

GENERAL SALES TERMS AND CONDITIONS
GEMALTO
金雅拓通用销售条款和条件

1 GENERAL

- 1.1** These General Sales Terms and Conditions shall apply to products and related services (hereafter jointly the “Products”) manufactured or provided by Gemalto, a company organized and existing under the laws of the People’s Republic of China (hereafter “GEMALTO”) to a customer (hereafter the “Buyer”). Any proposal or form of proposal howsoever (hereafter the “Proposal”) made by GEMALTO to the Buyer for its Products shall be governed by these General Sales Terms and Conditions which, unless expressly otherwise agreed in writing, shall prevail in the event of a discrepancy with any other written or oral agreement between GEMALTO and the Buyer.
- 1.2** The Proposal, including, without limitation, commercial, technical and financial documents sent to the Buyer together with these General Sales Terms and Conditions, shall be valid for a period of thirty (30) calendar days from the date of its issuance, unless extended by GEMALTO by written notice to the Buyer.
- 1.3** The Buyer’s written acceptance of the Proposal or the placement of an order in writing by the Buyer (hereafter the “Order”) shall be deemed the Buyer’s unconditional

1. 概述

- 1.1** 本《通用销售条款和条件》适用于金雅拓，一家依中国法律组建并存续的公司，为客户（以下简称“买方”）生产或提供产品及相关服务（以下合称“产品”）的交易。金雅拓就产品向买方出具的任何形式的报价（以下简称“报价”）均应受本《通用销售条款和条件》的约束。除非双方另行达成明确书面协议，若本《通用销售条款和条件》与金雅拓和买方达成的其他书面或口头协议不一致，应优先适用本《通用销售条款和条件》。
- 1.2** 除非金雅拓书面通知买方予以延长，金雅拓向买方出具的报价（包括但不限于报价附随的商务、技术、财务文档）应于发出之日起三十（30）个日历日内有效。
- 1.3** 买方对报价的书面接受或买方发出书面订单（以下简称“订单”）视为买方无条件且不可撤销地接受本《通用销售条款和条件》并放弃买方自身的采购条款和条件或其他任

and irrevocable agreement to these General Sales Terms and Conditions and the waiver of the Buyer's own purchase terms and conditions or any other similar document.

1.4 The Proposal may be subject to alteration and withdrawal by written notice of GEMALTO to the Buyer at any time until a contract arising therefrom (hereafter the "Contract") has been executed in writing by the Buyer's and GEMALTO's duly empowered representatives.

1.5 If the Buyer accepts the Proposal with additions, modifications, qualifications or assumptions, such acceptance shall be considered a new offer by the Buyer. Any such new offer shall only be binding upon GEMALTO if and to the extent it is accepted in writing by GEMALTO. Whether the Order was preceded or not by a Proposal, the Contract shall not be deemed binding unless the Buyer has received written acceptance of the Order from GEMALTO, both concerning the Order, and where applicable, the additions, modifications, qualifications or assumptions thereto (hereafter the "Order Acceptance"). In the event of a discrepancy between the Order and the Order Acceptance, the Order Acceptance shall prevail and determine the terms of the Contract. No Order may be canceled or modified after the date of issuance of the Order Acceptance, except with the prior

何类似文件。

1.4 在买方和金雅拓的适当授权代表书面签署与报价相关的合同前（以下简称“合同”），金雅拓可随时向买方发出书面通知变更或撤销报价。

1.5 如果买方接受报价但附带补充、修改、限制或假定，该等接受应被视为买方的新要约。而该等新要约仅在金雅拓以书面形式予以接受时，才对金雅拓产生约束力。无论订单之前是否有报价，除非买方收到金雅拓书面文件（以下简称“订单确认书”），明确接受订单及其补充、修改、限制或假定（如适用），否则均不构成具有约束力的合同。如果订单和订单确认书不一致，订单确认书应当优先适用并决定合同的条款。除金雅拓事先书面同意且由此产生的所有费用均由买方承担的情况下，订单在订单确认书的发出日之后不得取消或变更。

written approval of GEMALTO and provided that all costs resulting therefrom shall be borne by the Buyer.

- 1.6** The Contract shall consist exclusively of:
- An agreement signed by both parties or the Order and its Order Acceptance agreed upon by both parties, including, as the case may be, any complementary specific or special conditions of sale; and
 - These General Sales Terms and Conditions, which form an integral part of the Contract.

In the event of a discrepancy between the Order Acceptance and these General Sales Terms and Conditions, the Order Acceptance shall prevail and determine the terms of the Contract.

- 1.7** The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings (whether oral, in writing or any other form) between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of GEMALTO which is not set out in the Contract.

2. DOCUMENTATION

- 2.1** The weight, dimensions, size, performance and other

- 1.6** 合同由以下部分构成:

- 双方签署的协议, 或双方同意的订单及订单确认书(视情况可能包括任何具体或特别销售条件);
- 构成合同不可或缺部分的本《通用销售条款和条件》。

如订单确认书和本《通用销售条款和条件》有冲突的, 以订单确认书为准确认合同条款。

- 1.7** 合同构成双方之间就有关事宜达成的完整协议, 且替代双方先前就该事宜达成的所有协议和谅解(无论口头、书面或其他形式)。买方确认不会依赖于任何由金雅拓做出的或以金雅拓名义做出的但未体现在合同中的任何声明、承诺或表述。

2. 文件

- 2.1** 金雅拓提供的产品相关技术或商业文件(以下简称“文件”)中所述之

specifications of the Products provided for in the technical or commercial documentation (hereafter the "Documentation") of GEMALTO are of an indicative nature only and are not contractually binding unless expressly indicated so by GEMALTO in the Order Acceptance or provided in the Contract.

