

## General terms and conditions for coating services of Oerlikon Balzers Coating USA, Inc.

### 1. Terms and Conditions

Terms and conditions set forth herein shall apply to any and all services to be performed by Oerlikon Balzers Coating USA, Inc. (Oerlikon Balzers) and comprise all of the terms and conditions between Oerlikon Balzers and its Customer. No other or different terms and conditions shall be applicable unless contained in a separate writing and signed by an authorized representative of Oerlikon Balzers.

### 2. Offer and Acceptance

Oerlikon Balzers' quotation shall be construed as an offer to provide services upon the terms and conditions set forth herein, and shall be subject to withdrawal at any time prior to acceptance by Customer as provided for herein. Acceptance by Customer of the quotation by Oerlikon Balzers, and these terms and conditions shall be deemed to have been made upon the receipt of the materials of the Customer upon which the work by Oerlikon Balzers is to be performed. The use of any documentation or instruments by Customer to indicate acceptance or confirmation shall be considered for the convenience of the Customer only, and any items and conditions therein shall be of no force or affect whatever.

### 3. Prices

The prices quoted are firm for ninety (90) days, except as may be adjusted for as provided for herein, but thereafter are subject to change without notice. All clerical errors in Oerlikon Balzers' quotation, acknowledgement and invoices are subject to correction.

### 4. Taxes and Fees

Any and all taxes or fees imposed by any federal, state, municipal or other governmental authority with respect to

this transaction, and any and all duties, tariffs or otherwise shall be added to the price and paid by the Customer. In the event, that Oerlikon Balzers pays such taxes, fees or otherwise Customer shall reimburse Oerlikon Balzers.

### 5. Terms of Payment

**5.1** 1% (one percent) cash discount for payments received 10 days after of Oerlikon Balzers' invoice date unless otherwise specified. Customer shall pay Oerlikon Balzers no later than „net 30 days“ after date of Oerlikon Balzers' invoices.

**5.2** Credit card payments will be processed 11 days after Oerlikon Balzers' invoice date unless otherwise specified.

### 6. Delivery of Material to Oerlikon Balzers

**6.1** Customer is responsible for shipping charges to and from the Oerlikon Balzers' plant.

**6.2** Packaging for shipment to Oerlikon Balzers: Secure packaging of the material shipped to Oerlikon Balzers is the responsibility of the Customer and Oerlikon Balzers will not be liable for any in transit damage caused by improper packaging. Oerlikon Balzers will promptly notify the Customer of any damage caused during shipment.

**6.3** Packaging for return to the Customer: The cost of normal packaging of the material is included in the price and the method of packaging shall be at the sole discretion of Oerlikon Balzers. Should Customer specify any special packaging or handling, any additional cost shall be added to the price.

**6.4** Customer shall be responsible for risk of loss while the material is being transported to or from Oerlikon Balzers.

### 7. Time of Delivery: Installments

**7.1** All dates for completion of the work by Oerlikon Balzers are approximate. Oerlikon Balzers shall not be liable for any delays or default by reason of any occurrences beyond its control, including without limitation fire, flood, embargo, strike, failure to secure materials or labor from usual sources of supply, governmental restrictions considered "force majeure" or any other circumstances beyond Oerlikon Balzers control.

**7.2** Oerlikon Balzers reserves the right to make deliverables in installments and all such installments shall be separately invoiced and paid for when due per invoice without regard to subsequent deliveries.

### 8. Termination

If Customer for any reason terminates this agreement in whole or in part, the notice of termination must be in writing to Oerlikon Balzers. Oerlikon Balzers shall then cease all work and hold Customer's materials, whether completed in full or in part, and Customer shall then pay to Oerlikon Balzers an amount equal to

**8.1** the percentage of the price that is equal to the percentage of work completed plus

**8.2** actual expenditures made by Oerlikon Balzers in connection with the uncompleted portion of the work, including without limitation all cancellation charges paid by Oerlikon Balzers for commitments made with respect to this order.

### 9. Inspection by Customer: Limitation of Liability; Warranty

**9.1** The Customer acknowledges that it will inspect the materials immediately upon receipt from Oerlikon Balzers and shall notify Oerlikon Balzers within ten (10)

working days of the delivery by Oerlikon Balzers, and in any event prior to the time any further processing, assembly or other work has been done on or with such materials, of any alleged damage, shortage deficit or otherwise. Failure by Customer to make any claim within such time shall constitute acceptance of the materials and waiver of all such claims. No items shall be returned to Oerlikon Balzers without the prior approval of Oerlikon Balzers.

**9.2** Oerlikon Balzers shall not be liable for

**9.2.1** any shrinkage, expansion, deformity or rupture of materials,

**9.2.2** damage resulting from hidden contamination in the materials,

**9.2.3** coating applied to areas on the material where it was not needed or requested or,

**9.2.4** unless previously agreed to in writing, damage to materials as the result of hardness tests,

**9.2.5** any chipping or other damage on solid carbide tools caused by handling or the coating process or,

**9.2.6** breakage of carbide tipped tools at the braze joint after coating.

**9.3** Oerlikon Balzers will carry out its standard inspection procedures prior to the return of the materials. Oerlikon Balzers does not warrant that all items are within the specification limits of hardness unless a 100% hardness test is requested in writing for which there shall be an additional charge.

**9.4** Except as otherwise provided for herein, Oerlikon Balzers agrees to recoat any of the materials sent by Customer for coating if it is determined that any coating applied by Oerlikon Balzers is defective in accordance with predetermined specifications. This warranty will extend for a period of 90 days from the date the materials are shipped to the Customer by Oerlikon Balzers. This warranty is in lieu of any other warranties whether express or implied, including without limitation the implied warranties of merchantability and fitness.

**9.5** The sole and exclusive remedies of the Customer shall be those as specifically set forth in this Section 9. Oerlikon Balzers' maximum liability for any and all claims shall not in the aggregate exceed the price the Customer has paid to Oerlikon Balzers pursuant to this agreement. Under no circumstances shall Oerlikon Balzers be liable to the Customer or any

third party for loss of business or profit or any other economic loss, or any incidental, special, indirect or consequential damages.

## **10. Indemnifications**

Customer shall indemnify and hold Oerlikon Balzers harmless from and against any and all actions, claims, demands, losses, damages or otherwise arising out of or in any way connected with the use of the materials which are the subject of this agreement including those based in whole or in part on the default or negligence of Oerlikon Balzers.

## **11. Additional Provisions**

**11.1** If during the period of this agreement the financial condition of Customer, in the sole opinion of Oerlikon Balzers, so warrants, Oerlikon Balzers may require cash payment or additional security from Customer in advance before proceeding or shipment, may accelerate the date of any payment and may withhold performance or cancel this agreement, all without prejudice to any other lawful remedies. If shipment by Oerlikon Balzers is delayed by Customer, payment shall be due in full when Oerlikon Balzers is prepared to make shipment.

**11.2** Until Customer makes full payment of the price, Oerlikon Balzers shall retain a security interest in the materials and may, at its option and without further agreement or signature by Customer, file evidence of such security interest pursuant to the Uniform Commercial Code.

**11.3** The Customer and Oerlikon Balzers mutually agree that the agreement growing out of this transaction, regardless of the place of its physical execution, shall be treated as though executed within the State of New York, and shall be interpreted within the purview of the laws and statutes of the State of New York in the United States of America.

**11.4** This agreement shall be binding upon the representative, successors and assigns of each of the parties hereto.

### **Oerlikon Balzers Coating USA, Inc.**

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