

## 1. General

### 总 则

- 1.1 These BASF Metals (Shanghai) Co Ltd: Terms and Conditions for Sale of Electrocatalysts and Components for Electrolyzer and Fuel Cell Systems (“**Conditions**”), together with other commercial terms, if any, agreed to by BASF Metals (Shanghai) Co Ltd (“**BASF**”) and Customer (individually “**Party**”, collectively “**Parties**”) in an order, written quotation or other writing (“**Commercial Terms**”) (together constituting the “**Contract**”), contain the sole, entire and exclusive agreement between the parties for the sale and physical delivery of the electrocatalysts and components for electrolyzer and fuel cell systems described in the Commercial Terms (individually and collectively “**Products**”) and supersede all prior discussions, proposals, negotiations, quotations, representations, oral confirmations and agreements. 本巴斯夫金属（上海）有限公司电解槽和燃料电池系统电催化剂和部件销售条款与条件（“**条款**”），以及由巴斯夫金属（上海）有限公司（“**巴斯夫**”）与客户（单独简称“**一方**”，合称“**双方**”）以订单、书面报价或其他书面形式商定的其它商业条款（如有）（“**商业条款**”）（合称“**合同**”），构成双方之间商业条款中所述的电解槽和燃料电池系统电催化剂和部件（单独或统称为“**产品**”）之销售和实际交付的唯一的、完整的和排他性的协议，并取代所有先前的讨论、提议、谈判、报价、陈述、口头确认和协议。
- 1.2 Commencement of performance by Customer pursuant to the Contract constitutes complete and unconditional acceptance of the Contract and nothing contained in Customer's confirmation, invoice, acknowledgement, or shipping documents shall relieve Customer of its obligations hereunder. Any additional or conflicting terms, whether or not material, shall not, in any manner, by implication, waiver, or otherwise, supplement or amend the terms of the Contract or otherwise govern the relationship between BASF and Customer. Any waiver, modification or amendment of the terms and conditions of the Contract shall only be effective if such waiver, modification, or amendment is contained in a written instrument duly executed by or on behalf of both Parties. No waiver of any breach or condition of the Contract shall be deemed a waiver of any other breach or condition, whether of like or different nature. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of BASF which is not set out in the Contract. Acceptance of the Contract by BASF is specifically conditioned upon the terms and conditions set forth herein. 客户根据本合同开始履行义务构成本合同的完全和无条件的接受，客户确认书、发票、回执或装运单据中包含的任何内容均不能解除客户在本合同项下的义务。任何附加的或相抵触的条款，无论是否重要，都不能以任何方式，以暗示、弃权或其他方式，补充或修改本合同的条款或以其他方式适用于巴斯夫和客户之间的关系。对合同条款和条件的任何弃权、修改或修订，只有在经双方或双方代表正式签署的书面文件中载明该弃权、修改或修订方为有效。对合同中任何违约行为或条件的弃权不得视为对任何其他违约行为或条件的弃权，无论其性质相同或不同。客户确认：其没有依赖巴斯夫或其代表在本合同中未列明的任何声明、承诺或陈述。巴斯夫接受本合同的具体条件是本条款规定的条款与条件。

## 2. Acceptance of Order

### 订单接受

- 2.1 Any order for purchase of Products made by the Customer (“**Order**”) are only accepted by BASF subject to the Conditions to the exclusion of all other terms and conditions. BASF is under no obligation to accept any Order. By submitting an Order, Customer is submitting an offer to enter into a contract with BASF. 客户发出的购买产品的任何订单（“**订单**”），由巴斯夫仅根据本条款接受，不包括任何其他条款和条件。巴斯夫没有义务接受任何订单。客户提交订单即表示其提交与巴斯夫达成合同的要约。
- 2.2 A Contract shall only be formed upon BASF's acceptance of an Order, either:  
巴斯夫通过以下方式之一接受订单后，合同方可成立：
- (i) by sending a confirmation or email specifically confirming acceptance of an Order; or  
发送确认书或电子邮件明确确认接受订单；或
  - (ii) by delivering Products.  
交付产品。
- 2.3 Each Order accepted by BASF shall be a separate Contract and cancellation, or termination of any individual Contract shall not entitle Customer to terminate or repudiate any other Contract. Should Customer amend, cancel or terminate a Contract before the estimated delivery date then Customer shall indemnify BASF against any loss, damage, costs, charges, taxes, expenses or other suffered by BASF caused solely, mainly or partially by Customer's amendment, cancellation or termination of the Contract.

巴斯夫接受的每一份订单应被视为一份独立的合同，任何单独合同的取消或终止不应使客户有权终止或否认任何其他合同。如果客户在预计交货日前修改、取消或终止合同，则客户应赔偿巴斯夫完全、主要或部分因客户修改、取消或终止合同而遭受的任何损失、损害、成本、费用、税款、支出或其他费用。

### 3. Precious Metals

#### 贵金属

The PGM transaction under pool model is subject to the relevant agreement and (or) contract between parties.  
合作模式下的PGM贵金属交易，以各方之间的相关协议和（或）合同为准。

### 4. Intellectual Property

#### 知识产权

- 4.1** Because BASF has no control over Customer's (or others') processing, sale, use or disposition of any Products (or any product containing Products), including, without limitation, the admixing, reacting or combining of any Products with other products, chemicals or materials, Customer assumes the entire liability and responsibility therefore and agrees to defend, indemnify and hold harmless BASF from and against all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including reasonable attorneys' fees), penalties, and judgments arising out of or related to infringement of any third party's intellectual property rights, patents on processes practiced by Customer or patents on products made by Customer.

