

费斯托(中国)有限公司销售条款与条件

1. 总则

- 1.1 费斯托(中国)有限公司(以下简称“费斯托”)提供的所有交付物与服务(包括软件销售)均以下列销售条款与条件为准。若任何客户提交的任何订单中包含与本处内容不一致的条款,该条款将被明确撤销。除非上述订单中的条款获得费斯托的书面同意,否则不对费斯托享有法定约束力。
- 1.2 使用费斯托软件与定制软件的行为还应接受另行规定的软件用户条款的约束。
- 1.3 客户下达订单或接受费斯托交付的货物即代表客户认可费斯托的条款。

2. 报价与交货

- 2.1 所有的报价须经确认才有效,除非报价带有时限(如CS物料的报价);费斯托的订单确认书构成合同依据以及交货范围的确定因素。在客户要求进行特定投标的情况中,上述规定亦适用。客户下达的订单对客户享有约束力,在费斯托提交订单确认书后,视作订单已被费斯托接受。在订购产品目录内组件的情况中,若费斯托连同所开具的发票以及货物一并提交订单确认书,也应视作费斯托按时提交订单确认书。在报价附带时限和接受期限的情况中,若费斯托未按时提交订单确认书,该报价不具约束力。费斯托保留出于技术进步的目的变更设计并对技术数据和性能特性进行修改的权利。费斯托将提前一段适当的时间在费斯托网站(www.festo.com)上的气动产品目录下公告任何上述改动以及产品停产情况。
- 2.2 连同招标书或订单提交的任何文件(例如提交给费斯托的图纸、规格、材料、样品、工具或类似物品)仍归客户所有。费斯托在编制和出具报价单时,必须以上述文件为准。若之后须对招标书以及费斯托的报价单进行改动,必须在下达订单时以书面方式注明改动内容。
- 2.3 费斯托以上述方式的类似方式添加入报价单的任何文件均属于费斯托的财产。客户承诺不会将上述文件用于任何其他合同或将其复制或提供给第三方。
- 2.4 任何明显失误、印刷错误、计算错误、拼写错误或核算错误不对费斯托享有约束力,亦不得致使客户有权要求索赔。
- 2.5 若费斯托为特定产品配有相关文件(例如使用手册),客户可通过费斯托的网站(www.festo.com)免费下载上述文件。若客户另有要求,费斯托可在额外收费的基础上向客户提供上述文件的印刷件。

3. 价格与支付

- 3.1 价格以费斯托订单确认书上的价格为准。价格中如不含增值税,开发票时应将该增值税计入开票金额。
- 3.2 配送与包装成本由客户方承担。若计价依据发生变化,费斯托保留更改价格的权利。
- 3.3 发票金额应包含货物金额和增值税金额。
- 3.4 若逾期付款,费斯托保留对逾期付款导致的损失或附加费进行索赔的权利。
- 3.5 组装费、维修费以及产品信息费按照净金额支付。
- 3.6 若订单所订购的货物净价值低于人民币800元,费斯托将在发票中加入一笔小额订单费人民币50元。
- 3.7 不允许代扣任何款项或抵扣潜在的反索赔金额,除非该反索赔金额已被认可或依法确定。

4. 交货期

- 4.1 订单确认书中规定的交货日期仅在所有技术细节与商业细节均在交货日期之前得以明确的前提下享有约束力。客户承诺提供一切必要的材料,以便在交货日期前履行订单。若交付物在上述日期之前离开费斯托的工厂或费斯托告知客户其已做好发货准备,则应视作上述发货日期得以执行。
- 4.2 费斯托有权分批交货或提前交货。
- 4.3 交货会因为不可抗力的困难程度而相应延迟。不可抗力包括劳资纠纷的相关活动,尤其包括罢工与停工。不可抗力还包括分包商所导致的不可预见的困难或情况。

- 4.4 而且，若在费斯托延期交货期间发生上述不可抗力，费斯托无须对此承担责任。
- 4.5 若按照客户的要求延迟发货，费斯托有权在一段合理的期限后另行处置交付物，或在一段相应延长的期限后向客户交货，并向客户收取仓储费用。

5. 接受

在货抵双方约定交货地点 24 小时内，客户应按照合同及订单确认书的规定对货物型号、数量、包装、外观、规格等方面进行验收并接受该货物。如客户未提出任何异议也未按时签收的，将视为已接受货物。

