

美商国家仪器有限公司 (National Instruments Hong Kong Limited) (“NI”)

销售条款和条件

本销售条款和条件 (以下称“**本合同**”) 适用于您 (以下称“**客户**”) 向 **NI** 购买 **NI** 硬件 (以下称“**硬件**”)、**NI** 软件使用授权 (以下称“**软件**”)、非 **NI** 品牌产品 (合称“**产品**”) 及与**硬件**和**软件**相关的培训、服务与支援 (以下称“**服务**”) 之相关事宜。除非**客户**与 **NI** 针对特定**产品**或**服务**交易, 另行签订其他合同, 相关事宜均应以**本合同**为准。

客户向 **NI** 提出订单, 即代表同意接受**本合同**的拘束。 **NI** 明示排除**客户**订单或其他类似文件所载条款。若**客户**不同意本销售条款和条件, 请立即通知 **NI**, 并将未使用之**产品**, 以原包装退回 **NI**。

1. 价格与订单. 产品价格记载于 **NI** 向**客户**开立之报价单 (以下称“**报价单**”)。除非**报价单**内另有记载, **报价单**应于开立日起算届满三十(30)日时失效。**NI** 可以全权决定是否接受**客户**订单。 **NI** 一旦登录订单内容, 并向**客户**提出销售确认书, 即视为接受订单。未经 **NI** 书面同意, 订单变更对 **NI** 概不具拘束力。 如果**客户**有任何欠付 **NI** 的款项或信用状况不佳, 则 **NI** 保留中止或取消订单的权利。

2. 付款与开立发票. 除非**客户**已获批使用信用额度, **客户**应于 **NI** 发货前付清货款。付款应使用 **NI** 开立的发票所列明的货币。就所有逾期未付款项, **NI** 有权按百分之一点五 (1.5%) 或法律允许的最高的月利率逐日加计收取利息。若订单涵盖多项**产品**, **NI** 将于各项**产品**出货时开立发票。如果**客户**要求开具非标准发票, **NI** 有权要求**客户**支付百分之五 (5%) 手续费以及政府机关要求 **NI** 代扣的任何金额 (如有)。

3. 交付、所有权与损失风险. **产品** (如为**软件**, 则其媒体) 之所有权及损失风险, 应在以下任一情况发生时转移给客户:

(a) 如果**客户**是或**客户**同意作为进口商, 则于**NI**、**NI**关联公司或**NI**使用的仓库向**客户**出货时转移给客户; 或 (b) 如果**NI**是或**NI**同意作为进口商, 则于从**NI**使用的当地仓库出货时转移给客户, 如适用; 但是, **NI**保留**产品**的担保权益和占有权, 直至**客户**全额付款。若收货地点与接受订单之**NI**关联企业位于同一国家, **NI**将安排运送; 但**客户**应负责支付发票所载运费及处理费, 除非**NI**另有说明。一旦**NI**书面确认, **客户**可选择通过**NI**事先批准的承运人自行安排运送, 但在此种情况下或收货地点与接受订单之**NI**关联企业位于不同国家, **客户**应负责所有运输及处理事宜, 包括费用, 关税, 手续及清关, 但出口报关由**NI**负责。**客户**应及时向**NI**提供出口报关所需的信息。**NI** 所提供之出货日仅为估计日期, 针对因**产品**出货迟延而产生之损失及请求, **NI** 概不负责。若到货之**产品**内容短少, **客户**应于**产品**到达指定收货地后七(7) 日内或者 (如果指定收货地在香港地区之外的) **NI**发运**产品**后三十 (30) 日内, 以书面提出, 否则视同放弃。**NI**可自行决定向**客户**分批装运**产品**, 而无需承担任何责任或罚金。每次装运将构成单独的销售, **客户**应支付已装运部分的货款, 无论该等装运是否全部或部分履行了**客户**的采购订单。

4. 税务. 除非**报价单**另有约定, **产品**价格不含**客户**因购买**产品**和/或**服务**而产生之任何销售税、消费税、使用税、服务税、增值税、印花税、地方附加税、营业税及其他类似税项 (以下称“**税项**”) 以及与**本合同**项下购买**产品**与/或**服务**相关或由其产生的进口/出口税, 前述**税项**及进出口税等应由**客户**自行负责缴纳。若**客户**有权免纳特定税项或有零税率资格, 应于提出订单时, 向 **NI** 提供适当证明文件。如果适用的当地法律要求**客户**代表 **NI** 从**客户**支付给 **NI** 的款项中代扣代缴所得税或类似税款, 则**客户**应(i)立即通知 **NI**; (ii)直接支付该等税款至相关税务部门, 除非 **NI** 另有指示; 并(iii)向 **NI** 提供原始纳税收据或其他原始缴税文件以证明**客户**已代表 **NI** 支付该等税款, 并且该等原始纳税收据或原始缴税文件上应载有完整、正确的 **NI** 的公司名称并显示 **NI** 为纳税人。如果**客户**不能向 **NI** 提供该等原始纳税收据或原始缴税文件以证明**客户**已代表 **NI** 缴纳该等代扣代缴税款, 则**客户**应向 **NI** 支付全额发票金额。

