

## 订单条款及条件

**AGREEMENT**

- 1.1. Parties. The terms and conditions set forth below, together with those appearing in this Order and any attachments hereto, including a Statement of Work (collectively, "Order"), constitute an agreement between AGILENT TECHNOLOGIES, INC., or any other AGILENT entity identified on the face of this Order, including any and all applicable subsidiaries ("AGILENT"), and the party identified in the "Issued To" box on the face of this Order ("Seller").
- 1.2. Precedence. In the event of a conflict between this Order and any other written agreement between the parties and specifically covering the same goods or services, the terms and conditions of such agreement shall prevail to the extent of such conflict. A conflict between the terms set forth herein and those set forth in an SOW will be resolved in favor of the SOW. Notwithstanding the above, this Order shall prevail over any differing or additional terms and conditions proposed by Seller, including, without limitation, those contained in any invoice.
- 1.3. No Modification. No modification of this Order shall be binding unless in writing and signed by an authorized representative of each party.

**2. PRICES AND PAYMENT.**

- 2.1. Price. Seller shall sell to AGILENT the goods ("Goods") or services ("Services") shown in this Order at the prices specified. Any forecasts provided by AGILENT were provided as an accommodation to Seller, and shall not constitute a commitment of any type by AGILENT. Except as otherwise provided in this Order, prices are exclusive of applicable freight charges and duties.
- 2.2. Taxes. AGILENT shall be responsible for any applicable sales taxes, provided Seller has submitted appropriate information or documentation to allow AGILENT to recover such taxes as appropriate. AGILENT shall include such taxes with the payment or provide Seller with the appropriate information or documentation to support exemption from such taxes. AGILENT shall have no other or further liability to Seller with respect to any tax, duty, levy or like imposition for which Seller may be liable as a result of the supply of the Goods or Services.
- 2.3. Payment. Unless indicated otherwise on the face of this Order, payment shall be due sixty (60) days after the latter of AGILENT's receipt of either an appropriate invoice from Seller or the relevant Goods or Services. AGILENT may deduct from such payment any monies owed by Seller to AGILENT.
- 2.4. Not Acceptance. Payment by AGILENT shall neither constitute acceptance of the Goods or Services, nor impair AGILENT's right to inspect such Goods or Services or invoke any available remedies.

**3. SHIPMENT AND DELIVERY.**

- 3.1. Shipment Terms. Seller shall ship Goods in the method identified by AGILENT to permit Seller to meet the delivery date(s) identified by AGILENT on the face of this Order ("Delivery Date"). If Seller ships by any other method, Seller shall pay any resulting increase in the cost of freight. Except as specified below, shipments of Goods shall be FCA (as that term is defined in the Incoterms 2010 handbook) Seller's place of shipment/export, and title and risk of loss or damage shall pass from Seller to AGILENT upon Seller's delivery of the Goods to the designated carrier at the place of shipment/export. If AGILENT agrees to pay for applicable freight charges and duties as part of the purchase price, shipment shall be CIP or DDU, and title and risk of loss or damage shall pass from Seller to AGILENT upon Seller's delivery of the Goods to the "Ship To" address identified by AGILENT on the face of this Order.

- 3.2. Costs. Except as otherwise provided in this Order, Seller shall bear all shipping and transport expenses. Seller shall bear all expenses related to handling, packing, packaging, loading and delivery of Goods to the designated carrier, and loading of Goods onto carrier's conveyance.
- 3.3. Packaging. Seller shall handle, pack and package the Goods so as to protect the Goods from loss or damage, in conformance with good commercial practice, AGILENT specifications, government regulations (including those applicable to chemicals and hazardous materials) and other applicable requirements. Without limiting the generality of the foregoing sentence, Seller shall use packaging materials, including pallets, that are free of pests and comply with all applicable regulations regarding Solid Wood Packing Materials; Seller shall use recycled or reusable packaging materials and minimize the number of different types of packaging materials whenever possible; and Seller shall comply with all applicable requirements regarding packaging recycling, re-use and return, and furnish to AGILENT, upon request, information or documentation of Seller's compliance. Seller shall be responsible for any loss or damage due to its failure to handle, pack and package the Goods in a proper and lawful manner; AGILENT shall not be required to assert any claims for such loss or damage against the carrier involved. In each shipment, Seller shall include a packing list that contains the following: (a) this Order number; (b) the AGILENT part number; (c) the quantity shipped; and (d) the requested delivery date. The information on the packing list must agree with the information on Seller's invoice.
- 3.4. Prospective Failure. Failure to meet the Delivery Date specified on the face of this Order shall constitute a breach of this Order. Seller shall give AGILENT notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date. If only a portion of Goods is available for shipment to meet the Delivery Date, Seller shall ship the available Goods unless directed by AGILENT to reschedule shipment. If only a portion of the Services can be performed on the Delivery Date, Seller shall perform such Services unless directed by AGILENT to reschedule performance. Partial deliveries shall be deemed late shipments and be considered complete only when all Goods and Services have been shipped. Notwithstanding the above, upon Seller's notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date, AGILENT reserves the right to terminate the Order and any subsequent Orders without any charge or liability.
- 3.5. Late Shipment. If, due to Seller's failure to ship Goods in a timely manner, the identified method of transportation would not permit Seller to meet the Delivery Date, Seller shall ship the Goods by air transportation or other means acceptable to AGILENT, and shall pay for any resulting increase in the cost of freight.
- 3.6. Early Shipment. If AGILENT receives any shipment more than three working days prior to the Delivery Date, AGILENT may either return the Goods or delay processing the corresponding invoice until the Delivery Date.
- 3.7. Non-Complying Goods. Seller shall be responsible for all risk and expenses, including transportation charges, associated with (a) the return of all Non-Complying Goods (as defined in section 6.1 below), over shipments, and early shipments returned by AGILENT to Seller; and (b) the shipment to AGILENT by Seller of all repaired, replacement and reworked Goods.

