

Terms and Conditions of Sale

Pertaining to Magnet / Winding Wire and Related Products and Services

Asia Pacific

1. GENERAL

These Terms and Conditions of Sale (these "Terms") govern Buyer's purchase of any Magnet / Winding Wire and related products (the "Products") or services (the "Services") from **Essex Furukawa Magnet Wire (Suzhou) Ltd., Essex Furukawa Magnet Wire (Penang) Sdn. Bhd.**, or **Essex Furukawa Magnet Wire Kuala Lumpur Sdn. Bhd** or any affiliate or subsidiary entity thereof ("Seller") named in a quotation, order acknowledgement, or similar document issued by Seller ("Seller Documents"). If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to Seller, these Terms are in lieu of any terms later submitted by Buyer and Seller rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Seller tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Seller's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Buyer. Buyer's performance, or acceptance of, or payment for, any products from Seller will constitute Buyer's acceptance of these Terms exclusively. If there is an executed written sales agreement in effect between the parties (a "Sales Agreement"), these Terms form a part thereof. Waiver by Seller of any breach, remedy or provision of these Terms shall not be construed to be a waiver of any succeeding breach or any other provision or legal remedy of Seller. The section headings of these Terms are for ease of reference only and shall not be admissible in any action to alter, modify or interpret the contents of any section hereof. The International Convention on the Sale of Goods shall have no application to any sales of Products or Services hereunder.

2. PRICE AND PAYMENT

Orders are not binding upon Seller until accepted by Seller in its sole discretion. No order submitted by Buyer shall be deemed accepted by Seller unless and until either confirmed in writing by Seller or by delivery of the Product specified in the order, and then only on these Terms. Seller may modify Buyer's order where necessary as follows: (a) substituting the latest or correct part number or part description for the part number or part description set forth on the order; (b) substituting Seller's prices in effect as applicable to the order; (c) substituting an estimated delivery schedule which is reasonable (considering Seller's stock availability and lead time); and (d) correcting any stenographical or typographical error.

Unless otherwise agreed to in writing by both parties, all accepted orders of the Products and Services will be invoiced at Seller's prices in effect on the date of shipment. Credit is extended at the sole discretion of Seller. If credit has been extended, the amount of credit may be changed or credit withdrawn by Seller at any time, in its sole discretion. If a cash discount is stipulated, it is subject to Buyer's entire account being current. Any discounts given to Buyer by Seller in relation to the price of the Products or Services are conditional upon payment for the Products being made strictly in accordance with the Sales Agreement and these Terms and to Buyer's entire account for all products purchased from Seller being current. Unless otherwise agreed to by Seller in writing, Buyer agrees to pay all amounts due to Seller within thirty (30) days from the date of invoice. Buyer shall pay interest and service charges on overdue invoices from the due date until paid at a rate of 1.5% per month or the maximum legal rate, whichever is less, and any collection costs of Seller. FAILURE TO PAY ANY AMOUNT WHEN DUE VOIDS ANY WARRANTY. Fees for and relating to the Products and Services are subject to adjustment in the event there are cost increases created by circumstances such as, but not limited to, changes in government energy policies, fuel and energy increases, metal premium or metal processing charges, chemical or material price increases, material and supply shortages, transportation and shipping costs. Any accepted order requiring special manufacturing processes, inspection, specified weight, packaging, test results, certification, etc., is subject to additional charges.

3. DELIVERY, TITLE, RISK OF LOSS, AND SHIPPING OF PRODUCTS

Title to and risk of loss of the Products shall pass to Buyer upon tender of such Products to Buyer at Seller's factory or a common carrier. Unless otherwise agreed by Seller in writing, shipping terms shall be Ex Works (Incoterms® 2020) Seller's factory or warehouse. Freight charges are specified in the applicable Seller Documents. Seller will attempt to ship +/- 10% of the quantity ordered in pallet quantity releases, to the nearest full pallet. For item releases for less than pallet quantities, Seller will attempt to ship within +/- 10% of the quantity ordered to the nearest standard package unit. Seller's weights on shipments shall govern. All orders shipped within +/- 10% of the quantity ordered shall be considered complete. Any shipping date provided by Seller is the Seller's best estimate and will not operate to bind Seller to ship or make deliveries on such date.

Buyer must thoroughly inspect the Products at the time of receipt for signs of damage, discrepancies or a shortage. Inspections of the Products at the time of delivery shall be commenced in the presence of the carrier's driver and Buyer shall note on the freight bill any shortages, discrepancies or damages of any Product received on the carrier's receipt. If concealed loss or damage is discovered, Buyer must report it to the carrier within 15 days from the date of receipt.