6. 风险转移

- 6.1 所有交货工作的风险由客户承担。分批或提前交付的货物的风险在发货后或费斯托向客户提交发货就绪通知后转移至客户。此规定亦适用于费斯托负责承运的货物（即使费斯托使用自有车辆运货，且自行负责安装）。
- 6.2 经客户要求，费斯托应安排为货物投保涵盖盗窃、破损、运输、火灾与水渍损失以及任何其他可保风险的保险，保险费用由客户承担。

7. 所有权保留

- 7.1 在客户全额结清所欠货款（包括客户在与费斯托建立业务关系之前欠下的任何余款，不论其源自何等法定来源）之前，所供货物的所有权仍归费斯托所有。费斯托执行上述保留货物所有权的行不得被视作费斯托退出合同。相反地，上述行为应作为费斯托在销售合同项下享有的各项权利的保障并且也是对财产收回权的一种补充，当然也包括获得损害赔偿和利润损失赔偿的权利。
- 7.2 尽管有前款规定，不论何种原因而导致退货或换货时，退换产品的所有权于该合同解除时即自动从客户处转移至费斯托。
- 7.3 在产品的所有权转移至客户后，有关产品的一切知识产权仍应属于有关许可人。
- 7.4 若客户不遵守合同规定（尤其是客户延期付款），剩余的货物余款将立即到期应付。在上述情况中，费斯托有权在向客户提交付款要求书后前往客户现场收回货物。此时，客户不享有货物的任何所有权。

8. 软件使用

- 8.1 作为客户支付报酬的回报，客户应获得使用费斯托各类型软件及其相关资料的非专属、不可转让且永久性权利。客户有权在任一硬件产品或（在某些情况中）双方明确约定的某一硬件产品上使用上述软件。费斯托仍应享有上述软件的版权以及其他一切知识产权。客户不得出于数据备份之外的其他目的复制上述软件的任何部分。客户不得删除软件中的版权公告。
- 8.2 费斯托应针对其软件提供印刷版的安装与调试说明（其中应包含相关的安全说明）。其他资料仅将通过电子形式提供，并附在线帮助。若提供有新版软件，上述资料也将通过电子形式发送。
- 8.3 将软件转让给第三方之前，须获得费斯托的批准。若所提供的软件用于转售，相关第三方必须同意本处规定。不允许对软件进行更改。
- 8.4 若违反本销售条款，客户应支付相当于十倍订单金额的违约金。不得使用任何潜在的索赔来抵消上述违约金。一经要求，客户应立即归还软件及其相关资料。
- 8.5 上述条款不适用于根据客户提供的技术参数专门为客户开发的专属软件。此类软件由费斯托作为按合同制造的全套控制系统的其中部分开发与定制，上述控制系统使用有来自费斯托方面适用于一系列应用程序并按照合同性能要求进行改制的模块化软件模块（标准软件模块）。销售条款第 2 条不适用于定制的培训软件。在客户全额付清定制应用程序的采购价款后，费斯托应将软件的专属、无空间限制且永久性的使用权转让给客户，但客户不享有组成定制版软件的各个基础标准软件模块的任何权利。尽管本处另有规定，费斯托有权为其他客户要求提供的应用程序定制并提供类似的软件解决方案。费斯托保留将定制软件用于内部用途的基础使用权。

9. 退货

除非经费斯托事前书面许可，客户不得退货。费斯托仅考虑退回未使用的、符合当前市场需求的可用商品。费斯托仅考虑接受发货日期后 30 日内提出的退货申请。根据客户要求设计并开发的产品、装置和系统不可退货。退货金额以退货时或发票日期上现行的产品价格为准。但是，费斯托保留对退货商品收取最低手续费、重检费以及为恢复商品的适合销售性而产生的任何额外费用，具体由费斯托的检验程序确定，包含退货的所有运输费用。

10. 保修申请

费斯托保证其产品在向客户交货之日后 12 个月内不会出现任何材料缺陷和工艺缺陷。依照本销售条款与条件第 14 条的规定，费斯托应对货物的质量缺陷、所有权的合法性及质量担保负责（但不对任何其他要求负责），具体如下：

