

1. Scope**范围**

- 1.1. These General Terms and Conditions of Purchase and, if applicable, the most current version of LEM Group Suppliers General Requirements Manuel (available on www.lem.com) which are an integral part of these General Terms and Conditions of Purchase (hereinafter collectively the "Conditions of Purchase") apply to all goods and services procured by LEM INTERNATIONAL SA or any of its affiliates within Switzerland, Bulgaria, China and Japan (hereinafter "LEM") from external suppliers (without regard to supplier location), as listed by LEM in a purchase order (hereinafter the "Products/Services"). By accepting LEM order, the supplier agrees to the exclusive application of these Conditions of Purchase for the procurement of Products/Services by LEM. Other conditions do not apply even if LEM does not explicitly refuse them or if the conditions of the supplier set out that they shall prevail. Any modifications or deviations from these Conditions of Purchase must be agreed in writing and signed by LEM and the supplier, in which case such modifications or deviations shall prevail.

本《一般采购条款》和最新版本的《LEM 集团供应商一般要求手册》(后者可在 www.lem.com 网上下载,是《一般采购条款》的组成部分)(合称“**采购条款**”)适用于 LEM INTERNATIONAL SA 及其在瑞士、保加利亚、中国和日本的附属公司(以下称“**LEM**”)从外部供应商处(不考虑供应商的位置)采购的所有产品和服务(“**服务/产品**”),如 LEM 订单所示。供应商对 LEM 订单的接受,表明同意 LEM 产品/服务采购条款的排他适用,而其它条款,即使 LEM 没有明示拒绝或供应商规定以其为准,也不适用。对本采购条款的任何修正或更改须经 LEM 和供应商双方书面批准并签署方可生效。

2. Affiliate**附属公司**

- 2.1. An affiliate of LEM INTERNATIONAL SA is defined as any legal entity which directly or indirectly controls, is controlled by or is under common control with LEM INTERNATIONAL SA. The term "control" shall mean the ability to vote more than 50% of the voting securities of any entity or otherwise having the ability to direct the management and policies of an entity.

附属公司是指 LEM INTERNATIONAL SA 直接或间接控制、被控制、或共同控制的任何法律实体。“**控制**”当意为拥有该实体 50% 以上控股权或能够指导其管理和政策。

3. Order**订单**

- 3.1. The contract is considered as concluded between LEM and the supplier when LEM has placed an order, unless the supplier rejects it in writing within 2 working days after receipt. The order together with these Conditions of Purchase and any other documents specifically referred to in the order or separately agreed to in writing, such as technical specifications, drawings or quality requirements will be binding and form part of the contract between LEM and the supplier.

LEM 下订单的行为应视为与供应商签订了合同,除非供应商在收到订单后 2 个工作日内书面拒绝。订单和采购条款、及订单中专门提及的或双方约定的任何文件,如技术规格、图纸或质量要求等,是 LEM 与供应商合同的一部分,对双方都有约束力。

- 3.2. The supplier shall fully comply with LEM's requirements as set forth in the order, including, without limitation, the identified reference and revision level of the ordered Products/Services. Deviating comments on the order shall only be valid if approved in writing by LEM. In such a case, LEM will issue a revised order cancelling and superseding the previous one. In any case, the supplier undertakes to promptly inform LEM if any LEM's requirement contained in the order differs from the technical specifications validated by LEM.

供应商应完全遵守 LEM 订单中所载要求,包括但不限于,订购产品/服务的识别参照和修改水平。对订单意见的偏离仅当 LEM 书面批准时方有效。此时,LEM 将发出一份修改订单,取消或替代之前的订单。如果 LEM 订单中的要求与其批准生效的技术规格不同,供应商承诺将立即通知 LEM。

- 3.3. Orders may be submitted, whether in writing or electronically, and do not need to be signed to be enforceable, unless otherwise required by applicable law.

订单可以书面或电子形式提交,无需签字即生效,除非适用法律另有规定。

4. Order change and cancellation**订单更改和取消**

- 4.1. Except and only to the extent it is specifically precluded by applicable law, LEM may at any time, in the form of a change order to the supplier (whether in writing or electronically), make any changes to an order even after it was approved (e.g. change to delivery dates, place(s) of delivery, packaging, quantities and/or the Products/Services covered by an order).

除非适用法律明确禁止并仅排除法律禁止的范围,LEM 可在任何时候向供应商发出更改订单(书面或电子形式),对订单进行任何修改(如,更改送货日期、送货地址、包装、数量或/或订购的产品/服务)即便订单已经通过审核。

- 4.2. If any such change causes a material increase or decrease in the cost of, or the time required for, performance of the order, an equitable adjustment shall be made to the price and/or delivery date. Any claim by the supplier for adjustment under this clause shall be made in writing, together with supporting documentation satisfactory to LEM. However, any such claim shall be deemed waived unless asserted within 2 working days after receipt by the supplier of the change order. Unless otherwise instructed by LEM, any claim by the supplier must be approved by LEM in writing before the supplier proceeds with such change. The supplier shall not suspend performance under any order while LEM and the supplier are in the process of making such changes and any related adjustments.

