

General Terms of Purchase ("GTP") of Oerlikon Group ("OERLIKON")

1. Scope of Application

1.1 These GTP set forth the terms and conditions governing the purchase of products and/or services by OERLIKON from the Supplier and deliveries made by the Supplier to OERLIKON. The Purchase Order or contract executed for specific procurement of goods and/or services shall constitute the primary governing document of the purchase order. These GTP constitute an integral part of each purchase order and delivery agreement. Engineering drawings, specifications and referenced specifications further constitute requirements for performance and execution of the purchase order or contract.

1.2 No additional or different terms or conditions, whether material or immaterial, shall become a part of this agreement unless expressly accepted in writing by an authorized officer of OERLIKON. Acceptance of product or services upon delivery and/or use does not preclude subsequent rejection or enforcement of terms and conditions.

1.4 The scope of delivery, specifications, objectives, delivery dates and the prices for deliveries pursuant hereto shall be set forth in separate purchase orders or contracts. Upon Supplier's accepting a purchase order, a delivery agreement shall come into effect with respect to the items covered by such purchase order. These GTP constitute an integral part of each purchase order and delivery agreement.

2. Performance and default

2.1 Supplier is contractually obligated to perform and deliver products and/or services as specified by purchase orders or contracts. Performance includes conformance to all specifications and requirements including but not limited to materials, processes, packaging, documents, data, quality requirements, inspection, testing and data and timely delivery. The Supplier is deemed in default if any specifications are not met.

2.2 No deviations, substitutions, exceptions or exclusions are permitted without the express written consent of Oerlikon including materials, processes, components, secondary operations or other specifications. Objective evidence of compliance must be maintained and provided at Suppliers expense upon demand by Oerlikon.

3. Offer

3.1 By the tender invitation the Supplier, acting as specialist, is asked to submit an offer at no charge. The Supplier shall focus the offer on the specifications and objectives of OERLIKON and explicitly point out any deviations, exceptions or exclusions from the Supplier's offer and OERLIKON's specifications and objectives. The Supplier, therefore, acknowledges his duty to inform OERLIKON of any such deviations, exceptions or exclusions. If the Supplier does not limit the time period for acceptance of his offer it will be considered to be open and binding for 90 days.

4. Purchase order

4.1 To be effective, purchase orders must be in writing. Acceptance of a purchase order by the Supplier shall be deemed effective if it is in writing. The Supplier is obligated to confirm each purchase order in writing at the latest within 5 (five) working days of mailing from OERLIKON, whereas the delivery receipt at OERLIKON for purposes of purchase order delivery is decisive.

4.2 If the conclusion of a delivery agreement is made dependent on a purchase order confirmation, OERLIKON shall only be bound if this confirmation of purchase order does not deviate from the content of the purchase order.

4.3 Further quality agreements will be set out on a purchase order-specific basis. The following documents, records, data and specifications, in particular, are authoritative in determining quality: order, drawings, standard sheets (OERLIKON standards and indications and data on drawings), specifications, items and materials to be provided are identified specifically by Purchase Order. Supplier is obligated to provide said items per specific purchase order requirements including quantity, material identification number, revision and any other specifications delineated by the Purchase Order. Any conflict between specifications amongst this GTP, Purchase Order and related specifications shall be decided according to the following hierarchy: Purchase order requirements supersede referenced engineering drawings; specifications and requirements; engineering drawings supersede subsequently referenced material, process and other general specifications.

4.4 Supplier is obligated to protect proprietary data, designs, information and property of Oerlikon as further defined and addressed by the Oerlikon Non Disclosure Agreement which is incorporated herein by reference..

5. Prices and Terms of Delivery

5.1 The prices of the Supplier are considered to be fixed prices in the currency indicated on the purchase order, EX WORKS, delivered, duty-paid, at the delivery address of OERLIKON (INCOTERMS 2000). Other terms of delivery shall be as set forth in the purchase order or as otherwise set forth in writing by the parties. The Value Added Tax, if and when applicable, shall be indicated separately.