2.2 The Documentation provided to the Buyer remains the exclusive property of GEMALTO and may not be communicated, copied or reproduced by the Buyer without the prior written authorization of GEMALTO.

2.3 Subject to the terms of the Contract, the Buyer is granted a non-exclusive, non-transferable and non-assignable right to use the Documentation. The Buyer agrees to limit access to the Documentation to those employees who require such access in order to use the Products. The Buyer will not make available or disclose any information concerning the Documentation to any other person without the prior written consent of GEMALTO. The obligations expressed in this provision shall remain binding upon the Buyer even after completion or termination of the Contract. The Buyer shall take all the same precautions to maintain the confidentiality of the Documentation as those employed to protect its own

产品的重量、体积、尺寸、性能和其他规格仅具有参照性，并不具有合同约束力，但金雅拓在订单确认书或合同中明确说明其具有约束力的情况除外。

2.2 金雅拓向买方提供的文件仍为金雅拓的专有财产。未经金雅拓事先书面授权，买方不得予以传播、复制或重制。

2.3 根据合同条款，买方被授予一项非独占的、不可转移的且不可转让的使用文件的权利。买方同意将知悉文件的人员范围限定为使用产品之目的而必须知悉文件的员工。未经金雅拓事先书面同意，买方不得向任何人提供或披露文件相关的任何信息。本条所约定的义务在合同履行完毕或终止后仍然对买方具有约束力。买方应当采取与保护其自身的专有信息相同的全部措施以保证文件的机密性。

proprietary information.

3. TERMS OF SALE

3.1 The minimum quantity of any Order or Contract or the minimum price for any Product under any Order or Contract shall be subject to the mutual agreement in writing by the parties.

3.2 Unless otherwise agreed in writing, all sales of the Products between the parties are deemed concluded "FCA" GEMALTO's premises as further specified in the Order Acceptance and / or the Contract.

3.3 The term "FCA" or any other term used to define the terms of sale provided for in the Contract shall be interpreted in accordance with the INCOTERMS® 2010 published by the International Chamber of Commerce.

3.4 The carrying out of operations at the request of the Buyer by GEMALTO other than those required by the terms of sale established by the Contract shall in no way modify either the type of sale nor the content of the Contract: the request of the Buyer to carry out such operations necessarily implies that GEMALTO will act in the name of and on behalf of the Buyer. Such operations and the resulting costs will be invoiced separately to the Buyer who agrees to pay GEMALTO upon receipt of the

3. 销售条款

3.1 任何订单或合同要求的最低数量或任何订单或合同项下产品的最低价格将由双方另行书面约定。

3.2 除非另行书面同意，双方之间就产品的销售视为以FCA贸易术语下金雅拓场所交货完成。金雅拓场所具体地址将在订单确认书或合同中予以进一步明确。

3.3 FCA 贸易术语或用于确定合同中销售条款的其他任何贸易术语均应按照国际商会发布的《2010 年国际贸易术语解释通则》(INCOTERMS® 2010) 进行解释。

3.4 金雅拓根据买方的要求提供合同约定以外的工作，不构成对贸易术语或合同内容的任何修改：上述买方的要求仅意味着金雅拓将以买方名义并代表买方开展此类工作。金雅拓将就该等工作及其产生的费用向买方开具发票，买方同意在收到相关发票后向金雅拓支付相关款项。特别是在 FCA 贸易术语下销售时，金雅拓即使协助承运人完成其产品装运或存储工作，也不应被解释为金雅拓为运输合同的主体，因而承担有运输义务。

relevant invoice. In particular, in the event of a sale “FCA”, GEMALTO shall remain independent from the contract of carriage even when it may assist, in any manner whatsoever, in the activities of loading or storage to facilitate the task of the carrier.

4. DELIVERY

4.1 Except in the event of provisions to the contrary included in the Order Acceptance or the Contract or otherwise agreed in writing, the delivery schedule shall be calculated from the last of the following dates:

- Receipt by GEMALTO of all the information and data necessary for the fulfillment of the Order; or
- Receipt by GEMALTO of the payment for the Order.

4.2 Prior to delivery, the Products will be preserved, packaged or crated in accordance with GEMALTO's usual standards.

4.3 Products shall be deemed accepted by the Buyer upon delivery to the Buyer and the Products delivered in accordance with an Order are definitively transferred and may not be either returned or exchanged except in the event of a provision to the contrary.

4.4 GEMALTO reserves the right to make partial or anticipated deliveries with partial invoicing for

4. 交付

4.1 除非订单确认书、合同或其他书面协议中有相反约定，产品交付时间应当从下述日期中的最晚者起算：

- 金雅拓收到履行订单所必须的所有信息和数据；或
- 金雅拓收到相应订单的付款。

4.2 在交付之前，产品将根据金雅拓的通常标准进行保存、包装或装箱。

4.3 除非另有相反约定，产品交付时即视为被买方接受，且根据订单交付的产品即视为已转移给买方，并不得退回或更换。

4.4 金雅拓保留进行部分交货或提前交货的权利，并就该交货数量开具发票。特别说明，金雅拓有权保留实

the relevant amount. In particular, GEMALTO reserves the right, for any given Order or Contract, to deliver quantities that may differ from the quantity ordered by the Buyer by up to ten percent (10%), more or less and the Buyer undertakes to pay the price corresponding to the quantity of Products effectively delivered by GEMALTO within that tolerance.