The pallets, reels and spools Seller uses to ship Products to Buyer shall always remain the property of Seller and are not a component of Buyer's purchase. Additional packaging provisions are set forth in the applicable Seller Documents.

4. LIMITED WARRANTIES AND DISCLAIMERS

Seller warrants to Buyer that at the time of delivery the Products will conform substantially to Seller's applicable Product Data Sheets at the time of purchase ("Specifications"). As Buyer's sole and exclusive remedy and Seller's entire liability for any breach of the foregoing warranty, Seller will, at Seller's option and expense, either refund the purchase price paid, or repair or replace the Product that fails to meet this warranty upon return of the nonconforming Product; provided, Buyer notifies Seller of noncompliance in writing within sixty (60) days of delivery of such Product. Transportation charges to and from Seller's location for the return of nonconforming Products to Seller and their re-shipment to Buyer and the risk of loss thereof will be borne by Seller. Buyer shall use Seller's designated carrier for all re-shipments. These warranties do not apply to any Product that was not properly stored or handled by the Buyer, that was repaired or altered or was otherwise subject to abuse, neglect or improper use by Buyer, or that has any stage of processing performed on it which causes the defect. EXCEPT WITH RESPECT TO THE SPECIFIC WARRANTIES SET FORTH IN THIS SECTION 4 OF THESE TERMS, SELLER MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS, SERVICES OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Without limitation, under no circumstances shall Seller be liable for any costs associated with reworking, re-manufacturing or scrapping goods in which defective Product supplied by Seller was incorporated, for any costs associated with production stoppages, machinery breakdown or recall campaigns, or for any trouble shooting, administrative or engineering charges.

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5. CLAIMS OF PATENT INFRINGEMENT

Seller shall conduct, at its own expense, the entire defense of any claim, suit, action or other proceedings ("Claim") brought against Buyer by a third party alleging that any Product infringes upon any People's Republic of China ("PRC") or Malaysian patent of any third party; provided, however: (i) Seller receives prompt written notice of the Claim; (ii) Seller has full control of the defense and all related settlement negotiations; (iii) the Products are made according to a specification or design furnished by Seller, or if a process patent is involved, the process performed by the Products are recommended in writing by Seller; and (iv) Buyer provides Seller with all necessary assistance, information and authority to perform the defense and negotiate settlement thereof. Provided all four of the foregoing conditions are met, Seller shall, at its own expense, either settle said Claim or shall pay all damages (excluding incidental, consequential, statutory, or punitive damages) and costs awarded by the tribunal therein. If the use or resale of such Products is finally enjoined, Seller shall, at Seller's option, procure for Buyer the right to use or resell the Products, replace them with equivalent non-infringing Products, modify them so they become non-infringing but equivalent, or remove them and refund the purchase price (less a reasonable allowance for use, damage or obsolescence). Buyer shall indemnify and hold Seller harmless from all Claims based upon (i) the use of a Product customized for Buyer based on Buyer's ideas, specifications or designs, (ii) the performance of a process performed by the Products not recommended in writing by Seller, or (iii) the use or sale of the Products delivered hereunder in combination with other products not delivered to Buyer by Seller.

6. EXCUSABLE PERFORMANCE

Seller is excused from performing any of its obligations under these Terms, any order or Sales Agreement if its performance is prevented, hindered or delayed by delays of suppliers, acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order (whether or not it proves to be invalid), fires, riots, inability to supply or obtain , products, materials, raw materials, supplies, fuel or utilities from normal sources of supply, labor disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures, pandemics, epidemics, quarantines or other public health emergencies of similar nature, or any other events or circumstances beyond Seller's reasonable control (an "Event"). To the extent an Event delays Seller's performance, such performance shall be extended for as many days beyond the due date until the delay concludes; provided, however, if Seller is unable to perform any of its obligations under any order due to an Event for more than thirty (30) days, it may in its sole option terminate, without liability or penalty, any Sales Agreement, order or obligation in whole or in part. It is expressly understood that the Seller has available a limited source for the materials used by Seller in the manufacture of the Products and provision of the Services. If there is an interference, limitation or cessation of any material from Seller's source of supply for any reason, Buyer agrees to relieve the Seller temporarily, proportionately, or permanently of liability under these Terms or any Sales Agreement or order, depending upon whether the interruption of the source of supply is a temporary interruption, a reduced delivery of materials, or a permanent cessation of supply. In the event there is a Product shortage pursuant to this section, Seller may ration and distribute such Products as it deems appropriate.