如果上述更改严重增加或降低了订单执行的成本或交货时间,应对价格及/或送货日期进行适当调整。供应商在本条款项下的调整主张需以书面形式提出,并辅以符合 LEM 要求的支持性文件,但须在收到更改订单后的 2 个工作日内提出,否则视为放弃调整。除非 LEM 另有指示,供应商的任何调整主张须经 LEM 书面批准后方可进行。在 LEM 和供应商作出更改或任何相关调整的过程中,供应商不得暂停对任何订单的执行。

- 4.3. Except and only to the extent it is specifically precluded by applicable law, LEM may cancel any order at any time and for its sole convenience on or before the lead time for production or 30 calendar days prior to the date of delivery, whichever is shorter, without any liability to LEM in connection with any such cancellation. If LEM cancels any order less than the lead time for production or 30 calendar days prior to the delivery date, whichever is shorter, LEM shall reimburse the supplier for the work already performed prior to the notice of cancellation that the supplier can document to LEM's satisfaction. The supplier shall not be paid for any work done after receipt of the notice of cancellation nor for any costs incurred by supplier's sub-suppliers or providers which the supplier could reasonably

have avoided. LEM will in no event reimburse costs exceeding the contract price of the Products/Services under the cancelled order. This clause 4.3 is without prejudice to LEM's rights to cancel any order for cause.

除非适用法律明确禁止并仅排除法律禁止的范围,LEM 可为其自身的便利在交付周期之前或交货日期 30 日之前随时取消订单,以时间较短者为准,而无需就取消承担任何责任。如果 LEM 在短于交付周期或交货日期 30 日之前取消订单,以时间较短者为准,LEM 应对供应商提交符合 LEM 要求的文件证明其在收到取消通知前已经进行的工作予以补偿。但供应商收到取消通知之后进行的工作,或产生的其本可合理避免的来自其供货商的支出,LEM 不再予以补偿。LEM 的补偿在任何情况下均不超过已取消订单的产品/服务的合同价格。本第 4.3 条的规定不得阻碍 LEM 行使订单取消权。

- 4.4. No further claims shall exist.

不得产生其它主张。

5. Prices and payment terms**价格和支付条件**

- 5.1. The supplier shall provide the Products/Services at a firm-fixed price including all delivery costs. Price increases shall be valid only if confirmed in writing by LEM's duly authorized representative.

供应商应按照固定的价格提供产品/服务,包括所有的运输费。价格上涨须经 LEM 的合法授权代表书面确认后才有有效。

- 5.2. Unless otherwise specified in the order, all prices are deemed delivery duty paid (DDP - Incoterms 2010) to the place of delivery specified by LEM. Currency is as set forth in the order.

除非订单另有明确规定,所有的价格均应视为 LEM 指定目的地完税后交货的价格(DDP 国际贸易条件解释通则 2010)。汇率如订单所载。

6. Invoicing/Terms of payment**发票/支付条款**

- 6.1. The supplier may issue an invoice after delivery but not later than 30 calendar days of delivery of the Products/Services.

供应商可发货后开具发票,但不得迟于产品/服务发货后 30 天。

- 6.2. The supplier shall submit to LEM invoices in a form and format satisfactory to LEM and complying with generally accepted accounting principles. In particular, invoice shall indicate the exact LEM order number, LEM designation of the Products/Services, quantity and price. The invoice address is according to the order. The value-added tax shall be shown separately on the invoice. The supplier shall be responsible for all consequences arising from the failure to meet these requirements.

供应商应以符合 LEM 要求的形式和格式向 LEM 开具发票,并遵守公认会计准则。尤其是,发票应显示 LEM 的准确订单号、LEM 指定的服务/产品、数量和价格。发票地址应与订单相一致。增值税应于发票上单独显示。未能满足上述要求的责任和后果应由供应商承担。

- 6.3. Unless otherwise agreed in writing and except and only to the extent it is specifically precluded by applicable law, the invoices are paid by LEM within 60 calendar days end of month after receipt of correctly issued invoices. Payments shall in no event be construed as an acceptance of the Products/Services nor a waiver of notices of defects by LEM.

除非双方另有书面约定,或适用法律明确禁止并仅排除法律禁止的范围,LEM 将于收到正确开具的发票 60 日内的月底进行付款。LEM 的付款在任何情况下均不视为对产品/服务的接受或对疵产品/服务的追偿权的放弃。

- 6.4. LEM reserves the right of set-off and the right of retention to the extent permitted by applicable law.

LEM 在适用法律许可的最大范围内保留抵销权和保留权。

- 6.5. The supplier is not allowed to proceed to any delivery stop against LEM in case of late payment of LEM.

若 LEM 延期付款,供应商不得停止交货。

7. Place of delivery and passing of risk and ownership**交货地址、风险承担和所有权转让**

- 7.1. Unless otherwise specified in the order, deliveries shall be DDP (Incoterms 2010) to the place of delivery specified by LEM on the order or LEM's place of business if no other place of delivery has been specified.

除非订单另有规定,应采用指定目的地完税后交货(国际贸易条件解释通则 2010),如果没有规定其他地址,应采用 LEM 在订单中指定的地址。

- 7.2. Each delivery shall include a detailed delivery note listing the order details, order number, order date and LEM buyer name, with clear and correct description of INTRASTAT codes (when applicable). The supplier shall ensure that all special documents required by law, such as safety data sheets, certificate of origin and export documents, accompany the delivery.

