

EQUIPMENT SALE AGREEMENT

设备出售协议

THIS EQUIPMENT SALE AGREEMENT (this **Agreement**) is entered into in [May] on [26] 2011 by and between:

本设备出售协议(以下简称“本协议”)于 20__年[]月[]日在[上海]由以下两方签署:

- (1) **XXX** (hereinafter referred to as the **Seller**) a limited liability company duly incorporated and registered under the laws of the People's Republic of China, having its registered address at [XXXX], with its contact information at [XXXX], People's Republic of China; and

XXX (以下简称为“**卖方**”), 一家根据中华人民共和国法律设立登记的有限责任公司, 其注册地址为[XXXX], 其联系方式为[XXXX]。

- (2) **XXX.**, (hereinafter referred to as the **Buyer**) a limited liability company existing and organised under the laws of the People's Republic of China (registration number: [310228001346071]) having its registered address at [XXXX], with its contact information at [XXXX], People's Republic of China; and

XXX (以下简称为“**买方**”), 一家根据中华人民共和国法律组建和存续的有限责任公司(注册号为 **XXX**), 其注册地址为 [XXX], 其联系方式为[XXXX]。

In the following, the Seller and Buyer shall be individually referred to as a **Party** or collectively referred to as the **Parties**.

在下文中, 卖方与买方单独称为“一方”, 合称为“双方”。

1 Definitions

定义

In this Agreement:

在本协议中:

Agreement means this Equipment Sale Agreement and includes the Schedules;

协议指包括附件在内的本设备出售协议;

Equipment means the equipment and goods listed in Schedule 1;

设备指本协议附件 1 中列明的设备和物品;

Days means calendar days;

日指日历日;

Price means RMB [] (Renminbi []) (including tax) representing the agreed value of the Equipment;

价格指 RMB (人民币) (含税), 代表设备的约定价格;

Project Safety Agreement means the Project Safety Administration Agreement signed on even date herewith by the Buyer and the Seller and attached as Schedule 2; and

项目安全协议指由买方和卖方于本协议同一天签署的项目安全管理协议, 在此作为附件 2;

Confidentiality Agreement means the confidentiality agreement attached hereto as Schedule 3; and

保密协议在此作为附件 3;

RMB means the lawful and circulating currency of the People's Republic of China.

人民币指中华人民共和国法定流通货币。

2 Sale of Equipment

设备的出售

- 2.1 The Seller agrees to sell, and the Buyer agrees to buy, the Equipment at the Price.

卖方同意根据约定价格出售、买方亦同意以约定价格购买设备。

- 2.2 The payment of the Price must be made in full in cash by bank transfer within [Three (3)] Days after the execution of this Agreement. The payment of the Price must be received by the Seller before the Equipment is removed from the Seller's premises by the Buyer.

相关一切价款必须在本协议签署之日起三 (3) 日内以现金转账方式全部支付。买方须在从卖方的场地搬离设备之前向卖方支付相关一切价款。

- 2.3 Seller's Payment Details

Account Name:

Bank of Deposit:

Bank Account Number:

Tax Identification Number:

Telephone:

Address:

卖方收款信息:

开户名:

开户行:

银行账号:

税号:

电话:

地址:

3 Pick-up of the Equipment

设备的提取/搬离

- 3.1 The Buyer shall pick up the Equipment from the Seller's premises at its own costs before the 20 after the execution of this Agreement. Title in, and risk of loss of all the Equipment shall pass from the Seller to the Buyer upon the commencement of the pick-up by the Buyer.

买方应在本协议签署之日起至 20 年 月 日 内自费从卖方的场地提取设备。设备的所有权以及损毁的风险应在买方开始提取设备起由卖方完全转移至买方。

- 3.2 The Buyer shall assume all risks of the pick-up or other work to be performed by the Buyer on the Seller's premises (such as, but not limited to, dismantling, handling, or packaging of the Equipment). The Buyer will save and hold Seller harmless from and against all liability, claims and demands on account of personal injuries, including death, or property loss and damage to others (including the Seller and employees of the Seller or the Buyer) arising out of or in any manner connected with the performance of such work, and caused by the negligent or wilful act or omission to act of the Buyer or its employees, and the Buyer will at his own expense defend any and all actions based thereon and will pay all charges of attorneys and all costs and other expenses arising therefrom.

The Buyer will not subcontract any portion of the work without prior written permission of the Seller.