7. TAXES AND EXPORTS

Any and all taxes (not including any PRC or Malaysian income tax, U.S. income or excess profit taxes attributable to Seller) which may be imposed by any taxing authority, arising from the sale, delivery or use of the Products or Services and for which Seller may be held responsible for collection or payment, either on its own behalf or that of Buyer, shall be paid by Buyer to Seller upon Seller's demand. Export orders are subject to applicable export regulations and requirements. Buyer disclaims in favor of Seller any right or interest in, the drawback of duty, taxes or surcharges paid on imported material contained in the Products.

8. FINANCIAL RESPONSIBILITY OF BUYER

Buyer's solvency is a condition of Seller's performance and Seller may, at any time, in its sole discretion for credit reasons (including a good faith belief that a current or future payment is or may be impaired) or because of Buyer's breach of this or any other agreement with Seller, suspend or change credit terms, fix a limit on credit, require progress payments, demand payment in full of any outstanding balance, accelerate all unpaid amounts owed by Buyer including the unwinding of previously priced quantities, withhold shipments, demand COD (cash on delivery) or request other assurances of payment, cancel or terminate any order or agreement (including forward buys), or repossess all Products previously delivered, which Products shall become the absolute property of Seller subject to credit therefore. Buyer grants to Seller a security interest in Products delivered hereunder to secure Buyer's obligations under these Terms and any Sales Agreement and grants to Seller the right to execute, deliver, and/or file any financing statement or do any other thing reasonably necessary to perfect Seller's security interest. Notwithstanding any other provision of these Terms, Seller reserves the right in its absolute discretion from time to time to require payment in full of the price of the Products or Services before delivery of all or any of the Products or performance of Services.

Seller may terminate any order or Sales Agreement by written notice to Buyer if (i) a receiver or trustee is appointed for any of Buyer's property; (ii) Buyer is adjudicated or voluntarily becomes bankrupt or a debtor under any bankruptcy, dissolution or reorganization laws or similar law; (iii) Buyer becomes insolvent or makes an assignment for the benefit of creditors; (iv) an execution is issued pursuant to a judgment rendered against Buyer; or (v) Buyer is unable or refuses to make payment to Seller. If any order or Sales Agreement is terminated by Seller pursuant to this section, Seller shall be relieved of any further obligation to Buyer and Buyer shall reimburse Seller for its termination costs and expenses and a reasonable allowance for profit.

In addition to any right of set off or recoupment provided by law, Buyer agrees that all its accounts with Seller will be administered on a net settlement basis and that Seller may set off debits and credits, including Seller's attorney fees and costs of enforcement, against any of Buyer's accounts regardless of the basis for such debits and credits and without advance notice. In this section, "Seller" includes Seller's parent, subsidiaries and affiliates, and "Buyer" includes Buyer's parent, subsidiaries and affiliates.

9. CANCELLATIONS AND RETURNS

All orders accepted by Seller are non-cancelable unless (i) such order is cancelled in writing forty-five (45) days prior to the scheduled ship date and (ii) the Products ordered were standard stock items and not manufactured as special or customized items. If paid for, cancelled Products may be returned for credit only. Return of any Product must be authorized by Seller. Seller will issue a formal RETURN MATERIAL AUTHORIZATION (RMA) tag to support all authorized returns. For any credit, this document must provide the Buyer's order number, Seller's invoice number, description, and quantity of item to be returned, and reason for request. Standard Stock Items are returnable at invoice price less a 20% restocking charge, freight prepaid by Buyer to the plant of manufacture or Seller's designated location. Non-stock items and/or special items are not subject to return. All material must be returned to Seller on the original pallets, undamaged and in the original packaging.

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10. CHANGES — PROCESS, MATERIAL AND PRODUCT DESIGN

Seller continually develops and uses new processes, materials and product designs in an effort to improve its Products, while maintaining conformity to the Specifications. If Buyer's applications of the Products rely upon any performance, dimensional or constant criteria other than as required by the applicable Specifications, Buyer must conduct regular testing or evaluation of those specific Products. Seller makes no warranty or representation of any nature that any material shipped conforms to any material of like product description as may have previously been delivered to Buyer.

11. LIMITATION OF LIABILITY

IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, DELAY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DIRECT OR INDIRECT PROFITS, REVENUE, OR USE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF BUYER OR ANY OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY TO BUYER EXCEED ALL AMOUNTS ACTUALLY PAID BY BUYER TO SELLER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SET FORTH IN SECTION 4.

