

**TERMS AND CONDITIONS OF SALE OF FOIL TO BUSINESS CUSTOMERS  
OF  
KURZ HONG KONG LTD.**

库尔兹香港有限公司

向商业客户销售箔膜之条款和条件

**EDITION OCTOBER 2016**  
2016 年 10 月版

## Index

### 目录

1. Validity	
有效性.....	3
2. Offers	
报价.....	3
3. Terms of Delivery, Transfer of Risk	
交付条款、风险转移.....	4
4. KHK's Right to make its own Deliveries	
库尔兹香港自行交付之权利.....	4
5. Terms of Payment	
付款条件.....	5
6. Delivery Dates	
供货日期.....	5
7. Retention of Title	
所有权保留.....	7
8. Material Defects	
重大缺陷.....	9
9. Intellectual Property Rights, other Defects of Title	
知识产权, 其它所有权瑕疵.....	11
10. Obligations of the Customer	
客户的义务 .....	12
11. Impossibility, Adjustment of the Contract	
未能履行合同, 合同调整.....	13
12. Other Claims for Damages	
其他损害赔偿申索 .....	13
13. Confidentiality	
保密.....	15
14. Dispute Resolution and Applicable Law	
争议解决及适用法律 .....	15
15. Language	
语言.....	16

## 1. Validity

### 有效性

1.1 The present Terms and Conditions of Sale (“T&C”) of KURZ HONG KONG LTD. (“KHK”) shall apply only to (i) supplies of foil and services including the provision of application services for finished decorated parts (“Delivery(ies)”), which KHK has made on the basis of a contract (“Contract”) concluded with a business customer thereof (“Customer”), as well as to (ii) any offer made by KHK for a Delivery to a potential Customer (“Offer”).

库尔兹香港有限公司（“库尔兹香港”）的现有销售**条款和条件**（“**条款和条件**”）仅适用于（i）**库尔兹香港**与**库尔兹香港**的商业客户（“**客户**”）订立的合同（“**合同**”）基础上进行的箔膜的供应和服务，包括为包装后成品部分所提供的**应用服务**（“**交付**”），以及（ii）**库尔兹香港**向潜在**客户**为**交付**而提出的任何**报价**（“**报价**”）。

1.2 These T&C and the Contract constitute the entire and sole record of the agreement between a Customer and KHK in respect of Deliveries. KHK shall not be bound by any express, tacit or implied representation, warranty, promise or the like not recorded herein. Any conditions of purchase or other general terms and conditions of a Customer and any other terms and conditions deviating from these T&C and the Contract (including any term or condition therein that stipulates that they shall override or supersede these T&C and the Contract or similar or the like wording) shall not apply unless KHK has expressly agreed to them in writing and with reference to the specific term or condition.

该等**条款和条件**以及**合同**构成了**客户**和**库尔兹香港**之间就**交付**而达成的整体且唯一的协议。**库尔兹香港**不应受**合同**中未记录的任何明示、默示或暗示的声明、保证、承诺或同等行为的约束。**客户**的任何采购条件或其他一般**条款和条件**，以及任何与该等**条款和条件**以及**合同**相背离的任何其他**条款和条件**（包括当中规定了其应推翻或取代该等**条款和条件**及**合同**或类似或同等的措词的任何**条款或条件**）均不适用，除非**库尔兹香港**以书面并参照特订的**条款或条件**而明确同意其适用。

1.3 Unless the context otherwise requires, in these T&C, words expressed in the singular include the plural and vice versa, and a gender includes the other gender. “Hong Kong” means Hong Kong Special Administrative Region of the People’s Republic of China.

除非上下文另有要求，在该等**条款和条件**中，以单数形式表达的单词包括复数，反之亦然，且一种性别包括另一种性别。“**香港**”指中华人民共和国香港特别行政区。

## 2. Offers

### 报价

2.1 KHK reserves all ownership and intellectual property rights in all documents, including but not limited to illustrations, drawings, plans and construction or engineering documents, etc. relating to any Offer.

库尔兹香港保留所有与任何**报价**相关的所有文件的所有权及知识产权，包括但不限于图示、图纸、方案和建造或工程文件等的所有权及知识产权。

2.2 Unless earlier withdrawn before acceptance, an Offer is binding on KHK and valid only if it is fully accepted by the Customer without qualification within 45 calendar days from the date of the Offer. Upon acceptance of the Offer, the Customer shall be deemed to have accepted these T&C in full unconditionally and irrevocably.

除非**库尔兹香港**在**客户**接受**报价**之前撤销**报价**，只要**客户**自**报价**日起 45 天内无条件地完全接受**报价**，该**报价**对**库尔兹香港**具有约束力且有效。接受**报价**后，**客户**会被视为已完全并无条件且不可撤销地接受该等**条款和条件**。

### 3. Terms of Delivery, Transfer of Risk

交付条款、风险转移

3.1 According to Incoterms® 2010, prices of Deliveries shall be Ex Works KHK ("Place of Delivery"), which includes packaging.

