



GENERAL TERMS

通用条款

Terms for All Transactions

适用于所有交易

These General Terms apply to any quote, order, order acknowledgment, invoice, sale, license or delivery of all products, software, or services provided by Viavi Solutions (Beijing) Co Ltd. (唯亚威通讯技术(北京)有限公司) ("VIIVI"). VIIVI does not accept, expressly or impliedly, and VIIVI hereby rejects and deems deleted, any additional or different terms or conditions that any potential or actual customer ("Customer") presents, including, but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgment, or other document, or established by trade usage or prior course of dealing, unless VIIVI expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, accepting delivery, keeping, or using products or otherwise proceeding with any transaction after receipt of the Agreement (as defined below) or after otherwise being notified that such transactions are subject to the Agreement, Customer agrees to the terms of the Agreement. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms of the Agreement.

1. DEFINITIONS.

"Agreement" means a contract between VIIVI and the Customer that is formed by reference to these General Terms.

"Confidential Information" means any technical or other information related to VIIVI's Goods and Services (including, but not limited to, any documentation, services offerings, training materials, and written, visual, and oral instructions) and any information that is marked or otherwise expressly identified as confidential in writing or that should have been reasonably understood as such due to its nature, regardless of whether in tangible, electronic, verbal, graphic, visual or other form, that VIIVI discloses to Customer. Confidential Information does not include material or information that (i) is generally known by third parties as a result of no act or omission of Customer; (ii) subsequent to disclosure hereunder was lawfully received without restriction on disclosure from a third party having the right to disseminate the information; (iii) was already known by Customer prior to receiving it from VIIVI and was not received from a third party in breach of that third party's obligations of confidentiality; or (iv) was independently developed by Customer without use of Confidential Information of VIIVI.

"Delivery Date" means the earlier of the date on which (i) VIIVI puts a Good into the possession of a carrier for shipment, (ii) Customer takes possession of a Good; or (iii) VIIVI makes the Good available to Customer.

"Documentation" means VIIVI's information manuals that (i) contain operating instructions and performance specifications for the Products, Software, and/or Services; (ii) VIIVI delivers to Customer with the Products, Software, and/or Services; and (iii) VIIVI generally makes available to all users of its Products, Software, and/or Services.

"Firmware" means firmware and software that is (i) installed on tangible products, including back-up copies of such software that are delivered with such tangible products, and (ii) not referred to by VIIVI with individual product numbers and line item prices.

"Goods" means Products, Software and Documentation.

"Intellectual Property" means any computer program or routine (in object code, source code, or embedded format, regardless of the medium on which it resides), algorithms, know-how, firmware, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, mask works, designs, utility models, symbols, logos,

这些通用条款适用于任何唯亚威通讯技术(北京)有限公司 ("VIIVI") 提供的所有产品, 软件或服务的报价, 订单, 订单确认, 发票, 销售或交付。除非 VIIVI 用书面形式明确并清楚地表明接受, VIIVI 不会明示或暗示地接受, 并在此拒绝或视为删除由任何未来或现有的客户交付的, 包括但不限于任何订单, 承诺, 确认或其它文件中包含或参照的条款或条件, 或根据商业惯例以及先例建立的条款。如果客户下了订单, 接受交付, 保留或使用了产品, 或在收到协议(如下定义)或收到该协议将适用该交易的通知后继续交易, 则视为客户同意该协议条款。如果提交这些条款被视为下单, 对此订单的承诺则应明确地仅限于该协议的条款。

1. 定义

"协议"是指 VIIVI 和客户参照本通用条款所签订的合同。

"机密信息"是指 VIIVI 提供给客户的任何有形的, 电子的, 口头的, 图象的, 视觉的或以其它形式的, 任何与 VIIVI 的产品和服务相关的技术或其它信息(包括但不限于文档, 服务提供文件, 培训资料, 以及书面的, 视觉的和口头的指示), 以及以书面形式标记为或明确定义为机密的其它信息, 或根据其性质应合理地理解为机密的其它信息。"机密信息"不包括以下资料或信息: (i) 因客户的不行为或过失导致的第三方知道的一般信息; (ii) 由有权的第三方公布的不受限制而合法取得的信息; (iii) 在从 VIIVI 处收到之前客户已从合法第三方那里得知的信息; 或者 (iv) 客户未使用 VIIVI 的机密信息而独立开发的信息。

"交付日期"是指以下日期中的较早日期: (i) VIIVI 将货物交付运输承办人的日期, (ii) 客户接受交付的日期; 或 (iii) VIIVI 将货物提供给客户的日期。

"文档"是指 VIIVI 的信息手册, (i) 包括产品, 软件和/或服务 的操作指示和实施细则; (ii) 随同产品, 软件和/或服务交付给客户的文件; 以及 (iii) VIIVI 通常提供给所有产品, 软件和/或服务用户的文件。

"固件"是指固件和软件 (i) 安装在有形产品上的, 包括与有形产品同时交付的软件的拷贝 (ii) VIIVI 没有用单独的产品数量和价格提到的。

"商品"是指产品, 软件和文档。

"知识产权"是指任何计算机程序或例程(以目标代码, 源代码, 或嵌入格式的形式, 无论它所在的介质), 算法, 专有技术, 固件, 硬件和/或软件配置, 发明, 文档, 翻译, 文字及其他作品的著作权, 数据, 数据库, 信息, 掩膜作品, 外观设计, 实用型号, 标志, 标识, 商标, 名称, 程序, 过

marks, names, procedures, processes, methods, improvements and any other intangibles as well as the prototypes, samples, copies, and other materialized forms of the foregoing intangibles.

“Product” means any tangible products or parts thereof that VIAVI agrees to deliver or delivers to Customer including any Firmware.

“Proprietary Rights” means any and all rights, title, ownership and interests in and to copyrights, mask work rights, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to Intellectual Property, recognized in any jurisdiction or country of the world, whether or not registered or perfected.

“Services” means any services provided by VIAVI, including without limitation, any Installation Services, Training Services, Software Maintenance Services, Time & Materials Services, and/or Fixed Fee Services, as applicable (such terms as defined in any quote, order, or acknowledgement).

“Software” means any computer software in object code, source code, or other format that VIAVI agrees to deliver or make available to Customer, excluding Firmware. For greater clarity, no licenses under these General Terms shall extend to any source code.

“Work Product” means any tangible or intangible results or deliverables that VIAVI agrees to create or deliver, or intentionally delivers to Customer, as a result of performing services, including, but not limited to, configurations, computer programs or other information, or customized hardware, and any Intellectual Property developed in connection therewith and Proprietary Rights related thereto.