- 4.5** For each Order of card products, primary colors will be created by GEMALTO and printed on the cards products on the basis of the proof (i.e. the initial reproduction of the artwork of the concerned cards sent by GEMALTO to the Buyer in electronic or paper format) signed by the Buyer. All other colors will be created and printed on the basis of the pantone colors chart available in each GEMALTO production site. The difference between on the one hand, for the primary colors the proof and for the other colors the pantone colors chart, and on the other hand the colors printed on the card products shall be measured with a spectrophotometer and will not exceed +/- 3.5 in the CIE 94 colorimetric space (2.1.1) D65/10 depending on the card product type.
- 4.6** Should the delivery of the Products or any part thereof be postponed either at Buyer's request or for any reason not attributable to GEMALTO, GEMALTO shall be entitled to store the Products or any part

实际交付数量与订单或合同约定的产品数量之间存在正负不超过百分之十 (+/-10%) 的差的权利。买方同意, 在上述允差范围内根据金雅拓实际交付的产品数量支付相应价款。

- 4.5** 就各订单的卡产品而言, 卡产品基色由金雅拓创建, 并将按照买方签署的样张 (即金雅拓向买方以电子或纸制形式发送的相关卡原图的最初样品) 在卡产品上印色。而所有其他颜色则依据金雅拓的各生产地所具备的国际色卡颜色表创建并印色。基色的样张与卡产品上印色、色卡颜色表与卡产品上印制的其他颜色可能存在差别, 根据光谱色度计测量, 其差别在 CIE94 色度空间 (2.1.1) D65/10 中不超过 +/-3.5。
- 4.6** 根据买方的要求或者由于不可归因于金雅拓的原因而导致产品全部或部分延期交付时, 金雅拓有权存储产品或其任何部分, 但风险和费用由买方承担。存储日期应视为产品交付日期。在这种情况下, 金雅拓需要向买方出具一份仓储存单以免

thereof at Buyer's risks and expenses. The date of storage shall be deemed to be the date of delivery. In such a case, GEMALTO shall issue and sign a warehouse certificate discharging GEMALTO of all liabilities incurred in connection with such storage.

除金雅拓与上述存储有关的一切责任。

5. TRANSFER OF RISKS AND TITLE

5. 风险和所有权的转移

5.1 Risk in the Products shall pass to the Buyer at the time of delivery as per the applicable INCOTERM.

5.1 产品损毁或灭失风险应当根据交付所适用的国际贸易术语的规定转移给买方。

5.2 Title to the Products shall vest in the Buyer from the time GEMALTO receives full payment for the Products.

5.2 产品所有权应当在金雅拓收到买方的全额付款后才转移给买方。

6. Price

6. 价格

6.1 Unless otherwise stated in the Order Acceptance, the prices for the Products specified in the Proposal of GEMALTO are fixed and firm for the Contract performance according to the terms and conditions herein contained.

6.1 除非订单确认书中有相反约定，根据本文条款和条件履行合同时，金雅拓的报价中约定的产品价格是固定且不可变更的。

6.2 The prices hereunder set forth are quoted in Renminbi (CNY), which will be the invoicing and payment currency, unless otherwise agreed by the parties.

6.2 除非双方另有约定，产品均以人民币（CNY）报价，且发票和支付货币也均为人民币（CNY）。

6.3 All prices of Products or parts thereof to be delivered by GEMALTO under the Contract are to be understood "FCA", as further

6.3 金雅拓在合同项下全部或部分交付的产品价格均为 FCA（INCOTERMS® 2010），并在订单确认书或合同中进一步明确约

specified in the Order Acceptance or the Contract, according to the INCOTERMS® 2010.

6.4 Without prejudice to the above-mentioned INCOTERMS, all prices hereunder are exclusive of all taxes (including VAT), customs duties, levies and other charges whatsoever which shall be at the exclusive charge of the Buyer. In the event of applicable withholding taxes, the Buyer shall provide to GEMALTO the proof of tax payment promptly. Both parties shall cooperate to secure a reduction or elimination of such withholding taxes and apply for treaty benefits, if applicable.

7. INVOICING AND PAYMENT

7.1 Unless otherwise required by the applicable laws and regulations, a separate invoice in GEMALTO format shall be issued for each shipment.

7.2 Payment shall be made as follows: 100% upon issuance of Order, unless otherwise agreed by the parties.

7.3 In the event Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to GEMALTO, GEMALTO may, without limitation: (i) postpone the fulfillment of its own obligations until full payment of the sums due for the principal; (ii) charge Buyer interest on the amount unpaid, calculated on a

定。

6.4 在不违反上述贸易术语的前提下，本文项下所有价格不包括所有税款（如增值税）、关税、征税和其他任何收费，该等税费均应由买方自行承担。如适用任何预扣税款，买方应向金雅拓提供已纳税证明。双方应相互配合以获取预扣税款的减免及申请适用的税收协定优惠待遇。

7. 开具发票和付款

7.1 除适用法律法规另有不同要求，每批产品装运后，金雅拓将单独开具一份金雅拓格式的发票。

7.2 除双方另有约定外，订单出具时应支付产品全价。

7.3 如果买方未能在到期日付款，在不影响金雅拓其他权利或可采取的救济措施的前提下，金雅拓可以（但不限于）采取以下措施：(i) 延迟履行自身义务，直至买方支付全部应付款项；(ii) 就未支付部分按月向买方收取利息，直到应付款项被全额支付（欠款期不足一个月的按一个月计算），该等利息等于中国人民银行同期贷款利率；(iii) 在金雅拓

monthly basis, equal to People's Bank of China loan interest rate of the same period on the due date of the payment from the time the payment is due until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest); (iii) terminate the Contract upon expiry of a seven (7) calendar day written notice of GEMALTO to the Buyer which has remained without effect.

