

## General Terms and Conditions of Purchase of BYK China (Feb 2016) 毕克中国关于产品采购的一般条款（2016年2月版本）

### 1. Field of application, Placing of Orders, Differing Conditions/适用范围、订单下达及条款差异时的处理

1.1 Our Conditions of Purchase apply to all contracts between BYK China (hereinafter referred to as BYK) and the Vendors. These terms and conditions also apply to all future orders. This also applies if, in future orders issued by our suppliers (hereinafter also referred to as "Vendors"), we do not explicitly draw attention to the applicability of our General Conditions of Purchase. Our General Conditions of Purchase also apply alongside any special terms that may in addition be agreed upon individually. Any agreements or ancillary agreements that deviate from the above must be made in writing. This also applies to any amendments of this written form clause.

采购一般条款适用于所有毕克中国(下文简称BYK)与供应商签署的合同,也适用于此后基于合同而产生的订单。如果此后涉及由我们的供应商(下文均简称供应商)发出的订单,我们不会再次明确提醒关于本一般条款的适用性。本一般条款也可以与双方个别商定的任何特别条款同时应用。任何背离以上约定的协议或从属协议必须以书面形式做出。本一般条款同样适用于这种书面形式条款的修正。

1.2 Only those orders that have been placed by us in writing (including fax or email orders) are binding. This also applies to subsequent ancillary agreements, additions and/or amendments. The Vendor shall confirm each order in writing.

本一般条款仅与由我方书面下达的订单(包括传真与邮件订单)捆绑生效,并适用于后续的从属协议、附件和/或修正。供应商须以书面形式确认每个订单。

1.3 Our Conditions of Purchase apply exclusively; any Vendor's sale and delivery terms and conditions worded differently shall not apply even if we do not expressly object to them. Differing conditions shall only apply if we expressly approve such conditions in writing. Our Conditions of Purchase also apply if we unconditionally accept a delivery supplied / service provided by the Vendor although we know that the Vendor's sale and delivery terms and conditions conflict with or deviate from our own Conditions of Purchase. Neither a failure to object thereto nor payment or acceptance of the goods shall be a recognition of any third-party general terms and conditions.

本一般条款的适用具有排他性,供应商的任何销售和交付条款与条件,凡措辞不同于本一般条款的将无法适用,即使我们并未明确地表示反对这些条款。除非我们书面明确表示同意,有差异的条款才可适用。当我们无条件地接受了供应商交付的货物/提供的服务,尽管我们知道供应商的销售和交付条件与条款同本一般条款冲突或背离,哪怕是付款行为或接受货物被视为接受第三方的条件与条款,我们的采购一般条款仍将适用。

1.4 In the event that the Vendor makes a delivery in excess of the order quantity placed the contract will not be deemed to have been modified, nor will any additional payments be made thereon. The Vendor may require the return of excess deliveries at its own expense at any time. At our request, the Vendor is obliged to immediately take back any excess deliveries; in this case, the Vendor shall compensate us for the cost of warehousing and maintaining incurred between the time of receipt of our request for return of the excess deliveries and the respective collection. If a delivery/service is a commercial transaction for the Vendor and if the Vendor defaults on its obligation to take back the excess delivery within 10 calendar days, we are entitled, at our discretion, to utilize or sell the excess delivery. For bulk materials, +0.3% tolerance is acceptable.

万一供应商交付的货物数量超过订单数量,将不会被视作订单修改,也不会有额外的货款支付给供应商。供应商可以要求在任何时间返还多交付的货物,但一切费用由供应商自己承担。我们可以要求供应商立刻收回多交付的货物,在此情形下,供应商应当补偿我们在要求发出之日至多交付的货物被收回之日期间发生的仓储费和保管费。如果供应商的交付物/提供的服务是一种商业行为,且供应商未能在10个日历天内履行其收回超额交付的义务,我们有权根据自己的判定,使用或处理这部分交付物。对于散装物料,+0.3%的误差是可以接受的。

### 2. Breach of Obligations/违约责任

The statutory claims regarding breach of obligations shall apply to the extent that nothing to the contrary or nothing supplementary is provided for in the following:

如无与之相反或无下列补充定义,法律规定的违约责任适用:

#### 2.1 Delays in delivery/延迟交付

2.1.1 The agreed delivery dates and the agreed place of performance are binding. If not otherwise explicitly agreed in writing, delivery periods shall commence on the date of the order.

