

Oerlikon Balzers Coating Benelux - Luxembourg

General Terms and Conditions of Sales for the BALINIT Coating Service

1. General

1.1 These General Terms and Conditions of Sales (hereinafter referred to as General Terms) are binding if they have been declared applicable in the offer (also called "quotation") or confirmation of order. Any other terms defined by the customer or in other documents are only valid if they have been expressly accepted by Oerlikon Balzers Coating Benelux – Luxembourg. ("Oerlikon") in writing or electronically. THESE GENERAL TERMS EXPRESSLY LIMIT ACCEPTANCE TO ITS TERMS AND CONSTITUTES NOTICE OF OBJECTION TO ANY ADDITIONAL OR DIFFERENT TERMS IN CUSTOMER'S DOCUMENTS SO AS TO PRECLUDE THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS IN ANY RESULTING CONTRACT. IF THESE GENERAL TERMS ARE CONSTRUED AS AN ACCEPTANCE OR AS A CONFIRMATION OF AN EXISTING CONTRACT, SUCH ACCEPTANCE OR CONFIRMATION IS EXPRESSLY CONDITIONED ON CUSTOMER'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN.

1.2 All quotations are valid for 30 days from date of quotation, unless Oerlikon states otherwise in writing.

1.3 Only the written or electronic confirmation of order is binding. If Oerlikon does not give a confirmation of order the invoice shall serve as the confirmation of order.

1.4 If any one or more of the provisions of these General Terms or any part or parts thereof shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of these General Terms and the illegal, invalid or unenforceable provision shall be replaced by a new provision the content of which shall be as close to the legal and economic effect of the replaced provision as possible.

2. Placing of order

2.1 To be effective orders must be made in writing or electronically.

2.2 The order must contain all information relevant to Oerlikon such as number and date of Oerlikon's offer, sales person, description of the substrate, number of items, dimensions, material specification, any previous treatment and instructions as to the surfaces to be coated etc. Any changes in the composition of the material and the preparatory treatment shall be notified to Oerlikon in good time. Oerlikon is entitled to require the customer to provide any additional information which it might consider necessary for the proper treatment of the substrate.

3. Scope of services

Oerlikon's scope of supply and services referred to in the confirmation of order shall form part of the contract only. Further services not specified therein shall be charged extra.

4. Delivery of the substrates

Upon delivery of the substrates the customer shall indicate the number of items, description and value of the substrates in an accompanying document (delivery note).

For all supplies the following information shall be provided in addition in a proforma invoice: price of each item and total value, number of packages, gross and net weight, country of origin, mode of transport for delivery and desired mode of transport for return to the customer.

The substrates delivered have to be in a state fit for coating. Oerlikon reserves the right to return substrates which do not comply with these requirements at the customer's expense.

5. Labeling of the substrates

The customer shall mark the substrates to be supplied appropriately.

6. Entry control

Substrates received to be coated are only summarily and in a non-

binding way controlled and compared with the order. There is no obligation to control the substrates. If the customer asks Oerlikon to perform entry controls and if Oerlikon agrees to such control it shall be limited to an inspection of the substrates and the recording and notifying of the defects noted. This service shall be charged extra.

7. Technical documentation

7.1 Sales brochures and catalogues are not binding unless expressly stated otherwise. Specifications in technical documents are only binding as far as they have been expressly guaranteed.

7.2 Oerlikon reserves all rights to any technical documentation supplied to the customer. Without prior written consent of Oerlikon, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to the customer. In particular the customer is not entitled to reproduce or replicate components or parts thereof and services specified therein.

8. Confidentiality

Each party shall keep confidential the manufacturing and business secrets as well as any other proprietary information received from the other party and shall neither directly nor indirectly disclose the same to any third party whomsoever nor publish them in any manner whatsoever nor use them for any other purpose, in particular but without limitation for the reproduction or replication of machines, systems, components and parts thereof.

