



附件 1, 采口条款及条件 Annex 1, Terms and Conditions of Purchasing

1. **接受订单; 同意。** 采购订单, 包括本采购条款与条件 (“条款”) 是安马里罗齿轮(江苏)有限公司 (“买方”) 发出的购买产品 (“产品”) 及/或服务 (“服务”) 的要约, 具体如订单接受方 (“卖方”) 所收到的采购订单中所描述。本条款是规定买方购买产品与服务的唯一的协议条款与条件, 并且取代所有其他条款与条件, 无论是口头的或者书面的, 也取代双方之间所建议的额外条款或者不同条款的所有其他沟通。本条款代表双方之间最终的且完整的理解, 并且只能由双方以书面协议的形式进行修订或者取消。本条款明确限制对前述规定的同意。由买方提议的任何额外条款或者不同条款的建议, 或者买方企图对本条款和条件的任何规定进行任何程度的修改, 在此一律视为重大变更, 且一律拒绝接受。买方所提交的任何文件或表格的任何条款, 均不得具有改变或者增补本条款和条件所包含的规定的效力。除非本条款另有说明, 卖方对买方订单的确认, 产品的装运或者开始提供任何服务或开始履约, 应当构成对本条款与条件的毫无疑问的接受。
2. **交付。** 时间对于产品的交付和服务的履行是至关重要的。如果产品的交付和/或服务的履行在规定的开始日期内未开始, 或者在规定的时间内尚未完成, 买方除了其享有的其他权利或补救措施之外, 还有权就任何尚未装运的产品或者未提供的服务终止既有的订单而无须承担任何责任, 并且购买替代的产品或者服务并且向卖方就相应产生的额外的收取费用。为了遵守文件正面所指定的送达日期, 如果卖方必须以一种比指定的运输方式更为昂贵的方式运输, 则卖方应当承担该等更贵的运输成本。
3. **遗失风险。** 卖方应当并且为买方所购买的产品任何遗失或损失负责, 无论遗失或者损害原因为何, 直至产品送达买方指定的交付地点。
4. **质保。** 卖方保证本条款项下所购买的产品或服务: (1) 完全符合买方提供或指定的规格、图纸、描述和/或样品, (2) 在材料、工艺和设计上不存在缺陷, (3) 具有良好的商品质量并且符合适当和充分的用途, (4) 不存在任何留置权、索赔、担保权利或者其他权利负担, (5) 不存在侵权或盗用任何第三方知识产权的索赔; 并且 (6) 是依据所有适用的国家和地方法律法规的要求和标准生产或提供的。即使在检查、测试、交付、承兑或付款后, 若检验失效、测试或发现任何缺陷或其他不合格后, 所有质保仍旧有效, 并且卖方应当承担在本条款项下的所有义务和买方遭损害的任何权利, 同时开展补救措施。卖方的任何试图拒绝、排除、限制或修改任何质保或者卖方的直接的产品赔偿, 均不得有任何效力。
5. **验货。** 所有产品在任何合理的时间和地点, 包括在生产过程中, 均应当受到买方和/或买方的授权代表的验货。在未经买方在买方的经营场所验货前, 任何产品均不得被视为已接受。买方保留拒绝或撤销接受不符合买方订单要求的产品的权利, 即使存在任何付款或任何在前的检验或测试。
6. **赔偿。** 卖方不会向买方提起诉讼, 要求损害赔偿、损失、成本、费用、索赔、债务、判决、和解、罚款、和解或处罚 (包括但不限于律师费和诉讼成本), 包括因下列各项而产生直接的、间接的、附带的、连带的或者其他损失 (以下合称为 “索赔”): (1) 由产品或服务产生、导致或与之相关的人身伤害、财产损失或其他损失; (2) 卖方的实际或所谓的疏忽、行为或不作为或不遵守买方和卖方之间的所有条款或任何其他协议, (3) 任何召回; (4) 实际或指称的侵犯或盗用任何知识产权或所有权; 以及 (5) 卖方违反本条款或本协议所明文表达的任何保证或法律规定的任何保证。未经买方事先书面的同意, 卖方不得订立任何结算协议。该等赔偿可以附加于卖方的保证义务之上。
7. **知识产权。** 卖方保证产品的制造、销售和使用不会侵犯任何专利、版权、商标、商业秘密或其他专有权。如果所有或任何部分的产品被认为构成对一个专利的侵权并且/或者其使用因任何原因而被禁止, 卖方应自行承担费用, 或者及时购买享有免费特许使用权的可以继续使用的产品, 或者用令买方满意的、不存在侵权问题的质量和性能相同的产品替代该等产品。
8. **保险。**
 1. 本协议期间, 卖方应当自行承担成本, 从保险商处获得并且始终维持下列保险: 财产保险;
 2. 卖方应在取消或减少所需保险范围的有效日期前 30 天内, 向买方提供书面通知, 包括影响任何本政策就本条款的合规性的修改。
 3. 在提出任何时间之前, 卖方应向买方提供保险凭证, 连同附加被保险人副本, 代位权和主要/非补充的代言和其他文件放弃可能需要的由买方所要求的保险证明。卖方按本条款所述交付产品即构成了一个具体的陈述, 即所要求的所有保险范围均已到位, 并在供货期内有效。卖方明确承认并承认其对保险条款的遵守是买方决定签署订单的实质性原因。卖方明确承认并承认, 在本协议中所要求的保险不限制卖方在发生损失时的责任。
9. **变更。** 买方有权随时更改图纸、规格、材料、包装、时间和交货地点以及运输方式。如果这种变化导致费用或生产所需时间的增加或减少, 则双方应商定进行公平调整。卖方同意接受本章节所规定的任何变更。
10. **抵消。** 买方有权用任何应当根据本协议向卖方支付的费用, 抵消因本次交易或其他交易而产生的卖方应付给买方的任何金额。
11. **召回。** 如果产品存在任何缺陷、不合格或不足以至于买方必须自行全权决定发起一场行动、召回或类似的安排 (“召回”)、修理, 更换或修复任何产品或者已经安装了产品的买方产品, 卖方应对买方及其客户承担其产品维修或替代等直接费用。