**4. CHANGES.**

- 4.1. Change or Cancellation. AGILENT may, without any charge or liability, change or cancel any portion of this Order, provided AGILENT gives Seller

notice (a) for customized Goods or Services (i.e., supplied exclusively in accordance with AGILENT's designs or specifications), at least thirty (30) calendar days prior to the Delivery Date; and (b) for all other Goods or Services at any time prior to shipment.

- 4.2. Actual Costs. If AGILENT changes or cancels any portion of this Order after the time periods set forth above, AGILENT shall be responsible for any resulting costs incurred by Seller that cannot be avoided by commercially reasonable mitigation efforts.
- 4.3. Design or Specification Changes. AGILENT may, without any charge or liability, change, effective upon notice to Seller, AGILENT's designs or specifications at any time prior to shipment of corresponding Goods or receipt of corresponding Services. If any such change directly affects the prices or delivery schedules of Goods or Services, an equitable adjustment may be made, provided that Seller makes a written claim for an adjustment within 30 days of AGILENT's notice and prior to shipment of the Goods or provision of the Services, and provided that such equitable adjustment is documented in writing signed by authorized representatives of both parties. If, after reasonable and good-faith efforts, the parties are unable to agree upon the amount of the adjustment, AGILENT may terminate, without any charge or liability, this Order as to all Goods and Services affected.
- 4.4. No Process or Design Changes. Seller shall not, without the prior written consent of AGILENT, make any process or design changes affecting the Goods.

**5. QUALITY AND WARRANTY.**

- 5.1. Quality Control. Seller shall maintain an objective quality program for all Goods and Services in accordance with (a) the Quality section in the latest revision of [Agilent Supplier Code of Conduct](#); and (b) any general specification set forth in this Order or otherwise supplied by AGILENT. Seller shall furnish to AGILENT, upon request, a copy of Seller's quality program and supporting test documentation.
- 5.2. Conformance Defects and Liens. Seller warrants that all Goods and Services shall (a) conform strictly to the specifications, design criteria, descriptions, drawings, samples and other requirements described or referenced in this Order or provided by Seller; (b) be free from defects in design, materials and workmanship; and (c) be free of all liens, encumbrances and other claims against title.
- 5.3. Non-Infringement Warranty. Seller warrants that all Goods and Services do not and shall not infringe any patent, trademark, copyright, trade secret or other intellectual property right of a third party.
- 5.4. General Warranties. Seller warrants that (a) Goods are new and do not contain any used or reconditioned parts or materials, unless otherwise specified or approved by AGILENT; (b) Goods are manufactured by or for the original manufacturer and do not contain any counterfeit materials; (c) Goods and results of the Services do not use or incorporate any freeware, shareware or open source software, unless otherwise specified or approved by AGILENT; and (d) all Services shall be performed in a professional manner.
- 5.5. Duration of Warranties. Seller's warranties of conformance, defects and liens shall be in effect for the longer of either (i) Seller's normal warranty period, or (ii) one year following the date of acceptance of the Goods or Services by AGILENT. All other warranties provided by Seller under this Order shall be in effect perpetually.

**6. NONCOMPLYING GOODS AND SERVICES.**

- 6.1. AGILENT's Options. In addition to the remedies specified in Section 10 below, if any Goods or Service is defective or otherwise not in conformity with the requirements of this Order ("Non-Complying Goods" and "Non-