5.2 Unless otherwise specified, all shipments shall be FOB Oerlikon facility or designated destination. The Supplier is obligated and responsible for delivery of specified products and materials in good and undamaged condition. Title and risk of loss shall remain with the Supplier until delivery and acceptance at the designated Oerlikon facility or other designated destination. Delivery and acceptance of the products and materials shall not relieve Supplier of responsibility for damages later discovered to have been caused in the shipping process.

6. Terms of Payment

6.1 The purchase order number, the exact trade mark/goods' designation as well as the number of the drawing or the part must

be indicated on all correspondence, confirmations, delivery notes, invoices etc.

6.2 Two copies of a separate invoice shall be executed for each purchase order as well as for each delivery.

6.3 Payment for each delivery shall be made by OERLIKON within 90 days net. Other terms of payment shall be as set forth in the purchase order or as otherwise agreed upon by the parties in writing.

7. Dates of Delivery, Late Delivery and Packaging

7.1 The delivery is due at the destination on the date(s) stipulated in the purchase order. If a fixed calendar delivery date has been agreed upon, late delivery puts Supplier automatically in default, unless the Supplier communicates his delivery difficulties in due time and OERLIKON agrees in writing on a different delivery schedule.

7.2 OERLIKON is entitled to claim as compensation for damages resulting from delay for each whole or partial week by which the delivery date is exceeded a flat rate of one percent of the net sale price, up to a maximum amount of 5% of the delivery's net sales price. The requirement of prior notice, insofar as a delivery date is not determined by the calendar, remains unaffected by this provision. If the Supplier is late with only part of the delivery, the penalty for default shall be calculated on the price of the Supplier's total performance that is affected by the late partial delivery. The foregoing provisions of this paragraph 7.2 are in addition to and not exclusive of any other remedy that may be available to OERLIKON in the event the Supplier fails to deliver an item in accordance with the terms of a purchase order or delivery agreement. Nothing herein shall be deemed to limit any such other remedy that may be available to OERLIKON, nor shall OERLIKON's enforcement of any other rights it may have been deemed or construed to affect or waive any of its rights hereunder. The Supplier's payment of damages required by this paragraph 7.2 does not release the Supplier from its duty to fulfill the delivery according to the agreement.

7.3 The Supplier may plead omission of essential services to be performed by OERLIKON only if he has requested these on time.

7.4 Over, partial or early deliveries are admissible only if they have been agreed to in writing by OERLIKON.

7.5 If the Supplier is in default with his delivery and if in transactions without a fixed calendar delivery date the Supplier remains in default with his delivery after a given reasonable grace period, OERLIKON shall thereafter be entitled to refuse acceptance of the delivery and to either withdraw the related delivery agreement and/or to seek damages for non-fulfillment of the delivery obligation. The amount of any penalty for default according to paragraph 7.2 above shall be credited against any damages to which OERLIKON may be entitled under this paragraph 7.5.

7.6 If it becomes evident prior to the delivery date that the Supplier will not be able to meet the agreed delivery date, OERLIKON may terminate the delivery agreement and waive delivery. Paragraph 7.5 shall apply accordingly.

7.7 The delivery agreement may also be terminated by OERLIKON if in the course of manufacture it becomes evident that the object to be delivered will not be suitable for the purpose intended.

7.8. All deliveries are to be packed according to the requirements of the goods and the route of transportation as well as the transportation kind. The Supplier binds himself to the free withdrawal of the packaging materials in the address of delivery named by OERLIKON. It is the responsibility of the Supplier to assure delivery of product without damage or deterioration.

7.9 Each package delivered must include a packing slip or delivery note that specifically identifies the Oerlikon Purchase Order, quantity, Oerlikon part / material number, and description of each item.

8. Warranty, Liability

8.1 The Supplier expressly warrants all product features and specifications identified and/or implied by contract, purchase order and related documents specified in the delivery agreements as well as that the products it delivers are free of defects which will reduce their value or fitness for normal use as well as their useful life under known conditions of use. In addition to the warranty of product features in the delivery agreements and the terms thereof notwithstanding, the Supplier warrants that each product delivered pursuant to the delivery agreements (i) has been tested and controlled and meets all industry standards and all legal requirements under existing laws, regulations and directives relating to design, safety, fire and environmental protection and (ii) has been designed in a manner not to endanger life and health if the product is used as directed.

