

STANDARD TERMS AND CONDITIONS OF SALE  
(Shanghai Phoenix Communication & Technology Co., Ltd.  
Herein called "Phoenix")  
标准销售条款  
(上海菲尼克斯通讯技术有限公司, 以下简称 "菲尼克斯")

1. Any difference between the order and instructions submitted by Buyer shall be deemed to have been waived by Buyer in favor of Phoenix's terms and conditions upon Buyer's failure to object in writing within 10 days after receipt of acknowledgment; stenographic and clerical errors are subject to correction. No waiver, alterations or modifications of any of the provisions of these terms and conditions shall be valid unless signed by an authorized representative. Failure of Phoenix to object to modifications or additional conditions inserted in any order from Buyer shall not be construed as a waiver of this Condition of Sale, nor as an acceptance of any such modification or additional condition inserted. All orders are subject to acceptance at our office at address of Shanghai Phoenix Communication & Technology Co., Ltd., which is: No. 569 XuHua Road, XuJing Town, Shanghai.

1. 依据菲尼克斯的条款规定, 买方在收到确认后 10 天内未以书面形式提出定单与其要求的分歧, 则视为买方主动放弃, 笔误应以改正后为准。对此销售条款的删除、变更及修改必须经授权代表签字, 否则无效。若菲尼克斯由于疏忽未反对买方修改及添加条款, 则表示菲尼克斯并未放弃此销售条款, 并未接受所做的修改及添加。所有的定单以上海菲尼克斯通讯技术有限公司, 地址为上海市青浦区徐华路 569 号处接受为准。

2. Notwithstanding any statement of terms or time payments appearing on the face of this order, Phoenix reserves the right to require payment in advance of shipment or to ship C.O.D. it is agreed that title to and the right to possession of any article not fully paid for at time of delivery to Buyer, shall be retained by and remain in Phoenix until said purchase price is fully paid. Quotations automatically expire 30 calendar days from the date issued and can be terminated prior thereto by notice from Phoenix within such period. This quotation is based upon the quantity and shipping schedule specified on the reverse hereof. All prices quoted are based upon current costs to Phoenix of materials and outside services; such prices are subject to increase if such costs are increased. Quantity prices are based on releases by Buyer within 90 days. Phoenix shall also retain a lien on any tools, molds, inserts or components owned by Buyer and in possession of Phoenix until full payment of Buyer's account.

2. 尽管定单中规定支付条款或分期付款, 菲尼克斯仍有权要求买方提前付款或货到付款。双方同意交货后买方未完全付清货款前菲尼克斯仍保留对产品的所有权。报价自发布之日起 30 天后自动失效, 也可由菲尼克斯在此期间提前通知终止。报价依据数量及规定的交货期而定, 所有的报价依据菲尼克斯当前的原料成本和外部服务成本计算, 若该成本增长, 则价格也会相应提高。报价依据的数量以买方 90 天内所提供的数量为准。买方全部付清货款前, 菲尼克斯对买方存放在菲尼克斯的所有的工具、模具、插件或元件享有留置权。

3. All shipment will be made in accordance with the instructions contained in Buyer's purchase order. If such instructions are changed, all additional shipping or handling charges will be borne by Buyer. In the absence of shipping instructions, Phoenix reserves the right to use its own discretion when routing.

3. 所有的出货将根据买方采购定单的要求制定，如有变动，则所有额外的运费及装卸费均由买方承担。如买方对装运无要求，则菲尼克斯有权自行安排。

4. Phoenix's policy is to earnestly endeavor to comply with the requests of its customers respecting deliveries. All shipments of articles to be made under any order shall be subject to government priorities or allocations in effect from time to time. Phoenix shall under no circumstances be responsible for failure to fill any order or orders when due to fires, floods, riots, strikes, freight embargoes or transportation delays, shortage of labor, fuel, material, supplies or power, acts of God or of the public enemy, any existing or future laws or acts of the central or local government (including specifically but not exclusively, any orders, rules or regulations issued by any official or agency of any such government) affecting the conduct of Phoenix's business, or to any other cause beyond Phoenix's reasonable control.

4. 菲尼克斯的原则是尽力满足客户的交货要求，但所有定单的交货有时会受政府优先分配政策的限制；由于火灾、洪水、暴乱、罢工、禁运、运输延误、劳力不足、燃料缺乏、原料短缺、电力不足、天灾、公敌、现存的及将来出现的影响菲尼克斯业务运行的中央和地方的法律法规（包括官方或同等机构颁发的所有规章制度）及菲尼克斯无法合理控制的其他原因导致菲尼克斯未能履行定单，则菲尼克斯对此不负责任。

5. Prices quoted do not include the cost of any qualification test.

5. 报价不含任何质量鉴定检测的费用。

6. The price of any article in this contract is based on the contemplated delivery of the full quantity ordered, if this quantity is reduced for any reason, phoenix reserves the right to adjust the unit price.