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- Complying Services", respectively), AGILENT may either (a) return the Non-Complying Goods for repair, replacement or reworking at Seller's expense; (b) repair the Non-Complying Goods itself and recover its reasonable expenses of repair from Seller; or (c) require Seller to re-perform the Services at Seller's expense.
- 6.2. Time for Compliance. If AGILENT returns the Non-Complying Goods, Seller shall return the repaired, replacement or reworked Non-Complying Goods no later than five working days after receipt of the Non-Complying Goods from AGILENT. If AGILENT requires Seller to re-perform the Non-Complying Services, Seller shall re-perform the Services within five working days after notice from AGILENT that Services are defective or not in conformity with the requirements of this Order. The cure period specified in Section 10.1 below shall apply only once to any breach of this section 6.
- 6.3. Failure to Provide Complying Goods. If Seller fails to return repaired, replacement or reworked Goods to AGILENT within five working days of receipt of Non-Complying Goods, AGILENT may reject the Non-Complying Goods, and Seller shall reimburse AGILENT all associated costs paid by AGILENT. If AGILENT rejects the Non-Complying Goods, AGILENT may terminate this Order and procure, upon such terms and in such manner as AGILENT deems appropriate, replacement goods. Seller shall reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing any such replacement goods.
- 6.4. Failure to Re-Perform Services. If Seller fails to satisfactorily re-perform the Services within five working days after notice from AGILENT, AGILENT may terminate this Order and procure, upon such terms and in such manner as AGILENT deems appropriate, replacement services. Seller shall reimburse AGILENT upon demand for all associated costs paid by AGILENT for the Services, as is equitable under the circumstances, and for all additional costs incurred by AGILENT in purchasing any such replacement services.
- 6.5. End-of-Life Returns. Where lawfully required, Seller shall accept from AGILENT, without any charge or liability to AGILENT, any material included in the Goods or their packaging by return freight prepaid by AGILENT.
- 7. LICENSE**
- 7.1. License Grant. If Goods include software, Seller grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, import, reproduce, and distribute the software in object code form for internal use directly or as integrated into AGILENT products. Seller also grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, import, distribute and offer for sale any copies of the software purchased that remain in the original shrink-wrapped packaging. If Goods include documentation, Seller grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, reproduce, distribute and prepare derivative works in AGILENT's name all documentation furnished by Seller. AGILENT may reproduce such documentation without Seller's logo or other identification of source, subject to affixing copyright notices to all copies of documentation, and Seller hereby waives and shall cause to be waived all applicable moral rights with respect to such documentation. These rights with respect to software and documentation shall extend to (a) third parties to use and reproduce the Goods for AGILENT's internal use; and (b) third-party channels of distribution.
- 8. INDEMNIFICATION, INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION**
- 8.1 Intellectual Property in Results of Services
- 8.1.1 "Intellectual Property" or "IP" shall mean all inventions, patents (including without limitation applications divisions, reissues, reexaminations, terms extensions, continuations, and any foreign counterparts), works of authorship, copyrights (including without limitation registrations, applications and derivatives), trademarks (including without limitation service marks, trade dress, and other marks indentifying a party or its products), designs, processes, mask works, trade secrets, domain names, proprietary technical information and other similar proprietary information tangible and intangible, whether or not registered or registrable.
- 8.1.2 "Pre-existing IP" means IP conceived or developed prior to or independent of performance of this Order. Each party will retain full right, title and interest in and to any Pre-existing IP. Seller will not use any Pre-existing IP in connection with this Order without first obtaining from the owner any rights necessary to enable Seller to fully comply with the terms of this Order. Agilent grants Seller a non-exclusive, non-transferable license (without the right to sublicense) to use and reproduce Agilent's Pre-existing IP provided by Agilent to Seller pursuant to this Order, solely to the extent necessary for Seller to perform its obligations under this Order.
- 8.1.3 Seller hereby agrees to and does irrevocably assign and transfer to Agilent all of its worldwide IP in and to all results of the Services. At Agilent's sole expense, Seller shall execute any documents and take all additional steps as reasonably requested by Agilent to perfect, record, and register such assignment.
- 8.1.4 Seller hereby grants to Agilent a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable license with right to sublicense any Pre-existing IP to the extent necessary for Agilent's full enjoyment and commercial exploitation of the results of the Services as reasonably contemplated by the Order.
- 8.1.5 Indemnification. Seller agrees to defend, indemnify and hold harmless AGILENT and its affiliates, subsidiaries, assigns, subcontractors and customers from and against all claims, losses, demands, fees, damages, liabilities, costs, expenses (including attorneys' fees), obligations, causes of action, suits or injuries of any kind or nature arising from, in connection with or related in any way to any breach or alleged breach of any of the warranties made by Seller or any act or omission of Seller in the performance of this Order.
- 8.2. Infringing Goods And Services. Without limiting the above remedy, if AGILENT's use of any Goods or receipt of any Service is enjoined because of any actual or claimed infringement of patent, trademark, copyright, trade secret or other intellectual property right of a third party (collectively, "Infringing Product"), Seller shall at its expense use its best efforts to procure the right for AGILENT to continue using or receiving the Infringing Product. If Seller is unable to do so, Seller shall at its expense (a) replace the Infringing Product with non-infringing goods or service (as applicable) without loss of functionality; (b) modify the Infringing Product to be non-infringing; or (c) if unable to replace or modify the Infringing Product, refund in full all costs paid by AGILENT for the Infringing Product and reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing any replacement goods or services.
- 8.3. Removal of AGILENT's Trademarks. Unless otherwise specified or approved by AGILENT, Seller shall remove AGILENT's name and any of AGILENT's trademarks, trade names, insignia, part numbers, symbols or decorative designs from all Goods rejected or returned by AGILENT or not sold or shipped to AGILENT.
- 8.4. Confidential Information. Except as required to supply Goods or Services pursuant to this Order or as otherwise instructed by AGILENT, Seller shall not use or disclose any confidential information of AGILENT. Confidential information includes, without limitation, all information designated by AGILENT as confidential; all information or data concerning AGILENT's Goods (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to any AGILENT information assets systems ("IA/S"), including but not limited to, computers, networks and voice mail; and any other information that is of such a nature that a reasonable person would believe it to be confidential.
- 8.5. Limited IA/S Access. Seller's access to AGILENT's IA/S is limited to those specific IA/S, time periods and personnel authorized by AGILENT, and is subject to AGILENT information protection policies. Any other access is expressly prohibited. Seller warrants that it shall comply with these obligations and that access granted hereunder shall not impair the integrity and availability of AGILENT's IA/S. AGILENT may audit Seller to verify compliance. Seller warrants that each employee, agent or subcontractor who performs work pursuant to this Order has been informed of the obligations contained herein and has agreed to be bound by them.
- 9. LEGAL COMPLIANCE**
- 9.1. General Compliance. Seller shall comply with all applicable laws, rules, and regulations.
- 9.2. Other Requirements. AGILENT will have the right, upon reasonable request, to review Seller's processes, books, records, and accounting practices, and compliance with [Agilent's Supplier Code Conduct](#) for any transactions related to this Order until five (5) years after delivery of the Goods and/or Services. Seller will maintain complete records including but not limited to the costs of all materials and services purchased, work subcontracted to other parties and all payroll costs. All records will be maintained in accordance with GAAP or like accounting rules in other jurisdictions and in such manner as may be readily audited. A failure to provide such records upon AGILENT'S request shall be deemed a material breach of this Order.
- 9.3. Chemical Substances. Seller shall provide product material chemical composition data upon request to verify compliance with applicable product chemical content restrictions.
- 9.4. Environmental Compliance. All Goods and their packaging shall comply with all applicable environmental, health and safety (EHS) laws, rules and regulations, including The General Specification for the Environment (GSE) DWG A-5951-1745-1.
- 9.5. C-TPAT In conjunction with providing Goods and Services to AGILENT, Seller shall comply with Customs-Trade Partnership Against Terrorism (C-TPAT) or equivalent supply chain security measures. When requested by AGILENT, Seller shall demonstrate compliance by providing certification thereof to AGILENT.
- 9.6. Supplier Code of Conduct. Supplier shall comply with AGILENT's Supplier Code of Conduct (available at [https://www.agilent.com/supplier/Agilent\\_Supplier\\_Code\\_of\\_Conduct.pdf](https://www.agilent.com/supplier/Agilent_Supplier_Code_of_Conduct.pdf))
- 10. BREACH.**
- 10.1. Breach by Seller. If Seller breaches any provision of this Order, AGILENT may terminate the whole or any part of this Order, unless Seller cures the breach within ten (10) working days after receipt of AGILENT's notice of breach.