12. **不可抗力。** 如果双方因为不可抗力的原因, 而无法接受/发运产品或履行服务, 双方不应就该等无法收/交货或提供服务承担责任。
13. **因故终止。** 发生下列情形, 买方有权随时终止本协议的全部或者部分: (1) 卖方未能在买方指定的时间或任何以书面形式传达的延长期内交付产品或履行其服务; (2) 卖方或卖方提交合法的破产、清算或重组申请; (3) 卖方为利益或债权人签署了一份转让协议; (4) 买方或其大部分资产被指定了接收人; 或 (5) 卖方基于合理的理由怀疑买方的履约能力, 并且买方无法在收到卖方的书面要求的十天或者卖方指定的其他期限内向卖方提供充分的履约保证。卖方在本章节项下的终止的权利不是唯一的补救办法。卖方有权获得法律规定或公平的所有其他权利和补救措施。本合同如终止, 任何一方自该等终止之日所累积的权利或义务均不受影响。
14. **为买家之方便而终止。** 买方可随时书面通知卖方, 在任何方便的时候终止订单。对于为买方订单所特别准备的产品, 所有已完成的工作或原材料的全部费用都包含在 (由买方支付给卖方的) 取消费用中, 应由卖方书面确认并按照买方书面指示进行处置。
15. **模具。** 买方提供或特别支付的任何工具都应是买方的独有财产。卖方应负责其拥有的模具的维修, 并应立即将工具归还买方。卖方放弃任何留置权或其他保留模具的权利, 并且承认其根据要求归还模具的义务是无条件的。
16. **审计。** 买方及其指定人有权审核和检查卖方以及卖方的供应商, 从而确保他们在订单和本条款项下的合规。
17. **通知。** 任何及所有必须或者应该发出的与本订单有关的法律通知或其他法务沟通, 应当以书面形式提供。如通过专人寄送, 一经送达即生效; 如果通过邮资预付的挂号信邮寄, 则必须要求寄送回执, 并且视为在寄出后的第三天送达; 如果通过全国认可的快递服务寄送, 则视为在交付快递后的一个工作日送达, 但该等快递服务应保留收件人的时间、地点和签收信息。
18. **买方信息。** 买方对其提供给卖方的信息并不作任何保证。排除任何关于买方提供的信息的中存在的任何暗示保证, 包括任何关于适销性的保证和符合特定用途的保证。卖方承认并同意: 买方收到的任何销售预测、数量购买估计或类似的预测都不是买方的购买承诺, 而是仅代表对未来的计划。买方没有义务购买并未包含在买方发布的订单中的卖方的成品或未完成的原材料, 或以其他方式补偿卖方。
19. **弃权。** 买方的所有弃权均必须以书面形式作出。买方在任何时候未能要求卖方履行本合同项下的任何义务, 均不影响买方履行该义务的权利。在行使本协议中的任何权利、权力或补救措施过程中的任何延误或不采取行动, 不得损害此种权利、权力或补救或被视为对任何违约的弃权或默许。
20. **其它。** 未经买方事先书面同意, 卖方不得转让买方的订单或到期的款项。本条款应根据中华人民共和国法律解释, 而不考虑任何有关冲突法的规则。某些属性的条款应当在本协议终止或期满后仍然有效。本条款中所包含的标题并不属于本条款和条件组成部分, 而仅供各方便阅读之用。


附件 1, 采□条款及条件 Annex 1, Terms and Conditions of Purchasing

1. **ACCEPTANCE; AGREEMENT.** The purchase order, including these Terms and Conditions of Purchase (these "Terms") is an offer by Amarillo Gear (Jiangsu) Co., Ltd. ("Buyer") to purchase the goods ("Goods") and/or services ("Services") described in the purchase order from the person or entity to whom the purchase order is addressed ("Seller"). These Terms are the only terms and conditions which govern the purchase of Goods and Services by Buyer and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. These Terms expressly limit acceptance to these provisions. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of these Terms is hereby deemed material and objected to and rejected. No terms of any document or form submitted by Seller shall be effective to alter or add to the provisions contained in these Terms. Unless otherwise stated herein, Seller's acknowledgment of Buyer's order, shipment of Goods or commencement of any work or performance of any Services shall constitute acceptance by Seller of these Terms.