10.1 质量缺陷：

- a) 因风险转移之前的情况产生的所有缺陷零件，一经发现，应由费斯托酌情进行维修或（通过提交无故障的零件）更换。但零件的磨损不享受保修。
- b) 费斯托担保费斯托软件是以适当方式复制的。费斯托软件被设计用于费斯托指定的硬件产品。费斯托将通过换货的方式满足保修申请。除非协议双方另有书面约定，费斯托并未担保软件及其数据结构不存在任何缺陷。
- c) 若涉及定制软件，费斯托应担保定制软件符合技术参数、订单确认书、相关资料或费斯托与客户制订的工作/程序说明规定的各项功能与特点。费斯托并未担保上述程序被用于客户指定的各项应用程序时不会出现任何缺陷，尤其是费斯托在开发或验收时并不知晓的或并未进行测试的应用程序。
- d) 客户应立即以书面方式通报所有缺陷，但最晚不迟于收到货物后 8 日。
- e) 若客户提交的缺陷投诉有合理理由，费斯托将承担相关的直接费用 - 前提是缺陷投诉成立 - 包括替换件的成本、替换件的运输成本以及合理的卸载与重新安装费用，前提是上述程序并未导致客户向费斯托提出不合理要求。
- f) 客户应向费斯托提供进行维修或换货的时间和机会，否则费斯托无须承担因此产生的后果。若情况紧急，操作安全性存在危险，为防止出现重大损害，在获得费斯托的事前许可后，客户有权自行或委托第三方纠正产品缺陷，并向费斯托报销必要成本。此规定亦适用于费斯托不当拖延缺陷纠正工作的情况。若客户或某一第三方进行的维修作业不合格，费斯托无须对此产生的任何后果承担责任。
- g) 其他保修申请应按照本销售条款与条件第 14 条的规定进行裁定。
- h) 此外，费斯托不对基于以下理由的任何损害承担责任：客户或第三方不适宜或不适当地使用、储存产品或错误安装产品的行为、未经授权的维修及改装行为、自然磨损、错误的或疏忽的操作行为、费斯托能力外的化学效应与电场效应等以及将产品用于非设计用途或不按照费斯托相关资料（例如使用手册、产品目录表）中包含的信息和详细说明使用产品的行为（无论上述信息以何等方式提供），尤其是与费斯托产品的使用条件相关的信息（例如润滑说明、压缩空气质量/其他操作要求、环境条件等）。另外，若客户或第三方在未经费斯托事前许可且不具备任何其他正当理由（例如费斯托不当拖延缺陷纠正工作）的情况下擅自改动操纵装置/软件，保修服务将无效，即使是某一未经改动的部件发生错误。

10.2 权利瑕疵：

- a) 若使用交付物的行为侵犯他人的工业产权或版权，费斯托应自费为客户取得可大体上继续使用交付物的权利，或按照客户的要求对交付物进行改造，以消除上述侵权行为。
- b) 若无法以经济合理性的方式或在合理的期限内实现上述工作，客户有权退出合同。同样，费斯托也有权退出合同。
- c) 另外，费斯托应保障客户免于相关的版权所有人提出的任何无争议索赔或依法可主张的索赔。

- d) 依照本销售条款与条件第 14 条的规定，在侵犯产权或版权的情况中，费斯托的上述义务是最终的。上述义务的适用前提是客户及时向费斯托通报第三方提出的任何产权或版权侵权索赔且客户合理支持费斯托进行上述索赔的答辩工作或允许费斯托对产品进行改造；费斯托有权自行处理所有的答辩活动（包括庭外和解）；上述权利瑕疵或侵权行为并非因客户下达的某一指示产生并且也并非因客户未经授权改造交付物的行为或未经授权使用交付物的行为造成。

11. 转售

除费斯托事先书面同意外，客户从费斯托采购的货物，仅限用于生产制造客户自身的产品，不得向任何第三方直接或间接转售（包括将产品的部件拆下转卖）。如客户违反此保证或费斯托有合理依据怀疑客户将违反此保证，费斯托有权拒绝接受该客户发出的订购信息，客户应承担费斯托由此遭受的一切损失。