根据 2010 年国际贸易术语解释通则，**交付**价格规定为**库尔兹香港**（“**交付地点**”）工厂交货价，含标准包装。

3.2 Subject to Clause 8.6, prices of a Delivery are net prices in such currency as stated in the Offer without further deductions.

受制于第 8.6 条，**交付**价格为以**报价**中规定的该等货币形式的净价，不得作进一步扣减。

3.3 If a Delivery is dispatched or collected, the risk shall transfer to the Customer Ex Works KHK, according to Incoterms® 2010. This shall apply to free Deliveries as well.

如果**交付**项下货物已经被派遣或已被接收，根据 2010 年国际贸易术语解释通则，**库尔兹香港**工厂交货时，**交付**风险将转移给客户。本条款亦适用于**无偿交付**。

### 4. KHK's Right to make its own Deliveries

库尔兹香港自行交付之权利

In the event that the contractually agreed Delivery is not available because KHK has not received deliveries in time from its own suppliers or KHK's delivery stock is depleted or insufficient, KHK is entitled to make a partial Delivery, or a replacement Delivery which is equivalent in quality of and price to the contractually agreed Delivery. If this is not possible or is not accepted by the Customer, the Customer agrees that KHK may terminate the Contract without any compensation to the Customer and the Customer shall not be entitled to any form of loss or damage against KHK in relation thereto.

若因**库尔兹香港**未从其自身供货商处及时收到货物或**库尔兹香港**的供货库耗尽或短缺而导致无法按合同约定**交付**，**库尔兹香港**有权进行部份**交付**，或以与合同约定**交付**相同的质量和价格进行替代性**交付**。若此仍不可行或**客户**不接受，**客户**同意**库尔兹香港**可解除合同，无需向

客户提供任何赔偿，且客户无权就该等合同解除对库尔兹香港要求任何形式的损失或损害赔偿。

## 5. Terms of Payment

### 付款条件

5.1 Unless otherwise agreed, KHK's invoices are due for immediate payment upon receipt by the Customer without any deduction, despite that title of the items under the Delivery has not been passed to the Customer as stated under Clause 7 and KHK shall accordingly be entitled to sue for the price once it is due. If KHK recovers possession of such items, such recovery of possession shall be without prejudice to the rights of KHK to any other loss and damage suffered.

除非另有约定，尽管交付项下货物的所有权如第7条规定尚未转移至客户，库尔兹香港的发票于客户收票后即到期应付，并不得作任何扣减。一旦发票到期，则库尔兹香港据此有权追讨欠款。若库尔兹香港重新获得该等货物的所有权，该等重新获得所有权不得损害库尔兹香港就其任何其他损失及遭受的损失追讨赔偿的权利。

5.2 The Customer may only set off from the price for a Delivery the amount of those of its claims against KHK that are undisputed or have been finally and conclusively determined in a legally binding manner.

客户只可就对库尔兹香港的无争议的债权或经具有法律约束力的方式而被最终及不可推翻地确定的债权，将该等债权金额从交付价格中抵销。

## 6. Delivery Dates

### 供货日期

6.1 Observance of the stipulated time for Delivery is conditional on the timely receipt of all documents, necessary permits and approvals, especially of plans to be provided by the Customer as well as fulfilment of the agreed terms of payment and other obligations by the Customer. Unless these conditions are fulfilled on time, the time for Delivery shall be extended accordingly; this Clause 6.1 shall not apply if KHK is solely responsible for the delay as provided in Clause 6.3.

遵守约定的交付时间是有条件的，取决于是否及时收到所有文件、必要的许可和批准，特别是将由客户提供的方案及客户是否按约定完成付款并履行其他约定义务。除非该等条件按时得以满足，否则交付时间将相应顺延；若库尔兹香港对第6.3条规定的延迟负有单独责任，本第6.1条则不适用。

6.2 If non-observance of the time for Delivery is due to force majeure ("Force Majeure") such as an act of God e.g. earthquake, typhoon and tsunami, financial crisis or changes in financial conditions, e.g. increase of cost in obtaining supplies by over 5% and downturn in the business of foil supply, mobilization, war, riot or similar events e.g. strike or lock-out, the time limits shall be extended appropriately to a reasonable time until after the Force Majeure

event has ceased.