2. ORDERING. VIAVI's quotations (unless they expressly specify otherwise) and Customer's orders are irrevocable for thirty (30) days from their respective date. Customer's orders are subject to acceptance at VIAVI's sole discretion. No form of acceptance, except VIAVI's written acknowledgment sent to Customer or VIAVI's commencement of performance, shall constitute valid acceptance of Customer's orders, with any such acceptance being expressly conditioned on assent to the terms hereof and the exclusion of all other terms. VIAVI may change its prices at any time without prior notice to Customer, but such change shall not affect any quotation that has been outstanding for less than thirty (30) days or any order that VIAVI has expressly accepted in writing or through performance (whereby partial performance constitutes only partial acceptance to the extent performed). Once VIAVI has accepted an order, Customer may not cancel, terminate, reschedule, suspend performance of, or issue a hold on, such order, in whole or in part, without the prior written consent of VIAVI, which consent, if given, shall be upon terms that will compensate VIAVI for any loss or damage resulting therefrom, including but not limited to any work in process or services performed, the price of Goods and Services shipped to, manufactured for, or held separately for, Customer, and loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses. In addition, if a return is agreed, VIAVI reserves the right to charge Customer a restocking fee as follows: for standard Goods, 20% of the purchase price of the returned Goods with a minimum charge of \$50. Refunds, if any, will be issued as credits notes.

3. DELIVERY. VIAVI selects the carrier, unless Customer provides written instructions. The carrier shall not be considered VIAVI's agent. VIAVI shall deliver all Goods FCA VIAVI's shipping facility (Incoterms 2010) as designated by VIAVI. Customer takes title and bears shipping costs and risk of loss from the FCA point of shipment. VIAVI does not transfer ownership or title to any Software, Firmware, Documentation, or copies thereof; VIAVI only grants limited, non-exclusive licenses, as provided herein. Partial and installment shipments are authorized. Goods may be delivered individually upon availability and will be accepted and paid without right of return or refund of the delivered Goods, independent of the timing of any undelivered future Goods or Services included in the Customer's order. Alterations to any Goods and Services which VIAVI deems necessary to comply with changed safety standards or governmental regulations, to make a Good or Service non-infringing, or to otherwise improve a Good or Service, may be made at any time by VIAVI without prior notice to, or consent of, Customer and such altered Goods and Services shall be deemed fully conforming. Immediately upon receipt, Customer shall visually inspect the shipment and notify VIAVI in writing of any deficiencies. Customer

程, 方法, 改进和任何其他无形资产以及原型, 样品, 复制件, 以及上述无形资产的其他物化形体。

“产品”是指 VIAVI 同意交付或交付给客户的任何有形产品或零件, 包括任何固件。

“专有权利”是指不管是否已注册或完善, 已被某国或某司法管辖区认可的, 与版权, 掩模权, 工业设计, 商标, 服务标记, 商业名称, 商业秘密及专利有关的任何及所有权利, 称号, 所有权和利益, 以及任何与知识产权相关的其他权利。

“服务”是指 VIAVI 提供的任何服务, 包括但不限于任何安装服务, 培训服务, 软件维护服务, 时间与材料服务, 和/或适用的固定费用服务 (根据在任何报价, 订单或确认中定义的条款)。

“软件”是指任何 VIAVI 同意交付或提供给客户的目标代码, 源代码, 或其他格式的计算机软件, 不包括固件。在此明确, 在本通用条款下的许可不得延伸到任何的源代码。

“工作成果”是指 VIAVI 为履行服务而同意建立或交付, 或有意提供给客户的任何有形或无形的结果或成果, 包括但不限于配置, 计算机程序或其他信息, 或定制硬件, 以及与产品开发有关的任何知识产权和专有权利。

2. 订单。DJSU 的报价 (除非另有明确规定) 和客户的订单自发出日起三十 (30) 日之内不可撤销。VIAVI 可根据自己的判断决定是否接受客户的订单。除了 VIAVI 发送给客户的书面确认书或 VIAVI 开始履行合同, 没有其他形式应构成 VIAVI 对客户订单的有效承诺。VIAVI 的承诺明确以接受本通用条款并排除所有其他条款为前提。无需另行通知, VIAVI 可随时更改给客户的报价, 但是该价格变动不应影响 VIAVI 已提交给客户的三十 (30) 天以内的报价, 以及 VIAVI 以书面形式明确表示接受的和以履行形式接受的订单 (此处如履行为部分履行则构成已履行部分的承诺)。一旦 VIAVI 接受订单, 未经 VIAVI 事先书面同意, 客户不得取消, 终止, 重新安排, 暂停履行, 或中止该订单或部分订单。如 VIAVI 同意, 该同意应以客户将赔偿 VIAVI 由此遭受的任何损失或损害为前提, 包括但不限于任何进行中的工作或服务, 已交付给客户的, 生产的, 或单独分开的商品和服务的价格, 以及 VIAVI 因此损失的利润, 产生的费用, 以及合理的日常和行政支出。此外, 如果双方同意, VIAVI 保留向客户收取重新进货费用的权利, 如: 對於標準貨物, 退回貨物的購買價格的 20%, 最低費用為 50 美元。退款, 如果有的話, 將作為貸方票據發出。

3. 交付。除非客户另外提供书面指示, VIAVI 将选择承运人。承运人不被视为 VIAVI 的代理人。VIAVI 应交付所有货物至 VIAVI 指定的 FCA 航运地点 (国际贸易术语通则 2010)。客户从 FCA 交付时起承担运费及风险损失。VIAVI 不转让任何软件, 固件, 文件或副本的所有权或权属; VIAVI 仅给予本条款规定的有限的, 非排他性的许可。部分和分期交付是被授权的。商品可能会视供货情况分别交付, 已交付的商品经签收付款即不可退货或退款, 与客户订单中所含任何未交付之未来商品或服务的时间无关。如 VIAVI 认为有必要为符合安全标准或政府规章, 或使商品或服务不侵权, 或以此改善商品或服务, VIAVI 可以在任何时间, 无需另行通知或经客户同意, 对任何商品和服务作改动, 并且所作的改变应被视为完全符合合同。在收到交付后, 客户应即时检查, 并以书面形式通知 VIAVI 有关商品的任何缺陷。除非 VIAVI 在商品和服务交付的十 (10) 天内收到客户详细的书面通知, 客户应被视为放弃其对不正确或不完整的交付或包装要求赔偿的权利。VIAVI 指定的或传达给客户的履行和交付日期只是大约日期, 并且 (i) 不在该日期履行和交付不得视为 VIAVI 违约, 和/或 (ii) VIAVI 可在传达给客户的或客户要求的日期前交付, 客户应接受整体或部分交付。

shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging, unless VIAVI receives Customer's detailed written notice within ten (10) days following delivery of the Goods and Services by VIAVI. Performance and shipping dates specified or communicated by VIAVI to Customer are approximate dates only and (i) the failure to perform or ship on such dates shall not be considered a breach by VIAVI, and/or (ii) VIAVI is permitted to deliver, and Customer will accept, shipments, in whole or in part, in advance of any dates communicated by VIAVI and/or requested by Customer.

4. NO INSTALLATION. VIAVI is not obligated to customize or install any Goods and Services, unless VIAVI expressly agrees otherwise in a signed writing, in which case VIAVI's obligations with respect to such services shall be separate and independent of VIAVI's obligations with respect to the delivery of Goods and other Services.

