

## General Legal Terms and Conditions

January 2010

### I. General

1. In these General Legal Terms and Conditions the parties are hereinafter referred to as Oerlikon and as "Customer".

The General Legal Terms and Conditions apply to all Oerlikon business transactions with Customer. Customer shall acknowledge the General Legal Terms and Conditions also for any follow-up orders since these terms are already known to him upon the closing of the follow-up orders.

Any diverging conditions stipulated by Customer become valid only after they have expressly been confirmed by Oerlikon in writing. All agreements and statements of legal relevance of the contracting parties require a written consent to become valid. In the event of a condition in the General Legal Terms and Conditions becoming ineffective as a whole or in part, this will be without prejudice to the effectiveness of the remaining conditions. The contracting parties will be required to agree to a new condition which serves the legal and economic achievement of the meanwhile invalid condition as closely as possible.

Information and indications given in the brochures and price lists will only be binding when the contract expressly refers to them.

2. Subject of the contract is the work (hereinafter referred to as "Work") to be executed for Customer according to the agreed technical specifications by Oerlikon. Materials to be delivered to Oerlikon and to be further processed by Oerlikon are hereinafter referred to as "Material". Oerlikon shall reserve any right of the technical documents which have been handed over to Customer. Without Oerlikon's prior written authorization none of these documents may be made available as a whole or in part to third parties, nor shall be used outside the purpose for which they were submitted to Customer.

For lack of any deviating agreement Customer shall make available any technical documents and information necessary for executing Work to Oerlikon immediately after closing of contract. Should one party provide the other party with drawings, technical documents and information regarding Material, Work or products prior to or after closing of contract those shall remain the property of the party having provided them.

### II. Placement of Order

The placement of order shall contain all important information required by Oerlikon such as designation of item, number of pieces, dimensions, material number, any pre-treatments and procedures in view of coating surfaces. Changes in material composition and in any possible pre-treatment shall be notified to Oerlikon in due time. Oerlikon is entitled to make necessary additional inquiries on the appropriate treatment of the product by Customer.

### III. Scope of Services – Prices

1. Oerlikon's services are conclusively listed in the order. Services which will be required in the course of the order handling and which are not included in the order shall be charged separately. Prices will be adjusted appropriately in the event material or processing of the material change because information and documents provided by Customer have not met the actual circumstances or have been incomplete, or nature and scope of services included in the order have changed. Should such additional services be required prior to start of processing, as

for example special pre-treatments or special fixtures, Oerlikon shall inform Customer of the additional charge prior to start of processing. Should such additional services be required not before executing the service those will be performed without giving any notice to Customer and will be charged separately. Customer acknowledges Oerlikon's claim unless he immediately rejects it in writing.

2. Our prices are understood – unless no VAT is expressly quoted – to be ex-works pursuant to INCOTERMS 2000, exclusive any VAT rates and packaging, payable without any discounts. Any taxes, charges, fees, customs duty and others levied in connection with the contract shall be borne by Customer or shall be returned to Oerlikon after Oerlikon has supplied evidence thereof in the event Oerlikon has had to pay them.

3. Oerlikon is not obligated to inspect Material on its suitability in his accomplishment of services. Should Oerlikon, during its accomplishment of contract, detect any defects of the products being attributable to defective moulds, tools and equipment or defective material provided by Customer, or any errors or omissions made in the technical documents and information provided by Customer, Oerlikon shall immediately make notice thereof to Customer. Customer shall be obliged to correct this error message and these omissions. Customer shall bear any additional costs arising thereof.

### IV. Modifications after Placement of Order

Each of the parties is entitled to propose any change of Work by making known such propositions to the other party in writing indicating any expected affects of the price, quantities and delivery plan. The other party shall immediately make a written statement thereon. Modifications of the agreed specifications or of the nature of executing Work become valid only after they have been approved in writing by the parties.

### V. Delivery of Material

1. Customer shall deliver Material without delay and identify it appropriately. Customer shall indicate number of pieces, designation and value of goods on an accompanying document (delivery note) upon delivery. All delivered goods shall contain unit price and total value, number of packaging, gross and net weights, country of origin of the goods, mode of transportation for the delivery and desired mode of transportation for return goods. Oerlikon reserves the right to return any delivered goods which do not meet these requirements and charge any incurring costs. The contract will remain unaffected by this arrangement.

2. Oerlikon shall inspect Material, as soon as business operations permit it, optically without using any specially technical devices or, as the case may be, inspect orders comprising several pieces in such manner by taking a random sample thereof. Oerlikon shall immediately inform Customer on defects, damages or short delivery of Material having become apparent at this inspection.