6. 合同中所有产品的价格以定单中全部数量的预期交货为准，若数量因故减少，则菲尼克斯有权调整单价。

7. Except for the tax, which shall be paid by Phoenix according to Chinese law, the prices stated herein do no include any additional fees or tax applicable to the sale, delivery or use of articles here under and the Buyer shall pay to Phoenix in addition to the prices herein specified, the amount of any such tax which may be impose upon or payable by Phoenix.

7. 除中国法律规定应当由菲尼克斯承担的税金外，本文所述价格不包括任何额外的因销售、提交、使用该产品所要缴纳的营业税、消费税、执照税及类似税款，若菲尼克斯需支付上述税费的，则买方应当支付给菲尼克斯。

8. Ownership of Tools-Except where otherwise specifically provided for, the tool charge quoted does not cover the entire cost and payment therefore does not cover title to the tools or the right to remove them from phoenix's possession. However, there will be no further charge for repairs, renewals, or maintenance as long as the tools are in active use, provided that Phoenix may dispose of such tools after a lapse of two years without a reorder.

8. 工具所有权：工具报价如无特殊说明，则不包括工具的全额成本，因此买方支付工具费用不能转移对工具的所有权，仍属菲尼克斯所有。只要工具可正常使用，菲尼克斯在两年后未收到使用该工具的定单，转让该工具时不应对其征收额外的修理费、更新费或维修费。

9. Articles may be returned only with Phoenix's written consent. Such articles shall be returned in accordance with Phoenix shipping instructions; all returned shall be subject to a 10% minimum handling charge. Articles made upon special order to meet Buyer's requirements are not returnable.

9. 退货需经菲尼克斯书面同意，否则不可退回，退货应按菲尼克斯的货运要求运回，并支付最低 10% 的手续费，按买方要求专门制造的产品不可退货。

10. Orders placed cannot be canceled by the Buyer, no can deferred deliveries of goods made up or in process be extended beyond the original delivery date specified except with phoenix's consent and upon terms hereinafter set forth. Phoenix reserves the right to process in advance all articles purchased on a deferred delivery basis. In the event that Phoenix should consent to accept cancellation of any order, adjustment shall be made by the following method:

10. 买方取消定单或推迟交货期必须经菲尼克斯同意，必须遵守下文所规定的条款，否则不得取消定单，不能推迟交货期。菲尼克斯对买方要求迟延交货的产品保留所有权，若菲尼克斯同意取消定单，需按下列条款操作：

1) All articles, which are completed and ready for delivery on the date that such cancellation becomes effective, will be paid for by the Buyer at the unit order price payable upon delivery to the Buyer.

1) 若买方取消已生产完毕并准备发货的产品，买方需在菲尼克斯交货时按定单价格支付货款。

2) As to all such articles not so completed an ready for delivery, the Buyer shall have the option (with respect to all or any part thereof):

2) 若买方取消的产品未完成生产，则有下列选项（适用于所有产品或其中的部分产品）

A) Of requiring completion and paying the unit price therefore, or

A) 买方要求菲尼克斯完成产品并支付货款。

B) Of compensating Phoenix for the partially completed and uncompleted portion of the order.

B) 买方补偿定单中菲尼克斯部分完成和未完成的产品。

(1) By reimbursing Phoenix for all actual expenditures made with respect to the partially completed and uncompleted portion of the order.

(1) 买方补偿菲尼克斯在部分完成和未完成产品上的实际花费。

(2) By reimbursing Phoenix for all expenditures made in setting or discharging that portion

(2) 买方补偿菲尼克斯处理定单取消的花费。

(3) By paying Phoenix as a profit on the partially completed and uncompleted portion of the order, a sum to be computed in the following manner:

(3) 买方支付菲尼克斯部分完成和未完成的产品一定的利润，利润金额按下列方法计算：

(a) Estimate the profit which would have been realized by Phoenix on the partially completed and uncompleted portion of the order if the same had been completed and labor and materials costs prevailing at the date of termination had remained in effect;

(a) 估计菲尼克斯完成定单中部分完成和未完成的产品生产应获得的利润，以及在合同中止时剩余的劳动力成本和原材料费用。

(b) Estimate from the consideration of all relevant factors, the percentage of completion of the partially completed and uncompleted portion of the order; and

- (b) 结合所有相关因素，估计部分完成和未完成的产品占定单总数的百分比。
- (c) Multiply the anticipated profit as determined under (a) by this percentage determined under (b) the result is the amount to be paid to Phoenix as a proportionate of all share of profit as above provided.
- (c) 用 (a) 中计算的预期利润乘以 (b) 中显示的百分比，积则是应按比例支付给菲尼克斯的利润。