5. PAYMENT. Subject to credit approval by VIAVI, which VIAVI may modify, revoke or subject to conditions (e.g., approved letter of credit) at any time, Customer shall pay VIAVI-submitted invoices in full within thirty (30) days of the invoice date, without any deductions, withholdings, or off-set. Unless VIAVI expressly states otherwise, all fees and prices quoted or invoiced exclude sales taxes, service taxes, withholding taxes, customs duties, and other taxes and charges, insurance, and costs related to transportation and special packaging requested by Customer, if any, with any such charges, taxes and/or costs being paid or reimbursed by Customer. If any withholding taxes apply, Customer shall gross up the invoiced amount to ensure that, after such withholding, VIAVI receives the full amount invoiced. If VIAVI does not receive all amounts when due (i) any due and unpaid portion of the fees shall bear interest in the amount of one and one half percent (1.5%) per month (annual rate 19.56%) or the maximum rate allowed by law, whichever is less, (ii) VIAVI may immediately suspend deliveries, licenses and/or performance of any Goods and/or Services, and (iii) VIAVI may require payment in advance for any subsequent orders or deliveries and/or further performance. At VIAVI's request, Customer shall provide an irrevocable letter of credit from a financial institution and with terms reasonably acceptable to VIAVI. All amounts are due in U.S. currency, unless VIAVI specifies otherwise in writing, e.g., a quotation or invoice. All sales are final.

6. INTELLECTUAL PROPERTY CLAIMS.

6.1 Claims. VIAVI will defend or settle any third party claim against Customer that Goods and Services (excluding Build to Print Products as defined in Section 10.3) as delivered by VIAVI infringe a third party's copyright, trade secret right or U.S. patent provided Customer promptly notifies VIAVI in writing, and cooperates with and provides control of the defense or settlement to VIAVI, to the extent legally permissible.

6.2 Remedies. In the event of an infringement claim under Section 6.1 (Claims), VIAVI will pay (i) infringement claim defense costs, and (ii) settlement amounts and final court-awarded damages, provided in all cases that such costs, amounts, and/or damages do not exceed the amount that Customer paid to VIAVI for the Goods and/or Services at issue. If such a claim appears likely, VIAVI may, at its option, modify the Good or Service, procure any necessary license, or replace it. If VIAVI determines that none of these alternatives is reasonably available, VIAVI will, subject to Customer's return of the Goods or Services upon request by VIAVI, provide a prorated refund of the fees that Customer paid for such Goods or Services, depreciated on a 36 month (Software) or 60 month (Product) linear basis.

6.3 Exclusions. VIAVI has no obligation for any claim of infringement arising from: (i) VIAVI's compliance with, or use of, Customer's designs, specifications, instructions or technical information; (ii) Goods and Services modifications by Customer or a third party; (iii) Goods and Services not used as expressly provided within the Documentation, VIAVI's specifications or related application notes; or (iv) use of the Goods and Services with products not supplied by VIAVI. This Section 6 states VIAVI's entire liability, and Customer's sole remedy, for infringement claims.

7. LIMITATION OF LIABILITY.

7.1 Limitations. IN NO EVENT SHALL VIAVI HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR

4. 没有安装义务。除非 VIAVI 明确书面同意, VIAVI 没有义务定制或安装任何商品和服务。在 VIAVI 同意的情况下, VIAVI 的定制或安装义务应当分离并独立于商品和其他服务的交付义务。

5. 付款。根据 VIAVI 可在任何时间修改, 撤销或受条件限制 (例如, 信用证的批准函) 的信贷审批, 客户应在收到 VIAVI 的发票后的三十 (30) 日之内, 无任何扣除, 扣缴, 或抵销, 支付全额款项。除非 VIAVI 另有明确规定, 所有费用和报价或发票价不包括销售税, 服务税, 预提税, 关税和其他由客户支付或报销的税金, 缴费, 保险, 以及与运输及客户要求的特殊包装相关的费用。如应扣缴税款, 客户应将税款加入发票总金额, 以确保预扣后 VIAVI 能收到全部的发票金额。如果 VIAVI 在付款到期时未收到所有款项 (i) 任何未付部分应以每月百分之一点五 (年率 19.56%) 的利率计息, 或以法律允许的最大利率计息, 以较少者为准, (ii) VIAVI 可立即暂停交货, 授予许可, 和/或履行任何商品和/或服务, 以及 (iii) VIAVI 可就任何后续订单或交付, 和/或下一步履行向客户要求提前付款。如 VIAVI 要求, 客户应提供由金融机构签发的, 具备 VIAVI 可接受的合理条款的不可撤销信用证。除非 VIAVI 另外书面指定, 例如在报价单或发票中注明, 所有金额应以美元结算。所有销售都是最终销售。

6. 知识产权索赔

6.1 索赔。如果客户及时书面通知 VIAVI, 并配合且将辩护或和解的控制权交给 VIAVI, VIAVI 将在法律允许的范围内, 为任何由第三方基于 VIAVI 交付的侵犯第三方版权, 商业秘密或美国专利的商品和服务 (不包括 10.3 节中定义的印刷品) 向客户提出的索赔进行辩护和调解。

6.2 补救。在 6.1 节的侵权索赔 (索赔) 情况下, VIAVI 将支付 (i) 侵权索赔的辩护费用, 以及 (ii) 和解金额和法庭判决的损害赔偿, 但在任何情况下, 这些费用, 金额及/或损害赔偿的数额, 不得超过该客户已支付给 VIAVI 的争议商品和/或服务的价款。如果可能, VIAVI 可自行决定修改商品或服务, 购买或更换所需的许可。如果确定没有其他可能, VIAVI 可要求客户退还产品或服务。VIAVI 会按比例退还客户支付的商品或服务的价款, 折旧率按软件 36 个月或产品 60 个月的使用期限计算。

6.3 排除。VIAVI 对任何由下列原因导致的侵权不负责:

(i) VIAVI 遵循或使用客户的设计, 规格, 指示或技术信息; (ii) 客户或第三方对商品和服务所作的修改; (iii) 客户没有根据 VIAVI 提供的文档, 规范或相关的应用指示使用商品和服务; 或 (iv) 与非 VIAVI 提供的产品一起使用货物和服务。本第 6 节陈述了 VIAVI 的全部责任, 是客户的侵权索赔的唯一补救。

7. 责任限制

7.1 限制。在任何情况下 VIAVI 不对任何意外的, 特殊的, 间接的或后果性的损失, 利润, 收入或数据的损失, 安装或拆卸费用, 或成本弥补承担责任。VIAVI 对任何商品或服务所引起的或相关的赔偿责任不应超过在提出索赔前的 12 个月中, 客户在协议下支付的或应支付的全都价款。

7.2 范围。第 7.1 节 (限制) 中的责任限制适用于任何损失, 无论其成因也不管其责任理论是出自合同, 侵权 (包括但不限于疏忽) 或任何其他法律理论, 也不管 VIAVI 是否已被告知此类损失的可能性, 或本通用条款是否包含适用的补救措施, 或是否某一特定条款会因此失去关键目的。

CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE, OR DATA, INSTALLATION OR REMOVAL COSTS, OR COST OF COVER. THE LIABILITY OF VIAVI FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY GOODS OR SERVICES SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO THE PURCHASE PRICE PAID OR PAYABLE BY CUSTOMER FOR THE GOODS OR SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES WITHIN THE LAST 12 MONTHS PRECEDING THE CLAIM UNDER THIS AGREEMENT.

