

GENERAL TERMS AND CONDITIONS OF SALE for Deliveries and Services to Entrepreneurs of LEONI Cable (China) Co., Ltd (last updated 1. July 2013)

莱尼电气线缆（中国）有限公司向企业提供货物或服务的一般销售条款（最后更新于2023年7月1日）

1. Area of application

- 1.1 These General Terms and Conditions for Deliveries and Services to Entrepreneurs apply to all agreements, contractual declarations, goods supplied and services performed by LEONI Changzhou Co., Ltd. (hereinafter "LEONI") unless expressly agreed otherwise. These General Terms and Conditions of Sale also apply to all future goods supplied, services performed or offers placed by LEONI, even if they are not agreed separately once again. These Conditions do not, however, apply to business to consumer contracts.
- 1.2 These General Terms and Conditions for Deliveries and Services to Entrepreneurs shall apply exclusively. Any general terms and conditions of the Customer shall not apply even where LEONI has not separately objected to them in any individual case. Even if LEONI refers to a letter or writing containing or referring to the general terms and conditions of the Customer or any third party, or confirms selection fields on purchaser portals or similar electronic systems of the Customer that have to be activated for system-related reasons, this shall not constitute consent to the application of such general terms of business. The same shall apply accordingly in relation to any deliveries or payments.

2. Definitions

- 2.1 Some of the terms used related to the copper business in contractual documents of LEONI are not used consistently in the industry. LEONI, however, endeavours to use terminology consistently in the interests of transparent business relationships and customer communication. In order to avoid difficulties in their interpretation, we refer to the following definitions of the terms. These definitions form part of the contract. If the terms defined below are used in contractual documents, they have the meaning given below:
- 2.1.1 Alloy surcharge: The alloy surcharge is a lump sum in EURO fixed by LEONI which is part of the agreed copper price model for the two copper alloys copper magnesium CuMg0.2 and copper tin CuSn0.3. LEONI defines this lump sum before the beginning of each calendar half year and informs the Customer in due time.
- 2.1.2 BFIX: The exchange rate from USD to Euro published by Bloomberg; the exchange rate at Frankfurt 2pm is decisive.
- 2.1.3 Camden: The price of copper published by the International Wire Group (IWG), which is based on the COMEX listing and includes the expected copper price movements for the next two weeks. It is published every two weeks by the IWG.
- 2.1.4 COMEX: Price for copper in USD on the New York Mercantile Exchange, COMEX Division (Commodity Exchange Inc.), which has licensed warehouses for gold, silver and copper.
- 2.1.5 Effective cross section: The effective cross section is the actual geometric cross section of a conductor (where applicable, inside a cable). Small tolerances are possible due to production processes.
- 2.1.6 Total price: For copper cables, the total price is generally made up of the adder price and the final sales price for the copper product.
- 2.1.7 GIRM: The GIRM (Groupement d'Importation et de Répartition des Métaux) publishes a copper value based on the LME.
- 2.1.8 Adder price: The adder price gives the price for the cable without the metal content, which is calculated separately.
- 2.1.9 Copper base/copper base price: The copper base price is a standard value agreed with the customer (e.g. EUR 120/100 kg). Stating the copper base price (e.g. EUR 120/100 kg) is intended to make it easier to compare quotations. On the basis of a hypothetical copper listing of, for example, EUR 120/100 kg, a total price is calculated, which can be compared to other quotations that are calculated based on a different or the same hypothetical copper listing. The actual price to be paid may deviate significantly upwards or downwards depending on the actual copper listing as a considerable copper surcharge may have to be paid in some cases. It is therefore not possible to ascertain the actual invoice amount or a ballpark indication of its amount from this price.
- 2.1.10 (Copper) premium or Cupremium: The term describes the costs determined by our copper suppliers to transform the raw copper ore into a usable format, i.e. up to a copper cathode. These costs are fixed by our suppliers and are passed on to customers. LEONI determines the costs before the beginning of each calendar half-year and informs the Customer of these costs in good time. LEONI incurs the costs in USD; they are converted into EURO using the average value according to BFIX from the respective previous half calendar year minus 1 month (example: in the second calendar half year the average value from December (previous year), January, February, March, April, May (respective current year) is calculated).
- 2.1.11 Copper premium on average: The copper premium on average is charged by suppliers to LEONI for deliveries of copper invoiced on monthly average price (or other periods on average).

1. 适用范围

- 1.1 除非另有明确约定，本向企业提供货物或服务的一般条款适用于所有的协议、合同声明、莱尼线缆（常州）有限公司（以下简称“莱尼”）提供的货物和服务。即使没有再次单独约定，本一般销售条款也适用于莱尼公司所有将来提供的货物、服务或发出的要约。但是，本条款不适用于和消费者的合同业务。
- 1.2 本向企业提供货物或服务的一般条款排他适用。客户的任何一般商业条款均不适用，即使在个别的情况下，莱尼没有明确地反对其适用。即使我们引述包含或提及买方的商业条款的文件或者第三方的文件或确认因系统相关原因必须激活的买方门户或客户类似电子系统上的选择字段，这也不构成适用上述条款的约定。同样的情形也适用于交付和付款。

2. 名词定义

- 2.1 莱尼在铜业务合同文件中使用的一些术语在行业中并不统一。但是，为了有助业务关系透明化及客户沟通，莱尼尽力使用统一的术语。为了避免解释术语时出现问题，我们明确指定以下术语定义。这些定义构成合同的一部分。只要以下定义的术语出现在合同文件中，则其含义如下。
- 2.1.1 合金附加费：合金附加费是莱尼以欧元为单位确定的一笔总金额，是两种铜合金铜镁CuMg0.2和铜锡CuSn0.3的商定铜价模型的一部分。莱尼在每个日历半年开始前确定该笔总金额并适时通知客户。
- 2.1.2 BFIX（英文：BFIX）：彭博社公布的美元对欧元的汇率；法兰克福时间下午2点的汇率是决定性的。
- 2.1.3 Camden（英文：Camden）：国际线材集团（IWG）根据COMEX牌价所公布的铜价，包括未来两周的铜价预期变化。该价格由IWG每隔两周公布。
- 2.1.4 COMEX（英文：COMEX）：纽约商品交易所COMEX分部（商品交易所公司）公布的以美元计算的铜价，COMEX分部拥有许可的黄金、白银和铜产品仓库。
- 2.1.5 有效横截面（英文：Effective Cross Section）：有效横截面是导线实际几何横截面（可能位于电缆内部）。由于制造原因可能会出现较小公差。
- 2.1.6 总价格（英文：Total Price）：铜线电缆的总价格通常由零铜价格与铜价构成。
- 2.1.7 GIRM（英文：GIRM）：GIRM（金属进口与销售集团）根据LME公布的铜价。
- 2.1.8 零铜价格（英文：Adder Price）：零铜价格指不含单独计算的金属部分的电缆价格。
- 2.1.9 铜基准价（英文：Copper Base/Copper Base Price）：铜基准价是与客户约定的标准值（例如120欧元/100公斤）。确定铜基准价（例如120欧元/100公斤）是为了便于对报价进行比较。这样，根据120欧元/100公斤的铜牌价计算出的总价格与根据其他或相同铜牌价计算得到的报价就有可比性。实际支付价格可能会因为铜的实际牌价而与计算价格有较大差异，因为部分业务需要支付铜附加费。因此无法从这个价格推算出实际发票金额或大致金额。
- 2.1.10（铜）溢价或铜溢价（英文：(Copper) premium or Cupremium）：该术语描述了将原铜矿石转化为可用形式（即阴极铜）所产生的成本。这些成本由我们的供应商确定，并转嫁给客户。莱尼在每个日历半年开始之前确定成本，并及时通知客户这些成本。莱尼以美元为单位产生成本；根据BFIX，使用上半个日历年减去1个月的平均值将其转换为欧元（例如：在第二个日历年，计算12月（前一年）、1月、2月、3月、4月、5月（当年）的平均值）。
- 2.1.11 平均铜溢价（英文Copper premium on average）：平均铜溢价由供应商就按月平均价格（或其他期间的平均价格）开具发票的铜交付向莱尼收取。

