

GENERAL SALES TERMS AND CONDITIONS
GEMALTO TAIWAN CO., LTD.
台灣金雅拓股份有限公司
通用銷售條款和條件

1 GENERAL / 概述

1.1 These General Sales Terms and Conditions shall apply to products and related services (hereafter jointly the "Products") manufactured or provided by Gemalto Taiwan Co., Ltd. (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.

本《通用銷售條款和條件》適用於台灣金雅拓股份有限公司（以下簡稱“金雅拓”）為客戶（以下簡稱“買方”）生產或提供產品及相關服務（以下合稱“產品”）的交易。金雅拓就產品嚮買方出具的任何形式的報價（以下簡稱“報價”）均應受本《通用銷售條款和條件》之約束。除非雙方另行達成明確的書面協議，若本《通用銷售條款和條件》與金雅拓和買方達成的其他書面或口頭協議不一致，應優先適用本《通用銷售條款和條件》。

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.

除非金雅拓書面通知買方予以延長，報價應於發出之日起三十（30）個日曆日內有效。該報價應包括但不限於連同《通用銷售條款和條件》發送給買方的商務性、技術性及財務相關文件。

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 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.

買方對報價的書面接受或買方發出書面訂單（以下簡稱“訂單”）視為買方無條件且不可撤銷地接受本《通用銷售條款和條件》並放棄買方自身的購買條款和條件或其他任何類似文件。

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.

在買方和金雅拓的適當授權代表書面簽署與報價相關的合同前（以下簡稱“合同”），金雅拓得隨時嚮買方發出書面通知變更或撤銷報價。

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

如果買方接受報價但附帶補充、修改、限制或假定，該等接受應被視為買方的新要約。而該等新要約僅在金雅拓以書面形式予以接受時，才對金雅拓產生約束力。無論訂單之前是否有報價，除非買方收到金雅拓書面文件（以下簡稱“訂單確認書”），明確接受訂單及其補充、修改、限制或假定（如適用），否則均不構成具有約束力的合同。如果訂單和訂單確認書不一致，訂單確認書應當優先適用並決定合同的條款。除金雅拓事先書面同意且由此產生的所有費用均由買方承擔的情況下，訂單在訂單確認書的發出日之後不得取消或變更。

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.

合同由以下部分構成：

- 雙方簽署的協議，或雙方同意的訂單及訂單確認書（視情況可能包括補充性的任何具體或特殊的銷售條款）；以及
- 構成合同不可或缺部分的本《通用銷售條款和條件》。

若訂單確認書與本《通用銷售條款和條件》存在任何不一致之處，訂單確認書應當優先適用並決定合同的條款。

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.

合同構成雙方之間就有關事宜達成的完整協議，且替代雙方先前就該事宜達成的所有協議和諒解（無論口頭、書面或其他形式）。買方確認其並不會依賴於由金雅拓做出或以金雅拓名義做出的、卻並未體現於合同中的任何聲明、承諾或陳述。

2. DOCUMENTATION / 文件

2.1 The weight, dimensions, size, performance and other 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.
金雅拓提供的技術或商業文件（以下簡稱“文件”）中所述之產品的重量、體積、尺寸、性能和其他規格僅具有參照性，並不具有合同約束力，但金雅拓在訂單確認書或合同中明確說明其具有約束力的情況除外。

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.
金雅拓嚮買方提供的文件仍為金雅拓的專有財產。未經金雅拓事先書面同意，買方不得予以傳播、複製或重製。

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 proprietary information.

根據合同條款，買方被授予一項非獨佔的、不可轉移的且不可轉讓的使用文件之權利。買方同意將知悉文件的範圍僅限於為使用產品之目的而必須知悉文件的僱員。未經金雅拓事先書面同意，買方不得向任何人提供或披露文件相關的任何信息。本條款所約定之義務於合同履行完畢或終止后仍然對買方具有約束力。買方應當採取與保護其自身的專有信息相同的全部措施以保證文件的機密性。

3. TERMS OF SALE / 銷售條款

3.1 Unless otherwise expressly stated in the Proposal, the minimum quantity of any Order shall be of two hundred (200) Products (or 5,000 units in case of cards).