12. CONFIDENTIALITY

Buyer will not disclose to third persons any proprietary or confidential information of Seller concerning its business and operations, including without limitation, pricing information, for a period of five (5) years from the date such confidential information was learned or for confidential information meeting the definition of "trade secret" under applicable law, until such information is no longer a "trade secret." The obligations of confidentiality in this Section 12 do not apply to Confidential Information to the extent that the Confidential Information becomes readily ascertainable by proper means by the public other than through breach of this Section 12 by Buyer.

13. DISPUTE RESOLUTION

Any disputes arising out of or in relation to the provisions of these Terms, Sales Agreement, if any, the Seller Documents, or any accepted order, shall be solved through friendly consultation between the two parties. If the parties hereto fail to solve such dispute by consultation within 30 days after the date of notification of the existence of the dispute by one party to the other party, the parties shall submit the dispute, including a dispute as to the validity or existence of these Terms, Sales Agreement, or any order, to (in the case of Essex Furukawa Magnet Wire (Suzhou) Ltd.) China International Economic and Trade Arbitration Commission ("CIETAC") Shanghai Branch, or (in the case of Essex Furukawa Magnet Wire (Penang) Sdn. Bhd or Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd) the Asian International Arbitration Centre ("AIAC"), in each case for arbitration in accordance with its then current valid arbitration rules. The arbitral award is final and binding upon both parties. The arbitration proceedings shall be conducted in (in the case of Essex Furukawa Magnet Wire (Suzhou) Ltd.) the English and Chinese language in Shanghai or (in the case of Essex Furukawa Magnet Wire (Penang) Sdn. Bhd or Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd) in the English language, and any arbitrator to be selected must be able to function in such written and spoken languages. The arbitration tribunal shall consist of three arbitrators (each party respectively appoints one arbitrator with the third arbitrator (presiding arbitrator) appointed by the arbitrators respectively appointed by both parties or appointed by the chairman of CIETAC or AIAC if the third arbitrator is not appointed within 20 days after the date of appointment of the later of the two arbitrators appointed by the parties) and the presiding arbitrator shall not be a national of the countries of incorporation of either of the contracting parties. The Parties agree that each of them may nominate arbitrators who are not included on CIETAC's or AIAC's panel.

14. ADDITIONAL TERMS

These Terms, Sales Agreement, if any, the Seller Documents, and all the accepted orders be governed by and construed in accordance with published relevant laws and regulations of (in the case of Essex Furukawa Magnet Wire (Suzhou) Ltd.) the PRC or (in the case of Essex Furukawa Magnet Wire (Penang) Sdn. Bhd or Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd) Malaysia. Where there is no published PRC or Malaysian law on the subject, international practice and internationally-recognized legal principles shall prevail. The provisions of these Terms and the Sales Agreement, if any, constitute the entire agreement between Buyer and Seller with respect to the matter contained herein and supersedes any prior oral or written communications, understanding, representations, proposals or agreements with respect to such subject matter. Seller may revise these Terms from time to time. These Terms may not be amended or modified by the Buyer except upon the execution of a written agreement signed by both parties indicating an intent to modify these Terms. Neither Buyer nor Seller may assign any of its rights or obligations hereunder or under any order; provided, however, that Seller shall be permitted to assign any of its rights or obligations under these Terms, Sales Agreement or any order in connection with the sale or transfer of all or substantially all of its business, whether by merger, reorganization, consolidation, transfer of assets, transfer of equity interests, or otherwise. If any provision of these Terms or a Sale Agreement is invalid, unenforceable or in conflict with any law, such provision shall be deemed severed from these Terms and/or the Sale Agreement and the validity of the remainder of these Terms and/or the Sale Agreement shall not be affected thereby. The provisions of these Terms that by their nature are reasonably intended by the parties to survive the expiration or termination of these Terms or any accepted order, including without limitation sections 4, 5, 11, 12, 13 and this section 14, shall survive the expiration or termination of these Terms or any accepted order.

15. LANGUAGE

These Terms are written and executed (in the case of Essex Furukawa Magnet Wire (Suzhou) Ltd.) in a Chinese version and in an English version of equal validity and effect, or (in the case of Essex Furukawa Magnet Wire (Penang) Sdn. Bhd or Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd) in an English version. If there is any discrepancy between the Chinese and the English versions, the English version shall prevail.