每次交货应包含详细的交货单,列有订单细节、订单号、LEM 买方名称,以及清楚准确的 INTRASTAT 编码描述(如适用)。供应商应确保交货时递交法律要求的所有的文件,如安全数据清单、产地证明和出口文件。

- 7.3. The supplier will be responsible for any damage causes by wrong, missing or insufficient documentation. Wrong, missing or insufficient documentation may delay payment, except and only to the extent it is specifically precluded by applicable law.

供应商应承担因单证错误、灭失或不足而引起的所有损失。单证错误、灭失或不足可引起延期付款,除非适用法律明确禁止并仅排除法律禁止的范围。

- 7.4. Ownership of the Products/Services passes to LEM with their delivery to the place of delivery.

交货地交货后产品/服务所有权转移至 LEM。

8. Packaging**包装**

- 8.1. Packaging must be secure and adequate for preventing damage during storage, transport and shipment. The Supplier must comply with any special labeling and packaging instructions given by LEM at no further cost, except and only to the extent it is specifically precluded by applicable law, respectively additional costs may be imposed by the supplier only with LEM's prior written consent.

包装应牢固且充分,以避免储存和运输中产生损害。除非适用法律明确禁止并仅排除法律禁止的范围,供应商应遵守 LEM 提供的标签和包装指示,并且不向 LEM 产生额外的费用,个别的额外费用只有经 LEM 事先书面同意后方可由 LEM 承担。

- 8.2. The supplier shall ensure that the packaging complies with the applicable environmental regulations.

供应商应确保包装遵守可适用的环保规定。

9. Delivery dates, delay**交货日期、延迟**

- 9.1. Delivery dates and quantities specified in the order are binding. Delivery date shall be understood as the date of delivery of the Products/Services at the agreed place of delivery in accordance with clause 7.1 above.
订单中规定的交货日期和数量有约束力。交货日期应理解为在约定地点交付产品/服务的日期，与上述第 7.1 条相一致。
- 9.2. Partial deliveries and early deliveries are not permitted, unless otherwise agreed.
除非另有约定，不允许部分交货或提前交货。
- 9.3. If the supplier anticipates that he will not be able to deliver the Products/Services at the delivery date, the supplier shall forthwith notify LEM in writing of the reason and the expected duration of the delay.
如若供应商预期无法在交货日期交付产品/服务，应即时书面通知 LEM 无法按期交付的原因和预计延误的时间。
- 9.4. In case of early, delayed or partial delivery, the supplier shall be immediately deemed to be in default without notice.
供应商在任何情况下的提前、延迟或部分交货，应当即被视为未经通知的未履行。
- 9.5. Acceptance of an early, delayed or partial delivery shall not be deemed a waiver of the rights that LEM is entitled to as a result of supplier's deviation from the binding delivery dates.
LEM 对提前、延迟或部分交货的接受，不应视为对供应商违背约定的交货日期所享有的权利的放弃。
- 9.6. In the event of delay, LEM reserves the right to claim a penalty amounting to 1% of the contract price per complete or incomplete week of delay, but not exceeding 10% of the contract price in total. The penalty shall not relieve the supplier from its obligations under the contract. LEM reserves the right to assert any further legal claims, including the right to claim damages and/or terminate the contract.
如若发生延迟，每延迟一周，不足一周按一周算，LEM 保留索赔 1% 合同价款的权利，赔偿总额不超过合同价款的 10%。赔偿不得免除供应商在合同项下的义务。LEM 保留主张进一步法律索赔的权利，包括索要损失赔偿的权利及/或终止合同的权利。

10. Performance**履行**

- 10.1. The supplier undertakes to perform the contract with all due diligence and efficiency, in a competent and workmanlike manner and in compliance with the generally accepted best practice of the industry.
供应商承诺尽职尽责和有效率地履行合同，并符合行业内公共认可的最佳实践要求。
- 10.2. The supplier agrees that it will comply with all applicable laws, standards, rules, regulations and requirements of the jurisdiction where the Products/Services are manufactured, stored, shipped, used and sold.
供应商同意其将遵守产品/服务生产地、存储地、运输地、使用地和销售地所在法域的所有可适用法律、标准、规则、法规和要求。
- 10.3. In case of Products/Services procured by LEM for the need of manufacture of its own products, the supplier shall use an appropriate and documented quality management system to ensure at all times traceability of the Products/Services and any materials in the Products as well as conformity of the Products/Services with the agreed specifications and quality standards. The supplier shall not substitute or modify the Products/Services nor any materials in the Products without LEM prior written consent. Might the supplier require changing manufacturing site, product design, process or control, the supplier must receive LEM's prior written agreement for such change.
如果 LEM 采购产品/服务是为生产其自身产品的需要，供应商应使用适当的且有记录的质量管理系统，以确保所有的产品/服务和产品中的材料在任何时候皆有可追溯性，并遵守约定的产品/服务规格和质量标准。未经 LEM 事先书面同意，供应商不得替换或更改产品/服务或产品中的材料。如若供应商要求更换生产地、产品设计、工艺流程或控制，供应商须取得 LEM 的事先书面同意。
- 10.4. The supplier shall promptly notify LEM in writing of any circumstances which could endanger or hinder the performance of the contract, including any possible quality or safety issue with the Products/Services.
如有可能危及或阻碍合同履行的任何情形，供应商应立即书面通知 LEM，包括任何可能的产品/服务质量或安全问题。