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- 10.2 **Definition of Breach.** For purposes of section 10.1 above, the term "breach" shall, without limitation, include (a) any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Seller; (b) the appointment, with or without Seller's consent, of a receiver or an assignee for the benefit of creditors; (c) Seller's failure to provide AGILENT, upon request, with reasonable assurances of performance; or (d) any other failure by Seller to comply with this Order.
- 10.3 **Termination.** In the event that AGILENT terminates this Order in whole or in part as provided above, AGILENT may procure, upon such terms and in such manner as AGILENT deems appropriate, replacement goods or services, and Seller shall reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing such replacement goods or services.
- 10.4 **Rights and Remedies.** The rights and remedies granted to AGILENT pursuant to this Order are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.
- 11. IMPORT/EXPORT REQUIREMENTS.**
- 11.1. **General Compliance.** Seller shall comply with all applicable import and export requirements, and shall furnish to AGILENT, upon request, information or documentation of Seller's compliance, as well as any other information or documentation required to enable AGILENT to comply with such requirements applicable to its receipt of any Goods. Without limiting the generality of the foregoing sentence, Seller warrants the following:
- 11.1.1. **Certification.** Upon AGILENT's request, Seller shall provide AGILENT with an appropriate certification stating the country of origin for Goods, sufficient to satisfy the requirements of (a) the customs authorities of the country of receipt; and (b) any applicable export licensing regulations, including those of the United States.
- 11.1.2. **Required Marking.** All Goods shall be marked (or the container shall be marked if there is no room on the Goods themselves or unless exempted from marking) with the country of origin.
- 11.1.3. **Commercial Invoice.** Seller shall issue a commercial invoice containing, without limitation, the following information: invoice number, invoice date, name and address of the shipper, name and address of the seller (if different from the shipper), name and address of the consignee, name and address of the buyer (if different from the consignee), a detailed description of the Goods, model number, AGILENT part-numbers, serial number of Goods (if goods are serialized), AGILENT-assigned Harmonized Tariff Schedule (HTS) number for the destination country, order number, box number, total number of boxes, total box weight (in kilograms), country of origin, quantities in the weight and measure of the country to which the Goods are shipped, unit price of each Good, value of any customs assists, total invoice value, currency of the invoice, invoice type, Incoterms 2010 term of sale, carrier name and bill of lading number. The invoice must be issued in the language required by the country to which the Goods are shipped.
- 11.2. **Importer of Record.** If any Goods are imported, Seller shall when possible allow AGILENT to be the importer of record, unless otherwise specified or approved by AGILENT. If AGILENT is not the importer of record and Seller obtains duty drawback rights to the Goods, Seller shall furnish to AGILENT, upon request, information and documentation required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to AGILENT.
- 12.1. **No Assignment.** Seller shall not assign its rights or obligations without AGILENT's prior written consent. Any attempted delegation or assignment shall be void.
- 12.2. **Waiver.** The waiver of any term or condition of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition, nor as a waiver of any subsequent breach of the same term or condition.
- 12.3. **Choice of Law.** The terms and conditions of this Order shall be governed by and will be construed in accordance with the laws of China.
- 12.4. **Arbitration.** For purposes of this Section 12.4, the term "Order" shall be limited to transactions exceeding \$300,000 (US). Any dispute arising out of, under, or in connection with the terms and conditions of this Order, including the validity, performance, termination and breach of terms and conditions of this Order, shall be submitted to the China International Economic and Trade Arbitration Commission, located in Beijing, and such dispute shall then be settled by and in accordance with the rules of such Commission in Beijing, and any award by such Commission shall be final and binding on both parties and their respective successors.
- 12.5. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, UNLESS EXPRESSLY PROVIDED OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY. NOTWITHSTANDING THE FOREGOING, SELLER SHALL BE RESPONSIBLE FOR ANY DAMAGES OF ANY KIND UNDER SECTIONS 8 AND 9 ABOVE AND FOR CLAIMS OF BODILY INJURY OR DEATH.
- 12.6. **Non-Restrictive Relationship.** Nothing in this Order shall be construed to preclude AGILENT from producing, distributing or marketing the same or similar goods or services as the Goods or Services provided under this Order or purchasing such same or similar goods or services from other third parties.
- 12.7. **Severability.** If a body of competent jurisdiction holds any term or provision of this Order to be invalid or unenforceable, such term or provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Order will remain in full force and effect.
- 12.8. **Insurance.** When providing Services to Agilent, Seller will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect AGILENT in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders. Seller further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Seller in the jurisdiction or jurisdictions in which Seller's operations take place.
- 12.9. **Privacy.** AGILENT will store and use Seller's personal data in accordance with AGILENT'S privacy statement available at [www.agilent.com/go/privacy](http://www.agilent.com/go/privacy). If Seller is processing personal data on behalf of AGILENT, Seller agrees to comply with all applicable data privacy laws.
- 12.10. **Relationship.** Nothing contained in this Order is intended to create the relationship of a partnership, joint venture, employer employee or principal-agent. In performing this Order, Seller and its subcontractors will act in the capacity of independent contractors and not as agents or representatives of Agilent. Nothing in this Order is intended to or shall create or evidence any employment or co-employment, joint employment, or common-law employment relationship between Agilent and any Seller employees or employees of Seller's subcontractors.