- 2.1.12 Copper premium on the unknown: The copper premium on the unknown is incurred for copper deliveries to LEONI that are settled on the daily quotation or prompt fixing unknown in advance.
- 2.1.13 Final sales price for the copper product: The final sales price for the copper product is calculated based on the agreement with the customer. Calculation factors are normally the delivery quantity, the type of cable, a copper sales factor and a copper price model.
- 2.1.14 Copper price model: The copper price model is a copper invoicing model agreed with the customer which determines which amount, taking various factors into consideration, such as the average value of a certain listing over a certain period, is to be used as an invoicing value for the copper component when invoicing the customer.
- 2.1.15 Copper sales factor: The copper sales factor is a purely commercial calculation factor agreed with the Customer that is used to calculate the total price of a cable. Although customarily expressed in the business in kg/km, the copper sales factor does not indicate the quantity or weight of the actual copper contained in the cable. It is a purely arithmetic calculation factor that does not give any direct indication of the quantity of copper used in the cable.
- 2.1.16 Copper surcharge: The copper surcharge is calculated based on the difference between the copper price model agreed with the customer and the copper base price agreed with the customer, which is multiplied by the copper sales factor. The following formula is used by LEONI to calculate the copper surcharge:

$$\text{Copper surcharge [€/km]} = \text{Copper sales factor [kg/km]} \times ((\text{agreed copper price model [€/100 kg]} - \text{copper base price [€/100 kg]}) / 100$$
- 2.1.17 LME: Exchange price on the London Metal Exchange for copper in USD. The value "Daily Settlement Cash ASK" is decisive. The conversion into Euro is done according to BFIX.
- 2.1.18 LME Alu: London Metal Exchange exchange price for aluminium in USD. The value "Daily Settlement Cash ASK" is decisive. The conversion into Euro is done according to BFIX.
- 2.1.19 Metal 1 (as exchange key), abbr. ME1: Continuously updated LEONI prices for various copper alloys that are composed of at least two elements. The corresponding formula for this is based on the chemical composition of the respective alloy. Metal 1 (as exchange key) does not apply to the copper alloys and aluminum under Metal 2.
- 2.1.20 Metal 2 (as exchange key), abbr. ME2: Continuously updated prices for (i) copper, silver and the alloys CuSn6 and CuZn37 published on Westmetall and (ii) aluminum based on the LME quotation and the agreed aluminum surcharge and (iii) the alloys copper magnesium CuMg0.2 and copper tin CuSn0.3 based on the LME quotation and the agreed alloy surcharge.
- 2.1.21 Nominal cross section: Nominal cross section is the cross section specified in certain documents. This does not always correspond to the actual cable cross section, but it is a good basis for standardisation and calculations. The electrically effective cable cross section for metal cables is determined by measuring the electrical resistance (generally the DC resistance) and, due to the different constructions of the individual types of cable and additional processing effects, does not categorically correspond to the geometric cable cross section, which would be derived from the nominal cross section and the standard values for specific resistances. It is therefore a nominal value that indicates certain operational characteristics and possible uses. This is to be expressly indicated when using the term.
- 2.1.22 Nominal: The use of the term "nominal" with reference to a number indicates that it refers to an abstract indicator. The specific number indicated may differ from the actual number; however, a number given as "nominal" indicates an approximate value that is generally present based on the standards and experience.
- 2.1.23 SHME: The Shanghai Metal Exchange (SHME), a state futures exchange in China, is a non-profit, self-regulating corporation. The exchange was created for trading in non-ferrous metals including copper, aluminium, lead, zinc, tin and nickel. The listing is normally used in China.
- 2.1.24 WME/Westmetall: Westmetall GmbH & Co. KG is an internationally oriented trading company for non-ferrous metals. Its core business is trading the commodity metals copper, tin, nickel and lead as well as copper alloys. Daily prices for these metals are published online at www.westmetall.com. LEONI uses these mainly for alloys.
3. **Conclusion of contract / Delivery**
- 3.1 Supply contracts (order placement and acceptance) must be concluded in writing. So far as understandings and agreements were reached in other form in individual cases, these must be confirmed in detail and in writing without delay. Orders must correspond with LEONI's offers or contain specific mention of any modification.
- 3.2 Call-offs must be scheduled and accepted by the purchaser within six months of the conclusion of the agreement or order confirmation from LEONI, unless otherwise agreed. On expiry of the acceptance period or if the purchaser does not use an agreed call-off within six months following the placing of an order, LEONI shall be entitled, after the expiry of a grace period of two weeks, to demand immediate acceptance and payment of the goods, to withdraw from the contract or to demand damages due to non-fulfilment, at the option of LEONI.
- 2.1.12 未知的铜溢价 (英文Copper premium on the unknown): 未知的铜溢价是由于向莱尼交付的铜而产生的, 这些铜是根据每日报价或事先未知的即时定价结算的。
- 2.1.13 铜产品价格 (英文: final sales price for the copper product): 铜产品价格的计算取决于与客户的协议。计算因素通常包括交货数量、电缆类型、铜含量和铜价格模型。
- 2.1.14 铜价模型 (英文: Copper price model): 铜价模型是一个与客户约定的铜价结算模型, 在考虑各种因素 (例如某个时期内的某个牌价的平均值) 的情况下, 该模型确定了在给客户提供发票上使用什么样的价格作为铜部件的结算值。
- 2.1.15 铜销售系数 (英文: Copper sales factor): 铜销售系数是一个与客户商定的纯粹的商业计算值, 包括在电缆总价格的计算中。尽管行业中通常以千克/千米为单位, 但是铜销售系数并不表示电缆中实际包含的铜数量或重量。这是一个纯粹用于计算的系数, 不能由此直接得出电缆中的用铜量。
- 2.1.16 铜附加费 (英文: Copper surcharge): 铜附加费是指根据客户铜价模型约定的铜价减去与客户约定的铜基准价的差再乘以铜销售系数。莱尼使用以下公式计算铜附加费:

$$\text{铜附加费 [欧元/千米]} = \text{铜销售系数 [千克/千米]} \times (\text{约定的铜价模型价格 [欧元/100 千克]} - \text{铜基准价 [欧元/100 千克]}) / 100$$
- 2.1.17 LME (英文: LME): 以美元计算的伦敦金属交易所 (LME) 铜交易价格。"每日结算现金询问" 的价值是决定性的。转换为欧元是根据 BFIX 进行的。
- 2.1.18 LMEAlu (英文: LMEAlu): 伦敦金属交易所铝的交易价格 (美元)。“每日结算现金询问” 的价值是决定性的。根据 BFIX 转换为欧元。
- 2.1.19 金属1 (作为交换密钥), 缩写ME1: 由至少两种元素组成的各种铜合金的持续更新的莱尼价格。相应的公式基于相应合金的化学成分。金属1 (作为交换键) 不适用于金属2下的铜合金和铝。
- 2.1.20 金属2 (作为交换密钥), 缩写ME2: 持续更新的 (i) Westmetall 上公布的铜、银及合金CuSn6及CuZn37; (ii) 基于LME报价及协定铝附加费的铝; (iii) 基于LME报价及协定合金附加费的合金铜镁CuMg0.2及铜锡CuSn0.3的价格。
- 2.1.21 标称横截面 (英文: Nominal Cross Section): 标称横截面是在一些文件中提及的横截面。该横截面并非总是对应导线的实际横截面, 但可作为一个标准和计价基准。金属导线的有效导电横截面是通过测量电阻 (通常是直流电阻) 来确定的, 并且由于各类导线结构不同, 并受到加工过程的影响, 导电横截面基本上不对应于标称横截面和特定电阻标准值计算得到的导线几何横截面。这是一个表示某些运行特性和使用方法的标称值。在使用过程中必须明确指出这一点。
- 2.1.22 标称 (英文: Nominal): 用“标称”来说明一个数字表示这是一个抽象描述。具体给定的数字可能与实际数字有所不同, 但用“标称”说明的数字是从标准或经验上来说通常近似的值。
- 2.1.23 SHME (英文: SHME): 上海金属交易所 (SHME) 是一家中国国营期货交易所, 是不以盈利为目的的自主经营机构。该交易所是为铜、铝、铅、锌、锡、镍等有色金属贸易而设立的。其牌价在中国很常用。
- 2.1.24 WME/Westmetall (英文: WME/Westmetall): Westmetall GmbH & Co. KG 是一家面向国际的有色 (NE) 金属贸易公司。核心业务是进行铜、锡、镍和铝以及铜合金等商业金属的交易。这些金属的价格每日公布在 www.westmetall.com, 莱尼主要在合金方面使用这些价格。
3. **合同的订立/交付**
- 3.1 供应合同 (订单下达和承诺) 应该以书面形式订立。如果在个别情形下, 双方以其他的形式达成了谅解和协议, 必须毫不延迟地作出详细的书面确认。订单必须和莱尼公司的要约一致, 或者明确提出任何修改的部分。
- 3.2 除非另行约定, 买方必须在协议订立之日起或莱尼确认订单之日起六个月内, 通知并接受送货。如果接受期限截止或者买方在下达订单之后的六个月内没有通知送货, 莱尼有权, 在两周的宽限期到期之后, 选择要求买方立即接受货物并支付货款, 或者解除合同, 或者要求买方赔偿不履行所造成的损失。

