



# General Conditions of Sale for Customers Resident in PRC

## I. Application of the General Conditions of Sale

1. These General Conditions of Sale apply to all customers of Optibelt GmbH's affiliates in China, namely Optibelt Power Transmission (Shanghai) Co., Ltd. and Optibelt Power Transmission (Taicang) Co., Ltd. (collectively referred to as "Optibelt") whose relevant place of business is **in the People's Republic of China ("PRC"**, for the purpose of this General Conditions of Sale, Taiwan, the Special Administrative Region of Hong Kong and Macao are excluded). For customers whose place of business is not in PRC, the International Conditions of Sale of Optibelt apply, which will be forwarded on request. In each case, the relevant place of business is the actual registered address of customers.
2. These General Conditions of Sale apply to all contracts made on or after October 1<sup>st</sup>, 2019 whose preponderant object is the **supply of goods** to customers. Additional obligations assumed by Optibelt do not affect the application of these General Conditions of Sale.
3. Conflicting or differing **terms of business of the customer** do not bind Optibelt, even if Optibelt does not object to them or even if Optibelt unconditionally renders performance or accepts the customer's performance. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these General Conditions of Sale, deviate from statutory provisions.
4. These General Conditions of Sale do not apply, if the customer buys the goods for **personal, family or household use** and if Optibelt knew or should have known that at the conclusion of the contract.

## II. Formation of the Contract

1. The customer is under an obligation to give **written notice to Optibelt** prior to the formation of a contract if the goods to be delivered are to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use or if there is a risk of a typical damages or unusual amounts of loss of which the customer is or ought to have been aware.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by Optibelt, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of Optibelt, will **take effect exclusively if followed by a written acknowledgement** of the order by Optibelt. The actual delivery of the goods ordered, any other conduct of Optibelt or silence on the part of Optibelt does not allow the customer to assume the formation of the contract. Under normal conditions, Optibelt can dispatch such written acknowledgement of the order up to and including **Seven (7) calendar days after** the customer's order has been received by Optibelt. Within such 7-day period, the customer's order is irrevocable. In case of overdue confirmation, both parties shall negotiate and communicate separately.
4. The written **acknowledgement of the order** by Optibelt shall be **received in time**, if it is received by the customer within Seven (7) calendar days after its date of issue. The customer will inform Optibelt without delay, if the written acknowledgement of the order is received with some delay.
5. The written acknowledgement of the order by Optibelt sets out all the **terms of the contract** and brings the contract into effect even if – except for the price for the goods and the quantity to be delivered – the written acknowledgement is not consistent with

# 适用于中国境内客户的通用销售条款

## I. 通用销售条款的适用

1. 本通用销售条款适用于Optibelt GmbH在中国的关联企业, 即欧皮特传动系统(上海)有限公司及欧皮特传动系统(太仓)有限公司(以下合称为“欧皮特”)的所有相关营业地点位于**中华人民共和国 (“中国”**, 为本合同之目的, 不包括台湾、香港及澳门行政区)境内的客户。营业地点不在中国境内的客户将适用欧皮特国际销售条款, 经要求后, 前述通用条款可被发送。在任何情形下, 相关营业地点系指客户实际注册地址。
2. 本通用销售条款将适用于2019年10月1日或之后签订的以向客户**供货**为主旨的所有合同。欧皮特需承担的额外责任不会影响本通用销售条款的适用性。
3. 任何与本通用销售条款相冲突或相悖的**客户的商业条款**对欧皮特不具有约束力, 即便欧皮特未对此提出异议, 或者存在无条件履行或接受客户的履行。无论本通用销售条款包含何种内容, 本条规定在客户的商业条款违背法律规定的情形下仍适用。
4. 如果客户因**个人、家人或家庭使用**的原因购买货物的, 并且在合同签订时欧皮特已经知悉或应该知悉前述购买原因的, 则本通用销售条款不适用。

## II. 合同订立

1. 如果拟交付的货物不仅需要适用于常规情形下的使用, 或者将在不寻常的、或对健康、安全、环境有特殊危险的、或需要更为严格的使用要求的情况时, 或者如果存在客户已经或应该知道的有关典型损害或不寻常数额的损失的风险时, 客户有义务在订立合同前**向欧皮特书面通知**。
2. **客户的订单**应通过书面形式作出。如果客户的订单与欧皮特提交的报价或投标文件不一致, 客户应强调该等差异。
3. 所有订单, 尤其是欧皮特员工接受的订单, **仅在欧皮特对该订单作出书面确认后方可生效**。客户不得因订单货物的实际交付、欧皮特的任何其他行为或者欧皮特方的沉默而推定合同已订立。通常情况下, 欧皮特可在其收到客户订单后的**七(7)个日历日(包含第7天)**内出具前述书面确认函。在该7日期限内, 客户的订单不可被撤销。超期确认的, 由双方另作协商沟通。
4. 如果客户在欧皮特出具**书面订单确认函**后的七(7)日内收到了前述确认函, 则视为欧皮特的书面订单确认函被及时收取。如果书面订单确认函在接收时存在延迟, 则客户应立即通知欧皮特。
5. 欧皮特的书面订单确认函应包括全部**合同条款**并意味着合同生效, 即使书面确认函与客户在各方面的声明内容存在不一致(尤其是有关本通用销售条款的排他性适用, 但拟交付的货物价格和数量除外)。客户的特殊需求, 即与货物或合同履行相关的保证或担保,

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the declarations of the customer in every respect, especially with reference to the exclusive application of these General Conditions of Sale. Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract therefore require express written confirmation by Optibelt in every case. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by Optibelt is not completely consistent with the declarations of the customer, the customer specifies the deviations in writing and if the objection is received by Optibelt within a short time, at the latest seven (7) calendar days, after receipt of the written acknowledgement of the order by the customer.

6. Confirmations produced by the customer are of **no effect** without any objection by Optibelt being necessary. In particular, neither the actual delivery of the goods, any other conduct of Optibelt or silence on the part of Optibelt shall give rise to any belief by the customer in the relevance of his confirmation. If the binding documents agreed by both parties need to be supplemented, a supplementary agreement shall be made, which shall not be inconsistent with this general sales contract.

7. Optibelt's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by Optibelt or to make promises which differ from its content or guarantees.