5. 软件. **软件**之相关授权内容, 应适用**软件**所附之许可合同; 若无许可合同, 则应适用 ni.com/legal/license 所发布之 National Instruments 软件授权合同 (以购买时为准)。所有**软件**均仅供许可使用, 并未被**客户**买断, **软件**所有权应由相关许可人保留。

6. 非 NI 品牌产品. **NI** 所销售之非 **NI** 品牌**产品**, 未必可由 **NI** 测试或修复, **客户**可能必须自行联络制造商或服务供应商提供服务或提出质保要求。**NI** 并未针对非 **NI** 品牌**产品**提供任何保证, 亦无义务提供支援, 或承担相关责任。本**合同**之有限质量担保及 **NI** 知识产权责任条款, 不适用于非 **NI** 品牌**产品**交易。 “非 **NI** 品牌**产品**”系指 **NI** 所销售, 但未标示 **NI** 品牌之第三方**硬件**、**软件**或**服务**。

7. 服务. 除**本合同**下的条款和条件外, **NI**所提供之**服务**, 也应适用双方以书面议定之服务合同或工作说明, 或 ni.com/legal/serviceterms 所发布之 **NI** 服务条款。

8. 退货政策. 根据**本合同**的要求, **客户**于发票开立日起三十(30) 日内, 如有特殊原因需要退还**产品**的, 应满足以下全部条件: (i) 该**产品**是全新未开封的; (ii) 不影响 **NI** 将**产品**直接进行再次销售; 和 (iii) **NI** 有权针对**客户**退回之**产品**, 收取相应货款百分之十五 (15%) 之退货手续费, **客户**授权 **NI** 从**客户**的任何预付款项中自动扣减该百分之十五

(15%) 之退货手续费, 且无需另行书面通知**客户**。但是, 三十 (30) 日期间届满后, **NI** 概不接受无理由退货。**客户**退回**产品**前, 应取得 **NI** 的退货授权(RMA) 编号。 **NI** 全权决定是否接受定制**产品**及非 **NI** 品牌**产品**的退货。

9. 有限质量担保. 除非双方另行约定, **NI** 保证于 **NI** 发货之日起一 (1) 年内, **硬件**并不存在足以导致**产品**与届时 **NI** 发布规格实质性不符的材料或技术瑕疵, 而且**NI**将按照ni.com/legal/serviceterms上的“支持服务条款和条件”提供技术支持。

除非双方另行约定, NI 保证于 NI 开票之日起九十(90)日内, 软件 (i) 功能将实质性符合软件所附之说明文件; (ii) 从 NI 收到的记录软件的媒体并无材料或技术瑕疵。NI 保证, 服务将以符合专业标准之优良方式执行。如果服务与维修或校准相关的, 客户应当在服务标的产品交付给 NI 前, 消除或卸载该产品上的所有数据、非 NI 软件、密码与非 NI 设备, 移除产品附件。若 NI 于适用的质量担保期间内, 接获瑕疵或不符通知, NI 将自行决定: (i) 修复或更换瑕疵硬件或软件; (ii) 重新履行有瑕疵的服务; 或 (iii) 退还瑕疵硬件、软件或服务之相关费用。修复或更换后之硬件及软件, 其质量担保期间应为原质量担保期间之剩余日数, 或从 NI 维修中心发货之日起九十 (90) 日, 以较长的期间为准。若 NI 选择修复或更换硬件, NI 除可以使用新品外, 亦可以使用效能及可靠程度等同于新品、功能至少等同于原始零件或硬件之翻新零件或产品。客户将质量担保范围内之硬件退回 NI 前, 应取得 NI 的 RMA 编号。客户得自行承担费用办理瑕疵硬件在客户场地与 NI 香港办公室之间的运输、进出口海关申报以及所有相关费用。但是, 若 NI 检查并测试客户退回之硬件后, 认定其不属于有限质量担保范围的, NI 将通知客户, 并寄回硬件, 相关运费应由客户承担。对于本项有限质量担保并未涵盖之硬件检查与测试, NI 有权另行收取标准服务费用。前述质量担保不适用于由于下列事由所导致的硬件或软件瑕疵: 不当维护、安装、修理或校准 (并非由 NI 所执行者), 未经授权修改, 不当环境, 使用不当硬件或软件密码, 超过硬件或软件规格之不当使用或操作, 不当电压, 意外、错误使用或疏忽, 雷击、水灾或其他天灾。本条款所述内容为客户有权主张之唯一救济方法, 即使该等救济方法无法达到其主要目的, 仍不影响其适用。

