

TERMS AND CONDITIONS OF SALE 销售条款和条件

The following Terms and Conditions of Sale (the "Terms") are applicable to the provision of all goods supplied and/or services rendered ("goods") by Ferro Performance Pigments (Shanghai) Co., Ltd. ("Ferro"), to any purchaser, or in the case of sample products or material, recipient, thereof ("Buyer").

本销售条款和条件（“条款”）适用于所有由**福祿顏料（上海）有限公司（“福祿公司”）**向任何买方，或者在供应产品或材料样品的情况下向任何接收方（“买方”），供应其所提供的货物和/或服务（“商品”）。

1. **GENERALLY** - Ferro's offer for sale of goods and Buyer's acceptance of any such offer is governed exclusively by these Terms unless otherwise agreed in writing signed by Ferro. If an order is deemed to be an offer by Buyer, Ferro's acceptance of such offer is expressly conditioned on Buyer's assent to these Terms. Any additional, different, or conflicting terms proposed by Buyer in any offer, acceptance, confirmation (including any Buyer purchase order or specifications) or otherwise, (a) are requests for material alterations to these Terms, (b) are hereby rejected and objected to by Ferro, and (c) will not be binding in any way on Ferro.

1. 一般条款——**福祿公司**的**商品**销售要约以及**买方**对于上述要约的接受应排他性地受**条款**约束，除非另有约定并经**福祿公司**签字同意。如果**买方**订单视为**买方**发出的要约，**福祿公司**对于该要约的接受明确基于**买方**对于**条款**的同意。**买方**在任何要约、同意、确认（包括任何**买方**的采购订单或规格）中或以其他方式提出的、任何附加、与**条款**不同或相冲突的条款(a)是对于**条款**的实质性变更，(b)**福祿公司**特此拒绝并反对，并且(c)**福祿公司**在任何情况下不受此类条款约束。

2 **BUYER'S CREDIT** - For the purpose of assessing the credit worthiness of the Buyer from time to time and the collection of payments, the Buyer hereby irrevocably authorizes Ferro and its employees and agents to make such inquiries as they deem necessary including, but not limited to, making inquiries with and obtaining reports (as permitted by law) from persons nominated by the Buyer as trade references, the Buyer's creditors, bankers and financiers, credit providers, mortgagee or mortgagees and trade insurers and credit reporting agencies ("Information Sources") and the Buyer agrees and consents to the Information Sources providing to Ferro such information as is required by Ferro and permitted to be given by law for the purposes outlined in this condition. The Buyer also consents to Ferro disclosing the contents of any credit report or personal

information to a credit reporting agency for the purpose of that credit reporting agency creating, altering or adding to any credit information file in relation to the Buyer.

2. 买方信用——为了不时评估**买方**的信用以及收取货款，**买方**特此不可撤销地授权**福祿公司**及其雇员、代理人开展**福祿公司**认为必要的调查，包括但不限于：向**买方**提名的交易参考方、**买方**的债权人、银行和融资方、信贷提供方、抵押权人、保险公司和信用报告机构（“**信息源**”）进行询问并从其处获取报告（在法律允许的范围內）。此外，**买方**同意并认可由**信息源**给予**福祿公司**其所要求的、并且法律允许披露的资料，以用于本条所述之目的。为使信用报告机构能够创建、修改或增加任何关于**买方**的信用档案，**买方**同意**福祿公司**向该信用报告机构披露任何信用报告的内容或个人信息。

3. **PRICE; PAYMENT** - The goods are hereby offered for sale at prices to be established by Ferro. Unless otherwise specified on Ferro's invoice, order confirmation, acknowledgment or otherwise agreed to by the parties in writing, Buyer will pay for all goods on the day in the agreement. Ferro reserves the right to assess reasonable interest charges on any amounts not paid by the date such payments is due. All orders are subject to credit approval by Ferro. Ferro reserves the right to withhold shipment or to require other adequate assurances of performance of Buyer's payment obligations as Ferro in its discretion may require, notwithstanding any order confirmation issued by Ferro.

3. 价格及支付——**商品**的销售应当按照**福祿公司**决定的价格进行。除非**福祿公司**的发票、订单确认信或者同意函中另有说明，或以其他方式经双方书面同意，**买方**应当在双方议定规定的时间内付清全部**商品**货款。对于在付款日期截止时**买方**尚未付清的款项，**福祿公司**有权加收合理利息。所有订单须经**福祿公司**的信用审批。即使**福祿公司**已确认订单，**福祿公司**仍有权停止发货，或要求采取其他能充分确保**买方**履行付款义务的措施，由**福祿公司**全权决定。

4. **TAXES** - Ferro's price for goods is exclusive of any Federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of any order. Ferro will list separately on its invoice any such taxes applicable to any such goods or transaction, and payable by Buyer, with respect to which Buyer does not furnish to Ferro evidence of exemption.