约定的交付日期和约定的交付地址是绑定的。如无明确的书面另行约定,交付周期自订单下达之日起算。

2.1.2 To allow us to make and facilitate necessary organizational preparations (e.g. creation of storage capacities), the Vendor is not entitled to deviate, without our prior written consent, from the delivery/performance dates or other terms specified in the order. This also applies to early deliveries. The criterion for compliance with the delivery/performance date is the proper transfer of the goods to the right delivery address specified in the contract or purchase order, received and signed by right receiver.

为保证我们能够做好必要的准备工作(如:准备库存空间),在未预先得到我们书面同意的情况下,供应商不得背离订单上所规定的交付/执行日期和其他条款,提前交付同样也不允许。是否符合交付/执行日期的标准是货物被正确地送达合同或采购订单上指定的交货地址并由正确的接收人签收。

2.1.3 Vendor shall inform us without delay including notification of reasons, if a (partial) delivery will or may be delayed or will or may not be fulfilled.

如果一项交付(或部分交付)可能会延迟或无法满足,供应商应立刻通知我们并告知原因。

2.1.4 If Vendor fails to make the delivery in a timely manner we are entitled to assert any statutory claims. In particular, we are entitled, upon expiry of a reasonable grace period, to demand compensation instead of demanding performance of the contract and to withdraw – even only with regard to the part that has not been fulfilled – from the contract. If we demand compensation the Vendor is entitled to prove that the Vendor did not culpably breach any duties. The previously mentioned grace period is not necessary if we agreed on a fixed date.

如果供应商未能按期完成交付,我们有权提出惩罚性要求。特别是一个合理的宽限期也已届满,我们有权要求赔偿甚至撤销合同未履行部分,而不是要求继续履行合同。如果我们要求赔偿,供应商有权证明其并非主观恶意违背责任。如果我们约定的交付日期是固定日期,则前述的宽限期不存在。

#### 2.2 Defective Deliveries/Services/交付或服务缺陷

2.2.1 The Vendor promises to furnish its deliveries/services in accordance with the agreed specifications, the current standard business practices, and to carry out a thorough function and quality check prior to delivery. The Vendor furthermore ensures that its deliveries/services are in compliance with all applicable laws and any regulations of authorities etc of the People's Republic of China. If the Vendor delivers machinery and equipment, the Vendor in addition ensures that they comply with the regulations on the safety of equipments and products and regulations on Compulsory Certification.

供应商承诺将严格按照约定好的规格、现行的标准商业惯例完成交付/提供服务,并在交付前进行全面的性能和质量检验。而且,供应商保证其交付/服务符合中华人民共和国现行法律、法规和行政规定等。如果供应商交付的是机器、设备,还应保证其符合关于机器设备类产品安全性和强制性认证的有关法规。

2.2.2 We inspect the delivered goods at the place of destination within our ordinary course of business. Our receiving inspection is restricted to obvious defects. Notices of defect are to be made within 8 working days of the delivery date. Payment of the goods is not to be construed as a waiver of our right to make a complaint. Goods which are the subject of a complaint are only accepted by us on the account of and at the risk of the Vendor; we are entitled to store such goods separately at the Vendor's costs.

作为常规商业交易过程,我们在交货地点进行交付产品的的检验,但收货检验仅限于明显的缺陷。缺陷通知书将在约定交货日之后的8个工作日内发出。支付货款不能被理解为我们放弃提出投诉的权利。针对正处于投诉中的货物,只有在供应商承认对其的所有权和承担风险的前提下,我们才会暂时接受它,并在供应商承担费用的情况下代为存储。

2.2.3 If a good is defective, the Vendor shall (also) be liable for any losses that we incur in the ordinary course of business prior to the processing of the goods due to the fact that a defect has not been detected; the Vendor shall immediately hold us harmless from any such third-party claims for damages.