买方应承担提取设备的所有风险以及（包括但不限于拆除、操作或包装设备）须在卖方场地进行的其他工作。买方应使卖方免于承担任何由提取工作产生的或与其相关的、且因买方或其员工的疏忽或故意行为或不作为造成的人身伤害（包括死亡）、财产损失或第三方的损害（包括卖方及其员工、或买方）的所有责任、主张和要求。买方将自费对任何和所有基于上述原因而产生的诉讼进行抗辩，并支付所有的律师费和成本以及其他产生的费用。未经卖方事先书面允许，买方不得将提取工作的任何一部分进行分包。

- 3.3 The transfer of each Equipment unit shall encompass solely the machine body (including its mechanical/electrical accessories) downstream from the circuit breaker of the electrical cabinet. As expressly detailed in Schedule 1, the scope excludes cutting tools, wiring, systems, and any items not listed therein, located upstream of or at the circuit breaker of the electrical cabinet.

每台设备的转让范围，仅包括从电气柜断路器以下的机床主体及其机械/电气附件。根据附件一，明确不包含刀具、电气柜断路器及以上部分的线路、系统及任何未在清单中列明的物品。

- 3.4 The Buyer shall submit its construction and work plan to the Seller at least three (3) business days prior to the scheduled equipment retrieval. The Buyer may proceed with retrieval only upon obtaining the Seller's prior written approval. Any breach by the Buyer of this clause shall entitle the Seller to deny site access, order cessation of work, and treat such breach as a fundamental breach of this Agreement.

买方应在提取设备前 3 个工作日，向卖方提供施工作业方案。经卖方书面许可后，买方可进场提取设备。买方违反本款任一约定的，卖方有权拒绝其进场或要求停工，并视为买方根本违约。

- 3.5 The Buyer's right to take delivery and retrieve the Equipment under this Agreement is conditional upon the full and final settlement of the total Equipment purchase price by the Buyer.

买方在本协议项下的设备交接与提货，均以买方全额付清全部设备价款为前提。

4 Insurance and Safety Policy

保险与安全政策

- 4.1 The Buyer shall obtain insurance coverage satisfactory to the Seller to pick up the Equipment from the Seller's premises. Such insurance shall include, without limitation, Employee's Compensation, Employer's Liability, and Public Liability (Bodily Injury, Property Damage, and Contractual Liability) in

amounts of no less than RMB 3,000,000 with such companies as shall be satisfactory to Seller. The Buyer shall forward the corresponding certificates of insurance evidencing such coverage to the Seller before the commencement of the pick-up of the Equipment.

买方应就从卖方场地提取设备购买令卖方满意的保险。保险应涵盖但不限于员工赔偿、雇主责任和公众责任（人身伤害、财产损失以及合同责任），承保的公司应符合卖方的要求，保险的额度不低于人民币 300 万元。买方应在开始提取设备之前将证明涵盖上述保险范围的相应保险单证交付给卖方。

- 4.2 On the date of this Agreement, the Buyer has entered into a Project Safety Administration Agreement with the Seller attached as Schedule 2 hereto (the **Project Safety Agreement**). The provisions of the Project Safety Agreement are hereby made an integral part of this Agreement and shall be equally binding upon the Parties.

在本协议签订之日，买方与卖方即已签订了作为本协议附件 2 的项目安全管理协议（“项目安全协议”）。项目安全协议的条款将作为本协议不可分割的组成部分，对双方具有同等的约束力。

5 No warranty

卖方的不保证声明

- 5.1 The Buyer acknowledges and understands that the Seller purchased the Equipment from a third party in the past for use in the Seller's business, that the Seller has used the Equipment in its business, and that accordingly the Equipment is USED EQUIPMENT and not of the Seller's manufacture.

买方确认和了解，该等设备系卖方过去从第三方处购买并用于卖方的业务，且卖方已在其业务中使用了设备，因此该设备是二手设备，而非卖方制造。

- 5.2 The Seller makes no warranty or representation whatsoever, express or implied, oral or written, concerning the Equipment. The Equipment is sold "ASIS" and WITH ALL FAULTS. The Seller makes NO WARRANTY to the Buyer as to the WORKING CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE of the Equipment. The description of the Equipment in Schedule 1 shall not constitute a warranty, but is only for the purpose of identification.

