

北京菲斯曼供热技术有限公司
Viessmann Heating Technology Beijing Co., Ltd.

销售及服务通用条款 General Terms and Conditions for Sales and Services

一、 定义

1. Definitions

在本通用条款中，除非上下文内容另行规定，下列词语具有下述含义：

In these General Terms and Conditions, unless the context provides otherwise, the following terms shall bear the meanings assigned thereto:

“**菲斯曼**”指北京菲斯曼供热技术有限公司。

”**Viessmann**” means Viessmann Heating Technology Beijing Co., Ltd.

“**买方**”指接受菲斯曼就合同产品的销售作出的书面或口头报价，或其合同产品订单被菲斯曼接受的一方。

“**Buyer**” means the party who accepts the written or oral quotation for the Products provided by Viessmann or the party whose order for the Products is accepted by Viessmann.

“**销售合同**”指有关菲斯曼向买方销售合同产品的合同或标准报价单或买方向菲斯曼发出的订单。

“**Sales Contract**” means the contract, standard quotation form, or order from the Buyer to Viessmann for the purpose of Viessmann’s supply of the Products to the Buyer.

“**合同产品**”指构成销售合同标的任何产品，包括该产品的附件或备品备件或相关服务。

“**Products**” means such product that constitutes the subject matter of the Sales Contract, including accessories or spare parts of such product and relevant services.

“ **合同价格**” 指合同产品 (及根据销售合同提供的任何服务) 的价格。

“**Contract Price**” means the price of the Product (and any service to be provided under the Sales Contract).

二、 适用范围

2. Scope of Application

销售合同适用于买方向菲斯曼购买供热产品，附件，备品备件及相关服务。

The Sales Contract applies to the boilers, storage-type electric water heaters, accessories, spare parts and relevant services which the Buyer purchases from Viessmann.

三、 税款

3. Taxes

因供应合同产品发生的所有税款及其他费用应由买方支付。如果基于双方达成的特殊安排，由菲斯曼代买方支付了该等税款或费用，则买方有义务在约定时间内向菲斯曼偿还该等垫付的金额。

The Buyer shall defray all taxes and other fees incurred by the supply of the Products. In the event that subject to special arrangement Viessmann pays the said taxes and fees on behalf of the Buyer, the Buyer shall refund Viessmann the taxes and fees defrayed within the agreed time limit

四、 检验及测试

4. Inspection and Testing

在合同产品的生产期间及制造完成时 ,合同产品应按照菲斯曼内部的相关制度进行必要的检验和测试。

During manufacture and on completion, the Products shall be inspected and tested by Viessmann in accordance with its relevant internal guidelines.

根据中国法律法规及监管部门不时发布的政策关于合同产品检验及测试方面的要求 ,菲斯曼将尽合理的努力确保合同产品达到该等检验及测试要求。买方在验收菲斯曼交付的合同产品之前 ,可以要求核查合同产品达到前述检验及测试要求的相关文件 ,如买方未提出该等要求 ,则应视为买方放弃日后可能就此提出任何主张的权利。

According to the inspection and testing requirements that may be stipulated by the Chinese laws and regulations and governmental policies, Viessmann will make reasonable efforts to ensure that the Products satisfy the said requirements. Prior to accepting the Products delivered by Viessmann, the Buyer may request to review the relevant documents evidencing that the Products satisfy the aforementioned inspection and testing requirements. If the Buyer fails to raise such request, it shall be deemed as having waived its right to raise any claims in this respect.

五、 合同价格的支付

5. Payment of Contract Price

合同产品的相应货款应当按照双方在销售合同中约定的方式和进度支付。买方应承担因货款支付发生的银行费用及融资费用等费用。如买方延迟支付货款 ,则买方应当按照每月 2%的利率就未支付部分向菲斯曼作出赔偿。

The payment of the Contract Price shall be made in accordance with the manner and schedule provided in the Sales Contract. The Buyer shall defray any bank charges levied on payment, financing expenses, or others. In the event that the Buyer delays in

payment, interest will be charged on overdue payment at the rate of 2% per commenced month.