- 3.3 If circumstances emerge following the conclusion of the contract that justify doubts about the purchaser's creditworthiness, LEONI shall be entitled to suspend its performance and determine an appropriate period during which the purchaser must either provide payment in concurrent performance against delivery or furnish collateral. Once this period has fruitlessly expired, LEONI shall be entitled to withdraw from the contract or demand advance payment. In the event of a withdrawal the purchaser shall not be entitled to any claims due to non-performance.
- 3.4 The delivery periods stated determine roughly the time of delivery ex works following fulfilment of all production conditions, provided that no binding delivery periods were agreed. LEONI offers no guarantee of a specific transportation period.
- 3.5 Adherence to agreed delivery periods presumes the timely performance of participation duties incumbent upon the purchaser (in particular, the receipt of all documents, plans, drawings, data, supplies of materials, required permits and approvals) to be supplied by the purchaser together with compliance with the agreed terms and conditions of payment and other obligations by the purchaser. If these conditions are not fulfilled on time, the deadlines shall be extended appropriately; this does not apply if LEONI is responsible for the delay.
- 3.6 Acts of God, industrial disputes, unrest, export and trade restrictions, official measures and other unforeseeable, inevitable and serious events (collectively "force majeure") absolve the contracting partners from their obligations for the duration of the disturbance and the scope of their effect. Force majeure relating to a LEONI supplier and any delays in delivery on the part of LEONI caused thereby are to be regarded as equivalent to immediate force majeure. This also applies if these events occur at a time when the contracting partner in question is already in arrears, unless the contracting partner has caused the preceding delay or default deliberately or through gross negligence. The contracting partners are obliged to provide the requisite information immediately within the scope of what is reasonable and to adapt their obligations to the changed circumstances according to the requirements of good faith. If delivery becomes impossible due to force majeure, LEONI's duty of delivery shall cease. In such cases the purchaser shall not be entitled to claim damages.
- 3.7 If LEONI is in default with effecting delivery or performing other services or duties consistent with the respective agreed time schedules, LEONI shall be liable only for damages caused directly by delay which is to be considered as foreseeable in line with the customs of the trade. To the extent that LEONI does not act deliberately or grossly negligent, LEONI shall be liable only up to the amount of the order value of the relevant individual order. Liability for production downtime, lost profit and for all indirect damages caused by delay and for all other consequential damage or loss and pecuniary loss shall be excluded. This does not apply in cases of gross negligence or wrongful intent.
- 3.8 If the purchaser is in default of acceptance, LEONI shall be entitled to charge the purchaser the storage costs incurred - starting one month after the advice of readiness for dispatch - but at least 0.5% of the invoice amount for every month commenced, up to a maximum of 5% of the agreed price for the goods with which the purchaser is delayed. The purchaser shall be entitled to prove that damage or decrease in value has not occurred or is less than the lump-sum. LEONI reserves the right to prove greater loss and to claim for it.
- 3.9 All measures required to import the goods underlying the supply agreement into the purchaser's country, such as obtaining import licences and foreign exchange permits, shall be taken by the purchaser independently and in good time. Where the purchaser gains knowledge of circumstances that prevent an import, the purchaser shall inform LEONI thereof immediately. If the procurement of the requisite import documents is in doubt, LEONI shall be entitled to withdraw from the contract after setting a further two-week period.
- 3.10 For shipments to European Union countries the purchaser shall be obliged to quote LEONI the purchaser's VAT number at the time the order is placed. If the purchaser fails to stipulate this number to LEONI or if the number is incorrect, LEONI shall be entitled to claim damages. The same applies if the purchaser fails to make available to LEONI the necessary confirmations of transportation and of the final destination (certificate of delivery) immediately following receipt of the goods. The defence of contributory negligence shall be excluded; in particular, LEONI shall not be obliged to check or have checked for accuracy a VAT number it has received.
- 3.11 For exports to countries outside the European Union the purchaser shall be obliged to make available to LEONI the proof required in accordance with applicable fiscal provisions immediately following delivery of the goods. If the purchaser fails to comply with this obligation, LEONI shall be entitled to claim damages.
- 3.12 LEONI shall be authorised to part shipments and part performance provided that this is acceptable to the purchaser. Excess deliveries or short deliveries customary in the trade and totalling up to 10% of the contract amount are not considered a defect and must be accepted by the purchaser. Invoicing shall take place in accordance with the quantities actually delivered.
- 3.3 如果在合同订立之后, 出现可以对买方的信用产生合理怀疑的情况, 莱尼有权中止履行, 并确定一段合理的期限, 在此期限内买方必须在货物交付的同时支付货款, 或者提供保证。如果在这段期限内, 买方没有采取有效措施, 莱尼有权解除合同, 或者要求预付款。如果在此情形下合同被解除, 买方无权因未履行合同而提出任何主张。
- 3.4 如果没有约定具有约束力的交付时间, 所称的交付时间指的是在生产完成后大致的工厂交货的时间。莱尼对具体的运输期限不作任何保证。
- 3.5 遵守约定的交付时间, 是以假定买方及时履行其所应当承担的配合义务 (特别是, 接收所有文件、计划、图纸、数据, 提供材料、所需要的许可和批准), 以及买方按照约定履行付款义务等其他义务为基础的。如果买方没有按时履行上述条款, 截止日期应予适当地推迟; 但是如果该延迟是莱尼所造成的, 本条款不适用。
- 3.6 天灾、劳资争议、动乱、出口和贸易限制、政府措施和其他无法预见、不可避免的严重事件 (合称为“不可抗力”) 免除合同各方在不可抗力影响下, 受不可抗力的影响而不能履行合同的义务。莱尼供应商的不可抗力, 如果导致了莱尼一方延迟交货, 则该不可抗力应视为直接的不可抗力。除非合同方已经造成了在先的延迟或故意不履行义务、或因重大过失不履行义务, 上述条款也适用于遭受不可抗力影响的合同方是在已经延迟之后再发生不可抗力情形。合同方应当立即在合理范围内提供必要信息, 并且依据诚实信用的要求, 根据变更后的情形调整义务。如果因为不可抗力, 交付已经无法实现, 莱尼的交付义务应当终止。在这样的情形下, 买方无权主张损害赔偿。
- 3.7 如果莱尼没有根据约定的日程安排履行交付义务或提供其他服务或履行其他义务, 莱尼只对因延迟造成的直接损害, 并在根据贸易惯例可以预见的损失范围内, 承担责任。只要莱尼没有故意或重大过失, 莱尼承担的责任限于相关的单个订单的订单金额。对于生产停工期的责任, 因延迟所造成的利润损失和所有的间接损害, 所有其他的连带损害或损失以及金钱损失, 莱尼公司不承担责任。这不适用于存在重大过失或故意的情形。
- 3.8 如果买方没有接收货物, 莱尼有权要求买方支付发生的仓储费——自通知准备发货后的一个月后起算——不少于每月伊始发票额的0.5%以上, 且最高不超过对买方延迟接收的货物约定价款的5%。买方有权证明没有损害或价值没有减少, 或者损害或损失低于索赔的一次付清的金额。莱尼保留证明更大的损失并主张赔偿的权利。
- 3.9 供应协议项下的货物进口到买方的国家所需采取的所有措施, 例如获取进口证和外汇许可, 应该由买方单独、及时履行。如果买方得知禁止进口的情形, 买方应该立即将此情形通知莱尼。如果无法确定是否可以取得必要的进口文件, 莱尼有权在设定两周的宽限期之后解除合同。
- 3.10 对于出口到欧盟国家的货物, 买方应该在订单下达时将买方的增值税号告知莱尼。如果买方没有向莱尼告知上述号码, 或者所告知的数字不正确, 莱尼有权要求损害赔偿。如果买方在接收货物之后, 没有立即向莱尼对运输和最终目的地 (交付证明) 予以必要确认, 本条款也同样适用。混合过错的抗辩理由已被排除在外; 尤其是, 莱尼在收到增值税号后, 没有核查或核对准确性的义务。
- 3.11 对于出口到欧盟以外国家的货物, 买方应当在交付货物之后立即向莱尼提供根据所适用的财税规定所要求的证明文件。如果买方没有按约履行义务, 莱尼有权要求损害赔偿。
- 3.12 只要买方接受, 莱尼有权分批运输和分次履行义务。在贸易中通常发生的实际交货量多于或者少于合同量, 且不超过合同量10%, 不应被认定为瑕疵, 并且买方必须接受。发票应当根据实际交付的数量开具。

4. Prices and payment

- 4.1 All prices are based on the level of costs prevailing at the time the order is placed. If the agreed delivery takes place 4 months after the order is placed and if the cost of material, wages and other costs have increased by then, LEONI shall be entitled to levy appropriate charges to bring the original price quotation in line with the cost increases.
- 4.2 Prices are FCA LEONI (Incoterms 2020) plus the applicable VAT. Unless otherwise agreed, packaging and freight costs shall be at the expense of the purchaser.
- 4.3 Empties, particularly packaging such as spools, drums and barrels etc. ("empties") shall be invoiced separately and must be paid for by the purchaser at the same time as payment for the delivered goods is made. Ownership of the empties shall pass to the purchaser on full payment. The purchaser shall be entitled to return empties in perfect, clean and reusable condition to the supplying plant of LEONI within six months from the invoice date at the purchaser's own cost and risk. In this case the purchaser shall be reimbursed in full for the purchase price of the empties. LEONI does not accept return of disposable packaging.
- 4.4 In the event that LEONI and the purchaser, by derogation from 4.3 above, agree that the empties be borrowed to the purchaser, the purchaser shall return the empties to the LEONI supplying plant within six months of the invoice date at the purchaser's own cost and risk. In the event of damage to the empties caused by the purchaser, LEONI shall be authorised to demand compensation for the repair costs incurred. The same shall apply with regard to the cost of any cleaning required. If the empties have become unusable as a result of the damage or if repair does not make economic sense according to LEONI's reasonably justified discretion, the purchaser shall compensate LEONI for the value of the empties. If the empties are not returned within the period stipulated, LEONI shall be entitled, after setting a grace period of two weeks, to invoice the purchaser for the value of the empties. The empties shall pass into the purchaser's ownership on full payment.
- 4.5 Tool costs shall be invoiced separately without the purchaser thereby acquiring any rights to the tools.
- 4.6 Promises of discounts shall be subject to the proviso of all due amounts being settled. LEONI shall only accept bills of exchange as conditional payment subject to agreement. Any expenses shall be borne by the purchaser.
- 4.7 The purchaser can only offset payments against counterclaims or withhold payments due to such counterclaims that have been either uncontested or finally and non-appealably established.
- 4.8 Credit notes and reimbursements do not constitute acknowledgement of fault or acknowledgement of a legal obligation.