卖方不对设备做任何形式的保证或陈述，无论是明确的或是暗示的、口头的或是书面的。设备应按现状出售，且不保证没有瑕疵。卖方就设备的运行状态、适销性或特定目的的适用性对买方不作保证。附件 1 中对设备的描述不应构成保证，而仅用于验明之目的。

- 5.3 The Buyer acknowledges that the Seller has not inspected or tested the Equipment before the sale but that the Seller has given the Buyer an opportunity

to thoroughly inspect and test the Equipment before the consummation of this sale.

买方确认在出售前卖方没有检查或测试设备，但卖方已给予买方机会在本出售完成前对设备进行检查和测试。

- 5.4 The Buyer agrees to remove any and all trademarks, distinctive markings and designs of the Seller or the Seller's group which may appear on the Equipment, and to refrain from making any use of such trademarks, distinctive markings and designs.

买方承诺对可能出现在设备上的卖方或卖方集团的任何和所有的商标、独特的标示和设计予以去除，且同意不使用任何此类商标、独特的标示和设计。

- 5.5 The Seller shall provide the Buyer with the existing electrical drawings and manuals for the Equipment, without any representation or warranty as to the completeness, accuracy, or fitness for purpose of such materials.

卖方向买方提供其现存的设备电器图纸及说明书，但不对该等资料的完整性、准确性及适用性作任何保证。

- 5.6 The Parties hereby acknowledge that this Agreement constitutes a one-time, outright sale of the Equipment. Commencing from the date of Equipment retrieval, the Seller shall have no obligation to provide any form of after-sales service, technical support, or quality assurance with respect to the transferred Equipment.

双方确认，本协议为一次性买断式交易。自设备开始提取之日起，卖方就转让的设备不提供任何形式的售后服务、技术支持和质量保证。

- 5.7 The Buyer specifically confirms that its decision to purchase the Equipment is made solely based on its own independent judgment and professional assessment, and not in reliance on any representations by the Seller regarding the Equipment's performance, value, or fitness for any particular purpose. The Buyer hereby expressly waives any right to seek rescission or modification of this Agreement on the grounds of material misunderstanding or gross unfairness.

买方特别确认，其并非基于卖方对设备性能、价值或适用性的任何陈述，而完全是基于其自身的独立判断和专业评估决定购买设备。买方在此明确放弃以重大误解或显失公平为由主张撤销或变更本协议的权利。

6 Limitation of liability and indemnity

责任与赔偿的限制

- 6.1 In no event shall the Seller be liable for any damages to the Buyer or to any other party arising out of sale of the Equipment, the handling, transportation, possession, or use of the Equipment, the quality, workmanship, material, design,

or present, or future state of the Equipment, any hazard or defect in the Equipment, any failure of the Equipment to comply with any national or local government standards or regulations, any failure of the Seller to have given any warning or instruction concerning the Equipment, or the negligence of the Seller, and the Buyer unqualifiedly waives all claims for any such damages against the Seller.

在任何情况下卖方均不对设备的出售、设备的操作、运输、拥有或使用、或设备的质量、工艺、材料、设计、目前或将来的状态、或设备的任何危险或缺陷、设备不符合任何国家或地方政府标准或规定、或卖方未能就设备给予任何的警示或说明、或卖方的疏忽而产生的对买方或任何其他方的任何损害承担责任，且买方无条件的放弃就此类损害而对卖方提起任何诉讼主张。

- 6.2 The Buyer shall indemnify and hold the Seller harmless from any loss, damage, claim, cost or expense directly or indirectly arising from the inspection, testing, pick-up, sale, handling, transportation or use of the Equipment or arising from the Buyer's inability to use the Equipment either separately or in combination with any other equipment or for any other cause.

买方应赔偿并使卖方免于任何由于检查、测试、提取、出售、操作、运输或使用设备而产生的、或因买方无法单独使用或与其他设备连同使用设备而引起的、或任何其他原因造成的任何直接或间接损失、损害、主张、成本或费用。

- 6.3 In no event shall the Seller's aggregate liability for all claims, costs, expenses, and losses arising out of or in connection with the performance of this Agreement exceed ten percent (10%) of the total Equipment transfer price specified herein.