由于巴斯夫无法控制客户（或其他人）对任何产品（或任何含有产品的其他产品）的加工、销售、使用或处置，包括但不限于任何产品与其他产品、化学品或材料的混合、反应或结合，因此，客户对前述各项行为承担全部责任和义务。此外，对于因侵犯任何第三方的知识产权、客户实施的工艺的专利或客户制造的产品专利而引起的所有索赔、要求、诉因、损害、损失、责任、成本、费用（包括合理的律师费）、处罚和判决，客户同意赔偿巴斯夫、为巴斯夫辩护并使其免受损害。

- 4.2** With regard to Products supplied to Customer by BASF hereunder, Customer agrees:  
关于巴斯夫根据本合同向客户提供的产品，客户同意：

- (i) not to analyze or have analyzed any of such Products to determine the physical or structural characteristics or chemical composition of any samples, without the express written consent of BASF. If after obtaining the express written consent of BASF a third party is used to perform the analysis, Customer shall enter into a confidentiality agreement (satisfactory in form to BASF) with that third party prior to performing the analysis; and  
未经巴斯夫明确书面同意，不得分析或让第三方分析任何此类产品，以确定任何样品的物理或结构特征或化学成分。如果在获得巴斯夫的明确书面同意后，使用第三方进行分析，客户应在进行分析前与该第三方签订保密协议（以巴斯夫满意的形式）；以及
- (ii) not to provide the results of the evaluation of such Products to third parties.  
不向第三方提供此类产品的评估结果。

- 4.3** Customer acknowledges ownership by BASF or its affiliate(s) of the trademark(s) and/or trade name(s) appearing on all labels, literature and packing materials used and/or supplied by BASF. Unless otherwise expressly provided herein, no right, license and/or authorization is granted to Customer to use BASF's (or its affiliate's) name and/or trademark or trade name of BASF or its affiliate in conjunction with Customer's marketing, promotion, use, distribution, disposition and/or resale of Products purchased hereunder. Neither Customer nor any of its subsidiaries and/or affiliates shall 1) incorporate under or otherwise make use of the name of BASF and/or any of its subsidiaries or affiliates and/or 2) make use of any trademarks and/or trade names which, in the sole and exclusive discretion of BASF, are the same as and/or confusingly similar to the trademark(s) and/or trade name(s) appearing on such labels, literature and packing materials.

客户承认巴斯夫或其关联公司对巴斯夫使用和/或提供的所有标签、资料 and 包装材料上出现的商标和/或商号的所有权。除非本条款另有明确规定，巴斯夫未授权、许可、及/或同意客户在其营销、推广、使用、分销、处置和/或转售根据本条款购买的产品时使用巴斯夫（或其关联公司）的名称和/或巴斯夫或其关联公司的商标或商号。客户或其任何子公司和/或关联公司均不得：1）以巴斯夫和/或其任何子公司或关联公司的名义注册或以其他方式使用巴斯夫和/或其任何子公司或关联公司的名称和/或 2）使用任何商标和/或商号，而根据巴斯夫的唯一和排他性判断，该等商标和/或商号与出现在前述标签、资料 and 包装材料上的商标和/或商号相同和/或混淆性相似。

## 5. Delivery

### 交付

- 5.1 Delivery of the Products shall take place when Products are delivered at the address specified in the Commercial Terms or other documentation, or when collected by Customer. Customer shall be responsible for freight, insurance and other similar charges, plus any taxes, fees and assessments associated with the transportation of the Products from the place of delivery. BASF shall not be responsible for any damage to or loss in transit of the Products after delivery to the Customer or its designated carrier.

产品的交付应在产品交付至商业条款或其他文件中规定的地址时，或在客户领取产品时进行。客户应负责产品自交付地点后之运输有关的运费、保险费和其他类似费用，以及任何税款、费用和评估。巴斯夫不对交付给客户或其指定承运人后产品在运输途中的任何损害或损失负责。

- 5.2 Customer shall notify BASF of its intent to pick up the Products within 48 hours of the expected delivery time. Customer shall be responsible for any losses, charges, expenses and/or liabilities incurred by BASF with respect to any failure by Customer to pick up the Products including, without limitation, any handling, restocking, storage and transportation charges.

客户应在预计交货时间前48小时通知巴斯夫其提取产品的意向。客户应负责巴斯夫因客户未能提取产品而发生的任何损失、费用、支出和/或责任，包括但不限于任何处理、重新入库、存储和运输的费用。

- 5.3 The shipment dates set forth in the Commercial Terms are based upon BASF's best judgment, are subject to production limitations and factory schedules, and hence are not guaranteed.

商业条款中规定的发运日期基于巴斯夫的最佳判断，但受生产限制和工厂计划的影响，因此不能保证。

- 5.4 BASF shall not accept claims for shortages, damage or visible defects, unless such claims are received by BASF in writing within forty-eight (48) hours after delivery of the Products to Customer. Such written claims must be accompanied by a reference to Customer's shipping slip number. BASF shall be given a reasonable opportunity to inspect any shipment claimed by Customer to contain a shortage. Use of the Products by Customer prior to such inspection by BASF shall constitute acceptance of the Products and a waiver of any and all claims by Customer.

巴斯夫不接受对产品短缺、损坏或可见缺陷的索赔，除非巴斯夫在产品交付客户后的四十八（48）小时内以书面形式收到该等索赔。该等书面索赔必须附有客户的运输单据编号。巴斯夫应有合理的机会检查客户声称含有短缺的任何货物。客户在巴斯夫进行此类检查之前使用产品应构成对产品的接受，且客户并放弃其任何及所有的索赔。

- 5.5 BASF is entitled to entrust subcontractors or other third parties with the manufacture of the Products, partly or wholly, provided that BASF shall not be relieved of any of its obligations under the Contract.

巴斯夫有权委托分包商或其他第三方部分或全部生产产品，但不得解除巴斯夫在本合同项下的任何义务。

## 6. Title and Risk of Loss

### 所有权和损失风险

Risk of loss or damage to the Products shall transfer to Customer in accordance with the relevant Incoterm. Title to the Products shall transfer after payment of the purchase price and any other taxes, fees and charges owing under the Contract has been made in full.