12. 出口限制

- 12.1 双方同意，货物的交付受限于任何地区或机构或国家（包括中国、联合国、欧盟和美国）对技术和产品实施的、可在费斯托所在司法管辖区内强制执行的所有适用的出口管制或限制。客户确认，货物及所有相关的技术信息、文件和材料均不得违反上述管制或限制而直接或间接进口或出口、再出口、转运、交易、转移或转让。
- 12.2 一经费斯托要求，客户应按费斯托规定的格式和内容，向费斯托提供所有与出口管制法律、法规和限制有关的相关证明，例如（但不限于）最终用户证明。

13. 无法履约及违约

- 13.1 若费斯托在风险转移前丧失履约能力，客户有权退出合同。若类似商品的订单无法得以履行、部分货物的交付无法进行并且客户有拒绝分批交货的合法理由，客户亦可退出合同。若客户选择不退出合同，客户有权享有相应的减价。
- 13.2 若费斯托出现第 4 条规定的延迟履约行为，且未能在客户向费斯托授予的合理延期内履约，客户有权在法律规定的范围内退出合同。若因客户过错而导致收货或验收延迟，客户应承担验收合格的后果和责任。
- 13.3 若客户因归咎费斯托的延迟情况蒙受损失，客户有权提出违约索赔。每延迟一周（不考虑进一步索赔），针对延迟的部分货物，费斯托应向客户支付相当于上述迟延货物部分价值 0.5% 的违约金，违约金累计最高不超过该批迟延货物价值的 3%。
- 13.4 因延迟交货而提交的进一步索赔在此予以明确排除。
- 13.5 对于因客户违反本《费斯托(中国)有限公司销售条款与条件》而使费斯托所遭受之任何损失、损害、费用、开销、债务或索赔，客户同意就此向费斯托赔偿并保证不使费斯托遭受损害。

14. 责任

- 14.1 在任何情形下且不论出于何种诉讼理由，费斯托根据本协议对客户所负的最高责任总额（包括支付罚金、违约金的义务，且不论起因、过错程度、过失、违约或其他情况）应限于仅与费斯托须承担责任的单笔订单价款的三分之一（1/3）。
- 14.2 在任何情况下费斯托均不对任何依据本协议产生的间接或从属性损失负责，包括但不限于任何收入损失、利润损失、预期利益及节省损失、生产或运营中断损失、合同或商业机会损失、商誉损失、数据丢失或损坏、投资及机会成本损失、第三方申索及所有相关及附带成本及费用等。
- 14.3 除承担交付物的缺陷之外，费斯托仅在费斯托或其管理人员出现蓄意、重大过失或产品存在危害生命、人身或健康的可治罪缺陷且费斯托恶意隐瞒该缺陷或担保不存在上述缺陷的情况中承担责任，前提是上述责任为产品责任法中规定的与该产品使用相关的人身伤害与财产损失责任。
- 14.4 任何进一步的索赔在此予以明确排除。

15. 法定时效

任何索赔（无论基于何等法律原因）的法定时限应以相关的中国法律为准。

16. 保密义务

客户承诺对订单履行工作涉及的一切信息、技术诀窍和其他工业机密进行保密，在获得费斯托的明确许可之前，客户不得将任何信息、单据、资料、图纸、草图或其他文件转移或提供给任何第三方。费斯托也有义务对客户的所有信息进行保密。

17. 转让

未经对方事先书面同意，任何一方不得将其在合同项下之全部或部分权利和义务转让给第三方。

18. 司法管辖地

因合同关系产生的所有争议应接受中国上海浦东新区人民法院的司法管辖。

19. 适用法律

中华人民共和国法律应适用于费斯托与客户之间的合同关系，但所有涉及动产采购交易的双边及/或多边协议不适用于上述合同关系，尤其是 1980 年 4 月 11 日的《联合国国际货物销售公约》（CISG）。

20. 合规

客户保证已知悉费斯托《商业伙伴行为准则》，该准则可通过 https://www.festo.com.cn/net/SupportPortal/Files/709185/Code%20of%20Conduct%20Business%20Partners%20CN_FINAL.pdf 下载，并要求公司管理人员和员工遵守该准则。为保证合作顺利进行，客户应采取一切必要措施以避免发生任何非法行为，尤其是对费斯托造成不利影响的非法行为。因此，客户应在公司和/或集团内采取一切必要的，尤其是对于避免腐败或其他犯罪行为至关重要的行动，以监督其管理人员和员工对费斯托《商业伙伴行为准则》的遵守情况。

Terms and Conditions of Sale of Festo (China) Ltd.