7.2 Scope. THE LIMITATIONS OF LIABILITY IN SECTION 7.1 (LIMITATIONS) SHALL APPLY TO ANY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF VIAVI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE UNDER THESE GENERAL TERMS OR ANY OFFERING-SPECIFIC TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

8. CONFIDENTIAL INFORMATION. Customer will protect the secrecy of Confidential Information with due care. Customer will not (i) disclose Confidential Information to anyone, except to persons in its own organization who have a need to know in order to fulfill Customer's obligations or exercise Customer's express rights under the Agreement and who are bound by non-disclosure obligations requiring them to keep the Confidential Information secret; and (ii) use Confidential Information except as necessary for the performance of Customer's obligations or the exercise of Customer's express rights under the Agreement.

9. RIGHTS IN INTELLECTUAL PROPERTY AND TOOLING.

9.1 All Rights Reserved. Except as expressly agreed otherwise in writing, VIAVI and its licensors reserve all rights, title and interests, including Proprietary Rights, to (i) any Software, Firmware and/or Documentation, and (ii) all Intellectual Property in and/or related to the Goods and Services. Software, Firmware and Documentation are licensed, not sold. The use of a copyright notice on any Good or Service shall not be taken to indicate that it has been published. All right, title and interest in and to any Work Product, Intellectual Property and/or Proprietary Rights, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by VIAVI solely, jointly or on its behalf, in the course of, arising out of, or as a result of Services performed, and any related tooling, set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of VIAVI.

9.2 No Reverse Engineering. To the extent legally permissible, Customer agrees not to reverse engineer, translate, create derivative works of, decompile, separate, and/or disassemble, any Goods or portions thereof nor allow or assist others to do so.

9.3 Actions under Mandatory Law. To the extent that Customer is expressly permitted by applicable mandatory law to take any actions that are prohibited under these General Terms or any other terms of the Agreement, included, but not limited to, reverse engineering, Customer agrees to refrain from exercising such rights unless and until Customer has given VIAVI three (3) weeks' prior written notice of Customer's intent to exercise any such rights and VIAVI has not offered reasonable alternatives to Customer's exercise of the mandatory rights within such three (3) week period.

9.4 Marks and Labels. Customer acknowledges the goodwill associated with VIAVI's trademarks. Customer shall not obscure, remove or alter any trademarks, patent numbers, labels, serial numbers, product identification, copyright or other notices affixed to any Goods and Services, related documentation or packaging, without the express prior written consent of VIAVI. Customer shall display VIAVI's and its licensors' names and logos as well as the name of any Goods and Services on each copy of Software or Documentation made by Customer (provided that Customer shall not make any copies except as permitted by VIAVI in a duly signed writing).

9.5 Software License. Subject to the terms and conditions of this Agreement, VIAVI grants Customer a personal, non-sublicensable,

8. 机密信息。 客户将采取合理措施保护机密信息的保密性。客户不应 (i) 披露机密资料给任何人, 除了客户公司内部需要知道该信息以履行客户的义务或行使该协议下明确的客户的权利, 并且受保密义务约束并被要求保护机密信息的人员; (ii) 使用机密信息, 除非是为了履行客户的义务或行使该协议下明确的客户的权利。

9. 知识产权和工具的权利

9.1 权利保留。 除另有明确的书面约定, VIAVI 及其许可人保留一切权利, 所有权和利益, 以及以下的专有权利: (i) 所有软件, 固件和文档, 及 (ii) 所有与商品和/或服务相关的知识产权。软件, 固件和文档仅被授权使用, 而非出售。使用任何商品或服务上的版权声明不得理解为它已被出版。所有工作成果, 知识产权和/或专有权利上的权利, 所有权和利益, 不论它是否受法规保护, 只要它是由 VIAVI 独自, 联合或代表 VIAVI 制造, 创造, 开发, 编写, 构思或首先实践的, 并且是在 VIAVI 提供服务的过程中产生的或作为结果的, 以及任何相关的工具, 设置, 装修和准备费用, 不论是是否收费, 都应属于并成为 VIAVI 的独有和专属财产。

9.2 无逆向工程。 在法律允许的范围内, 客户同意不会允许或协助他人, 也不会自行逆向工程, 翻译, 创造衍生品, 反编译, 分离, 和/或反汇编任何商品或其中的部分。

9.3 强制性法律下的行为。 经适用的强制性的法律明确允许, 客户可以采取本通用条款或协议的其他条款禁止的某些行为, 包括但不限于逆向工程。客户同意, 除非在向 VIAVI 提交了表明客户将行使该权利的书面通知后的三(3)个星期内没有收到 VIAVI 提供的其他合理选择, 否则不会行使该行为。

9.4 商标和标签。 客户承认与 VIAVI 的商标相联的商誉。未经 VIAVI 事先书面同意, 客户不得含糊, 删除或修改任何商标, 专利号, 标签, 编号, 产品标识, 版权或其他贴在产品, 服务, 相关文件或包装上的告示。客户应在其制作的每个软件或文件的拷贝上显示 VIAVI 的及其授权人的名称和标志, 以及商品和服务的名称 (除非经 VIAVI 正式书面允许, 客户不得自行制作拷贝)。

9.5 软件授权。 在本协议条款和条件下, VIAVI 授予客户自用, 不可再授权的, 非排他性的, 不可转让的, 有限的许可, 允许被授权的用户根据适用的文件, 仅以客户的内部业务为目的地使用软件的拷贝。客户可以在一个独立电脑或产品上安装和保存一个拷贝, 但无论软件或其拷贝都不可以连接到网络上使得多个用户可以上载, 访问, 操控或以其他方式制作或使用。客户同意不会 (1) 翻译或创建基于软件或文档的任何衍生品, 或者以任何方式修改或改变软件或文档 (2) 销售, 再授权, 租赁, 出租, 出借, 转让, 传送, 分发, 或使用软件或文档给任何第三方; (3) 用任何本通用条款或软件许可条款未明确许可的方式, 或为本通用条款或软件许可条款未明确许可的目的, 复制或软件或文档。VIAVI 授予许可的前提是客户必须持续遵循所有在许可条款中描述的限制条件。如客户违反这些限制或本协议下的任何条款, 无须 VIAVI 的通知, 该许可将立即自动终止。