11. Sub-suppliers and providers**分包供应商**

- 11.1. The commissioning of sub-suppliers is subject to the prior written approval of LEM.
对分包供应商的委任受限于 LEM 的事先书面批准。
- 11.2. Independently of any negligence or fault, the supplier shall assume unlimited liability for its providers and sub-suppliers as for itself, even though LEM has approved them and LEM shall have no obligation and no liability whatsoever vis-à-vis the providers and sub-suppliers of the supplier.
无论产生任何过失或过错，供应商应就其分包供应商承担无限责任，即便对分包供应商的委任系经 LEM 批准，LEM 无任何责任义务面对分包供应商。
12. **Inspection**
审查
- 12.1. LEM is entitled, upon reasonable notice, at any time during the contract and for a period of 6 months thereafter, to access and inspect the facilities and records relating to the design, manufacture, testing, storage and/or delivery of the Products/Services, including, without limitation, the manufacturing and quality control, testing operations and compliance procedures relating to the Products/Services. The inspection may be carried out by LEM's representatives and/or LEM's customers. The supplier shall allow LEM's representatives and/or LEM's customers the appropriate right of access to the premises, facilities, equipment, personnel, books and records of the supplier, providers and sub-suppliers. The supplier shall ensure that LEM has the rights to access and inspect the providers and sub-suppliers as set forth herein.
LEM 有权在给予合理通知后，在合同期间或合同终止 6 个月内的任何时间审查设备或产品/服务的设计、制造、测试、存储及/或运输有关的记录，包括但不限于，制造和质量控制、运营测试和程序合规性。审查可由 LEM 的代表和/或客户进行。供应商应允许 LEM 的代表和/或客户有合理的权限进入供应商和分包供应商的工厂及审查设备、机械、人员和记录。供应商应确保 LEM 有权对上述所载供应商和分包供应商进行审查。
- 12.2. Such inspection shall not relieve the supplier from its obligations under the contract.
该类审查不得免除供应商在此合同项下的义务。

13. Warranty and Remedies**保修和补救**

- 13.1. The supplier warrants that the Products/Services(i) have the promised characteristics, (ii) are in accordance with the agreed performance requirements and specifications, (iii) comply with the applicable laws, standards, rules, regulations and requirements where the Products/Services are manufactured, stored, shipped, used and sold, (iv) are free from defect in design, material and workmanship, (v) are free from defects of title and rights of third parties, (vi) are suitable for their intended purposes, (vii) meet the quality agreements between LEM and the supplier, if any, and (viii) are new and unused at the delivery date. Said warranties shall be in addition to any warranties of additional scope given by the supplier to LEM.
供应商应保证产品/服务：(i) 具有承诺的特性；(ii) 符合约定的要求与规格；(iii) 符合产品/服务生产地、存储地、运输地、使用地和销售地的可适用法律、标准、规则、法规和要求；(iv) 无设计、材料和工艺瑕疵；(v) 无第三方权利瑕疵；(vi) 适合使用目的；(vii) 满足 LEM 与供应商的质量约定，如有；并且 (viii) 在交货日期是全新和未经使用过的。上述保证应并入供应商向 LEM 提供的额外范围的任何保证。
- 13.2. The warranty period shall be 36 months from the date of delivery of the Products/Services or for a longer period if the supplier issues such a warranty.
产品/服务的保质期应为自交付日期起 36 个月，或供应商提供的更长期限。
- 13.3. The supplier hereby discharges LEM from its obligation to inspect the Products/Services at receipt.
供应商在此免除 LEM 在收到产品/服务时进行检验的义务。
- 13.4. Any notification of defects within the warranty period is deemed made in time and the supplier hereby waives the objection of delayed notification.
在保质期内的任何瑕疵通知均应被视为按时作出，并且供应商放弃对延期通知予以拒绝的权利。
- 13.5. In the event of defective Products/Services, LEM may, at its option (i) require the supplier to remedy the defects at no charge, (ii) require the supplier to replace the defective Products/Services at no charge, (iii) reduce the price in proportion to the defects, or (iv) terminate the contract. In any case, LEM retains the right to claim damages in addition to the remedies set out above in this clause.