9. Price

9.1 Prices are net, Ex-Works ("EXW") Oerlikon Balzers Coating Benelux – Luxembourg, as determined by Oerlikon, according to INCOTERMS 2000, and exclusive of value added tax, sales tax and packing, unless expressly otherwise provided for in Oerlikon's offer.

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9.2 Payment shall be made in freely available euro without any deductions whatsoever.

9.3 Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like, which are levied out of or in connection with the contract, or shall refund them to Oerlikon against adequate evidence in the event that Oerlikon is liable for them.

9.4 The prices will be adjusted appropriately if:

- The term of delivery has been subsequently extended due to any reason for which the customer is responsible, or
- the coating material or the execution of the coating of the substrates has undergone changes because the information and/or documents provided by the customer were not in conformity with the actual conditions or were incomplete, or
- the nature or the scope of the agreed supplies or services has changed.

If such additional services (e.g. pretreatments or special fixtures) are required, Oerlikon will notify the customer of the additional price before coating starts.

10. Terms of payment

10.1 Payments have to be effected in accordance with the confirmation of order or invoice as the case may be. Payment will be deemed to be made when the total price agreed on has been paid to Oerlikon in euro.

10.2 No interest will be reimbursed for advance payments.

10.3 Any dates agreed for payment shall remain in full effect even where through no fault of Oerlikon delays arise in the performance of the contract.

10.4 If Oerlikon does not receive payment by the date stipulated interest shall thereafter accrue on the sum due and owing and shall be charged immediately to the customer at the current base

lending rate in the customer's domicile in accordance with LIBOR plus 4%, provided that such rate shall not be less than 1.5% per month.

10.5 The retention of or deduction from payments because of complaints, disputes or claims on the part of the customer which have not been expressly agreed by Oerlikon is inadmissible. The customer may only set off possible counterclaims against payments due under this contract where Oerlikon has expressly agreed to the same in writing.

11. Right of retention

11.1 If the customer does not comply with the terms of payment, Oerlikon reserves the right to make use of its right of retention with regard to the substrates in its possession which are being processed or have already been coated, until the payments according to the contract have been fully received by Oerlikon.

11.2 The customer bears all risk of any damage or loss of the substrates being retained. There is no obligation of Oerlikon to provide an insurance.

11.3 If the customer does not pay the amounts due within 90 days, Oerlikon is entitled to sell upon notification of its intention the substrates retained on the open market.

12. Delivery time

12.1 The time for delivery shall start as soon as the contract is entered into, Oerlikon is in possession of the substrates and the relevant, complete documentation as specified in clause 2.2, the scope of supply and the specifications are defined, all relevant official formalities have been completed, payments due with the order have been made and any agreed securities have been given. The date of delivery shall be deemed to be observed if by that time Oerlikon has sent a notice to the customer informing that the substrates are ready for dispatch.

12.2 Oerlikon's compliance with the time for delivery is conditional upon customer's fulfilling its contractual obligations.

12.3 The acceptance of orders with a prescribed term of delivery is not deemed to be an agreement with

respect to the term of delivery in question.

12.4 The time for delivery will be extended correspondingly in case of, and Oerlikon is not responsible for claims or damages resulting from, contingencies beyond the reasonable control of Oerlikon. As soon as the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.

12.5 Unless otherwise explicitly provided for in writing, agreed delivery dates are not binding. However, six weeks after failure to deliver by an agreed non-binding delivery date, the customer shall be entitled to request Oerlikon in writing to make delivery within a reasonable period. Failure to deliver within a reasonable period after the notice shall constitute late performance by Oerlikon.

12.6 Blanket orders may be scheduled over a 12 months or greater period. Unless otherwise stated delivery of all coated substrates must be taken within 12 months of order placement. An initial schedule release of 120 days is required, with a rolling 120 day firmly booked shipping schedule to follow by the first day of each calendar month. Delivery delays of more than 60 days require customer to notify Oerlikon in writing of reason for the delay. Oerlikon may bill back the difference between the unit price billed during the last 12-month period and the quoted unit price of actual quantity delivered.