**12. MISCELLANEOUS.**

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## 1. 完整协议

- 1.1 协议双方：以下所述条款及条件和本订单及其任何附件（以下统称“订单”）上显示的条款和条件，包含工作任务书，共同构成安捷伦科技公司或本订单上所确认的其他任何安捷伦法律实体，包括任何子公司、分公司、关联企业与本订单正面所示卖方（以下简称“卖方”）之间的协议。
- 1.2 优先性：如果本订单条款及条件与协议双方就相同产品和服务所签订的任何其他书面协议有冲突，本订单条款及条件将优先适用。如果本订单条款及条件与工作任务书有冲突，将根据有利于工作任务书来处理解决。除此之外，本订单条款及条件优先适用于任何卖方提出的不同的或附加的条款和条件，包括但不限于那些包含于发票内的任何不同的或附加的条款和条件。
- 1.3 不得修改：有关本订单的修改不具有法律约束力，除非该修改以书面形式做出并经双方授权代表签字。

## 2. 价格及发票

- 2.1 价格：卖方应按照指定价格向安捷伦出售本订单所示的商品（以下简称“商品”）或服务（以下简称“服务”）。除非本订单另有规定，任何由安捷伦提供给卖方的预测均为卖方提供适应的便利而不构成任何形式的安捷伦的承诺，上述价格不包含所适用的运费及税费。
- 2.2 税费：安捷伦将负责缴纳所有应缴销售税费，前提是卖方提供了适当的信息和文件同意安捷伦基于合理原因就所缴纳的销售税费得到补偿。安捷伦应将销售税费包含于应付款项中或向卖方提供适当的信息或文件以抵免所缴纳的销售税。安捷伦对于卖方因提供产品和服务而可能需要卖方承担的任何税费没有其他或进一步的责任。
- 2.3 付款：除非在此订单中另有规定，否则付款应于安捷伦收到卖方开具的发票或收到相应的产品或服务二者中较晚的日期后 60 日到期。安捷伦可以从上述付款中扣除卖方所欠安捷伦的任何款项。
- 2.4 非认可：安捷伦的付款既不代表着对产品或服务的认可，也不会削弱安捷伦对上述产品或服务的检验权或要求赔偿的权利。

## 3. 装运和交付

- 3.1 装运期限：卖方应当按照经安捷伦确认的方式运输产品以使卖方的交付符合订单中经卖方确认的交付日期（“交付日”）。除本条以下所规定的运输方式，如果卖方以其他方式运输产品，卖方应支付因采用其他方式运输产品所增加的运费。除以下有明确规定的情况之外，货物运输应采用卖方发货地 / 出口地 FCA 条款（定义见《国际商会国际贸易术语解释通则 2010 版》手册），并且货物的所有权以及损失 / 损害风险自卖方在发货地 / 出口地将货物交付给所指定的承运人之时由卖方转移给安捷伦。如果安捷伦同意支付适用的运费和关税，并将其合并入货款内，货物运输应采用 CIP 或 DDU 条款，并且所有权和产品灭失或损坏的风险自卖方将产品交付到本订单中经买方确认的“运至地”的地址后由卖方转移至买方。
- 3.2 费用：除非本订单中有相反的规定，卖方应当承担所有装船费和运输费。卖方应当承担所有与产品的搬运、捆扎、打包、装运和将产品交付给指定的承运人及将产品装上承运人的运输工具有关的费用。
- 3.3 包装：卖方应按照通常的商业惯例、安捷伦的规定、国家的规定（包括有关化学物品和危险品的规定）及其他适用的要求来搬运、捆扎、打包、产品以使其免于灭失或损坏。在不对上述规定的普遍

性进行限定的前提下，卖方应当使用不含有害物且符合所有有关固体木制包装材料的规定的包括托盘在内的包装材料；卖方应尽可能地使用再生的或可重复使用的包装材料并应尽量减少使用不同种类的包装材料的数目；卖方应遵守所有有关包装物的循环使用，再利用及回收的规定，并根据安捷伦的要求提供卖方遵守上述规定的信息或文件。卖方应当就因其未按照适当且合法的方式搬运、捆扎和包装产品而造成的灭失或损害承担责任；安捷伦不应被要求向有关承运人就上述灭失或损害进行索赔。在装船时，卖方应当将包含下列事项的装箱单一并装船：(a) 本订单的订单号；(b) 安捷伦的件号；(c) 装运产品的数量；和 (d) 要求的交付日期。装箱单上的信息必须与卖方发票上的信息一致。

- 3.4 预期迟延：未按本订单所规定的交付日交付产品将构成违约。卖方应就其不能如期交付产品或服务提供给予安捷伦通知。如果仅有一部分产品可以如期交付，卖方应将该部分产品如期发运，除非安捷伦做出重新确定装运日期的指示。如果只有部分服务可以如期提供，卖方应如期提供该部分服务，除非安捷伦做重新确定提供服务的时间的指示。部分交付将被视为迟延发运且只有在发运了全部产品和提供了全部服务后才视为完成了交付。
- 3.5 迟延发运：如果由于卖方的过失使得产品未能及时装运，从而导致已确定的运输方式不能够将产品在交付日交付，卖方应当以空运或其他安捷伦可以接受的方式发运产品，并承担由此产生的增加的运费。
- 3.6 提前发运：如果安捷伦在交付日前三个工作日之前收到任何发运的产品，安捷伦可以将产品退回或推迟处理相应的发票直到交付日。
- 3.7 不符要求的产品：卖方应就下列事项承担全部的风险及费用，包括交通费：(a) 所有安捷伦至卖方的就不符合要求的产品（见以下 6.1 的规定）、多余的产品及提前发运的产品退运，和 (b) 卖方运至安捷伦的所有修理、替换和重做的产品。