2. **DELIVERY.** Time is of the essence with respect to the delivery of Goods and the performance of Services. If the delivery of the Goods and/or the performance of the Services is not commenced by the specified starting date or completed within the specified time, Buyer may, in addition to any other rights or remedies it may have, terminate the order, without liability, for any Goods not yet shipped or Services not yet provided and purchase substitute goods or services and charge Seller for any extra costs. If, in order to comply with delivery date specified on the front hereof, Seller must ship by a more expensive way than specified herein, Seller shall pay any increased costs.
3. **RISK OF LOSS.** Seller shall assume and pay for any loss or damage to the Goods ordered by Buyer from any cause whatsoever until the Goods are delivered to Buyer at the Seller's designated delivery location.
4. **WARRANTIES.** Seller warrants that the Goods or Services purchased hereunder will be (a) in full conformity with the specifications, drawings, descriptions and/or samples furnished or specified by Buyer, (b) free from defects in material, workmanship and design, (c) of good merchantable quality and fit and sufficient for the purposes intended, (d) free and clear of all liens, Claims, security interests or other encumbrances, (e) free of claims of infringement or misappropriation of any third party's intellectual property rights; and (f) produced or provided in compliance with and meet all requirements and standards of all applicable federal, state, and local laws and regulations. All warranties shall survive any inspection, testing, delivery, acceptance or payment or failure to inspect, test or discover any defect or other nonconformance shall relieve Seller of any of its obligations under these Terms or impair any rights or remedies of Buyer. **NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT DAMAGES SHALL BE OF ANY FORCE OR EFFECT.**
5. **INSPECTION.** All Goods are subject to inspection by authorized representative(s) of Buyer and/or Buyer's customers at all reasonable times and places, including during production. No Goods shall be considered accepted prior to inspection by Buyer at Buyer's place of business. Buyer reserves the right to reject or to revoke acceptance of Goods which fail to meet any requirement of Buyer's order, notwithstanding any payment or any prior inspection or test.
6. **INDEMNIFICATION.** Seller, shall indemnify, hold harmless and defend Buyer, its affiliates and their respective successors and assigns, against all lawsuits, damages, losses, costs, expenses, claims, liabilities, judgments, settlements, fines, settlements or penalties, including all attorney's fees and litigation costs, whether direct, indirect, incidental, consequential, or otherwise (collectively, "Claims") for: (i) personal injury, property damage, or other damage, arising out of, relating to, or in connection with, the Goods or Services; (ii) Seller's actual or alleged negligence, act or omission or failure to comply with all these Terms or any other agreement between Buyer and Seller, (iii) any Recall; (iv) actual or alleged infringement or misappropriation of any intellectual property or proprietary right; and (v) Seller's breach of these Terms or any of the warranties expressed herein or any warranties implied by law. Seller shall not enter into any settlement without Buyer's prior written consent. This indemnification is in addition to the warranty obligations of Seller.
7. **INTELLECTUAL PROPERTY.** Seller warrants that the manufacture, sale and use of the Goods will not infringe any patent, copyright, trademark, trade secret or other proprietary right. Seller shall indemnify Buyer in accordance with Section 6. If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing goods of equal quality and performance.
8. **INSURANCE.**
 - a. Seller shall obtain and at all times during which this Agreement is in effect maintain at its cost the following insurance with insurers: Property Insurance
 - b. Seller shall provide written notice to Buyer no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage, including any modification affecting any policy's compliance with these Terms.