产品的损失或损坏风险应根据相关的国际贸易术语规定转移给客户。产品的所有权应在全部付清本合同项下应付的购买价格，以及任何其他税款、费用和收费后转移。

## 7. Non-Performance

### 不履行

Notwithstanding any other provisions of the Contract, in the event Customer:

尽管本合同有任何其他规定，如果客户：

- (i) defaults in the payment or performance of any obligation to BASF under the Contract or any other open contract between the Parties;

未按合同或双方之间的任何其他未结合同向巴斯夫付款或履行任何义务；

- (ii) is unable to pay its debts as they fall due;  
无法偿还到期债务;
- (iii) gives notice of intention to appoint an administrator, or a winding up petition is presented to any court or documents are filed with any court for the appointment of an administrator or such Party is wound up, goes into liquidation or has an administrator, manager or receiver appointed or enters into any form of arrangement with or for the benefit of creditors or has a bankruptcy petition filed or bankruptcy order made against it (or if there is a proposal or threat to do any of the above acts or things against such Party) or if any similar or analogous event occurs in any jurisdiction; or  
发出任命管理人的意向通知, 或向任何法院提交了破产申请, 或向任何法院提交了任命破产管理人的文件, 或该方破产、进入清算, 或已任命破产管理人或接管人, 或与债权人或为债权人的利益达成任何形式的安排, 或已申请破产, 或收到针对该方的破产命令 (或有人提议或威胁要针对该方采取上述任何行动或事项), 或任何类似或类似事件在任何司法管辖区发生; 或
- (iv) otherwise becomes bankrupt or insolvent (however evidenced),  
其他破产或无力偿债的情形 (无论何种证明),

then in any such event BASF shall have the right – without prejudice to its other rights and remedies – to immediately terminate any unfulfilled part of the Contract and any other open contract between the Parties. Customer shall forthwith indemnify BASF against any loss, damage, liability, or expense suffered or incurred by reason of such termination or suspension.

则在任何此类情况下, 巴斯夫有权, 一在不影响其其他权利和救济的情况下, 立即终止合同的任何未履行部分以及双方之间的任何其他未结合同。且客户应立即赔偿巴斯夫因上述终止或中止而遭受或产生的任何损失、损害、责任或费用。

## 8. Warranty

### 保 证

#### 8.1 BASF warrants that the Products delivered hereunder shall at the time of delivery:

巴斯夫保证, 本合同项下交付的产品在交付时应:

- (i) conform to the specifications set forth in the Contract, or if no specifications are set forth, BASF's standard specifications for the Products and  
符合合同中规定的规格, 如果合同中没有规定规格, 则符合巴斯夫产品的标准规格, 以及
- (ii) the Products are free and clear of all liens, encumbrances and security interests.  
产品上不存在任何留置权、产权负担和担保权益。

#### 8.2 BASF's liability for Products delivered hereunder that are proven by Customer to be in breach of the warranty set forth in clause 8.1 shall be limited, at BASF's option, to:

如果客户证明本合同项下交付的产品违反了第 8.1 条规定的保证, 则巴斯夫对该等产品的责任限于下列之一 (由巴斯夫自行选择):

- (i) replacing or repairing such Products or  
更换或维修该等产品, 或
- (ii) refunding the purchase price received by BASF for such Products.  
退还巴斯夫收到的该等产品的购买价款。

#### 8.3 All claims for breach of warranty must be presented to BASF in writing within ten (10) days after delivery of the Products to Customer ("Warranty Claim"). Failure to give such notice shall constitute a waiver by Customer of the Warranty Claim. 所有违反质保的索赔必须在产品交付给客户后十 (10) 天内, 以书面形式向巴斯夫提出 ("质保索赔")。未发出前述通知应构成客户放弃质保索赔。

#### 8.4 BASF shall have an opportunity of verifying the Warranty Claim before Customer uses the Products. Customer shall not use and will instead segregate and store such Products until BASF can exercise its right to verify the Warranty Claim. If requested by BASF, Customer shall return the nonconforming Products to BASF strictly in accordance with BASF's



written instructions concerning shipping, handling, insurance and other matters as to which BASF issues instructions. Failure to comply with these provisions shall invalidate the Warranty Claim.

在客户使用产品前，巴斯夫应有机会核实质保索赔。在巴斯夫行使其核实质保索赔的权利之前，客户不应使用并将会隔离和储存该等产品。如巴斯夫要求，客户应严格按照巴斯夫的关于运输、装卸、保险和其他事项的书面指示将不合格产品返还给巴斯夫。未能遵守这些规定将导致质保索赔无效。

**8.5 In no event shall BASF be liable for:**

在任何情况下，巴斯夫均不对以下事项负责：

- (i) **Products damaged in shipment or otherwise without fault of BASF;**  
非因巴斯夫的过错而在装运过程中或其他情况下损坏的产品；
- (ii) **defects in Products due to negligence (other than that of BASF), accident, abuse, improper care or storage, abnormal condition of temperature or moisture outside of the recommended storage and transportation conditions specified in a safety data sheet or other instructions;**  
由于疏忽（巴斯夫的疏忽除外）、事故、滥用、护理不当或储存不当、超出安全数据表或其他说明中规定的建议储存和运输条件的异常温度或湿度条件而造成的产品缺陷；
- (iii) **damage to Products which have been tampered with or altered in any way other than by BASF; or**  
除巴斯夫外，产品被以任何方式篡改或更改而造成的损坏；或
- (iv) **expenses incurred by Customer or any third party in attempting to correct any defects in or nonconformance of Products.**  
客户或任何第三方试图纠正产品的任何缺陷或不合格之处而产生的费用。

**8.6 Recommendations by BASF, if any, covering the use, utilization, properties, or qualities of Products delivered hereunder are believed to be reliable, but BASF makes no warranty whatsoever with respect thereto. Use or application of Products sold by BASF to Customer hereunder is at the discretion of the Customer except as expressly warranted by BASF in writing.**

巴斯夫就本合同项下交付的产品的使用、用途、性能或质量提供的建议（如有）据信是可靠的，但巴斯夫对此不作任何保证。除非巴斯夫以书面形式明确保证，巴斯夫出售给客户的产品的使用或应用由客户自行决定。

**8.7 Save as aforesaid in clause 8.1, all other conditions, guarantees, or warranties whether express or implied, arising by law, custom or otherwise including (but without prejudice to the generality of the foregoing) conditions, guarantees or warranties as to quality, merchantability, fitness for a particular purpose or description of the Products or its use under any conditions whether known or made known to BASF or not are hereby excluded to the fullest extent permitted by law.**  
除第 8.1 条所述外，所有其他条件、保证或担保，不论是明示的还是暗示的，不论是由法律、习惯还是其他原因引起的，包括（但不影响前述的一般性）有关质量、适销性、特定用途的适用性或对产品或其任何条件下的使用的描述的条件、保证或担保，无论巴斯夫是否知晓或被告知，均在法律允许的最大范围内予以排除。