4. 税——**福祿公司**的**商品**价格不包括任何联邦、州、或当地就履行订单而产生的销售行为、销售价格或**商品**使用而征收的、或者根据上述各项计征的任何销售、使用或消费税。**福祿公司**将在发票上单独列出**买方**应当支付的、适用于相关**商品**或交易的税

款；买方未向福禄公司提供对于上述税款的豁免证明。

5. DELIVERIES - Ferro will use commercially reasonable efforts to meet the delivery dates, specifications, and quantities as set forth in Buyer's purchase order. Ferro will not, however, be liable for damages or delays in delivery due to causes beyond its reasonable control.

5. 交货——福禄公司将尽合理的商务努力以满足订单中所提出的交货日期、规格以及数量。但是，对于因超出福禄公司合理控制范围的原因而产生的损害或迟延交货，福禄公司不承担责任。

6. PRODUCT WARRANTIES - Ferro warrants to Buyer that at the time of delivery Ferro will have good title to all goods supplied to Buyer and the right to convey title to such goods to Buyer free and clear of all liens. Ferro further warrants to Buyer that all such goods will conform to the specifications, drawings, samples, or other description furnished or specified by Ferro or agreed to in writing by Ferro, and will be free from defects in material and workmanship. Ferro further warrants that any services it provides hereunder will be performed in a workmanlike manner. The warranties stated in this Clause 6 are the only representations and warranties Ferro has given Buyer in connection with the provision of goods to Buyer. Except as set forth in this Clause 6, Ferro has not made and hereby expressly disclaims any other or further representation or warranty, either express or implied, concerning the goods. THE WARRANTIES GIVEN IN THIS CLAUSE 6 ARE IN LIEU OF ALL OTHER WARRANTIES FERRO MIGHT HAVE GIVEN BUYER, INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR INTENDED USE. All other warranties Ferro or anyone purporting to represent Ferro may have given, or which may be provided or implied by law or commercial practice, ARE HEREBY EXCLUDED.

6. 产品保证——福禄公司向买方保证，在发货时福禄公司对提供给买方的商品拥有有效的所有权，且具有将该商品所有权转让给买方的权利，并且该商品上不存在任何质押权。福禄公司进一步向买方保证，所有商品符合福禄公司提供或指明的、或者福禄公司书面同意的规格、图纸、样品或其他描述，并且保证商品在材料或工艺上不存有瑕疵。福禄公司保证条款项下的任何服务将以专业的方式提供。本第6条中载明了福禄公司就向买方提供商品而向买方作出的全部保证。除了本第6条中所载明的保证，福禄公司没有作出，并且特此否认，任何关于商品的、其他或进一步明示或暗示的陈述或保证。

本第6条中的保证替代福禄公司可能已经向买方作出的所有其他保证，包括适销性保证以及特定目的适用性保证。对于福禄公司或任何声称代表福禄公司的人员可能已经作出的任何其他保证以及任何法律或商业实践授予或暗示的保证，特此予以排除。

7. NON-CONFORMING GOODS - Upon Buyer's receipt of shipment, Buyer shall immediately inspect the goods. Unless Buyer provides Ferro with written notice of any claim for shortage, defect or nonconformity in the goods within ten (10) days after receipt of shipment, such goods shall be deemed finally inspected, checked and accepted by Buyer and Buyer's failure to provide such notice shall be deemed to constitute a waiver of any such claim.

7. 不符合规定的商品——在收货后，买方应立即检验商品。除非买方在收货后十日内向福禄公司提出主张商品短缺、瑕疵或不符合规定的书面通知，该批商品应视为已经买方最终检验、核查并且接受。买方未发出上述书面通知的，视为买方放弃上述主张。