10. 无其他保证. 除本合同明示规定者外, 产品及服务均系以“现状”提供, 并无任何保证, NI 在此排除有关所有产品和服务之一切明示或默示保证, 包括适售性、适用性、无侵权之默示保证, 及因交易习惯或贸易惯例而产生之任何保证。NI 并未针对产品或服务之使用或使用结果, 提供有关正确、精确、可靠程度或其他方面之保证、担保或声明。NI 并未保证产品运作无中断或全无错误。

11. 警告与客户补偿. 客户了解并确认, 产品及服务之设计、制造、测试目的, 并非针对生命或安全攸关系统、危险环境或其他需要故障保全功能之环境, 包括核能设施, 飞行器导航设备, 航空交通控制系统, 救生系统, 维生系统或其他医疗器材, 以及产品或服务故障可能导致死亡、人身伤害、严重财产损失或环境灾害之其他应用方式 (合称“高风险用途”)。客户应采取适当防护措施, 包括提供备份及关闭装置, 以应对产品及服务故障。NI 明示排除有关产品或服务适用于高风险用途之明示或默示保证。客户应针对因其将产品或服务适用于高风险用途而导致之请求、损失、损害、诉讼 (含司法诉讼、仲裁及行政程序)、费用 (含合理律师费), 包括因产品责任、人身伤害 (含死亡) 或财产损失引起的请求, 为 NI 辩护、提供补偿、使 NI 免责并避免 NI 受到任何损害, 无论该等请求是否全部或部分系基于 NI 之实际或被主张的过失所提出。

12. 系统及程式责任与额外补偿. 客户确认, 其应负责在将产品或服务纳入客户系统或程式时, 确认与验证产品及服务之适用及可靠程度, 包括该等系统或程式之适当设计、程序及安全等级。客户应采取适当防护措施, 包括提供备份及关闭装置, 以应对产品或服务于纳入系统或程式时发生故障。客户应针对因其将产品或服务纳入客户系统或程式而导致之请求、损失、损害、诉讼 (含司法诉讼、仲裁及行政程序)、费用 (含合理律师费), 为 NI 辩护、提供补偿、使 NI 免责并避免 NI 受到任何损害, 无论该等请求是否全部或部分系基于 NI 之实际或被主张的过失所导致。

13. 知识产权责任. 若有第三方提出请求, 主张硬件、软件或服务侵害其任何受美国及/或中华人民共和国法律所保护的专利、著作权或商标 (以下称“请求”), NI 同意负责辩护, 前提是: 客户一旦得知任何请求, 或可能导致请求之相关指控时, 立即通知 NI, 同意 NI 全权掌控辩护及和解事宜, 并全力配合 NI 进行辩护。NI 同意支付因请求而导致之确定判决或和解赔偿金额, 但应以依本条规定达成之和解为限。若客户未经 NI 事先书面同意, 自行达成和解, NI 概不负责。即使有前述规定, 针对因下列事由而产生, 或与其相关之请求, NI 并无义务依本条负责: (a) 客户修改硬件、软件或服务; (b) 未依 NI 提供之相关说明文件使用硬件、软件或服务; (c) 将硬件、软件或服务与非由 NI 提供之其他硬件、软件或服务合并, 或一并操作、使用; (d) NI 遵循客户规格或指示, 包括纳入客户所提供或要求之软件或其他资料; 或 (e) 非 NI 品牌产品。

以上为针对产品或服务侵害专利、商标、著作权或其他知识产权, 客户有权主张之唯一救济方法, 及 NI 之全部责任。本项有限补偿责任, 应取代其他有关侵权行为之法定或默示保证或义务。

若经 NI 合理认定, 硬件、软件或服务可能被控侵权, 为降低潜在损害, NI 可以自行决定 (i) 为客户取得硬件、软件或服务之继续使用权; (ii) 将原有硬件、软件或服务, 更换为无侵权情况之同等硬件、软件或服务; 或 (iii) 退还客户已支付之货款, 发生 (ii) 或 (iii) 的情况时, 客户应立即将硬件退回 NI, 或停止使用软件, 或终止服务。