- 7.4** Time for payment shall be of the essence. In the event of a payment delay by the Buyer, GEMALTO may also require for any new delivery (regardless of the conditions that may have been agreed), payment prior to shipment or suspend or cancel any pending Contract or Order without incurring any liabilities whatsoever.
- 7.5** GEMALTO reserves the right to establish, at any time, a limit for outstanding credit in favor of the Buyer, and adapt the applicable payment periods accordingly.
- 7.6** No discount will be accepted for advance payments except in case of prior written consent between the parties.
- 7.7** The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Buyer has a valid court order requiring an

向买方发出书面通知后的七（7）个日历日届满时终止剩余未履行部分合同。

- 7.4** 付款时间至关重要。如果买方延迟付款，对于任何新的交付（无论双方之前如何约定），金雅拓均可要求买方在装运之前付款，或者暂停或取消任何尚未完成的合同或订单，且无需承担任何责任。
- 7.5** 金雅拓有权随时设定有利于买方的信用额度，并相应调整付款期限。
- 7.6** 除双方事先另有书面同意外，买方预付款或提前付款均不享受任何折扣。
- 7.7** 买方应依据合同约定向金雅拓全额付款，不得有任何扣款，包括通过抵销、索赔、折扣、扣减或其他形式，但买方持有生效的法院命令要求金雅拓向买方支付等额于上述扣款金额的情况除外。

amount equal to such deduction to be paid by GEMALTO to the Buyer.

8. PRE-DELIVERY ACCEPTANCE TESTING

8.1 If the parties agree to carry out a pre-delivery acceptance testing on a Product and a pre-delivery acceptance testing procedure is provided in the Contract, an acceptance testing shall be carried out, at the premises of GEMALTO, within a maximum period of fifteen (15) calendar days from the date of issuance of the written notice for pre-delivery acceptance testing sent by GEMALTO. Any pre-delivery acceptance testing will be at the expense of the Buyer and performed in accordance with the GEMALTO standard testing procedures then in force.

8.2 The Buyer shall have the right to attend the pre-delivery acceptance testing subject to written notification to GEMALTO of the names and biodata of its representatives at least three (3) calendar days prior to the above-mentioned anticipated date. Failure of the Buyer to attend shall not delay or prevent the performance of such pre-delivery acceptance testing. GEMALTO may subsequently carry out the pre-delivery acceptance testing, in accordance with article 8.1, the terms of which will thereafter be deemed completed.

8. 发货前验收

8.1 若双方同意在发货前进行产品验收测试，且在合同中就发货前验收测试程序进行了约定，则该验收测试应自金雅拓发出通知之日起 15 个日历日内在金雅拓的场所内进行。任何发货前验收测试应由买方承担费用，且应依照据金雅拓当时执行的测试流程实施。

8.2 买方有权参加发货前验收测试，但应于前述预计日期提前至少三个日历日将代表人姓名及资料以书面形式通知金雅拓。买方若未能参加，该发货前验收测试并不因此而被延迟或取消。金雅拓可依据 8.1 条款随后进行发货前验收测试，8.1 条款将被视为完成。

9. WARRANTY

9.1 GEMALTO hereby warrants the Products to be free from defects in materials and workmanship under normal use and service for a period of twelve (12) months from the date of delivery. The Buyer shall notify GEMALTO of the defects in writing within seven (7) calendar days after the defects are discovered, and the notice shall thoroughly describe the conditions under which the defect has arisen in order to facilitate the diagnostic of the defect. GEMALTO will make arrangements with the Buyer for the Products to be evaluated. If the evaluation reveals a defect in the Products, the defects of the Products returned by the Buyer will be made good at GEMALTO's expense by repair or replacement at GEMALTO's option. The property of the defective Products shall pass to GEMALTO upon delivery of the replacement. Should a replaced part no longer be available, it will be replaced with a part that most closely matches it.

9.2 Transportation and insurance costs for defective parts returned to GEMALTO shall be at the Buyer's charge. Transportation and insurance costs for parts replaced or repaired by GEMALTO shall be at GEMALTO's charge. For the Products which have been replaced or repaired by GEMALTO hereunder, the warranty provided by GEMALTO shall continue for

9. 保证

9.1 金雅拓在此保证产品在正常使用及服务的情况下，在材料及工艺方面均不存在瑕疵，保证期间为自交付之日起十二（12）个月。买方应自发现产品瑕疵之日起七（7）个日历日内，以书面形式将该瑕疵通知金雅拓。为便于金雅拓查找瑕疵原因，买方应在通知中详细描述瑕疵出现的情况。金雅拓将就产品检测与买方进行安排。若检测表明产品的确存在瑕疵，则买方退回的瑕疵产品，金雅拓将自行选择予以修理或更换，费用由金雅拓承担。瑕疵产品的所有权自更换产品交付时转移给金雅拓。若金雅拓无更换部件，则将提供与之最匹配的部件予以替换。

9.2 退回瑕疵产品所产生的运费和保险费由买方承担。更换或修理瑕疵产品所产生的运费和保险费由金雅拓承担。产品经由金雅拓更换或修理后，上述 12 个保证期并不重起算。

the remainder of the 12-month period provided above.