如有瑕疵产品/服务，LEM 可自由选择 (i) 要求供应商无偿地对瑕疵予以补救；(ii) 要求供应商无偿地替换瑕疵产品/服务；(iii) 就瑕疵按比例降低价格；或者 (iv) 终止合同。在任何情况下，LEM 均保留索赔和要求补救的权利。
- 13.6. If the supplier is unable to eliminate a defect within a reasonable time since notification of the defect by LEM or in case of urgency, LEM shall be entitled to eliminate the defect itself or through a third party at the cost and risk of the supplier.
如若供应商不能在合理时间内排除瑕疵或在紧急情况下，LEM 应有权自己或通过第三方排除瑕疵，费用和 risk 由供应商承担。
- 13.7. After the defect has been remedied or the defective Products/Services have been replaced, the warranty period shall commence anew.
采取瑕疵补救措施或替换瑕疵产品/服务后，质保期应重新开始。
- 13.8. The right to assert any further legal claims remains expressly reserved.
LEM 仍然明确保留主张进一步法律索赔的权利。
14. **Product obsolescence**
产品停产
- 14.1. If the supplier discontinues the production of the Products, he shall be bound to inform LEM of this at least 12 months in advance and allow LEM the opportunity to make a final order at all times within such 12 months period.
如若供应商停止生产产品，则其有义务至少提前 12 个月通知 LEM，并允许 LEM 有机会在 12 个月内进行最后下单。
15. **Liability, Insurance**
责任、保险
- 15.1. The supplier shall be liable to LEM and its affiliates, shareholders, directors, officers, employees, agents, subcontractors, suppliers and customers (the "Indemnified Parties") for and hold such Indemnified Parties harmless from all costs and all damages, and, shall pay any costs and damages incurred by the Indemnified Parties from and against any third-party claims (including lawsuits) arising from the Products/Services provided by the supplier under the contract, including but not limited to product liability (if applicable) or a contractual breach of the supplier such as late delivery or breach of warranty obligations, whether or not the supplier may have been negligent or at fault. This liability includes, but is not limited to, the costs of product recall actions, the costs of dismantling, installation, testing, and transportation of defective products at (from and to) LEM's customers.
供应商应就所有支出和损失向 LEM 及其附属公司、股东、董事、高管、雇员、代理、分包商、供应商和客户 ("被补偿方") 负责并使其免受损害，并且供应商应支付被补偿方因供应商提供的产品/服务而产生的任意第三方索赔 (包括诉讼) 的任何支出和损失，包括但不限于产品责任 (如适用) 或供应商的违约，如延迟交货或违反保证义务，无论供应商是否有过失或过错。责任包括但不限于，产品召回行动，拆卸、安装、测试和运输 LEM 客户 (从客户地址发出或发送至客户地址) 瑕疵产品的费用。
- 15.2. The supplier shall have and maintain all necessary insurance coverages with insurance carriers to the satisfaction of LEM, including, but no limited, professional liability and public liability insurance (with extended product liability insurance) that also covers the costs of any recalls. At any time upon LEM's request, the supplier shall provide LEM with a certificate of insurance as evidence of appropriate coverages. The insured amount under this clause 15.2 cannot be considered nor construed as limitation of liability.
供应商应向保险公司进行投保并保持保险有效以使 LEM 得到充分保障，投保范围包括但不限于，职业责任险和公共责任险 (及延伸的产品责任险)，并涵盖召回的成本。任何时候经 LEM 的要求，供应商应向 LEM 提供保险凭证作为已进行合适投保的证明。本第 15.2 条下的保险金额不能被视为或解释为对责任的限制。
16. **Intellectual property rights**
知识产权
- 16.1. The supplier warrants that the Products/Services do not infringe any copyrights, patents, trademarks, designs or other property rights of third parties.
供应商保证产品/服务没有侵犯第三方的任何复制权、专利、商标、设计或其他专有权利。
- 16.2. In addition to clause 15.1 above and independently of any fault on the part of the supplier, the supplier shall promptly defend the Indemnified Parties (as defined in clause 15.1) against any third-party claims based on alleged intellectual property rights infringement and pay any costs and damages incurred by the Indemnified Parties in conjunction with such claims. Supplier's obligation to defend the Indemnified Parties and pay any costs and