销售条款和条件

关于磁铁/绕组线及相关产品和服务

亚太地区

1. 一般条款

买方从埃赛克斯古河电磁线（苏州）有限公司、Essex Furukawa Magnet Wire (Penang) Sdn.Bhd. 或 Essex Furukawa Magnet Wire Kuala Lumpur Sdn.Bhd 或在卖方的报价单、订单确认书或类似单据（以下简称“卖方单据”）中指定的关联公司或子公司实体（以下简称“卖方”）购买任何磁铁/绕组线及相关产品（以下简称“产品”）或服务（以下简称“服务”）的行为受这些销售条款和条件（以下简称“条款”）的约束。如果在买方向卖方提交采购订单或类似单据之前先向买方提出这些条款，则这些条款替代买方随后提交的任何条款，卖方拒绝接受买方所有附加的或不同的条款和条件，无论是确认性条款还是其他条款。如果卖方在买方提出其他条款之后（无论是作为采购订单的一部分还是其他方式）提出这些条款，则卖方接受买方关于买方条款的任何要约的明确前提是买方完全接受这些条款，并且不包括买方提供的任何条款或条件，无论这些条款是否包含除买方提供的任何条款之外的其他或不同条款。买方对卖方的任何产品的履行、验收或付款，构成买方对这些条款的完全接受。如果双方之间已签署有效的书面销售协议（以下简称“销售协议”），则这些条款构成其中的一部分。卖方对这些条款的任何违反、救济或规定的弃权，均不得解释为对任何后续违反或对任何其他规定或卖方的法律救济的弃权。这些条款的章节标题仅供便于引用，在任何诉讼中均不予采纳用于更改、修改或解释其任何章节的内容。《国际货物销售公约》不适用于本协议项下的任何产品或服务销售。

2. 价格和付款

在卖方自行决定接受订单之前，订单对卖方不具有约束力。除非卖方以书面方式确认或通过订单中指定产品的交付（然后仅根据这些条款）确认，否则买方提交的订单均不得视为已被卖方接受。卖方有可能在必要时按如下方式修改买方订单：**(a)** 用最新或正确的零件编号或零件描述代替订单上列出的零件编号或零件描述；**(b)** 使用适用于该订单的卖方有效价格代替；**(c)** 使用合理的估计交货时间表代替（考虑卖方的库存情况和订货到交货时间）；以及 **(d)** 更正任何速记或印刷错误。

除非双方另有书面协议，否则所有已接受的产品和服务订单都将按照卖方发货之日的有效价格开具发票。信用赊购由卖方自行决定予以扩展。如果信用赊购已扩展，卖方可随时自行决定更改信用赊购的金额或撤回信用赊购。如规定有现金折扣，则取决于买方的最新完整账目。买方严格按照销售协议和这些条款支付产品款项后，卖方可向其提供与产品或服务的价格相关的任何折扣，这取决于买方对从卖方购买的所有产品的最新完整账目。除非卖方另行书面同意，否则买方同意在发票日期后的三十（30）天内支付所有应付卖方的款项。买方应按每月1.5%的利率或最高法定利率（以两者中较低者为准），支付逾期发票从到期日至支付日期间的利息和服务费，并支付卖方的任何托收成本。未能支付任何到期金额会使任何保证均无效。如果因以下情况造成成本增加，则产品和服务的费用及与之相关的费用可能会有所调整，这些情况包括但不限于政府能源政策的变化、燃料和能源涨价、金属溢价或金属加工费、化工或材料价格上涨、材料和供应短缺、运输和运送成本。任何需要特殊生产流程、检验、额定重量、包装、测试结果、认证等的已接受订单，均须支付额外费用。

3. 产品的交付、所有权、灭失风险和运送

产品的所有权和灭失风险应在卖方工厂或公共承运人处将该等产品提供给买方后转移给买方。除非卖方另行书面同意，否则运送条款应为卖方工厂或仓库的工厂交货（Incoterms® 2020）。运费在适用的卖方单据中有明确规定。卖方会设法运送比托盘投入量中预订的数量增加或减少不超过10%的产品，以凑成最接近的整托盘数。对于少于托盘数量的物品投入量，卖方会设法运送比将预订数量增加或减少不超过10%的物品，以凑成最接近的标准包装单位。应以卖方发货重量为准。所有在订购数量的 +/- 10% 范围内运送的订单均应被视为已完成。卖方提供的任何发货日期都是卖方的最佳估计，并不意味着卖方必须在该等日期发运或交货。