除非報價中有明確的不同約定，任何訂單的採購數量不得低於 200 個產品（或 5,000 張卡片）。

3.2 Unless otherwise agreed in writing, all sales of the Products between the parties are deemed concluded DAP as further specified in the Order Acceptance and / or the Contract.

除非另行書面同意，雙方所有產品銷售應適用 DAP，細節由訂單確認書或合同予以進一步約定。

3.3 The term "DAP" 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.

DAP 貿易術語或用於確定合同中銷售條款的其他貿易術語，均應按照國際商會發佈的《2010 年國際貿易術語解釋通則》進行解釋。

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 relevant invoice.

金雅拓根據買方的要求提供合同約定以外的工作，不構成對貿易術語或合同內容的任何修改；買方的要求僅意味金雅拓將以買方名義並代表買方開展此類工作。金雅拓將就該等工作及其產生的費用嚮買方開具發票，買方同意在收到有關發票後嚮金雅拓支付相關款項。

4. DELIVERY / 交付

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 a the payment for the Order.

除非訂單確認書，合同或其他書面協議中有相反約定，產品交付時間應當從下述日期中的最晚者起算：

- 金雅拓收到履行訂單所必須的所有信息和數據；或
- 金雅拓收到該訂單項下的付款。

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

在交付之前，產品將根據金雅拓的通常標準進行保存、包裝或裝箱。

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.

除非另有相反約定，產品交付時即視為被買方接受，且根據訂單交付之產品即視為已轉移給買方，並不得退回或更換。

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

金雅拓保留進行部分交貨或提前交貨的權利，並就該交貨數量開具發票。金雅拓特別保留交付數量與買方訂購數量相差最高為百分之十（+/-10%）的權利，買方承諾在該允差範圍內根據金雅拓實際交付的產品數量支付相應的價款。

- 4.5 For each Order of cards 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 spectroradiometer and will not exceed +/- 3.5 in the CIE 94 colorimetric space (2.1.1) D65/10 depending on the card product type.

就各訂單卡產品而言，卡產品基色由金雅拓創建，並將按照買方簽署的樣張（即金雅拓嚮買方以電子或紙制形式發送的相關卡原圖的最初樣品）在卡產品上印色。而所有其他顏色則依據金雅拓的各生產地所具備的國際色卡顏色表創建並印色。基色的樣張與卡產品上印色、色卡顏色表與卡產品上印制的其他顏色可能存在差別，根據光譜色度計測量，其差別在 CIE94 色度空間 (2.1.1) D65/10 中不超過 +/- 3.5。

- 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 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.

根據買方的要求或者由于不可歸因于金雅拓的原因而導致產品全部或部分延期交付時，金雅拓有權存儲產品或其任何部分，但風險和費用應由買方承擔。存儲日期應視為交付日期。於該情形之下，金雅拓應開具并簽署一份倉庫憑單以免除金雅拓與該存儲有關的一切責任。

5. TRANSFER OF RISKS AND TITLE / 風險及所有權之轉移

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

產品風險應根據所適用之國際貿易術語的規定於交付時轉移給買方。

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

產品的所有權於金雅拓收到買方為產品支付的全部價款時轉移給買方。

6. PRICE / 價格

- 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.

除非訂單確認書中有相反約定，根據本文條款和條件履行合同時，金雅拓報價中約定的產品價格是固定且不可變更的。

- 6.2 The prices hereunder set forth are quoted in New Taiwan Dollars (NTD), which will be the invoicing and payment currency, unless otherwise agreed by the parties.

除非雙方另有約定，產品均以新台幣（NTD）報價，且發票及支付貨幣也均為新台幣（NTD）。

- 6.3 All prices of Products or parts thereof to be delivered by GEMALTO under the Contract are to be understood "DAP", as further specified in the Order Acceptance or the Contract, according to the INCOTERMS® 2010.

