

**GENERAL TERMS AND CONDITIONS (GTC) – Effective Date May 31th 2025**

一般条款及条件-2025 年 5 月 31 日生效

B&R Industrial Automation (China) Co., Ltd.

Business licence No.: 91310115607358535F

贝加莱工业自动化（中国）有限公司

统一社会信用代码 91310115607358535F

**1. Definitions**

定义

*ABB:*

*ABB:*

Means all companies of the ABB Group

指 ABB 集团的所有公司

*Applicable Integrity Laws:*

适用诚信法律:

See definition in clause 0

见第 15.1 款定义

*B&R:*

贝加莱:

B&R Industrial Automation (China) Co., Ltd., Business licence No.: 91310115607358535F, Registered address: Rm 1604,1606, 16F, Building 2, No.79, Aona Road, Free Trade Zone, Shanghai, China.

贝加莱工业自动化（中国）有限公司, 统一社会信用代码 91310115607358535F, 公司注册地: 中国（上海）自由贸易试验区奥纳路 79 号 2 幢 16 层 1604、1606 室。

*Background Intellectual Property (BIP):*

背景知识产权:

Intellectual property owned or controlled by either of the *Parties* at the date of commencement of their business relationship.

任何一方在业务关系开始之日已拥有或控制的知识产权。

*Contract Products:*

合同产品:

Standard and/or customized services/products from *B&R's* portfolio (hardware, software, services) to be provided due to an *Individual Order (Standard Product and Purchaser-specified Product)*.

根据单个订单提供的贝加莱产品系列（硬件、软件、服务）中的标准和/或定制服务/产品（标准产品和采购方指定产品）。

*Contract Year:*

合同年度:

One year from the beginning of the business relationship (contract) between the *Parties*, in case of doubt from the first *Order* (and thereafter one additional corresponding year each time).

双方之间的业务关系(合同)开始后的一年, 为免歧义, 应自第一次订单之日起算一年(以及此后的每一年)。

*GTC:*

一般条款及条件:

These General Terms and Conditions of *B&R*.

本贝加莱《一般条款及条件》。

**Individual Order:**

单个订单:

Individual and, binding contract (based on *Offer, Order, Order Confirmation*) on the delivery of *Contract Products*.

关于交付 *合同产品* 的单独的且具有约束力的合同（基于 *要约、订单、订单确认*）。

**Offer:**

要约:

*B&R's* nonbinding request to submit an *Order*.

贝加莱提出的关于提交 *订单* 的无约束力的要求。

**Order:**

订单:

*Purchaser's* request on the delivery of *Contract Products* based on an *Offer*.

采购方提交的基于 *要约* 对 *合同产品* 交付的要求。

**Order Confirmation:**

订单确认:

Acceptance of an *Order* by *B&R* with binding effect. It may deviate from the *Order*.

贝加莱具有约束力地接受 *订单*。其可变更 *订单* 的内容。

**Order Validity Period:**

订单有效期:

5 working days within which *Purchaser* is bound to its *Order*.

5 个工作日内，采购方受其订单的约束。

**Parties:**

双方:

*B&R* and *Purchaser*.

贝加莱及采购方

**Production Site of B&R:**

贝加莱的生产基地:

Site of B&R in Austria.

贝加莱在奥地利的工厂。

**Property Rights:**

产权:

All immaterial rights (in particular industrial property rights and copyrights) ; = Intellectual Property Rights.

所有无形权利（特别是工业产权和版权），即知识产权。

**Purchaser:**

采购方:

*B&R's* contractual partner, even before concluding an *Individual Order* (agreement).

贝加莱的合同伙伴，甚至在订立 *单个订单*（协议）之前。

**Purchaser-specified Product:**

采购方指定产品:

A *Standard Product* enhanced by customization for the needs of the *Purchaser* or a product specifically designed according to the *Purchaser's* specification.

根据采购方需求进行了定制化改进的 *标准产品* 或根据采购方规格专门设计的产品。

**Restricted Person:**

受限制人士:

See definition in clause 15.3  
见第 15.3 款定义

**Sanctions Agency:**

制裁机构:

See definition in clause 15.2  
见第 15.2 款定义

**Standard Product:**

标准产品:

Any *Contract Product* from B&R's respectively valid product catalog ([www.br-automation.com](http://www.br-automation.com)).

任何来自 贝加莱当时有效产品目录的 *合同产品* ([www.br-automation.com](http://www.br-automation.com))。

## 2. **Scope and Applicability** 合同范围及适用性

- 2.1. These *GTC* govern the legal, commercial and technical modalities for the supply of *Contract Products* to *Purchaser* on the basis of *Individual Orders*. In case a provision of these *GTC* is primarily aimed at hardware, such provision is nevertheless applicable to software or services accordingly.

本一般条款及条件约定了 贝加莱基于单个订单向采购方提供合同产品的法律、商业和技术模式。如该等一般条款及条件的某项规定主要针对硬件，其亦应相应地适用于软件或服务。

- 2.2. These *GTC* apply to all *Offers* made by and all *Orders* submitted to *B&R* and will become content of each *Individual Order*.

本一般条款及条件适用于 贝加莱的要约和提交给 贝加莱的所有订单，并应构成每个单个订单的内容。

- 2.3. *B&R* rejects the applicability of any terms and conditions of *Purchaser*.

贝加莱拒绝适用采购方的任何条款和条件。

- 2.4. Any deviations from and amendments to these *GTC* and from/to an *Individual Order* only apply if and insofar as they have been accepted by *B&R* in writing.

任何对本一般条款及条件及对任一单个订单的变更和修订仅在 贝加莱书面确认后方可适用。

- 2.5. The following descending order of precedence shall apply: (i) these *GTC*; (ii) any written supplements to or deviations from these *GTC* or from or to any *Individual Order*; (iii) *Individual Order*; (iv) *Order Confirmation*.

以下为应适用的先后顺序：(i) 本一般条款及条件；(ii) 对本一般条款及条件或对任何单个订单的任何书面补充或变更；(iii) 单个订单；(iv) 订单确认。

- 2.6. The *Parties* will comply with all mandatory legislation in their sphere.

双方应遵守其领域内的所有强制性立法。

- 2.7. In case *B&R* shall - in each case - accept an affiliated company of *Purchaser* as authorized to put an *Order*, *Purchaser* shall hold *B&R* fully harmless for fulfilling all contractual obligations of such third party. Besides, these *GTC* shall apply accordingly with respect to any such third party.

如 贝加莱在任何情况下接受采购方的关联公司授权下订单，采购方应使 贝加莱在履行该第三方的所有合同义务方面完全不受影响。此外，本一般条款及条件应相应适用于任何该等第三方。

## 3. **Safety** 安全性

- 3.1. The *Parties* shall comply with applicable safety and environmental regulations, including

regulations, instructions and directions relating to order, safety, environment and control that apply locally in each respective case.

双方应遵守适用的安全 and 环境法规，包括遵守根据不同情况而适用的与当地的秩序、安全、环境和控制有关的法规、指示和说明。

- 3.2. Even when not explicitly requested by *B&R*, *Purchaser* assesses, evaluates and communicates any safety risk with regard to the equipment and/or systems to which the execution of services or delivery of *Contract Products* may relate, including respective in-house regulations or guidelines of *Purchaser*. Internal regulations or guidelines will not have a restrictive effect on these *GTC*. *Purchaser* shall be responsible vis-à-vis *B&R* for all disadvantages accruing therefrom.

即使贝加莱未明确要求，采购方也会评估、评价和通报与履行服务或交付合同产品可能涉及的设备和/或系统相关的任何安全风险，包括各自的内部规定或采购方的指导方针。内部规定或指导方针不会对本一般条款及条件产生任何限制性影响。采购方应对由此产生的所有不利因素向贝加莱负责。

#### 4. Termination 终止

If (i) *Purchaser* fails to meet any of his obligations or fails to do so in time or properly, (ii) *Purchaser* is declared bankrupt, (iii) *Purchaser* requests suspension, (provisional) suspension and/or postponement of payment, (iv) *Purchaser* starts liquidation of his company, (v) the majority of the shares in *Purchaser* is transferred to a competitor of *B&R*, (vi) a competitor of *B&R* otherwise gains control of *Purchaser*, (vii) if *Purchaser's* assets are entirely or partially seized, or (viii) *Purchaser* is in breach of *ABB's* Code of Conduct (cf para 16), *B&R* may to its own discretion and at all times preserving any right to payment of costs, damage and interests suspend execution of any existing contractual relationship/duty (in particular *Individual Order*) or to legally terminate and/or dissolve it in whole or in part without prior notice of default by means of a written declaration.

如果 (i) 采购方未能履行其任何义务或未能及时或适当地履行义务，(ii) 采购方被宣布破产，(iii) 采购方要求暂停、(临时)中止和/或推迟付款，(iv) 采购方开始对其公司进行清算，(v) 采购方的大部分股份被转让给贝加莱的竞争对手，(vi) 贝加莱的竞争对手以其他方式获得对采购方的控制，(vii) 如果采购方的资产被全部或部分扣押，或者 (viii) 采购方违反 *ABB* 的行为准则 (参见第 16 条)，贝加莱可自行决定并在任何时间保留获取任何费用、损失和利益支付的权利，暂停履行任何现有的合同关系/义务 (尤其是单个订单)，或者在无需事先发送违约通知的情况下通过书面声明的方式合法终止和/或全部或部分解除合同。

#### 5. Specification and Use of Contract Products • Machine Safety • Services 合同产品的规格和使用 - 机器安全 - 服务

- 5.1. The specification of each *Standard Product* is usually shown in *B&R's* respectively valid product catalogue ([www.br-automation.com](http://www.br-automation.com)). In case specifications are not stated there, any specifications for *Contract Products* have to be agreed upon by mutual signature. The availability of the *Contract Products* and spare parts is defined by the provisions of the respectively valid *B&R* product lifecycle (<https://www.br-automation.com/en/about-us/br-lifecycle>).