3. Material and products are the property of Customer and Customer shall have the risk thereof. Oerlikon only bears the costs of warehousing of handed-over Material, provided Customer is not in default of acceptance.

4. Delivered Material shall be in a condition able to be coated. The following requirements shall be met:

a. Metallic material such as high speed steels, warm and cold work steels, stainless steels, heat treated steels, carbides and cermets are able to be coated.

b. Heat treatment shall be effected in such a way that coating temperature (up to 500 °C) does not result in a loss of hardness or in distortion. Coatings at temperatures between 250 °C and 350 °C are available on request.

c. Drill holes, threads or one surface for fixturing Material must be available which shall be left uncoated.

Surfaces which must not be coated at all shall be designated in the delivery documents.

Material with inside contours (drill holes, slots) is able to be coated. Depending on their geometric ratios, coating thickness diminishes with the increasing depth. Soldering points shall be temperature-resistant up to 600 °C and free from any shrinking, flux and cadmium. It shall be taken into account that the stability of soldering points is lessened by the thermal stress in the coating process. This also applies to solders which are suitable for vacuum. Welded Material shall have to be stress-relief annealed.

Material must not be bonded or injected. Blind holes and inside threads shall be free from any hardening salts and any other contaminants. Cooling channels shall be opened and cleaned.

d. Surfaces shall be metallically bright. They shall not be chromium-plated, burnished, steam tempered nor bath nitrated.

Ground surfaces shall be free from any grinding cracks, oxide skins and new hardening zones. Do not use a blunt grinding disc in this process. Cutting edges should be free from any burrs so they do not break off when they are used for the first time.

We generally recommend making several recuts when spark erosion is used in order to reduce the formation of a "white" layer. Good adhesion of the coating is generally achieved on spark-eroded surfaces when this surface is pre-treated by means of microbeams.

Polished surfaces shall be free from any residues of the polishing agent.

Photoetched surfaces can be coated without being pre-treated in case they are free from any residues or stains.

All surfaces shall be free from any rust, chips, wax, adhesive tape, color, mould coats and the like. Material shall be free from any grinding dust, stains from cleaning agents, finger prints and the like and shall be demagnetized.

e. Material shall be packed in such a way that it will not be damaged by external or mutual impact. Packaging shall also be suitable for a return shipment.

Material should be treated and protected with oil which shall then be removed without leaving any residue when we make an alkaline cleaning of Material.

High-gloss polished surfaces should preferably be covered by an acid-free PVC foil of at least 50 µm thickness. We do not recommend the use of soft materials with abrasive effects such as cotton wool, paper or plastic foam.

## VI. Acceptance Inspection

Oerlikon documents the coating procedure and any tests of samples in a report. This badge report may be examined on demand. There is no separate inspection of the product.

## VII. Delivery Deadlines

1. Delivery deadlines are scheduled according to the plan which was agreed by the parties. Delivery deadlines shall not commence earlier than on the day on which Oerlikon receives Material and has all necessary technical documentation at hand. In the event no agreements have been made, Oerlikon determines the time of delivery. The agreement made on delivery deadlines does not make this transaction a firm deal.

2. Delivery deadlines will be appropriately extended should impediments occur incurring to Oerlikon, Customer or any third party. Once the circumstances impeding the delivery have disappeared, delivery deadlines re-commence anew. Should the impediment be caused by Customer or a third party and should Oerlikon, due to the delay in time, be unable to comply with the agreed deadlines and which have been re-scheduled from the date of disappearance of the impediment, Oerlikon is entitled to appoint a new but later date of delivery. Oerlikon shall store any material and any products in his possession in the event of delays. Customer shall compensate Oerlikon for any costs of warehousing, handling and, if necessary, of any insurances taken out for Material and products etc. incurred thereby and borne by Oerlikon due to such a delay. In no event the risk is transferred to Oerlikon.

## VIII. Defects Liability Guarantee

1. Customer shall supply evidence for and show any defects to Oerlikon.

2. Customer is not entitled to claim a price reduction but has the right of rectification of the product to the extent that such rectification is technically possible. Should any rectification of defects be technically impossible, Oerlikon shall remove the coating from the defective product free of charge. In the event a stripping is not possible or, as the case may be, Material has been damaged during processing, Oerlikon compensates Customer for the material value of Material whereas Customer will be compensated for the maximum amount of two times the value of coating. Any other guarantee claims are excluded.