8. TRADE COMPLIANCE
8. 贸易合规

(a) EXPORT CONTROL REGULATIONS - The goods that are the subject of this document and related technology are subject to export and re-export restrictions under U.S. and other countries' export control regulations, including without limitation the U.S. Export Administration Regulations, regulations of the U.S. Office of Foreign Asset Control and comparable laws and regulations of other countries, which may require U.S. or other government approval for any re-export or retransfer ("Export Control Regulations"). Buyer warrants that it (i) will adhere to and comply with (x) all applicable Export Control Regulations and (y) any applicable terms, conditions, procedures and documentation requirements made known to Buyer that may be promulgated by Ferro from time-to-time to comply with the Export Control Regulations; (ii) will not, directly or indirectly through a third party, ship Ferro materials to the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria, Sudan or any other country subject to trade embargoes in violation of Export Control Laws. Buyer acknowledges that Ferro will not proceed with a shipment when Ferro knows that the Ferro products in that shipment are destined for a sanctioned country. Buyer represents that neither Buyer nor any of its principals, officers, or directors, or any person or entity known to Buyer to be directly involved in this transaction as freight forwarder, customer, end-user, consultant, agent or otherwise is designated on any of the U.S. government restricted parties lists, including without limitation the U.S. Commerce Department Bureau of Industry and Security Denied Persons List,

Entity List or Unverified List, the U.S. Treasury Department Office of Foreign Asset Controls Specially Designated National and Blocked Persons List or the U.S. State Department Directorate of Defense Trade Controls Debarred Parties List or restricted parties lists of any country having jurisdiction over Buyer or the transaction involving the goods that are the subject of this document or related technology.

(a) 出口管制条例——本文件项下的**商品**以及相关技术受美国及其他国家出口管制规定中的出口及再出口限制，包括但不限于美国出口管理条例，美国海外资产管理办公室的规定，以及其他国家的类似法律法规；根据上述法规，**商品**及相关技术的再出口或转口可能需要美国或其他政府的批准（“**出口管制条例**”）。**买方**保证 (i) 将遵守并服从 (x) 所有适用的**出口管制条例**，以及 (y)**福祿公司**为遵守**出口管制条例**而可能不时制订并且通知**买方**的任何适用的条款、条件、程序以及文件要求；(ii) 将不会违反**出口管制条例**而直接或通过第三方间接地将**福祿公司**的任何材料运往乌克兰克里米亚地区、古巴、伊朗、朝鲜、叙利亚、苏丹或任何其他受到贸易禁运限制的国家。**买方**认可，如**福祿公司**知悉其货物将运往任何受贸易禁运限制的国家，**福祿公司**将终止该批货物的运送。**买方**保证，**买方**或其任何管理人员、职员、董事或**买方**知悉的、将作为货运商、客户、终端用户、顾问、代理或以其他方式直接参与本交易的任何人员或主体均不在任何美国政府限制交易方名单中，包括但不限于美国商务部工业安全局拒绝交易人员名单、拒绝交易主体名单或未经核实方名单，美国财政部海外资产管理办公室特别指定国家及封锁人员名单，美国国务院国防贸易控制局禁止方名单，以及对**买方**或者涉及本文件项下**商品**或相关技术的交易具有管辖权的任何国家所制订的限制方名单。

(b) ANTIBOYCOTT PROVISIONS - Buyer will not request of Ferro information or documentation where the purpose of such request is to support, give effect to or comply with a boycott of any country in contravention of the laws or policies of the United States, including but not limited to the Arab League boycott of Israel. Ferro hereby rejects any such request by Buyer and will report receipt of any such request to the relevant U.S. government office, as required by law.

(b) 反抵制条款——**买家**不会为支持、实施或遵守违反美国法律或政策的、任何国家的抵制行为而向**福祿公司**索要信息或资料，包括但不限于阿拉伯国家联盟对以色列的抵制。**福祿公司**特此拒绝此类**买方**的请求，并将根据法律要求将该请求向美国有关部门汇报。

(c) ANTICORRUPTION AND ANTIBRIBERY - In relation to any transaction involving the goods that are

the subject of this document or related technology, Buyer shall not seek to obtain or retain business or gain any other advantage by making or offering to make any payment of money or by providing or offering to provide anything of value, directly or indirectly, to: (i) any government official; or (ii) any non-governmental person, in either case with the intent that such official or person will perform their responsibilities improperly. Buyer warrants that it will comply with the anticorruption laws and anti-bribery laws of any country having jurisdiction over Buyer or the transaction involving the goods that are the subject of this document or related technology, and will in all cases comply with the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

(c) 反腐败与反贿赂——在任何关于本文件项下的**商品**或相关技术的交易中，**买方**不得通过向 (i)任何政府官员，或(ii)任何非政府官员，给付或者提出给付任何金钱或有价物，意图令上述人员不当履行其职责，从而寻求获得或保留业务或取得其他利益。**买方**保证将遵守任何对**买方**或涉及本文件项下的**商品**及相关技术的交易具有管辖权的国家的反腐败与反贿赂的相关法律，并且将在任何情况下遵守美国的《反海外腐败法》以及英国的《反贿赂法案》。

(d) NONCOMPLIANCE - In the event that Ferro reasonably believes that any provision of this Clause 7 has or may have been breached, Buyer shall cooperate fully with Ferro's investigation to clear the matter and Ferro shall not be obligated to sell or provide goods or technology or take any other act in furtherance of any transaction or agreement while such investigation is pending and such suspension or forbearance by Ferro shall not constitute breach of any obligation in respect of the transaction to which this document applies or otherwise.