**9. Compliance**

**合 规**

**9.1 Customer warrants that it is in compliance with and in the performance of the Contract it will comply with all applicable laws, statutes, ordinances, rules and regulations of all governmental authorities, including but not limited to the USA Foreign Corrupt Practices Act, the anti-money laundering provisions of the USA Patriot Act and Bank Secrecy Act, the USA Fair Labor Standard Act of 1938 and any amendments thereto and export control laws of the United States of America and the anti-money laundering provisions of the relevant laws. Customer will not resell or ship to persons on the Denied Parties List or persons located within embargoed countries. Customer shall ensure that any Precious Metals delivered in accordance with clause 3 only contains minerals that were sourced in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.**

客户保证其遵守并在履行本合同过程中将遵守所有适用法律、法规、法令、规则和政府机构的规章制度，包括但不限于《美国反海外腐败法》、《美国爱国者法案》和《银行保密法》中的反洗钱条款、《1938 年美国公平劳动标准法》及其任何修订案、《美国出口管制法》以及相关法律中的反洗钱条款。客户不得将产品转售或运输给被拒绝方名单上的人员或禁运国家的人员。客户应确保根据第 3 条交付的任何贵金属仅包含根据经合组织《受冲突影响和高风险地区矿产负责任供应链尽职调查指南》采购的矿产。

**9.2** All work performed, and all items supplied shall be in compliance with all applicable laws, regulations and standards on safety and health.

实施的所有工作和提供的所有物品均应符合有关安全和健康的所有适用法律、法规 和标准。

**9.3** BASF may terminate the Contract at any time, by notice, when it has reasonable belief that Customer is not in compliance with applicable laws, statutes, ordinances, rules and regulations of all governmental authorities.

若巴斯夫有理由相信客户没有遵守适用法律、法规、法令、规则和政府机构的规章制度，可随时通知客户终止合同。

## **10. Limitation of Liability / Indemnification**

### **责任限制/赔偿**

**10.1** In no event shall BASF be liable to Customer whether in contract, tort (including, without limitation, negligence), misrepresentation or otherwise, howsoever arising for any loss of profit, loss of anticipated profit, loss of business, loss of contract, overhead recovery, anticipated savings, loss of data, loss of production, depletion of goodwill, product recall nor for any special, indirect or consequential loss or damage, or otherwise for any costs, expenses or claims for any compensation whatsoever arising out of or relating to the Contract or the performance hereof. In no event shall the aggregate liabilities of BASF to Customer arising out of or relating to the Contract or the performance hereof exceed the price paid by Customer to BASF hereunder for the Products or services in respect of which such claim is made.

在任何情况下，对任何无论是基于合同、侵权行为（包括但不限于过失）、虚假陈述或其他原因，或无论因何引起的利润损失、预期利润损失、业务损失、合同损失、管理费用追索、预期节余、数据丢失生产损失、商誉损失、产品召回或任何特殊的、间接的或继发性损失或损害，或由合同或履行合同引起的或与之相关的任何成本、费用或任何赔偿请求，巴斯夫概不负责。在任何情况下，巴斯夫向客户承担的由合同或合同履行引起的或与之相关的全部累计责任不得超过客户根据合同就索赔产品或服务向巴斯夫支付的价款。

**10.2** Customer assumes all risk and liability for loss, damages or injury to persons or to the property of the Customer or others arising out of the use or presence of the Products purchased hereunder. Customer agrees to indemnify and hold harmless BASF against any liability, damages, losses, costs, and expenses in connection with any suit or claim, including but not limited to, any loss of use, loss of profits, damages or injuries to person or property arising out of or relating to any use of the Products purchased by Customer hereunder whether such claim is made by Customer, Customer's customers, or other third parties.

客户承担因使用或保存本合同项下购买的产品而对客户或其他人的人员或财产造成的损失、损害或伤害的所有风险和责任。客户同意赔偿巴斯夫并使其免受与任何诉讼或索赔有关的任何责任、损害、损失、成本和费用，包括但不限于因使用客户根据本合同购买的产品而引起的或与之相关的任何使用损失、利润损失、人身或财产损害或伤害，无论该索赔是由客户、客户的客户还是其他第三方提出的。

## **11. Price**

### **价 格**

**11.1** Unless otherwise set forth in the Commercial Terms, all orders of the Products shall be priced in accordance with BASF's prices in effect on the date an Order is accepted by BASF, except in the case where Precious Metals are priced separately from the Products, in which case Precious Metals shall be priced in accordance with the metal market prices published by BASF on the day the Precious Metals are shipped or credited to the Metal Account. BASF reserves the right to revise any price previously quoted without notice to Customer at any time prior to acceptance by the Customer.

除非商业条款中另有规定，所有产品订单应按照巴斯夫接受订单之日有效的巴斯夫价格进行定价，但贵金属与产品分开定价的情况除外，在这种情况下，贵金属的定价应按照巴斯夫在贵金属装运或计入贵金属账户之日公布的金属市场价格进行。巴斯夫保留在客户接受之前随时修改先前报价的权利，而不另行通知客户。

**11.2** Any changes to the Commercial Terms or the performance of additional work, including without limitation, changes to the quantities or specifications of the Products, agreed to by BASF will be subject to revision of the Commercial Terms and any other adjustments to terms that BASF, in its sole discretion, deems necessary. Unless otherwise specifically agreed in writing by BASF, Customer will be subject to BASF's standard fees or charges in effect at the time such changes to the Commercial Terms or the performance of additional work is accepted by BASF.

经巴斯夫同意的对商业条款的任何变更或额外工作的履行，包括但不限于对产品数量或规格的变更，将根据商业条款的修订以及巴斯夫自行决定认为必要的任何其他条款调整。除非巴斯夫另行明确书面同意，客户将按照巴斯夫接受该等商业条款的变更或额外工作履行时巴斯夫现行有效的收费标准付费。

## 12. Payment

### 付款

12.1 Unless otherwise specifically agreed in writing by BASF, (i) payment for all Products or other services shall be made by Customer against BASF's invoice within thirty (30) days from date of such invoice, terms net cash and (ii) payment for precious metals shall be cash in advance.