14. 专有权利. 针对产品所涵盖或服务所产生之知识产权 (包括 NI 依本合同制作或提供之定制开发项目), 其一切相关权利、所有权及利益, 均应由 NI 保留。本合同并未将该等知识产权之所有权或许可权转移予客户。

15. 责任限制. 在适用法律许可的范围内, NI 对下列损失或责任不承担任何责任: (I) 因本合同、产品或服务而产生, 或与此相关之特别、间接、附带、惩罚性、警示性或衍生损害; 或 (II) 因下列事由而产生, 或与其相关之损害: (A) 无法使用产品或服务, 包括取得替代产品或服务之费用; (B) 产品、硬件、软件中的资料或数据遗失、篡改或无法使用; (C) 收益、获利或业务机会损失; (D) 业务中断或暂停; 或 (E) 无法达成特定结果。于相关法律许可范围内, NI 所承担

的本合同下以及与本合同、产品或服务相关的责任总额，不得超过客户针对导致该项请求之产品或服务所支付之货款金额。本条：(1) 适用于 NI 及其授权人、经销商、供应商（包括其董事、主管、员工及代理人）；(2) 体现了 NI 与客户间依据产品及服务价格议定之风险分配；(3) 即使 NI 已知损害可能发生，仍应适用，无论该损害赔偿请求是否全部或部分基于 NI 被主张的或实际的过错；且(4) 无论损害赔偿请求系基于契约、保证、无过失责任、过失、侵权或其他理由所提出，皆应适用。

16. 不可抗力。 若 NI 因其无法合理控制之事由，包括天灾或自然灾害，如山体滑坡、洪水或火灾；政府行为，如宣布进入紧急状态；恐怖主义行为、罢工或暴乱（实质影响本合同的履行和/或产品或服务的交付）；电信、电力和/或运输中断；客户指定的供应商之分包和/或供应厂商未履约；无法取得必要劳力和/或材料（视情况而定）（以下称“**不可抗力事件**”）导致迟延和/或未能履约，NI 概不负责和/或承担责任。若发生不可抗力事件，NI 未履行或未完全履行本合同下的义务均不得视作 NI 不遵守或不完全遵守本合同，NI 有权取消相关订单，无需对客户承担任何责任。

17. 出口管制法及法规遵循。 若未事先取得相关政府之必要许可、授权、认证或批准，客户不得直接或间接地出口、再出口或转移任何产品（基于本条之目的，产品应包括从NI获得的产品及服务或技术数据所涵盖或附随之软件与技术）至任何受美国或其他国家适用法律或法规中被限制出口、再出口或转移的国家或用户。此外，从NI在欧洲和马来西亚的分销中心所提供的产品可能受到各自适用法律法规下的额外授权规定的约束。客户声明并保证，其未被美国或相关国家法律禁止或限制取得产品。在任何时候，如果有违反适用的出口管制或贸易制裁法律的可能，NI可决定暂停履行、拒绝和/或取消订单的全部或部分，或拒绝履行与产品有关的任何售后服务（包括但不限于质量担保期内的任何校准、维修或更换）。NI开立之报价单、销售确认书或RMA，均不视为对出口或国内转移的授权。在NI向客户交付任何产品或物品之前，NI有权要求客户提供最终用途信息、最终用途证明或其他适用文件。请参考ni.com/legal/export-compliance，以了解更多信息，并查询相关的进口分类代码（如HTS）、出口分类代码（如ECCN）和其他进出口数据。

18. 准据法。 本合同以中华人民共和国法律为准据法，但应排除冲突法的适用。就因本合同引起的或与本合同相关的一切争议，均应在提交至上海国际经济贸易仲裁委员会通过仲裁解决。仲裁裁决应是最终的，对双方具有约束力。仲裁应当根据申请仲裁时上海国际经济贸易仲裁委员会届时有效的仲裁规则进行。仲裁地为上海。本合同不适用联合国国际货物买卖合同公约。

19. 更新。 NI 有权随时更新本合同，更新版本应自发布于 ni.com/pdf/legal/us/terms_and_conditions_HongKong.pdf 时起生效；然有效之条款，应以购买产品或服务时适用之本合同版本为准。

20. 合同的取消、中止或终止。 如果客户严重违反本合同项下义务（包括迟延支付或拒绝支付全部或部分合同款项），NI 有权拒绝、取消、中止、或终止订单及/或本合同而无需向客户承担责任。