若因不可抗力因素（“**不可抗力**”）而未能遵守**交付**时间，例如，天灾，如地震、台风和海啸；财务危机或财务情况的变化，如取得供应品的成本增长了 5%以及箔膜供应业务的衰退；动员、战争、暴乱或相似事件，如罢工或停工，该时间限制应延长直至**不可抗力**事件终止后的一个合理时间。

6.3 In the event that KHK is solely responsible for a delay of the Deliveries and that the Customer can establish with substantive grounds and evidence that it has suffered a loss due solely to such delay, the Customer may claim liquidated damages of 0.5% of the net price for such Deliveries for every completed calendar week of delay but in no event shall the aggregate of such damages exceed a total of 5% of the net price for such Deliveries.

如果**库尔兹香港**对**交付**延迟负有单独责任且**客户**能以实质的理由和证据证实其单纯因该延迟而遭受损失，**客户**则可要求**库尔兹香港**支付违约金，每延迟一个日历周，违约金为该**交付**的净供货价的 0.5%，但不论任何情形下，该违约金的总金额最高不超过该**交付**的净供货价的 5%。

6.4 For the purpose of clarification, the limit of liability under Clause 6.3 shall apply to claims by the Customer for damages due to a delay of Delivery even after expiry of the time limit for Delivery fixed by the Customer. This limit shall not apply in cases of bodily injury or death, wilful misconduct or gross negligence where liability is mandatory.

为作澄清，即使**客户**于其设立之**交付**时限届满后才因**交付**延迟而提出损害赔偿申索，第 6.3 条款下的责任限制仍然适用。然而，该限制在具有强制责任的人身伤害或死亡事故、故意不当行为或严重疏忽的情况下，则不得适用。

6.5 For the purpose of this Clause 6, the Customer shall only be entitled to terminate the Contract to the extent that (i) KHK is solely liable for the delay in Delivery and (ii) the Customer has set a reasonable time limit within which to perform the Delivery and states that it will cease to accept the Delivery after expiry of the new time limit and KHK has not made the Delivery within such new time limit. In such case, the Customer may only claim liquidated damages against KHK in the amount of no more than 5% of the net price for the Deliveries.

为本第 6 条之目的，只有在 (i) **库尔兹香港**对**交付**延迟负有单独责任的情况下，以及 (ii) **客户**已为**库尔兹香港**设立合理时间限制以在该合理时间限制内履行**交付**义务，并表明其将在新的时间限制届满后将停止接受**交付**且**库尔兹香港**在该新的时间限制内仍未**交付**的情况下，**客户**才有权解除合同。在该等情况下，**客户**有权向**库尔兹香港**要求支付不超过**交付**净供货价 5% 的违约金。

6.6 Notwithstanding Clause 6.5, despite the delay in Delivery by KHK as mentioned under Clause 6.5, the Customer shall upon request by KHK and within a reasonable time limit state whether it shall terminate the Contract due to the Delivery being delayed or insist upon a Delivery.

尽管有第 6.5 条的规定，倘若出现了在第 6.5 条款下提及的**库尔兹香港**的**交付**延迟，**客户**应根

据**库尔兹香港**的要求在合理时间内表明其是否会因**交付**延迟而解除**合同**或坚持要求**交付**。

## 7. Retention of Title

### 所有权保留

7.1 All the items delivered ("Secured Goods") shall remain KHK's property until each and every claim against the Customer to which KHK is entitled under any Contract and these T&C has been duly satisfied. Notwithstanding the retention by KHK of title to the Secured Goods, the risk in the Secured Goods shall pass to the Customer as provided in Clause 3.3. If the value of all KHK's security interests against the Customer exceeds 20% of the value of all KHK's secured claims, KHK shall release a corresponding part of the security rights at the Customer's request.

所有已交付的货品（“**担保货物**”）仍属**库尔兹香港**的财产，直至**库尔兹香港**根据任何**合同**及该等**条款和条件**对**客户**享有的每一项及所有债权均得以充分实现为止。尽管**库尔兹香港**对**担保货物**保留所有权，**担保货物**的风险应根据第 3.3 条转移至**客户**。如果**库尔兹香港**对**客户**所有担保利益的价值超过**库尔兹香港**全部担保债权价值的 20%，**库尔兹香港**应经**客户**要求，解除相应部份的担保权利。

7.2 For the duration of the retention of title of the Secured Goods as provided above:

在如上所述的**担保货物**的所有权保留期间：

7.2.1 the Customer shall during such time hold the Secured Goods as the fiduciary agent of KHK and shall accordingly remain liable to account to KHK for the Secured Goods;

**客户**在该期间内应以**库尔兹香港**的受托代理人身份持有**担保货物**，并相应地仍负有就**担保货物**向**库尔兹香港**承担责任的义务。

7.2.2 the Customer is prohibited from creating any pledge or security over the Secured Goods, and in case of a seizure of the Secured Goods or other acts or interventions by third parties relating to the Secured Goods, the Customer shall immediately inform KHK thereof in writing; and

**客户**被禁止对**担保货物**设立任何质押或抵押，且在**担保货物**被扣押或第三方对有关**担保货物**作出其它行为或进行处置的情况下，**客户**须立刻以书面通知**库尔兹香港**；以及

7.2.3 the Customer shall store the Secured Goods separate from other goods of the Customer and third parties and shall identify the Secured Goods as the property of KHK. The Customer shall not remove any identifying marks placed on the Secured Goods by KHK or use the Secured Goods for manufacture of any goods or transfer the Secured Goods to any third party.