六、 交付与验收

6. Delivery and Acceptance

菲斯曼将按照销售合同规定的交付期限和交付地点交付合同产品,前提是买方满足了合同项下所有的前提条件。如果买方应满足的一项或多项条件存在迟延,则菲斯曼的交付时间应当相应地予以顺延。菲斯曼有权在上述交付期限内分批交付合同产品,合同产品如分批交付,菲斯曼就任何一批或多批合同产品迟延交付或未交付,或买方就任何一批或多批合同产品未能收取、不收取或拒绝接受,均不应使有关先前交付的合同产品或以后尚未交付的合同产品的销售合同无效。

Subject to the Buyer's due fulfillment of all the conditions agreed upon under the Sales Contract, Viessmann shall deliver the Products in accordance with the period and place stipulated in the Sales Contract. In the event that the fulfillment of one or more of the said conditions is delayed on the part of the Buyer, the specified period of delivery shall be extended correspondingly. Viessmann is entitled to deliver the Products by installments within the said period of delivery. When the Products are delivered by installments, Viessmann's failure to deliver one or more installments or the Buyer's failure or refusal to accept one or more installments shall not void the parts of the Sales Contract according to which certain installments of Products have been delivered or are to be delivered.

菲斯曼将合同产品运至销售合同中规定的交付地点并经买方签收后即视为交付。

买方应指定专人签收合同产品,并在合同产品送达交付地点之前向菲斯曼提供买方授权签收人的签字样及签收时授权使用的印章式样的原件,否则菲斯曼有权将交付期限推迟至买方提供上述材料之日。

When Viessmann delivers the Products to the place of delivery stipulated in the Sales Contract and the Buyer signs to acknowledge receipt of the Products, the Products shall

be deemed having been delivered. The Buyer shall designate a person to sign to acknowledge receipt of the Products, and shall provide the sample of signature of the designated person, as well as original sample of the authorized seal prior to the delivery of Products; otherwise Viessmann shall have right to correspondingly postpone the time of delivery.

买方有义务在菲斯曼交付合同产品后及时进行检验和验收。在合同产品由菲斯曼负责安装的情况下，在菲斯曼完成合同产品的安装调试后，买方在菲斯曼开具的“客户确认书”和“安装报告”上签章确认即视为对合同产品验收合格。在合同产品不由菲斯曼负责安装的情况下，如果买方在合同产品交付后三个工作日内未向菲斯曼发出相反的通知，视为合同产品已验收合格。

The Buyer is obligated to promptly inspect and accept the Products after delivery by Viessmann. Where Viessmann is responsible for installation, upon the completion of installation and commissioning and the Buyer's confirmation by signing the Confirmation Letter and Installation Report, the Products shall be deemed qualified and duly accepted. Where Viessmann is not responsible for installation, if the Buyer does not notify Viessmann to the effect of a contrary meaning within three months after delivery, the Products shall be deemed qualified and duly accepted.

七、 所有权及风险的转移

7. Transfer of Ownership and Risk

合同产品的所有权及风险应在菲斯曼向买方交付合同产品时转移至买方，但是，如果买方未按照约定支付合同价款或未履行其他重要义务的，合同产品的所有权不发生转移而仍属于菲斯曼。

Ownership of the Products and the risks of damage and loss thereof shall pass to the Buyer upon Viessmann's delivery of the Products. However, ownership of the Products does not pass to the Buyer if the Buyer fails to pay the Contract Price or perform its other major obligations.

因为买方的原因致使菲斯曼不能按照约定的期限交付合同产品的，买方应当自违反约定之日起承担合同产品毁损、灭失的风险；菲斯曼按照约定交付合同产品，但买方违反约定拒绝受领或延迟受领合同产品的，合同产品毁损、灭失的风险自买方违反约定之日期起由买方承担。如果合同产品需要运输，自菲斯曼将合同产品交由承运人运输之时起，合同产品毁损、灭失的风险由买方承担；如果菲斯曼将运输在途的产品出售给买方，则产品毁损、灭失的风险自产品销售合同成立时起由买方承担。

If the Products cannot be delivered by Viessmann according to the stipulated time due to reasons attributable to the Buyer, the risks of damage and loss of the Products shall be borne by the buyer as from the date of the Buyer's such breach. If the Buyer breaches the relevant stipulation by refusing to take delivery or failing to take delivery on time, the risks of damage and loss of the Products shall be borne by the Buyer as from the Buyer's such breach. If the Products require carriage, the risks of damage and loss of Products shall be borne by the Buyer as from the time when Viessmann delivers the Products to the Carrier. If the Products are sold to the Buyer in transit, the risks of damage and loss of the Products shall be borne by the Buyer as from the time of formation of the Sales Contract.