由金雅拓交付之全部或部分產品的價格均應理解為依據 DAP（INCOTERMS® 2010）價格，且由訂單確認書或合同予以進一步約定。

- 6.4 Without prejudice to the above-mentioned INCOTERMS, all prices hereunder are exclusive of all taxes (including GST/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.

在不違反上述貿易術語的前提下，本文項下所有價格不包括所有稅款（如商品及服務稅/增值稅）、關稅、徵稅和其他任何收費，該等稅費均應由買方自行承擔。若適用任何預扣稅款，買方應向金雅拓提供已納稅證明。雙方應互相配合以獲取預扣稅款的減免及申請適用之稅收協定優惠待遇。

7. INVOICING AND PAYMENT / 開具發票及付款

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

除非適用法律法規另有不同要求，每批產品裝運后金雅拓將單獨開具一份金雅拓格式的發票。

- 7.2 Unless otherwise agreed by the parties, the price of the Products shall be paid by the Buyer to GEMALTO within 30 calendar days from the invoice date.

除非雙方另有約定，買方應於發票日起三十個日曆日內向金雅拓支付產品價款。

- 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 monthly basis at 0.25% above the 3-month TAIBOR rate 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.

若買方未能在到期日付款，在不影響金雅拓其他權利或可采取的救濟措施的前提下，金雅拓可以采取以下措施（但不限于）：

(i) 延遲履行自身義務，直至買方支付全部應付款項；(ii) 就未支付部分按月向買方收取利息，每月利率為付款到期日三月間台北金融業拆款定盤利率加 0.25%，利息計算期間為自付款到期日起至全部款項付清為止（欠款期間不足一個月的按一個月計算）；(iii) 在金雅拓向買方發出書面通知后的七（7）個日曆日屆滿時終止剩餘未履行部分合同。

- 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.
付款時間至關重要。若買方有遲延付款之情形，對於任何新的交付（無論雙方如何約定），金雅拓均可要求買方在裝運之前付款，或者暫停或取消尚未完成的任何合同或訂單，且無需承擔任何責任。
- 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.
金雅拓有權隨時設定有利于買方的信用額度，並相應調整付款期限。
- 7.6 No discount will be accepted for advance payments except in case of prior written consent between the parties.
除雙方事先另有書面同意外，買方預付款或提前付款均不享受任何折扣。
- 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 amount equal to such deduction to be paid by GEMALTO to the Buyer.
買方應全額支付合同項下應付價款且不得有任何扣費，無論是否通過抵銷、索賠、折扣、扣減或其他形式，但買方持有生效的法院指令要求金雅拓向買方支付對等於該扣費之金額的情況除外。
- 8. PRE-DELIVERY ACCEPTANCE TESTING / 發貨前驗收測試**
- 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 for 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.
若雙方同意對產品進行發貨前驗收測試，並於合同中對發貨前驗收測試程序予以約定，則該驗收測試應於金雅拓發出書面通知之日起十五個日曆日內在金雅拓場所內進行。任何發貨前驗收測試應當由買方承擔費用，並應依照金雅拓當下執行的測試流程進行。
- 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.
買方有權參加發貨前驗收測試，但應於前述預計日期提前至少三個日曆日將代表人姓名及資料以書面形式通知予金雅拓。買方若未能參加，該發貨前驗收測試並不因此而被延遲或取消。金雅拓可依據 8.1 條款隨後進行發貨前驗收測試，8.1 條款將被視為完成。
- 9. WARRANTY / 保證**
- 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.
金雅拓在此保證產品在正常使用及服務的情況下，在材料及工藝方面均不存在瑕疵，保證期間為自交付之日起十二（12）個月。買方應自發現產品瑕疵之日起七（7）個日曆日內，以書面形式將該瑕疵通知金雅拓。為便于金雅拓查找瑕疵原因，買方應於通知中詳細描述瑕疵出現的情況。金雅拓將就產品檢測與買方進行安排。若檢測表明產品的確存在瑕疵，則買方退回的瑕疵產品，金雅拓將自行選擇予以修理或更換，費用由金雅拓承擔。瑕疵產品之所有權自更換產品交付時轉移給金雅拓。若金雅拓無更換部件，則將提供與之最匹配的部件予以替換。
- 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 the remainder of the 12-month period provided above.
退回金雅拓的瑕疵產品，應由買方支付運輸及保險的費用。更換后或被修理后的產品，運輸及保險的費用由金雅拓承擔。產品經由金雅拓更換或修理后，上述十二個月保證期並不重新起算。
- 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.
產品按現狀提供，且金雅拓在此所做之保證嚴格限於修理或更換存在瑕疵的部分。上述保證僅適用於按照金雅拓使用說明進行使用及維護的產品。
- 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.