**客户**应将**担保货物**与**客户**和第三方的其他货物分别储存，并将**担保货物**标明为**库尔兹香港**的财产。**客户**不得将**库尔兹香港**在**担保货物**上所作的任何识别标记删除或使用**担**

保货物生产任何货物或将担保货物转移至任何第三方。

7.3 In the event that the Customer is in breach of an obligation, in particular, a default of payment pursuant to Clause 5.1, the following shall also apply:

如果客户违反了任何一项义务，特别是根据第 5.1 条的付款违约，下述条款也将适用：

7.3.1 If the Customer fails to pay the price of the relevant Delivery on time in accordance with Clause 5.1 hereof, KHK shall be entitled to interest from the day on which payment was due until the date of actual payment. The rate of interest shall be five (5) percentage points above the rate of the HK Interbank Offered Rate (“HIBOR”) quoted for the corresponding maturity period for HKD in force on the due date of payment.

如果客户未按本条款和条件第 5.1 条规定按时支付相关交付的价格，则库尔兹香港有权收取从付款到期日起至实际付款日期间的利息。利率应为付款到期日当时有效的港币相应期间的香港银行同业拆借利率上浮五(5)个百分点。

7.3.2 Immediately upon the default of payment by the Customer pursuant to Clause 5.1 or following the expiry of reasonable time limit stipulated by KHK (if any) within which the Customer must rectify the breach and the Customer fails to do so:

在客户对第 5.1 条规定的付款违约后，或在库尔兹香港规定客户应纠正违约的合理时限（如有）届满时而客户未有纠正违约之后：

(i) KHK has the absolute authority to terminate the Contract and KHK and/or any of its agents or authorized representatives shall have the absolute authority to retake, sell or otherwise deal with or dispose of all any or part of the Secured Goods without any form of liability to the Customer, and the Customer is obliged, at its own cost, to return the Secured Goods to KHK or KHK’s agents or authorized representatives;

库尔兹香港立即有绝对权限以解除本合同，且库尔兹香港及/或任何其代理人或授权代表有绝对权限收回、出售或以其他方式处理或处置所有任何或部分担保货物而无须向客户承担任何形式的责任，客户亦有义务自费用将担保货物退还给库尔兹香港或库尔兹香港的代理人或授权代表；

(ii) For the purpose specified in (i) above, KHK or any of its agents or authorized representatives shall be entitled at any time and without notice to enter upon any premises in which the Secured Goods or any part thereof is installed, stored or kept, or is reasonably believed to be so;

为上述（i）项所述之目的，库尔兹香港或任何其代理人或授权代表有权在任何时候且无须通知的情况下，进入安装、储存或保管担保货物或其任何部分的任何场所，或进入被库尔兹香港合理认为已安装、储存或保管担保货物或其任何部分的该等场所；

(iii) KHK shall be entitled to seek a Court injunction to prevent the Customer from selling, transferring or otherwise disposing of the Secured Goods or any part thereof;

库尔兹香港有权寻求法庭禁令以防止客户出售、转移或以其他方式处置担保货物或担

保货物的任何部分；

- (iv) If the Secured Goods are already sold by the Customer, KHK shall be entitled to the amount of unpaid purchase price of the Contract under all proceeds or proceeds in relation thereto as mentioned under Clause 7.2.2, and the Customer shall upon the demand of KHK and/or its agents or authorized representatives, remit or pay the same to KHK.

若客户已出售担保货物，库尔兹香港对所有收益当中的合同未支付的购买价格，或对第 7.2.2 条所提及的与担保货物相关的收益项下的合同未支付的购买价格均享有权利，且客户应根据库尔兹香港及其代理人或授权代表的要求，向库尔兹香港汇入或支付该等款项。

## 8. Material Defects

### 重大缺陷

KHK's liability for Material Defects (as defined in Clause 8.2) is conclusively defined in the following provisions:

库尔兹香港对重大缺陷（于第 8.2 条中之定义）的责任于以下条款中作最终定义：

8.1 The description of the quality of the foils is defined conclusively in the respective Technical Specification of KURZ ("TS") for the individual foil. KHK shall not be liable for material defects relating to qualities not specifically mentioned in the TS. To the fullest extent permissible under the applicable law, KHK expressly disclaims all guarantees, representations, statements, or warranties of any kind (whether express, implied in law or from a course of dealing or usage of trade or residual) including but not limited to implied warranties of merchantability, quality, accuracy, non-infringement, and fitness for a particular purpose, whether or not the purpose or use has been disclosed to KHK. It is the sole responsibility of the Customer to examine the suitability of the foils for the intended use.