每个标准产品的规格通常列明于贝加莱当时有效产品目录中 ([www.br-automation.com](http://www.br-automation.com))。如果产品规格未在该产品目录中列明，合同产品的任何规格都必须由双方签字同意。合同产品和备件的供应由各自有效的 *B&R* 产品生命周期的规定来确定 (<https://www.br-automation.com/en/about-us/br-lifecycle>)。

- 5.2. *Contract Products* are suitable for laws applicable at *Production Site*.  
合同产品符合生产现场当地适用的法律。

*Purchaser* will be responsible for the proper use of the *Contract Products*. *Purchaser* shall implement adequate training, instruction and documentation measures, following at

least the guidelines set forth in any *B&R's* manuals. *B&R* is not obliged to test and/or provide warning with regard to special purposes or conditions of use for the *Contract Products*. *Purchaser* will be responsible for compliance with all industry-specific standards, safety requirements, conditions of service, patents in his sphere.

采购方应正确使用 *合同产品*。采购方应实施充分的培训、指导和记录措施，且至少应遵循 *贝加莱* 手册中规定的准则。*贝加莱* 没有义务对 *合同产品* 的特殊用途或使用条件进行测试和/或提供警告。采购方将负责遵守所有特定行业的标准、安全要求、服务条件和其领域内的专利。

Machine safety is and stays the full responsibility of *Purchaser*. This in particular includes (i) risk assessment of the machine, (ii) specification of the needed safety functions, (iii) ensurance that the requirements as stated in the user manual are followed, (iv) validation of any safety function of the machine, and (v) identification and prohibition of any foreseen misuse of the *Contract Products*.

机器安全是采购方的全部责任。尤其包括(i)机器的风险评估，(ii)所需安全功能的说明，(iii)确保遵循用户手册中的要求，(iv)验证机器的任何安全功能，以及(v)识别和禁止任何可预见的对 *合同产品* 的滥用。

Machine safety is in no way included in *B&R's* scope of services. Any potential support provided by *B&R* in this regard shall be understood as non-binding recommendations only and shall not entail any responsibility whatsoever on the part of *B&R*.

机器安全绝不包括在 *贝加莱* 的服务范围内。*贝加莱* 在这方面提供的任何潜在支持应被理解为不具约束力的建议，不应导致 *贝加莱* 方面的任何责任。

In no event will *B&R*, its officers, directors, representatives, assigns, suppliers or subcontractors assume any responsibility or liability for the machine safety or work performed by *B&R's* application engineers on request of the *Purchaser*. *Purchaser* herewith confirms and agrees that *B&R* will have no liability for personal injury, death, direct or indirect damages, consequential damages of any type including but not limited to, operational interruption, loss of profit, loss of information and data. Further, *Purchaser* will hold *B&R* harmless and indemnify against any claims from third parties for any and all claims for damages for whatsoever reason in conjunction with machine safety or any services *B&R* provided to *Purchaser*.

在任何情况下，*贝加莱*、其职员、董事、代表、受让人、供应商或分包商都不会对机器安全或 *贝加莱* 的应用工程师根据采购方的要求进行的工作承担任何责任或义务。采购方在此确认并同意，*贝加莱* 对人身伤害、死亡、直接或间接损害、任何类型的继发性损失，包括但不限于运营中断、利润损失、信息和数据损失不承担任何责任。此外，采购方应使 *贝加莱* 不受损害，并应对第三方无论基于何种原因而提出的与机器安全或 *贝加莱* 提供给采购方的任何服务有关的所有损害索赔进行赔偿。

- 5.3. In case of software development or similar services provided by *B&R*, *Purchaser* shall cooperate with *B&R* hereunder, including, without limitation, (i) providing *B&R* with reasonable facilities and timely access to hardware, supplies, information, and personnel of the *Purchaser*; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing a stable, fully functional environment which will support the services and allow *B&R* and *Purchaser* to work productively; and (iv) promptly notifying *B&R* of any issues, concerns or disputes with respect to the services.

在 *贝加莱* 提供软件开发或类似服务的情况下，采购方应根据本一般条款及条件与 *贝加莱* 合作，包括但不限于：(i) 向 *贝加莱* 提供合理的设施和及时的访问，以获取采购方的硬件、用品、信息和人员。(ii) 提供有经验和合格的人员，他们具有适当的技能，能够胜任和及时地履行其指定的任务和职责；(iii) 提供一个稳定的、功能齐全的环境，以支持服务，使 *贝加莱* 和采购方能够有效地工作；(iv) 及时通知 *贝加莱* 有关服务的任何问题、关注或争议。

*Purchaser* shall be responsible for the performance of its personnel and agents and for the quality of the work provided to *B&R* for purposes of the performance of the services. 采购方应对其人员和代理人的表现以及为履行服务而提供给 *贝加莱* 的工作质量负责。

*Purchaser* acknowledges and agrees that *B&R's* performance is dependent upon the timely and effective satisfaction of the *Purchaser's* responsibilities hereunder and timely decisions and approvals of the *Purchaser* in connection with the services. *B&R* shall be entitled to rely on all decisions and approvals of the *Purchaser*.

采购方认可并同意，贝加莱的履行取决于采购方能及时并有效的履行其在本一般条款及条件项下的义务，以及采购方能及时作出与服务有关的决定和批准。贝加莱应有权依赖于采购方的所有决定和批准。

*Purchaser* shall be solely responsible for, among other things: (i) making all management decisions and performing all management functions; (ii) designating a competent management member to oversee the services; (iii) evaluating the adequacy and results of the services; and (iv) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities. It is understood and agreed that services may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the *Purchaser*.

除其他事项外，采购方应单独负责：(i) 做出所有的管理决策和履行所有的管理职能；(ii) 指定一名合格的管理成员来监督服务；(iii) 评估服务的充分性和结果；(iv) 建立和维护内部控制，包括但不限于监督正在进行的活动。各方理解并同意，服务可能包括意见和建议，但所有与实施这些意见和建议有关的决定应属于采购方的责任，且应由采购方做出。

*Purchaser* acknowledges that *B&R* shall have the right to (i) provide consulting or other services of any kind or nature whatsoever to any person or entity as *B&R* in its sole discretion deems appropriate, and/or (ii) use any works of authorship or other intellectual property that may be included in the deliverables, to develop for itself, or for others, materials or processes that may be equal or similar to those produced as a result of the services. *B&R* therefore has the right to use the outcome of the services in any way it sees fit to its full discretion.

采购方认可，贝加莱有权 (i) 向任何个人或实体提供贝加莱自行认为适当的任何种类或性质的咨询或其他服务，和/或 (ii) 使用可能包含在交付物中的任何著作或其他知识产权，为自己或他人开发可能与服务成果相同或类似的材料或工艺。贝加莱因此有权以其认为合适的任何方式全权使用服务的成果。

Unless otherwise expressly agreed, the source code shall remain the sole property of *B&R*. The *Purchaser* shall receive a non-exclusive right to use the results of the services.

除非另有明确约定，源代码应始终属于贝加莱独有的财产。采购方应获得使用服务成果的非排他性权利。

## **6. Orders, Individual Orders and Quantities**

### **订单、单个订单和数量**

#### **6.1. *B&R* is not required to accept an *Order*.**

贝加莱不负有必须接受每一个订单的义务。

#### **6.2. *Purchaser* is bound to any placed *Order* with *B&R* until expiration of the *Order Validity Period*. Any deviation in an *Order* from these *GTC* shall be null and void.**

在订单有效期届满之前，采购方必须遵守其提交给贝加莱的任何订单。任何偏离本一般条款及条件的订单都将是无效的。

#### **6.3. *Purchaser* must submit its *Orders* to *B&R's* affiliates in the *Purchaser's* country. If *B&R* is not represented in such country, the *Order* shall be submitted to *B&R*.**

采购方必须将其订单提交给贝加莱在采购方所在国家的关联公司。如果贝加莱在该国家没有代表，则应将订单提交给贝加莱。

#### **6.4. The *Individual Order* becomes effective when the *Order* is accepted. *B&R* may accept the**

*Order through Order Confirmation or delivery. B&R may also accept an Order after the expiration of the Order Validity Period, unless Purchaser has cancelled its Order.*

单个订单自订单被接受起生效。贝加莱可通过订单确认或交货来接受订单。除非采购方已经取消了该订单，贝加莱也可以在订单有效期到期后接受订单。

- 6.5. *Purchaser must examine each Order Confirmation without undue delay. When an Order Confirmation deviates from the Order, Purchaser must object within 5 working days of receipt, otherwise the Order Confirmation shall be deemed accepted.*