11. Phoenix shall not be liable for any claims whatsoever, unless it shall have received from Buyer within 30 days from date of shipping, written notice of such claims specifying in detail and with reliable certainty all defects or defaults forming the basis of such claims. Buyer agrees that Phoenix's liability for loss or damages on any claim of any kind, including, without limitation, negligence in manufacture, engineering or design, or breach of contract or warranty, is limited to an amount equal to the price of the items ordered. Additionally, again without limitation, Buyer further agrees that phoenix shall not be liable for any penalty or for an indirect, special, secondary, punitive, or consequential damages, such as loss of profits or revenue, loss of or damage to other equipment, or claims of third parties against the Buyer, all such liabilities being waived, discharged and released by Buyer. Buyer warrants that all items manufactured by Phoenix in accordance with specifications provided by Buyer shall be free of the rightful claim of any person arising from a patent or trademark, and the Buyer agrees to indemnify and hold Phoenix harmless against any and all losses, damages, and costs including attorneys' fees, which it might incur as a result of the infringement, or alleged infringement, of any patent or trademark, resulting from its manufacturing activities in accordance with such specifications.

11. 买方应在装运日起 30 天内书面通知菲尼克斯索赔，并以可靠证据详细说明有关的缺陷，否则菲尼克斯对任何索赔均不负责任。由于菲尼克斯生产失误、工程或设计错误而违约或违反担保，买方同意菲尼克斯应赔偿买方定单中该产品的同等价格的损失；买方同意菲尼克斯不支付罚款；由于间接原因、特殊原因、次要原因、惩罚性原因产生的损失(例如收入或利润的损失、其他设备的损失或损坏或第三方对买方的投诉)，所有上述损失由买方承担。买方保证菲尼克斯根据买方提供说明制造的产品均不引起专利或商标纠纷，若菲尼克斯根据买方提供的说明书的生产行为侵犯或所谓侵犯任何的专利或商标，买方同意赔偿菲尼克斯的所有损失、损害及律师代理费，并保证菲尼克斯不承担法律责任。

12. Variation in quantity- No variation in quantity will be accepted without prior approval of the Buyer.

12. 数量差异：若无买方提前批准，数量差异不予接受。

13. Buyer agrees that if production tooling is removed from the premises of Phoenix, a tool-in production charge may be made in an amount equal to 40% of the initial tooling charge, it being agreed that the initial tooling charge did not include any engineering or design changes made in the course of molding buyer's parts more efficiently and this additional charge is imposed to cover such engineering and/or design changes. All prototype tooling becomes property of Phoenix.

13. 若菲尼克斯转让生产工具，买方同意支付相当于工具原价格 40% 的费用，双方同意工具原价格不包括更有效的模制买方产品产生的更改工程设计的费用，如有更改设计，需征收额外的费用，所有的工具原型仍属菲尼克斯所有。

14. Tooling payment-33-1/3%of the net tooling charge must accompany the tooling order. 33-1/3% is due and payable upon completion of the tooling, and 33-1/3% is due and payable upon Buyer's approval of samples.

14. 工具付款：工具定单中需附加 33%的净工具费用，并在工具生产完成时支付，以买方接受样品为准。

15. The rights and obligations of the parties pursuant to this order and the construction of the terms hereof shall be governed and controlled by the Laws and regulations of P.R China and the municipality of Shanghai.

15. 本条款以及定单中所规定的双方权利和义务均适用中华人民共和国和上海市的法律和法规并按其进行解释。

16. In the event Phoenix is required, in its sole judgment, to take legal action to enforce collection of any invoice issued pursuant to this contract, Buyer agrees to pay all costs of such delinquency and collection action, including interest on the balance outstanding from the date said sum becomes due, at the rate of 21% per annum, and including reasonable attorney fees and costs of collection.

16. 若菲尼克斯被迫通过诉讼手段强制收回的应收款项，买方同意支付所有的逾期债款及托收手续费，包括货款到期日起拖欠款项的利息（年利息率为 21%），包括合理的律师代理费及托收费用。

17. Should there be any discrepancy between the English and Chinese versions of these Terms and Conditions, the English version shall prevail.

17. 若中英文本存有歧义，概以英文版为准。

18. Any dispute arising from or in connection with this Terms and Conditions shall be submitted to China International Economic and Trade Arbitration Commission, Shanghai Sub-Commission for arbitration which shall be conducted in accordance with their arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

18. 凡因本销售条款引起的或与本销售条款有关的任何争议，均应提交中国国际经济贸易仲裁委员会上海分会，按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁的结局是终局的，对双方均有约束力。