买方在收到货物时必须彻底检查产品是否有损坏、不符或缺缺的迹象。交付时，应在承运人的司机在场的情况下对产品进行检查，并且买方应在运货单上注明承运人收据上收到的任何产品的短缺、不符或损坏情况。如果发现隐蔽的损失或损坏，买方必须在收到之日起15天内将其报告给承运人。

卖方用于向买方运送产品的托盘、卷轴和线轴始终是卖方的财产，而非买方购买行为的组成部分。在适用的卖方单据中阐明了其他包装方面的规定。

4. 有限保证和免责声明

卖方向买方保证，交货时，产品将基本符合购买时适用的卖方产品数据表（以下简称“规格”）。如有任何违反上述保证的情况，作为买方对此的唯一和排他性救济以及卖方对此承担的全部责任，卖方将退还已付的购买价款，或者在不合格产品被退回后维修或更换不符合该保证的产品，具体按卖方的选择确定并由卖方承担费用；但前提是，买方应在该产品交货后的六十（60）天内书面通知卖方该不合格情况。将不合格产品退货给卖方以及重新发货给买方时，往返卖方地址的运费以及其灭失风险将由卖方承担。对于所有重新发货，买方应选用卖方指定的运输公司。这些保证不适用于买方储存或处理不当，经过维修或改动，以其他方式遭到买方滥用、疏忽或不当使用，或者对其进行任何阶段的加工造成缺陷的任何产品。除了这些条款的第4条中规定的具体保证外，卖方未针对产品、服务或其义务的履行情况做出任何其他明示或默示保证，并明确否认任何适销性保证或特定目的适宜性保证。在任何情形下（无限制），卖方均不承担与返工、重新制造或报废含有卖方供应的缺陷产品的商品有关的任何费用，不承担与生产中中断、机器故障或召回计划有关的任何费用，也不承担任何故障排除、管理或工程费用。

5. 专利侵权索赔

第三方对买方提起任何索赔、诉讼、起诉或其他程序（以下简称“索赔”），声称任何产品侵犯第三方在中华人民共和国（以下简称“中国”）或马来西亚的任何专利的，卖方应自费开展全部抗辩；但前提是：**(i)** 卖方收到关于该索赔的及时书面通知；**(ii)** 卖方对抗辩工作及所有相关和解谈判拥有完全控制权；**(iii)** 产品按照卖方提供的规格制作或设计，或者如果涉及到工艺专利，该产品执行的工艺是由卖方以书面形式建议的；以及 **(iv)** 买方向卖方提供开展抗辩及其和解谈判所需的一切必要协助、信息和权限。如果同时满足上述四个条件，卖方应自费解决该索赔，或者应支付法庭裁定的所有损害赔偿金（不包括附带、后果性、法定性或惩罚性损害赔偿）及费用。如果最终禁止使用或再销售此等产品，卖方可选择为买方取得使用或再销售产品的权利，使用同等非侵权产品替换产品，对产品进行修改，使之不再侵权但功效等同，或者移除产品并退还购买价款（扣除合理的使用、损坏或淘汰补助）。买方应赔偿卖方并确保卖方免于承担所有基于以下情形的索赔：**(i)** 使用基于买方的理念、规格或设计为买方定制的产品，**(ii)** 产品执行的工艺流程非卖方书面建议的工艺流程，或者 **(iii)** 搭配非卖方交付给买方的其他产品使用或销售本协议下交付的产品。

销售条款和条件

关于磁铁/绕组线及相关产品和服务

亚太地区

6. 可谅解履约

如果因供应商延误, 天灾, 自然灾害, 政府或政府机构, 恐怖主义, 战争或人为破坏, 善意遵守任何适用的外国或国内法律法规或命令(无论是否证明无效), 火灾, 骚乱, 无法供应或获取来自正常供应来源的产品、材料、原材料、用品、燃料或公用设施, 劳资纠纷, 停工, 封锁, 交通延误, 地震, 洪水, 风暴或其他恶劣天气条件, 电力短缺或停电, 大流行病, 流行病, 检疫隔离或其他类似性质的突发公共卫生事件, 或超出卖方合理控制范围的任何其他事件或情况(以下简称“事件”), 导致卖方无法履约、妨碍卖方履约或延误卖方履约, 卖方可免于履行这些条款、任何订单或销售协议项下的任何义务。如果一项事件延误卖方履约, 该等履约应按照从到期日直至延误情形结束之间的天数予以顺延; 但是, 如果卖方因一项事件无法履行任何订单下的任何义务超过三十(30)天, 卖方可以自行选择全部或部分终止任何销售协议、订单或义务, 而无需承担任何责任或处罚。双方明确理解, 对于卖方在制造和提供服务时使用的材料, 卖方拥有有限的来源。如果卖方供应来源的任何材料受到干扰、限制或出于任何原因停止供应, 买方同意根据供应来源中断是暂时中断、材料交付减少还是永久停止供应, 相应地暂时、按比例或永久免除卖方在这些条款或任何销售协议或订单项下的责任。如果发生本条款所致的产品短缺情形, 卖方可以根据其认为适当的情况定量分配此类产品。

