

## 采购通用条款

### General Terms and Conditions for Purchase

#### 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”或“买方”是指北京菲斯曼供热技术有限公司。

“**Viessmann**” or “**Buyer**” means Viessmann Heating Technology Beijing Co., Ltd.

“卖方”是指与买方签订采购合同的公司或个人。

“**Seller**” means the person or company with whom Buyer enters into a purchase contract.

“采购合同”指菲斯曼为采购合同产品与卖方签订的合同。

“**Purchase Contract**” means the contract entered into between Buyer and Seller for the purpose of purchasing Products from Seller.

“合同产品”指构成采购合同标的的任何产品，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 Purchase Contract, including accessories or spare parts of such product and relevant services.

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## 二、 交付的时间和地点

### 2. Time and Place of Delivery

卖方应在采购合同约定的期限内交付合同产品。采购合同对交付期限没有约定或约定不明确的，买方有权在任何时间要求卖方交付合同产品。

Seller shall deliver the Contract Products within the stipulated time limit provided in the Purchase Contract. Where a time limit is not clearly stipulated in the Purchase Contract, Buyer shall have the right to require delivery of the Contract Products at any time.

卖方应在采购协议约定的交付期限届满之前，应及时地书面通知买方已经发生的或可能发生的迟延。如果卖方未在采购协议约定的交付期限届满后【15】日内交付合同产品，那么买方有权解除采购合同而不承担任何费用。

Seller shall promptly notify Buyer in writing of any actual or potential delays in the delivery of the Contract Products. Buyer may cancel the Purchase Contract without incurring any cancellation charges, if the Contract Products are not delivered by Seller within [15] days after the expiration of the delivery schedule specified therein.

卖方交付合同产品的地点应为买方营业地，采购合同另有约定除外。

Seller shall delivery the Contract Products at the business place of Buyer, unless the Purchase Contract stipulates otherwise.

## 三、 付款

### 3. Payment

除采购合同另有约定外，买方应在收到合同产品以及卖方签发的发票后【60】日内向卖方付款。

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Unless otherwise specified in the Purchase Contract, all payments from Buyer are due [60] days after receipt of the Contract Products and Seller's Invoice.

#### 四、 检验及测试

#### 4. Inspection and Testing

买方有权在合同产品的生产或准备过程中于合理的时间或交付时检验合同产品。买方有权在合同产品交付前（合同产品分批交付的，在每一批次交付前）检验产品样品。但合同产品交付后，买方仍有权做最终检验。

Buyer may inspect the Contract Products during their manufacture or preparation at reasonable times and at the time of their delivery. Buyer may inspect representative samples of the Contract Products (including each shipment where applicable) prior to delivery. All Contract Products are subject to final inspection by Buyer after the delivery.

如果卖方交付的合同产品不符合采购合同约定的质量要求，则买方有权解除采购合同或者拒绝接受合同产品，并由卖方承担相关风险及费用。

If the Contract Products delivered by Seller do not meet the specifications provided in the Purchase Contract, Buyer shall have the right to cancel the Purchase Contract or to reject and return the Contract Products at the risk and expense of Seller.

#### 五、 质量保证

#### 5. Warranties

卖方保证其提供的合同产品（a）符合买方提供的图纸、规格和或其他数据；（b）如果买方没有提供不同于或者比卖方公布的规格更加具体的要求，符合卖方公布的规格；（c）符合并与卖方提供的样品质量相同；（d）是崭新的，且只包含新

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的零部件；以及(e)如果买方曾告知，或卖方通过其他途径得知买方的使用意图，应符合买方的该意图。

Seller warrants that all furnished Contract Products (a) will conform to applicable drawings and/or specifications and/or other data provided by Buyer, (b) will conform to published specifications of Seller, where Buyer has not furnished specifications different from or more specific than the published specifications, (c) will conform and be equal to any samples provided by Seller, (d) will be new and contain only new components, and (e) will be fit and sufficient for the purpose intended by Buyer, where Buyer has communicated such purpose to, or it is otherwise known by Seller.

上述保证的效力不受任何检验、交付、接受和付款的影响。除非经买方书面明确同意，卖方关于责任限制或免责声明均不生效。

All warranties shall survive any inspection, delivery, and acceptance of, and payment for, the Contract Products. Disclaimers by Seller of express or implied warranties and limitations of liability shall not be effective unless expressly accepted in writing by Buyer.

## 六、 权利保障

### 6. Indemnification

卖方同意保障、为其提供辩护并使得买方、买方的附属公司及其代理及雇员免于承担直接或间接由以下事项导致或与以下事项有关的任何主张、诉讼、判决、和解赔偿、损失、责任或费用（包括合理的律师费）：(a)卖方在采购合同下的任何违约行为；(b)由任何第三方提起的、有关合同产品的、关于侵犯专利权、商标权、著作权、商业秘密或其他知识产权的主张；以及(c)与合同产品或卖方履行采购合同下的义务有关的任何人身伤亡或财产损害。

Seller agrees to indemnify, defend and hold Buyer, Buyer's affiliates, and each of their agents and employees harmless from and against all claims, actions, costs of settlement,

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losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) asserted against, resulting from, imposed upon or incurred by any of the foregoing parties, directly or indirectly, by reason of or resulting from or in connection with: (a) any breach by Seller of any of its obligations under the Purchase Contract, (b) any allegation of infringement or violation of any patent, trademark, copyright, trade secret or other intellectual property rights of any other person in connection with the Contract Products; and (c) any injury or death to persons or damage to property in connection with the Contract Products or the performance of Seller's obligations under the Purchase Contract.