8.2 OERLIKON is not obliged to inspect any product for defects or notify Supplier of defects in order to maintain OERLIKON's warranty claims, except for warranty claims in respect of obvious defects.

8.3 Contrary to possible legal prescriptions the warranty in respect of each product delivered by the Supplier to OERLIKON shall survive for a period of 24 months from the date the product is delivered to OERLIKON. The Supplier at its expense and free of charge to OERLIKON, shall promptly, upon request by OERLIKON, repair all defects (which shall also include the not achieved guaranteed specification and the absence of any guaranteed product feature) of which OERLIKON gives the Supplier notice during the warranty period. In addition, OERLIKON shall be entitled to all legally guaranteed warranty claims. Notwithstanding the foregoing, OERLIKON may, at its election and as an alternative to the Supplier's repairing a defective item, require the Supplier to replace the defective item with a

non-defective item. In the exercise of this right of discretion, OERLIKON shall consider in good faith whether the Supplier is capable of making repairs due to the nature of its business operation. In either case, the Supplier shall bear all expenses arising from the repair or replacement of the defective item.

8.4 For replacement deliveries and repairs the Supplier grants a warranty of 24 months from date of delivery of repaired or replaced product.

8.5 OERLIKON shall be entitled to cancel purchase order or, if paid, charge back the Supplier for the full purchase price of defective product including shipping expenses incurred or to get a sales price reduction on account of a material defect if (i) the Supplier fails to replace or repair a defective item by such reasonable deadline as may be set by OERLIKON in its discretion or if (ii) the Supplier declines to replace or repair a defective item.

8.6 OERLIKON shall be entitled to have a defective item repaired by a third party and to charge the costs thereof to the Supplier without giving the Supplier an opportunity to repair the defective item if, due to special urgency or other valid business reasons, OERLIKON reasonably believes the Supplier is incapable of repairing the item to OERLIKON requirements. In this case, OERLIKON shall immediately notify the Supplier of the defect upon OERLIKON discovery thereof.

8.7 The Supplier shall be liable for all damages, including consequential damages, caused by the breach of any warranty applicable to a product delivered to OERLIKON pursuant hereto.

8.8 The Supplier shall indemnify and hold OERLIKON harmless against any loss or claim, including the cost of defending against any such claim, against OERLIKON arising from any act or omission of the Supplier or any breach of warranty by the Supplier that causes or is alleged to have caused personal injury or damages to the property of any third party.

8.9 The Supplier is liable for his subcontractors to the same degree as for his own performance.

9. Product Liability, Indemnification, Insurance Coverage

9.1 The Supplier shall indemnify and hold OERLIKON harmless against any third party claim for damages against OERLIKON insofar as a product delivered by the Supplier to OERLIKON was the cause of the damage or the cause of the damage was within the Supplier's control.

9.2 The Supplier shall reimburse OERLIKON for all expenses arising in connection with any recall measure taken by OERLIKON to repair or replace any defective product if either (i) the defect was caused by a defective item delivered by the Supplier to OERLIKON or (ii) prevention of the defect was otherwise within the Supplier's control. To the extent it may reasonably be expected to do so, OERLIKON will notify the Supplier of recall measures to be taken.

9.3 The Supplier shall obtain and maintain in full force and effect during the term of the related delivery agreement and for at least five years following the termination thereof, a commercial general liability and product liability insurance to cover all claims hereunder or otherwise related to any product delivered or required to be delivered under any delivery agreement.

10. Third Parties' Intellectual Property Rights

9.1 The Supplier represents and warrants to OERLIKON that the delivery to, and use by, OERLIKON of the Supplier's products in accordance with the terms of these GTP and any delivery agreement concluded hereunder will not infringe any patent, trademark, trade secret or other intellectual property rights of any third party. In case any such third party claim of infringement is made against OERLIKON, the Supplier shall indemnify, hold harmless and defend OERLIKON against any such claim.