采购方必须审查每份订单确认，不得无故拖延。当订单确认与订单存在差异时，采购方必须在收到后的 5 个工作日内提出异议，否则应视为接受订单确认。

- 6.6. *Purchaser shall only be entitled to cancel Individual Orders for convenience in case of a mutual agreement with B&R. In case of a cancellation of the Individual Order, Purchaser shall pay a cancellation fee as follows:*

仅在与贝加莱协商一致的情况下，采购方才有权因便利取消单个订单。若单个订单因此取消，采购方应按以下要求支付取消费用：

- (i) 50% of the purchase price of cancelled *Standard Products* in Product Life Cycle Phase “Active” or “Classic”;  
对于产品生命周期处于“活跃”或“经典”阶段的标准产品，支付被取消产品价格的 50%；
- (ii) 70% of the purchase price of cancelled *Standard Products* in Product Life Cycle Phase “Limited” and beyond;  
对于产品生命周期处于“限量”及后续阶段的标准产品，支付被取消产品价格的 70%；
- (iii) 85% of the purchase price of cancelled *Purchaser-specified Products* in Product Life Cycle Phase “Active” or beyond; except the Parties agreed otherwise in advance.  
对于产品生命周期处于“活跃”及后续阶段的采购方指定产品，支付被取消产品价格的 85%，双方事先另行达成协议的除外。

- 6.7. *In the event of an unjustified return or refusal of the Contract Products by the Purchaser, Purchaser shall pay the full purchase price of the returned or refused Contract Products.*  
若采购方无理退还或拒收合同产品，采购方应支付退还或拒收合同产品的全部货款。

- 6.8. *Purchaser shall only be entitled to postpone the fulfillment of the Individual Order (e.g. delivery at a later date) in case of a mutual agreement with B&R. In case of a postponement, Purchaser shall pay 30% of the purchase price of the postponed Contract Products. A postponement of up to a maximum of 6 months is permitted.*

仅在与贝加莱协商一致的情况下，采购方才有权延期履行单个订单（例如，延期交货）。在延期的情况下，采购方应支付延期合同产品价格的 30%。延期最长不超过 6 个月。

- 6.9. *Charges according to clauses 错误!未找到引用源。 and 6.8 include all costs identified in connection with the Individual Order incurred prior to the effective date of notice of termination and all expenses incurred by B&R attributable to the termination to compensate for disruption in scheduling, planned production and other indirect costs.*

根据第 6.6、6.7 和 6.8 款收取的费用包括在终止通知生效日期之前与单个订单相关的所有费用，以及贝加莱因终止订单而产生的所有补偿已计划和安排的生产中断的费用和其他间接费用。

## **7. Delivery, Installation and Start-Up** 交付、安装及启动

- 7.1. *If delivery is not accepted by Purchaser, the risk shall in any case pass to Purchaser and acceptance shall be assumed.*

如果采购方不接受交货，在任何情况下，风险都应转移给采购方并视为已经接受交付。

- 7.2. Only upon accepted request of *Purchaser*, *B&R* shall carry out the installation and start-up of the *Contract Products* against refund of all adequate (i) travel expenses, (ii) subsistence expenses and (iii) all adequate expenses for working times (including travelling and waiting times) as per the *Offer*. All and any permits required by authorities for installations and the operation of plants shall be provided by *Purchaser*.

仅在采购方的要求被接受的情况下，且采购方承担所有适当的（i）旅行费用，（ii）生活费用和（iii）根据要约，所有适当的工作时间（包括旅行和等待时间）的费用的情况下，贝加莱才应进行合同产品的安装和启动。当局要求的所有和任何安装和工厂运行的许可证应由采购方提供。

## 8. Training 培训

Unless otherwise agreed in writing, *B&R* shall not be obliged to instruct or train *Purchaser* in the use of the delivered *Contract Products*. If *Purchaser* requests respective instruction and training, the adequate costs derived therefrom shall be borne separately by *Purchaser* as per the *Offer*. If not otherwise specified in the *Offer*, the training/instruction shall be usually carried out in the company facilities of *B&R*.

除非另有书面约定，贝加莱不承担指导或培训采购方如何使用所交付的合同产品的义务。如果采购方要求相应的指导和培训，由此产生的适当费用应由采购方根据要约单独承担。如果未在要约中另行约定，培训/指导通常应在贝加莱的公司设施中进行。

## 9. Delivery Periods (Delivery Dates) • Terms of Delivery • Packing 交付期（交付日期） - 交付条款 - 包装

- 9.1. Basic delivery periods, which may be reasonably exceeded by *B&R* result from the indicative values separately provided by *B&R* in the *Offer* and/or the *Order Confirmation*. *B&R* shall have the right to make partial deliveries and/or early delivery.

基本交付期系根据贝加莱在要约和/或订单确认中单独提供的指示性数值计算而得，贝加莱的实际交货可能会合理地超过该基本交付期。贝加莱有权利进行分批交付和/或提早交货。

- 9.2. Deliveries are made according to the Incoterms 2020 rules, FCA. International shipments shall be handled by *B&R* approved freight forward agencies only. Further information is available from the local *B&R* sales team upon request.

各方选择适用 FCA 进行交付，贸易术语适用《国际贸易术语解释通则（2020）》。所有国际货运必须通过贝加莱批准的货运代理机构处理。如需进一步信息，可向当地的贝加莱销售团队咨询。

- 9.3. *Contract Products* will be packed reasonably and properly.  
合同产品将被合理和适当地包装。

## 10. Delay in Delivery • Force Majeure • Shortage of Goods 延迟交货 - 不可抗力 - 货物短缺

- 10.1. In case of (i) an agreed binding delivery date/period and (ii) a delay in delivery by more than one month, liquidated damages, a sum equivalent to 0.5 % for each full week following the agreed delivery date for the delayed *Contract Products* shall be charged, in total limited to a maximum of 5 % of the respective delayed *Contract Products*. Entitlement to such liquidated damages is the *Purchaser's* sole and exclusive remedy arising from or in connection with such delay.

如果(i)约定了有约束力的交付日期/期限，且(ii)延迟交货超过一个月，则应收取违约金，违约金金额为每延迟一个完整的日历周，按相关延迟交付合同产品价值的 0.5%收取，但违约金累计不得超过相关延迟交付合同产品价值的 5%。该违约金是采购方因此类延迟可获得的唯一和排他性救济。

- 10.2. Force majeure is any event inside and outside the organization and/or any circumstance



that is not foreseeable and reasonably preventable; including, but not limited to, acts of God such as fire, earthquake, landslide etc. but also war or warlike circumstances, revolution, epidemics, pandemics, unrest, business disruptions, official measures, changes in law (e.g. but not limited to such as described in Clause 11.4), labor dispute, blackout and similar comparable circumstances.

不可抗力是指组织内部和外部的任何事件和/或任何无法预见和合理预防的情况；包括但不限于天灾，如火灾、地震、山体滑坡等，也包括战争或类似战争的情况、革命、流行病、大流行病、动乱、业务中断、官方措施、劳动争议、法律变更（如，但不限于第 11.4 款所描述的变化）停电和类似的相仿境况。

Force majeure events and delays in delivery by upstream suppliers of at least eight weeks arising out of such event do not give rise to an event of default and entitle the *Parties* to either extend the deadlines accordingly or to withdraw from the *Individual Order* due to incomplete performance; any legal claims are excluded. *B&R* must inform the *Purchaser* immediately after becoming aware of the reasons about the reasons for the withdrawal or the extension of the deadlines.

不可抗力事件或由上游供应商因不可抗力事件所导致至少八周迟延交货的情况不会构成违约事件，并赋予双方相应延长最后期限或因未完全履行退出单个订单的权利；任何法律上的索赔均应被排除。贝加莱必须在意识到存在撤销或延长期限的事由后立即通知采购方。

In case of a withdrawal of the *Individual Order*, *B&R* shall be entitled to reimbursement for all costs incurred, in particular for *Purchaser-specified Products* already produced.

若单个订单因此取消，贝加莱有权就所有已发生的费用获得补偿，尤其是已生产的采购方指定产品。

10.3 Clause 11.4 second paragraph shall apply accordingly.

第 11.4 款第二段应相应适用。

## 11. Prices (Payment) • Change in Law • Terms of Payment • Credit Approval • Retention of Title 价格（付款） - 法律变更 - 付款条款 - 信用审批 - 保留所有权

11.1. Prices and terms of payment are determined by the *Order Confirmation*. In the event that the basis for price calculation changes for reasons beyond *B&R's* control – e.g. relevant legislative changes, rises in the cost of raw materials, other relevant changes on the market and the like – *B&R* may unilaterally adjust the prices appropriately. *B&R* shall explain the change in circumstances.

价格和支付条款由订单确认决定。如果价格计算的基础由于贝加莱无法控制的原因而发生变化--例如，相关立法变化、原材料成本上升、市场上的其他相关变化等—贝加莱可以单方面适当调整价格。贝加莱应对情况的变化作出解释。

11.2. The price does not include any tariffs or duties which may now or hereafter be applicable. *Purchaser* agrees to pay or reimburse any such tariffs or duties, or *B&R's* reasonable estimated cost impact thereof, which *B&R* or its sub-suppliers are required to pay or collect.

价格不包含现在或将来可能适用的任何关税或其它税费。采购方同意支付或补偿此类关税、税费、或贝加莱或其次级供应商因此需支付或代征的合理预估的相关费用。

11.3 The agreed prices in the *Order Confirmation* can be subject to revision at any time, in the event of: (i) material increases in components, raw materials, or energy costs; or (ii) governmental actions such as new or increased tariffs or duties.