9.3 The Products are provided “as is” and GEMALTO’s warranty hereunder is strictly limited to the repair or replacement of defective parts. The above warranty shall apply only in as much as the Products have been used and maintained in compliance with GEMALTO’s instructions for use.

9.4 This warranty shall not apply to consumable and extendible items (such as but not limited to batteries, fuses) and to defects arising from or connected with Buyer’s failure to operate or maintain the Products in accordance with GEMALTO’s specifications and documentation and generally with standard practices of product operations and shall not be applicable to defects arising from or connected with: (i) any combination of the Products with equipment, material, products or systems not furnished, not approved or not specifically recommended by GEMALTO; or (ii) any modification of the Products performed by others but GEMALTO; or (iii) any accident, vandalism, negligence or handling errors causing damage to the Products; or (iv) normal wear and tear; or (v) defective installation, maintenance or storage (vi) technical maintenance or interventions on the Products other than those deemed necessary by GEMALTO.

9.3 产品按现状提供，且金雅拓在此所做的保证严格限于修理或更换存在瑕疵的部分。上述保证仅适用于按照金雅拓的使用说明进行使用及维护的产品。

9.4 上述产品保证责任不适用于消耗品及延展性商品（诸如但不限于电池、保险丝），也不适用于由于买方未遵循金雅拓的技术规范、文件及通常适用标准进行操作或维护导致的瑕疵，且不适用于如下原因所导致的瑕疵：

- 与非由金雅拓提供或未经金雅拓特别认可之设备、材料、产品或系统结合使用；
- 金雅拓以外的任何第三方对产品进行修改；
- 任何意外、故意破坏、疏忽或操作错误导致的产品损坏；
- 产品正常损耗；
- 不当产品安装、维护或存储；
- 对产品进行金雅拓认为不必要的技术维修和改动。

9.5 For Products resold as is and components that GEMALTO purchases from suppliers, GEMALTO's warranty is strictly limited to the terms granted to GEMALTO by its suppliers.

9.6 GEMALTO does not and shall not warrant that the Products will be resistant to all possible attacks and shall not incur, and disclaims, any liability in this respect. Even if each Product is compliant with current security standards in force on the date of their design, the Buyer acknowledges that the resistance of the security mechanisms necessarily evolves according to the state of the art in security and notably under the emergence of new attacks. Under no circumstances, shall GEMALTO be held liable for any third party actions or claims and, in particular, in case of any successful attack against systems or equipment incorporating the Products. The Buyer is deemed to have provided and is responsible for all designs, plans, data (e.g. personalization data), electronic security mechanisms and architecture, and specifications with respect to Products (collectively, "Designs"). If, at the Buyer's request or otherwise, GEMALTO makes suggestions with respect to the Designs, the Buyer will be responsible for analyzing the same and determining whether or not to incorporate them into the Designs. The Buyer represents and warrants that by placing an order

9.5 对于金雅拓从供应商采购转售的产品或部件，金雅拓的保证责任仅限于供应商给予金雅拓的保证范围。

9.6 金雅拓不能也不应当保证产品能禁得住任何攻击，并在此方面不承担并拒绝承担任何责任。即使产品在设计时符合当时有效的安全标准，买方也认同，根据安全方面的技术发展水平，特别是新攻击不断产生的情况下，安全机制的抵抗力也必须逐步提升。在任何情况下，特别是发生对含有产品的系统或设备有效攻击的事件时，金雅拓均不为任何第三方的诉讼或主张承担任何责任。与产品相关的所有设计、计划、资料（如个人化信息）、电子安全机制和架构及技术规范（统称为“设计”）均视为由买方提供并由买方负责。如果根据买方要求或在其他情况下，金雅拓提供了与设计有关的建议，买方应负责对金雅拓的建议进行分析并决定是否予以采纳。买方声明并保证，订购产品时（a）依其自身的认知和判断选择并使用产品及产品安装的电子安全机制或架构，且（b）已阅读、理解和接受产品中的电子安全机制或架构。在任何情况下，对于产品电子安全机制或架构的失效或针对其的攻击，金雅拓均不承担任何责任。

for the Products: (a) it relies on its own knowledge and judgment in the selection and use of the Products as well as the electronic security mechanism or architecture installed in the Products, and (b) it has read, understood and accepted the electronic security mechanisms or architecture offered by the Products. GEMALTO shall not be liable in any manner whatsoever with respect of the failure of, or attack on the electronic security mechanisms or architecture of the Products.

9.7 The warranty in this clause and the rights and remedies of the Buyer hereunder are exclusive and in lieu of and the Buyer hereby expressly waives any other warranties, rights or remedies whether statutory, express or implied arising by law or otherwise with respect to any defects in or failures of the Products. In particular, GEMALTO does not warrant that the Products will be resistant to all possible efforts to defeat or disable its functions, including its security mechanisms, and GEMALTO shall not incur, and disclaims, any liability in this respect.