在任何第三方诉讼中，如果卖方依据本条款之规定有义务为买方提供辩护，但未及时有效地提供上述辩护的，买方对该第三方诉讼的辩护及和解享有控制权，且相关费用由卖方承担。

Buyer shall have the right, at Seller's expense, to control the defense and settlement of any third party action as to which Seller is obligated to defend Buyer pursuant to this provision if Seller fails to defend Buyer in a competent and timely manner.

## 七、 保险

### 7. Insurance

卖方应投保产品责任险和充分的运营保险，其保险范围应涵盖与合同产品有关或由合同产品导致的一切人身损害或财产损害的主张。上述保险的保险金额应不低于买方指定的金额，且应据买方的要求将买方列为受益人。除非提前 10 日书面通知买方，否则上述保险不得撤销。应买方要求，卖方应向买方提供投保上述保险的证明。

Seller shall maintain products liability and completed operations insurance which provides coverage in respect of all claims involving bodily injury or property damage arising out of or in connection with the Contract Products. Such insurance shall be in

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such minimum amounts as Buyer shall designate and shall, upon Buyer's request, declare Buyer as a named insured. Such policies of insurance shall not be cancellable except upon ten days' written notice to Buyer, and Supplier shall furnish proof of such insurance to Buyer upon Buyer's request.

买方可以书面形式放弃要求卖方投保上述保险的权利。

Buyer may waive its rights of requesting Seller to maintain such insurance in written.

## 八、 违约责任

### 8. Liability for Breach of Contract

除采购合同另有明确规定外，卖方和买方均无须赔偿另一方的间接损失或伴随损失，包括但不限于：产量损失或利润损失。

Unless otherwise agreed in the Purchase Contract, Buyer and Seller are not liable for any indirect and/or consequential damage, including but not limited to, loss of production and loss of profit.

## 九、 保密

### 9. Confidential Information

卖方应对买方提供的全部信息、图纸、规格或数据（下称“**保密信息**”）保密。卖方不得为自己或第三方的利益使用或披露买方提供的任何信息、图纸、规格或数据，法律另有规定除外。

All information, drawings, specifications, or data (hereafter “**confidential information**”) furnished by Buyer shall be kept confidential. Seller shall not use for its own or any third party's benefit, or, except as required by law, disclose such confidential information.

## 十、 合规

### 10. Compliance with Laws

在履行采购合同的过程中，卖方应充分符合所有应适用的法律、法规和规章，并使买方免于承担因卖方不符合上述规范而导致的任何责任。卖方应自付费用取得政府机关要求的与合同产品的生产或交付有关的许可、批准或检验。

Seller shall, in its performance under the Purchase Contract, fully comply with all applicable laws, regulations and rules and shall indemnify and hold Buyer harmless from any liability resulting from failure to so comply. Seller shall obtain and pay for any licenses, permits, or inspections by public bodies required in connection with the manufacture, or delivery of the Contract Products.

## 十一、 转让

### 11. Assignment

未经买方事先书面同意，卖方不得将采购合同或其在采购合同下的权利义务转让或分包给第三人。任何未经买方事先书面许可的转让都是无效的。

Seller shall not assign the Purchase Contract or subcontract all or any of its rights or obligations under the Purchase Contract without the prior written consent of Buyer. Any attempted assignment without Buyer's prior written consent shall be void.

## 十二、 弃权

### 12. Waiver

在任何情况下，买方没有对采购协议下的违约行为提出主张不应视作放弃此权利。

Where Buyer fails to claim against any breach of the Purchase Contract, such failure does not, under any circumstances, constitute waiver of the right to do so.

### 十三、 法律适用

#### 13. Applicable Law

本通用条款及相关协议，包括但不限于采购合同，受中华人民共和国法律的排他管辖，并应据中华人民共和国法律解释。

These General Terms and Conditions and relevant agreements, including but not limited to the Purchase Contract, shall be exclusively governed by and construed in accordance with the laws of China.

### 十四、 争议解决

#### 14. Dispute Resolution

如发生本通用条款以及基于本通用条款签署的协议（包括但不限于采购合同）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 Purchase 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.

### 十五、 一般条款

#### 15. General Provisions

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15.1 本通用条款以中文和英文做成，具有同等法律效力。

15.1 These General Terms and Conditions are made in Chinese and English, which are equally authentic.

15.2 双方声明本通用条款及采购协议不构成任何形式的合伙关系、代理或雇佣关系。

15.2 Both parties acknowledge that these General Terms and Conditions and the Purchase Contract shall not be construed as partnership, agency or employment relationship of any form.

15.3 本通用条款及采购合同构成双方之间达成的完整协议，并取代双方先前就合同产品采购事宜达成的所有协议、谈判和谅解。非经双方书面签署，不得修改本通用条款及采购合同。

15.3 These General Terms and Conditions and the Purchase Contract constitute the entire agreement between the parties and replace all prior agreements, negotiation and understanding with regard to the purchase of the Contract Products. These General Terms and Conditions and the Purchase Contract shall not be revised without written agreement by both parties.

15.4 本通用条款或采购合同的任何条款被认定为无效，任何其他条款仍然有效。

15.4 Where any provision in these General Terms and Conditions or the Purchase Contract is deemed as void, the remaining provisions shall remain valid.

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