上述保證不適用於可消耗及延展部分（諸如但不限於電池、保險絲），也並不適用於因買方未能依據金雅拓提供的技術規範、文件及通常適用標準進行操作或維護所出現的瑕疵，且不適用於如下原因所致之瑕疵：（i）與非由金雅拓提供、批准或未經金雅拓特別認可之設備、材料、系統結合使用；或（ii）金雅拓以外的任何第三方對產品進行修改；或（iii）任何意外、故意毀壞、疏忽或操作錯誤導致之損壞；或（iv）產品正常損耗；或（v）不當安裝、維護或存儲；（vi）對產品進行金雅拓認為不必要的技術維修和改動。

- 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.

對於金雅拓自供應商處採購轉售的產品或部件，金雅拓所做之保證僅嚴格限於金雅拓自供應商處所獲得之保證。

- 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 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.

金雅拓不能也不應當保證產品能禁得任何可能發生的攻擊，並在此方面不承擔並拒絕承擔任何責任。即使產品在設計時符合當時有效的安全標準，買方也認同，根據安全方面的技術發展水平，特別是新攻擊不斷產生的情況下，安全機制的抵抗力也必須逐步提升。在任何情況下，特別是發生對含有產品的系統或設備有效攻擊的事件時，金雅拓均不為任何第三方的訴訟或主張承擔任何責任。產品相關的所有設計、計劃、數據（譬如個人化數據）、電子安全系統及架構，以及規格（統稱“設計”）均應視為由買方提供并由買方負責。若根據買方請求或在其他情況下，金雅拓對設計提出建議，買方應負責分析並決定是否予以採納。買方聲明并保證其對產品發出訂單：(a) 依據的是其自身之知識及判斷進行選擇、使用、及安裝於產品的電子安全系統或架構，並且(b) 其已經閱讀、理解并接受由產品所提供的電子安全系統或架構。對於產品的電子安全系統或架構的失效或針對其的攻擊，金雅拓不承擔任何形式之責任。

- 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.

本條款下金雅拓之保證及買方之權利和救濟為排他性的，買方明確放棄與產品瑕疵或故障有關的、法律明示或默認的或其他形式的任何保證、權利或救濟。金雅拓特別表示不做以下保證，即產品可以禁得任何企圖阻止或破壞其功能（包括其安全機制）的攻擊；對此，金雅拓不承擔並拒絕承擔任何責任。

10. LIABILITY / 責任

- 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 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.

在適用法律最大許可的限度內、關於任何基於合同所產生之損害、損失或費用，金雅拓及其關聯公司之主管、僱員或其供應商、代理或分銷商，在任何情形下不應向買方及其主管、代理、僱員、繼承者或受讓人，承擔因合同產生的或與合同相關的（如產品缺陷、侵權或被指侵權、意外事件、失效或任何未能履行合同之情形）任何間接的、特殊的、結果性的或意外產生的任何種類或性質的、由買方或第三方產生或所遭受之損害，包括但不限於任何損失、費用、損害、收入損失、利潤損失、使用損失、生產損失或預期收益損失、業務損失、合同或商業機會損失、商譽或名譽的損失或損害、或任何關於數據、數據庫或軟體之丟失或破壞，即使金雅拓已經被告知發生該等損害或損失的可能性。對於基於該等損害、損失或費用的索賠，買方應當為金雅拓進行抗辯、賠償金雅拓並保證其不受損害。

- 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.