## 4. 变更

- 4.1 变更或取消：如果安捷伦就下列事项给予卖方通知，安捷伦可以变更或取消本订单的任何部分而不承担任何费用或责任，(a) 对于专门定制的产品或服务（根据安捷伦的方案或规格专门向安捷伦提供）至少提前于交付日三十（30）个日历日通知卖方；和 (b) 对于其他产品或服务在发运前的任何时候通知卖方。
- 4.2 实际费用：如果安捷伦在以上第 4.1 节规定的时间之后变更或取消本订单的任何部分，安捷伦应承担经过卖方合理的努力以减少运费但仍不可避免而增加的费用。
- 4.3 方案或规格的变更：安捷伦可以在相应的产品发运前或服务接收前任何时候变更其方案或规格而不承担任何费用或责任，该变更自给予卖方通知时生效。如果该变更直接影响到产品或服务的价格或交付安排，可以对此做出公平的调整，前提是卖方在收到安捷伦的通知后 30 日内且在产品发运或服务提供之前书面要求做出调整，并且该公平的调整以书面形式做出并经双方授权代表签字。如果双方无法通过合理和诚信的努力就调整的数额达成一致，安捷伦可以终止有关受影响的产品和服务的订单而无须承担任何责任。
- 4.4 不得更改工艺或方案：未经安捷伦事先书面同意，卖方不得做出任何会对产品造成影响的工艺或方案变更。

## 5. 质量及保证

- 5.1 质量控制：卖方应建立有一套客观的质量方案。该方案应当依照 (a) 最新的安捷伦供应商质量行为准则中的质量章节；和 (b) 本订单中或由安捷伦另行提供的一般规格。经安捷伦要求，卖方应当向安捷伦提供上述方案以及配套测试文件资料的复印件。
- 5.2 规格相符和担保物权：卖方保证所有商品及服务 (a) 与本订单规定的或卖方提供的设计标准、规格、图纸、样品和其他要求严格相符，(b) 在设计、材料和制造工艺上没有任何缺陷，(c) 不受任何留置权、抵押权和其他权力要求的约束。
- 5.3 不侵权保证：卖方保证所有产品和服务不得侵犯第三方的专利权、商标权、著作权、商业秘密和其他知识产权。
- 5.4 一般保证：卖方保证 (a) 产品是新的而且不含有任何用过的或经修理的零件或材料，除非经安捷伦规定或同意；(b) 商品由原厂生产或为原厂生产；(c) 产品与服务成果不能使用或结合任何免费软件、共享软件或公开的原始码软件，除非经安捷伦规定或同意；且 (d) 所有服务应以专业的方式提供。
- 5.5 保证的期间：卖方关于规格相符和担保物权的保证应于以下两个期间中更长的一个期间内有效：(i) 卖方通常的保证期间，或 (ii) 安捷伦接受产品或服务之日后一年内。本订单下卖方提供的所有其他保证永久有效。

## 6. 不合格产品和服务

- 6.1 安捷伦的选择权：除了以下第 10 条规定的赔偿补救措施外，如果任何产品或服务有缺陷或不符合本订单的规定（分别称为“不合格产品”和“不合格服务”），安捷伦可以 (a) 将不合格的产品退回，由卖方自费进行替换或返工，或 (b) 对不合格产品进行修理，并由卖方补偿安捷伦的合理修理费用，(c) 要求卖方自费重新提供服务。
- 6.2 返修时间：如果安捷伦将不合格的产品退回，卖方应当在自收到不合格产品后不迟于 5 个工作日内对不合格产品进行修理、替换或重作并返回给安捷伦。如果安捷伦就不合格的服务要求重新提供服务，卖方应当在收到安捷伦有关服务有缺陷或不符本订单的规定的通知后 5 个工作日重新提供服务。以下第 10 条规定的补救期对于违反本条规定的情况仅适用一次。
- 6.3 未能提供合格产品：如果卖方未能在收到不合格的产品后 5 个工作日内将修理、替换或重做的产品返回至安捷伦，安捷伦可以拒收不合格的产品，卖方应当赔偿安捷伦所支付的与不合格产品有关的所有费用。如果安捷伦拒收不合格产品，安捷伦可以终止订单并以认为合理的条件和方式采购替代品。卖方应当根据要求补偿安捷伦因采购上述替代品而支付的所有额外的费用。
- 6.4 未能重新提供服务：如果卖方在收到安捷伦通知后 5 个工作日内未能满意重新提供的服务，安捷伦可以终止订单并以认为合理的条件和方式采购替代服务。在平衡补偿情形下，卖方应当根据要求偿付所有安捷伦对此服务已经支付的相关费用，以及安捷伦因采购上述替代服务而支付的所有额外的费用。
- 6.5 报废产品返还：如果法律允许，卖方应当接受由安捷伦退回的已预先支付运费的报废产品或其包装中的任何材料，并且不要求安捷伦承担任何费用或责任。

## 订单条款及条件

## 7. 许可

7.1 许可授予: 如果产品中含有软件, 卖方授予安捷伦为内部使用的目的全球范围的非独占性的免费许可, 以直接使用、进口、复制及分发该软件的目标代码或其集成于安捷伦的产品中。卖方还授予安捷伦一项全球范围的非独占性的免费许可为销售所购买的原装软件的拷贝而使用、进口、分发和发出要约。如果产品中含有文档, 卖方授予安捷伦一项全球范围的非独占性的免费许可以安捷伦的名义使用、复制、分发该文件及进行由此派生的工作。安捷伦可以对该文件进行复制而不加入卖方的公司标志和其他表示信息来源的标志, 但应当在所有文件的拷贝上加注有关版权的通知, 卖方在此放弃或要求别人放弃于该文档有关的名义上的权利。上述与软件和文档有关的权利将延伸、流程、适用于 (a) 为安捷伦内部使用的目的而由第三方使用和复制; 和 (b) 有第三方做分销商时。

## 8. 免责、知识产权和机密信息

## 8.1 服务成果的知识产权

8.1.1 "知识产权" 是指所有的发明、专利权 (包括但不限于应用类、再发行、再审查、期限延长、延续的与其他国外的副本专利)、著作权、版权 (包括但不限于登记注册、申请和衍生)、商标 (包括但不限于服务标识、商标, 与其他可以辨别是一个个体或产品的标识)、设计、电路布图作品、商业秘密、域名、专利技术信息, 与其他相类似不论是否登记或可得登记的有形与无形的专利信息。