八、 保险

8. Insurance

如果买方提出要求并承担费用，可以为合同产品投保，投保范围可涵盖风险依约转移至买方之后合同产品可能遭受的损失或损害。在此情况下，如果在风险转移至买方后，合同产品遭受了任何损失或损害，经买方要求，菲斯曼应当在事故认定完成之后，及时作出必要的安排以代表买方就保险公司依约应承担的赔偿范围向其索赔。

At the Buyer's request and expense, insurance can be effected to cover any loss or damage to the Products that may occur after the risk has passed to the Buyer in accordance with the terms of sale agreed upon. In such case, should any loss or damage occur after the risk of the Products has passed to the Buyer, Viessmann shall at the Buyer's request, promptly after ascertainment of the incident and, on the Buyer's behalf make necessary arrangements to recover the losses and damages for which the insurance company is liable under the aforesaid insurance contract.

九、 设计、工艺及材质保证

9. Design, Workmanship and Materials Warranty

菲斯曼保证，合同产品的设计、工艺及材质符合其向买方所作的说明或双方所作的约定。买方理解并认可，由于合同产品自身的性质和特点，其除了包含菲斯曼自家生产的设备或备品备件外，还可能会包含菲斯曼视情况需要而配备的由第三方生产的设备或备品备件。菲斯曼对于菲斯曼生产的设备的质保期为合同产品安装调试合格后 24 个月，但无论如何最晚不超过自菲斯曼的工厂或外部仓库或其他适用的地点发货后 36 个月；此外，菲斯曼对第三方生产的设备或备品备件，以及菲斯曼生产的备品备件的质保期为合同产品安装调试合格之后 12 个月，但无论如何不超过自菲斯曼的工厂或外部仓库或其他适用的地点发货后 24 个月。在质保期内，如出现由于合同产品本身的设计、制造、材料等方面的问题而实质性地影响合同产品的使用的情况，菲斯曼将负责对问题产品进行免费维修或更换。凡不是由产品品质原因造成的故障，菲斯曼仍负责维修、更换，但费用应由买方承担。

Viessmann guarantees that the Products are of such design, workmanship and materials as demonstrated by Viessmann or agreed upon by the parties. Buyer understands and acknowledges that due to the nature and characteristics of the Products, they may consist of, other than the equipments or spare parts manufactured by Viessmann itself, certain equipments or spare parts manufactured by relevant third parties that Viessmann

may select where it deems necessary. For the said equipments manufactured by Viessmann, Viessmann offers a warranty period of 24 months after the installation and commissioning of the Products, but such warranty period shall in any event not exceed 36 months after the date of the shipment from Viessmann's plants or external warehouses or any other applicable place as the case may be; besides, for the said equipments or spare parts manufactured by third parties and spare parts manufactured by Viessmann, Viessmann offers a warranty period of 12 months after the installation and commissioning of the Products, but such warranty period shall in any event not exceed 24 months after the date of the shipment from Viessmann's plants or external warehouses or any other applicable place as the case may be. During the warranty period, Viessmann will repair or at its option replace free of charge, the parts that are proved to be defective to an essential degree owing to wrong design, faulty construction or inferior materials. In case the malfunction is not caused by quality related problems, Viessmann will provide repairing or replacement services as the situation may require, but the cost associated with such repairing or replacement shall be borne by the Buyer.