由于買方、第三方或最終用戶對產品的違法或欺詐性使用而造成的損害，金雅拓在任何情況下均不承擔責任。

- 10.3** Any claim against GEMALTO must be brought within no later than twelve (12) months after the cause of claim arises.

任何針對金雅拓之權利主張應不遲於引起權利主張的責任事件起十二（12）個月內提出。

- 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.

金雅拓或其供應商、代理或分銷商在本合同下的全部責任，無論該責任基於何種法律理論產生，最高不超過（i）引起責任的訂單價款或（ii）在導致責任的事件發生前六（6）個月內買方根據合同嚮金雅拓實際支付的總價款，以上述兩者金額較小者為準。

11. FORCE MAJEURE / 不可抗力

- 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.

金雅拓對合同項下任何義務的履行系因不可抗力的原因而被部分或全部遲延或阻止，則不構成違約。

- 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 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.

“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：天災、政府決策、禁運、戰爭或全國性緊急事件、敵對行動、公敵行爲、世界任何地方的恐怖襲擊、內亂、破壞活動、火災、洪水、爆炸、流行病、檢疫限制、擾亂日常所須資源（包括但不限于電力、水、燃料及類似資源）供給、罷工（無論發生在金雅拓或其供應商或分包商）、停工及工潮、供應商或分包商因本文所述不可抗力導致的遲延。

- 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.

如發生不可抗力，金雅拓應當將該等事件通知買方，且合同履行期應當自動延長，該等延長期限應為金雅拓克服該等事件後果所合理需要的時間。

- 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.

如因不可抗力，金雅拓的全部或部分義務遲延履行或不能履行的期限超過三（3）個月，金雅拓可以在任何時間嚮買方請求全部或部分終止合同，且不對買方產生進一步責任。雙方屆時將盡量達成協議，如未能達成協議，應適用第 14 條約定。但是任何一方任何到期或將到期的款項的支付不得以不可抗力為由而遲延或不履行。

12. EXPORT CONTROL / 出口控制

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 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.

若產品由金雅拓出口且產品受到出口管制，買方應承諾完全遵守相關出口管理及管制之法律法規，以確保產品不會，直接或間接，違反出口適用法律或違反進口適用法律。未經金雅拓或有關主管部門事先書面同意，買方不得將產品（包括售後支持相關的貨物和備用品）、文件、操作手冊及任何與產品有關的信息銷售、出借或交付予任何第三方，不論基於什麼條件、是否有償、臨時性或永久性。

13. INTELLECTUAL PROPERTY, CONFIDENTIALITY AND INFRINGEMENT / 智慧財產、保密及侵權

- 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 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.

金雅拓基於報價或合同中所提供的、包含于任何文件或支持中的信息及數據（統稱“信息”），應同附于信息上的所有智慧財產（包含但不限于專利權、版權、商標權、外觀設計）屬於金雅拓專有。因而，任何與產品相關之名稱、商標、商業秘密、專利、待審批之專利、專門技術、版權及其他智慧財產權，其權利、所有權或利益均不因合同而轉移給買方。尤其，對於嵌入式軟體，產品之銷售並不發生該軟體所有權之轉移，而僅意味著基於金雅拓於產品中所享有的智慧財產權，根據本文條款，買方可獲得一項非排他性的且不可轉移之許可，與金雅拓提供的產品一起且僅以嵌入於產品中的形式使用該軟體。

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.

除上述 13 條所約定，買方不得以暗示地、反言或其他方式獲得任何對金雅拓專利、商業秘密、版權或任何其他智慧財產權之許可，不論直接地或間接地。買方不得超出合同，或安裝、運作或維護產品之目的（視情況而定）使用信息。履行之前或過程中所產生之任何發明、設計及流程，金雅拓保留其全部所有權。

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

買方應對信息予以嚴格保密，且不應向買方基於 13.1 條款所述目的有必要知悉該信息之僱員以外其他任何人批露該信息。任何其他批露均應取得金雅拓事先書面批准。

- 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.