5. Terms of freight

- 5.1 Unless otherwise agreed, the risk shall generally pass to the purchaser once the goods leave the works or the purchaser has been notified that the goods are ready for dispatch. At the request and cost of the purchaser LEONI shall conclude insurance as demanded by the purchaser.
- 5.2 The choice of the delivery route and means of transport shall be at the discretion of LEONI, there being no guarantee that the cheapest shipping method will be used. If the purchaser demands a different shipping method, the additional cost shall be borne by the purchaser.
- 5.3 Delivery in accordance with clauses CIF, CIP or CFR (Incoterms 2020) shall take place only for goods whose value per single shipment is EUR 5,000 or more. Except in cases of agreed CIF or CIP delivery, the consignment will only be insured against transport damage at the request of the purchaser and at the purchaser's expense.
- 5.4 In the event of shipment of goods by sea, consignments with a value of goods less than EUR 5,000 shall only be dispatched "FOB" (Incoterms 2020) Chinese port. The same applies to part shipments, provided that they have been agreed with the purchaser. Consignments with a goods weight of less than 50 kg shall be dispatched only FCA (Incoterms 2020) regardless of the value of the goods.
- 5.5 If unforeseen events occur, such as threat of war, the breakout of armed conflict, closure of shipping lanes and similar events of force majeure, LEONI shall be entitled to charge any increases in freight and insurance costs resulting from this to the purchaser.

6. Retention of title

- 6.1 The goods shall remain in the ownership of LEONI until all present and future claims from the business relationship with the purchaser have been fulfilled. The purchaser shall be obliged to store the goods separately. The retention of title shall cover the accepted balance, provided that LEONI books amounts receivable from the purchaser in current account (current account retention of title clause).
- 6.2 The purchaser shall perform any processing for LEONI without this resulting in any obligations for LEONI. Any co-ownership shares accruing to the purchaser from the mixing together or combination of goods subject to retention of title shall be transferred by the purchaser to LEONI in advance on acceptance of the goods that are subject to retention of title. The purchaser shall hold the manufactured goods or aggregate assets in trust for LEONI.

4. 价格和付款

- 4.1 所有的价格都是基于订单下达之时的价格水平。如果约定的交付发生在订单下达的4个月之后, 并且如果那时材料成本, 工资和其他费用增加了, 莱尼有权要求收取适当的费用, 以根据成本的增加调整原来的报价。
- 4.2 价格为FCA莱尼价(2020年国际贸易术语解释通则)加上按照规定缴纳的增值税。除非另有约定, 包装费和运输费用应当由买方承担。
- 4.3 对于空容器, 尤其是例如线轴、鼓和桶等的包装物("空容器"), 应该单独开具发票, 买方应当在支付已交付货物的同时支付空容器费用。在完成全额付款之后, 空容器的所有权转移给买方。买方可以从发票开具之日起的六个月内, 由买方自担费用和风险, 将无瑕疵的、清洁的、可以重新使用的空容器, 退还给莱尼的供应工厂。在该情形下, 空容器的购买价格将被全额退还给买方。莱尼不接受不可回收包装物的返还。
- 4.4 如果莱尼和买方, 不适用上述第4.3条, 同意把空容器借给买方, 买方应该在开具发票之日起的六个月内, 由买方自担费用和风险, 将空容器退还给莱尼供应的工厂。如果买方对空容器造成了损坏, 莱尼有权要求补偿已发生的修理费用。这同样适用于任何需要清理的费用。如果因为损坏, 空容器不可以重新使用, 或者根据莱尼合理正当的判断, 修理在经济上不合理, 买方应该补偿莱尼空容器的价值。如果空容器在规定的期限内没有退还, 莱尼有权在设定两周的宽限期后, 向买方开具对空容器价格的发票。在全额支付后, 空容器的所有权即转移至买方。
- 4.5 对工具费用应该单独开具发票, 买方并不因此取得对工具的任何权利。
- 4.6 折扣的承诺是以结清所有已到期的款项为条件的。仅在在有约定的情况下, 莱尼才接受汇票作为付款方式。所有费用应当由买方承担。
- 4.7 除非买方的反诉是无争议的或者是最终的不可上诉的, 买方才可以抵消或扣留付款款项。
- 4.8 贷项通知和退款不构成对错误的承认, 或对法律义务的承认。

5. 运输条款

- 5.1 除非另有约定, 通常情况下, 在货物离开工厂或买方被告知货物已经准备好发送时, 风险应转移到买方。在买方提出要求并由买方支付费用的情况下, 莱尼应按照买方的要求购买保险。
- 5.2 莱尼自行决定交付路径和运输方式的选择, 对于是否使用最便宜的船运方式, 莱尼不作任何保证。如果买方要求使用一种不同的船运方式, 应由买方承担额外的费用。
- 5.3 只有对单批船运货物价值是5,000欧元以上的货物才是根据CIF, CIP或CFR条款(2020年国际贸易术语解释通则)交付。除了同意按CIF或CIP条款交付以外, 只有在买方要求并且由买方承担费用的情况下, 才对货物交付的运输损坏购买保险。
- 5.4 如果是海运, 对于少于5000欧元的货物交付, 只应该使用FOB条款(2020年国际贸易术语解释通则)中国港。如果已经和买方达成一致, 这也同样适用于部分海运。对于少于50千克的货物的交付, 不管其货物价款多少, 都只应该以FCA(2020年国际贸易术语解释通则)条款交付。
- 5.5 如果发生了不可预见的事件, 例如战争的威胁、武装冲突的爆发、航道的封锁以及不可抗力的类似事件, 莱尼有权要求买方承担因此增加的运输费和保险费。

6. 所有权保留

- 6.1 在与买方的商业关系中现有的和将来的债权都已实现之前, 莱尼保留对货物的所有权。买方应单独储存货物。所有权的保留应当包括认可的结算余额, 只要莱尼的账科目里记有来自买方的应收款(现金账户所有权保留条款)。
- 6.2 买方为莱尼加工货物不构成莱尼任何形式的义务。如果买方将所有权保留的货物与其他物品混合或结合, 新货物的共同所有权应在买方接收所有权保留的货物时将转移给莱尼。买方应代莱尼保管生产的货物或共同财产。