 - c. Prior hereto and at any time upon request, Seller shall provide certificates of insurance to Buyer along with copies of the additional insured, waiver of subrogation and primary / noncontributory endorsements and other documentation as may be required by Buyer demonstrate the insurance coverages required herein. Seller's delivery of products as described in these Terms constitutes a specific representation that all insurance coverages required herein are in place and effective for the period of supply. Seller specifically recognizes and acknowledges that its compliance with the insurance provisions described herein is material to Buyer's decision to enter into an order. Seller specifically recognizes and acknowledges that the insurance required in this Agreement does not limit Seller's responsibility in the event of a loss.
9. **CHANGES.** Buyer shall have the right at any time to make changes in drawings, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, a mutually agreed upon equitable adjustment shall be made therein. Seller agrees to accept any such changes subject to this section.
10. **SET OFFS.** Buyer has the right to set off against any amounts due Seller hereunder from any amounts owed to Buyer by Seller arising from this or any other transaction.
11. **RECALL.** In the event that Buyer determines, in Buyer's sole discretion, that any defect, nonconformance or deficiency in any of the Goods requires a field campaign, recall or similar action ("Recall"), to repair, replace or remediate any Goods or any of Buyer's products in which Goods are incorporated, Seller shall be liable to Buyer and its customers for all direct cost regarding to repair or replace their products.
12. **FORCE MAJEURE.** Both sides shall not be liable for failure to take delivery of the Goods or to allow performance of the Services if such failure or inability is due to causes beyond both sides' reasonable control.
13. **TERMINATION FOR CAUSE.** Buyer may terminate its order without liability, in whole or in part, at any time, if (i) Seller fails to deliver the Goods or to perform the Services by the specified time or any extension thereof authorized by Buyer in writing; (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller; (iii) Seller executes an assignment for benefit or creditors; (iv) a receiver is appointed for Seller or any substantial part of its assets; or (v) Buyer shall have any reasonable ground for insecurity with respect to Seller's ability to perform and Seller in unable to provide Buyer with adequate assurance of its ability to perform within ten days after written request therefore by Buyer. Buyer's right under this section to terminate its order is not an exclusive remedy. Buyer shall be entitled to all other rights and remedies it may either at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.
14. **TERMINATION FOR CONVENIENCE OF BUYER.** Buyer may terminate its order at its convenience at any time by written notice to Seller. For specially prepared products which are unique to Buyer's order, any partially completed work or raw materials whose full costs are included in the cancellation charges shall be identified in writing and held by Seller for disposition in accordance with Buyer's written instructions.
15. **TOOLING.** Any tooling provided by or specifically paid for by Buyer shall be and remain the sole property of Buyer. Seller shall be responsible for maintenance of the tooling while in its possession and shall return tooling to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain tooling and acknowledges that its obligation to return tooling upon demand is unconditional.



16. **AUDIT.** Buyer and its designees shall have the right to audit and inspect Seller and Seller's SUPPLIERS to determine Seller's and its SUPPLIER's compliance with the order and these Terms.
17. **NOTICES.** Any and all notices or other communications required or desired to be given in connection with this order will be given in writing and will be deemed effective upon personal delivery, on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or one business day after deposit if sent by a nationally recognized courier service which maintains evidence of the time, place and receipt of delivery, and in each case if addressed as set forth in the order (or such other addresses a party may designate in writing from time to time)
18. **BUYER INFORMATION.** BUYER MAKES NO WARRANTY WITH RESPECT TO INFORMATION PROVIDED BY BUYER TO SELLER. ANY IMPLIED WARRANTIES THAT MAY EXIST WITH RESPECT TO ANY INFORMATION PROVIDED BY BUYER, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED. Seller acknowledges and agrees that any sales forecasts, quantity purchase estimates or similar projections received from Buyer are not purchase commitments of Buyer, but rather represent estimates for planning purposes only. Buyer shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, or unfinished raw materials, not covered by a purchase order issued by Buyer.
19. **WAIVER.** All waivers by Buyer shall be in writing. Failure of Buyer at any time to require Seller's performance of any obligation hereunder shall not affect Buyer's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.
20. **MISCELLANEOUS.** Seller shall not assign Buyer's order or any monies due or to become due from Buyer hereunder without Buyer's prior written consent. These Terms shall be construed in accordance with the laws of People Republic of China, without regard to any rules on conflicts of laws. Provisions which by their nature should survive will remain in force after any termination or expiration. The section headings contained herein are not part of these Terms and are included solely for the convenience of the parties.