除非巴斯夫另行明确书面同意：(i) 客户应在巴斯夫开具发票之日起三十 (30) 天内支付所有产品或其他服务的款项，付款条件为净现金；(ii) 贵金属的付款应为预付现金。

12.2 If at any time, in BASF's opinion, the financial responsibility of Customer becomes impaired or unsatisfactory to BASF, or, inadequate to meet the obligations hereunder, the terms of payment may, at BASF's option, be revised or withdrawn, and BASF may require cash or other satisfactory security before making further shipments to Customer. If BASF commences a collection action to recover unpaid invoices, BASF shall be entitled to (i) interest on the unpaid balance at the highest legal rate permitted from the due date of the invoice, (ii) attorney's fees and (iii) the costs of such collection action.

如果在任何时候，巴斯夫认为客户的财务状况受到损害或不能令巴斯夫满意，或不足以履行本协议项下的义务，巴斯夫可以选择修改或撤销付款条款。在向客户继续发货之前，巴斯夫可以要求提供现金或其他令人满意的担保。如果巴斯夫开始催收未付发票，巴斯夫有权获得 (i) 自发票到期日起按法定最高利率对未付余额收取的利息，(ii) 律师费，以及 (iii) 该等催收行为的费用。

## 13. Tax

### 税款

All export and import costs, taxes and duties (including, without limitation, sales, use, personal property, value added or similar taxes, however excluding taxes based on the net income of BASF) ("Tax"), shall be for the account of Customer, unless specifically agreed otherwise. Notwithstanding the above, BASF shall not collect, and Customer shall not pay, any such Tax for which Customer furnishes to BASF appropriate evidence of exemption from the proper governmental authority. Customer shall be responsible for and shall indemnify BASF against any Tax, interest, and penalty, if such exemption certificate or direct payment permit certificate is disallowed by the proper taxing authority. At its option, BASF may initially pay any such tax or other charges for Customer's account and thereafter invoice Customer for it.

除非另有明确约定，所有进出口成本、税款和关税（包括但不限于销售税、使用税、个人财产税、增值税或类似的税款，但不包括基于巴斯夫净收入的税款）（“税款”），应由客户承担。尽管有上述规定，如果客户向巴斯夫提供了相关政府机关的适当免税证明，则巴斯夫不应收取，且客户也不应支付任何该等税款。如果该免税证明或直接付款许可证明被有关税务机关驳回，客户应负责并赔偿巴斯夫的任何税款、利息和罚款。巴斯夫也可以自行选择首先为客户支付任何该等税款或其他费用，然后再向客户开具发票。

## 14. Survival

### 效力存续

In order that the Parties may fully exercise their rights and perform their obligations arising under the Contract, any provisions of the Contract that are required to ensure such exercise or performance (including any obligation accrued as of the termination date) shall survive the termination or suspension of the Contract.

为了使双方能够充分行使合同规定的权利和履行合同规定的义务，在合同终止或中止后，合同中确保行使或履行这些权利和义务所需的任何条款（包括截止合同终止之日应承担的任何义务）仍然有效。

## 15. Set-Off

### 抵销

15.1 BASF shall have the right at any time without notice to set off any liability of Customer to BASF and its affiliated companies against any liability of BASF and its affiliated companies to Customer, whether the liability of Customer or BASF and its affiliated companies shall be actual or contingent primary or collateral or joint and several and whether expressed as a

liability to pay money or a liability to deliver or transfer metal. BASF may at any time without notice convert any liability of BASF and its affiliated companies or Customer to deliver or transfer metal into a liability to pay the market value of the metal at the date when BASF elects to make such conversion.

巴斯夫有权在任何时候无需通知，将客户对巴斯夫及其关联公司的任何责任与巴斯夫及其关联公司对客户的任何责任进行抵销，无论客户或巴斯夫及其关联公司的责任是实际的还是或有的、主要的、附带的还是连带的，也无论其表述为支付金钱的责任还是交付或转移金属的责任。巴斯夫有权在任何时候无需通知，将巴斯夫及其关联公司或客户交付或转移金属的任何责任转换为支付巴斯夫选择进行该等转换之日金属的市场价值的责任。

**15.2 Any exercise by BASF of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.**

巴斯夫行使本条规定的任何权利，不应限制或影响巴斯夫根据合同或其他规定可获得的任何其他权利或救济。

**16. Assignment**

**转 让**

The Contract is for the benefit of the Parties and their respective successors and permitted assignees. No other person or entity (including without limitation any customer of either Party) shall have any rights hereunder; provided, however, that BASF may assign the Contract and the rights and duties hereunder (in whole or in part) without the prior consent of Customer to:

本合同对双方及其各自承继方和经许可的受让方有效。任何其他个人或实体（包括但不限于任何一方的任何客户）均不享有本合同项下的任何权利。但是，巴斯夫可以不经客户事先同意，将本合同以及本合同项下的权利和义务（全部或部分）转让给以下各方：

- (i) a company that directly or indirectly, controls, is controlled by or is under common control with BASF; or  
直接或间接控制巴斯夫、受巴斯夫控制或与巴斯夫受共同控制的公司；或
- (ii) any person, entity or company who acquires all or substantially all of BASF's electrocatalyst and components for electrolyzer and fuel cell systems business by way of transfer, merger, acquisition, consolidation, or other form of corporate transaction, provided that BASF furnishes Customer with advance written notice thereof.  
通过转让、兼并、收购、合并或其他形式的公司交易，获得巴斯夫全部或实质上全部电解槽和燃料电池系统电催化剂和部件业务的任何个人、实体或公司，前提是巴斯夫事先向客户发出相关书面通知。

Any such assignment shall not relieve BASF of any duties or liabilities hereunder.