12.7 If this has been agreed expressly in writing, the customer is entitled to claim liquidated damages for delayed services in so far as it can be proved that the delay has been caused by the fault of Oerlikon and that the customer has suffered a loss caused by such delay.

12.8 In the case of delayed services the customer has no rights and claims other than those expressly stipulated in this clause 12; in particular he has no right to rescind the contract. This limitation, however, does not apply to gross negligence or willful misconduct of Oerlikon.

13. Packing

Packing shall be charged for separately by Oerlikon and shall not be returnable. However, if it is

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declared as Oerlikon property, it shall be returned by the customer, carriage paid to the place of dispatch.

14. Passing of benefit and risk

14.1 Benefit and risk of the coated substrates shall pass to the customer by the date of shipment EXW Oerlikon Balzers Coating Benelux – Luxembourg according to INCOTERMS 2000 at the latest.

14.2 If delivery is delayed at the request of the customer or otherwise due to no fault of Oerlikon, the risk shall pass to the customer at the date originally agreed for delivery EXW. From this date onwards the substrates shall be stored and insured at the customer's expense and risk and all payments shall become due at the agreed date of delivery.

15. Shipping, transport and insurance

15.1 All substrates will be shipped in export packing via lorries, railway or airfreight. Oerlikon must be notified for special requests in relation to forwarding, transport and insurance.

15.2 Transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the coated substrates or of the shipping documents be immediately submitted by the customer to the last carrier.

15.3 The customer shall be responsible for taking an insurance against risks of any kind.

15.4 The customer shall comply with all applicable domestic, foreign, import, export, security and controller access laws and regulations, including obtaining all necessary security clearances for airports, cargo transport areas, and related facilities, governmental approvals and licenses in connection with the purchase of coated substrates.

16. Inspection, acceptance of, and claims in respect of the coated substrates

16.1 Oerlikon shall check the coated substrates before dispatch and the services upon completion as far as usual. Any further controls requested by the customer have to

be agreed upon separately and paid for by the customer.

16.2 Coated substrates that have passed the usual quality inspections will be packed for shipment without any special markings. The coating service for these substrates will be invoiced.

16.3 Coated substrates with coating faults on the functional surface(s) will be packed for shipment in packages marked with a red sticker. The coating service for these substrates will not be invoiced.

16.4 Claims have to be proved by the customer; the coated substrates complained about shall be made available for inspection by Oerlikon if requested. The claims shall be submitted to Oerlikon as follows:

- In the case of obvious defects as soon as possible but no later than 4 weeks after delivery.

- In the case of non-obvious defects as soon as possible after discovery, but no later than 6 months after delivery.

If no claims are made within the time limits stipulated above the coated substrates are deemed to have been approved and accepted.

The acceptance shall also be deemed completed if the customer refuses the acceptance of coated substrates or services without being entitled thereto.

16.5 The customer has no other rights and claims in respect of any defects whatsoever in relation to the coated substrates than those expressly named in clause 17 (Liability for Coating Defects).

17. Liability for coating defects

17.1 For claims made as defined in clause 16.4, the customer is entitled to and Oerlikon has the right to correct the fault – if technically possible – when the coating thickness at the specified point on the functional surface is 50% or less of the specified coating thickness or when the coating does not adhere to those functional surfaces.

17.2 If it is not technically possible to correct the fault, the value of the faulty, coated substrate will be partly or wholly compensated by Oerlikon when the coated

substrates are not usable because of the fault. However, maximum compensation in such cases will be the value of the coating service at the time the claim is made.

No compensation shall be paid where the coated substrates have been processed by the customer or a third party after coating.