11. Technical Documents and Operating Manuals

11.1 Oerlikon will provide Oerlikon engineering drawings, specifications and documents necessary for full and complete description of products and materials. The supplier is responsible for acquisition and retention of referenced specifications including materials, processes and industry standards. All documents placed at disposal to the Supplier remain in the sole property of OERLIKON and shall be returned immediately on first demand.

10.2 When required by contract or purchase order before work on the product is started the Supplier shall submit to OERLIKON, a set of engineering drawings for approval. Approval by OERLIKON does not relieve the Supplier from ensuring that the product can be built and that it will function according to specifications.

10.3 All documents prepared by Supplier on the basis of OERLIKON specifications shall be provided to OERLIKON in a set of drawings that can be photocopied or microfilmed and/or in the form of CAD data.

10.5 Supplier grants OERLIKON a worldwide, non-exclusive license to use, copy and publish all documents, data, technical information and the like provided by Supplier at its own discretion.

11. Inspection: Right to Inspect

11.1 OERLIKON maintains the right to inspect the facilities, tools, equipment, processes, operations, records, work in progress utilized by, or on behalf of, Supplier in the execution of contracts or purchase orders. Inspection does not diminish Suppliers obligation to perform or preclude subsequent rejection or action by Oerlikon.

12. Assembly and Installation

12.1 If the Supplier also undertakes the assembly and installation, these works shall be included in the delivery price unless separate payment has been agreed upon.

13. Secrecy and Product-related Exclusivity Agreement

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13.1 The Supplier shall not use for any purpose not authorized by the delivery agreements concluded hereunder or disclose to any third party any trade or manufacturing secret or customer data of OERLIKON. In particular, the Supplier shall not use any manufacturing know-how made available to the Supplier by OERLIKON in any form to manufacture or have manufactured for other customers products similar to or comparable with any product subject to a delivery agreement entered into hereunder. The Supplier shall cause each of its employees and subcontractors to agree by appropriate contractual measures to be bound by the foregoing provisions of this paragraph 13.1.

13.2 Paragraph 13.1 shall survive the termination of the delivery agreement concluded hereunder. Paragraph 13.1 shall not apply to manufacturing know-how of OERLIKON that is embodied in figures, drawings, calculations or other documents that are publicly disclosed by OERLIKON.

15. Applicable Law, Place of Jurisdiction, Attorney's Fees Place of Performance

15.1 These GTP and the individual *contracts, purchase orders and* delivery agreements concluded hereunder shall be construed in accordance with, and governed by the applicable laws State of Florida for Oerlikon, USA, St. Petersburg, FL. The regulations of applicable laws shall be of subsidiary application to the express provisions of these GTP and the delivery agreements concluded hereunder. For any litigation arising out the cooperation with the Supplier, the ordinary courts at the registered office of OERLIKON shall have the jurisdiction, provided that OERLIKON shall always be permitted to bring any action or proceeding against the Supplier in any court of competent jurisdiction worldwide.

15.2 In the event of a dispute between the Parties to a purchase order which results in litigation and a final judgment issued by a court of competent jurisdiction, the prevailing party shall be entitled to recover its reasonable attorney's fees incurred to pursue or defend such action.

15.3 Unless otherwise provided for in writing, place of performance shall be at the domicile of OERLIKON.

16. Miscellaneous

16.1 All modifications and supplements to these GTP (including, without limitation, this paragraph 16.1), all delivery agreements concluded hereunder and all modifications and supplements to such delivery agreements shall only be effective if embodied in a written instrument signed by each of the parties hereto.

16.2 Neither party may assign or transfer any of its rights and duties under these GTP or any delivery agreement concluded hereunder without the prior written consent of the other party.

16.3 This GTP *has* been fixed in compliance with the relevant applicable law of *the State of Florida, USA*. In the event any term or provision of these GTP shall for any reason be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. Such illegal, invalid or unenforceable provision shall be replaced by another valid, legal and enforceable provision in form and substance suitable to ensure the overall business intent of the parties hereto.

16.4 The Supplier expressly agrees that OERLIKON may store and process the corporate data of the Supplier.