任何此类转让均不得免除巴斯夫在本协议项下的任何义务或责任。

**17. Force Majeure**

**不可抗力**

- 17.1** BASF's obligations of performance under the Contract will be temporarily suspended and excused for the period of interruption to the extent any failure of performance is due to (i) fire, explosion, acts of nature, strike, lockout, accident, act of war or terrorism, theft or loss of Metal, equipment malfunction, riot, civil commotion, embargo, transport or plant stoppages, (ii) any regulation, law, sanction, order or similar restriction by any governmental agency or authority, court, or other similar government instrumentality ("**Governmental Authority**"), (iii) inability of BASF to obtain any Metal, energy source, equipment, labor or transportation, at prices and on terms, (iv) upstream suppliers being affected by any of the aforementioned events, or (v) cases where such events make performance of the affected business uneconomical for the foreseeable future (collectively "**Force Majeure**"). Metal quantities so affected for the period of interruption may, at the option of either Party, be eliminated from the Contract without liability. In the case of Force Majeure, BASF shall have no obligation whatsoever to make any allocation of its available production, deliveries, capacity, services, raw materials or other resources but may, in its sole discretion, elect to allocate its available production, deliveries, capacity, services, raw materials or other resources among all customers as well as departments, divisions, subsidiaries and affiliates of BASF, upon such basis as BASF, in its sole discretion, may determine, without liability whatsoever for any failure of performance which may result therefrom. In any event, BASF may determine, in its sole discretion, not to allocate any of its available deliveries, capacity, services, raw materials, or other resources to Counterparty without any liability whatsoever for any failure of performance which may result therefrom.



如果由于(i) 火灾、爆炸、自然灾害、罢工、停工、事故、战争或恐怖活动、盗窃或金属损失、设备故障、暴乱、内乱、禁运、运输或工厂停工而未能履行合同, (ii) 任何政府机关或部门、法院或其他类似政府部门 (“**政府机关**”) 的任何法规、法律、制裁、命令或类似限制而未能履行合同, (iii) 巴斯夫未能以合理价格和条款获得任何金属、能源、设备、劳动力或运输而未能履行合同, (iv) 上游供应商受到任何前述事件影响, 或(v) 此类事件导致在可预见的未来履行受影响的业务不经济 (统称为 “**不可抗力**”), 巴斯夫在本合同项下的义务将被暂时中止, 并在中断期间免除其履行义务。在合同中断期间, 受影响的金属数量可由任何一方选择从合同中剔除, 而无需承担任何责任。在不可抗力的情况下, 巴斯夫没有任何义务对其可用的生产、交付产品、产能、服务、原材料或其他资源进行任何分配, 但可自行决定在所有客户以及巴斯夫的部门、分部、子公司和关联公司之间分配其可用的生产、交付产品、产能、服务、原材料或其他资源, 具体分配依据由巴斯夫自行决定, 但巴斯夫不对由此可能导致的任何不履约承担任何责任。在任何情况下, 巴斯夫均可自行决定不将其任何可用的交付产品、产能、服务、原材料或其他资源分配给合同相对方, 而不对由此可能导致的任何不履约承担任何责任。

- 17.2** BASF shall notify Counterparty of the anticipated extent and period of interruption due to Force Majeure without delay and shall take commercially reasonable measures to remedy the interruption.

巴斯夫应及时通知合同对方不可抗力可能发生中断的范围和时间, 并采取合理的商业措施对该等中断进行补救。

- 17.3** If Force Majeure prevents BASF from fulfilling its obligations hereunder, the Parties will use reasonable efforts to determine contingencies so that the performance of BASF obligations under the Contract can be resumed as soon as possible. If after reasonable efforts are made to determine contingencies, Force Majeure prevents BASF from fulfilling its obligations for a period of more than ninety (90) consecutive days, BASF will be entitled in its sole discretion to terminate the Contract with immediate effect by written notice of termination to the other Party, provided that the termination notice is received within ten (10) calendar days of the end of such period of consecutive days of Force Majeure, pursuant to the provisions of clause 19 hereof.

如果不可抗力使巴斯夫无法履行其在合同项下的义务, 双方将尽合理努力确定应急计划, 以便巴斯夫能够尽快恢复履行其在合同项下的义务。如果在尽合理努力确定应急计划后, 不可抗力使巴斯夫无法履行其义务的时间超过连续九十 (90) 天, 则巴斯夫有权自行决定根据本条款第 19 条的规定, 通过向另一方发出书面终止通知的方式立即终止合同, 但终止通知必须在不可抗力连续天数结束后十 (10) 个日历日内收到。

- 17.4** If, following the termination of this Contract, there is any product delivered to, but not paid by Counterparty, Counterparty shall immediately return such product to BASF. If such return is not permitted due to the applicable Force Majeure event, the product shall be paid for by Counterparty immediately after the relevant Force Majeure event ceases to exist.

如果在本合同终止后, 有任何产品已交付给合同相对方但相对方未付款, 则相对方应立即将该产品退还巴斯夫。如果由于适用的不可抗力事件而不允许退货, 则相对方应在相关不可抗力事件不复存在后立即支付产品价款。

## 18. Confidentiality

### 保 密

- 18.1** Each party shall hold in strict confidence, and shall not disclose to a third party nor use for any purpose other than the execution or performance of the Contract, any information disclosed by the other party or learned in connection with the execution or performance of the Contract (including the fact that the agreement has been entered into and negotiations therefore have been made, as well as the details of such agreement and negotiations; “**Confidential Information**”); provided, however, that this shall not apply in the case where disclosure is made to the minimum extent possible as required or ordered by laws and regulations or by a public agency, and where the other party gives consent thereto in writing in advance. Further, when a party becomes aware of being requested to disclose the Confidential Information as required by laws and regulations or as ordered by a public agency, the parties shall immediately in advance of the disclosure notify the other party in writing of the details of the Confidential Information subject to the disclosure, the timing and manner of the disclosure, and the relevant laws and regulations or the public agency that has given the disclosure order.