- 6.3 The purchaser can dispose of the goods subject to a retention of title and the items resulting from their processing only subject to retention of title and must not impair the retention of title of LEONI by any transactions in rem (e.g. conditional bill of sale or pledge). LEONI may revoke the purchaser's resale authorisation regarding the goods owned or co-owned by LEONI at any time and demand furnishing of collateral if the purchaser fails to meet his payment obligations in due form.
- 6.4 LEONI must be notified in writing and without delay of any actual or legal recourse by third parties to the goods subject to retention of title, any damage to or loss of these goods.
- 6.5 All claims accruing to the purchaser from the resale or for other legal reasons with regard to the goods subject to retention of title (including any balance demands from current account) shall be assigned by the purchaser to LEONI in advance. If the goods subject to retention of title are disposed of together with other items not belonging to LEONI or if they are included in works deliveries, the assignment shall only apply in the amount of the invoice value of the goods subject to retention of title. The purchaser shall be obliged revocably to collect the claims assigned to LEONI for LEONI's account in the purchaser's name. The collection authorisation may be revoked at any time if the purchaser fails to meet his payment obligations in due form.
- 6.6 Provided that the realisable value of this collateral exceeds the LEONI claims to be collateralised by more than 10%, LEONI shall release collateral at the demand of the purchaser at the option of LEONI.
- 7. Default**
- 7.1 The purchaser is in default if he fails to pay as agreed within 14 days of receipt of the invoice.
- 7.2 In the event of the purchaser being in default, the claims made against him by LEONI from the underlying legal transaction shall fall due for payment in cash immediately, regardless of bills of exchange accepted or deferred payment terms agreed.
- 7.3 The purchaser shall grant LEONI a right of lien to the material left with the purchaser for the execution of the order and to the claims replacing it in order to secure all present and future claims from the business relationship with the purchaser. If the purchaser is in default or if credit has expired, LEONI shall be entitled to effect the sale of the pledged material at the market price quoted on the London Metal Exchange or, if not traded, at the average German market price on the day of overdue payment or credit expiry.
- 8. Warranty claims**
- 8.1 The purchaser shall examine the delivered goods immediately on receipt. Claims due to a quantity defect or an obvious deficiency of the goods must be asserted by the purchaser within two weeks of their receipt. In the case of deliveries per sample or specimen, warranty claims - including claims for hidden defects - shall be excluded if the delivered goods correspond to the sample or specimen. To the extent that a deficiency is due to the material delivered by the purchaser, no warranty claims shall be permitted.
- 8.2 All warranty claims presuppose that the defect is reported to LEONI without delay once it has been established, before processing, either in writing or electronically, and that a specimen of the goods that are the subject of the complaint is sent. Damage in transit must be noted on the bill of lading and the delivery note and must be confirmed by the driver with a signature.
- 8.3 In the event of a defect as to quality or title within the period of limitation for warranty claims in accordance with 8.5 below, LEONI shall, at its own discretion, either restore the contractual status of the goods or provide a substitute to the contractual place of delivery free of cost and freight against return of the deficient goods. Any claims by the purchaser for the expenditure required for the purposes of subsequent performance to correct defects, particularly costs of transit, infrastructure costs, wage costs and cost of materials, shall be excluded where the expenditure increases because the goods were afterwards shipped to a place other than the contractual place of delivery. Replaced goods shall become the property of LEONI. Should the remedy of the defect or substitute delivery fail, the purchaser can withdraw from the single order contract in question or assert a reduction in payment. Further claims, particularly claims for consequential damage or loss, shall be excluded, unless in the case of (i) wrongful intent or gross negligence by the owner, executive officers or vicarious agents, (ii) injury to life, body or health, (iii) a breach of a contractual duty, the fulfilment of which in the first place enables due performance of the contract and the fulfilment of which the contracting partner can usually rely upon (cardinal duty), (iv) mandatory liability according to the product liability legislation or (v) LEONI has provided a guarantee of quality or durability. In the event of a violation of a cardinal duty any claims for damages shall be limited to the damages which have been foreseen or ought to be foreseen when LEONI concluded the respective contract.
- 6.3 买方可以处置所有权保留的货物, 和经加工但所有权保留的物品, 但不得因为所有权转让(例如有条件的财产转让证书或质押)而损害莱尼的所有权保留。如果买方未能按照约定的形式履行付款义务, 莱尼可以在任何时候, 从买方撤回关于莱尼所有或共同所有的货物的转售授权并要求提供担保。
- 6.4 如果出现第三方对所有权保留的货物的任何实际的或法律的追索, 任何该等货物的损坏或灭失, 买方应当以书面形式、毫不迟延地通知莱尼。
- 6.5 买方因转售或其他与所有权保留货物有关的法律原因(包括对现金账户的余额支付请求)而产生的追索权应事先转让给莱尼。如果所有权保留的货物和其他不属于莱尼的货物一并处理, 或者其被包括在工程交付中, 转让只适用于所有权保留的货物的发票金额。买方有义务以自己的名义, 替莱尼追索已转让给莱尼的应收款项。如果买方未能以适当的方式履行付款义务, 莱尼可以在任何时候撤回收取款项的授权。
- 6.6 如果担保物的变现价值超过了莱尼的主张额的10%, 莱尼可以自行选择, 按买方要求释放担保物。
- 7. 违约**
- 7.1 如果买方在收到发票之后的14天内, 没有按照约定付款, 买方构成违约。
- 7.2 如果买方违约, 莱尼基于合法交易而对买方享有的债权将立即到期, 买方应当立即以现金的方式付款, 而不论已接受汇票方式或者已约定了延期付款。
- 7.3 买方应同意莱尼对材料享有留置权并有权要求替换材料, 以确保订单的执行, 以及与买方的商业关系中产生的莱尼所有的目前的和将来的债权。如果买方违约, 或者信用终止, 莱尼有权以伦敦金属交易所的市场报价出售留置的材料, 如果不是通过买卖, 则以逾期付款或信用终止之日德国平均市场价格变卖。
- 8. 保证**
- 8.1 买方应该在收到货物之后立即验收交付的货物。对于因为货物数量短缺或明显缺陷产生的索赔, 买方应当在收到货物之后的两周内提出。如果按样品或样本交付, 交付的货物和样品或样本一致的, 基于保证而提出的索赔——包括对隐蔽瑕疵的索赔——应当排除。如果瑕疵是因买方提供的材料造成的, 不提供保证。
- 8.2 所有基于保证而提出的索赔, 是以假定在发现瑕疵之后, 在处理之前, 买方以书面或以电子方式毫不迟延地报告给莱尼, 并且索赔的货物的样本已经发送给莱尼为前提的。在运输过程中发生的损坏必须在提单和交付单据中注明, 并且必须由驾驶员签名确认。
- 8.3 如果根据下文第8.5条款, 对于在保证期内发生的关于质量或所有权的瑕疵, 莱尼应自行决定, 或者修复货物至合同规定的情形或者免费提供替代物到合同约定的交付地点并取回有瑕疵的货物。买方提出的为了修补缺陷而产生的费用, 特别是运输费用, 基础设施费, 工资和材料费, 如果是因为后来将货物运到非合同约定的交付地点的其他地方而增加的费用, 应被排除。替换下的货物应当为莱尼的财产。如果瑕疵的修补或替代物的交付无法实现, 买方可以解除存在争议的单个订单或者主张减少价款。其他的索赔, 特别是对连带损害或损失的索赔, 应被排除, 除非 (i) 所有者、执行人员或代理人存在故意或重大过失, (ii) 对生命、身体或健康的损害, (iii) 违反合同义务, 而该义务的完成是按约履行合同的的前提, 且该义务的履行是合同方通常可以信赖的(主要义务), (iv) 根据产品责任立法规定的强制义务, 或者 (v) 莱尼已经对质量或耐久性作出了保证。如果违反了主要义务, 对损害的索赔应当限于莱尼在签署该合同时已经预见或应当预见的损害范围。