8. **Amendments** to the concluded contract always require written confirmation by Optibelt.

### III. Obligations of Optibelt

1. Subject to an exemption according to section VIII.-1 b) Optibelt must **deliver the goods** specified in the written acknowledgement of the order. Optibelt is **not obliged to perform obligations** not stated in the written acknowledgment of the order by Optibelt or in these General Conditions of Sale, in particular Optibelt is under no obligation to supply documents, to furnish information or to deliver accessories not explicitly agreed upon in writing, to install additional safety devices, to carry out assemblies or to advise the customer.

2. Optibelt's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to bring any other contractual claim against Optibelt. Without prior written consent from Optibelt, the customer shall not assign any of its rights or obligations under these General Conditions of Sale or the contract to any third party. The customer's responsibility to take delivery continues to exist even if it **assigns rights to third parties**. The customer gives Optibelt an unlimited indemnity against all claims made by third parties against Optibelt out of the contract made with the customer.

3. Optibelt undertakes to deliver goods of average kind and quality taking account of the **tolerances customary in trade** concerning the kind, quantity and quality. Divergences in measure and size, structure and colour are reserved as far as they result from the nature of the materials used and are customary in trade. Optibelt is entitled to make **part deliveries** and to invoice them separately.

4. If further **specification** is required in relation to the goods to be delivered, Optibelt will carry this out having regard to his own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. Optibelt does not undertake to

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在任何情况下均需要欧皮特作出明确的书面确认。合同未生效仅可能存在于以下情况，即当**客户以书面形式表示拒绝**，认为欧皮特出具的订单确认函与客户声明不完全一致，并以书面形式对该等差异做出具体解释，同时该等书面拒绝系在短时间内（最迟不晚于客户收到订单确认函后7个日历日内）由欧皮特收到。

6. 客户做出的确认将**不具有任何法律效力**，且无需欧皮特对该等确认进行任何明确反对。特别是，欧皮特实际交付货物的行为，或欧皮特的其他行为，或欧皮特的任何沉默均不应被客户理解为是欧皮特方面的确认。如需补充双方共同认可的约束性文件，需另作补充协议且不与本通用销售合同相悖。

7. 欧皮特的**员工**、商业代理或其他销售中介机构无权放弃欧皮特出具的书面订单确认函中约定的要求，亦无权作出与其内容或保证不同的承诺。

8. 对已签订的合同进行**修改**时，始终需要获得欧皮特的书面确认。

### III. 欧皮特的义务

1. 除第8.1条b款项下免责条款外，欧皮特应当根据书面订单确认函的约定**交付货物**。对于未在欧皮特的书面订单确认函或本通用销售条款中约定的义务，欧皮特**无义务履行**，尤其是在未经书面形式做出明确约定时，欧皮特无义务提供文件、信息或配件，亦没有义务安装额外的安全装置、进行设备组装或向客户提供建议。

2. 欧皮特仅向客户承担其与客户签订的合同项下的义务。未参加合同签署的第三方，尤其是**客户的客户**，均无权要求欧皮特向自身交付货物或向欧皮特提出任何其他合同主张。未经欧皮特事先书面同意，客户不得将其在本通用销售条款或合同项下的任何权利或义务转让给任何第三方。即便客户**将其权利转让给第三方**，客户的提货责任将持续存在。对于第三方因欧皮特与客户签订的合同对欧皮特提出的所有索赔，客户承诺对欧皮特负有无限赔偿义务。

3. 欧皮特承诺在考虑到有关种类、数量和质量**的贸易惯例公差**的情况下，交付正常品质的货物。对于货物在尺寸、结构和颜色上的差异，如果该等差异系因使用的材料性质导致且在商业惯例中常见，则此等差异应当被接受。欧皮特有权进行**分期交付**，并分别开具发票。

4. 如拟交付的货物需受限于进一步的**规格要求**的，欧皮特将在考虑自身利益及可辨明的客户的合法利益的情况下执行。欧皮特无义务向客户作出有关明确货物或参与制定规格的要求。欧皮特不承诺向客户告知其已经制定的货物规格或为客户提供不同规格的选择。

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inform the customer of the specification he has made or to give the customer the option of a differing specification.

5. Optibelt undertakes to place the goods packaged according to Optibelt's standard **at disposal for collection by the customer EX Works (Incoterms 2010)** at the place of his premises in PRC at the agreed time of delivery. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. Under no circumstances, not even when other Incoterms are agreed Optibelt is obliged to inform the customer of the delivery, to examine the goods with respect to their conformity with the contract on the occasion of delivery, to arrange for the shipment of the goods or to insure the goods. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involves a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these General Conditions of Sale remain applicable.

6. Agreed **delivery time periods or delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by Optibelt. Optibelt is entitled to deliver earlier than at the agreed delivery time or to select the date of delivery within the period for delivery.

7. Without prejudice to his continuing legal rights, Optibelt is entitled to fulfil his obligations **after the delivery time agreed upon**, if the customer is informed that Optibelt will exceed the delivery time limit and of the time period for late performance. Subject to the aforesaid conditions, Optibelt is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by Optibelt before commencing late performance. Optibelt will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that Optibelt is liable for this under the provisions laid down in section VIII.

8. **Risks as to the risk of loss of or damage of the goods, price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for Optibelt to give notice, pass to the customer at the latest as soon as the loading of the goods has begun or as soon as the customer does not take delivery in accordance with the contract. The **picking up of the goods** is part of the customer's obligations. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involves a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these General Conditions of Sale remain applicable.

9. Optibelt is **not obliged** to procure documents or certificates not expressly agreed, to obtain any licences, authorizations or other **documents** necessary for the export, transit or import, or to provide security, export, transit, import or customs **clearance**. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involves a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these General Conditions of Sale remain applicable.