- damages shall not apply if and to the extent the liability or damage was caused solely by the supplier's proper use of LEM Property contributed to, or implemented into the Products/Services (as defined in clause 17.1 below) and if the supplier does not know or was not expected to know that intellectual property rights of third parties were infringed.
- 除上述第 15.1 条的规定外, 无论供应商是否有过错, 均应立即维护被补偿方(定义见第 15.1 条)基于侵犯知识产权的任何第三方索赔, 并支付被补偿方产生的任何相关费用和损失。如若该责任或损失是由供应商的正确使用 LEM 财产(定义见以下第 17.1 条)所引起的, 并且供应商不知晓或不应当知晓侵犯了第三方的知识产权, 则供应商对被补偿方的维护和支付义务在此相关范围内不适用。
- 16.3. If an action for the infringement of property rights is filed, the supplier may at its own expense, at LEM's option, either reach a settlement which grants LEM the right to use the Products/Services free of any liability for infringement, or replace it with a similar one as agreed by LEM, or take back the Products/Services and credit LEM with an amount equal to the purchase price reduced taking into account the normal depreciation of the Products/Services. Failure to satisfy the above LEM's option entitles LEM to terminate the order and claim compensation for any and all costs and damages incurred. This clause 16.3 is without prejudice to LEM's rights under clause 16.2.
- 如若被提起侵犯知识产权的诉讼, 供应商可自担成本地, 根据 LEM 的选择: 达成和解, 使 LEM 有权使用产品/服务而不产生任何侵权责任; 经 LEM 同意用类似产品进行替换; 收回产品/服务, 并按照合同价款减去正常使用折旧费后的金额对 LEM 给与补偿。若供应商未能按照 LEM 的选择采取以上措施, LEM 将有权终止订单并就产生的所有费用和损失向供应商索取赔偿。本第 16.3 条的规定不影响 LEM 在第 16.2 条项下的权利行使。
- 17. Ownership of information and material
信息和材料的所有权归属**
- 17.1. Any and all intellectual property, commercial and technical information and material, including, without limitation, patents, know-how, trademarks, logo, designs, drawings, tools, molds, dies, plans, templates, samples, specifications, test equipment, manufacturing and/or testing and quality processes (hereinafter "LEM Property") that LEM discloses and makes available to the supplier, in whatever form and format, shall be and remain LEM's property. The supplier shall not at any time do or cause to do, directly or indirectly, any act which impairs or tends to impair in any way LEM's rights, title or interest in and to any of LEM Property. LEM reserves all rights in respect of LEM Property.
- LEM 披露的或向供应商提供的任何形式或格式的所有知识产权、商业和技术信息和材料, 仍归 LEM 所有, 包括但不限于, 专利、技术诀窍、商标、标识、设计、图纸、工具、模型、模具、计划、模板、样品、规格、测试机器、制造及/或测试和质量工艺。(以下称“LEM 财产”) 供应商不得在任何时候以任何方式直接或间接地进行或导致他人进行任何有损 LEM 对 LEM 财产的权利、所有权或利益的行为。LEM 保留与 LEM 财产相关的所有权利。
- 17.2. LEM Property shall not be modified without the written consent of LEM. Any items of LEM Property shall be clearly marked by the supplier as being owned by LEM and separated from the supplier property. LEM Property shall not be used by the supplier except for performance of the contract or as authorized in writing by LEM and may only be supplied to third parties with LEM prior written consent. The Products manufactured with any LEM Property may neither be used by the supplier itself nor offered or supplied to third parties.
- 未经 LEM 书面同意, 不得对 LEM 财产进行更改。供应商应将 LEM 的各项财产明确标识为 LEM 所有, 并与供应商的财产区分开来。供应商不得将 LEM 财产用于履行本合同之外的或未经 LEM 书面授权的其他目的, 并且未经 LEM 事先书面同意不得披露给第三方。采用 LEM 所有物制造的产品, 供应商不得私自使用或提供给第三方。
- 17.3. While in supplier's possession or control, LEM Property shall be held at supplier's cost and risk. The supplier warrants that it will keep any items of LEM Property in good condition and safely stored, and will replace any such items when lost or destroyed. The supplier undertakes to carry out in a timely manner any needed maintenance and inspection work on any items of LEM Property at his own expense and shall promptly report any failure. The supplier shall insure at his expense any items of LEM Property against loss by fire, water and theft.
- 当 LEM 财产为供应商占有或控制时, 保管成本和风险由供应商承担。供应商保证将完好安全地保存 LEM 财产, 并对缺失和损坏项目进行替换。供应商承诺将自担成本地按时对 LEM 财产进行及时维护和审查工作。并且, 供应商应自担成本地对 LEM 财产进行火险、水险和防盗窃的投保。
- 17.4. Any right of retention with respect to LEM Property is expressly excluded and the supplier undertakes that LEM Property shall be free and clear of all liens and encumbrances, security interests and claims of the supplier and supplier's creditors. Unless otherwise agreed, LEM Property must be automatically returned or destroyed at LEM's request. Notwithstanding the foregoing, in the event of supplier's insolvency or bankruptcy, LEM's representatives are authorized to enter the supplier's premises at any time and remove LEM Property.
- 针对 LEM 财产的任何保留权明确排除, 并且供应商承诺 LEM 财产应免于所有的留置权和权利负担、担保物权以及供应商及其债权人的索赔。除非另有约定, 供应商应遵照 LEM 的要求自动将 LEM 财产予以返回或销毁。无论上述如何规定, 如若供应商无力清偿或破产, LEM 可在任何时候授权代表进入供应商的地址并取回 LEM 财产。
- 17.5. In case the supplier fails to comply with any of its obligations under this Section 17, LEM shall be entitled to claim compensation for the resulting damages.
- 如若供应商未能遵守其在本第 17 条项下的任何义务, LEM 有权索取损害赔偿。
- 17.6. If the supplier develops custom features for the Products/Services, all intellectual property rights, title and interest in such custom work shall be the sole property of LEM, the custom work being considered works created under commissioning. In case such direct vesting of rights is not possible under the applicable law, the supplier shall at supplier's costs perform any and all actions, necessary to transfer and assign to LEM, or if not allowed under the applicable law, to provide LEM with the right to use or an equivalent, over such custom works, which is as broad as possible under the applicable law, for the maximum term allowed, without the right of supplier to use such works. Should the supplier fails to do so within reasonable time and in addition to any other remedies available to LEM, LEM shall be entitled to handle all necessary procedures and ask for assistance and reimbursement of the costs incurred.