9.6 固件许可。 在本协议条款和条件下, VIAVI 授予客户非排他性, 有限的和受限制的许可来使用作为交付或提供的产品的一部分的固件; VIAVI 不允许客户制作固件的拷贝或其衍生品; 除非作为交付或提供的产品的一部分, 客户也不得转让固件。固件可能包括 VIAVI 和/或其第三方许可人提供的适用于固件使用的许可条款, 并优先于这些授权条款。

9.7 文档许可。 VIAVI 授予客户不可转授, 非排他性的, 不可转让的有限许可来使用 VIAVI 为客户的内部经营为唯一目的, 支持客户使用产品和服务的文档。除非经 VIAVI 在正式签署书面文件中同意, 客户未被授权复制或修改文档。

non-exclusive, non-transferable, limited license to have authorized users use copies of the Software in accordance with the applicable Documentation solely for Customer's internal business purposes. Customer may install and keep one (1) copy of the Software on either a stand-alone computer or a Product, neither of which may be connected to a network in a manner that allows more than one (1) user to upload, access, manipulate or otherwise create or use a copy of the Software. Customer agrees not to (i) translate or create any derivative works based on the Software or Documentation or modify or alter the Software or Documentation in any manner whatsoever (ii) sell, sublicense, lease, rent, loan, assign, convey, distribute, or use the Software or Documentation to any third parties; (iii) copy or use the Software or Documentation for any purpose or in any manner not expressly permitted in these General Terms or Software license terms accompanying the Software. VIAVI's license grant is conditioned on Customer's continuous compliance with all license limitations and restrictions described in these license terms and if Customer violates any of these limitations or restrictions or any other terms of this Agreement, the license grant will automatically and immediately terminate without notice from VIAVI.

9.6 Firmware License. Subject to the terms and conditions of this Agreement, VIAVI grants Customer a non-exclusive, limited and restricted license to use Firmware as part of the Product on, with, or for, which it is delivered or made available; VIAVI does not permit Customer to make any copies or derivative works of Firmware and Customer may not transfer Firmware, except as part of the same Product on, with, or for, which it is delivered or made available. Firmware may include license terms provided by VIAVI and/or its third party licensors which will apply to the use of the Firmware, and take precedence over these license terms.

9.7 Documentation License. VIAVI grants Customer a non-sublicensable, non-exclusive, non-transferable, limited license to use the Documentation that VIAVI provides for Customer's internal business purposes solely in support of Customer's use of the Goods and Services. Customer is not authorized to copy or modify Documentation, except as expressly permitted by VIAVI in a duly signed writing.

10. LIMITED PRODUCT WARRANTY AND DISCLAIMER.

This Section 10 applies only if and to the extent Customer orders, or VIAVI delivers Products, but not, for example, if and to the extent Customer orders Software or Services.

10.1 Limited Product Warranty. Notwithstanding any provision to the contrary (but subject to the operation of any law to the extent it cannot be excluded), VIAVI's sole and exclusive obligations to Customer for any Product made by VIAVI and sold hereunder are solely as described in this Section 10.1 and Section 10.2 below, with such obligations being limited solely to any Product which has been returned to VIAVI under the RMA procedure (as defined in Section 11) and which in the reasonable opinion of VIAVI is determined to be defective in workmanship, material or not in compliance with the VIAVI specification applicable to the Product and has in fact failed under normal use on or before the specific Product warranty periods set forth at <https://www.viavisolutions.com/en-us/services-and-support/support/warranty-terms-and-conditions> and incorporated herein by reference. All warranty periods as detailed on the aforementioned website shall begin on the Delivery Date as defined in Section 1, unless otherwise stated in writing by VIAVI in accordance with Section 12.3. All third party products (including Software or Firmware) provided by VIAVI carry only the original manufacturer's warranty applicable to Customer. VIAVI will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party. Any Product repaired or replaced under warranty is only warranted for the period of time remaining in the original warranty for the Product. Customer shall have no warranty claims, unless VIAVI receives from Customer, before the end of the warranty period and within thirty (30) days of the date on which Customer first came to know, or should have known, about the warranty claim: (A) a written notice describing the warranty breach in reasonable detail (a "Warranty Claim"); and (B) information in sufficient detail to enable VIAVI to reproduce and analyze the failure.

10 有限的产品保证和免责声明。

本第 10 条只适用于并只限于客户订购的或 VIAVI 交付的产品，对客户订购的软件或服务并不适用。

10.1 有限产品保证。 即使有相反的条款（但须受任何不能予以排除的法律的约束），VIAVI 对客户的唯一且排他性的就其制造和销售的产品的义务为本节第 10.1 节和第 10.2 节中所述的义务。除非根据第 12.3 节 VIAVI 另有书面陈述，上述义务仅适用于根据 VIAVI 的 RMA 程序（如第 11 条规定）退还的，并经 VIAVI 合理认定为工艺或材料不合格，或不符合 VIAVI 的产品规范，并事实上在 <https://www.viavisolutions.com/en-us/services-and-support/support/warranty-terms-and-conditions> 阐明并通过引述方式纳入本协议的特定产品保证期内不能正常使用的产品。除非 VIAVI 根据第 12.3 节另有书面说明，否则，前述网站中详述的所有保证期均应从第 1 节定义的交付日期开始。所有 VIAVI 提供的第三方产品（包括软件或固件）只提供适用于客户的原厂保修。只有在相应第三方明确授权的情况下，VIAVI 将接受在保修期内的产品的修理，更换或退款。在保修期内维修或更换的任何产品的保修期为该产品原保证的剩余期限。除非 VIAVI 在保修期结束前，并在客户知道或应当知道索赔事项发生的三十（30）天内收到客户的保修索赔，并且该索赔应该：（A）包括合理细节的关于违反质量保证的书面通知（一个“保修索赔”）；及（B）提供足够详细的信息足以帮助 VIAVI 重现和分析故障，客户将失去保修权利。

10.1.1 排除原因。 客户就以下原因导致的缺陷或质量不符不享有产品保证，（i）在没有 VIAVI 书面明确指定的硬件或软件的环境下使用产品；（ii）客户未能遵守 VIAVI 的使用说明；（iii）不执行更新；（iv）产品安装时的客户环境的变化；（v）VIAVI 的员工或其授权的代表以外的人的行为或疏忽；（vi）VIAVI 的员工或其认证的人以外的人所做的产品安装或维修；（vii）意外损坏，拆卸，改装，滥用，修理或改造（由 VIAVI 的员工或其授权的代表以外的人导致的），不当储存或处理，与其他不兼容或质量低劣的产品一起使用，或在超过该产品的规格或等级的应用程序中使用，疏忽，安装不当或其他滥用，或使用在危险活动中；或（viii）如第 12.7 节中所述的不可抗力（不可抗力）。此外，在此明确声明，保修权利不包括强制性的技术支持（例如，端到端案例管理、主题专家的网络和电话支持、地区范围内的当地语言和时间支持）。VIAVI 技术支持根据服务合同（该合同必须由每位客户与 VIAVI 单独签订）提供，因此，VIAVI 将技术支持视为独立于保修权利以外的服务类别。在 VIAVI 提供技术支持且未指定单独、有效的支持联系人的情况下，VIAVI 拥有随时中止此类技术支持的单独酌处权。发生这种情况时，事件将被记录并被合理跟踪；在没有有效服务合同的前提下，VIAVI 没有义务解决任何事件。根据合同或合同中所写的适用的标准支持条款与条件，应为已付费的技术支持服务单独预留承诺的服务等级响应时间。