库尔兹香港已在单个箔膜的相关技术规格（“技术规格”）中对箔膜的质量描述作出最终定义。库尔兹香港对与技术规格中未具体提及的质量水平有关的重大缺陷不承担责任。在适用法律允许的最大范围内，库尔兹香港明确表明不承担所有保证、声明、陈述或任何形式的担保（无论是在法律中明示或暗示的或是从交易过程或交易习惯或其他惯例当中），包括但不限于对商业可销售性、质量、准确性、非侵权以及为特定用途之适当性的隐含保证，无论该目的或用途是否已向库尔兹香港披露。检验箔膜是否符合预期用途是客户单独的责任。

8.2 In the case of Deliveries of foils which the Customer can establish with substantive grounds and evidence pursuant to Clause 8.4 that the foils do not meet the quality listed in the respective TS and the defects do not fall under the exclusions under Clause 8.7 ("Material Defect") at the time of transfer of risk, KHK shall at its option either repair or re-deliver them at no charge ("Subsequent Performance").

如交付箔膜时，客户能根据第 8.4 条以实质的理由和证据证实在风险转移时，箔膜不具备相关技术规格中列明的质量水平且缺陷不符合第 8.7 条所排除的状况（“重大缺陷”），库尔兹香港有权自行选择免费修复或免费重新发运货物（“后续履行”）。

8.3 The warranty period for foil delivered shall be 6 months as of the Delivery. The warranty period for the repaired or replaced foil remains to be 6 months as of the Delivery of the original foil, and therefore the warranty period shall not be extended as a result of Subsequent Performance.

交付的箔膜的质保期为交付起六个月。已被修复或替代的箔膜的质保期仍为初始箔膜交付起六个月，因此质保期不得因后续履行而被延长。

8.4 The Customer shall give KHK notice of a Material Defect in writing without undue delay. The notice of Material Defect shall include details of the seal tape system relating to Delivery (batch number, bar code).

客户应将重大缺陷以书面通知库尔兹香港，且不得无理拖延。该重大缺陷通知应包括与交付有关的封条系统上的详细信息(批号、条形码)。

8.5 If KHK shall not be given adequate time and opportunity to carry out Subsequent Performance, or if Clause 8.7 or Clause 8.9 applies, KHK shall have no liability for the Material Defect notwithstanding any other provisions that may be to the contrary under these T&C.

如果库尔兹香港未被给予充足的时间和机会进行后续履行，或如果第 8.7 条或第 8.9 条适用，则库尔兹香港对重大缺陷不承担责任，尽管任何其他条款可能与本条款和条件相反。

8.6 In the event that Subsequent Performance fails, the Customer can - without prejudice to other claims for damages stipulated in Clause 12 - terminate the Contract or negotiate with KHK for a reduced price of the Delivery.

在未能进行后续履行的情况下，客户可以在不影响第 12 条规定的其他损害赔偿申索的前提下，解除合同或与库尔兹香港协商降低交付的价款。

8.7 Claims for Material Defects shall not be made by the Customer in the event of an insignificant deviation from the agreed quality, insignificant interference with use, natural wear and tear or damages which arose after transfer of risk as a result of faulty or negligent handling, excessive strain, unsuitable production facilities or operating resources, or particular external influences which are not assumed under the Contract.

在对约定质量不构成重大偏离，对使用未形成重大干扰、自然损耗或在风险转移后因错误或过失处理、过度拉伸、不合适的生产设施或操作资源而产生的损毁、或受未在合同项下假定的特殊外来影响的情况下，客户不得就重大缺陷提出索偿主张。

8.8 Claims made by the Customer for necessary costs such as transport, route, labour and material costs incurred for the purposes of Subsequent Performance, are excluded to the extent that the expenditure has increased due to the Delivery being subsequently made to a place other than the Place of Delivery.

客户就其为后续履行之目的而产生的必要费用，如交通、路线、人工及材料费用而提出索偿主张，如该费用乃因交付至原定交付地点以外的其他地点而增加的，则该等增加的费用的索

偿将被排除。

- 8.9 The Customer shall only have a right of recourse against KHK if the Customer has not entered into a contract with its client under which such client waives its claims or does not claim any compensation for the Material Defects.

客户仅在其未与其客户签订一份根据该合同该客户就**重大缺陷**放弃索偿主张或不要求任何赔偿的合同的条件下，才可向**库尔兹香港**追偿。

- 8.10 Claims by the Customer against KHK for a Material Defect which are more extensive or different to those claims set out in this Clause 8 are excluded. Clause 12 shall apply to all other claims for damages.