10. Optibelt is in no case liable to perform duties associated with the putting of the goods into circulation **outside PRC**, to bear levies,

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5. 欧皮特承诺, 其将根据欧皮特的标准包装货物并在在约定的交付时间将货物放置于其中国境内的经营场所, **供客户提货, 交付条件: EX Works (国际贸易术语解释通则2010)**。欧皮特无需预先将货物分开, 或作标记, 也无需事先通知客户货物已备妥待运。在任何情形下, 即使双方约定了其他贸易术语, 欧皮特均没有义务通知客户有关交付事宜、在交货时检查货物是否符合合同规定、安排货物的装运或为货物投保等事项。其他贸易术语或条款中的约定, 例如“免费送货.....”或类似其他表述仅仅涉及有关运输和运输费用的条款的差异; 除此之外, 本通用销售条款中的其他规定应适用。

6. 约定的**交付期限**或**交付日期**受制于客户在充足的时间内取得所有要求的文件、发布信息、许可、批准、证照或任何其他授权或同意, 按照约定支付定金, 以及及时、适当地履行其应尽的所有其他义务。此外, 约定的交付期限自欧皮特出具书面订单确认函起计算。欧皮特有权在早于约定的交付时间或在交付期限内选择任意日期进行交付。

7. 如果客户被告知欧皮特将延期交货以及延迟履行的期限, 在不损害欧皮特持续性合法权利的情况下, 欧皮特有权在**约定的交付时间之后**履行其义务。在上述条件下, 欧皮特有权多次请求延期履行。如果延期履行不具有合理性, 客户可在合理时间内对该延期履行提出异议。该等异议仅在欧皮特开始执行迟延履行前收到的情况下方可生效。欧皮特将赔偿因延期交付导致客户遭受的可证明的必要额外开支, 但前提是根据第8条规定, 欧皮特对此负有责任。

8. **有关货物、价格和性能的毁损灭失的风险**, 甚至是未在合同中明确体现的, 以及欧皮特无需做任何通知的风险, 只要是与货物有关的, 最迟都应当在已开始装货或客户未按合同规定提货时转移至客户。**按约定定期提货**是客户的义务。其他贸易术语或条款中的约定, 例如“免费送货.....”或类似其他表述仅仅涉及对有关运输和运输费用的条款产生差异; 除此之外, 本通用销售条款中的其他规定仍应适用。

9. 欧皮特**没有义务**获取未明确约定的文件或证书、或获取有关出口、过境或进口所需的任何许可、授权或其他**文件**, 亦没有义务提供安全保障、出口、过境、进口或海关**通关**服务。其他贸易术语或条款中的约定, 例如“免费送货.....”或类似其他表述仅仅涉及对有关运输和运输费用的条款产生差异; 除此之外, 本通用销售条款中的其他规定仍应适用。

10. 在任何情形下, 欧皮特均不负责履行与货物在中国境外流通有关的职责, 亦无义务承担在**中国境外**发生的税款、关税和费用, 或是



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duties and charges accruing outside PRC, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside PRC or to comply with any other legal provisions applicable to the goods outside PRC. The customer will arrange for translations in any language other than English and Chinese of documents or other written materials about the goods required by law or called for otherwise at his risk and expense.

11. Without prejudice to his continuing legal rights, Optibelt is entitled to **suspend the performance of his obligations** so long as, in the opinion of Optibelt, there are grounds for concern that the customer will wholly or partly fail to fulfil his obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs his obligations to enable payment to Optibelt or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance Optibelt is entitled at his own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on issuance of a payment guarantee by one of the big Chinese commercial banks. Optibelt is not required to continue with performance of his obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.

12. Except as provided in section III.-7., Optibelt is only obliged to inform the customer of **possible disruption in performance**, once the commencement of the disruption is definitely certain for Optibelt.

### IV. Obligations of the Customer

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price for the goods** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to one of the financial institutions designated by Optibelt. To the extent that a price for the goods has not been agreed, the price which is at the agreed time of delivery Optibelt's usual price for the goods will apply. Optibelt's employees, commercial agents or other sales intermediaries are not authorized to accept payments.

2. The payment to be made by the customer is in any event **due for payment** at the time specified in the written acknowledgement of the order, or otherwise on receipt of the invoice. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the goods and/or the documents and/or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Optibelt or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or if the cover given by a credit insurer is reduced on grounds for which Optibelt is not responsible.

3. The customer warrants that all legal requirements and documentations for the fiscal treatment regarding value added tax of the delivery and/or any service will be fulfilled. To the extent that Optibelt has to pay Chinese and/or foreign value added tax, the customer will indemnify Optibelt in all and every respect without prejudice to any continuing claim by Optibelt.

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遵守适用于中国境外的重量和测量系统、包装、标签、标记要求和注册或认证等义务，亦或是遵守适用于中国境外货物的任何其他法律规定。客户将根据法律或其他要求或因其他原因所需，安排翻译有关货物的非使用英文和中文语言的文件或其他书面材料，相关风险和费用由客户自行承担。

11. 如果欧皮特有理由担心客户将无法全部或者部分按照合同履行其义务时，在不损害欧皮特持续性法律权利的情形下，欧皮特有权**中止履行**。尤其是，当客户未能充分履行其向欧皮特或第三方支付款的义务，或延迟付款，或信用保险公司提供的信用额度已超过或即将在下次交付时超过时，前述中止权将产生。欧皮特有权选择不中止履行，自行决定继续进行交付，即便已经确认继续交付的，仍需以支付预付款或经中国一家大型商业银行开立付款保函为前提条件。如果客户提供的为避免中止履行的担保没有充足的保障或者可能受到适用法律的质疑时，欧皮特无需继续履行其义务。

12. 除第3条第7款约定的情况外，仅在欧皮特认为合同履行中断非常确定时，欧皮特才有义务将可能影响合同履行的中断事宜通知客户。

### IV. 客户的义务

1. 无论客户是否存在确保或实现付款的持续义务，客户均承诺按照书面订单确认函约定的货币向欧皮特指定的一家金融机构支付**约定的货款**，并且不扣除任何款项、费用和成本。如果未就货物约定价格的，则以欧皮特在约定交付时间的通用价格为准。欧皮特的员工、商业代理或其他销售中介无权收取任何款项。

2. 在任何情形下，客户的应付款项的到期日为书面订单确认函中规定的付款时间或在收到发票时。货款到期不受任何前提条件制约，特别是，不以客户是否已经提取货物和/或文件及/或是否有机会检查货物为条件。如发生与客户资产相关的破产程序被申请启动，或在无合理理由的情况下客户不履行对欧皮特或第三方应尽的基本义务的，以及当客户提供的资信信息不准确或信用保险公司为客户提供的信用额度因非归因于欧皮特的原因被减少时，**客户被授予的付款期限**将停止适用，且任何未结清的款项应立即到期并支付。

3. 客户承诺将遵守所有与交付和/或任何服务的**增值税**财务处理相关的法律要求及文件要求。如发生欧皮特不得不支付中国境内和/或境外增值税的情况，在不影响欧皮特持续要求索赔的权利的情况下，客户应向欧皮特提供全面赔偿。客户授予的该等赔偿将放弃任何进一步的要求或其他抗辩，尤其是放弃对诉讼时效的抗辩，并且赔偿范围包括对欧皮特遭受损失的赔偿。



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The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of statute of limitation or prescription and also includes the reimbursement of the expenses incurred by Optibelt.