3. In the event products will be further processed by Customer or a third party after the coating process, a defects liability guarantee is not applicable either, and beyond this there is no compensation of damage. The liability of consequential damages is expressly excluded.

## IX. Liability

1. The liability of Oerlikon is excluded for any deviations and damages being attributable to delayed, unnecessary, incomplete or inaccurate informati-

on or unsuitable treatment procedures and which have been considered by Oerlikon to be inappropriate, particularly in cases where handed-over Material does not meet the requirements needed for a coating mentioned above.

Oerlikon shall not adopt any liability with view of damages being attributable to an unsuitable quality of the handed-over Material, such as material defaults, residues of processing or any other impurities, manufacturing defaults, inappropriate heat treatment, rusty stains, non-detachable residues, soldering joints etc. as well as with view of a reduced corrosion resistance with stainless steels caused by the coating.

2. Oerlikon refuses any liability with view of losses, delayed deliveries, cases of mistaken material etc. caused by inaccurate labeling of Material made by Customer, forwarding agent or customs duty. There also exists no liability with view of any damages which may be caused by storing the products even if reasonable care has been taken.

3. Provided no criminal negligence is given, Oerlikon is not liable in the event of quality losses, dimensional deviation, modification of surface roughness and of damages caused during processing of Material which was pre-treated by Oerlikon, furthermore in the event of sporadically occurring minor errors, damages or stains outside the functional surfaces, of slight deviations in color and shade-fastness of the delivered products, in the event of defects being directly or indirectly attributable to unsuitable surface treatment methods applied by Oerlikon of the delivered Material to be treated. No warranty of keeping the prescribed dimensions is taken by Oerlikon.

4. Oerlikon is only liable, provided a criminal negligence is given, for Customer's claims on behalf of improper consulting and the like or negligence of any minor obligations.

5. Any claims of Customer, except those expressly stated in these conditions, regardless of the legal reason, particularly those not expressly named claims for compensation of damage or withdrawal from the contract are excluded. In no case do exist Customer's claims for compensation of damages which have not arisen at the processed Work itself, such as loss of production, losses of usage, loss of orders, lost profits, and of any other direct or indirect damages.

6. Customer shields Oerlikon against any claims made by a third party outside this contract for product liability. Claims of recourse on behalf of Customer against Oerlikon to satisfy claims made by a third party for product liability are ruled out.

## X. Liability Limitations

Is Oerlikon obligated to make compensations, this compensation will be limited to a maximum amount of twice the value of coating.

## XI. Packaging and Transportation

Special modes of dispatch, transportation and transportation insurance shall be made known to

Oerlikon in due time. Transportation is on the account of and at the risk of Customer. Complaints in connection with the dispatch or transportation of the products or of the freight documents at the place of destination shall immediately be made to the last forwarding agent.

Unless special agreement has been made in view of transportation and packaging, transportation of packaging which was used to deliver Material to Customer will be returned after processing. In the event packaging cannot be re-used Oerlikon provides packaging and charges Customer for it.

## XII. Terms of Payment

1. Payments shall be made according to the contractual agreements or, as the case may be, in case of deviations during the accomplishment of services according to the invoice. The obligation of payment will be regarded as having been fulfilled when the total amount due has been paid to Oerlikon. No interest will be reimbursed for advance payments. The agreed dates of payment shall remain effective even if delays in delivery arise through no fault of Oerlikon. In the event of Customer failing to meet his payment obligations agreed upon, we shall be entitled, without necessarily sending a reminder, to charge default interest amounting to 10% and, if a reminder has been sent, to charge costs of reminders including solicitor's costs and costs of suit.

2. In cases of delayed payment Oerlikon shall, after having sent a prior written notice to Customer, discontinue the accomplishment of the contract and withhold Material and products, moulds, tools and equipment etc. which are in his possession until payment has been made. Customer carries the risk for damage or loss of retention goods and of any additional costs incurred.

## XIII. Transfer of Risk

1. Material delivered to Oerlikon by Customer including any aids, technical documentation and others made available to Oerlikon remains the property of Customer and the risk shall not be passed to Oerlikon. Customer also carries the risk for materials being processed and for the finished product.

2. In the event of a deviating written agreement, profit and transfer of risk are effected to Customer not later than when Work has left our factory.

## XIV. Legal Venue and Applicable Law

The legal relationship is subject to the Austrian Law. Depending on the value in dispute, the legal venue is the competent local court of the district court Bruck an der Mur or, as the case may be, the provincial court of Leoben.

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