1. General

- 1.1 All deliveries and services from Festo (China) Ltd., including the sale of software, are subject to the following terms and conditions of sale. Any conditions in any order given by any customer which are inconsistent with these conditions are expressly revoked. Such conditions shall not be legally binding for Festo unless they have been agreed to in writing by Festo.
- 1.2 The use of Festo software and customised software is subject to separate software user conditions.
- 1.3 The placing of an order or acceptance of goods delivered by Festo shall constitute the customer's agreement to our conditions.

2. Quotation and delivery

- 2.1 All quotations unless limited in time (e.g. the quotation of CS project) are subject to confirmation; our written order confirmations shall form the basis of the contract and the definitive factor for the scope of the delivery. This also applies if the customer has requested a specific tender. Orders given by the customer are binding for the customer and shall be deemed to have been accepted upon presentation of the order confirmation by Festo. This shall be deemed to have been presented in due time in the case of catalogue components if presented together with the issued invoice and the delivery. In the case of quotations with a time limit and a time stated for acceptance, the quotation shall not be binding, if an order confirmation is not submitted in time. Festo reserves the right to vary the design and make changes to technical data and performance characteristics insofar as these are for the purpose of technical progress. Festo will announce any such changes, and any product discontinuations, with an appropriate period of notice in its pneumatics catalogue on the Festo website (www.festo.com).
- 2.2 Any documentation submitted with the request for tender or an order, such as drawings, specifications, material, samples, tools, models or similar and made available to Festo, shall remain the property of the customer. These are binding for the preparation and issue of the Festo quotation. Any subsequent variations relating to the initial request for tender and the Festo quotation must be specified in writing when ordering.
- 2.3 Any documentation added by Festo to a quotation in a manner similar to that mentioned above shall remain the property of Festo. The customer undertakes not to use this documentation for the purpose of any other contracts or to reproduce or make it available to third parties.
- 2.4 Any apparent mistakes, printing, computational, spelling or calculation errors shall not be binding for Festo and do not give the customer the right to claim for damages.
- 2.5 Insofar as Festo have documentation (e.g. manuals) for particular products, this will be available to customers as a free-of-charge download from the Festo website (www.festo.com). Printed versions of this documentation can be provided for customers to separate order and for an additional charge.

3. Prices and payment

- 3.1 Prices apply based on the order confirmation. If the prices on the order do not include VAT, the VAT shall be included in the invoices.
- 3.2 The despatch and packaging costs shall be met by the customer. Festo reserves the right to implement price changes if the basis for our calculations has been altered.
- 3.3 The invoice amount consists of contract price and VAT.
- 3.4 If the period of payment has been exceeded, Festo reserves the right to claim the damages or surcharges caused by delayed performance. The calculation of the surcharge shall be according to the associated clauses in the Appendix of separate contract.
- 3.5 Assembly and repair costs and product information costs are payable net.
- 3.6 In the case of orders with a net goods value of less than RMB 800 yuan, Festo will add a small-order surcharge at RMB 50 yuan.
- 3.7 The withholding of payments or offsetting of potential counterclaims is not permissible other than in the case of recognised or legally determined counterclaims.

4. Delivery period

- 4.1 The date specified in the order confirmation is binding only if all the technical and commercial details have been clarified by that time. The customer undertakes to provide the materials essential for the

order to be executed on time. The delivery date is deemed to have been adhered to, if the object of delivery has left the Festo works by the said date or if the customer has been advised of its readiness for shipment.

- 4.2 Partial and early deliveries by Festo are permissible.
- 4.3 The delivery delay increases proportionately in the event of difficulties attributable to vis major. This includes actions as part of industrial disputes, in particular strikes and lockouts. It also applies in the event of unforeseen difficulties or circumstances arising with subcontractors.
- 4.4 Moreover, Festo will not be responsible in the above described circumstances, if these occur during an already existing delay.
- 4.5 If despatch is delayed at the request of the customer, Festo shall after a reasonable period of time be entitled to dispose otherwise of the delivery item or to supply the customer to a correspondingly extended time limit and to charge the customer storage costs.

5. Acceptance

Customer shall inspect the type, quantity, package, surface quality, specification, etc. within 24 hours after the goods arrive the place agreed by both parties according to the provisions of the contract and order, and accept the goods. If customer doesn't file a claim or fails to accept the goods within the specified time, it shall be deemed to have accepted the goods.