如出现以下情况，订单确认中约定的价格可随时调整：(i) 零部件、原材料或能源成本大幅增加；或(ii) 政府行为，如新增或提高关税或其它税费。

11.4 The *Parties* agree that in the event of any change in laws, regulations or increases in tariffs or duty rates imposed, implemented or enacted after the Effective Date of the *GTC* or the *Order Confirmation* or change in interpretation of any laws, regulation, tariffs or duty

rates affecting the cost of the scope of supply set forth herein and/or the time of performance or delivery of the same, *B&R* shall be entitled to an adjustment in the price reflecting the change in the laws, tariffs or duty rates or other costs and any necessary adjustment to the time of performance or delivery of the scope of supply.

双方同意, 若在 *GTC* 或 *订单确认* 生效之后, 实施、执行或颁布的法律、法规发生变化或关税或税率增加, 或对任何法律、法规、关税或税率的解释发生变化, 影响到供货范围的成本和/或履行期限或交付时间, *贝加莱* 应有权对价格进行调整, 以反映法律变更、关税或税率或其他成本的变化, 并对履行期限或交付供货范围的时间进行任何必要的调整。

- 11.5 In case and insofar that no terms of payment are specified in the *Offer* or *Order Confirmation*, payment shall be made by bank transfer to *B&R*'s bank account within five (5) working-days of receipt of *B&R*'s (pro-forma) invoice. Any payment shall be made at the expense and risk of *Purchaser*. Any assistants of *B&R* shall only be entitled to collect payments due to a separate written power of attorney of *B&R*. In any case *B&R* shall have the right of upfront payment by *Purchaser*, even before acceptance of an *Order* or any delivery.

如果 *要约* 或 *订单确认* 中未约定付款条件, 则 *采购方* 应在收到 *贝加莱* 的 (形式) 发票后五 (5) 个工作日内通过银行转账的方式, 向 *贝加莱* 的银行账户进行付款。任何付款的费用与风险都应由 *采购方* 承担。*贝加莱* 的任何代收人凭借 *贝加莱* 单独出具的书面授权书方有权收取款项。在任何情况下, 甚至在接受 *订单* 或任何交付之前, *贝加莱* 均有权要求 *采购方* 预先付款。

- 11.6. All work shall be subject to credit approval by *B&R*. If *Contract Products* are not delivered at one time, *Purchaser* shall pay the unit price applicable to the *Contract Products* delivered.

所有工作都应得到 *贝加莱* 的信用批准。如果 *合同产品* 不是一次性交付的, *采购方* 应按已交付的 *合同产品* 的单价进行支付。

- 11.7. Each shipment of *Contract Products* shall be considered a separate and independent transaction. *B&R* may, at any time, decline to make shipments or deliveries of *Contract Products*, or extend additional credit, except upon receipt of payment. Without limiting its rights or remedies, *B&R* shall have the right to halt or terminate *Contract Products* or any other service or support before receiving respective payments.

每批 *合同产品* 的运输应被视为单独和独立的交易。除非 *贝加莱* 已经收到货款, 否则 *贝加莱* 有权在任何时候拒绝运送或交付 *合同产品*, 或要求提供额外的信贷保证。在不限制其权利或救济措施的情况下, *贝加莱* 有权在收到相应的付款前, 停止或终止交付 *合同产品* 或提供任何其他服务或支持。

- 11.8. If in *B&R*'s opinion *Purchaser's* financial condition or payment history makes *B&R* insecure as to payment for the *Contract Products* or services, *B&R* may require full or partial payment in advance.

如果 *贝加莱* 认为 *采购方* 的财务状况或付款历史使 *贝加莱* 对 *合同产品* 或服务的付款没有保障, *贝加莱* 可以要求 *采购方* 提前支付全部或部分款项。

- 11.9. Any payment or charge not received when due will bear interest at the rate of 1 % per month (12 % per year) from the date due.

任何到期未收到的付款或费用将按每月 1% (每年 12%) 的利率从到期日开始计息。

- 11.10. The full purchase price set forth for the *Contract Products* shall not be subject to any set-off, deduction or counterclaim of any kind. *Purchaser* shall pay for all of *B&R*'s costs of enforcing any claims (including reasonable attorneys' fees), including collection of amounts due for *Contract Products*. If *Purchaser* fails to make a payment on or before the due date for such payment, or becomes insolvent, all balances then due and owing to *B&R* shall become due immediately, notwithstanding any agreed upon payment periods. Any orders for *Contract Products* that have been confirmed by *B&R*, but not yet filled, shall in such cases become cancellable at the sole discretion of *B&R*.

*合同产品* 的购买价格不应受到任何形式的抵销、扣减或反请求的影响。*采购方* 应支付 *贝加莱* 为执行索赔 (包括合理的律师费) 而产生的任何费用, 包括收取 *合同产品* 的到期金额。如果 *采购方* 未

能在到期付款日或之前付款，或变得无力偿还，那么尽管双方对于付款期限有任何其他约定，采购方所有应付的和欠付贝加莱的余额应立即到期。在此情形下，针对任何已经由贝加莱确认但尚未完成的合同产品订单，贝加莱可自行决定取消。

- 11.11. Ownership over the *Contract Products* remains with *B&R* until the full payment agreed has been received.

在收到全部约定款项前，合同产品的所有权归贝加莱所有。

- 11.12. Without prejudice to any other remedies, *B&R* shall be entitled to immediate repossession of any *Contract Products* delivered by *B&R* if *Purchaser* fails to timely pay for such *Contract Products*, and *Purchaser* hereby permits *B&R* entry to *Purchaser's* premises for such purpose and waives any and all rights to notice or hearing prior to seizure of the *Contract Products* following default in payment.

在不影响任何其他救济措施的情况下，如果采购方未能及时支付合同产品的费用，贝加莱有权立即收回贝加莱交付的任何合同产品，而且采购方在此允许贝加莱因此目的进入采购方的场所，并放弃在其逾期付款后贝加莱扣押合同产品前获得通知或听证的任何和所有权利。

## 12. Warranty (Liability For Defects)

保修（对缺陷的责任）

- 12.1. *B&R* warrants that at the time when the risk passes the *Contract Products* (i) meet the agreed specifications (due to clause 5.1) and (ii) are in accordance with the state of the art when first marketed and are insofar free from defects.

贝加莱保证，在风险转移时，合同产品(i)符合约定的规格（基于第 5.1 条），且(ii)与首次上市时的技术水平相一致，并且在此范围内没有缺陷。

- 12.2. The warranty period is 12 months from the date of delivery (passing of risk). After any improvement or replacement of the *Contract Products*, the original warranty period does not begin anew.

保修期为交付（风险转移）之日起 12 个月。在对合同产品进行任何改进或更换后，原保修期不重新开始计算。

- 12.3. The exclusive place of performance for the elimination of defects under the warranty shall be *B&R's* headquarter in A-5142 Eggelsberg or the *B&R* service center (<https://www.br-automation.com/en-gb/about-us/locations/>) nearest to the *Purchaser*. *Purchaser* shall return defective *Contract Products* at its own expense. Returns shall travel on the risk of *Purchaser*.

在保修期内，消除缺陷的专有执行地点是位于 A-5142 Eggelsberg 的贝加莱总部或离采购方最近的贝加莱服务中心（<https://www.br-automation.com/en-gb/about-us/locations/>）。采购方应自费退回有缺陷的合同产品。退货的风险由采购方承担。

- 12.4. *B&R* will under no aspects whatsoever be liable for (i) suitability of the *Contract Products* for the use intended by *Purchaser*; (ii) normal wear and/or tear; (iii) improper handling, use, operation, storage, shipment or lack of maintenance, (iv) errors, including, but not limited to, software errors that are common without impairment of use and (v) functionality and/or performance of the *Contract Products* with respect to *Purchaser's* applications.

在任何情形下，贝加莱均不对以下情况负责：(i) 合同产品是否符合采购方的预期用途；(ii) 正常磨损；(iii) 不适当的处理、使用、操作、储存、运输或缺乏维护；(iv) 错误，包括但不限于不影响使用的常见软件错误；以及(v)就采购方实际应用方面，合同产品的功能和/或性能。

- 12.5. *Purchaser* must inspect the *Contract Products* as follows: Upon delivery samples shall be picked and inspected without undue delay; if any defects are identified, the complete shipment must be inspected. Written notice of defects must be given within 7 working days from date of receipt at the latest. If a functionality problem or other defects are only identifiable at a later date, written notice of defects must be given no later than 7 working

days from date of detection. *Purchaser* must provide evidence of the date the defect was detected.

采购方必须按以下方式检查合同产品。合同产品一经交付，应立即取样检查，不得无故拖延；如果发现任何缺陷，必须对整批货物进行检查。最迟必须在收货之日起的 7 个工作日内发出瑕疵的书面通知。如果功能问题或其他缺陷是后来才发现的，则必须在发现后的 7 个工作日内发出书面缺陷通知。采购方必须提供有关发现缺陷的日期的证据。

If notice is not given or not given within the specified period of time, the *Contract Products* delivered shall be deemed accepted, and *Purchaser* can make no claims based on defects.