任何一方应对另一方披露的或因合同的签署或履行而获悉的任何信息 (包括已达成协议和为此进行磋商的事实, 以及该等协议和磋商细节; “**保密信息**”) 严格保密, 不得向第三方披露, 也不得用于本合同签署或履行以外的目的。但是, 本条规定不适用于按照法律和法规或公共机构的规定或命令披露的最低限度, 且另一方事先以书面形式同意进行披露的情况。此外, 当一方获悉法律法规的要求或公共机构的命令被要求披露保密信息时, 双方应在披露前立即以书面形式通知另一方需要披露的保密信息的内容, 披露的时间和方式以及相关的法律法规或下达披露命令的公共机构。

- 18.2** Notwithstanding the preceding paragraph, Confidential Information shall not include any information:

尽管有前述条款的规定, 保密信息不包括下列信息:

- (i) that is already publicly known or known to the party who has received such information ("Receiving Party") when such information is disclosed by the other party to, or is learned by, the Receiving Party;  
在另一方向接收方披露或接收方获悉该信息时, 已为公众所知或已为接收信息的一方 ( "接收方" ) 所知的信息;
- (ii) that becomes publicly known for reasons not attributable to the Receiving Party after such information is disclosed by the other party to, or is learned by, the Receiving Party;  
在另一方向接收方披露或接收方获悉该信息后, 并非由于接收方的原因而为公众所知的信息;
- (iii) that is duly obtained by the Receiving Party with no duty of confidentiality from a third party with legitimate rights to such information after such information is disclosed by the other Party to, or is learned by, the Receiving Party;  
or;  
在另一方向接收方披露或接收方获悉该信息后, 接收方从对该信息有合法权利的第三方处正式获得且不负有保密义务的信息; 或
- (iv) that is also independently obtained by the Receiving Party after such information is disclosed by the other party to, or is learned by, the Receiving Party.  
在另一方向接收方披露或接收方获悉该信息后, 接收方独立获得的信息。

**18.3** Upon request from the other party or upon the ending or termination of the Contract, a party shall, as instructed by the other party, immediately return to the other party, or dispose of, any and all materials containing the Confidential Information (including excerpts, summaries, copies, and electromagnetic records obtained from the other party).  
应另一方的要求, 或在合同结束或终止时, 一方应按照另一方指示, 立即将包含保密信息的任何和所有材料 (包括从另一方获得的摘录、摘要、副本和电磁记录) 退还给另一方, 或对其进行处理。

**18.4** Notwithstanding paragraph 18.1, each party shall be entitled to disclose the Confidential Information to their officers and employees on a need-to-know basis for the purpose of entering into or performing the Contract to the extent necessary for that purpose; provided, however, that such Party shall be obliged to cause such officers and employees to comply with this clause 18.  
尽管有第 18.1 条的规定, 各方有权在为签订或履行本合同所需的范围内向其管理人员和雇员披露保密信息。但是, 该方有义务促使这些管理人员和雇员遵守本第 18 条的规定。

## **19. Communication**

### **通讯**

**19.1** Unless otherwise notified by BASF, Customer shall direct any notice or communication to BASF as follows:  
除非巴斯夫另行通知, 客户应将任何通知或通讯发送给巴斯夫如下:

BASF Metals (Shanghai) Co Ltd, Room 301, Building H, No. 200 Jinsu Road, Shanghai 201206, China  
中国, 上海市, 金苏路200号, H幢301室, 巴斯夫金属(上海)有限公司, 邮编: 201206

**19.2** Except as otherwise provided herein, any notice or communication hereunder shall be in writing and deemed received five (5) days after the posting of any letter or twenty-four (24) hours after an email is sent to the respective Party's address or email address.  
除非本合同另有规定, 本合同项下的任何通知或通讯应为书面形式, 并在信件投寄后五 (5) 天或在电子邮件发至相关方地址或邮箱后二十四 (24) 小时被视为收到。

## **20. Severability**

### **可分割性**

If any provision of the Contract shall be adjudicated to be invalid or unenforceable, it is the Parties' intent that the remaining provisions of the Contract will remain in full force and effect, and the affected provision or portion thereof will be deemed modified so that it is enforceable to the maximum extent permissible to reflect as closely as possible the intentions of the Parties as evidenced from the provisions of the Contract.

如果本合同的任何条款被判定为无效或不能执行，根据双方的意图，本合同的其余条款将会保持其全部效力，而受影响的条款或部分条款将会被修改，以使其能在允许的最大范围内执行，并尽可能地反映双方在本合同条款中的意图。

## **21. Applicable Law & Place of Jurisdiction**

### **适用法律和管辖地**

**21.1** The Contract is a commercial transaction, and the conduct of the Parties hereunder and thereunder shall be governed by and construed in accordance with the laws of PRC, without giving effect to the principles of conflicts of law. The United Nations Convention on Contracts for the International Sale of Products and the United Nations Convention on the Limitation Period in the International Sale of Products, as amended, shall not apply to the Contract.

本合同为商事交易，双方在本合同项下的行为应适用中国法律并据其解释，不适用法律冲突原则。经修订的《联合国国际货物销售合同公约》和《联合国国际货物销售时效期公约》不适用于本合同。

**21.2** Each Party submits to the jurisdiction of the courts located Shanghai in any action or proceeding arising out of or relating to the Contract; agrees that all claims with respect to the action or proceeding may be heard and determined by such courts; and agrees not to bring any action or proceeding arising out of or relating to the Contract in any other jurisdiction. Each Party waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Each Party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law.

在因合同引起的或与合同有关的任何诉讼或程序中，各方均服从位于上海的法院的管辖；同意与诉讼或程序有关的所有索赔均可由上海法院审理和裁决；并同意不在任何其他司法管辖区提起因合同引起的或与合同有关的任何诉讼或程序。各方放弃以诉讼地不便为由进行抗辩，并放弃可能就此要求任何其他方提供的任何保证金、担保或其他担保。各方同意，以上述方式提起的任何诉讼或程序中的最终判决应具有决定性，并可通过对判决提起诉讼或法律规定的任何其他方式予以执行。

## **22. Representations and Warranties**

### **陈述与保证**

**22.1** Customer represents and warrants, with respect to itself, that neither the execution of this Contract nor the complete of transactions contemplated hereby (i) shall violate any provision of applicable law or any judgment, writ, injunction, order or decree of any court or Government Authority having jurisdiction over it; (ii) result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; or (iii) except as provided herein, require any filing, consent, vote or approval which has not been given or taken, or at the time of the transaction involved shall not have been given or taken. Customer represents and warrants that it has the full power and authority to enter into this Contract and perform its obligations herein.