8.1.2 "事先存在的知识产权" 是指在履行本订单前或无关于本订单, 已经取得的知识产权。卖方任何一方对任何事先存在的知识产权保有权利、资格与利益。为使卖方能完全符合本订单条款, 卖方未取得事先存在的知识产权所有人的授权, 不能使用该事先存在的知识产权。安捷伦授予卖方一个非独占性的、不可转让的许可 (无转让许可的权利) 且仅在为履行本订单下业务为目的而使用和复制安捷伦所提供基于本订单给卖方的安捷伦的事先存在的知识产权。

8.1.3 卖方同意不可撤销地转让或授予安捷伦所有于服务成果上的全球性的知识产权。由安捷伦自行承担费用, 当安捷伦合理要求下, 卖方应提供必须的文件与采取必要的协助, 使安捷伦能完成、记载与登记本项转让事项。

8.1.4 卖方应向安捷伦授予非排他性的、全球性的、免授权费用的、不可撤销的、永久性的、与可转让授权任何事先存在的知识产权的许可使用权, 以使安捷伦能符合本订单册的充分享有服务成果与商业利用服务成果。

8.1.5 免责: 卖方同意对于由于其违反保证或被指控违反保证而导致或与该违反有关的任何索赔、损失、要求、收费、损害赔偿、责任、费用、支出 (包括律师费)、义务、案由、诉讼或伤害, 卖方应独立承担诉讼和赔偿, 保障安捷伦及其关联公司、子公司、受让人、分包商和客户不会因为上述原因而受到损害并予以免责。

8.2 侵权产品和服务: 在不对上述补偿做出任何限制的前提下, 如果安捷伦或其附属机构、分公司、受让人、分包商或客户被禁止使用任何商品或服务 (以下简称"侵权产品"), 卖方应自费尽最大努力获得继续使用侵权产品的权利。如果卖方无法做到这一点, 卖方应自费 (a) 用非侵权产品替换侵权产品, (b) 将侵权产品改为非侵权产品, 或 (c) 在无法替换或修改侵权产品的情况下, 退还安捷伦为侵

权产品支付的所有费用并根据安捷伦的要求补偿安捷伦 因购买替代产品或服务而产生的额外费用。

8.3 去除安捷伦商标: 除非另有约定或经安捷伦同意, 对于被安捷伦拒收、退还或安捷伦没有购买或没有运至安捷伦的所有商品, 卖方应从此类商品上去除安捷伦的名称以及安捷伦的任何商标、商号、标记、件号、标志或装饰性设计。

8.4 机密信息: 除非本订单另有规定或安捷伦另有指示, 卖方不得使用或披露其从安捷伦获得的、或以其他方式得到或发现的安捷伦的任何保密信息。"保密信息" 包括但不限于安捷伦指定的所有保密信息、与安捷伦的产品 (包括产品的发现、发明、研究、改进、开发、生产或销售) 或一般业务活动 (包括成本、预测、利润、定价方法和程序) 相关的所有信息或数据、通过访问任何"信息资产/系统 [IA/S]" (即计算机、网络、语音邮件等) 获得的信息以及以上没有专门描述的、任何有理智的人都认为属于保密性质的信息。

8.5 IA/S 准入限制: 对信息资产/系统的访问限于特定的信息资产/系统、特定时段以及经安捷伦授权的特定人员, 同时对信息资产/系统的访问应服从安捷伦的信息保护政策。明确禁止卖方使用任何其他信息资产/系统、在其他时段使用特定的信息资产/系统或未经授权的人员使用上述信息资产/系统。即使卖方被授权的某一信息资产/系统是通向卖方被授权范围之外的其它信息资产/系统的渠道取得的, 上述禁止应同样有效。卖方保证其将遵守这些义务, 并保证其按照本协议获得的访问权不会破坏安捷伦信息资产/系统的完整性和可用性。安捷伦可以对卖方进行检查, 以验证其是否曾遵守其义务。卖方保证其每个按照本协议执行工作的雇员、代理商或分包商都了解本协议所包括的义务, 并同意受该义务的约束。

## 9. 遵守法律

9.1 普遍遵守: 卖方应当遵守所有适用的法律、规则和规定。

9.2 其他要求: 在商品和/或服务交付后的五 (5) 年内, 安捷伦 有权就与本订单有关的任何交易, 在提出合理要求后, 审查卖方的流程、账簿、记录和会计惯例, 以及对 安捷伦《供应商行为准则》的遵守情况。卖方将保有完整记录, 包括但不限于采购的所有材料和服务成本、分包给其他方的工作成本以及所有用工成本。所有记录将根据 GAAP 或其他司法管辖区的类似会计规则以可随时审计的方式保有。未能应 安捷伦 要求提供此等记录应视为对本订单的实质性违反

9.3 化学物质: 卖方应当根据要求提供产品材料的化学成分数据, 以确保产品符合适用的产品化学物质含量的限制。

9.4 环境达标: 所有产品及其包装都应当符合适用的环境、健康和安全的 (EHS) 的法律、政策和法规, 包括通用环境准则 (GSE)。DWG 文件 A-5951-1745-1。

9.5 海关贸易伙伴反恐计划。在向安捷伦提供产品和服务的同时, 卖方应当遵守海关贸易伙伴反恐计划或同等的供应链安全措施。卖方应当按照安捷伦的要求向其提供相关的证明以显示其遵守这一条件。

9.6 供应商行为准则。供应商应当遵守安捷伦供应商行为准则 (网址: [https://www.agilent.com/supplier/Agilent\\_Supplier\\_Code\\_of\\_Conduct.pdf](https://www.agilent.com/supplier/Agilent_Supplier_Code_of_Conduct.pdf))