如果货物存在缺陷,供应商有义务承担我们在正常业务范围内、在货物缺陷未被发现之前加工货物所造成的损失。供应商应保证我们免受任何来自第三方的损失赔偿要求。

2.2.4 The Vendor shall be especially liable for any infringements of intellectual property rights which occur although we used the supplied goods as agreed upon.

供应商尤其应承担任何因我们使用了供应商提供的货物而造成侵犯知识产权的责任。

### 3. Damages and Indemnification for Third-Party Claims/第三方主张的损害和赔偿

3.1 We rule out accepting liability for breaches of our obligations due to negligence to the extent the breaches in question do not concern material contractual obligations, guarantees or losses that result from injury to life and limb or from injuries detrimental to health and to the extent claims under the Product Liability Act or under any other mandatory legislation are concerned. The same applies to violations of obligations on the part of our employees and statutory representatives. "Material contractual obligations" are understood to be obligations that protect any Vendor's material contractual legal situations which are especially protected pursuant to the spirit and the purpose of the contract. "Material" are furthermore any of our obligations which are essential for the fulfillment of the contract and the fulfillment of which the Vendor may rely upon. If we are liable for damages our liability is limited to such damages which are typical and foreseeable. We exclude our liability for any indirect damages to the extent we did not breach any material contractual obligations and to the extent we, our executive management or our representatives did not act intentionally to cause a breach.

我们排除接受因为疏忽与实质性合同义务、保证或由生命、肢体和健康的伤害而造成的损失无关的、根据产品责任法或其他有关强制性法律到了需要进行索赔的违约责任。上述情况也适用于我们的员工与法定代表违反责任的情形。实质性的合同义务被理解为保护供应商实质性合同法律地位的义务,特别是依照合同的精神和目的需保护的。此外"实质性"是任何我们所必需的、供应商所依赖其来履行合同的义务。如果我们承担损害赔偿赔偿责任,我们的责任仅限于典型的、可预见的损失。我们排除非因我们的经营管理人员或代表非故意,且没有违反任何实质性的合同义务而造成的任何间接损失的责任。

3.2 If the Vendor is responsible for a product-related loss, the Vendor undertakes to hold us harmless from third-party claims for damages in this respect (including reasonable legal proceedings and defence costs, expenses, fees, taxes, and reasonable advance payments, etc.) if the reason for such claims (in relation to us) falls within the Vendor's control and organizational sphere.

如果供应商对产品相关的损失负责,在这方面供应商承担起保证我们免受第三方索赔的责任(包括合理的法律诉讼和辩护的成本、开支、费用、税收及合理的预付款等),如果索赔(跟我们有关系)的原因是属于供应商控制和组织的范围。

3.3 If third-party claims are lodged against us due to alleged infringement of intellectual property rights in respect of the deliveries/services furnished or due to alleged infringement of a reservation of title or other tangible entitlements to the goods(s) delivered or service(s) provided, the Vendor undertakes to hold us harmless from these third-party claims in this respect (including reasonable legal proceedings and defence costs, expenses, fees, taxes, and reasonable advance payments etc.).

如果第三方索赔是因为供应商的交付物/服务而控诉我们侵犯知识产权,或者因其对交付的货物和服务保留所有权或其他有形的应享权利而控诉我们,供应商承诺让我们免受这些第三方索赔(包括合理的法律诉讼和辩护费用、支出、费用、税收及合理预付款等)。

### 4. Warranty Periods/质保期

The statutory warranty periods shall apply. If the Vendor intentionally misrepresented a defect by omission, the warranty period shall be extended to 10 years.

法定质保期限应适用。如果因为供应商不作为故意隐瞒缺陷，质保期限应延长至 10 年。

## 5. Transport/Packaging/运输与包装

5.1 The Vendor shall, on its own account, contract transportation of the goods in the customary fashion and via typical routes, hand over the goods to the appointed carrier, up to the specified destination. Prior to the surrender of the goods to the right receiver, the Vendor shall bear all the risks associated with the loss of or damage to the goods.