如果采购方未发出通知或未在规定的时间内发出通知，交付的合同产品应被视为接受，采购方无权基于缺陷主张索赔。

In particular with respect to any services provided by B&R - including recommended change orders, intermediate and final milestone deliverables (including B&R produced plans, drawing, specifications and other work details), and any work products – such services (work products) shall be deemed accepted by *Purchaser* 7 working days after completion and submission thereof to *Purchaser* for acceptance or comment, unless objections from *Purchaser* are provided to B&R in writing within such 7 working days period.

特别针对贝加莱提供的任何服务--包括建议的变更单、中期和最终的里程碑交付物（包括贝加莱制作的计划、图纸、规格和其他工作细节），以及任何工作产品—除非采购方在这些服务（工作产品）完成并提交给采购方接受或评估后的 7 个工作日内向贝加莱书面提出反对意见，否则采购方应被视为已经接受了上述服务（工作产品）。

- 12.6. The warranty covers free improvement (repair) or replacement of the defective *Contract Products* by flawless *Contract Products* according to *B&R's* choice. *Purchaser* is not entitled to any further claims for defect, in particular claims for avoidance of contract, price reduction or damages. Substitute performance by third parties is not permitted. The warranty obligations are fulfilled at *B&R's* expense (excluding cost of transport to *B&R*); expenses incurred by *Purchaser* in connection with the warranty will not be refunded. 保修范围包括根据贝加莱的选择对有缺陷的合同产品进行免费改进（维修）或更换为无缺陷的合同产品。采购方无权提出任何进一步的缺陷索赔，特别是要求撤销合同、降价或赔偿。不允许由第三方替代履行。为履行保修义务产生的费用由贝加莱承担（不包括运输到贝加莱的费用）；采购方因保修而产生的费用将不予偿付。
- 12.7. **There is no obligation for B&R to update (improve/repair) software provided to the Purchaser.**  
贝加莱无义务对提供给采购方的软件进行更新（改进/修理）。
- 12.8. Insofar as *B&R* may provide any consultancy services (such as implementation/installation of hardware and/or software etc.), *B&R* shall not assume any liability therefore to the extent legally possible; in particular, *B&R* shall not be liable for the functionality of its software in customer-specific applications.  
就贝加莱可能提供任何咨询服务（如硬件和/或软件的实施/安装等），贝加莱在法律允许范围内不承担任何责任；特别是，贝加莱不对其软件在客户特定应用中的功能负责。
- 12.9. With respect to software development or similar services provided by *B&R*, *B&R* warrants that it shall perform the services in good faith and in a professional manner. *B&R* disclaims all other warranties, either express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. The *Purchaser's* exclusive remedy for any breach of this warranty shall be for *B&R*, upon receipt of written notice given within 7 working days, to use diligent efforts to cure such breach, or, failing any such cure in a reasonable period of time, the refund of fees paid to *B&R* hereunder with respect to the services giving rise to such breach. *B&R* shall not assume any liability therefore to the extent legally possible.

关于贝加莱提供的软件开发或类似服务，贝加莱保证其将以诚信和专业的方式提供服务。贝加莱不承担所有其他明示或暗示的保证，包括但不限于对适销性和特定用途的适用性的保证。对于任何违反本保证的行为，采购方唯一救济措施是，贝加莱在收到 7 个工作日内发出的书面通知后，将尽最大努力纠正这种违约行为，或者，如果未在合理的时间内进行任何此类纠正的，则退还根据本一般条款及条件支付给贝加莱的与引起此类违约的服务有关的费用。在法律允许的范围内，贝加莱不承担任何责任。

### 13. Limitation of Liability 责任限制

#### 13.1. B&R's liability to Purchaser is unlimited (i) for any personal injury and death, (ii) willful acts, and (iii) where unlimited liability is compulsory by law (e.g. product liability).

基于 (i) 任何人身伤亡，(ii) 故意行为，以及 (iii) 法律强制规定的无限责任（如产品责任），贝加莱对采购方承担无限责任。

#### 13.2 B&R's aggregate liability for all claims of any kind arising from or related to the formation, performance or breach of the *Individual Order*, or any *Contract Products* whether under the *Individual Order*, in warranty, tort, negligence, strict otherwise for any loss or damage arising out of, connected with, or resulting from the *Individual Order* or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under the *Individual Order*, or from any services rendered in connection therewith liability, or otherwise, shall not exceed 10 % of the purchase price of the *Individual Order* and a maximum amount of EUR 50.000,00 per calendar year for all damages occurred.

对于因单个订单的订立、履行或违反或任何合同产品（无论是否根据单个订单）而引起的或与之相关的任何类型的索赔，无论是基于保证、侵权、疏忽、其他严格责任，还是因单个订单或其履行或违反而引起的、与之相关或导致的任何损失或损害、或因设计、制造、销售、交付、转售、修理、更换、安装、安装技术指导、检查、操作或使用单个订单所涵盖或根据单个订单所供的任何设备或提供的与此相关的任何服务而造成的任何损失或损害，贝加莱所承担的责任总限额不得超过单个订单总价的 10 %，且在每个日历年度内该责任总限额累计不得超过 50,000 欧元。

#### 13.3. Any liability for indirect damage, consequential damage, operational interruption/loss of production, loss of profit, loss of information and data, loss of contract, loss of opportunity and loss for interest costs is excluded. Loss of profit includes the loss of a commercial opportunity that already constitutes a distinct asset for Purchaser at the time of the damage (e.g. due to an already existing agreement between Purchaser and a third party). B&R shall not be liable for financial losses of Purchaser in connection with work carried out and expenses incurred by Purchaser in the context of warranty.

任何间接损害、继发性损害、运营中断/生产损失、利润损失、信息和数据损失、合同损失、机会损失以及利息费用损失的责任都被排除。利润损失包括在损害发生时已经构成采购方确切资产的商业机会的损失（例如，由于采购方和第三方之间已经存在的协议）。贝加莱不对采购方在保修范围内进行的工作和产生的费用造成的经济损失承担责任。

#### 13.4. Unless otherwise provided by applicable mandatory laws, claims for damages and reimbursement for expenses against B&R have a limitation period of 12 months after delivery of the *Contract Products*, or in the case of liability in tort from the date of knowledge or grossly negligent ignorance of the circumstance giving rise to the claim or the person liable to pay damages.

除非适用的强制性法律另有规定，采购方对贝加莱提出的损害赔偿和费用报销的时效期限为合同产品交付后的 12 个月，如果是侵权责任，则自知道或因严重疏忽而不知道引起索赔的情况或有责任支付损害赔偿的人之日起算。

#### 13.5. Where the liability of B&R is excluded and/or limited, the same shall apply to its representatives, employees and other subcontractors.

当贝加莱的责任被排除和/或限制时，此等排除和/或限制同样应适用于其代表、雇员和其他分包

商。

## 14. Intellectual Property Rights 知识产权

### 14.1. *Purchaser* acquires ownership in physical *Contract Products* (e.g. hardware, [reproduced] user manuals etc.).

采购方获得合同产品实物的所有权（如硬件、【复制的】用户手册等）。

Furthermore, *B&R* will grant *Purchaser* the non-exclusive right, unlimited in time, to use the training materials as provided (tutorial videos, text files, etc.) for internal training purposes. In particular, *Purchaser* shall be entitled to cut training materials itself and to transmit, send, perform and make available these training materials on the hardware/final product for internal training purposes by wireless or wired means. In this case, *Purchaser* guarantees that the cut training materials does not create a misleading impression about the use and application of the contractual products and that no essential information is lost. Otherwise, *Purchaser* shall be liable for all damages, costs and losses (including all reasonable costs for legal prosecution and defense) incurred in this connection.

此外，贝加莱将授予采购方非排他性的、无限期地使用所提供的培训材料（教程视频、文本文件等）用于内部培训的权利。特别是，采购方应有权自行切割培训材料，并通过无线或有线方式在硬件/最终产品上传输、发送、运行和提供这些培训材料用于内部培训目的。在此种情况下，采购方保证切割后的培训材料不会对合同产品的使用和应用产生误导，也不会丢失任何关键信息。否则，采购方应承担所有与此相关的损害、费用和损失（包括所有合理的法律诉讼和辩护费用）。

### 14.2. *B&R* will grant *Purchaser* all necessary *Property Rights* so that *Purchaser* is able to use the *Contract Products*. In case of an *Individual Order*, *Purchaser* must comply with the license terms that are applicable to the *Contract Products* at the time when the risk passes to *Purchaser*; the terms will be provided to *Purchaser* upon request. Applicable license terms are set forth under [www.br-automation.com/eula](http://www.br-automation.com/eula).

贝加莱将授予采购方所有必要的产权，以便采购方能够使用合同产品。在单个订单的情况下，当风险转移至采购方时，采购方必须遵守适用于合同产品的许可条款；这些条款将根据要求提供给采购方。适用的许可条款载于 [www.br-automation.com/eula](http://www.br-automation.com/eula)。

Without prejudice to the aforesaid, *B&R* remains the owner and/or sole holder of all *Property Rights* relating to the *Contract Products*. The licenses for use granted to *Purchaser* are covered by the agreed payment, unless otherwise agreed. *Purchaser* does not acquire any exclusive rights.