若客户就**重大缺陷**向**库尔兹香港**提出的索偿主张超出或有别于本第 8 条的规定，则该等索偿主张均被排除。第 12 条将适用于所有其他损害赔偿主张。

## 9. Intellectual Property Rights, other Defects of Title

知识产权，其它所有权瑕疵

- 9.1 Unless otherwise agreed, the Delivery made by KHK shall be free from intellectual property rights, including and not limited to copyright, ("Intellectual Property Rights") of third parties, i.e. any party apart from KHK, the Customer and their respective associates ("Third Party"). If a Third Party asserts legitimate claims against the Customer due to an infringement of an Intellectual Property Right by the Deliveries furnished by KHK and used in conformity with the Contract and such infringement is finally and conclusively determined in a legally binding manner in favour of the Third Party, KHK shall be liable to the Customer within the stipulated time limit in Clause 8.3 as follows:

除非另行约定，否则**库尔兹香港**交付的货品不应包含第三方，即除**库尔兹香港**之外的任何方、**客户**及其各自的关联公司（“**第三方**”）的智慧产权，包括且不限于著作权（“**知识产权**”）。如果有**第三方**因**库尔兹香港**交付的且**客户**按合同使用的货品侵犯**知识产权**而向**客户**提出合法申索，且该**第三方**就该侵权申索以具有法律拘束力的方式最终及不可推翻地获判胜诉，则**库尔兹香港**将在第 8.3 条限定时限内按以下规定向**客户**承担责任：

- 9.1.1 At KHK's own option and expense, KHK shall either obtain a right to use the Deliveries, modify the Deliveries so as not to infringe Intellectual Property Rights or replace the Deliveries. If this is not possible on the basis of terms acceptable to KHK, the Customer shall have a right to terminate the Contract or negotiate with KHK for a reduced price of Delivery. The provisions in Clause 8.5 and 8.9 shall also apply accordingly.

**库尔兹香港**可依其选择及自理费用的情况下，以获得对**交付**货品的使用权，或更改**交付**货品以使其不侵犯**知识产权**，或替换**交付**货品。若上述选择不可能以**库尔兹香港**可接受的条件为基础下执行，则**客户**有权解除合同或与**库尔兹香港**协商降低**交付**的价款。第 8.5 和 8.9 条也应相应适用。

9.1.2 The fulfilment of the aforesaid obligations shall be subject to the condition that the Customer immediately notifies KHK in writing of the claims asserted by the Third Party, that the Customer has not acknowledged an infringement and that all countermeasures and settlement negotiations are reserved to KHK. If the Customer stops using the Deliveries to reduce the damage or loss or for other important reasons, he shall make it clear to the Third Party that the suspended use does not constitute any acknowledgment of an infringement of Intellectual Property Rights. Further, if KHK notifies the Customer that it wishes to take over the conduct of the settlement negotiations with the Third Party and/or the legal proceedings initiated by the Third Party in the name of the Customer, the Customer shall allow KHK to do so and provide all such reasonable assistance to KHK as it may request provided that KHK shall bear the legal costs in such negotiations and the defence in such legal proceedings.

上述义务履行的条件是**客户**须立即将**第三方的**申索以书面通知**库尔兹香港**，且**客户**未承认侵权而**库尔兹香港**保留采取所有对策和协商解决纠纷的权利。如果**客户**为减少损害或损失或基于其他重要原因停止使用**交付**货品，**客户**应向**第三方**清楚表明，该暂停使用并不构成对**知识产权**侵犯的任何承认。此外，如果**库尔兹香港**告知**客户**其希望以**客户**的名义接管与**第三方的**和解协商及/或由**第三方**提起的法律诉讼，**客户**应允许**库尔兹香港**采取此种行为，并根据**库尔兹香港**可能提出的要求向**库尔兹香港**提供所有该等合理的协助，前提是**库尔兹香港**承担该等协商及该等法律诉讼中的答辩的法律费用。

9.2 Claims of the Customer under this Clause 9 shall be excluded if he is liable for the breach of the Intellectual Property Right.

如**客户**须就侵犯**知识产权**负责，则其在本第 9 条项下的申索将被排除。

9.3 Claims of the Customer under this Clause 9 shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of the Customer, by a use of the Deliveries not foreseeable by KHK or by the Deliveries being altered by the Customer or being used together with products not provided by KHK.

如果**知识产权**侵权是由**客户**的特定要求、或**库尔兹香港**不可预见的对**交付**货品的使用、或被**客户**更改的**交付**、或**客户**将**交付**货品与非**库尔兹香港**提供的产品一同使用所引起，则**客户**提出本第 9 条项下之申索亦将被排除。

9.4 The provisions in Clause 8 shall apply to any other defects of title to the extent that the Material Defects shall be considered as any other defects of title.