18. Exclusion of liability for coating defects

18.1 Incorrect or inaccurate information in the customer's order

Oerlikon's liability is excluded for all differences and damages which are due to late, incorrect, incomplete or inaccurate information or unsuited treatments prescribed by the customer in the order, or unsuited treatments described by Oerlikon.

18.2 Defective substrates

Oerlikon's liability is excluded for damages which are due to the unsuitable state of the substrates supplied, e.g. the presence of defects in the material, finishing residues, foreign substances, manufacturing faults, unsuited heat treatments, rust spots, non-removable residues, brazed connections, etc. as well as the reduced corrosion resistance of stainless steels caused by the coating process.

The customer is liable for any damage caused to Oerlikon's equipment caused by residues or foreign substances remaining on the substrates sent for coating.

18.3 Inaccurate labelling of the substrates

Oerlikon declines any liability for losses, delayed deliveries, confusion, etc. which are due to inaccurate labelling of the substrates by the customer, carrier or customs authorities.

18.4 Storage damage

Oerlikon declines liability for all damage which despite taking all reasonable care may arise out of the storage of the substrates (rust spots, etc.).

18.5 Minor defects

Barring the case of intent or gross negligence, Oerlikon is not liable for:

- a reduction of quality, changes in dimensions, changes in surface roughness and damage during coating of substrates not pre-treated by Oerlikon;

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- individual small faults, damages or spots outside the functional areas;
- slight colour deviations as well as for the constancy of the colour of the coated substrate;
- faults that are directly or indirectly due to the customer having used an unsuited method for treating the substrates before the substrates were supplied to Oerlikon for coating.

18.6 Prescribed dimensions

Oerlikon assumes no responsibility for holding to dimensions prescribed by the customer.

18.7 Supplies and services of subcontractors

Oerlikon warrants for goods and services of subcontractors requested or provided by the customer to the extent of such subcontractor's warranty and liability obligations only.

18.7 Limitation of liability for defects

In the case of defective coating a customer has no other rights and claims other than those expressly stipulated Clause 17.

19. Exclusion of further liability

19.1 Oerlikon makes no representation or warranty of any character with respect to infringement or to the exemption of the goods and services from third parties' protective rights.

19.2 OERLIKON ASSUMES NO RESPONSIBILITY FOR ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

EXCEPT AS SPECIFICALLY PROVIDED IN THESE GENERAL TERMS. Without limiting the generality of the foregoing, this exclusion from liability includes, but is not limited to, claims, arising out of interference with the customer's production, expenses for downtime, lost profits, lost sales, injury to person or property or any other incidental or consequential loss.

19.3 These exclusions, however, shall not apply to gross negligence or willful misconduct of Oerlikon.

19.4 The customer will indemnify Oerlikon for all non-contractual claims for product liability raised by third parties. Claims of the customer against Oerlikon out of customers' payments in connection with product liability claims raised by third parties are expressly precluded and waived.

20. No liability for additional obligations

Oerlikon is not liable for claims of the customer arising out of insufficient information or faulty advice and the like or out of breach of any additional obligations whatsoever except where caused by Oerlikon's gross negligence or willful misconduct.

21. Applicable Law and Place of jurisdiction

21.1 These General Terms shall be construed and the legal relations between the parties shall be determined in accordance with the substantive law provisions of Hasselt – Tiel - Luxembourg, with the exclusion of the conflict of laws provisions of Hasselt – Tiel - Luxembourg. The uniform UN law of sales (CISG) shall not be applicable.

21.2 Any dispute arising in connection with these General Terms or any related contract shall be submitted to the courts Hasselt – Tiel – Luxembourg, having jurisdiction over Oerlikon, provided that Oerlikon shall always be permitted to bring any action or proceedings against customer in any court of competent jurisdiction.

21.3 In any action or arbitration brought under or in connection with these General Terms or any related contract, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

21.4 The parties acknowledge that the only official text of these General Terms and related documents is that written in English and that any translations into other languages, even if signed by both parties shall not be binding. In case of difference between the various texts, the English text shall prevail.

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