## 10. 违约

10.1 卖方违约: 如果卖方违反本订单任何规定, 安捷伦可全部终止本订单或终止本订单的任何部分, 除非卖方在收到安捷伦的违约通知后十个工作日内能够对其违约行为进行纠正。

10.2 违约的定义: 为了以上第 10.1 节的目的, "违约" 一词应包括但不限于以下任何情况: (a) 卖方自动进入了破产程序或被宣告破产; (b) 无论卖方是否同意, 已经指定了债权人或受让人; (c) 未能在安捷伦提出要求的情况下向其提供合理的履约保证; 或 (d) 其他未能履行本订单规定的义务的情况。

10.3 终止: 如果安捷伦按照上述规定全部或部分终止本订单, 安捷伦可以按照其合理地认为适当的条款和方式采购与被终止本订单中所包括的产品或服务的替代品或服务。经安捷伦要求, 卖方应补偿安捷伦在采购替代产品或服务的过程中发生的所有额外费用。

10.4 权利和补救: 按照本订单赋予安捷伦的权利和补偿是对法律所规定的其它权利或补偿的补充, 前者不应限制或影响后者。

## 11. 进口/出口规定

11.1 普遍遵守: 卖方应当遵守所有适用的进口和出口方面的规定, 并且应当根据要求向安捷伦提供有关卖方遵守法律规定及其他方面的信息或文件以使安捷伦在其接收产品时符合有关进出口方面的规定。在不反对前述规定的普遍适用性做出限制的前提下, 卖方保证遵守下列事项:

11.1.1 证明: 基于安捷伦的要求, 卖方应当安捷伦提供适当、充足的产品原产地证明以满足下列要求: (a) 产品接收国海关的要求; 和 (b) 任何适用的出口许可规定, 包括美国的出口许可规定。

11.1.2 需要的标记: 所有产品必须标有生产地 (如果产品本身没有地方标记产地名称或不允许在产品上标记原产地, 则应在产品的外包装上标上生产地)。

11.1.3 商业发票: 卖方应当开具包含下列事项而不加限制的商业发票: 发票号、发票日期、发货人的名称及地址、卖方的名称和地址 (如果与承运人不同)、收获人的名称和地址、卖方的名称和地址 (如果与承运人不同)、产品的详细描述、样品号、安捷伦根据协调收费方案对于目的地设定的号码、订单号、箱号、总箱数、总箱重 (以公斤计)、原产地、货物运至国有关重量和测量的单位, 每种产品的的单位价格、海关协助价值、全部发票价值, 发票的货币币种、发票种类、有关销售的 2010 年贸易术语、承运人名称和提单号。发票必须以产品接收国要求的语言开具。

11.2 记录上的进口方: 如果产品被进口, 卖方应当在可能时允许安捷伦作为记录上的进口方, 除非另有规定或经安捷伦同意。如果安捷伦不是记录上的进口方, 而卖方获得了有关产品退税的权利, 卖方应当基于要求向安捷伦提供接收国海关要求的信息和文件以证明进口的事实及将退税的权利转移至安捷伦。

## 12. 其他

12.1 不得转让: 如无安捷伦事先书面同意, 卖方不得转让其权利和义务。任何试图委托他人或转让的行为均无效

12.2 弃权: 对本订单任何条款或条件的弃权必须以书面形式做出。对于双方书面认可以外的其他任何条款或条件的弃权都不能被解释为弃权, 并且对已经构成违约的条款或条件的弃权不能被解释为弃权。

## 订单条款及条件

- 12.3 适用法律：本订单条款和条件适用中华人民共和国法律并依其进行解释。
- 12.4 仲裁：此 12.4 款中的“订单”仅限于超过 300,000 美元的交易。本订单项下的条款和条件所产生或与之有关的争议应提交中国国际经济贸易仲裁委员会在北京依其仲裁规则仲裁。仲裁裁决是终局的并对双方及其权利义务继承者都有约束力。
- 12.5 责任限制：除非有相反的规定，在法律所允许的最大范围内，在任何情况下任何一方都不对基于合同、侵权或其他法律根据任何间接的、特殊的、偶然的或结果性的损失承担责任。尽管有前述规定，卖方仍应当就第 8 条和第 9 条项下的损害与人身伤害或死亡的损害承担责任。
- 12.6 非限制关系：本订单不应被视为排除安捷伦生产、分销或市场宣传本订单下相同或类似的产品或服务或从第三方处采购相同或类似的产品或服务。
- 12.7 可分性：如果本订单条款和条件中的任何条款或规定被有权机关认定无效或无约束力，其他条款和规定仍保持合法有效。
- 12.8 保险：当提供服务给安捷伦时，卖方应担保并提供必须的保险，保险范围包括第三人身体伤害（个人伤害）责任险，足够补偿安捷伦所受到的伤害或损失的财产保险，并且需符合当地的法律、法规或法令。在当地法律管辖范围内或卖方营业发生地的法律管辖范围内，卖方更应参考商业习惯上就类似规模的公司与类似经营项目的公司，也比照提供给安捷伦任何附加的保险项目与保险上限。
- 12.9 隐私：安捷伦将按照安捷伦隐私声明条款（该条款可以在 [www.agilent.com/go/privacy](http://www.agilent.com/go/privacy) 上查看）的规定存储和使用卖方的个人信息。如果卖方代表安捷伦处理个人信息，则卖方同意应遵守所有适用的有关隐私保护的法律法规。
- 12.10 关系：本订单中没有任何条款和内容旨在建立任何合伙、合资、雇佣与被雇佣或代理的关系的意思表示。卖方及其分包商是以独立合同当事人或承包商而非安捷伦的代理或代表的身份执行本订单。本订单没有任何条款和内容旨在或应当被视为证据在安捷伦和卖方的雇员或卖方分包商的雇员建立了雇佣、联合雇佣、共同雇佣或基于普通法系所认定的雇佣关系。