminate the respective contract by notice in writing without prior notice period if:
(a) the customer ceases or announces its intention to cease to carry on its business;
(b) the customer enters into liquidation or is declared insolvent or bankrupt or is deemed to be insolvent or unable to pay its debts;
(c) engages in any illegal or criminal conduct as defined under PRC law.
- 15.3. Except as otherwise provided herein, where a party has committed a material breach of these Sales Conditions and/or the contract, and the breach has not been remedied within 1 (one) month after having been given notice thereof by the non-breaching party, the non-breaching party is entitled to terminate the contract by giving written notice to the breaching party with a prior notice period of 1 (one) month.
- 15.4. Upon termination of the contract, the parties shall continue to perform all orders for the goods which have already been accepted prior to and at the time of termination unless the terminating party, at its option, notifies the other party in writing that it cancels any or all orders which provide for delivery after the effective date of termination. The termination of the contract by either party shall be without prejudice to the accrued rights and obligations of the parties, including, but not limited to (i) the obligation to make payment of all amounts then or thereafter due and payable and (ii) claims of damages directly caused by the failure of a party to fulfill its obligations under these Sales Conditions and/or the contract.
- 15.4. Item 13 to 17 shall survive the termination of the contract.
- 16. Governing Law, Dispute Resolution**
- 16.1. These SE's Sales Conditions shall be subject to the law of the People's Republic of China (which, solely for purpose of these SE's Sales Conditions, does not include the Special Administrative Region of Hong Kong, the Special Administrative Region of Macau and Taiwan) to the exclusion of the conflicts of law provisions. The terms of the UN Sales Convention or other conventions relating to the laws of sales of goods shall explicitly not apply.
- 16.2. Any dispute arising out of or in connection with these SE's Sales Conditions or over their validity shall be resolved by the parties hereto through friendly consultation. If no agreement can be reached within 30 (thirty) working days after the dispute has arisen, the dispute shall, to the exclusion of the ordinary court of law, only be submitted for arbitration to the China International Economic and Trade Arbitration Commission, Shanghai Sub-Commission ("**Arbitration Commission**" or "**CIETAC**") and the arbitration shall be conducted under the arbitration rules of the CIETAC in effect at the time of application for dispute resolution. The venue of arbitration shall be Shanghai. The arbitration shall be conducted in English language.
- 16.3. The arbitration tribunal shall consist of 3 (three) arbitrators. Each party to the dispute shall appoint 1 (one) arbitrator. The 3rd (third) arbitrator, who shall act as the chairman of the arbitration tribunal, shall be jointly appointed by the above-mentioned 2 (two) arbitrators. If a party fails to appoint its arbitrator within 1 (one) month after receipt of the notice of arbitration from the arbitration commission or in case the arbitrators fail to reach an agreement on the chairman within 1 (one) month after they have been appointed, the respective arbitrator or the chairman shall be appointed by the CIETAC.
- 16.4. The arbitration award shall be final and binding on the parties. The arbitration fees and the reasonable expenses incurred by the winning party / parties, including lawyers' fees, shall be borne by the losing party according to the degree of the loss. During the arbitration proceedings, the parties shall continue to perform these SE' Sales Conditions and the relevant contract except for the provisions which are under dispute.
- 17. Final Provisions**
- These SE's Sales Conditions and the related contract shall to the greatest extent possible be interpreted in such a manner as to comply with the applicable laws. However, if any provision thereof is, notwithstanding such interpretation, determined to be or to become invalid or unenforceable, or if there is an omission, the remaining provisions of these SE's Sales Conditions and the related Contract shall remain to be binding upon the contract partners. The contract partners agree to replace any such invalid or unenforceable provision by a valid and enforceable one which comes as close as possible to the original purpose and intention of the invalid or unenforceable provision. In the event of an omission, a provision which corresponds with the purpose and intention of what would have been agreed between the contract partners, if the matter had been considered at the outset, shall be deemed to have been agreed