十、 不可抗力

10. Force Majeure

在签订销售合同后,如发生任何不可抗力情形从而导致菲斯曼无法适当履行合同,则菲斯曼的义务和责任应当相应地予以免除。此处所称不可抗力,是指不能预见、不能避免并不能克服的客观情况,包括但不限于战争、洪水、火灾、禁运、征用、扣押、货币限制、内乱、暴乱、集会、货源短缺、能源限制,以及由于前述事件的发生而导致的供货不足或延迟等。

If, after the execution of the Sales Contract, any Force Majeure events occur that affect Viessmann's due performance of the Sales Contract, any responsibilities and liabilities of Viessmann shall be released accordingly. For the purpose of these General Terms and Conditions, the said "Force Majeure" means any objective circumstance which is unforeseeable, unavoidable and insurmountable, including but not limited act of war, flood, fire, embargo, requisition, distress, currency restrictions, turmoil, rally, scarcity of goods, energy restrictions and deficiencies or delays in deliveries from suppliers due to any of the aforesaid events.

十一、 责任限制

11. Limitation of Liability

作为一般原则，如果合同产品导致了任何人身伤害，仅在该等人身伤害被证明是由于菲斯曼或菲斯曼负责的其他方的过错造成的情况下，菲斯曼才有义务对该等人身伤害承担相应的责任；同样地，如果合同产品遭受了任何损失，仅在该等损失被证明是由于菲斯曼或菲斯曼负责的其他方的过错造成的情况下，菲斯曼才有义务对该等损失承担相应的责任。前述对货物损失的责任不包括买方或其他第三方设计、制造或采购的产品，以及包含买方或其他第三方设计、制造或采购之产品的其他产品。

As a general principle, in the event of any personal injury caused by the Products, Viessmann only accepts the respective liability for such injury provided the injury is proved to be due to fault on Viessmann's part or on the part of others for whom Viessmann is responsible. Similarly, in the event of any damage to goods, Viessmann only accepts the respective liability for such damage to the extent that the said damage is proved to be due to fault on Viessmann's part or on the part of others for whom Viessmann is responsible. The said liability for damage to goods does not include products designed, manufactured or purchased by the Buyer or other third party, either or any other products in which such products are included.

菲斯曼不对与供货相关的任何生产损失或利润损失负责，并且菲斯曼的责任不得超出明确约定的范围。如果菲斯曼基于上述条款而应对特定事项负责，菲斯曼的责任应仅限于指定的部件/设备的价值，以及根据已提供的项目建议书或订单确认书等文件需由菲斯曼支付的运费及类似费用。仅在买方完全履行了其承担的责任的前提下，菲斯曼所承担的责任才对菲斯曼有约束力。

Viessmann accepts no liability for any production loss or loss of profit in connection with the supply or any other consequential loss, and Viessmann's liability shall not exceed what is expressly specified. If Viessmann becomes liable under the terms stated above, its liability shall be limited to the value of the specified parts/ equipment plus

any freight and similar costs which are to be defrayed by Viessmann in accordance with the submitted proposal or the order confirmation. The obligations accepted by Viessmann are only binding provided the Buyer duly fulfils all the obligations undertaken by it.

尽管有以上内容，对于以下情况，菲斯曼不承担任何责任：

Notwithstanding the above, Viessmann shall not be liable under any of the following circumstances:

1. 因不可抗力的发生，合同产品给买方或其他任何第三方造成了财产或人身损害；

Due to any Force Majeure events, the Products cause any damages/ injury to the property or body of the Buyer or any third party;

2. 合同产品的缺陷造成买方或其他任何第三方人身或财产损害，但合同产品投入流通时的科学技术水平尚不能发现缺陷的存在，或者将合同产品投入流通时的科学技术水平尚不能发现缺陷的存在。此处所称“缺陷”是指产品存在危及人身、他人财产安全的不合理的危险；产品有保障人体健康和人身、财产安全的国家标准、行业标准的，是指不符合该标准；

Any defects of the Products cause any damages/ injury to the property or body of the Buyer or any third party, but such defects were non-existent when the Products were put into circulation, or the defects cannot be found at the time of circulation due to the scientific and technological level at that time. The term “defects” means the unreasonable danger existing in the Products that threatens the safety of human body or properties of others, or, means inconformity with the respective national standards or industry standards safeguarding human health and safety of human body and property (provided there are such applicable standards);