7. 税款和出口

由销售、交付或使用产品或服务所引起, 且卖方有责任代表自身或代表买方收取或缴纳的任何税务机关可能征收的任何及所有税款(不包括任何中国所得税、马来西亚所得税、美国所得税或可归因于卖方的超额利润税), 应在卖方要求时由买方支付给卖方。出口订单须遵守适用的出口条例和要求。为支持卖方, 买方放弃在产品所含进口材料的相关关税、税款或附加费退税中的任何权利或权益。

8. 买方的经济责任

买方的偿付能力是卖方履约的一项条件。卖方出于信贷原因(包括善意地认为当前或未来付款受损或可能受损)或因为买方违反本协议或与卖方之间的任何其他协议, 可随时酌情暂停或更改信用条款, 设置信用额度限制, 要求按进度付款, 要求全额支付任何未清余额, 加快收取买方拖欠的所有未付金额, 包括解除先前定价的数量, 扣留货物, 要求 COD(货到付款)或要求其他付款保证, 取消或终止任何订单或协议(包括预先购买), 或收回之前交付的所有产品, 这些产品应成为卖方受赊贷约束的绝对财产。买方向卖方授予本协议项下交付产品中的担保权益, 为买方在这些条款和任何销售协议下承担的义务做担保, 并授予卖方签署、交付和/或提交任何融资表, 或为完善卖方的担保权益而采取任何其他合理必要措施的权利。尽管这些条款中有任何其他规定, 卖方仍保留不时酌情要求在交付所有或任何产品或履行服务之前全额支付产品或服务价款的权利。

如果 (i) 买方的任何财产被指定了接管人或受托人; (ii) 根据任何破产、解散或重组法或类似法律, 买方被裁定或自愿破产或成为债务人; (iii) 买方资不抵债或为了债权人的利益进行转让; (iv) 根据针对买方的判决作出执行; 或 (v) 买方无力或拒绝向卖方付款, 卖方可在书面通知买方后终止任何订单或销售协议。如果卖方根据本条规定终止任何订单或销售协议, 卖方应得以解除对买方的任何进一步义务, 且买方应为卖方报销其终止费用和开支以及合理的利润补助。

除了法律规定的任何抵销或追偿权利外, 买方同意它与卖方之间的所有账目都将在净结算基础上处理, 卖方可以对照买方账目进行借项和贷项的相互抵销(包括卖方的律师费和执行费用), 且无需提前通知。在本条款中, “卖方”包括卖方的母公司、子公司和关联公司, “买方”包括买方的母公司、子公司和关联公司。

9. 取消和退货

除非满足以下所有条件, 否则已被卖方接受的所有订单均不可取消: (i) 在计划发货日期前四十五(45)天书面取消订单; 并且 (ii) 订购的产品属于标准库存物品, 而非专门生产的特殊物品或定制物品。被取消订单的产品如果已经付款, 则仅可以因信用原因退货。任何产品的退货必须经卖方授权。卖方将签发正式的“退货授权”(RMA) 标签, 以支持所有授权的退货。对于任何信用赊购, 该文件必须提供买方订单编号、卖方发票编号、退货物品的描述和数量以及申请退货的理由。标准库存物品将按发票价格扣除 20% 的退库费后退货, 并且买方应预付运抵生产工厂或卖方指定地点的运费。非库存物品和/或特殊物品不可退货。所有材料都必须以原托盘、原包装、无损坏的方式退至卖方。

10. 变更 - 工艺、材料和产品设计

卖方将持续开发和使用新的工艺、材料和产品设计, 以改进其产品并同时确保符合规格要求。如果买方对产品的应用依赖任何非适用规格要求的性能、尺寸或固定标准, 则买方必须对这些专用产品进行定期测试或评估。卖方未作出有关任何发出的材料与之前可能交付给买方的具有类似产品描述的任何材料一致的任何性质的保证或陈述。