21. 一般条款。 本合同及其中所纳入之条款，构成双方当事人间针对标的事项之完整合意，取代先前针对标的事项之书面或口头共识与协议。客户确认其已详阅本合同，了解条款内容，并同意受其拘束。未经NI书面同意，不得透过其他文件更改、补充或修订本合同。NI迟延或未能行使本合同所载权利，不得解释为抛弃该等权利或权力，亦不对该等权利造成影响。NI 抛弃本合同特定条款应以书面为之，且不得解释为抛弃或修改本合同其他条款，或持续抛弃任何条款。本合同所称之“包括”，应解释为“包括但不限于”。为避免疑义，在本合同中使用“购买”**软件**一词时，应解释为购买供客户使用相关软件的许可。若本合同有任何部分或条款经认定为违法、无执行力，或与具有执行力之相关法规抵触，本合同其他部分或条款之效力，概不受影响。当事人兹此针对本合同，明示抛弃“合同语意不明处，应以对委任律师草拟合同的一方较为不利之方式解释”原则。

NATIONAL INSTRUMENTS HONG KONG LIMITED ("NI") TERMS AND CONDITIONS OF SALE

The terms and conditions detailed herein ("Agreement") apply to your ("Customer") purchase from NI of NI hardware ("Hardware"), licenses to use NI software ("Software"), and Non-NI Branded Products (collectively the "Product(s)"), as well as training, services and support related to Hardware and Software ("Services"). THIS AGREEMENT SHALL APPLY UNLESS CUSTOMER AND NI HAVE ENTERED INTO A SEPARATE SIGNED AGREEMENT APPLICABLE TO THE PURCHASE OF THE PRODUCTS OR SERVICES. By placing an order with NI, Customer agrees to be bound by the terms of this Agreement. NI EXPRESSLY OBJECTS TO AND REJECTS ANY TERMS AND CONDITIONS IN CUSTOMER'S PURCHASE ORDER OR OTHER SIMILAR DOCUMENT. IF Customer DOES NOT AGREE WITH THESE TERMS, PROMPTLY NOTIFY NI AND RETURN THE PRODUCT UNUSED IN ITS ORIGINAL PACKAGING TO NI.

1. PRICES AND ORDERS. Prices are set forth in the quotation issued by NI to Customer ("Quote"). All Quotes expire thirty (30) days from date of issuance, unless otherwise stated in the Quote. All orders are subject to acceptance at the sole discretion of NI. Orders will be considered accepted once NI books an order and sends Customer a sales order acknowledgement. NI shall not be bound by changes to an order unless agreed by NI in writing. NI reserves the right to suspend or cancel any order if Customer has any outstanding payments due to NI or is not in good standing.

2. PAYMENT AND INVOICING. Payment is due at the time the order is placed, unless that Customer has been approved for a credit. Payment shall be in the currency listed on the NI invoice. For all sums not paid when due, NI reserves the right to impose interest daily at a monthly rate of one point five percent (1.5%) or the highest rate permissible by applicable law. If there are multiple units in an order, each unit will be invoiced when shipped. For nonstandard invoice processes requested by Customer, NI reserves the right to impose a five percent (5%) processing fee and any amounts NI is required to pay to government authorities on behalf of Customers (if required).

3. DELIVERY, TITLE and RISK OF LOSS. Title and risk of loss to Products (for Software, the media only) shall pass to Customer upon the occurrence of either of the following: (a) if Customer is, or agrees to be, the importer of record, upon the shipment from NI, NI's affiliated companies or a warehouse used by NI; or (b) if NI is, or agrees to be, the importer of record, upon the shipment of Products from a local warehouse used by NI, if applicable; provided however, NI retains a security interest and right of possession in the Products until Customer makes payment in full. For Products to be delivered within the same country as the NI entity accepting the order, NI will arrange the shipping; however, Customer is responsible for all shipping and handling fees set forth in the invoice, unless otherwise indicated by NI. Upon written confirmation from NI, Customer may choose to arrange for shipping with a carrier previously approved by NI, but in this case or if the order is placed with an NI entity outside of the country of the applicable shipping destination, Customer is responsible for all shipping and handling, including fees, customs, formalities, and clearance, except that NI is responsible for the Export Declaration. Customer shall provide NI with the necessary information for the Export Declaration, in a timely manner. Shipment dates provided by NI are estimates only, and NI shall have no liability for losses or claims resulting from late delivery of Products. Claims for shipment shortage shall be deemed waived unless presented to NI in writing within seven (7) days upon arrival of the Products to the designated place, or thirty (30) days upon shipment from NI if the designated place of receiving Products is not within the territory of Hong Kong. NI may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order.