4. Regardless of the currency and of the jurisdiction of any court, under the circumstances of signing a supplementary agreement or based on the corresponding written seal confirmation documents, Optibelt is entitled at its own discretion to **set off** incoming payments against claims existing against the customer by virtue of his own or assigned rights at the time of payment.

5. Any statutory rights of the customer to **set-off** against claims of Optibelt, to **withhold payment** or taking delivery of the goods, to **suspend** the performance of his obligations or to **raise defences or counterclaims** are excluded, except where the corresponding claim of the customer against Optibelt is in the same currency, is founded in the customer's own right and is either due and undisputed or has been finally adjudicated or where despite written warning by the customer Optibelt has committed a fundamental breach of his obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.

6. The customer undertakes to **take delivery** of the goods at the delivery time without taking any additional period of time and at the place of delivery resulting from section III.-5. and shall fulfil all the duties imposed by the contract, by these General Conditions of Sale, by the rules of the International Chamber of Commerce ("ICC") for the use of Incoterms® 2010 and by statutory provisions. The customer is only entitled to refuse to take delivery of the goods if he terminates the Contract in accordance with the rules in section VII.-1.

7. Irrespective of any statutory provisions, the customer shall at its own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed **waste-disposal** of the goods delivered by Optibelt to the customer and of the packaging material.

### V. Delivery of non-conforming Goods or Goods with Defective Title

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods do **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in PRC. Changes in design, construction or material which reflect technical improvements don't constitute a lack of conformity with the contract. Regardless of the stipulation established in sentence 1, the goods shall be deemed to conform with the contract to the extent that the PRC legal regulations do not prevent the usual use of the goods.

2. To the extent that the written acknowledgement of the order by Optibelt does not contain an explicit statement to the contrary, Optibelt is in particular **not liable** for the goods being fit for a purpose which is not usual in PRC or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal regulations existing outside of PRC. Any assurance or guarantee required by the customer must always be agreed to as such in the written acknowledgement of the order, also in subsequent dealings. Optibelt shall also not be liable for any non-conformity with the con-

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4. 无论货币种类及法院管辖权为何, 债权债务的抵消, 在签订补充协议或基于相应书面盖章确认文件的情况下, 欧皮特对于款项的支付或对冲, 有权自行决定**抵消**其向客户提出的任何请求或索赔, 不论该请求系基于自身权利或受让的权利而获得。

5. 客户享有的任何关于**抵消**对欧皮特索赔的法定权利、**拒绝付款或拒绝提货**、**中止**履行其义务的法定权利或**提出抗辩或反诉**的任何权利均应被排除, 除非客户针对欧皮特的相应索赔系属于同一币种, 且是基于客户本身的权利取得, 是已到期并无可争议的或者已经被判决, 或是尽管客户出具了书面警告, 欧皮特在相同的合同关系下对其应尽义务仍构成了根本性违约, 并且未提供任何足够的保证。

6. 客户承诺会在约定的交付时间及第3条第5款约定的交付地点**提取**货物, 且无任何延迟, 并且应履行合同、本通用销售条款、国际商会有关国际贸易术语解释通则®2010的使用规则的规定和法律规定的全部义务及责任。仅当客户根据第7.1条的规定终止合同时, 客户有权拒绝提货。

7. 无论法律如何规定, 客户应自费保管或以任何其他方式确保欧皮特交付给客户的货物和包装材料的重新使用、材料回收或其他**废物处理**的规定。

### V. 与合同不符货物或所有权瑕疵货物的交付

1. 在不影响法律规定的任何有关排除或减少卖方责任的情况下, 如果客户能够证明, 根据第3条的规定, 在风险转移时, 货物的包装、数量、质量或描述与书面订单确认函中约定的规格显著不同的, 或在缺少约定的规格的情况下, 货物不适合中国境内的通常用途的, 则货物**不符合合同规定**。为技术优化而在设计、施工或材料上的改变不构成不符合合同规定。尽管有前句规定, 只要中国法律的相关规定不会妨碍货物的正常使用, 则货物应被视为符合合同规定。

2. 只要欧皮特的书面订单确认函不包含任何相反的明确声明, 欧皮特**无需**就下述情形**承担责任**: (1) 货物需用于在中国不常见的用途; (2) 货物需达到客户进一步的预期要求; (3) 货物具有与样品或模型相同的质量; (4) 货物符合中国境外的现有法律的相关规定。客户所要求的任何保证或担保, 均须在书面订单确认函及后续交易中予以约定。对于在风险转移时不存在的与合同不符的情况, 欧皮特**无需**承担责任。在未经欧皮特事先书面同意的情形下, 如果客户自己或通过第三方消除了与合同不符之处, 则欧皮特的相应责任将被免除。

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tract that did not exist at the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of Optibelt in writing, Optibelt will be released from his liability.

3. The customer is obliged vis-à-vis Optibelt to examine every single delivery comprehensively for any discoverable or typical lack of conformity with the contract and moreover as required by law.

4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered, made public and in legal force in PRC and prevent the usual use of the goods in PRC. Regardless of the stipulation established in sentence 1, title to the goods shall be deemed not to be defective to the extent that the PRC legal regulations do not prevent the usual use of the goods.

5. Without prejudice to the statutory obligations of the customer to give notice within reasonable time, the customer is obliged vis-à-vis Optibelt to give notice to Optibelt of any lack of conformity with the contract or any deficiency in title within one (1) year after the goods have factually been handed over to him. Such **notice** has to be made in writing and directly to Optibelt and to be formulated in such a precise manner as to enable Optibelt to effect remedy measures without need for further inquiries at the customer and to secure claims against Optibelt's suppliers and moreover as required by law. Optibelt's employees, commercial agents or other sales intermediaries are not authorised to accept notices outside Optibelt's premises or to make any statements concerning lack of conformity with the contract or of title and its consequences.

6. Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these General Conditions of Sale. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature. In the event of **notice not having been properly given**, the customer may only rely on remedies if Optibelt has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by Optibelt as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by Optibelt of the requirement of proper notice.

7. The customer is **not entitled to remedies** for delivery of non-conforming goods or goods with a deficiency in title, insofar as the customer is liable vis-à-vis third parties for conditions of the goods or their fitness for a use which are not subject of the agreement with Optibelt, or if the customer's claim is based on foreign law not in force in PRC.

8. To the extent that the customer in accordance with the terms of these General Conditions of Sale is entitled to remedies because of delivery of non-conforming goods or goods with defective title, he is entitled to demand **delivery of substitute goods or repair or to reduce the price for the goods**. The reduction of the price for the goods is limited to the damages suffered by the customer. Irrespective of the customer's remedies, Optibelt is always entitled in accordance with the provision in section III.-7. to repair goods which do not conform with the contract or to supply substitute goods or to avert the customer's remedies by giving it a credit note of an appropriate amount. Other additional requirements need to be discussed in written form.

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3. 客户有义务对欧皮特的每一次交付进行全面**检查**，以确定是否存在任何可发现的或典型的与合同或法律相关要求不符之处。

4. 在不影响法律规定的任何有关排除或减少卖方责任的情况下，如果客户证明在风险转移时，货物存在第三方的可执行权利或索赔时，则货物存在**所有权瑕疵**。在不影响进一步法律要求及第三方基于工业产权或其他知识产权享有的权利或主张的情形下，并且仅当前述权利在中国注册、公开并具有法律效力的范围内，所有权瑕疵才可构成。虽然有第1句的规定，如果中国法律的相关规定不会妨碍货物的通常使用，货物的所有权不视为存在瑕疵。

5. 在不影响客户有关在合理时间范围内进行通知的法定义务的前提下，在货物被实际交付给客户后的一(1)年内，客户有义务向欧皮特通知任何与合同不符之处或货物在权属方面存在的任何瑕疵。该等**通知**应以书面形式直接送达欧皮特，并且应精确表述以达到可确保欧皮特无需进一步向客户询问即可采取补救措施的程度，以及为保证欧皮特可向其供应商提出相关索赔的程度，并应达到相关法律要求的精准程度。欧皮特的员工、商业代理或其他销售中介无权在欧皮特营业场所外接收通知，亦无权就货物不符合合同约定、所有权瑕疵事项或相关后果做出任何声明。

6. 在欧皮特收到依据第5.5条作出的**适当通知**后，客户可以根据本通用销售条款获得相应的救济措施。客户无权享有其他任何权利或索赔要求，也无权提出任何非合同性质的索赔。如果**通知未能及时、适当发出**，仅当欧皮特以欺诈手段隐瞒货物不符合合同约定或存在所有权瑕疵的情况下，客户才有权获得救济措施。欧皮特关于货物不符合合同约定或存在所有权瑕疵的声明仅为解释实际状况的目的而作出，但不会构成欧皮特对适当通知的要求的任何放弃。

7. 如果客户的索赔系基于在中国无法律效力的外国法律，或当客户有责任向第三方提供的货物需符合一定状态或适用某一种用途，但该等状态或用途并未与欧皮特有过任何约定的情况下，客户就与合同不符的货物或所有权瑕疵的货物的交付不享有任何救济。

8. 如果交付的货物不符合合同约定或存在所有权瑕疵，且根据本通用销售条款的条款，客户有权对此享有救济措施，则客户有权要求交付**替代货物或对货物进行修理，或降低货物的价格**。降价以客户所受损失的数额为限。不论客户要求何种救济措施，欧皮特均有权根据第3.7条的约定修理与合同不符的货物，或提供替代货物，或通过向客户提供适当金额的贷记单来避免客户（采取）的救济措施。其余额外诉求，需以书面文本形式另作商讨。



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### VI. Warranties

1. Subject to section III.-3, without prejudice to any exclusion or reduction of liability of the seller provided by law, Optibelt makes no warranties or representations to the customer except to the extent set out in these General Conditions of Sale.
2. Optibelt warrants the goods to be free from defects in workmanship and materials under normal use and service for a period of 12 calendar months from the date of delivery by Optibelt ("Warranty Period").
3. This warranty does not cover costs of recovery of the goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation by the customer or a third party, failure to perform required preventative maintenance or normal wear and tear.
4. During the Warranty Period, to the extent permitted by law, the customer's sole remedy with respect to breach of warranties will be repair or replacement by Optibelt of any such defective goods at Optibelt's expense. A warranty period of three (3) months is granted for the replaced or repaired goods from the time of delivery or rectification which, however, runs at least until the expiry of the original warranty period.

### VII. Termination of the Contract

1. The **customer** is entitled to **terminate the contract**, if the respective applicable legal requirements are complied with, after he has threatened Optibelt with termination of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, he is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract terminated. In any event, the customer must give notice of termination of the contract in writing upon reasonable time given to Optibelt and to Optibelt directly. For avoidance of doubt, such reasonable period of time in this section VII.1 shall be in no event less than 20 calendar days unless otherwise agreed upon between both Parties.
2. Without prejudice to its continuing legal rights, **Optibelt** is entitled to terminate the contract in whole or in part without compensation if the customer objects to the application of these General Conditions of Sale, if on grounds for which Optibelt is not responsible the written acknowledgement of the order by Optibelt is received by the customer more than fourteen (14) calendar days after its date of issue; if insolvency proceedings relating to the assets of the customer are applied for; if the customer has experienced a change of control due to reasons including but not limited to board member re-election, management change, transfer of stock rights or major assets, separation, merger and acquisition; if the customer without providing a justifiable reason does not meet fundamental obligations due towards Optibelt or towards third parties, in particular, delays its payment for over fifteen (15) calendar days; if the customer has provided inaccurate information regarding its creditworthiness; if customer has transferred its rights or obligations under these General Conditions of Sale or the contract to any third party without prior written consent from Optibelt; if the cover given by a credit insurer is reduced on grounds for which Optibelt is not responsible; if Optibelt through no fault of his own does not receive supplies properly or on time; or if for other reasons Optibelt cannot be expected to fulfil his obligations by means which taking into