3. 由于买方或其他任何第三方的过错使产品存在缺陷，造成不能正常使用或人身、财产损害，包括但不限于以下情形：

The Products cannot be normally used, or damages/ injury occur due to defects of the Products caused by the fault of the Buyer or any third party, including but not limited to:

- 没有按照产品的性质进行运输、接收、保管等；
failing to transport, accept, keep or otherwise dispose of the Products in accordance with their nature;
- 超出适用的工作范围进行使用；
using the Products exceeding the appropriate scope of use;
- 未按有关说明进行不当的操作、保养、管理；
inappropriately operating, maintaining, managing or otherwise disposing of the Products in violation of the respective instructions;
- 未经菲斯曼书面认可，自行改造或变动产品；
unilaterally altering or changing the Products without the prior written consent of Viessmann;
- 接受菲斯曼或菲斯曼指定的安装方、维修方之外的其他任何第三方的安装、维修等，因此而导致的故障；
accepting the installation, repair or other services provided by any third party other than Viessmann or the Viessmann designated installing/repairing entity, which causes malfunction of the Products;
- 由于产品性质发生的自然磨损、消耗等；以及
the natural attrition, depletion and so on due to the nature of the Products;
and
- 违反有关法律法规的规定而使用产品。
using the Products in violation of the requirements of the relevant laws and regulations.

十二、 管辖法律及争议解决

12. Governing Law and Dispute Resolution

本通用条款以及基于本通用条款签署的协议 (包括但不限于销售合同) 受中华人民共和国法律管辖并应依其解释。

These General Terms and Conditions and any agreements (including but not limited to the Sales Contract) executed based on these General Terms and Conditions are

governed and shall be construed in accordance with the laws of the People's Republic of China.

如发生本通用条款以及基于本通用条款签署的协议(包括但不限于销售合同)项下的或相关的任何争议,各方应首先进行友好协商,如无法通过友好协商解决,则争议应提交中国国际经济贸易仲裁委员会,按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的,对双方均有约束力。

In the event of any disputes arising from or in connection with these General Terms and Conditions and any agreements (including but not limited to the Sales Contract) executed based on these General Terms and Conditions, the parties shall firstly try to resolve such disputes through friendly negotiation; if the disputes cannot be resolved through friendly negotiation, the disputes shall be submitted to the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration in accordance with CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

十三、 其他

13. Miscellaneous

本通用条款由菲斯曼为规范其在中国的产品销售的目的,基于现行的中国法律及通行的商业惯例而拟定。

These General Terms and Conditions are prepared by Viessmann for the purpose of standardizing its sales activities in China on the basis of the currently effective laws of China and the business practice.

就菲斯曼与其客户(买方)每一宗交易而言,买方在签署销售合同前应仔细审阅本通用条款,并就任何疑问及时与菲斯曼沟通。如果买方在签署销售合同前未就本通用条款提出疑问或异议,应视为买方同意本通用条款的内容,并接受相应的法律后果。

As for each transaction between Viessmann and its clients (the Buyer), the Buyer is advised to carefully review these General Terms and Conditions prior to the execution of the Sales Contract, and to communicate with Viessmann with respect to any queries. Should the Buyer fail to raise any questions or objections to these General Terms and Conditions prior to the execution of the Sales Contract, the Buyer shall be deemed as having accepted these General Terms and Conditions and the respective legal consequences.

如果本通用条款的任何部分基于任何原因而无效 ,其余部分仍然有效并对相关当事方具有约束力。如本通用条款与双方另行达成的其他特殊约定发生冲突 ,则应以后者为准。

If any part of these General Terms and Conditions becomes invalid due to any reason, the remaining parts thereof shall remain effective and binding upon the parties. In case of any discrepancies between these General Terms and Conditions and other special agreements between the parties, the latter shall prevail.

兹确认本公司(作为买方)已审阅以上通用条款 ,本公司同意和接受其全部内容 ,并愿受其约束及承担相应的法律责任。

This is to confirm that we, as Buyer, have reviewed the above General Terms and Conditions, we agree with and accept all the provisions thereof, and are willing to be bound by them and to assume the respective legal obligations.

买方 _____
Buyer

授权签字人 _____
Authorized Signatory

日期 : _____
Date