- 如若供应商开发出 LEM 指定特性的产品/服务, 则该类工作中的所有知识产权、所有权及利益应为 LEM 独有, 且应被视为在 LEM 委托下开展的工作。如若可适用法律不可操作该类直接授权, 则供应商应自担成本地进行所有必要行动, 将权利转让给 LEM; 或者如若可适用法律不允许该类直接授权, 则供应商应向 LEM 提供该类自定义特性的使用权或类似相当的权利。如若供应商未能在合理时间内进行上述行为及采取可行的补救措施, LEM 有权采取所有必要措施并要求协助及补偿产生的损失。
- 18. Confidentiality
保密**
- 18.1. As long as it is not entered into the public domain, the supplier shall keep as strictly confidential any and all information furnished by LEM, including, without limitation, all LEM Property as well as any other data, documents and experience of LEM, its affiliates or their respective customers or business partners, and shall not disclose any such information to any third party, or use such information for any purpose other than performing the contract, except otherwise expressly agreed to in writing by LEM.
- 供应商应对 LEM 提供的所有信息严格保密, 只要这些信息没有进入公共领域, 包括但不限于, 所有的 LEM 财产, 以及 LEM 及其附属公司或各自客户或商业伙伴的任何数据、文件和经验, 并且不得披露给任何第三方或为履行本合同之外的目的而使用该类信息, 除非 LEM 另有明确书面同意。
- 18.2. LEM information shall not be retained for longer than necessary to provide the Products/Services. Immediately upon termination of the contract or at any time upon LEM written request, the supplier shall either return to LEM or, at LEM's option, destroy LEM information and all copies thereof, except for copies which must be retained in accordance with applicable law or which reside on automatic computer back-up or disaster recovery systems so long as such residing copies are not readily accessible and are not used or consulted for any purpose not permitted. In case of destruction, the supplier shall confirm in writing such destruction to LEM.
- 对 LEM 信息的保留不得超过提供产品/服务所需的必要时间。合同终止后或经 LEM 书面要求, 供应商应立即将 LEM 信息返还至 LEM 或予以销毁, 包括销毁所有的复制件, 根据可适用法律必须保留、或自动保存在电脑备份或恢复系统内而无法取出的复制件除外, 未经允许供应商不得使用或参考该类复制件, 并且供应商应向 LEM 书面确认已经全部销毁。
- 18.3. The disclosure of the contract for advertising or reference purposes shall not be allowed without LEM's written consent.
- 未经 LEM 书面同意, 不得披露本合同用于广告或参考目的。
- 18.4. The supplier shall be bound by this undertaking on and after termination of the contract. Supplier is obliged to bind its employees, agents and sub-suppliers with the same non-use and confidentiality obligations.
- 本承诺在合同终止后仍对供应商具有约束力。供应商有义务约束其雇员、代理和分包供应商履行保密义务及不得使用保密信息。
- 19. Data Protection
数据保护**
- 19.1. When performing the contract, the supplier may need to process personal data about LEM or its employees. The supplier shall be responsible for processing such personal data in compliance with the applicable data protection laws and only for the purpose of performing the contract. The supplier shall not, without LEM's prior written consent, transfer personal data to any third party or country offering a lower level of legal protection than in the country of origin of the personal data in question.
- 履行本合同时, 供应商可能需要使用 LEM 或其雇员的私人数据。供应商应仅为履行本合同之目的按照合乎可适用的数据保护法规定的方式使用人员数据。未经 LEM 书面同意, 供应商不得向任何第三方或法律保护级别低于私人数据来源地的国家转让私人数据。
- 19.2. The supplier is advised and consents that LEM processes personal data about the supplier and its representatives (such as the name, address, telephone number, fax number and e-mail address of the supplier's representatives) for the purposes of handling the contract between LEM and the supplier and managing and administering LEM group-wide purchases and procurement services. The supplier consents to LEM sharing personal data with other LEM affiliates, including for administrative and marketing purposes. The supplier understands and consents that personal data may be transferred to and processed in databases located and accessible globally by the personnel of LEM affiliates and any third party service providers acting on LEM's behalf worldwide, including in countries offering a lower level of legal protection than in supplier's country of incorporation. The supplier warrants that it processed personal data lawfully, including obtained the required consents, and that LEM has the right to process for its own purposes any personal data transferred by the supplier.
- 供应商同意 LEM 可为处理其与供应商之间的合同及管理 LEM 集团采购而使用供应商及其代表的私人数据(如供应商代表的姓名、地址、电话号码、传真号码和邮箱地址)。供应商同意 LEM 可为包括管理和市场等在内的目的而与其他 LEM 附属公司分享私人数据。供应商理解并同意 LEM 可将供应商的私人数据转移至 LEM 的全球数据库, 并且全球范围内的 LEM 及其附属公司的人员和代表 LEM 的第三方服务提供商均可获得供应商的人员数据, 包括提供法律保护级别低于供应商所在国家的国家。供应商保证其私人数据系合法的, 包括已取得必要的同意, 并且 LEM 有权为其自己的目的而使用供应商提供的私人数据。
- 20. Export and Import compliance
进出口合规**
- 20.1. The supplier shall remain in full compliance with all applicable export and import control laws and regulations. The supplier will obtain, at its own expenses, any import, export, transfer and re-export approvals and licenses required for the Products/Services and will retain documentation evidencing compliance with those laws and regulations.
- 供应商应完全遵守所有可适用的进出口管制法律法规的规定。供应商将自担成本地取得产品/服务所需的任何进口、出口、转让和再出口许可和执照, 并将保留相关记录以兹符合法律法规的证明。
- 20.2. The supplier undertakes to find out in due course about possible export and/or import bans or restrictions and will immediately inform LEM accordingly when relevant.
- 供应商承诺将及时发现可能的出口和/或进口禁令或限制, 并将立即通知 LEM 相关信息。
- 21. LEM Code of Conduct
LEM 行为守则**
- 21.1. The supplier, its employees, agents, sub-suppliers and providers are expected to comply with the requirements as set forth in LEM Code of Conduct, setting out LEM's core values, responsibilities and ethical obligations, and any updated version thereof. Signature of LEM Code of Conduct by the supplier is a pre-requisite to any continued business relationship between LEM and the supplier. The supplier is responsible for ensuring compliance with LEM Code of Conduct by all its employees, agents, sub-suppliers and providers. LEM reserves the right to audit compliance with LEM Code of Conduct which may include facility inspections. Failure to adhere to LEM Code of Conduct shall entitle LEM to terminate the contract for material breach without compensation.
- 供应商及其雇员、代理、分包供应商应遵守 LEM 行为守则及更新版的规定, LEM 行为守则规定了 LEM 的核心价值观、责任和道德义务。供应商签署 LEM 行为守则是双方继续开展业务关系的先决条件。供应商应负责确保其所有雇员、代理、分包供应商均遵守行为守则。