10.1.2 被排除的产品和组件。 客户就以下产品和组件没有质量保证，（i）损耗性的产品或零件（例如，预期使用期限不超过九十（90）天的零件，如某些电池），（ii）经 VIAVI 以外的人修改的产品，除非这些修改是经 VIAVI 书面批准或指示的，且修改与书面的指示和规格一致；（iii）原型，实验性的，尚处在实验阶段的，实体试验或不合格的产品；（iv）VIAVI 在其网站或其他地方，由其自行决定提供的任何补丁，更新或修改（为避免疑问在此解释，VIAVI 没有义务在特定维修协议范围之外提供任何补丁，更新或修改），（v）定制产品（除在第 10.3 节所述-定制）和 VIAVI 提供的应客户的要求，规格或指示提供的任何其他产品，除非 VIAVI 以正式签署的书面文件同意所提供的产品应适用第 10.1 节（有限产品责任）中指定的有限质量保证；及（vi）不符合 VIAVI 的 RMA 程序退还的产品。

10.1.1 **Excluded Causes.** Customer has no warranty rights with respect to defects or non-conformities caused by (i) use of the Product with hardware or software that was not expressly specified in writing by VIAVI as suited for use with the Product; (ii) Customer's failure to follow VIAVI's operating instructions; (iii) failure to implement updates; (iv) changes to the Customer environment in which Product was installed; (v) acts or omissions of persons other than VIAVI or its authorized representatives; (vi) installation or maintenance of Product by someone other than VIAVI or persons certified by VIAVI; (vii) being accidentally damaged, disassembled, modified, misused, repaired or reworked (by any party other than VIAVI or its authorized agents), improperly stored or handled, used in conjunction with another product that is incompatible or of an inferior quality, or used in applications which exceed the Product's specifications or ratings, neglected, improperly installed or otherwise abused or is used in hazardous activities; or (viii) Force Majeure conditions as defined in Section 12.7 (Force Majeure).

10.1.2 **Excluded Product and Components.** Customer has no warranty rights with regard to any (i) consumable Product or parts thereof (e.g., parts with an expected useful life of less than ninety (90) days, such as certain batteries); (ii) Product that has been modified by someone other than VIAVI, unless such modifications were directed or approved by VIAVI in writing and made in conformance with all specifications and instructions provided in such writing; (iii) prototypes, experimental, alpha, beta, field trial or unqualified Product; (iv) any patches, updates, or revisions that VIAVI makes, at its sole discretion, available on its website or otherwise (for the avoidance of doubt, VIAVI is not obligated to make any patches, updates, or revisions available outside the scope of specific maintenance agreements); (v) build to print Product (other than provided in Section 10.3 – Build to Print) and any other Product that VIAVI provides in accordance with Customer's request, specifications, or instructions, unless VIAVI agrees in a duly signed writing that the provided Product shall be covered by the limited warranty specified in Section 10.1 (Limited Product Warranty); and (vi) Product not returned in accordance with VIAVI's RMA procedure. Additionally, to be clear, warranty rights do not include mandatory technical support (e.g. end-to-end case management, subject matter expertise via web and telephone support, in-region local language and time support). VIAVI technical support is provided under a service contract (which each customer must enter separately with VIAVI) and therefore, is treated by VIAVI as a category of service independent from warranty rights. To the extent that VIAVI provides access to technical support without a separate, valid support contract, it shall be at VIAVI's sole discretion and VIAVI may discontinue such technical support at any time. In such cases, incidents will be logged and tracked on a reasonable effort basis; VIAVI does not commit to resolving any incidents without a valid service contract. Committed service level response times are reserved for separately paid-for technical support service pursuant to contracts or standard support terms and conditions, as applicable, as defined therein.

10.1.3 **Refurbished Parts and Prior Testing.** Product may incorporate reconditioned or refurbished parts or subassemblies and may have been used in testing prior to sale.

10.2. Exclusive Remedies. If any Product materially fails to conform to the limited warranty set forth in Section 10.1 (Limited Warranty) and actually fails during the applicable warranty period and under normal use, VIAVI shall, at its sole discretion (i) repair or replace the non-conforming Product to remedy the non-conformity identified by Customer in accordance with Section 10.1 (Limited Product Warranty); or (ii) issue a credit to Customer for the amounts paid for the Product in exchange for return of the non-conforming Product, in which case Customer's licenses to any Firmware shall be automatically revoked. Customer hereby transfers to VIAVI title and ownership of any parts that VIAVI replaces.

10.3 Build to Print. Any Product that VIAVI makes or customizes in accordance with Customer's specifications ("Build to Print Product") is excluded from the limited warranty in Section 10.1 (Limited Product Warranty). With respect to Build to Print Product, VIAVI warrants only that VIAVI performs the manufacturing services in a professional and workmanlike manner and in accordance with standards reasonably applicable to such services. VIAVI will re-perform any services which

10.1.3 重组部件和事先测试。 产品可能使用翻新或重组零件或重装部件, 也可能在销售前的测试中使用过。

10.2 排它性的补救措施。 任何产品如果实质上未符合第 10.1 节 (有限保证) 中的有限保证, 且该瑕疵发生在适用的保修期内和在正常使用中, VIAVI 应酌情 (i) 根据第 10.1 节 (有限产品保证) 的规定, 修复或更换产品以解决客户指出的瑕疵问题, 或 (ii) VIAVI 应退还客户支付的数额以交换客户退还的产品, 在这一情况下, 任何固件的许可将自动撤销。客户在此转移给 VIAVI 任何替换部件的所有权和权属。

10.3 定制。 第 10.1 (有限产品保证) 中的有限产品保证对任何 VIAVI 根据客户的规格要求制作或定制的产品 ("定制产品") 不适用。关于定制产品, VIAVI 只担保以专业和熟练的方式和合理适用的服务标准执行服务。如果客户在服务完成后的三十 (30) 天之内以书面形式及时通知 VIAVI 任何不符, VIAVI 将重新提供服务。本服务保证是适用于定制服务或定制合同的唯一保证。

10.4 免责声明。 本第 10 条明文规定的补偿将是客户的唯一并且排它性的补偿, 并应取代客户针对 VIAVI 的就产品和/或服务的瑕疵所提出的任何其他权利或救济。除在第 10.1 节 (有限产品保证) 和 10.3 (定制) 明确表明声明或保证外, VIAVI 对任何产品不作任何明示的声明或保证。VIAVI 否认所有暗示的保证, 条件和陈述, 包括但不限于任何就适销性的担保, 质量满意的保证, 适用某特定用途, 以及不侵权保证, 不管是否此类暗示保证是基于法定理论, 包括但不限于合同, 交易过程, 使用, 或贸易惯例。