6. Passage of risk

- 6.1 All deliveries shall be effected at the risk of the customer. Partial and early deliveries shall also be at the risk of the customer upon despatch or upon communication of readiness for shipment. This also applies if the consignment is transported by Festo and even if Festo uses its own vehicles and effects the installation.
- 6.2 At the request of the customer, Festo shall arrange at the customer's expense insurance of the consignment against theft, breakage, transport, fire and water damage and any other insurable risks.

7. Retention of ownership

- 7.1 The goods supplied shall remain the property of Festo until all debts owed by the customer are settled in full including any balances existing from the business relationship with the customer irrespective of statutory source. The enforcement of our right to retain ownership should not be regarded as a withdrawal from contract. On the contrary, it ensures our rights from the contract of sale in addition to Festo's entitlement to the return of Festo's property, in particular to the reimbursement of damages and lost profits.
- 7.2 Notwithstanding the provisions of the preceding paragraph, the ownership of the changed and returned goods shall automatically be transferred to Festo from customer regardless of the cause.
- 7.3 All relevant Intellectual Property rights related to the goods shall still be owned by the licensor after the ownership of the goods has been transferred to the customer.
- 7.4 In the event of the customer not conforming to the contract, in particular in the case of a delay in payment, the total balance due shall become payable immediately. In such cases, Festo has the right to recover possession of the goods following a demand for payment and to collect these from the customer's premises. In such an event, the customer shall not have any right to ownership.

8. Use of software

- 8.1 In return for remuneration, the customer shall receive non-exclusive, non-transferrable and perpetual utilisation rights for Festo software of all kinds and any associated documentation. This software may be used on one hardware product or in some cases a specially agreed hardware product. Festo shall remain the owner of copyrights and all other industrial property rights. No part of this software must be duplicated other than for the purpose of data backup. Copyright notices must not be removed.
- 8.2 Festo will supply installation and commissioning instructions containing relevant safety instructions for its software in printed form. All other documentation will be supplied only in digital form with on-line help. When new software releases are supplied, these will also be sent in digital form.
- 8.3 The transfer of software to third parties requires the permission of Festo. If the software is provided for the purpose of resale, the third party must agree to these conditions. Modifications are not permissible.

- 8.4 In the event of a violation of these conditions, the purchaser shall pay a contractual penalty amounting to ten times the order value. This contractual penalty shall not be set off against any potential claims for compensation. The software and associated documentation must be returned immediately on request.
- 8.5 The conditions described above do not apply to exclusive customer-specific software developed on the basis of specifications provided by the customer. This software is developed and customised by Festo as part of a contractually produced complete control system making use of modular software modules (standard software modules) from Festo suitable for a wide range of applications and adapted to the contractual performance requirements. Clause 2 of these conditions does not apply to customised training software. Upon full payment of the purchase price of the customised application program Festo shall transfer the exclusive, spatially unlimited and perpetual rights of utilisation to the customer, without the customer having any lawful entitlement to the individual basic standard software modules forming the basis of the customised version. Festo has the right, irrespective of these conditions, to create and offer similar software solutions customised for applications required by other customers. Festo shall retain basic utilisation rights for internal purposes.

9. Returned goods

No returns for goods will be allowed without Festo's prior written acceptance. Only unused active items, non obsolete in current demand will be considered by Festo for return for goods. Only request raise within 30 calendar days from shipment date will be considered by Festo for return for goods. Products, installations, systems that were designed and developed according to customer specifications are not returnable for goods. Credit will be based upon prices of products in effect at time of return or time of invoicing. However, the company reserves the right to impose a minimum value on returned goods which is subject to handling, re-inspection and any additional expense incurred in restoring goods to saleable condition, as determined by our inspection and including all shipping charges incurred in the return.