11. 责任限制

在任何情况下, 不论是因合同、侵权还是因其他原因引发, 即使事先已经告知买方或任何其他当事人发生相关损害的可能性, 卖方均不向买方承担任何间接性、连带性、特殊性、惩罚性、延误、或后果性损害的责任, 包括但不限于直接或间接利润损失、收入损失、用途丧失。在任何情况下, 卖方对买方承担的总责任不得超过买方实际支付给卖方的所有金额。即使第 4 条规定的有限救济的基本目的没有实现, 以上限制仍应适用。

12. 保密

买方不得向第三方泄露有关卖方业务和经营的任何专有性或保密性的卖方信息, 包括但不限于定价信息。保密期限为从获知相关保密信息之日起五(5)年, 对于满足适用法律下的“商业秘密”定义的保密信息, 保密期限为至该保密信息不再属于“商业秘密”之时。本第 12 条中规定的保密义务, 不适用于公众并非因买方违反本第 12 条的规定而可通过正当途径随时获取的保密信息。

13. 争议解决

因这些条款、销售协议(如有)、卖方单据或任何已被接受的订单规定引起或与之有关的任何争议, 应由双方友好协商解决。在本协议一方对对方发出存在争议的通知后, 如果双方无法在 30 天内通过协商解决争议, 则双方应将争议(包括关于这些条款、销售协议或任何订单的有效性或存在的争议)提交中国国际经济贸易仲裁委员会(以下简称“贸仲委”)上海分会(对于埃赛克斯古河电磁线(苏州)有限公司)或亚洲国际仲裁中心(以下简称“AIAC”)(对于 Essex Furukawa Magnet Wire (Penang) Sdn. Bhd 或 Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd), 分别由这些机构依据其当时生效的仲裁规则进行仲裁。仲裁裁决为终局裁定, 对双方均有约束力。对于埃赛克斯古河电磁线(苏州)有限公司, 仲裁程序的语言应为英语和中文, 仲裁地点为上海, 对于 Essex Furukawa Magnet Wire (Penang) Sdn. Bhd 或 Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd, 仲裁程序的语言应为英语, 要选择的任何仲裁员必须能读写相应的语言。仲裁庭应由三名仲裁员组成。双方分别任命一名仲裁员, 第三名仲裁员(首席仲裁员)由双方分别任命的仲裁员任命, 如果在双方任命的仲裁员中最

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晚获得任命的仲裁员获得任命后 20 天内仍未任命第三方仲裁员，则由贸仲委或 AIAC 主任任命。首席仲裁员不得是缔约双方中任何一方注册地国家/地区的公民。双方同意每一方均可提名非贸仲委或 AIAC 名册上的仲裁员。

14. 其他条款

这些条款、销售协议（如有）、卖方单据以及所有被接受的订单受中国（对于埃赛克斯古河电磁线（苏州）有限公司）或马来西亚（对于 Essex Furukawa Magnet Wire (Penang) Sdn. Bhd 或 Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd）颁布的相关法律法规管辖并依其解释。如果对于相关事项没有已颁布的中国或马来西亚法律，则应以国际惯例和国际公认的法律原则为准。这些条款和销售协议（如有）的规定构成买方与卖方之间有关这些条款标的事项的完整协议，取代之前有关该标的事项的任何口头或书面通信、谅解、陈述、方案或协议。卖方可以不时修订这些条款。除非经双方签署表明修订这些条款的意图的书面协议，否则买方不得变更或修订这些条款。买方或卖方均不得将其在这些条款或任何订单下的任何权利或义务转让；但是，对于卖方通过兼并、重组、整合、资产转让、股权转让或其他方式出售或转让其全部或实质上全部业务的，卖方可以将其在这些条款、销售协议或任何订单下的任何权利或义务转让。如果这些条款或任何销售协议的任何规定无效、不可强制执行或违背任何法律，则该规定应视为从这些条款和/或该销售协议中分离，并且这些条款和/或该销售协议剩余规定的效力不受影响。这些条款规定中根据其性质是双方合理希望在这些条款或任何已被接受的订单到期或终止后继续生效的规定，包括但不限于第 4 条、第 5 条、第 11 条、第 12 条、第 13 条和本第 14 条，应在这些条款或任何已被接受的订单到期或终止后继续生效。

15. 语言

这些条款以中文版和英文版（对于埃赛克斯古河电磁线（苏州）有限公司）撰写和签署，中文版和英文版具有相同的效力；或以英文版（对于 Essex Furukawa Magnet Wire (Penang) Sdn. Bhd 或 Essex Furukawa Magnet Wire (Kuala Lumpur) Sdn. Bhd）撰写和签署。中文版和英文版之间如有任何不一致之处，应以英文版为准。