(d) 不合规——如果**福祿公司**合理怀疑**买方**已经或可能已经违反了本第 7 条中的规定，**买方**应全力配合**福祿公司**的调查以解决该事项；并且在调查进行过程中，**福祿公司**无义务出售或提供商品、技术或采取其他行为推进任何交易或协议。上述**福祿公司**暂停或拒绝交易不违反其关于本文件项下交易的合同义务。

9. LIMITATION OF LIABILITY - FERRO'S LIABILITY FOR ITS GOODS UNDER ALL THEORIES OF LIABILITY SHALL BE LIMITED TO REPAIRING OR REPLACING THOSE FOUND BY FERRO TO BE DEFECTIVE, OR AT FERRO'S OPTION, TO REFUNDING THE PURCHASE PRICE OF SUCH GOODS. AT FERRO'S REQUEST, BUYER WILL PERMIT FERRO OR ITS DESIGNEE TO INSPECT ANY ALLEGEDLY DEFECTIVE GOODS INCLUDING SHIPMENT OF SUCH ALLEGEDLY DEFECTIVE GOODS TO THE LOCATION SPECIFIED BY FERRO AT FERRO'S COST.

9. 责任限制——福禄公司在所有责任承担的理论项下对其商品的责任只限于修理以及替换由福禄公司认定为瑕疵的商品，或者由福禄公司自主选择退还该批商品货款。在福禄公司请求下，买方应允许福禄公司或其指定人员检验任何被指瑕疵的商品，包括将被指瑕疵的商品运至福禄公司指定的地点，运输费用由福禄公司承担。

10. DISCLAIMER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES - FERRO SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE GOODS, INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON FERRO HEREUNDER OR IN CONNECTION HERewith. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT.

10. 关于附带损害和间接损害的免责声明——福禄公司不对由本协议或商品引起或与之相关的附带损害或间接损害负责，包括但不限于因违反福禄公司在本协议下的义务而产生或与之相关的附带损害或间接损害。为本条之目的，间接损害应包括但不限于使用价值、收入、利润的丧失。

11. INDEMNITY - Buyer shall indemnify, defend and hold Ferro and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and expenses (including attorneys' fees) resulting or arising from (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the goods or any product or waste derived therefrom, (c) Buyer's discharge or release of the goods or any product or waste derived therefrom into water, onto land or into the air, (d) Buyer's exposing any person (including Buyer's employees) to the goods or any product or waste derived therefrom, including failure to warn of such exposure, or (e) the transportation of the goods to Buyer after tender of the goods by Ferro to the carrier at Ferro's shipping point. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused solely by Ferro's negligence or willful misconduct, but shall apply where there is concurrent negligence or willful misconduct on the part of Ferro and Buyer in proportion to Buyer's negligence or willful misconduct.

11. 赔偿——对于因(a)买方过失或故意的不当行为，(b)买方使用、销售、操作、储存或处置商品或在此过程中产生的任何产品或废物，(c)买方将商品或由商品衍生的任何产品或废物倾倒入或排放至水体、土地、空气中，(d)买方使任何人（包括买方的雇员）暴露于商品（包括由商品衍生的产品或废物）前，包括未能对上述暴露作出警示，或(e)在福禄公司于福禄公司的起运点将商品交付给承运人后，商品运往买方处，而产生的任何罚款、处罚、诉讼、起诉、权利要求、责任、判决、损失、损害、成本及费用（包括律师费），买方应对福禄公司及其董事、管理人员、雇员、代理、供应商、母公司、关联机构、子公司、承继方及受让人予以赔偿，为其辩护，并令其免受损害。前述条款应适用于，但不限于，人身损害（包括死亡）及对财产或环境的破坏及损害。上述赔偿不应适用于因福禄公司过失、故意的不当行为而单独引起的任何罚款、处罚、诉讼、起诉、权利要求、责任、判决、成本及费用；但是如福禄公司及买方均存在过失或故意的不当行为，买方应按上述规定按比例进行赔偿。

12. FORCE MAJEURE - Except for the payment of monies owed, neither party will have any liability for any breach or failure to perform that is the result of an event, condition or circumstance beyond that parties' reasonable control, including, without limitation, acts of God, war, insurrection, or terrorism, fire, inclement weather, strikes, boycotts, or other similar circumstances. If a party becomes aware of any such event, condition or circumstance, then such party will promptly advise the other party and both parties will cooperate to ameliorate the circumstance or condition as quickly as possible.