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### VI. 保证

1. 受制于第3.3条且在不影响法律规定的任何有关排除或减少卖方责任的情况下, 欧皮特不向客户做任何除本通用销售条款规定之外的保证或陈述。
2. 欧皮特保证, 在欧皮特交付货物后的12个月("质保期")内, 货物在正常使用状态下不会存在工艺及材料上的瑕疵并提供相应服务。
3. 本保证不包含将货物从现场回收的费用, 及由外部原因造成的损坏、故障或失灵, 该等外部原因包括事故、滥用、误用、机械或电机超负荷、磨损、腐蚀、客户或第三方的不正确安装、未能进行所需的预防性维护或正常的磨损。
4. 在质保期内, 在法律允许范围内, 客户就违反保证享有的唯一救济为欧皮特对任何此类有瑕疵的货物的修复或替换, 费用由欧皮特承担。经修复或替换后的货物将获得自交付日期或修复日期起三(3)个月的质保期, 但该质保期应至少持续至原(被修复或替换的货物)质保期期满之日为止。

### VII. 合同终止

1. 在客户向欧皮特作出可能会解除合同的书面通知后, 且以书面形式就合同履行所给予的合理时间已经期满却无任何进展的情况下, **客户有权终止本合同**, 但需遵守相关适用法律的规定。如果客户要求交付替代货物、进行修理或其他履行方式, 其将在一个合理的时限内受到所选救济的约束, 在此期间无法行使其享有的合同解除的权利。无论何种情况, 客户必须在给予欧皮特一定的合理期限后才有解除权解除并应当将解除合同的书面通知直接送达欧皮特。为避免疑义, 除非双方另有约定, 此7.1条下的合理期限在任何情况下都不得少于20个日历日。
2. 在不损害其持续性合法权利的基础上, 如果发生以下情形之一, **欧皮特有权终止全部或部分的合同且无需进行赔偿**: 1)客户反对本通用销售条款的适用; 2)欧皮特对订单的书面确认自出具之日起超过十四(14)个日历日后才送达客户, 且该等延迟非归因于欧皮特一方; 3)与客户资产有关的破产程序申请被提出的; 4)客户的管理权发生变动, 包括但不限于董事会成员改选、管理层变动、股权或主要资产转让、分立、兼并和收购; 5)在无正当理由的情况下, 客户未能对欧皮特或第三方履行应尽的基本义务的, 特别是当延迟付款超过十五(15)个日历日; 6)客户提供的资信情况不准确的; 7)在未事先得到欧皮特书面同意的情况下, 客户将其在本通用销售条款下的权利或义务转让给任何第三方; 8)信用保险公司提供的信用额度因非归因于欧皮特的原因发生减少; 9)欧皮特在无任何过错的情况下无法正常或按时收到其供应商的供货; 10)在考虑到合同订立时欧皮特自身利益以及可确认的客户的合法利益的情况下, 导致欧皮特不会被期待通过不合理的(特别是对等履行不合理)方式履行其合同义务的其他原因。

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consideration his own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

### VIII. Damages

1. Without waiving the legal requirements **Optibelt** is only obliged to **pay damages** due to the violation of obligations resulting from the contract with the customer, the contractual negotiations carried on with the customer or the business relation with the customer in accordance with the following provisions:

- a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.
  - b) **Optibelt is not liable** for the conduct of suppliers or subcontractors or for damages to which the customer has contributed. Neither is Optibelt liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or other circumstances and which cannot be controlled by Optibelt with reasonable means. Moreover, Optibelt is only liable to the extent that the customer proves that the executive bodies or members of staff of Optibelt deliberately or negligently have breached contractual obligations owed to the customer.
  - c) In the event of liability Optibelt will compensate the **losses** of the customer to the extent that the customer proves that it has suffered an unavoidable direct loss caused by the breach of contractual obligations by Optibelt and **foreseeable** to Optibelt, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known. Optibelt shall not be held accountable for further liabilities caused by customer's failure to mitigate his losses with reasonable means.
  - d) Optibelt is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery is limited to 0.5 per cent for each full week of delay, up to a maximum of 5 per cent, and for other breaches of obligations is limited to an amount of 100 per cent of the value of the non-conforming part of the contract. However, this subparagraph does not apply to injury of life, body or health, to fraudulent concealment of the non-conformity or deficiency in title of the goods and to other breaches of contractual obligations due to intentional harm or gross negligence.
  - e) For breach of contractual, pre-contractual and/or obligations resulting from the business relation owed to the customer, Optibelt is obliged to pay damages exclusively in accordance with the provisions of these General Conditions of Sale. Any recourse to **concurrent bases of claim**, in particular of a non-contractual nature, is excluded to the most extent as permitted by the applicable law. Equally excluded is any recourse against Optibelt's company organs, employees, servants, members of staff, representatives and/or those employed by Optibelt in the performance of its obligations on grounds of breach of contractual obligations owed by Optibelt.
2. Irrespective of continuing legal or contractual claims the **customer** is obliged to pay **damages** to Optibelt as follows:
- a) In the event of **delay in payment** the customer will pay the

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### VIII. 损害赔偿

1. 在不放弃法律要求的前提下, **欧皮特**仅在违反其与客户达成的合同、与客户进行的合同谈判或与客户的商业关系所产生的义务时有义务**支付赔偿金**,且应按照以下规定赔偿:

- a) 客户首先需要**依赖其他救济措施**,且仅能在持续性瑕疵的情况下要求赔偿。客户不能要求损害赔偿作为其他救济措施的替代。
  - b) **欧皮特**对供应商或分包商的行为,或客户造成的损失**不负有责任**。欧皮特对自然或政治事件、国家行为、行业争端、破坏行为、事故、恐怖主义、生物、物理或化学过程或其他欧皮特以合理手段不可控的情况造成的障碍同样不负责任。另外,欧皮特仅在客户可以证明欧皮特的执行机构或员工故意或因疏忽违反了其对客户的合同义务时承担责任。
  - c) 在承担责任的情况下,欧皮特赔偿**损失**的前提是客户可证明其因欧皮特违反合同义务而遭受了不可避免的直接损失,且需证明在合同订立时欧皮特可以**预见**此种损失的发生及其数额。另外,客户需要在知道或应当知道违约情况发生之后立即**减轻其损失**。欧皮特不承担任何因客户未能以合理手段减轻损失而导致的进一步责任。
  - d) 欧皮特对利润损失或声誉损失**不负责任**。另外,延迟交付的或未交付对应的**赔偿金数额**不得高于每延迟一整周0.5%的标准,且累计最多不超过5%,对于其他义务的违反,该数额不得高于与合同不符部分对应价值的100%。但是,本分条款不适用于人身伤亡、健康损害,欺诈性隐瞒货物与合同不符或所有权存在瑕疵以及其他由于故意伤害或重大过失违反合同义务的情况。
  - e) 对于合同、合同前义务及/或因与客户的商业关系产生的义务的违反,欧皮特仅有义务根据本通用销售条款的规定支付赔偿金。基于其他同时存在的请求权的任何追索,特别是非合同性质的,应当在适用法律允许的最大限度内予以排除。另外,任何对欧皮特公司机构、雇员、雇工、员工、代表和/或欧皮特在履行义务过程中出于违反其负有的合同义务之原因雇用的人员的追索也将同样排除。
2. 不论客户享有的持续性法律或合同的请求如何,客户有义务按以下规定向欧皮特支付赔偿金:
- a) 如果发生**延迟付款**,每延迟一周,客户需支付延迟付款金额的



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damages at 0.5 per cent on the delayed payment for each full week of delay, as well as the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad.

- b) In the case of a failure to take delivery of the goods by the customer, Optibelt is entitled to claim damages without evidence being necessary up to 10 per cent of the value of the goods to be delivered according to the Optibelt's delivery policy.
3. Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in its commercial relationships with its clients obliged to **limit his liability** both in principle and in amount.

### IX. Limitation of Liability

1. Optibelt's liability under these General Conditions of Sale as well as the contract will be reduced by the amount of any contributory loss or damage to the extent caused by the act or omission of the customer.
2. To the maximum extent permitted by law and notwithstanding any provision to the contrary in these General Conditions of Sale, Optibelt's total liability under each contract (whether that liability arises under contract, tort, equity, statute or otherwise) for any loss, damage or expense arising out of or in connection with the performance of the contract, shall be limited to the purchase price paid by the customer to Optibelt for goods covered by that contract and in no event shall Optibelt be liable for loss of profits, opportunity, revenue, goodwill, use, production, contracts, business or anticipated savings, corruption or destruction of data or for any special or consequential loss or damage whatsoever.

### X. Force Majeure

1. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, epidemics, plagues and defects or delays in deliveries by sub-contractors caused by any such circumstance as referred to in this Clause.
2. A circumstance referred to in this Clause, whether occurring prior to or after the formation of the contract, shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.
3. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.
4. If Force Majeure prevents the customer from fulfilling his obligations, he shall compensate Optibelt for expenses incurred in securing and protecting the goods (if any).
5. Regardless of what might otherwise follow from these General Conditions of Sale, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under Section X for more than six months.

### XI. Other Provisions

1. **Title of the goods** that have been delivered **remains with Optibelt** until settlement of all claims existing against the customer. The

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0.5%作为违约金, 还需支付国内外正常发生的司法和非司法手段和程序的费用。

- b) 如果客户未能接收货物, 根据欧皮特公司提货政策详则, 欧皮特有权要求违约金而无需提供证据, 违约金金额最高可达拟交付货物价值的10%。
3. 在法律允许的范围内以及在符合商业惯例的情况系, **客户**有义务在与其客户的商业关系中在原则上和数量上**限制其责任**。

### IX. 责任限制

1. 欧皮特在本通用销售条款及合同下的责任应根据客户的作为或不作为而引起的损失或损害而相应减少。
2. 在法律允许的最大范围内且尽管在本通用销售条款中有任何相反的规定, 欧皮特在各合同下对任何损失、损害或因合同履行产生的或与合同履行相关的费用的全部责任(不论该责任是由合同、侵权、股权、法规或其他产生)应以该合同下客户向欧皮特支付的货款为限, 且无论何种情况下, 欧皮特对利润、机会、收入、商誉、使用、生产、合同、业务或预期储蓄的损失、腐坏或数据破坏都不负任何责任, 也不对任何特殊或间接损失或损害负责。

### X. 不可抗力

1. 如发生以下阻碍或不合理加重合同义务履行的情况时, 任意一方有权中止其同等义务的履行, 该等情况包括行业争端以及和任何其他双方无法控制的情况, 包括火灾、战争、大规模的军事调动、暴乱、征调、扣押、禁运、权力限制、大规模传染病、瘟疫, 及由于本条款中说明的任何情况导致的外包商瑕疵或延迟交货的情况。
2. 本条款中指明的情况, 无论是在本合同订立之前或之后发生的, 仅在合同订立时无法预见其会对合同履行产生影响的前提下, 才会产生中止履行的权利。
3. 声称受到不可抗力影响的一方应当在受到干预时立即书面通知另一方, 不可抗力事件停止时应当及时书面通知另一方。
4. 如果不可抗力事件阻碍了客户对其义务的履行, 客户应赔偿欧皮特有关货物安全保护方面产生的费用(如有)。
5. 无论根据本通用销售条款会随之发生何种结果, 如果本合同的履行已根据第10条规定中止超过六个月的时间, 则一方有权通过书面通知另一方的形式解除本合同。

### XI. 其他条款

1. 已交付货物的**所有权**应当在所有针对客户的索赔获得支付之前**属于欧皮特**。对于第3.8条下的价格和性能风险的分配不受所有权保



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allocation of risk as to price and performance in section III.–8. is not affected by the reservation of title.

2. The customer shall, without any demand being necessary, inform Optibelt in writing if Optibelt has to observe any particular duties of reporting or registration or providing information or prior notification or **retaining documents** or any other **requirements for access to market**, under the provisions in force in the country where the goods are to be used. Moreover, the customer will **monitor the delivered goods** in the market and inform Optibelt directly and in writing of any concern that the goods might pose a risk to third parties.

