

## Oerlikon Metco general terms and conditions of sale (Japan)

These Terms and Conditions can be found on the Internet under [www.oerlikon.com/metco](http://www.oerlikon.com/metco)

### 1. General

#### 1.1. Definitions

“**BUYER**” means the party which signs the CONTRACT documents as counterpart to OERLIKON METCO.

“**COATING AND MACHINING SERVICES**” means services on goods provided by BUYER.

“**COMPONENT/S**” means goods not being a SYSTEM or SPAREPARTS.

“**CONTRACT**” means the PURCHASE ORDER plus all documents referred to therein.

“**ENGINEERING SERVICES**” means engineering work not making part of a CONTRACT for the delivery of a SYSTEM.

“**EX WORKS**” means Ex Works according to Incoterms 2000 or, after replacement of the Incoterms 2000, the then effective Incoterms.

“**FINAL ACCEPTANCE**” means the document issued by the BUYER or the end-user at the beginning of the warranty period or, if no FINAL ACCEPTANCE document is foreseen in the CONTRACT, the document evidencing shipment of the goods or completion of the services. For consignment goods, FINAL ACCEPTANCE will take place at the date of transfer of ownership, usually at the point of consumption.

“**GENERAL TERMS**” means these General Terms and Conditions of Sale of OERLIKON METCO.

“**MAINTENANCE / REPAIR / INSTALLATION SERVICES**” means services not connected to the delivery of a SYSTEM and not falling under COATING AND MACHINING SERVICES.

“**MATERIALS**” means any consumables (e.g. powders, wires) used in the coating process with the exception of SPAREPARTS.

“**ORDER CONFIRMATION**” means the document provided by OERLIKON METCO to BUYER as a response to BUYER'S purchase order documents either by e-mail, facsimile or as a hardcopy.

“**PURCHASE ORDER**” means the purchase order documents issued by BUYER in the version confirmed by OERLIKON METCO in the ORDER CONFIRMATION. In case of deviations between said purchase order documents and the ORDER CONFIRMATION, the version of the ORDER CONFIRMATION shall become the binding PURCHASE ORDER unless BUYER expresses its dissent by e-mail, facsimile or hard copy within three (3) working days after receipt of the ORDER CONFIRMATION.

“**SCOPE OF SUPPLY**” means the goods and/or services, including but not limited to COATING AND MACHINING SERVICES, ENGINEERING SERVICES, COMPONENTS, MATERIALS,

SPAREPARTS, SYSTEMS and TRAININGS and the pertaining documentation to be delivered under the PURCHASE ORDER as explicitly specified and agreed upon by both parties.

“**SPAREPARTS**” means wear and tear goods.

“**OERLIKON METCO**” means the company pertaining to the Oerlikon Metco Business Unit which accepted the PURCHASE ORDER.

“**SYSTEM**” means a coating system or a part of a coating system including engineering work, delivered with or without installation or commissioning work.

“**TRAINING**” means educational support provided by or on behalf of OERLIKON METCO.

1.2. These GENERAL TERMS apply to all deliveries made by OERLIKON METCO. Deviations from these GENERAL TERMS have to be agreed upon in a mutually signed document.

1.3. The delivery encompasses the SCOPE OF SUPPLY and will be made EX WORKS.

1.4. In case of contradiction between CONTRACT documents, the following order of precedence shall apply:

- PURCHASE ORDER or other negotiated, agreed and mutually signed document, including all documents made a part thereof
- OERLIKON METCO'S offer
- These GENERAL TERMS
- BUYER'S request for an offer
- BUYER'S Purchase Terms and Conditions

1.5. All documents making part of the CONTRACT can be changed only in a written, duly signed document.

1.6. OERLIKON METCO'S sales and service personnel are not authorized to enter into any indemnity or hold harmless agreements on behalf of OERLIKON METCO.

1.7. All information and data contained in brochures and price lists are binding only to the extent that they are by reference expressly included in the CONTRACT.

### 2. Delivery date

2.1. OERLIKON METCO shall deliver the SCOPE OF SUPPLY at the dates specified in the PURCHASE ORDER as confirmed in the ORDER CONFIRMATION. The delivery period shall commence at the date of coming into force of the PURCHASE ORDER, or, if an initial down-payment has been agreed upon, five days after date of receipt of such down-payment.