12. 不可抗力——除了支付货款外，任何一方都不对因超出该方合理控制范围的事件、条件或情况而造成的违约或无法履约承担责任，包括但不限于天灾、战争、暴动或恐怖主义活动、火灾、恶劣天气、罢工、抵制活动或其他相似的情况。如果一方得知此类事件、条件或情况的发生，则该方应立即通知另一方，并且双方应尽快合作应对此类情况或条件。

13. GOVERNING LAW - The sale of good hereunder shall be governed, interpreted and construed by and in accordance with the laws of the People's Republic of China ("PRC") without regard to the conflict of laws provisions thereof, and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods. Buyer and Ferro shall use their best efforts to resolve and/or settle any disputes arising out of or in connection with this Order and/or these Terms. In the event that no resolution or settlement is reached for the dispute within sixty (60) days after the dispute arises, the

matter shall be referred to the Shanghai International Economic and Trade Arbitration Commission (CIETAC) for arbitration, which shall be conducted in accordance with prevailing CIETAC Arbitration Rules. The arbitration shall be conducted in English. The arbitration tribunal shall consist of three arbitrators. The presiding arbitrator shall not be a national of either the PRC or the United States. The arbitration award shall be final and binding on the parties. During the arbitration, the parties shall continue to perform all obligations under this Order and these Terms.

13. 管辖法律——本文件项下**商品**的销售应受到中华人民共和国（“**中国**”）法律的管辖，按**中国**法律解释及释义，但不包括其冲突法条款。《联合国国际货物销售合同公约》明确予以排除。**福祿公司**及**买方**应尽其所能解决和/或和解任何由订单和/或**条款**引起或与之相关的争议。如果争议在出现后 60 日内无法得以解决或和解，该争议应提交上海国际经济贸易仲裁委员会（“**贸仲会**”），根据适用的**贸仲会**仲裁规则进行仲裁。仲裁应采用英文进行。仲裁庭应由三名仲裁员组成。仲裁庭主席不应为美国国籍或**中国**国籍。仲裁结果应具有终局性并对双方具有约束力。在仲裁过程中，双方应继续履行在订单及**条款**下约定的所有义务。

14. COMPLIANCE WITH LAWS. Buyer shall comply with all applicable laws, regulations, and other legal requirements regarding the export, import, sale, distribution, marketing, and service of the goods and related technology, including without limitation, tax and foreign exchange legislation or regulations and the obligations under Clause 8.

14. 遵守法规——**买方**应遵守一切适用的、关于**商品**及相关技术的进口、出口、销售、分销、营销及服务的法律、法规以及其他法律要求，包括但不限于税收和外汇法律法规以及第 8 条下所约定的义务。

15. COMPLETE AGREEMENT - These Terms contain the complete and final agreement between Buyer and Ferro and supersede all other and further agreements, representations, warranties, covenants, promises, and other contractual obligations between the parties in respect of the subject hereof unless otherwise agreed to in a writing signed by Ferro. These Terms may be amended, modified or waived only by a written instrument that refers expressly to this paragraph and is signed by an authorized representative of Ferro. E-mails and electronic on-line, internet or other terms of Buyer shall not be deemed a means of modifying or amending these Terms.

15. 完整协议——**条款**包括了**福祿公司**及**买方**间就本**条款**主旨达成的全部、最终的协议，并取代双方就该主旨达成的所有其它或进一步协议、申明、保证、义务、承诺及其他的合同义务，但**福祿公司**以书面形式另行签字同意的除外。**条款**只能通过经**福祿公司**的授权代表签字的书面形式，且明确表明根据本段**条款**，才可予以修正，修改或放弃。电子邮件、网络电子通讯、英特网或**买方**的其他**条款**将不被视为修正或修改**条款**的有效方式。

16. LANGUAGE – These Terms are made in both Chinese and English. In case any discrepancy arises, the English version shall govern.

16 语言——**条款**以中文和英文制备。如两种语言有不一致，以英文版为准。