3. Without prejudice to Optibelt's continuing claims, the customer will indemnify Optibelt without limit against all claims of third parties which are brought against Optibelt on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which – such as, for example, the presentation of the product – were caused by the customer or other third parties without express written consent of Optibelt. In particular, the indemnity also includes the reimbursement for expenses incurred by Optibelt and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.

4. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by Optibelt in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.

5. All communications, declarations, notices etc. are to be drawn up exclusively in **Chinese or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**. Except thereof are changes in bank accounts. These changes have to be announced per post only in written and signed form.

### XII. General Basis of Contracts

1. The **place of delivery** results from section III.–5. of these General Conditions of Sale. The **place of payment and performance** for all the rest of obligations arising from the legal relationship between Optibelt and the customer is PRC. These provisions also apply if Optibelt assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. The agreement of other clauses of the Incoterms or of other delivery clauses merely involves a variation of the provisions as to the transportation and the transportation costs; besides that, the foregoing provisions remain applicable.

2. The legal relationship with the customer is exclusively governed by the PRC laws, which shall apply, above and beyond their own area of application, and regardless of reservations adopted by other states, to all contracts to which these General Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these General Conditions of Sale.

3. The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, and the **rights and obligations of the parties**, also including the liability for death or personal

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留的影响。

2. 如果根据货物被使用时所在的国家的现行规定, 欧皮特需要遵守任何特别的报告或注册义务, 或需要提供信息、事先告知、**保留文书**或有任何其他**市场准入的要求**, 客户应(无需经要求)书面通知欧皮特。另外, 客户将对**交付的货物进行市场监测**, 并就任何货物可能对第三方造成风险的疑虑直接向欧皮特发出书面通知。

3. 在不损害欧皮特的持续性索赔的基础上, 就第三方基于**产品责任**或类似规定对欧皮特提起的所有索赔, 客户应当无限制进行赔偿, 前提是该等责任是在欧皮特未明确书面同意的情况下由客户或其他第三方导致的, 例如产品展示等。特别说明的是, 该等赔偿还应包括对欧皮特发生的费用的补偿, 且客户对该等赔偿的支付放弃进一步的条件或其他反对意见, 特别是客户不再要求对控制或召回义务的遵守, 且放弃任何法定时效的抗辩。

4. 对于欧皮特提供的以实物材料或电子形式载有的图片、图纸、计算及其他**文件**以及计算机软件, 欧皮特保留所有专有权利、版权、以及其他工业产权和专有技术的权利。

5. 所有通讯、声明、通知等应以**中文或英文**拟定。通过传真或电邮的通讯也应遵守有关**书面通讯**的要求。除了银行账户变动的情况, 变更应当通过邮寄的方式通知, 且应当书面载明并签署。

### XII. 合同的基本依据

1. **交货地点**的确认应依据本通用销售条款第3.5条。**付款地点**和由欧皮特与客户之间的法律关系产生的所有其他义务的**履行地点**是中国。如果欧皮特承担了汇款的费用, 为客户在其他地点履行合同, 或为了获得文件或货物而进行付款, 或如果出现恢复履行的情况, 上述规定应当同样适用。国际贸易术语解释通则其他条款或其他交付条款的约定仅会对运输和运输费用方面的条款产生差异; 除此之外, 前述规定应当适用。

2. 与客户的法律关系仅受中国法律管辖, 此应适用于根据第1条的规定适用本通用销售条款的所有合同, 该等适用超越合同本身的适用领域, 且不论其他国家的权利保留。当适用标准商业条款时, 如存在疑义, 国际商会的国际贸易术语解释通则® 2010应结合本通用销售条款的规定适用。

3. **合同的订立**, 包括关于法院管辖和仲裁员的约定以及**双方的权利和义务**, 还包括由货物引起的任何人员死亡或人身伤害的责任以及先合同义务及随附义务, 以及对此的相关解释应当适用中国法律以及



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injury caused by the goods to any person and pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the PRC laws together with these General Conditions of Sale. The application of United Nations Convention on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) shall be excluded.

4. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these General Conditions of Sale apply, including their validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the parties shall be finally resolved, without recourse to the ordinary courts of law, by arbitration with China International Economic and Trade Arbitration Commission ("CIETAC") according to the applicable arbitration rules in force on the date when the Notice of Arbitration is received in accordance with these rules. The tribunal shall consist of three arbitrators, one (1) of them shall be nominated by the claimant, one (1) of them by the respondent and the chairman of the tribunal shall be designated by the two arbitrators so nominated, or if the amount in dispute is inferior to € 50.000, there shall be one (1) arbitrator appointed according to the arbitration rules of CIETAC. The place of the arbitration shall be Shanghai, PRC, the languages used in the arbitral proceedings shall be Chinese and English. The competence of the arbitral tribunal excludes especially every statutory competence, which is provided by reason of a personal or substantive relation.

5. If provisions of these General Conditions of Sale should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision.

6. These General Conditions of Sale are written in Chinese and English, both of which shall be equally effective and authentic. In case of discrepancy, the Chinese version shall prevail.

## 适用于中国境内客户的通用销售条款

本通用销售条款。对《联合国国际货物销售合同公约》(联合国销售公约/CISG)的适用予以排除。

4. 由适用本通用销售条款的合同产生的,或与之相关的所有合同性的或非合同性的争议以及破产法下的争议,包括该等合同的有效性、无效性、违反或终止,以及由双方的商业关系产生的其他争议都应提交至中国国际经济贸易仲裁委员会(CIETAC)并依据其在接收《仲裁通知》当时适用的仲裁规则通过仲裁解决,而非诉诸普通法庭。仲裁庭应由三名仲裁员组成,其中一(1)名由申请人提名,一(1)名由被申请人提名,而仲裁庭主席由该两名被指定的仲裁员指定;或,若争议金额不足50,000欧元,应有一(1)名按照CIETAC的仲裁规则进行委派的仲裁员。仲裁地点为中国上海,仲裁程序的语言为中文和英文。仲裁庭的管辖权特别排除因个人或实体关系而产生的一切法定管辖权。

5. 如果本通用销售条款的条款部分或完全无效,或变得部分或完全无效,其他约定应当继续适用。双方有义务以法律上有效的条款取代无效条款,且新条款应当尽可能接近无效条款的商业意义和目的。

6. 本通用销售条款以中英文写就,两种语言版本同样真实有效。如两种版本存在歧义,应以中文版本为准。

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