在**重大缺陷**被视作任何其他所有权瑕疵的范围内，第 8 条的规定将适用于任何其他所有权瑕疵。

## 10. Obligations of the Customer

### 客户的义务

The Customer shall be solely liable for the use and transfer of design, logos, trademarks,

holograms, stamping tools and other creative elements supplied by Customer to KHK - irrespective of the data carrier - which has infringed the Intellectual Property Rights of Third Parties. The Customer shall hold KHK harmless against all corresponding claims of Third Parties.

客户将自行承担由客户提供给库尔兹香港的且已侵犯第三方知识产权的设计、标志、商标、全息图，烫印工具及其他创作性元素(不论何种数据载体)的使用和转让所产生的责任。客户须确保库尔兹香港免于承担所有相应的第三方申索。

## 11. Impossibility, Adjustment of the Contract

### 未能履行合同，合同调整

11.1 Subject to Clause 6 and Clause 11.2, if it is impossible for KHK to make the Delivery, the Customer shall be entitled to claim damages unless KHK is not responsible for the impossibility. The Customer's claim for damages, however, shall be limited to 10% of the value of the net price of that part of the Delivery which owing to the impossibility cannot be put to the intended use by the Customer. The Customer's right to terminate the Contract shall remain unaffected.

受制于第 6 条和第 11.2 条，如果库尔兹香港无法进行交付，客户有权提出损害赔偿申索，除非库尔兹香港对不能交付无须负责。但客户的损害赔偿申索应限于因不能交付而无法供客户预期使用的该交付部分净价的 10%。客户解除合同的权利仍不受影响。

11.2 Where unforeseeable events of Force Majeure substantially change the economic importance or the content of the Deliveries or bring a considerable impact on KHK's business, the Contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, KHK has the right to terminate the Contract. If KHK makes use of this right of termination, KHK shall notify the Customer in writing after becoming aware of the significance of the event, notwithstanding that an extension of the Delivery time had initially been agreed with the Customer. The Customer shall not be entitled to claim any damages against KHK due to any Force Majeure events. 如果不可预见的不可抗力事件实质性改变了交付的经济价值或其内容又或对库尔兹香港的业务有巨大影响，则合同应在合理考虑诚信原则的基础上作相应的修改。若该修改不具经济合理性，库尔兹香港有权解除合同。如库尔兹香港行使该解除权，库尔兹香港应在得悉该事件的重要性后书面通知客户，尽管客户已经事先同意可以延长交付时间。客户无权因任何不可抗力事件而向库尔兹香港提出任何损害赔偿申索。

## 12. Other Claims for Damages

### 其他损害赔偿申索

12.1 Any other claims for damages apart from those stipulated under Clause 6 and 11 are governed as follows:

如下条款适用于除第 6 条和第 11 条规定的该等赔偿申索之外的任何其他损害赔偿申索：

12.1.1 Any such other claims for damages of the Customer shall be excluded regardless of whether they are based on duties arising under the contractual relationship or tort.

不论是由合同约定的关系产生还是基于侵权法产生的义务，**客户**的任何该等损害赔偿申索均应被排除。

12.1.2 KHK provides practical guidelines and advice in good faith without any liability to Customer. The Customer shall not be released from his obligation to examine the intended use of the foil at his sole responsibility. This shall apply even if KHK is aware of the Customer's application of use.

**库尔兹香港**系出于诚信提供应用指引和建议，并不对**客户**承担任何责任。**客户**单独负责检验箔膜预定用途的义务不得被解除。即使**库尔兹香港**知晓**客户**的应用方法，本条款仍适用。

12.1.3 KHK's liability for damages arising from the fundamental non-performance of contractual obligations of the Contract shall be limited to foreseeable damage normally covered by the Contract at the time of the conclusion of the Contract.

**库尔兹香港**对于根本性违反合同义务而产生的损害赔偿的责任应限于合同订立时合同通常涵盖的可预见损失。

12.1.4 Notwithstanding any other provisions hereof to the contrary, loss of profits and the indirect and consequential losses of the Customer shall be excluded from the scope of KHK's liability and the aggregate liability for breach to be assumed by KHK hereunder, including but not limited to the compensation for loss and liquidated damages, shall be limited to a maximum amount equivalent to 10% of the net price of the foil under the relevant Contract.

无论本**条款和条件**项下有任何其他相反的规定，**库尔兹香港**的责任范围中应排除**客户**的利润损失以及非直接和间接损失，且**库尔兹香港**在本**条款和条件**项下就违约而承担的总责任，包括但不限于损失赔偿和算定损害赔偿，将不超过相当于相关合同项下箔膜净价的 10%。

12.2 Insofar as KHK's liability pursuant to this Clause 12 is excluded or restricted, this shall also apply to the personal liability of its employees, personnel, staff and other agents.