- 8.4 To the extent to which LEONI has issued a guarantee of quality or durability regarding the delivery or parts thereof, LEONI shall be liable within the scope of the guarantee. LEONI shall be liable for any loss or damage to the delivery that is based on the absence of the guaranteed characteristics or guaranteed durability and which does not occur directly at the delivered goods, but only if the risk of such loss or damage is manifestly covered by the guarantee. LEONI excludes any kind of updating obligations.
- 8.5 All warranty claims by the purchaser shall become statute-barred on expiry of the period of limitation for warranty claims of 12 months from the date of delivery.
- 9. Property rights**
- 9.1 Unless otherwise agreed, LEONI shall be obliged to make delivery solely in the country where the place of delivery is located, free of industrial property rights and copyright of third parties (hereinafter "property rights"). Provided that a third party has asserted justified claims for the infringement of property rights against the purchaser as a result of deliveries that were made by LEONI and were used in accordance with the contract, LEONI shall be liable to the purchaser within the period stated in 7.5 above, as follows:
- 9.1.1 LEONI will, at its option and cost, obtain a right of use for the relevant deliveries, change them in such a way that the property right is not infringed or exchange them. If LEONI is not able to do this at appropriate conditions, the purchaser shall be entitled to exercise the statutory rights of withdrawal or to assert a reduction of payment.
- 9.1.2 LEONI's duty to pay damages shall be governed by 8.3 above.
- 9.1.3 The above-mentioned obligations of LEONI exist only to the extent that the purchaser informs LEONI in writing and without delay about the claims asserted by the third party, that the purchaser does not acknowledge an infringement and that all defensive measures and settlement negotiations are reserved to LEONI. If the purchaser discontinues use of the goods or services delivered in order to minimise damage, the purchaser shall be obliged to point out to the third party that discontinuation of use does not entail acknowledgement of an infringement of property rights.
- 9.2 Claims by the purchaser are excluded to the extent that the infringement of property rights has been caused by the purchaser.
- 9.3 Claims by the purchaser are furthermore excluded to the extent that the infringement of property rights has been caused by specific requirements stipulated by the purchaser, by use which could not be foreseen by LEONI or by the delivery being used by the purchaser in a different way or together with products not supplied by LEONI.
- 9.4 If property rights by third parties are infringed where deliveries are based on drawings or other information provided by the purchaser, the purchaser shall be obliged to exempt LEONI from all claims.
- 9.5 If other legal defects apply, the provisions of 7.3 above shall apply by analogy.
- 9.6 Any claims by the purchaser against LEONI and its vicarious agents that go beyond the claims provided for in this section 8 shall be excluded.
- 10. Sustainability and Social Responsibility**
- 10.1 It is of major importance for LEONI that social responsibility and sustainability also apply in its business relationships. Within the framework of the legally stipulated due diligence obligations, this therefore applies likewise in respect of LEONI's own staff, the staff of its contracting parties and society at large. To this end, LEONI has anchored its principles in its own Code of Conduct (LEONI Code of Conduct) as well as a Code of Conduct for Business Partners (LEONI Code of Conduct for Business Partners). The LEONI Code of Conduct for Business Partners shall be integral part of these Terms and Conditions. The currently valid version is available at [LEONI Code of Conduct for business partners – LEONI](#) and will be sent to the Customer on request. The Customer assures to comply with the LEONI Code of Conduct for Business Partners and to appropriately address the principles of responsible business conduct specified therein within its company.
- 10.2 LEONI expects that the Customer has established or introduces a due diligence process with corresponding measures and operates an appropriate system for the management of human rights and environment-related risks.
- 10.3 Any serious breach or repeated breaches of the principles of the LEONI Code of Conduct for Business Partners shall render the continuation of the business relationship untenable for LEONI. In such case, LEONI reserves the right to terminate the business relationship in whole or in part if (i) no action is taken to remedy the breach within a reasonable period of time after a written request to the Customer to remedy the breach; or (ii) a breach is obvious and other equally suitable means are not available or not successful.
- 8.4 如果莱尼已经对交付部分或部分的交付部分,出具了一份关于质量或耐久性的保证,莱尼应该在该保证的范围内承担责任。如果丧失了保证的特性或保证的耐久性,即使交付的货物没有遭受直接的损害或灭失,但该等损害或灭失的风险已明确包含在保证中,莱尼应对上诉交付的损害或灭失负责。
- 8.5 所有买方基于保证条款提出的索赔在交付之日起12个月的保证期终止后不得主张。
- 9. 财产权利**
- 9.1 除非另有约定,莱尼应只负责将货物交付到交付地点所在国家,该国不存在第三方的工业产权和著作权(以下简称“财产权利”)。如果第三方因为莱尼依据合同的交付行为,已经向买方提出了侵犯财产权利的合理主张,莱尼应当在上述7.5条写明的期限内对买方承担责任,如下:
- 9.1.1 莱尼可以自行决定,自担费用取得相关交付货物的使用权,改变货物下使其不再侵犯财产权利或替换货物。如果莱尼无法在适当的条件下处理,买方有权行使解除权或主张减少价款。
- 9.1.2 莱尼损害赔偿的义务应遵守第8.3条。
- 9.1.3 只有在买方将第三方提出的主张毫不延迟地以书面形式通知莱尼,而且买方对侵权不予认可,并将所有抗辩措施和和解谈判保留给莱尼的情况下,莱尼的上述义务才存在。如果买方为了使损害最小化,不再继续使用交付的货物或提供的服务,买方应向第三方指出不继续使用并不构成对侵犯财产权利的承认。
- 9.2 如果侵犯财产权利是由买方造成的,买方不得索赔。
- 9.3 如果侵犯财产权利是出于买方规定的具体要求,或是以莱尼无法预见的方式使用交付的货物,或者出于买方以另一种不同的方式使用交付的货物或者买方不与莱尼提供的产品一并使用而造成的,则买方也不得索赔。
- 9.4 如果交付的货物侵犯财产权利是因买方提供的图纸或其他信息所造成的,买方应当使莱尼免于所有的索赔。
- 9.5 如果适用其他法律上缺陷,上述第7.3条的规定应当类推地予以适用。
- 9.6 所有买方对莱尼和其代理人提出的超出本第8部分的规定规定的索赔,应不在此列。
- 10. 可持续性与社会责任**
- 10.1 对莱尼而言,社会责任与可持续性也适用于其业务关系至关重要。因此,在法律规定的尽职调查义务的框架内,这同样适用于莱尼的雇员、其签约方的雇员和整个社会。为此,莱尼将其原则纳入了行为准则(《莱尼行为准则》)以及业务合作伙伴行为准则(《莱尼业务合作伙伴行为准则》)。《莱尼业务合作伙伴行为准则》应是本通用条款的组成部分。目前有效的版本可在[LEONI Code of Conduct for business partners – LEONI](#)获取,并将应要求发送给客户。客户保证遵守《莱尼业务合作伙伴行为准则》,并在其公司内适当地执行其中规定的负责的商业行为原则。
- 10.2 莱尼期望客户已经建立或引入了具有相应措施的尽职调查程序,并进行了适当的人权和环境相关风险管理。
- 10.3 客户任何严重违反或重复违反《莱尼业务合作伙伴行为准则》的行为都将导致莱尼无法与其继续维持业务关系。在此种情形下,莱尼保留在客户出现以下情况下全部或部分终止业务关系的权利:(i)在书面要求客户在合理期限内纠正其违规行为之后,仍未采取任何行动纠正违规行为;或(ii)违规行为明显,且莱尼无法获得或采取其他与终止业务关系同等程度的解决手段。