在任何情况下，卖方因履行本协议或因本协议所引起的一切索赔、费用、损失等，其累计赔偿总额，均不应超过本协议的设备转让总价款的 10%。

7 Liability for Breach

违约责任

- 7.1 The Buyer shall complete the retrieval of all Equipment within fifteen (15) calendar days after the day immediately following the date on which the total Purchase Price has been paid in full. Should the Buyer fail to complete the retrieval of the Equipment within the time limit stipulated in Clause 1 above, the Buyer shall pay to the Seller liquidated damages for delayed retrieval at the rate of 0.5% (zero point five percent) of the total Contract Price for each day of delay. If the delay in retrieval exceeds fifteen (15) days, the Seller shall have the right to terminate this Contract unilaterally. Upon such termination, the Buyer shall pay to the Seller liquidated damages amounting to 30% (thirty percent) of the total Contract Price. The Seller is expressly authorized to deduct such liquidated damages directly from any payments already received from the Buyer.

买方应于全部价款付清之次日起十五（15）个日历日内，完成全部设备的提取。若买方未能在前款约定的期限内完成设备提取，每逾期一日，应向卖方支付相当于合同总金额千分之五（0.5%）的逾期提取违约金。逾期提取超过十五（15）日的，卖方有权单方解除本合同。合同解除后，买方应向卖方支付相当于合同总金额百分之三十（30%）的违约金。卖方有权从已收取的款项中直接抵扣前述违约金。

- 7.2 In the event of a breach of this Agreement, the breaching Party shall indemnify and hold harmless the non-breaching Party against all losses, damages, and expenses incurred thereby. The breaching Party shall also reimburse the non-breaching Party for all reasonable costs and expenses incurred in connection with the enforcement of its rights and remedies hereunder, including but not limited to attorneys' fees, court costs, arbitration expenses, costs of interim measures (including preservation fees), travel expenses, appraisal and valuation fees, and any other expenses reasonably related to the protection or enforcement of the non-breaching Party's rights.

违约方除应赔偿给守约方造成的全部损失外，还应赔偿守约方为实现债权而支出的所有合理费用，包括但不限于律师费、仲裁费、保全费、差旅费、鉴定评估费等。

8 Notices

送达

- 8.1 For the purpose of facilitating the performance of this Agreement, the Parties provide the following agreement details:

Seller's agreement Information:

Contact Person:

Address:

Mobile Phone:

Email:

Buyer's agreement Information:

Contact Person:

Address:

Mobile Phone:

Email:

为更好的履行本协议，双方提供如下联系方式：

卖方联系方式

联系人:

地址:

手机:

电子邮箱:

买方联系方式

联系人:

地址:

手机:

电子邮箱:

8.2 Manner and Effectiveness of Notice

送达的方式和生效

Notice via email or other agreed electronic means shall be deemed effectively served on the date of transmission. Notice via courier, registered mail, or similar means shall be deemed effectively served upon the date of receipt as evidenced by a signed delivery record. Refusal to accept delivery or return of the correspondence shall be deemed as receipt for purposes of this clause. The agreement details specified above shall also serve as the valid address for service of legal process in any judicial or arbitral proceedings.

通过电子邮箱及其它电子方式送达时，发出之日即视为有效送达。通过快递等方式送达时，对方签收之日视为有效送达；对方拒收或退回的，视为签收。上述联系方式同时作为有效司法送达地址。

8.3 This Article regarding contact information and service of notices constitutes an independent and severable clause. Its validity and enforceability shall survive irrespective of the invalidity, unenforceability, termination, or rescission of any other provision of this Agreement or the Agreement as a whole.

本送达、条款为独立条款，不受合同整体或其他条款的效力影响，始终有效。

9 Termination:

终止

Should the Buyer fail to pay the Price for the Equipment as set forth in Clause 2.2, or should the Buyer fail to pick up the Equipment from the Seller's premises as set forth in Clause 3.1, the Seller shall have the right, at Seller's election and without prior notice to Buyer, and in addition to any other remedy or remedies provided by this Agreement or by law, either:

如果买方未能根据本协议第 2.2 条支付设备的价款，或未能根据第 3.1 条从卖方的场地提取、搬离设备，卖方有权不经事先通知买方而自行决定采取下列措施，卖方是否采取下列措施并不影响本协议或法律规定的任何其他救济途径：

(a) to terminate this Agreement; or

终止本协议；

(b) to hold the Equipment at the risk and for the account of the Buyer; or

使设备不受危险，且由买方承担相应的费用；

(c) to resell the Equipment at such price and under such other terms and conditions as Seller, in its sole discretion, shall deem appropriate, and to recover from the Buyer any price deficiency.

根据卖方自行决定且视为适当的价格和其他条款、条件将设备转售给他人，且由买方补偿任何差价损失。

10 Taxes

税负

Each Party shall be responsible for all taxes which that Party is required to pay in accordance with the tax laws and regulations of the PRC.