在遵守第 10 條之約定的前提下，金雅拓對買方下述損失予以賠償：因依照技術說明使用產品，在買方所在國家引起智慧財產權侵權或侵權指控而直接產生的任何索賠、費用或責任。金雅拓上述賠償責任前提是：買方立即以書面形式將該索賠告知金雅拓（索賠不得遲於引起索賠的產品交付之日起 3 年），且買方應向金雅拓提供所要求之一切信息及協助，且買方給予金雅拓於其責任範圍內進行抗辯並和解的機會，且買方不得向提起索賠的第三方做出任何認可、聲明或和解等安排。

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.

金雅拓上述責任不包括金雅拓未從其供應商處獲得類似保證的產品，也不適用於（a）因買方將產品與其它物件、工具或器具聯結或結合而導致的侵權，或（b）根據買方設計而提供的產品導致的侵權。

- 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.

若法院或仲裁員最終判定存在智慧財產權侵權，或金雅拓認為產品可能成爲智慧財產權侵權索賠或侵權之訴的標的，金雅拓可以自行選擇下述一項解決方案：

- 爲買方獲得繼續使用產品的權利；或
- 以同等產品替代侵權產品；或
- 修改侵權產品以消除侵權。

- 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 Products or any part thereof.

以上約定是產品或其部分侵犯專利、版權、商標權或商業秘密或其他智慧財產權時，金雅拓的全部責任及保證。

- 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.

買方保證，買方提供的任何設計或說明不應導致金雅拓在履行同時侵犯任何智慧財產權。在此方面，買方應當以第 13.3 條和第 13.4 條約定的相同方式保護金雅拓，並使其免受損害。

14. APPLICABLE LAW AND SETTLEMENT OF DISPUTES / 適用法律及爭議解決

- 14.1** The Proposal and the Contract shall be governed by and construed in accordance with the laws of Taiwan, excluding its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sales of Goods (1980) shall be expressly excluded.

報價及合同應受臺灣法律管轄並依其解釋，但不包括其衝突規則。《聯合國國際貨物銷售合同公約》（1990）明確予以排除適用。

- 14.2** The Taipei District Court shall be the Court of First Instance and have exclusive jurisdiction to resolve any and all disputes between the parties arising out of or in connection with the Proposal or the Contract, which the parties are unable to settle amicably.

任何且所有產生於或關於報價或合同之糾紛，若雙方無法友好協商解決的，應提交台灣台北地方法院爲第一管轄法院且享有排他性管轄權。

15. ASSIGNMENT / 轉讓

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 of GEMALTO or to (ii) any third party in connection with a merger, sale of substantially all of GEMALTO'S assets or a change of control.

在未獲得對方事先書面明確同意（該等同意不應無理拒絕）的情況下，金雅拓或買方不得將第三方轉讓合同或合同的任何部分，但是，金雅拓有權將下述各方轉讓合同或合同任何部分（i）金雅拓的任何關聯方；或（ii）與合並、金雅拓實質上全部財產的出售，或控制權變更有關的任何第三方。

16. TERMINATION / 終止

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.

金雅拓可基於下述所列緣由隨時終止合同或其於合同項下之義務：

- 買方違約拖欠金雅拓任何金額應付價款；
- 買方未能向金雅拓償還債務；
- 買方發生破產、無力償債或進入破產管理程序；
- 買方於合同項下發生任何實質性違約，并自金雅拓通知其該違約之日起十五（15）個日曆日內未能補救的。

17. MISCELLANEOUS / 其他

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

若本合同條款被任何法院、裁判所或主管當局行政機關宣佈全部或部分不合法、失效、無效、可撤銷、不可執行或不合理，合同條款在非法性、失效、無效、可撤銷、不可強制執行或不合理方面具有可分割性，合同剩餘條款及該條款剩餘部分仍應繼續有效。