在**库尔兹香港**的责任根据本第 12 条被排除或限制的范围内，该排除或限制亦适用于其员工、人员、雇员和其他代理人的个人责任。

12.3 To the extent that the Customer is entitled to claim for damages according to this Clause 12, these shall be raised within 6 months from the date of Delivery, and if the claim is not raised within such 6 months, it shall be deemed waived or foregone by the Customer.

在**客户**根据本第 12 条有权提出损害赔偿申索的情况下，该主张应在**交付**之日起 6 个月内被提出。如果申索未在 6 个月内被提出，**客户**将被视为放弃或摒弃该申索。

12.4 The limitation of KHK's liability under this Clause 12 shall not apply in cases of bodily

injury or death, wilful misconduct or gross negligence where liability is mandatory.

本第 12 条项下**库尔兹香港**的责任限制不适用于造成人身伤害或死亡、故意不当行为或严重疏忽的其责任为强制性的情况。

### 13. Confidentiality

#### 保密

13.1 A party shall not without the written consent of the other party pass the other party's documents, knowledge and information, tools, molds, samples, models, profiles, drawings, data standard sheets, manuscripts and other technical documentation - irrespective of the data medium - ("Confidential Information") to Third Parties or use such Information for purposes other than for the purposes of the Contract. This shall not apply to Confidential Information which at the time of receipt (i) are generally known or were already known by the public or the receiving party without being obliged to maintain the duty of confidentiality, (ii) were transferred by a Third Party or (iii) were developed by the receiving party without breaching the confidentiality obligations hereunder.

一方不应在没有取得另外一方的书面同意前将另一方的文件、知识和信息、工具、模具、样品、模型、档案、图纸、数据标准图表、手稿和其他技术文件(不论以任何数据媒介) (“**保密信息**”) 传递给**第三方**或为非合同目的使用该**保密信息**。本条款不适用于在接收该**保密信息**时 (i) 已被普遍知晓或已被众所周知或之前已为没有保密义务的接受方所知 (ii) 被**第三方**转移或 (iii) 之前在不违反本**条款和条件**项下保密义务的前提下已由接收方进行开发的**保密信息**。

13.2 Confidential Information and all copies thereof held by the Customer shall be returned to KHK without delay if a Contract is not awarded. The Customer is not entitled to a right of retention to such Confidential Information and any copies thereof.

如果合同并没有批予**客户**，**客户**须将其持有的**保密信息**及所有有关复制品毫不延迟地归还给**库尔兹香港**。**客户**对该等**保密信息**及**保密信息**的任何复制品不享有留置权。

### 14. Dispute Resolution and Applicable Law

#### 争议解决及适用法律

Any dispute, controversy or claim arising out of or relating to these T&C or any Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in Hong Kong under the UNCITRAL Arbitration Rules in accordance with the Procedures for the Administration of International Arbitration of the Hong Kong International Arbitration Center ("HKIAC") in force at the date when the notice of arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three. The arbitration shall be held in the English language. The place of arbitration shall be in the Hong Kong Special Administrative Region at the HKIAC, unless the parties agree otherwise. The arbitration award shall be final, binding on the parties and not subject to any appeals, and shall deal with the matter of costs for arbitration and all matters related thereto.

任何由本**条款和条件**或任何**合同**、或违反**合同**或**条款和条件**、或解除**合同**或**条款和条件**、或

合同或条款和条件无效所引起的或有关的任何争议、纠纷或索赔，应根据联合国国际贸易法委员会仲裁规则由香港国际仲裁中心（“HKIAC”）按照提交仲裁通知之日有效的国际仲裁管理程序在香港通过仲裁解决。仲裁员人数应为三名。仲裁应以英语进行。仲裁地点是在香港特别行政区香港国际仲裁中心，除非双方另有约定。此仲裁裁决是终局的，对当事人具有约束力且当事人不得就仲裁裁决上诉，并须按仲裁裁决支付仲裁费用及处理与此有关的所有事项。

These T&C and the formation of any Contract, their validity, termination, interpretation, execution and the settlement of any dispute arising thereunder shall be governed by the laws of the Hong Kong.

本条款和条件以及任何合同的订立、其效力、终止、解释、执行及由此产生的任何争议之解决均受香港特别行政区法律管辖。

## 15. Language

### 语言

These T&C shall be made in English and the Chinese translation is only for reference. In case of discrepancies between the English version and the Chinese translation, the English version shall prevail.

本条款和条件应以英文制订，中文翻译只作为参考。如果本条款和条件的英文文本和中文翻译有任何不一致，应以英文文本为准。