11 退货程序。 客户必须在质量保证期内提出索赔, 任何来自第三方的索赔将不予受理。此处规定的保证是不可转让的。对于本协议规定下的索赔, VIAVI 将接受根据 VIAVI 的退回材料授权程序 ("RMA") 的规定退还的商品。在返回任何商品前, 客户应先从 VIAVI 取得 RMA 号码, 然后根据 VIAVI 的指示, 将已付运费和保险的商品交至当地的服务中心或 FCA 地点。如果客户在返回商品时没有逐项说明缺陷, VIAVI 将无法评估商品和服务, VIAVI 将把商品返还客户, 客户将承担相关的费用。如任何返回到 VIAVI 的商品被发现符合所适用的规格, 和/或在工艺和材料上不存在缺陷, 客户应被收取并支付 VIAVI 检验费用。检验费用按当时有效的标准计算。

12. 其它条款

12.1 合规性。 客户应获得所有执照, 许可及任何政府要求的批准, 并应遵循所有适用的法律, 法规, 政策和相关政府部门和其他主管机关的程序。如客户违反或被指控违反上述法律, 法规, 政策或程序, 客户应负责赔偿并保证不损害 VIAVI 的利益。事先未得到相关政府规定的许可, 包括但不限于美国政府和/或其他相关主管机关, 客户不应直接或间接地, 单独地或作为任何系统的一部分, 传输, 出口或再出口从 VIAVI 处收到的货物或任何技术数据 (包括流程和服务)。客户还证明 (i) 不会将 VIAVI 提供的产品或技术数据出售或转让, 或供以下单位使用: (a) 位于任何适用政府的目录上的 "禁运" 国, 包括但不限于美国政府, (b) 属于任何适用政府的目录上的 "拒绝" 或 "限制" 党, 包括但不限于美国政府, 和/或 (c) 涉及核, 生物或化学武器或导弹技术的设计, 开发, 生产或使用; (ii) 没有代理或当局已暂停, 撤销或拒绝客户的出口和/或进口权; 和/或 (iii) 客户居住在禁止此交易的司法管辖区, 或受该司法管辖区控制, 或为该司法管辖区的居民。

12.2 法律及司法管辖权的选择。 除了关于法律冲突的规则, 本协议的解释应依照中国的法律并受中国的法律的约束。协议双方在本协议下的任何争端, 如不能友好解决, 应提交中

are not in compliance with this warranty if Customer notifies VIAVI of non-compliance in writing, on or before thirty (30) days immediately following completion of the applicable services. THIS SERVICE WARRANTY IS THE ONLY WARRANTY THAT APPLIES TO THE PROVISION OF CONTRACT MANUFACTURING SERVICES OR BUILD TO PRINT PRODUCTS TO CUSTOMER.

10.4 Disclaimer. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 10 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST VIAVI WITH RESPECT TO ANY NON-CONFORMANCE OF GOODS AND/OR SERVICES. EXCEPT AS SPECIFIED IN SECTION 10.1 (LIMITED PRODUCT WARRANTY) AND 10.3 (BUILD TO PRINT), VIAVI MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCT. VIAVI DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

11. RETURN PROCEDURE. Customer must make all claims under the warranties, and no claim will be accepted from any third party. The warranties set forth herein are non-transferable. With respect to warranty claims under this Agreement, VIAVI will accept Goods only if returned in compliance with VIAVI's Return Material Authorization process ("RMA"). Customer shall obtain a RMA number from VIAVI prior to returning any Goods and ship the Goods prepaid and insured to the local care center or FCA point, as instructed by VIAVI. If Customer returns Goods without an itemized statement of claimed defects, VIAVI will not evaluate the Goods and Services but will return them to the Customer at the Customer's expense. Any Good that is returned to VIAVI but which is found to meet the applicable specifications for the Good and/or is not defective in workmanship and materials shall be subject to VIAVI's standard examination charge in effect at the time, which shall be charged to, and paid for by, Customer.

12. MISCELLANEOUS

12.1 Compliance. Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Customer will indemnify and hold VIAVI harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Goods or any technical data (including processes and services) received from VIAVI, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that (i) none of the products or technical data supplied by VIAVI will be sold or otherwise transferred to, or made available for use by or for, any entity that is: (a) located in an "embargoed" country in accordance with any applicable government list(s) including without limitation, those of the United States, (b) a 'denied' or 'restricted' party on any applicable government list(s) including without limitation, those of the United States, and/or (c) engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology; (ii) no relevant agency or authority has suspended, revoked or denied Customer's export and/or import privileges; and/or (iii) Customer is not located in or under the control of a national or resident of, a jurisdiction where this transaction is prohibited.

12.2. Choice of Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of China, to the exclusion of its rules on conflicts of laws. Any dispute arising under the terms of the Agreement which cannot be resolved amicably between the parties, shall be submitted to the competent courts of Beijing, China. The parties specifically disclaim the application of the United Nations Convention on Contracts for the International Sales of

国北京的主管法院。双方明确放弃适用有关国际货物销售合同的联合国公约和/或它的实施细则及后续条款。

12.3 完整协议。本协议是 VIAVI 和客户之间的关于本协议标的事项的全部协议。除了任何现有的涉及本协议项下的产品、软件或服务的销售协议或保密协议外，本协议将取代双方之前的所有口头或书面的有关本协议项下的交易的通信，陈述或协议。采购订单或任何其他由本协议当事方签署的文件中的条款，无论这些文件的日期，不将影响本协议的条款。即使这些文件被接受方认可，也被视为删除。任何对该协议的通知，修改，或修正应视为无效，除非 (i) 通知以书面形式，传真或通过挂号邮寄，邮资预付，或通过电子邮件发送；及 (ii) 修改和补充是书面的，并经双方正式授权的人员签署。除非经 VIAVI 高级行政人员（高级副总裁或以上官员）书面确认，VIAVI 的销售或技术人员所做的承诺将不会有任何法律效力。此外，除非发到本通用条款序言中指定的地址，并将复印件发至 VIAVI Solutions Inc. 的法律部，地址在 6001 America Center Drive, 6th Floor, San Jose, CA 95002，或其他 VIAVI 以书面形式告知客户的作为发送通知的适当地址，任何通知无效。

12.4 日期和时间表。除非明确注明，所有此处提及的日期为日历日期。除非经 VIAVI 高级行政人员（副总裁及以上）以正式书面形式明确同意某一特定日期应具有法律约束力，所有预定的发货日期，交货日期和其他日期都是非约束性的估计。

12.5 权利不豁免。任何一方的延迟或不行使，或不强制执行任何权利或索赔不构成对此类权利或索赔的放弃，除非这一方正式授权的代表签署明确的书面豁免，不应影响该方以后执行或行使该权利。