10. LIABILITY

10.1 To the maximum extent permitted by applicable law and with respect to any damages, losses or costs arising out of or related to the Contract, GEMALTO, any of its

9.7 本条款下金雅拓的保证及买方的权利和救济为排他性的，买方明确放弃与产品瑕疵或故障有关的、法律明示或默认的或其他形式的任何保证、权利或救济。金雅拓特别表示不做以下保证，即产品可以禁得住任何企图阻止或破坏其功能（包括其安全机制）的攻击；对此，金雅拓不承担并拒绝承担任何责任。

10 责任

10.1 在适用法律最大许可的限度内、关于任何基于合同所产生的损害、损失或费用，金雅拓及其关联公司的董事、员工或其供应商、代理或分销商，在任何情形下不应向买方及

directors, employees and those of its affiliates or its suppliers, agents or distributors shall not be, in any case whatsoever, liable to the Buyer, its officers, agents, employees, successors or assignees for any indirect, special, consequential or incidental damages of whatsoever kind or nature arising out or in connection with the Contract, including but not limited to any loss, cost, damage, loss of revenue, loss of profit, income, revenue or loss of use, production or anticipated savings, loss of business, contracts or commercial opportunities, loss or damage to goodwill or reputation, or any loss or corruption of any data, database or software, incurred or suffered by the Buyer or any third party resulting from a defect, infringement or alleged infringement, an incident, the failure of the Products or any failure to perform according to the Contract even if GEMALTO was advised of the possibility of such damages. The Buyer shall defend, indemnify, and hold GEMALTO harmless from and against any claim based on such damage, loss or cost.

10.2 Under no circumstances shall GEMALTO be liable to the Buyer for any damages, losses or costs resulting from or arising out of any illegal or fraudulent use of the Products by the Buyer, any third party or the end-user.

10.3 Any claim against GEMALTO must be brought within no later than

其主管、代理、员工、继承者或受让人，承担因合同产生的或与合同相关的（如产品缺陷、侵权或被指侵权、意外事件、失效或任何未能履行合同之情形引起的）任何间接的、特殊的、结果性的或意外产生的任何种类或性质的、由买方或第三方产生或所遭受的损害，包括但不限于任何损失、费用、损害、收入损失、利润损失、使用损失、生产损失或预期收益损失、业务损失、合同或商业机会损失、商誉或名誉的损失或损害、或任何关于数据、数据库或软件的丢失或损坏，即使金雅拓已经被告知发生该等损害或损失的可能性。对于基于该等损害、损失或费用的索赔，买方应当为金雅拓进行抗辩、赔偿金雅拓并保证其不受损害。

10.2 由于买方、第三方或最终用户对产品的违法或欺诈性使用而造成的损害，金雅拓在任何情况下均不承担责任。

10.3 任何针对金雅拓的权利主张应不迟于自引起权利主张的责任事件起十

twelve (12) months after the cause of claim arises.

10.4 The aggregate liability of GEMALTO or its suppliers, agents or distributors in connection therewith shall not exceed either: (i) the price of the Order giving rise to the claim: or (ii) the total price actually paid to GEMALTO under the Contract during the six (6) months preceding the event leading to the claim for damages by the Buyer, whichever is smaller. This limitation of liability shall apply regardless of the form of action, whether in contract or in tort (including negligence) or based on a warranty.

11 FORCE MAJEURE

11.1 GEMALTO shall not be in default if the performance of any of its obligations under the Contract is partly or wholly delayed or prevented by reason of Force Majeure.

11.2 "Force Majeure" shall mean any event beyond the reasonable control of GEMALTO such as, without limitation: acts of God, governmental decision, embargo, war or national emergency, hostilities, act of the public enemy, terrorist attacks anywhere in the world, civil commotion, sabotage, fire, flood, explosion, epidemics, quarantine restriction, disturbances in supplies from normally reliable sources (including without limitation

二 (12) 个月内提出。

10.4 金雅拓或其供应商、代理或分销商在本合同下的全部责任，无论该责任基于何种法律理论产生，最高不超过 (i) 引起责任的订单价款，或 (ii) 在导致责任的事件发生前六 (6) 个月内买方根据合同向金雅拓实际支付的总价款，以上述两者金额较小者为准。

11 不可抗力

11.1 金雅拓对合同项下任何义务的履行系因不可抗力的原因而被部分或全部迟延或阻止，则不构成违约。

11.2 “不可抗力”是指金雅拓不能合理控制的任何事件，包括但不限于：天灾、政府决策、禁运、战争、国家紧急状态、敌对行动、公敌行为、世界任何地方的恐怖袭击、内乱、破坏活动、火灾、洪水、爆炸、流行病、检疫限制、扰乱日常所需资源（包括但不限于电力、水、燃料及类似资源）供给、罢工（无论发生在金雅拓或其供应商或分包商）、停工或工潮、供应商或分包商因本文所述不可抗力导致的迟延。

electricity, water, fuel and the like), strike (either at GEMALTO or its suppliers or subcontractors), lock-out and labour disturbances, delay from a supplier or subcontractor facing a case of force majeure as defined herein.

11.3 In case of Force Majeure, GEMALTO shall give notice of the event to the Buyer and the time schedule for the performance of the Contract shall be automatically extended by the period of time as reasonably necessary for GEMALTO to overcome the consequences of such event.

11.4 If the performance in whole or part of any GEMALTO's obligation is delayed or prevented by reason of Force Majeure for a period exceeding three (3) months, GEMALTO may at any time without further liability to the Buyer, request termination of the Contract or any part thereof. The parties will then try to establish by mutual agreement a liquidation settlement, failing which the provisions of Article 14 shall apply. However, Force Majeure shall not prevent or delay the payment of any sum due or to be due by either party.