在不影响上述规定的情况下，贝加莱仍然是与合同产品有关的所有产权的所有者和/或唯一持有人。除非另有约定，授予采购方的使用许可包含在约定的付款范围中。采购方不获得任何独家权利。

### 14.3. *B&R* warrants that the *Contract Products* do not infringe any *Property Rights* of third parties in the countries of the European Union and in Australia, Brazil, China, India, Iceland, Japan, Canada, Mexico, Norway, Russian Federation, Switzerland, Singapore, South Korea, Turkey, United Kingdom and USA. All other countries have not been checked in this respect by *B&R*; clause 14.5. shall apply accordingly. *Purchaser* will support, at its own expense, *B&R* in this regard.

贝加莱保证合同产品不侵犯欧盟国家以及澳大利亚、巴西、中国、印度、冰岛、日本、加拿大、墨西哥、挪威、俄罗斯联邦、瑞士、新加坡、韩国、土耳其、英国和美国的任何第三方的产权。所有其他国家的该等情况虽未经贝加莱的查验，仍应适用第 14.5 条。采购方将自费支持贝加莱在这方面的工作。

### 14.4. *Purchaser* shall inform *B&R* of any (potential) infringement of property rights that becomes known to *Purchaser*. In this case and where infringement of third-party *Property Rights* is claimed, the *Parties* will, each at their own expense, cooperate and do everything

to ward off such claims without undue delay. Such defense measures will be coordinated by *B&R*. Lawsuits will be pursued by *B&R*, unless this is impossible or unless otherwise agreed. If *Purchaser* pursues the lawsuit, constant coordination with *B&R* will be required, and *B&R*'s decisions must be adhered to. *Purchaser* shall not recognize any third-party claims or enter into settlements independently. If *Purchaser* does that, he must fully indemnify and hold *B&R* harmless in this respect. The *Parties* shall always inform one another, without undue delay, of any infringement claims and the resulting consequences. 采购方应通知贝加莱任何其所知的（潜在的）侵犯产权的行为。在该等情况下及如果第三方主张产权受到侵犯，双方将各自承担费用，及时合作并尽一切努力避免此类索赔的发生。该等防御措施将由贝加莱协调。诉讼应由贝加莱进行，但贝加莱不可能进行该诉讼或另有约定的除外。如果由采购方进行诉讼，采购方应需与贝加莱不断协调，且必须遵守贝加莱的决定。采购方不得承认任何第三方索赔或独立达成和解。如果采购方如此行事，其必须完全赔偿并使贝加莱在此方面不受损害。双方应始终相互通知任何侵权索赔和由此产生的后果，不得无故拖延。

- 14.5. If according to a legally binding judgement the *Contract Products* infringe third-party *Property Rights*, and the use of the *Contract Products* is thereby impaired or made impossible, the following shall apply: (i) The *Parties*, under the coordination of *B&R*, shall initially endeavor to keep the necessary usage rights in effect. Any costs arising therefrom (including, but not limited to, license fees) shall be borne by *B&R*. (ii) If the usage rights cannot be obtained or can be obtained only on unreasonable conditions, *B&R* shall, at its own expense, change the relevant *Contract Products* in such a way or replace them by other (similar) products that there is no infringement of the relevant *Property Right*. This will enable the *Purchaser* to use the *Contract Products* (and/or other similar products). The agreed specifications shall be complied with in all material respects as far as possible. Insignificant deviations causing no functional problems shall each be considered *B&R*'s BIP. (iii) *B&R* may also exempt the *Purchaser* from any license fees payable to a third party for use of the *Contract Products*. (iv) Should all this be impossible, *B&R* will take the *Contract Products* back and refund the payment.

如果根据具有法律约束力的判决，合同产品侵犯了第三方产权，使得合同产品的使用受到影响或无法使用，则应适用以下规定：(i) 双方在贝加莱的协调下，应首先努力保持必要的使用权的有效性。由此产生的任何费用（包括但不限于许可费）应由贝加莱承担。(ii) 如果不能获得使用权或只能在不合理的条件下获得使用权，贝加莱应自费，以一定的方式改变相关的合同产品或以其他（类似的）产品取代它们，从而不侵犯相关的产权。这将使采购方能够使用合同产品（和/或其他类似产品）。应尽可能在所有重大方面遵守已商定的规范。不引起任何功能问题的微小偏差均应分别被视为贝加莱的背景知识产权。(iii) 贝加莱也可以免除采购方为使用合同产品而支付给第三方的许可费。(iv) 如果所有这些都不可能，贝加莱将收回合同产品并退款。

- 14.6. *B&R* accepts no liability for changes to the *Contract Products* made by *Purchaser* or its customer. Nor will *B&R* accept liability for infringement of third-party *Property Rights* where the *Contract Products* are based, even partially, on *Purchaser* specifications or user-specific use of the *Contract Products*.

对于采购方或其客户对合同产品的更改，贝加莱不承担任何责任。如果合同产品是基于采购方的规格或用户对合同产品的特定使用，贝加莱也不承担侵犯第三方产权的责任，即使是部分责任。

- 14.7. Any claims of *Purchaser* other than those set forth in this clause 14. are excluded. *B&R*'s liability is as set forth in clause 13.

除本第 14 条规定的索赔外，采购方的任何索赔均被排除。贝加莱的责任如第 13 条中约定。

- 14.8. In all cases, *BIP* shall remain the property of the originating party. All inventions, discoveries, developments and improvements made or conceived in whole or partly (i) by *B&R* on its own or (ii) by *B&R* in conjunction of any service performance for *Purchaser* or with any input from *Purchaser*, shall each be considered *B&R*'s BIP.

在任何情况下，背景知识产权都应是原创方的财产。所有发明、发现、发展和改进的全部或部分（i）由贝加莱自己完成或（ii）由贝加莱在为采购方提供任何服务的过程中完成或由采购方提供任何投入的，都应视为贝加莱的背景知识产权。

- 14.9. *B&R shall not be liable in any way whatsoever in case that the Purchaser infringes intellectual property rights of third parties due to or as a result of the specific use the Contract Products provided by B&R. The Purchaser shall fully indemnify and hold B&R harmless in this respect, in particular with regard to any claims of third parties in this respect.*

如果采购方由于或因对贝加莱提供的合同产品的特定使用而侵犯了第三方的知识产权，贝加莱不以任何方式承担责任。采购方应充分赔偿并使贝加莱在这方面不受损害，特别是对第三方在这方面的任何索赔。

**15. Integrity Provisions, Sanctions and Export Controls**  
**诚信条款、制裁和出口管制**

- 15.1. *Applicable Integrity Laws* means:  
适用诚信法律是指：

Anti-bribery and anti-corruption laws: including U.S. Foreign Corrupt Practices Act 1977 (as amended), UK Bribery Act 2010 (as amended), any legislation enacting the principles of the OECD Convention on Combating Bribery of Foreign Officials and any other applicable laws, rules, regulations, decrees and/or official governmental orders relating to anti-corruption, anti-money laundering and anti-tax evasion in relevant jurisdictions (collectively “*Anti-Bribery & Corruption Laws*”); and

反贿赂和反腐败法律：包括 1977 年美国反海外腐败法（修订版），2010 年英国反贿赂法（修订版），适用的经合组织成员国为实施《禁止在国际商业交易中贿赂外国政府官员公约》制定的立法，以及相关司法管辖区内有关反腐败、反洗钱及反避税的任何其他可适用之法律、法规、条例、法令和/或官方政府命令（合称“*反贿赂反腐败法律*”）；和

Sanctions and trade control laws and regulations: any applicable laws, regulations, or administrative or regulatory decisions or guidelines that sanction, prohibit or restrict certain activities including, but not limited to, (i) import, export, re-export, transfer, or trans-shipment of goods, services, technology, or software; (ii) financing of, investment in, or direct or indirect transactions or dealings with certain countries, territories, regions, governments, projects, or specifically designated persons or entities, including any future amendments to these provisions; or (iii) any other laws, regulations, administrative or regulatory decisions, or guidelines adopted, maintained, or enforced by any Sanctions Agency on or after the date of the *Individual Order* (collectively, “*Trade Control Laws*”); and

制裁和贸易管制法律及法规：用于制裁、禁止或限制特定活动的任何可适用之法律、法规或者行政或监管性决定或指引，包括但不限于（i）进口、出口、再出口、转移、或者转运货物、服务、技术或软件的相关规定；（ii）对特定国家、区域、地区、政府、项目或者特别指定人士或实体提供融资、投资，或者与之进行直接或间接交易或往来的相关规定，包括未来对该等规定的任何修订；或（iii）单个订单生效之日或之后由任何制裁机构通过的、采用的或执行的任何其他法律、法规、行政或监管决策或者指引（合称“*贸易管制法律*”）；和

Human rights and anti-modern slavery laws: including The Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO Core Conventions on Labor Standards, the UK Modern Slavery Act and other similar human rights, anti-human trafficking and anti-modern slavery laws and regulations (collectively, “*Human Rights Laws*”).

人权及反现代奴役法律：包括《世界人权宣言》、《联合国商业和人权指导原则》、《经合组织跨国企业准则》、《国际劳工组织关于劳动标准的核心公约》、《英国反现代奴役法》，以及与上述文件类似的其它人权、反贩卖人口和反现代奴役的法律和法规（合称“*人权法律*”）。

- 15.2 *Sanctions Agency* means any governmental or regulatory body, instrumentality, authority, institution, agency or court that promulgates or administers Trade Control Laws including, but not limited to, the aforementioned governmental and regulatory bodies of (i) the United Nations, (ii) the United States of America (including the U.S. Department of Treasury Office of Foreign Assets Control, U.S. Department of State and U.S. Department



of Commerce), (iii) the European Union or (iv) Switzerland.