LEM 保留监督对 LEM 行为守则的遵守的权利, 可能包括设备审查。不遵守 LEM 行为守则将使得 LEM 有权因重大违约终止本合同而无需给予补偿。

22. Force Majeure

不可抗力

- 22.1. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded by Force Majeure, meaning an event that was not foreseeable by the affected party at the time of execution of the respective order, is unavoidable and outside the control of the affected party, and for which the affected party is not responsible. The following events (the list of which is not exhaustive) shall be considered as Force Majeure events to the extent they present the characteristics described above: strike, boycott, embargo, export restrictions, riot, epidemics, natural disasters, extreme natural events, act of war, terrorist acts. Each party shall use its commercially reasonable efforts to minimize the effects of any event of Force Majeure. 如果发生不可抗力事件, 任何一方有权在不可抗力阻碍合同履行范围内停止履行其义务, 不可抗力事件指各方在签发订单时不可预测的、各方不可避免且无法控制的事件, 各方对此均无需负责。下列事件(列举并未穷尽)在其显示上述特征的范围应被视为不可抗力事件: 罢工、抵制运动、禁运、出口限制、暴乱、流行病、极端自然事件、战争、恐怖活动等。各方应尽其合理商业努力将不可抗力事件的影响降至最低。
- 22.2. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If the affected party fails to give such notice, the other party shall be entitled to compensation for any additional costs which it incurs and which could have avoided had it received such notice. 声称受不可抗力事件影响的一方在该类情形介入和中断时应立即书面通知对方, 不得延误。如若受影响的一方未能给予该类通知, 对方应有权就因未能收到该类通知而未能避免的额外费用进行索赔。
- 22.3. Either party shall be entitled to terminate the contract by written notice to the other party if performance of the contract is suspended for Force Majeure for more than 30 calendar days. 如若合同因不可抗力事件而中止履行长达 30 日以上, 任何一方应有权书面通知对方终止本合同。

23. Assignment

转让

- 23.1. The supplier may not assign, transfer or encumber any rights resulting from the contract without LEM's prior written consent. LEM is allowed to assign, transfer or encumber to any third party any rights resulting from the contract. 未经 LEM 事先允许, 供应商不得转让其在本合同项下的权利, 但 LEM 可将其在本合同项下的权利转让给任何第三方。

24. Applicable law

适用法律

- 24.1. The contract shall be governed by and construed in accordance with the laws of the country of incorporation of the LEM company placing the order, with explicit exclusion of both any applicable international private law principle and the United Nations Convention on Contracts for the International Sale of Goods dated 11th April 1980. 本合同适用于 LEM 下订单的公司所在国家法律并依其解释, 明确排除国际私法准则和 1980 年 4 月 11 日的联合国国际货物销售合同公约的适用。

25. Place of jurisdiction

司法管辖地

- 25.1. The place of jurisdiction for any disputes shall be the registered office of the LEM company placing the order. 任何争议的司法管辖地应为下订单的 LEM 公司的注册地。

26. Other provisions

其他条款

- 26.1. Failure to enforce or exercise any right or provision of these Conditions of Purchase or a contract does not operate, and shall not be construed, as a waiver of such right or provision and shall not preclude the right later to enforce such right or provision or any other term herein contained. 本采购条款或任何合同项下权利或条款的未履行或未行使并无效用, 并且不得解释为对该项权利或条款的放弃, 且不得阻碍之后对该项权利或条款的行使。
- 26.2. If any provision of these Conditions of Purchase should be void or unenforceable, this shall not affect the validity of the remaining provisions. Any provisions that are void or unenforceable shall be replaced by provisions that come as close as possible to achieving the intended purpose. 如果《购买条款》的任何条款无效或不可执行, 则其不应影响剩余条款的有效性。任何无效或不可执行的条款应被替换为尽可能接近的条款以实现原目的。
- 26.3. Any clause of these Conditions of Purchase expressly or impliedly intended to survive termination of the contract shall remain in full force and effect notwithstanding such termination. Clause 13 (Warranty and Remedies), clause 15 (Liability, Insurance), clause 16 (Intellectual property rights), clause 17 (Ownership of information and material), clause 18 (Confidentiality), and clause 19 (Data Protection) shall survive termination. 任何明示或隐含合同终止后将持续有效的条款在合同终止后持续有效。第 13 条(保修和补救)、第 15 条(责任、保险)、第 16 条(知识产权)、第 17 条(信息和材料的所有权归属)、第 18 条(保密)和第 19 条(数据保护)在合同终止后持续有效。
- 26.4. Nothing in this contractual relationship shall be construed to constitute the supplier as an agent or employee of LEM or so as to have any kind of partnership with LEM. Unless authorized in writing, the supplier may neither represent, nor engage LEM towards third parties. 本合同关系不应被解释为供应商成为 LEM 的代理或雇员或与 LEM 具有任何类型的合伙关系。除非 LEM 书面授权, 否则供应商不可在第三方前代表或牵涉 LEM。
- 26.5. LEM and the supplier agree to these Conditions of Purchase being in English. In case of discrepancy between the English and other language versions, the English version shall prevail. LEM 与供应商同意采购条款以英文书就。若英文版本与其他语言版本不一致, 以英文版本为准。