10. Warranty claims

Festo warrants its products to be free from defects in materials and workmanship, for a period of 12 months from date of delivery to the customer. Subject to the provisions in Article 14 herein and excluding any further claims, Festo shall be liable for defects of quality and legality of title and warrants as follows:

10.1 Defects of quality:

- a) All parts found to be defective as a result of circumstances prior to the transfer of risk shall, at the discretion of Festo, either be repaired or replaced by delivery of a faultless part. Excluded from this warranty shall be parts subject to wear.
- b) Festo shall guarantee that Festo software has been duplicated properly. Festo software is designed to run on hardware products specified by Festo. Warranty claims shall be satisfied by means of a replacement. Unless otherwise agreed in writing, Festo shall not warrant that the software and its data structure are free of defects.
- c) In case of customised software, Festo shall warrant compliance with the functions and features stipulated in the specifications, the order acknowledgement, documentation or the work/procedure descriptions worked out together between Festo and the customer. Festo shall not warrant that such programs are free of defects in relation to the use of said programs in all applications intended by the customer, in particular not such applications of which Festo was not aware or did not test at the time of development/acceptance.
- d) The defects shall be notified immediately in writing, however, at the latest within 8 days after receipt of goods.
- e) If the defect complaint is justified, Festo shall bear of the immediate costs – insofar as the complaint proves to be founded – the cost of the replacement part, shipping thereof as well as reasonable costs related to uninstallation and reinstallation, insofar as such procedure does not result in unreasonable demands made on Festo.
- f) The customer shall allow Festo time and opportunity to effect the repair or replacement delivery, otherwise Festo shall not be held liable for the ensuing consequences. The customer, with Festo's prior consent, shall have the right to rectify defects itself or have them rectified by a third party in such urgent cases where there is a danger to operational safety and to prevent extensive damage, and to claim reimbursement of necessary costs from Festo. This shall also apply in the cases where Festo is causing undue delay in remedying the defect. Should the customer or a third party carry out unqualified repairs, Festo shall not be held liable for any consequences thereof.

- g) Other claims shall be determined as stipulated in Article 14 herein.
- h) In addition, Festo shall not be held liable for any damage on foot of the following grounds: unsuitable or improper use or storage, faulty installation by the customer or a third party, unauthorised repair attempts and modifications, natural wear, erroneous or negligent handling, chemical effects and electrical effects etc. outside our power, as well as in case of non-intended use and non-compliance with our information and details out of our documentation (e.g. user manuals, catalogue sheets), irrespective of the method of such information, in particular in relation to the conditions of use of our products (e.g. lubrication instructions, quality of pressurised air/of other operational requirements, environmental conditions). In addition, the warranty shall be voided if the customer or third parties modify the control/software without Festo's prior consent and without any other justification (Festo's undue delay in remedying defects), even if the error occurs in an unchanged component.

10.2 Defects of title:

- a) If the use of the delivery item infringes other's industrial property rights or copyrights, Festo shall, at its cost, obtain the right to principally enable the customer to continue to use the delivery item or to modify the delivery item in a manner acceptable to the customer so that the copyright infringement no longer exists.
- b) Should this not be achievable in an economically reasonable manner or within a reasonable period of time, the customer shall be entitled to withdraw from the contract. Given the stipulated conditions, Festo also shall have the right to withdraw from the contract.
- c) In addition, Festo shall indemnify the customer in relation to any non-disputed claim or legally asserted claim raised by the relevant copyright owners.
- d) Subject to Article 14 herein, the above stated obligations of Festo shall be final in relation to cases of infringement of property rights or copyrights. The aforesaid obligations shall be applicable only if the customer advises any property or copyright infringement claims raised immediately to Festo, the customer reasonably supports Festo in the defence of such claims or enables Festo to carry out modifications, Festo has at its disposal all defence actions including out-of-court settlements, the defect of title is not based on an instruction issued by the customer and the infringement is not caused by non-authorised modifications of the delivery item by the customer or non-authorised use of the delivery item by the customer.

11. Resell

Unless Festo has given a prior consent in writing, the supplied goods can only be used to manufacture customer's own products, and the customer is not allowed to resell the supplied goods, directly or indirectly, to any third party, including resell the component(s) removed from the goods. If customer violates this term or Festo has reasonable grounds for doubt of customer's violating this term, Festo has the right to refuse to accept customer's orders, and customer shall compensate for all losses incurred to Festo.

12. Export control

12.1 The parties agree that the goods shall be delivered subject to all applicable export controls or restrictions imposed on technology and products by any country or organisation or nation, including the China, United Nations, European Union and United States, which are enforceable in the jurisdiction of Festo. The customer acknowledges that the goods and all related technical information, documents and materials may not be imported or exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls or restrictions.