制裁机构是指颁布或施行贸易管制法律的任何政府或监管团体、职能部门、主管机关、机构、部门或法院，包括但不限于（i）联合国；（ii）美国（包括美国财政部外国资产管理办公室、美国国务院和美国商务部）、（iii）欧盟或（iv）瑞士的上述政府和监管机构。

- 15.3 *Restricted Person* means any entity or person included on a list (including U.S. and EU lists) of targeted parties, blocked parties, or persons subject to asset-freezing or other restrictions introduced under any applicable Trade Control Laws (and includes any entity that is directly or indirectly owned fifty (50) percent or more, in the aggregate or individually, or otherwise controlled by any *Restricted Person*).

受限制人士是指在任何可适用之贸易管制法律项下所列之任何目标对象、被封锁对象、或者遭遇资产冻结或其他限制的人士的名单（包括美国和欧盟名单）中所列的实体或个人（包括任何受限制人士直接或间接、单独或合计持有百分之五十（50%）或以上权益的任何实体，或者任何受限制人士通过其他方式予以控制的实体）。

- 15.4 Both Parties will comply with all Applicable Integrity Laws in connection with the *Individual Order*. Both Parties shall also ensure that their respective employees, officers, directors, and any affiliates or third parties engaged in any manner in relation to the *Individual Order* shall undertake to comply with all Applicable Integrity Laws and the requirements set out in this Clause in connection with the *Individual Order*. Both Parties confirm that they have not violated, shall not violate, and shall not cause the other Party to violate, any Applicable Integrity Laws in connection with the *Individual Order*.

双方谨遵与单个订单有关的所有适用诚信法律。双方还应当确保各自的员工、高级管理人员、董事、与任何关联方或以任何方式参与履行单个订单的第三方均承诺遵守所有适用诚信法律以及本条款中规定的与单个订单有关的要求。双方确认其未曾违反、不应违反、也不会导致另一方违反与单个订单有关的任何适用诚信法律。

- 15.5 The Parties confirm that they have not violated, shall not violate, and shall not cause the other Party to violate, any applicable Trade Control Laws. Each Party represents and warrants that, to the best of its knowledge, at the date of the *Individual Order* neither it, nor any of their respective directors or officers are a *Restricted Person*. Each Party agrees that it shall promptly notify the other Party if it becomes a *Restricted Person*.

双方确认其未有、不应违反也不会使对方违反任何适用的贸易管制法规。各方声明并保证，就其所知，在单个订单日，它或其各自的任何董事或官员都不是受限人员。各方同意，如果其成为受限人员，应立即通知另一方。

- 15.6 If, as a result of Trade Control Laws issued or amended after the date of the *Individual Order*, (i) the Purchaser or the end-user is/becomes a *Restricted Person*, or (ii) any necessary export license or authorization from a Sanctions Agency is not granted, the performance by B&R or by any affiliates or third parties engaged in any manner in relation to the *Individual Order* becomes illegal or impracticable, B&R shall, as soon as reasonably practicable, give written notice to the Purchaser of its inability to perform or fulfil such obligations. B&R shall be entitled to either immediately suspend the performance of the affected obligation under the *Individual Order* until such time as B&R may lawfully discharge such obligation or unilaterally terminate the *Individual Order* in whole or in part from the date specified in the said written notice or from any subsequent date thereafter. B&R will not be liable to the Purchaser for any costs, expenses or damages associated with such suspension or termination of the *Individual Order*.

如果由于贸易管制法规在单个订单日后颁布或修订，(i) 采购方或最终用户是/成为受限制人士，或(ii) 未从制裁机构获得任何必要的出口许可或授权，贝加莱、任何关联公司或与单个订单有关的第三方履行义务变得非法或不可行，贝加莱应在合理可行的情况下尽快向采购方发出书面通知，告知其无法履行或完成这些义务。贝加莱有权立即暂停履行单个订单下受影响的义务，直到贝加莱可以合法地履行该义务或自上述书面通知中告知的日期或此后的任何日期起单方面全部或部分终止单个订单。贝加莱将不对采购方因暂停履行或终止单个订单而产生的任何费用、开支或损害承担责任。

- 15.7 In the event of suspension or termination, B&R shall be entitled to payment of the *Individual Order* and any reasonable associated costs necessarily incurred by B&R in regard to such suspension or termination including, but not limited to, all reasonable costs associated with suspending or terminating any subcontract placed or committed for goods or services in connection with the *Individual Order*.  
若单个订单暂停履行或终止, 贝加莱有权就该单个订单的价格以及贝加莱因暂停或终止而产生的任何合理相关费用得到偿付, 包括但不限于暂停或终止与单个订单相关的任何已签订的或承诺的货物或服务分包合同的所有合理相关费用。
- 15.8 The *Contract Products* may be subject to foreign trade restrictions, including dual-use trade controls. The *Parties* undertake to obtain all the necessary licenses and/or permits from the competent authorities for the import or export of *Contract Products*. *Contract Products* that originate in the United States are subject to the U.S. Export Administration Regulations ("EAR") and must not be exported, re-exported, or transferred (in-country) without obtaining the necessary valid licenses/authorizations of the competent US authorities, including non-US items with controlled US content above the permitted de-minimis level and non-US items with controlled US content for which there is no de-minimis level.  
合同产品可能受贸易限制, 包括两用物项贸易管制。双方承诺为合同产品的进口或出口从主管当局获得所有必要的许可和/或批准。原产国为美国的合同产品受《美国出口管制条例》("EAR")的约束, 在未获得美国主管当局的必要有效许可/授权的情况下不得出口、再出口、转移(国内), 包括含超过允许的最低水平的美国受控内容的非美国物项和含没有最低水平的美国受控内容的非美国物项。
- 15.9 The *Purchaser* represents and warrants that the *Contract Products* are for civil use only and that it will not directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any *Contract Products* received from B&R to any *Restricted Person*, or parties that operate, or whose end use will be, in a jurisdiction/region prohibited by B&R including Belarus, Crimea, Cuba, Iran, North Korea, Russia, Syria, as well as the Donetsk, Luhansk, Kherson, and Zaporizhzhia regions of Ukraine (such list may be amended by B&R at any time). The *Purchaser* further represents and warrants that the *Contract Products* provided under the *Individual Order* or any applications (systems) shall not be installed, used, or applied in or in connection with (i) the design, production, use or storage of chemical, biological or nuclear weapons, space launchers or their delivery systems, (ii) any military applications or (iii) the operation of any nuclear facilities including, but not limited to, nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores and research reactors, without the prior written consent of B&R.  
采购方声明并保证合同产品仅用于民用, 且不会直接或间接出售、出口、再出口、放行、传输或以其他方式将从贝加莱收到的任何合同产品转移给任何受限制人士或在贝加莱禁止的司法管辖区/地区, 包括白俄罗斯、克里米亚、古巴、伊朗、北朝鲜、俄罗斯、叙利亚以及乌克兰的顿涅茨克、卢甘斯克、赫尔松和扎波罗热地区(贝加莱可随时修改此列表)运营的各方或最终用途在前述司法管辖区/地区的各方。采购方陈述并保证, 未经贝加莱事先书面同意, 单个订单或任何应用(系统)中的合同产品不得安装、使用或应用于或涉及(i)设计、生产、使用或存储化学、生物、核武器、航天发射器或该等武器的运载系统, (ii)任何军事用途, 或(iii)运行任何核设施, 包括但不限于核电厂、核燃料生产厂、铀浓缩工厂、乏燃料存储库和研究反应堆。
- 15.10 *Purchaser* shall immediately notify B&R in writing of any potential or actual breach of obligations set forth under *Applicable Integrity Laws*, the ABB Code of Conduct, or this clause by either the *Purchaser*, its affiliated parties or any third parties engaged by *Purchaser* in relation to the *Individual Order*. In the event of such notification or if B&R otherwise has reason to believe that a potential or actual breach has occurred, *Purchaser* agrees to cooperate in good faith with any audit, inquiries, or investigation which B&R deems necessary. During such audit, inquiries or investigation, B&R may suspend performance of its obligations until such time as B&R has received confirmation to its satisfaction that no breach has occurred or will occur. B&R shall not be liable to *Purchaser* for any claim, losses or damages whatsoever related to its decision to suspend or

terminate performance of its obligations under this provision.

若采购方、其关联方或者被聘用的参与履行单个订单的任何第三方存在潜在或实际违反适用诚信法律、《ABB 行为准则》或本条款的情形，采购方应当立即书面通知贝加莱。如有此通知，或者贝加莱有理由相信已经发生潜在或者实际的违规情形，采购方同意诚信地配合任何贝加莱认为必要的审计、问询或调查。该等审计、问询或调查过程中，贝加莱可以暂停履行其义务，直至贝加莱收到令其满意的确认表示并未发生或不会发生上述违规。对于与贝加莱决定暂停或终止履行本条款项下的义务相关的任何索赔、损失或损害，贝加莱无义务向采购方承担责任。

- 15.11 For the avoidance of doubt, no provision in these *GTC* shall be interpreted or applied in a way that would require any *Party* to do, or refrain from doing, any act which would constitute a violation of, or result in a loss of economic benefit under, applicable *Trade Control Laws*.