供应商应出于自身的需要委托运输单位，以惯常的方式、典型的路线，把货物交给指定的承运人，直至送达指定的目标位置。将货物交付给正确的收货人之前，供应商应当承担货物灭失或损坏的所有风险。

5.2 The Vendor shall take out transport insurance for the goods at its own expense.

供应商应自行承担货物的运输保险。

5.3 Prior to the surrender of the goods to the receiver, the Vendor shall bear all the costs relating to the goods, and also the freight charges and all costs incurred due to the activities detailed in Article 5.1, including the cost for loading of the goods and for unloading at the destination. Furthermore, the Vendor shall bear all the costs arising under Article 5.2.

在货物交付收货人之前，供应商应承担有关货物的所有成本，以及第 5.1 条详述的活动所引起的运费和所有成本，包括在目的地装货和卸货的成本。此外，供应商应承担根据第 5.2 条所产生的所有费用。

## 6. Assignment and Set-Off/权益转让和抵消

6.1 The rights and duties arising from the contract may not be assigned by a contracting party without the approval of the other party. This shall not apply to the assignment of monetary claims. We may, in addition, assign any claims to any company affiliated with us; the Vendor will be notified thereof and will be granted the right to withdraw from the contract.

缔约方由合同产生的权利和义务，未经另一缔约方的同意，不得转让给其他组织。但这不应适用与货币权益的转让。我们可能将合同权益转让给附属于我们的公司，我们会通知供应商，供应商有权选择撤销合同。

6.2 The Vendor may only set off claims against counterclaims or assert a right of retention if the Vendor's entitlements are due and uncontested or are due and have become final and legally binding.

供应商只有在应享受的权利已到期且无争议或到期且已具有最终法律约束力时，才可以发起反诉索赔或主张权利保留。

## 7. Retention of Title/所有权保留

Since the goods we order normally pass into our products as a result of treatment or processing and any retention of title thereby expires, all goods delivered to us must be free of such reservations and third-party rights (such as liens, other creditors' rights based on the assignment of claims, the ownership-transfer of goods for security, or other forms of security for loans, the sale of claims, lease-purchase arrangements, purchases subject to reservation of title etc.). Therefore, we explicitly do not accept any Vendor's retention of title.

由于我们订购的货物通常将作为处理或加工的结果传递到我们的最终产品，任何保留所有权均因此到期，所以交付给我们的所有货物必须都是免于这种所有权保留和第三方权利（例如留置权，基于债权转让的其他债权人权利、因为抵押而发生的货物所有权转移或其他形式贷款抵押物、债权出售、分期付款购买、购买受保留所有权等。）因此，我们明确地不接受任何供应商的所有权保留。

## 8. Documents, Confidentiality/文档及保密

8.1 Models, tools, printers' copies, drawings, documents, etc. which we provide for the execution of an order shall remain our property and must be kept secret. They may not be entrusted to third parties without our prior approval; neither for inspection nor may they be used for the manufacture of third-party goods or be reproduced. They must be returned to us immediately upon completion of the order.

我们为执行订单所提供的模型、工具、打印的副本、图纸、文档等始终是我们的财产，必须保密。未经我们事先批准，不得将上述财产交给第三方；既不能用于检验，亦不能用于第三方产品的制造或再生产。在订单完成后，上述财产必须返还给我们。

8.2 The provisions of Article 8.1 also apply correspondingly to confidential information.

第8.1条的规定同样适用于相应的保密信息。

8.3 This obligation regarding secrecy is to be imposed on all legal representatives, employees, and third parties employed by the Vendor for the purpose of discharging its obligations deriving from our order.

保密义务对于所有为了履行来自我们的订单的义务而受雇于供应商的法律代表、员工和第三方都具有强制约束力。

## 9. Payment/付款

9.1 Prices shall be fixed prices including value added tax (VAT). Unless different arrangements are made explicitly and in writing, offers, cost estimates and other price calculations made by the Vendor will not be reimbursed by us.