12.6 转让和授权。客户不得转让对 VIAVI 的任何权利。无论是基于自愿或依据法律，任何（声称的）转让都是无效的。VIAVI 延长的质量保证是不可转让的，且只服务于客户的利益。VIAVI 可以转让其权利和义务。

12.7 不可抗力。任何一方对由罢工，火灾，水灾，政府行为或命令或限制，供应商无法供货，或其他任何不受该方合理控制的原因导致的不履行或迟延履行-除了付款义务-不负违约责任。如因任何不可抗力事件而导致商品和服务供应短缺，VIAVI 有权自行决定按 VIAVI 认为的恰当的比例分配供给。

12.8 审计。经合理通知后，VIAVI 或其代理人可以检查客户的设施（包括计算机）和记录，以核实客户是否遵循本通用条款，软件许可条款，以及 VIAVI 给客户的任何软件（包括适用的技术支持费）的支付条款。客户将保留足够详细的使用记录以协助核实。客户应完全配合此类审计，并给予一切必要的援助和拨号或/或现场进入所有网络，记录，材料和设备。如果审核后发现有客户有付款不足的情况，VIAVI 将开给客户发票，客户应支付少付的款项，并支付自到期日起算的利息。如果少付金额超过到期款额的百分之五（5%），客户应报销 VIAVI 的审计费用。VIAVI 在本 12.8 节下的权利及救济是补充而不是替代其在任何法律或衡平法下则下应享有的其他权利或补救办法。

12.9 可分割性。如果且在某种程度上，任何本协议的条款，除付款义务外，成为或被有司法管辖权的法院宣布为违法，该条款，但只限于该非法条款，应为无效并且应被视为从本协议中删除。当事人同意在保留协议意图的前提下可通过必要程度的修改使该条款合法，或者，如果修改是不可能的，则可用其它合法的条款替代该条款以达到相同的目的。本协议所有其它条款应继续保留并有效。

Goods and/or its implementing and/or successor legislation and/or regulations.

12.3 Entire Agreement. This Agreement contains the entire agreement between VIAVI and Customer concerning the subject matter of this Agreement, and apart from any existing sales agreement covering the products, software or services hereunder or non-disclosure agreements, this Agreement supersedes any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. No provisions in any purchase orders, or in any other documentation employed by or on behalf of either party in connection this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. Any notices and any modifications of, or amendments to, the Agreement shall be invalid, unless (i) notices are in writing and sent by fax or by registered or certified mail, postage prepaid, or via email; and (ii) modifications and amendments are in writing and signed by duly authorized officers of both parties. Representations made by sales or technical personnel of VIAVI shall have no legal effect, unless confirmed by a senior executive of VIAVI (senior vice president or above) in writing. Furthermore, notices to VIAVI are invalid, unless and until received at the address specified in the preamble of these General Terms with a copy to Viavi Solutions Inc., Attn. Legal Department, 6001 America Center Drive, 6th Floor, San Jose, CA 95002 or at such other address(es) as may be specified by VIAVI to Customer in writing as the appropriate address for notices.

12.4 Dates and Timelines. All references to days shall be to calendar days, except as expressly noted otherwise. All scheduled shipment dates, delivery dates, and other dates are non-binding estimates, unless a senior executive of VIAVI (vice president and above) expressly agrees in a duly signed writing that a certain date shall be legally binding.

12.5 No Waiver. The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative.

12.6 Assignment and Delegation. Customer may not assign any of its rights against VIAVI, and any (purported) assignment, either voluntarily or by operation of law, is invalid. Any warranties extended by VIAVI are nontransferable and for Customer's benefit only. VIAVI may assign its rights and delegate its obligations.

12.7 Force Majeure. Any non-performance or late performance – except of payment obligations – of either party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing or late-performing party whether or not similar to the foregoing. If by reason of any such force majeure event, VIAVI's supplies of Goods and Services are limited, VIAVI shall have the right to prorate the available supply in such a manner as it, in its sole discretion, determines appropriate.

12.8 Audit. Upon reasonable notice, VIAVI or its agent(s) may inspect Customer's facilities (including computers) and records to verify Customer's compliance with these General Terms and any Software license terms and payment for all Software licensed (including applicable support fees) to Customer. Customer will keep records regarding its use in sufficient detail to permit this verification. Customer shall fully cooperate with such audit, and grant all required assistance and dial-in and/or on-site access to all networks, records, materials and equipment. If, after an audit, it is determined that Customer had underpaid any amounts due, VIAVI will invoice Customer for and Customer will pay the amount of the underpayment plus interest from the date payment was due. If the underpayment is more than five (5%) percent of the amount properly due, Customer will also reimburse VIAVI for its audit expenses. VIAVI's rights and remedies under this Section 12.8 shall be in addition to and not in lieu of any other rights or remedies that are available to VIAVI at law or in equity.

12.10 没有授权。本协议双方均为独立合同方。双方在此没有建立代理人和被代理人，雇主和受雇人，公司和员工，特许人和被许可人的关系。任何一方都没有权利或资格，也不应为另一方承担或创造任何义务或在任何方面代表另一方。VIAVI 不会承担也不授权任何第三方，个人或实体承担或接受任何责任或义务，或代表 VIAVI 作出与商品和/或服务有关的承诺。

12.11 解释。在本协议中，除非出现相反用意：(i) 条款，“此处”，“这里”和类似表述是指本协议，而不是指本协议的任何特定部分或本协议的任何补充协议；(ii) 单数名词只应包括复数，反之亦然；(iii) “包括”指“包括但不限于”；(iv) 所定义的词语或表达形式的其他语法形式有相对应的涵义；(v) 对某一节，文件或协议的提及应包括本协议所允许的对该节，该文件或该协议的修改的提及；及 (vi) 协议的分节和标题的插入是为了方便参考，不应影响对本协议的构建和解释。

12.9 Severability. If and to the extent that any of the terms of this Agreement, except payment obligations, become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, but only to the extent that such term is illegal, it being the intent and agreement of the parties that the Agreement shall be deemed amended by modifying such term to the extent necessary to make it legal while preserving its intent or, if that is not possible, by substituting therefore another term that is legal and achieves the same objective. All remaining terms of this Agreement shall remain in full force and effect.

12.10 No Authority. The parties to this Agreement are independent contractors. No relationship of principal to agent, master or servant, employer to employee or franchiser to franchisee is established hereby between the parties. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. VIAVI neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for VIAVI with regard to the Goods and/or Services.

12.11 Interpretation. In this Agreement, unless a contrary intention appears: (i) the terms, "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular portion hereof and include any agreement supplemental hereto; (ii) words importing a singular number only shall include the plural and vice versa; (iii) the term "including" means "including without limitation"; (iv) other grammatical forms of defined words or expressions have corresponding meanings; (v) a reference to a section, document or agreement, including this Agreement, includes a reference to that section, document or agreement as amended from time to time, as permitted hereunder; and (vi) the division of this Agreement into sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement.