客户陈述并保证，就其自身而言，执行本合同或完成本合同所设想的交易 (i) 不违反适用法律的任何规定或对其有管辖权的任何法院或政府机关的任何判决、令状、禁制令或法令；(ii) 导致或构成对其作为一方或受其约束的任何契约、合同、其他承诺或限制的违反或违约；或 (iii) 除本协议另有规定外，需要取得任何尚未给予或获得的备案、同意、投票或批准，或在所涉交易时尚未给予或获得的备案、同意、投票或批准。客户陈述并保证，其拥有签订本合同和履行合同义务的充分权力和授权。

**22.2** Customer represents and warrants, with respect to itself, that it shall not solicit, collect, use, duplicate, store, disclose, distribute or destroy any information, documents, or materials that may constitute state secrets under, or otherwise violate, the relevant PRC laws, regulations and rules on state secrets.

客户陈述并保证，就其自身而言，不得索取、收集、使用、复制、存储、披露、分发或销毁任何根据中国有关国家秘密的法律、法规和规定可能构成国家秘密的信息、文件或材料，或违反中国有关国家秘密的法律、法规和规定。

## **23. Covenant**

### **承诺**

- 23.1** Counterparty hereby covenants and agrees that, if it possesses or otherwise obtains any information, documents or materials that may constitute state secrets under the relevant PRC laws, regulations and rules, it will not, directly or indirectly, disclose or distribute such information, documents or materials to BASF.  
合同相对方承诺并同意，如果其持有或通过其他途径获得任何根据中国有关法律、法规 and 规定可能构成国家秘密的信息、文件或材料，其不得直接或间接向巴斯夫披露或分发该等信息、文件或材料。
- 23.2** Counterparty hereby covenants and agrees that, if it directly or indirectly discloses or distributes to BASF any information, documents or materials that constitutes state secrets under the relevant PRC laws, regulations and rules, it will (i) promptly notify BASF in writing of the nature of such information upon becoming aware of the disclosure or distribution; and (ii) expressly instruct BASF in writing of its rights and obligations in connection with the exercise of any remedies relevant to compliance of the PRC laws, regulations, and rules on state secrets.  
合同相对方承诺并同意，如果其直接或间接向巴斯夫披露或分发任何根据中国有关法律、法规 and 规定构成国家秘密的信息、文件或材料，其将：(i) 在获悉该等披露或分发后，立即以书面形式通知巴斯夫该等信息的性质；(ii) 以书面形式明确指示巴斯夫在行使与遵守中国有关国家秘密的法律、法规 and 规定有关的任何救济时的权利和义务。
- 23.3** Counterparty hereby covenants and agrees that, if it directly or indirectly discloses or distributes to BASF any information, documents or materials that constitutes state secrets under the relevant PRC laws, regulations and rules, it will expressly indemnify BASF for all losses, expenses, and liabilities incurred for any violation of the relevant PRC laws, regulation and rules on state secrets.  
合同相对方承诺并同意，如果其直接或间接向巴斯夫披露或分发任何根据中国有关法律、法规 and 规定构成国家秘密的信息、文件或材料，其将明确赔偿巴斯夫因违反中国有关国家秘密的法律、法规 and 规定而产生的所有损失、费用和责任。
- 24. Definitions.** In addition to any other terms defined herein, the following terms shall have the meaning ascribed to them as set forth below.  
定义。除本合同中定义的任何其他术语之外，下列术语应具有下文规定的含义。

**"AML Legislation"** means, with respect to any Person, any applicable law, judgment, order, executive order, decree, ordinance, rule or regulation of any Governmental Authority related to anti-money laundering, anti-terrorist financing, Sanctions and "know your client" laws binding on or affecting such Person or its property or operations including (i) the U.S. Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department and any other enabling legislation or executive order relating thereto, (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (United States), as amended; (iii) the United States Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001; (iv) the Bank Secrecy Act (United States), as amended; (v) Anti-money Laundering Law of the PRC, as amended, (vi) the Measures for the Supervision and Administration of Anti-money Laundering and Counter-terrorism Financing by Financial Institutions, as amended, and (vii) Administrative Measures for Anti-money Laundering and Counter-terrorism Financing for Banking Financial Institutions, as amended.

**"反洗钱法律"**指，就任何人士而言，指任何政府机关关于反洗钱、反恐融资、制裁和“了解你的客户”法律的任何适用法律、判决、命令、行政命令、法令、条例、规章或规定，包括 (i) 美国的《与敌国贸易法》及其修订版，以及美国财政部的外国资产控制规定和任何其他相关授权立法或行政命令，(ii) 《通过提供所需的适当工具拦截和阻挠恐怖主义，团结和加强美国》(2001) 及其修订版，(iii) 《美国关于恐怖主义融资的 13224 号行政命令》，(iv) 《美国银行保密法》及其修订版，(v) 《中国反洗钱法》及其修订版，(vi) 《金融机构反洗钱和反恐怖融资监督管理办法》及其修订版，及(vii) 《银行业金融机构反洗钱和反恐怖融资监督管理办法》及其修订版。

**"Anti-Corruption Laws"** means, with respect to any Person, any law, judgment, order, executive order, decree, ordinance, rule or regulation of any Governmental Authority related to bribery or corruption binding on or affecting such Person or its property or operations including (i) the United States Foreign Corrupt Practices Act of 1977, as amended; (ii) the OECD Convention of December 17, 1997 with respect to measures against corruption of foreign public officials and any OECD Guidelines or Action Statements with respect thereto; and (iii) any other applicable national and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

**"反腐败法律"**指，就任何人士而言，指任何政府机关关于贿赂或腐败的任何法律、判决、命令、行政命令、法令、条例、规章或规定，包括(i) 《1977 年美国反海外腐败法》及其修订版；(ii) 《经合组织 1997 年 17 日关于外国公职人员反腐败措施的国际公约》，以及任何与之相关的经合组织指引或行动声明；以及(iii)为实施《经合组织禁止在国际商业交易中贿赂外国官员公约》而制定的任何其他适用国内法和国际法。