12. EXPORT CONTROL

In cases where GEMALTO is exporting the Products and the Products are subject to export restrictions, the Buyer shall undertake to fully comply with all relevant export administration and

11.3 如发生不可抗力，金雅拓应当将该等事件通知买方，且合同履行期应当自动延长，该等延长期限应为金雅拓克服该等事件后果所合理需要的时间。

11.4 如因不可抗力，金雅拓的全部或部分义务迟延履行或不能履行的期限超过三（3）个月，金雅拓可以在任何时间向买方请求全部或部分终止合同，且不对买方产生进一步责任。双方届时将尽量达成协议，如未能达成协议，应适用第 14 条约定。但是任何一方任何到期或将到期的款项的支付不得以不可抗力为由而迟延或不履行。

12 出口控制

若产品由金雅拓出口且产品受到出口管制，买方承诺完全遵守相关出口管理及管制之法律法规、以确保产品不会，直接或间接，违反出口适用法律或违反进口适用法律。未经金雅拓或有关主管部

control laws and regulations so as to ensure that the Products are not, directly or indirectly, exported in violation of applicable laws or imported in violation of the applicable law. The Buyer shall therefore not sell, lend or deliver to any third party, under any conditions whatsoever, with or without compensation, temporarily or permanently, the Products (including supplies and spares/replacements delivered in connection with the after sales support), documentation, operating manuals and information in any way whatsoever related to the Products, without the prior written consent of GEMALTO or the relevant competent authorities.

13 INTELLECTUAL PROPERTY, CONFIDENTIALITY AND INFRINGEMENT

13.1 The information and data (hereafter the "Information") contained in any document or support of information supplied by GEMALTO under the Proposal or the Contract shall remain GEMALTO's exclusive property along with all intellectual property rights (including but not limited to patent rights, copyrights, trademarks, designs) attached thereto. Therefore, no right, title or interest is transferred to the Buyer by the Contract in the names, trademarks, trade secrets, patents, pending patents, expertise, copyright and other intellectual property rights relating to the Products. In particular, to the extent that software is

门事先书面同意，买方不得将产品（包括售后支持相关的货物和备用品）、文件、操作手册及任何与产品有关之信息销售、出借或交付予任何第三方，无论基于什么条件、是否有偿、临时性或永久性。

13 知识产权，保密和侵权

13.1 金雅拓在订单或合同下提供的任何文件或支持中的信息或数据（以下简称“信息”）应和附于信息上的所有知识产权（包括但不限于专利、著作权、商标、设计等）一起属于金雅拓专有。因此，与产品相关的名称、商标、商业秘密、专利、专利申请、专门技术、著作权或其他知识产权，其权利、所有权、利益均不会因合同而转移给买方。在此，需要特别说明的是，对于嵌入式软件，产品的销售并不意味着软件的所有权一并转移给买方，而仅意味着基于金雅拓于产品中享有的知识产权，依据本合同条款，买方获得一项非排他性的且不可转让的许可，与金雅拓提供的产品一起且以嵌入于产品中的形式使用该软件。

embedded in a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such software to Buyer, but, subject to the provisions set forth herein, shall only imply a non-exclusive and non-transferable license to Buyer under GEMALTO's intellectual property rights incorporated in the Products to use such software in conjunction with and as embedded in the Products supplied by GEMALTO.

Except as provided in this Article 13, the Buyer shall not be granted any license, either directly or indirectly, by implication, estoppel, or otherwise, to any patent, trade secret, copyright or any other intellectual property right of GEMALTO. The Buyer shall not make any use of the Information other than for the purpose of the Contract or, as the case may be, installing, operating or maintaining the Products. GEMALTO retains and shall retain full ownership of all inventions, designs and processes made prior to or during the course of performance of any Contract resulting therefrom.

13.2 The Buyer shall keep the Information in strict confidence and shall not disclose any of the Information to any other person than the Buyer's employees who need to know such Information for

除上述 13 条所约定，买方不得以暗示地、反言或其他方式获得任何对金雅拓专利、商业秘密、著作权或任何其他知识产权的许可，不论直接地或间接地。买方不得超出合同，或为安装、运作或维护产品之目的（视情况而定）使用信息。履行合同之前或过程中所产生的任何发明、设计及流程，金雅拓保留其全部所有权。

13.2 买方对该信息应当严格保密，除为本合同第 13.1 条约定之目的需知情的员工之外，不得向其他任何人披露信息。任何其他披露都应取得金雅拓的事前书面同意。

the purposes stated in sub-Article 13.1. Any other disclosure shall be subject to GEMALTO's prior written approval.

13.3 Subject to Article 10, GEMALTO shall indemnify the Buyer against any and all claims, costs, expenses or liability directly arising out of the alleged infringement or infringement of intellectual property rights in the Buyer's country as a consequence of the use by the Buyer of the Products in accordance with their technical specifications, provided that the Buyer shall promptly notify GEMALTO in writing of any claim, that no claim may be made after a period of three (3) years from the date of delivery of the Product giving rise to the claim, that the Buyer shall provide all information and assistance required by GEMALTO concerning the claim, that the Buyer shall give GEMALTO the opportunity to defend and settle under the responsibility of GEMALTO any claim in this respect and that the Buyer shall refrain from making any admission, declaration or arrangement with the third party raising such claims.