- 11. Confidentiality, Reservation of Copyrights, Industrial Property Rights and other rights**
- 11.1 LEONI reserves all property rights, copyrights and industrial property rights to all documents, materials and other objects (e.g. offers, catalogues, price lists, cost estimates, quotations, plans, drawings, illustrations, calculations, product descriptions and specifications, manuals, samples, models and other physical and/or electronic documents, information and objects) provided to the Customer by LEONI.
- 11.2 The purchaser is obliged not to disclose to third parties any confidential information (including business secrets) that the purchaser becomes aware of through the business relationship with LEONI. Employees in the business operations of the purchaser are not third parties in this sense, provided that they are also subject to a confidentiality obligation. Confidential information is information of any kind (e.g. technical or business data, documents or knowledge / know-how) and / or prototypes / samples which the purchaser receives in connection with the contractual relationship, irrespective of the type and form of transmission or knowledge of such information. No confidential information in the above sense is information that (i) was already lawfully known to the purchaser prior to the time of transfer by LEONI without an obligation of confidentiality, (ii) is already publicly known at the time of transfer or becomes publicly known thereafter without a breach of this obligation of confidentiality by the purchaser, (iii) has been communicated to the purchaser by a third party, unless the purchaser is aware or should have been aware that the third party has breached a confidentiality obligation by its communication, which it has assumed vis-à-vis LEONI, or (iv) has been developed by the purchaser independently of and without recourse to the Confidential Information. If the purchaser invokes one or more of the aforementioned exceptions, it must prove the existence of the respective requirements. The purchaser is prohibited from obtaining Confidential Information by way of reverse engineering. "Reverse engineering" shall mean all actions, including observing, testing, investigating and dismantling and, if necessary, reassembling, with the aim of obtaining confidential information. The obligation of confidentiality does not apply if the purchaser is obliged to disclose the confidential information by law or due to an official or court decision which is final and absolute. In this case, the Customer shall inform LEONI immediately of the obligation to disclose. In addition, the purchaser will make it clear in the course of disclosure that, if this is the case, it concerns business secrets and will endeavour to ensure that the confidentiality obligations imposed in this section 11 are applied. If the purchaser violates its obligations under this clause, it shall owe a contractual penalty of RMB 100,000.00, unless it is not responsible for the violation of its obligations.
- 12. Place of performance, place of jurisdiction, arbitration**
- 12.1 The place of performance, including for liabilities from bills of exchange, shall be the registered office of LEONI.
- 12.2 Any difference, dispute, controversy or claim arising out of or relating from any provision herein or on the making and validity of this contract and any breach thereof including actions arising from bills of exchange or cheques shall be settled by arbitration to be held by China International Economic and Trade Arbitration Commission ("CIETAC") in Shanghai, in accordance with its arbitration Rules by three (3) arbitrators in accordance with the said Rules. Each Party shall nominate one (1) arbitrator. The third arbitrator, who will act as chairman of the Arbitral Tribunal and who must be a lawyer, shall be appointed by the other arbitrators. The language of the arbitration shall be English. The arbitration shall be final and binding upon the parties. The place of arbitration shall be Shanghai and the place of oral hearing shall be the registered office of LEONI.
- 13. Choice of law**
- The law of the People's Republic of China shall apply exclusively. Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall be excluded.
- 14. Miscellaneous**
- 14.1 Assignments of any of the purchaser's rights and duties under the contract concluded with LEONI shall require the written consent of LEONI to be valid. This does not apply in matters relating to claims for payments.
- 14.2 If one of the provisions of these Terms and Conditions and of additional agreements reached is or becomes null or void, this shall not affect the validity of the other provisions and the contract.
- 11. 保密、版权、工业产权和其他权利的保留**
- 11.1 莱尼保留莱尼向客户提供的所有文件、材料和其他物品(如报价、目录、价格表、成本估算、报价、计划、图纸、插图、计算、产品说明和规格、手册、样品、模型和其他实物和/或电子文件、信息和物品)的所有产权、版权和工业产权。
- 11.2 买方有义务不向第三方披露买方通过与莱尼的业务关系了解到的任何机密信息(包括商业秘密)。从这个意义上讲,买方业务运营中的员工不是第三方,前提是他们也受保密义务的约束。保密信息是指买方收到的与合同关系有关的任何类型的信息(如技术或商业数据、文件或知识/专有技术)和/或原型/样品,而不考虑此类信息的传输或知识的类型和形式。上述意义上的任何保密信息均不是(I)在莱尼转让之前买方已合法知晓的信息,无需承担保密义务;(II)在转让时已为公众所知的信息,或在转让后买方未违反保密义务的情况下成为公众所知的信息;(III)由第三方传达给买方的信息;除非买方意识到或应当意识到第三方通过其与莱尼的通信违反了保密义务,或(IV)由买方独立开发,且对保密信息没有追索权。如果买方援引上述一项或多项例外情况,则必须证明存在相应的要求。禁止买方通过逆向工程获取保密信息。“逆向工程”是指为获取机密信息而采取的所有行动,包括观察、测试、调查和拆除以及重新组装(如有必要)。如果买方根据法律或官方或法院的最终和绝对决定有义务披露保密信息,则保密义务不适用。在这种情况下,客户应立即告知莱尼披露义务。此外,买方将在披露过程中明确说明,如果是这种情况,则涉及商业秘密,并将努力确保适用本第11条规定的保密义务。如果买方违反其在本条款下的义务,则应支付人民币100,000.00的合同罚款,除非买方对违反其义务不负责任。
- 12. 履行地点, 管辖地, 仲裁**
- 12.1 履行地, 包括汇票项下的义务, 为莱尼的注册地址。
- 12.2 因本条款产生的或与本条款有关的, 或者有关本合同的制定、效力的, 以及有关违约的任何分歧、纠纷、争议或索赔, 包括因汇票或支票产生的索赔, 应当由中国国际经济贸易仲裁委员会(“贸仲委”)按照该会的仲裁规则, 由三名仲裁员在上海进行仲裁解决。双方各指定一(1)名仲裁员。第三名仲裁员, 即本仲裁庭的首席仲裁员, 必须是一位律师, 应由其他的仲裁员选定。仲裁语言应为英语。仲裁裁决结果是终局的, 对双方均有约束力。仲裁地点在上海, 开庭审理的地点为莱尼的注册地。
- 13. 法律的选择**
- 专属适用中华人民共和国法律。《1980年4月11日联合国国际货物销售合同公约》在此不适用。
- 14. 其他规定**
- 14.1 与莱尼签署的合同项下的买方任何的权利和义务的转让, 都需要莱尼的书面同意才有效。但这不适用于有关付款主张的事项。
- 14.2 如果本条款或达成的其他额外协议的任一规定被认定为或成为无效, 不影响其他规定和合同的有效性。