12.2 On Festo's request, the customer shall furnish Festo with all relevant certificates relating to export control laws, regulations and restrictions, such as, but not limited to, end-user certificates, in form and content specified by Festo.

13. Impossibility of performance, default

13.1 The customer may withdraw from the agreement should performance by Festo become impossible before the risk is passed. The customer shall also be entitled to withdraw from the agreement should, in the case of an order for similar goods, execution of part of the delivery become impossible and the customer has a legitimate interest in refusal of a partial delivery. Should this not be the case, the customer may reduce the consideration accordingly.

- 13.2 In the event of a delay of performance by Festo as defined by Article 4, where the customer guarantees us a reasonable extension, the customer shall be entitled to withdraw from the agreement, within the scope of the statutory provisions, should the extension not be complied with. Should there be a delay of acceptance through the fault of the customer, the customer shall remain obliged to render a return service.
- 13.3 Should the customer incur damage caused by a delay for which Festo is responsible, the customer shall be entitled to claim liquidated damages for default. This liquidated damages shall amount to, for each full week of the delay and to the exclusion of further claims, 0.5 % and aggregately no more than 3 % of the value of the delayed part of the delivery.
- 13.4 Further claims as a result of late delivery shall be expressly excluded.
- 13.5 Customer hereby agrees to fully compensate Festo and hold Festo harmless from any losses, damages, costs, expenses, liabilities or claims arising out of customer's violation of this *Terms and Conditions of Sale of Festo (China) Ltd.*

14. Liability

- 14.1 In any event, and whatever the cause of action, Festo's maximum total liability to the Customer pursuant to and in connection with this Agreement – including the obligation to pay penalties, liquidated damages and regardless of cause, degree of fault, negligence, breach of contract or otherwise – shall be limited to one third (1/3) of the individual order value in respect of which the cause of Festo's liability has arisen.
- 14.2 In no event shall any pursuant to this Agreement Festo be liable to any party for any indirect or other consequential damages including but not limited to, any loss of revenue, loss of profits, loss of anticipated benefits and savings, loss of business interruption, loss of contracts or business opportunities, loss of goodwill, loss or corruption of data, loss of investment and opportunity cost, claims of third parties and all associated and incidental costs and expenses etc.
- 14.3 Festo shall not be liable for defects other than to the delivery item, for whatever legal reasons, only in case of intent, gross negligence of bodies or executives, culpable violation of life, body, health, defects whose presence was not disclosed by Festo or its managerial personnels maliciously or their absence guaranteed by Festo, as well as in case of delivery item defects to the extent as liability is provided under the product liability law for personal injury and property damage in relation to privately used items.
- 14.4 Any further claims shall be expressly excluded.

15. Statute of limitation

The statute of limitation for any and all claims, no matter what legal reason, shall be consistent with the relevant provisions of the law of PR. China.

16. Confidentiality

The customer undertakes to treat all information, know-how and other industrial secrets in connection with the execution of the respective order in strict confidence and not to pass on or make available any information, documents, documentation, drawings, sketches or other papers to third parties without the express permission of Festo. Festo shall also treat all customer documentation in confidence.

17. Assignment

Neither of the parties may assign its rights or obligations hereunder, in whole or in part, to a third party without the other party's prior written consent.

18. Place of jurisdiction

The Pudong People's Court in Shanghai, China, shall be the competent court of jurisdiction for all disputes arising from the contractual relationship.

19. Applicable law

The law of the People's Republic of China shall apply to the contractual relationship between Festo and the customer to the exclusion of all bi and/or multilateral agreements concerning the purchase of movables, in particular to the exclusion of the UN agreement relating to contracts regarding the international purchase of goods of 11.04.1980 (CISG).

20. Compliance

The Customer warrants that he or she has been informed of the Festo Code of Conduct for Business Partners, which can be downloaded from https://www.festo.com/group/de/repo/assets/pdf/corporate/Festo-Code-of-Conduct-Business-Partners_EN.pdf, and has instructed his or her managers and employees to comply with it. To secure this good conduct the Customer shall undertake any necessary step to avoid any illegal actions, especially to avoid illegal actions which would adversely affect Festo. Therefore within his or her company and/or group the Customer shall take any necessary actions needed to monitor compliance with the Festo Code of Conduct for Business Partners by his or her managers and employees, especially such actions which are essential to avoid corruption or any other criminal acts.