为避免疑问，本 *GTC* 中的任何条款都不应被解释或适用于要求任何一方采取或不采取任何构成违反适用的贸易管制法规或导致贸易管制法规下经济利益损失的行为。

- 15.12 Notwithstanding the foregoing or any other provision in the *GTC*, in the event of any actual or imminent violation of Applicable Integrity Laws or material breach of obligations set forth under the ABB Code of Conduct or this clause, *B&R* shall, subject to mandatory provisions of applicable law, have the right to unilaterally terminate the *Individual Order* with immediate effect. Such termination would be without prejudice to all rights of recourse which could be exercised by *B&R*, and *B&R* shall not be liable to *Purchaser* for any claim, losses or damages whatsoever related to its decision to terminate performance of its obligations under this provision. Further, *Purchaser* shall indemnify *B&R* for all liabilities, damages, costs, or expenses incurred as a result of any such violation, breach and/or termination of the *Individual Order*. *B&R* may report such violations to relevant authorities as required by Applicable Integrity Laws.

即便有前述规定或者本一般条款及条件有任何其他规定，如果存在实际的或即将发生的违反适用诚信法律或者严重违反《ABB 行为准则》或本条款的情形，在不违反可适用法律的强制性规定的前提下，贝加莱有权单方面终止单个订单并立即生效。该等终止不影响贝加莱有权行使的任何追索权，且对于与贝加莱决定终止履行本条款项下的义务相关的任何索赔、损失或损害，贝加莱无义务向采购方承担责任。此外，采购方应当赔偿贝加莱因采购方的该等违反、违约和/或终止单个订单而导致的所有责任、损害、成本或费用。贝加莱可根据适用诚信法律的要求向有关部门报告此类违规行为。

## 16. Code of Conduct 行为准则

*Purchaser* must comply with the Code of Conduct of *ABB*, which is retrievable at <https://global.abb/group/en/about/integrity/standards/abb-code-of-conduct>

采购方必须遵守 ABB 的行为准则，该准则可在 <https://global.abb/group/en/about/integrity/standards/abb-code-of-conduct> 获取。

## 17. Nondisclosure 不披露

- 17.1. The *Parties* shall maintain the confidentiality of both the existence and content of their contractual relationships as well as all know-how, data and other information of which they become aware in whatsoever form and shall only make use thereof in such context.  
双方应对其合同关系的存在和内容以及他们以任何形式了解到的所有专有技术、数据和其他信息进行保密，并且仅在此类情况下使用。

- 17.2. The *Parties* shall deal with the know-how etc. belonging to the other *Party* with the same care with which they deal with their own confidential information and restrict publication of the know-how etc. to employees, other auxiliary persons or third parties who are required to be aware of such know-how etc. The *Parties* shall not provide know-how etc. to others and/or make it public in another way, unless they have obtained prior written

consent to do so. This requirement for consent does not apply to passing on know-how etc. to group companies, to the extent permitted by law.

双方处理属于另一方的专有技术等时，应像处理自己的机密信息一样谨慎，并将专有技术等公布限制在需要了解这些专有技术等的人员、其他辅助人员或第三方。除非事先获得书面同意，双方不得向他人提供技术诀窍等和/或以其他方式公开。在法律允许的范围内，此等同意的要求并不适用于向集团公司传递专有技术等。

- 17.3. The *Parties* shall ensure that employees and third parties, including group companies, are subject to and comply with similar confidentiality obligations that are no less stringent than the obligations that apply to the *Parties* in accordance with these *GTC*. This confidentiality obligation survives the termination of the respective *Individual Order* with a period of five (5) years. Know-how etc. that is publicly accessible or that becomes publicly accessible without being attributable to the receiving party, is not considered confidential information. The *Parties* shall identify confidential information as such as much as possible.

双方应确保雇员和第三方，包括集团公司，遵守类似的保密义务，其严格程度不低于根据本一般条款及条件适用于双方的义务。该保密义务在单个订单终止后仍然有效，期限为五（5）年。可公开获取的专有技术等，或在不归因于接收方的情况下能够公开获取的专有技术等，不被视作保密信息。双方应尽可能地确定保密信息。

## 18. Governing Law • Dispute Resolution • Place of Jurisdiction 管辖法律 - 争议解决 - 管辖地

- 18.1. Each contractual relationship between the *Parties*, in particular each *Individual Order*, shall be governed exclusively by the substantive laws of People's Republic of China, giving no effect to the conflict of laws rules of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

双方之间的每一个合同关系，特别是每一个单个订单，应完全受中华人民共和国的实体法管辖，排除适用国际私法的冲突规则和《联合国国际货物销售合同公约》（CISG）。

- 18.2. The exclusive place of jurisdiction for any dispute shall be the competent court at *B&R's* place of registration.

任何争议的专属管辖地是贝加莱注册地的主管法院。

- 18.3. If the *Contract Products* are purchased directly or indirectly with federal, state, or local US government funding ("**US Government Contracts**"), the regulations of the **US Government Contracts Conditions** set forth under [www.br-automation.com/gtc](http://www.br-automation.com/gtc) apply.

如果合同产品是直接或间接使用美国联邦、州或地方政府的资金购买的（“美国政府合同”），则适用 [www.br-automation.com/gtc](http://www.br-automation.com/gtc) 中规定的美国政府合同条款。

## 19. Miscellaneous 其他

- 19.1. The written form requirement will be met by the *Parties* transmitting the identical documents, each signed by them in the original, by telefax or in a digital format as scanned documents to the other *Party*.

双方各自签署原件后，通过电传或以数字格式的扫描文件向另一方传送各自签署的相同文件，即可满足书面形式的要求。

The *Parties* acknowledge electronic signature (e.g. Adobe Acrobat Sign, DocuSign or similar which ensures identification of the issuer and the integrity of the document) applied by authorized persons, to be sufficient and binding for entering into an *Individual Order* and for any documents related to these *GTC* and/or the *Individual Orders*, including, without limitation, documents which require written form or which require to be signed by the *Parties*.

双方认可经授权人员使用电子签名（如 Adobe Acrobat Sign、DocuSign 或类似可确认签发人

身份和文件合规性的电子签名) 签订的单个订单以及与本一般条款及条件和/或单个订单有关的任何文件 (包括但不限于需要书面形式或需要双方签署的文件) 具有充分的约束力。

- 19.2. *Individual Orders* must be transferred via trusted electronic systems (such as Electronic Data Interchange or the like) or in writing to be effective. Statements made in electronically transmitted documents - e.g. by telefax or email - will be sufficient for the written form.

单个订单必须通过可信的电子系统 (如电子数据交换或类似系统) 或以书面形式传输方为有效。在电子传输文件中作出的声明--例如通过电传或电子邮件--将足以作为书面形式。

No modification and supplement of any contractual relationship shall be binding unless it is in writing and signed by all *Parties*. This written form requirement is also met by the *Parties* transmitting the identical documents, each signed by them in the original, by telefax or in digital format as scanned documents to the other *Party*.

任何合同关系的修改和补充, 除非是以书面形式并经所有各方签署, 否则不具约束力。双方通过电传或以数字格式的扫描文件向另一方传送各自签署的相同文件, 也可满足这一书面形式的要求。

The written form requirement can only be waived in writing. Subsidiary agreements made orally shall not come into effect.

只能以书面形式放弃对于书面形式的要求。口头达成的附属协议不发生效力。

- 19.3. If any individual provision of these *GTC* and/or the *Individual Orders* is invalid in whole or in part, the validity of the remaining provisions shall not be affected in any way. The *Parties* shall replace the invalid provision by a valid provision coming as close as possible to the economic purpose of the invalid provision. The same shall apply if these *GTC* and/or an *Individual Order* contains a loophole that needs to be closed.

如本一般条款及条件和/或单个订单的任何个别条款全部或部分无效, 其余条款的有效性不受任何影响。双方应以尽可能接近无效条款的经济目的的有效条款取代无效条款。如果本一般条款及条件和/或单个订单存在一个需要解决的漏洞, 也应适用上述规定。

- 19.4. The headings to the clauses of these *GTC* are for ease of reference only and shall not affect the clauses' interpretation.

本一般条款及条件的条款标题仅便于参考, 不应影响条款的解释。

- 19.5. Each *Party* may, after obtaining written approval, display the name and the logo of the other *Party* in reference lists.

每一方在获得书面批准后, 可在参考清单中显示另一方的名称和标志。

## 20. Data Protection

### 数据保护

Each *Party* shall process personal data under these *GTC* only in compliance with the provisions of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Directive – “GDPR”) as well as applicable national data protection law. The *Parties* undertake to conclude an agreement in accordance with the relevant standards, depending on the processing activity of personal data. The Privacy Notice of *B&R* can be found here: <https://www.br-automation.com/en/about-us/privacy-notices/>.

各方应仅在遵守欧洲议会和理事会 2016 年 4 月 27 日关于在处理个人数据方面保护自然人和此类数据自由流动并废除第 95/46/EC 号指令 (一般数据保护指令--“GDPR”) 的条例 (EU) 2016/679 以及适用的国家数据保护法的情况下处理本一般条款及条件下的个人数据。双方承诺会就处理个人数据的活动依照相关标准签订协议。贝加莱的隐私通知可以在这里找到: <https://www.br-automation.com/en/about-us/privacy-notices/>。