13.3 在遵守第 10 条之约定的前提下，金雅拓对买方下述损失予以赔偿：因依照其技术说明使用产品，在买方所在国家引起知识产权侵权或侵权指控而直接产生的任何索赔、费用或责任。金雅拓上述赔偿责任的前提是：买方立即以书面形式将该索赔告知金雅拓（索赔不得迟于引起索赔的产品交付之日起 3 年），且买方应向金雅拓提供所要求之一切信息及协助，且买方给予金雅拓于其责任范围内进行抗辩与和解的机会，且买方不得向提起索赔的第三方做出任何认可、声明或和解安排。

The foregoing obligation to indemnify the Buyer shall not apply to GEMALTO for Products for which GEMALTO has not obtained a similar warranty from its supplier(s) and shall not apply either to GEMALTO for any alleged infringement or infringement that is due to or based upon (a) the association or combination of the Products with any other article, software, hardware, apparatus or device, or (b) any alteration or modification of the Products which is not made by GEMALTO or which is based upon a design supplied by the Buyer.

13.4 Should a court or an arbitrator finally establish that there has been an intellectual property infringement or should GEMALTO consider that the Products could be the subject of a claim or suit for intellectual property infringement, GEMALTO may choose, at its option, either:

- to obtain the right for the Buyer to continue using the Products, or
- to substitute equivalent products for the infringing Products, or
- to modify infringing Products so as to eliminate the infringement.

13.5 The foregoing states the entire liability and warranty of GEMALTO with respect to the infringement of any patent, copyright, trademark or trade secret or of any intellectual property right by the

金雅拓上述责任不包括金雅拓未从其供应商处获得类似保证的产品，也不适用于(a)因买方将产品与其它物件、软件、硬件、工具或器具联结或结合而导致的侵权，或(b)非由金雅拓对产品做出的修改或更改产生的、或根据买方设计而提供的产品导致的侵权。

13.4 如果法院或仲裁员最终判定存在知识产权侵权，或金雅拓认为产品可能成为知识产权侵权索赔或侵权之诉的标的，金雅拓可以自行选择下述一项解决方案：

- 为买方获得继续使用产品的权利；或
- 以同等产品替代侵权产品；或
- 修改侵权产品以消除侵权。

13.5 以上约定是产品或其部分侵犯专利权、著作权、商业秘密或其它任何知识产权时金雅拓的全部责任和保证。

Products or any part thereof.

13.6 The Buyer on its part warrants that any design or instructions furnished or given by it shall not be such as will cause GEMALTO to infringe any intellectual property rights in the performance of the Contract. The Buyer shall, in this respect, hold harmless and protect GEMALTO in the same way as provided under sub-Articles 13.3 and 13.4.

14. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

14.1 The Proposal and the Contract shall be governed by and construed in accordance with the laws of the People's Republic of China. The application of the United Nations Convention on Contracts for the International Sales of Goods (1980) shall be expressly excluded.

14.2 The competent court of the domicile of GEMALTO in the People's Republic of China shall have exclusive jurisdiction to resolve any and all disputes between the parties arising out of or in connection with the existence, validity, construction, performance or termination of the Proposal or the Contract, which the parties are unable to settle amicably.

13.6 买方保证，买方提供的任何设计或说明不应导致金雅拓在履行合同时侵犯任何知识产权。在此方面，买方应当以第 13.3 条和第 13.4 条约定的相同方式保护金雅拓，并使其免受损害。

14 适用法律和争议的解决

14.1 除法律另有约定外，报价及合同应受中国法律管辖并依其解释。本合同不适用 1980 年《联合国国际货物买卖公约》的约定。

14.2 因报价或合同产生的或与之相关的，报价或合同的存续、有效、解释、履行或终止的任何争议，双方若不能友好协商解决，应提交给金雅拓在中国的注册地有管辖权的法院解决，该法院具有排他性司法管辖权。

15. ASSIGNMENT

Neither GEMALTO nor the Buyer shall, without the express prior written consent of the other (which consent shall not be unreasonably withheld) assign to any third party the Contract or any part thereof, except that GEMALTO shall be entitled, without the Buyer's consent, to assign the Contract or any part thereof to (i) any affiliated company or to (ii) any third party in connection with a merger, sale of substantially all of GEMALTO'S assets or a change of control.

16. TERMINATION

GEMALTO may terminate the Contract or its obligations hereunder at any time upon:

- Default by the Buyer in the payment of any amount due to GEMALTO hereunder;
- The Buyer's failure to pay any debt to GEMALTO;
- The Buyer's bankruptcy, insolvency or receivership;
- Any material default by the Buyer under the Contract not cured within fifteen (15) calendar days from the date GEMALTO notifies the Buyer of such default.

17. MISCELLANEOUS

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly

15 转让

在未获得对方事先书面明确同意（该等同意不应无理拒绝）的情况下，金雅拓或买方不得向第三方转让合同或合同的任何部分，但是，金雅拓有权无需经买方同意向下述各方转让合同或合同任何部分（i）金雅拓的任何关联公司；或（ii）与合并、金雅拓实质上全部财产的出售或控制权变更有关的任何第三方。

16 终止

若发生以下事由，金雅拓可以在任何时间终止合同或其应履行的义务：

- 买方未能在约定时间向金雅拓付款；
- 买方未向金雅拓偿还债务；
- 买方破产、无力偿债或进入破产管理程序；
- 买方出现重大违约行为，且在收到金雅拓关于纠正违约行为的通知之日起 15 日历日内仍未改正的。

17 其他

若本合同条款被任何法院、裁判所或主管当局行政机关认定为全部或部分不合法、失效、无效、可撤销、不可执行或不合理，合同条款在非法性、失效、

illegal, invalid, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue to be in full force and effect.

[end]

无效、可撤销、不可执行或不合理方面具有可分割性，合同其他条款或该条款其他部分仍应继续有效。

[完结]