价格应为含增值税的固定价格。除非以书面形式做出不同的定义，否则供应商的报价、成本估算及其他价格计算都无法得到我们的偿付。

9.2 Payment shall be made in accordance with agreed payment term upon receipt of the proper invoice and acceptance of the goods, these being free of defects. Unless different payment term is defined in writing, the default payment term is: within 60 days due net after invoice date.

在收到货物和正确的发票，且这些都不存在缺陷的情况下，我们才会开始按照约定的账期安排付款。除非以书面形式对付款账期做出不同的定义，否则默认的付款账期是：发票日后 60 天内付款。

9.3 The Vendor is asked to invoice each order separately, in duplicate, and stating our order number. Payment of the invoice will be made only to the Vendor specified in the order.

供应商应针对每个订单分别开具发票，并在发票上注明我们的订单号。发票对应的付款将仅向订单上所列明的供应商支付。

## 10. Withdrawal from the Contract/Cancellation /合同的撤销/解除

We are entitled to withdraw from or cancel the contract for proper cause. Such cause shall be, among others, if the Vendor has issued an affidavit under local law, the Vendor's assets are subject to a foreclosure procedure and such procedures are not cancelled within 4 weeks, if a petition that is not abusive is made for the opening of insolvency proceedings regarding the Vendor's assets, or if insolvency proceedings are instituted or the institution of the same is rejected due to a lack of assets.

根据正当理由我们有权撤销或解除合同，这样的理由可以是：供应商已经根据本地法律发布声明称其资产正受控于丧失抵押品赎回权程序，且这种程序无法在 4 周内取消；或供应商已提出非恶意的有关其资产的破产程序申请；或由于资产缺乏，供应商提起的破产程序申请被拒绝。

## 11. Force Majeure/不可抗力

We are entitled to withdraw in whole or in part from the contract if any *force majeure* events, labour disputes, breakdowns through no fault of our own, civil commotions, measures of authorities or any other comparable inevitable events through no fault of our own occurred and if such an event continues for a material duration and if such an event results in a material reduction of our demand.

如果发生不可抗力事件：劳资纠纷、非因我们原因的危机、民众骚乱、非因我们过错引起的政府当局的强制措施或其他类似的必然事件，此类事件在物料供应期间持续且导致我们物料需求减少，我们有权撤销全部或部分合同

## 12. Further Obligations of the Vendor/供应商的其他义务

12.1 The Vendor is obliged to manufacture any goods under the contract in compliance with any applicable laws and regulations on health and safety and on protection of employees and the environment. Subject to other obligations, Vendor will apply the guidelines of ALTANA's Code of Conduct which the Vendor may read on the following website: [http://www.altana.com/code\\_of\\_conduct](http://www.altana.com/code_of_conduct) and which we shall upon request send to the Vendor free of charge.

供应商有义务在遵守所有有关健康、安全和保护员工和环境的适用法律法规的前提下制造合同项下的货物。此外，供应商也应遵守《ALTANA 集团行为守则》，供应商可以在以下网站上阅读：[http://www.altana.com/code\\_of\\_conduct](http://www.altana.com/code_of_conduct)，我们也可以根据供应商要求免费发送该准则。

12.2 The Vendor shall comply with our applicable safety regulations if the Vendor enters our factory premises while fulfilling the contract.

如果供应商在履行合同时需进入我们的厂房，供应商应遵守我们现行的安全规章。

## 13. Place of legal jurisdiction/法定管辖地点

In the event of disputes, the place of legal jurisdiction is Shanghai, People's Republic of China.

一旦发生纠纷，法定管辖地点是中华人民共和国上海。

## 14. Partial Ineffectiveness/部分失效

The legal ineffectiveness of individual provisions of these terms and conditions shall not affect the effectiveness of the other provisions.

本一般条款的个别条款失效，不影响其他条款的效力。

## 15. Applicable Law/适用法律

This contract is governed by the laws of the People's Republic of China excluding the UN Convention on Contracts for the International Sale of Goods.

本合同的管辖法律为中华人民共和国法律，并排除适用联合国国际货物销售公约。