4. TAXES. Unless otherwise agreed in the Quote, Prices exclude, and Customer is responsible for, any sales, excise, use, service, value added, stamp duty, local surcharge, business, and like taxes ("Taxes") and import/export duties arising from the purchase of the Products and/or Services. If Customer is exempt from any Taxes or qualifies for zero Taxes, it must provide NI with the appropriate tax documentation at the time the order is placed. If any withholding or deduction for or on account of tax is required by applicable local laws to be made from any payment by Customer to NI, Customer shall then (i) notify NI in writing as soon as possible; (ii) unless otherwise rejected by NI, pay or deduct any withholding tax on NI's behalf directly to the relevant local tax authority; and (iii) promptly give NI an original official receipt or other official original document evidencing payment of the said taxes and ensure the full and correct company name of NI to be indicated as the tax payer on such original official receipt or official original document. In the event that Customer is unable to provide NI with such documents evidencing withholding or similar tax payment has been made on behalf of NI, Customer shall pay to NI the full amounts of fees, expenses and others indicated on an invoice issued by NI.

5. SOFTWARE. Software is licensed pursuant to the software license agreements provided with the software or, in the absence of such license agreements, the National Instruments Software License Agreement available at ni.com/legal/license at the time of order. All software is licensed, not sold, and title to the software remains with the applicable licensor(s).

6. NON-NI BRANDED PRODUCTS. Non-NI Branded Products that NI resells may not be testable or repairable by NI, and it may be necessary for Customer to contact the manufacturer or the publisher for service or any warranty claims. NI does not warrant, has no obligation to support, and shall have no liability for Non-NI Branded Products. The Limited Warranty and NI Intellectual Property Liability sections of this Agreement do not apply to the sale and purchase of Non-NI Branded Products. "Non-NI Branded Product(s)" means any third-party hardware, software, or service that NI sells, but does not carry an NI mark.

7. SERVICES. In addition to the terms and conditions of this Agreement, Services provided by NI are also subject to any service agreements or statements of work agreed upon in writing by the parties or, as applicable, to the NI service terms and conditions, available at ni.com/legal/serviceterms/.

8. RETURN POLICY. Subject to the requirements of this Agreement, in case of special circumstances where Customer needs to return Products, Customer returns Products within thirty (30) days of the invoice date, provided however that the following conditions are met: (i) Products are new and unopened; (ii) Products are capable of being directly re-sold by NI and (iii) NI reserves the right to charge Customer a fifteen percent (15%) restocking fee for any Products returned to NI and Customer hereby authorizes NI to automatically deduct from any prepayment made by Customer to NI such fifteen percent (15%) restocking fee without any written notice to Customer. Nevertheless, no returns will be accepted after the thirty (30) day period has expired. A Return Material Authorization (RMA) number is required for Customer to return any Products. Acceptance of returns of customized Products and Non-NI Branded Products is in the sole discretion of NI.

9. LIMITED WARRANTY. Unless otherwise stipulated by both parties, for a period of one (1) year from the shipping date, NI warrants that its Hardware will be free of defects in materials and workmanship that cause the Hardware to fail to substantially conform to the then applicable NI published specifications and will provide Technical Support in accordance with the Support Services Terms and Conditions available at ni.com/legal/serviceterms/. Unless otherwise stipulated by both parties, for a period of ninety (90) days from the invoice date, NI warrants that the Software (i) will perform substantially in accordance with the applicable documentation provided with the Software and (ii) the Software media will, in the form received from NI, be free from defects in materials and workmanship. NI warrants that the Services will be performed in a good and workmanlike manner. In case the services are related to repair or calibration, Customer shall remove all data, non-NI software, passwords and non-NI equipment from the subject products, and remove the accessories of the product to be repaired, replaced or calibrated prior to sending them to NI. If NI receives notice of a defect or non-conformance during the applicable warranty period, NI will, in its discretion: (i) repair or replace the affected Hardware or Software, (ii) re-perform the affected Services, or (iii) refund the fees paid for the affected Hardware, Software or Services. Repaired or replaced Hardware or Software will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. If NI elects to repair or replace Hardware, NI may use new or refurbished parts or products that are equivalent to new in performance and reliability and are at least functionally equivalent to the original part or Hardware. Customer must obtain an RMA number from NI before returning any Hardware under warranty to NI. Customer shall be responsible for the transportation of the affected Hardware from/to Customer to/from NI Hong Kong office, the customs clearance in relation to the import & export of the affected Hardware, and all costs and expenses associated therewith. If, however, NI concludes, after examining and testing returned Hardware, that it is not covered by the Limited Warranty, NI will notify Customer and return the Hardware at Customer's expense. NI reserves the right to charge a fee for examining and testing Hardware not covered by the Limited Warranty. This Limited Warranty does not apply if the defect of the Hardware or Software resulted from improper or inadequate maintenance, installation, repair, or calibration (performed by a party other than NI); unauthorized modification; improper environment; use of an improper hardware or software key; improper use or operation outside of the specifications for the Hardware or Software; improper voltages; accident, abuse, or neglect; or a hazard such as lightning, flood, or other act of nature. THE REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND THE CUSTOMER'S SOLE REMEDIES, AND SHALL APPLY EVEN IF SUCH REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

10. NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PRODUCTS AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND NI DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ALL PRODUCTS AND SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. NI DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE PRODUCTS OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NI DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

11. WARNING AND CUSTOMER INDEMNITY. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT PRODUCTS AND SERVICES ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN LIFE OR

SAFETY CRITICAL SYSTEMS, HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION; AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE PRODUCT OR SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR ENVIRONMENTAL HARM (COLLECTIVELY, "HIGH-RISK USES"). FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. NI EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE

PRODUCTS OR SERVICES FOR HIGH-RISK USES. CUSTOMER SHALL DEFEND, INDEMNIFY, RELEASE, AND HOLD NI HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING, LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S USE OF THE PRODUCTS AND SERVICES FOR ANY HIGH-RISK USES, INCLUDING ARISING FROM CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI.

12. SYSTEM AND APPLICATION RESPONSIBILITY AND ADDITIONAL INDEMNITY. CUSTOMER ACKNOWLEDGES THAT IT IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY AND RELIABILITY OF THE PRODUCTS OR SERVICES WHENEVER THE PRODUCTS OR SERVICES ARE INCORPORATED IN CUSTOMER'S SYSTEM OR APPLICATION, INCLUDING THE APPROPRIATE DESIGN, PROCESS, AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION. FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES WHEN PRODUCTS AND SERVICES ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. CUSTOMER SHALL DEFEND, INDEMNIFY, RELEASE AND HOLD NI HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S INCORPORATION OF THE PRODUCTS OR SERVICES INTO CUSTOMER'S SYSTEM OR APPLICATION, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI.

13. INTELLECTUAL PROPERTY LIABILITY. NI agrees to defend any third-party claim that alleges the Hardware, Software or Services infringe any patent, copyright, or trademark of U.S. and/or People's Republic of China ("Claim"), provided that, Customer notifies NI immediately upon learning of any Claim, or any allegation that the grounds for a Claim may exist, grants NI sole control over the defense and settlement of the Claim, and cooperates fully with NI in preparing a defense for any Claim. NI agrees to pay any final judgment or settlement resulting from any Claim, provided that the settlement is entered into in accordance with this Section. NI shall not be liable for a settlement made without its prior written consent. Notwithstanding the foregoing, NI shall have no obligation under this Section for any claim relating to or arising from (a) Customer's modifications of Hardware, Software or Services; (b) failure to use Hardware, Software or Services in accordance with the applicable documentation provided by NI; (c) the combination, operation, or use of Hardware, Software or Services with any hardware, software or service not provided by NI; (d) the compliance of NI with Customer's specifications or directions, including the incorporation of any software or other materials provided by or requested by Customer; or (e) Non-NI Branded Products.

The foregoing states the Customer's sole remedy for, and the entire liability and responsibility of NI for, infringement of any patent, trademark, or copyright or other intellectual property rights. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.

In any event, if NI believes in its reasonable opinion the Hardware, Software, or Services may be alleged to be infringing, for the purposes of mitigating any potential damages, NI may, at its sole discretion, (i) procure for the Customer the right to continue to use the Hardware, Software, or Services; (ii) replace them with comparable Hardware, Software or Services that are free of such infringement; or (iii) refund the fees paid by Customer, and in the event of either (ii) or (iii) Customer shall promptly return the Hardware to NI and/or terminate the use of the Software or Services.

14. PROPRIETARY RIGHTS. NI reserves all right, title, and interest in any intellectual property rights contained or embodied in Products, or resulting from the Services, including any custom developments created or provided by NI under this Agreement. Nothing in this Agreement will be deemed to grant to Customer any ownership rights in or license rights to such intellectual property.

15. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NI SHALL NOT BE LIABLE FOR (I) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES; OR (II) ANY

DAMAGES ARISING OUT OF OR IN CONNECTION WITH: (A) PRODUCTS OR SERVICES NOT BEING AVAILABLE FOR USE, INCLUDING ANY COSTS OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES; (B) LOSS OF, CORRUPTION OF, OR LOSS OF USE OF ANY PRODUCTS, HARDWARE, SOFTWARE OR DATA; (C) LOSS OF REVENUE, PROFIT, OR BUSINESS OPPORTUNITY; (D) BUSINESS INTERRUPTION OR DOWNTIME; OR (E) INABILITY TO ACHIEVE A PARTICULAR RESULT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF NI ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES, SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT OR SERVICE GIVING RISE TO SUCH CLAIM. THIS SECTION: (1) APPLIES TO NI AND ITS LICENSORS, DISTRIBUTORS, AND SUPPLIERS (INCLUDING ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS), (2) REFLECTS AN ALLOCATION OF RISK BETWEEN NI AND CUSTOMER IN VIEW OF THE PURCHASE PRICE OF THE PRODUCTS AND SERVICES, (3) APPLIES EVEN IF NI HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI, AND (4) REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE.

16. FORCE MAJEURE. NI shall not be responsible and/or liable for any delay and/or failure to perform due to any cause beyond its reasonable control, including acts of God or force of nature such as landslide, flood or fire, acts of governments such as declaration of state of emergency, act of terrorism, strike or riots (which substantially affect the execution of this Agreement and/or delivery of the Products or Services), interruptions of telecommunications, power and/or transportations; failure of contractors and/or suppliers appointed by the Customer or inability to obtain necessary labor and/or materials (as the case maybe) (the "Force Majeure Event"). In the event a Force Majeure Event occurs, neither the failure nor omission of NI to perform its obligations under this Agreement shall be treated as failure or omission to comply with this Agreement and NI reserves the right to cancel the applicable order without any liability to the Customer.

17. EXPORT AND SANCTIONS LAWS AND COMPLIANCE. Customer shall not export, re-export, or transfer, directly or indirectly, any Product (for purposes of this Section, Product shall include the Software and technology incorporated in or supplied with a Product and Services or technical data received from NI) to any country or user to which such export, re-export or transfer is restricted by United States or other country applicable law or regulation without first obtaining any required governmental license, authorization, certification, or approval. In addition, Products distributed from NI's distribution centers in Europe and Malaysia may also be subject to additional licensing requirements under respective and applicable laws and regulations. Customer represents and warrants it is not ineligible or otherwise restricted by United States or other country applicable law to receive Product. NI may, in its sole discretion, suspend performance, refuse and/or cancel all or part of an order, or refuse to perform any post-sale Services with respect to the Product (including, but not limited to, any calibration, repair or replacement under warranty) if at any time, applicable export controls or trade sanctions laws may be violated. The issuance of a Quote, a sales order acknowledgment, or a RMA by NI does not constitute export or in-country transfer authorization. NI may, in its sole discretion, require Customer to provide, end use information, an end use certificate or other applicable documentation prior to NI's delivery of any Product or item to Customer. See ni.com/legal/export-compliance for more information and to request relevant import classification codes (e.g., HTS), export classification codes (e.g., ECCN), and other import/export data.

18. GOVERNING LAW. This Agreement shall be governed by the laws of the People's Republic of China, without regard to principles of conflicts of laws. The parties submit to the personal jurisdiction of Shanghai International Economic and Trade Arbitration Commission. The arbitration decision is final and shall be binding on both parties. The arbitration shall be carried out in Shanghai and according to valid arbitration rules of Shanghai International Economic and Trade Arbitration Commission at the time of arbitration. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Products will not apply to this Agreement.

19. UPDATES. NI reserves the right to update this Agreement at any time, effective upon posting an updated version at ni.com/pdf/legal/us/terms_and_conditions_HongKong_EN.pdf; however, the terms and conditions in effect at the time of purchase shall apply to that purchase of Products or Services.

20. CANCELLATION, SUSPENSION, ETC. NI has the right to cancel, terminate, suspend or refuse to perform any delivery, order, and/or the Agreement without any liability to Customer if Customer breaches any material obligation of the Agreement (including in the case of any delay/failure in payment).

21. GENERAL TERMS. This Agreement, and any terms incorporated herein by reference, constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether written or oral, with respect to that subject matter. Customer acknowledges reading this Agreement, understands these terms, and agrees to be bound by them. This Agreement may not be altered,

supplemented, or amended by the use of any other document unless otherwise agreed in writing by NI. No delay or failure by NI to exercise any right it has under this Agreement shall impair or be construed as a waiver of such right. A waiver of any provision of this Agreement by NI must be in writing and shall not be construed as a waiver or modification of any other term hereof, or as a continuing waiver of any provision. The term 'including' as used in the Agreement should be construed as "including without limitation". For the avoidance of doubt, whenever the term "purchase" is used herein with respect to Software, it shall mean the purchase of a license for Customer to use the applicable Software. If any part, term, or provision of this Agreement is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of this Agreement shall not be affected. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the parties with respect to this Agreement.