各方应依照中华人民共和国税收法律、法规的规定，承担其需缴纳的所有税负。

11 Applicable Law

适用的法律

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

本协议应受中华人民共和国法律法规管辖与解释。

12 Settlement of Disputes

争议解决

12.1 Consultations

协商

In the event a dispute arises from or in connection with this Agreement, the Parties shall attempt in the first instance to resolve such dispute through friendly consultations. Such consultations shall begin no later than ten (10) Days after a written notice is given by the Party seeking consultation to the other Party. In case no settlement can be reached through friendly consultations within thirty (30) Days following such notice, either Party may submit the dispute to arbitration for final decision.

由本协议产生的或与其相关的争议，双方应首先尝试友好协商解决该争议。协商应不迟于一方向另一方寻求协商的书面通知发出十（10）日后进行。如该通知发出后三十（30）日内争议无法通过友好协商解决，任何一方均可提交该争议通过仲裁予以最终裁决。

12.2 Arbitration

仲裁

Subject to Clause 12.1 above, any dispute between the Parties arising from or in connection with this Agreement, including any question regarding its existence, performance, validity and termination which has not been resolved in consultation under Clause 12.1 above shall be referred to and finally resolved by arbitration. The arbitration shall be conducted in Shanghai by the China International Economic and Trade Arbitration Commission, in accordance with its rules then in force, which rules are deemed to be incorporated by reference to this Clause provided that:

根据以上第 12.1 条，双方之间由本协议产生的或与其相关的任何争议，包括涉及协议的存续、履行、效力和终止的任何问题，在无法根据以上第 10.1 条通过协商解决的情况下，应提交并通过仲裁予以最终解决。仲裁应由中国国际经济贸易仲裁委员会（上海分会）根据其当时适用的规则进行，在该等规则满足下述所有条件的前提下，该规则应视为已包括在本条款中（即下述条件应作为争议解决的规则组成部分）：

(a) all proceedings in any such arbitration shall be conducted in Chinese; and

任何此类仲裁的程序由中文进行；

(b) there shall be three arbitrators;

具备三名仲裁员；

(c) all of the arbitrator(s) shall be fluent in Chinese language.

所有的仲裁员均能流利地使用中文。

13 Miscellaneous

其他

13.1 Entire Agreement

完整协议

This Agreement and its Schedules constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede all prior discussions, negotiations and agreements either oral or written between them.

本协议及其附件构成双方之间就本协议标的物的完整协议，且替代双方之前口头或书面的所有讨论、协商或约定。

13.2 No Waiver

非弃权

Failure or delay on the part of either Party hereto to exercise any right, power or privilege under this Agreement, or under any other agreement relating hereto, shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege preclude any other future exercise thereof.

本协议任何一方未能或延迟行使本协议或与此相关的任何其他协议项下的任何权利、权力或权益，均不应作为对该权利、权力或权益的放弃；且任何单一或部分的行使任何权利、权力或权益均不应排除在未来对任何其他此类权利、权力或权益的行使。

13.3 Amendments

修订

This Agreement shall not be changed orally, but only by a written instrument signed by duly authorised representatives of both Parties.

本协议不得以口头方式进行修改，任何修改仅可通过双方授权代表签署的书面文件予以进行。

13.4 Language

语言

This Agreement is written and signed by and between the Parties in both English and Chinese language. In the event of any discrepancy or conflict between the Chinese and English versions, the Chinese version shall prevail.

本协议由双方用英语、中文书就和签署，两种语言具有同等效力。若中英文文本存在不一致或解释分歧时，以中文文本为准。

Counterparts

副本

This Agreement is written and executed in two (2) sets of originals. Each counterpart shall be deemed to be an original.

本协议一式二份，每一份副本均应视为一份原件。

13.5 Effectiveness

生效

This Agreement shall become effective on the date of signature of this Agreement by the Parties.

本协议自双方签署本协议之日起生效。

13.6 Confidentiality

保密

This Equipment Sale agreement is governed by the Confidentiality Agreement attached as Schedule 3.

本协议受附件 3 的保密协议的条款的约束。

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorised representative on the date first set forth above.

鉴此，本协议每一方由其授权代表在本协议文首所载之日签署本协议。

By:

By:

Name:

Name:

Title:

Title:

Signature:

Signature:

Company

Company

Seal:

Seal:

Schedule 1附件 1

List of Equipment

设备清单