2.2. If in exceptional cases BUYER requests to return MATERIALS, the MATERIALS should be in their original packaging, sealed and unopened. Original invoices and lot numbers should match. A restocking fee amounting to fifteen percent (15%) of the value of the returned MATERIALS will be charged. The acceptance of such returns will be at the sole discretion of OERLIKON METCO. Returns of other SCOPE OF SUPPLY than MATERIALS will not be accepted.

### 3. Price, Payment and Title Retention

3.1. The prices for the SCOPE OF SUPPLY are those stated in the PURCHASE ORDER. For work carried out on a time basis, the prices shall be determined in accordance with the hourly rates specified in the PURCHASE ORDER. If no agreement on hourly rates has been made, the hourly rate applied by OERLIKON METCO for other customers and comparable work shall apply. All prices are exclusive of sales, excise duties, VAT, sales taxes or similar taxes and duties.

3.2. a) Payment terms for SYSTEMS: 30 % at PURCHASE ORDER date, 30 % after 2 months after PURCHASE ORDER date, 30 % before shipment, 10 % after FINAL ACCEPTANCE but not later than 90 days after announcement of readiness for shipment. Above payments shall be made within thirty (30) days after invoice date.

b) Payment terms for all other SCOPES OF SUPPLY: 100 % within thirty (30) days after invoice date.

3.3. Payments for prices calculated on a time basis shall be invoiced on a monthly basis or after completion of the work, whichever occurs first. Payment shall be made within thirty (30) days from invoice date.

3.4. If the BUYER fails to comply with the agreed dates of payment, BUYER shall be liable, without reminder, for interest with effect from the agreed date on which payment was due, at a rate depending on the normal interest conditions at the BUYER'S domicile, but not less than five percentage points (5 %) above the three months' LIBOR (London Interbank Offered Rate) applicable at the due date of the delayed payment.

3.5. All payments shall be made without any deductions in the currency stated in the CONTRACT.

3.6. In case of late payment, OERLIKON METCO may after having notified the BUYER in writing, suspend its performance of the SCOPE OF SUPPLY until the open and due invoices have been paid.

3.7. If BUYER and OERLIKON METCO agreed on issuing a Letter of Credit by BUYER in favor of OERLIKON METCO, such Letter of Credit shall be irrevocable, extendable, and confirmed by a first class worldwide active bank. Withdrawal of the money shall be against invoice and bill of lading or warehouse receipt.

3.8. OERLIKON METCO retains the title and ownership to the SCOPE OF SUPPLY until the purchase price is paid in full by BUYER in accordance with the PURCHASE ORDER. Upon such payment in full, the title and ownership to the SCOPE OF SUPPLY shall be transferred to the BUYER.

### 4. Intellectual Property

4.1. BUYER shall provide the technical documentation (e.g. up-to-date drawings, descriptions, charts, instructions) which is necessary for the delivery of the SCOPE OF SUPPLY and is specified in the CONTRACT. BUYER confirms that BUYER is fully authorized to use (or have used) the technical documentation provided to OERLIKON METCO for the performance of the SCOPE OF SUPPLY by OERLIKON METCO or its sub-suppliers, respectively. In case BUYER would not be authorized to order said performance from OERLIKON METCO without violation of

intellectual property rights of third parties, or if such right should be challenged, BUYER shall inform OERLIKON METCO without any delay. In this case, OERLIKON METCO shall stop the work until the approvals needed for the performance have been obtained.

- 4.2. OERLIKON METCO shall not use technical documentation received from BUYER for any purpose other than to fulfill the CONTRACT.
- 4.3. Any know-how, inventions, patents or copyrights or the like belonging to or provided by OERLIKON METCO and used for or developed in the course of the fulfillment of the CONTRACT by OERLIKON METCO shall remain OERLIKON METCO'S property, and no ownership shall be transferred to BUYER with respect to such know-how, inventions, patents and copyrights, independent of the hardware on which such know-how, inventions, patents or copyrights is made available (machinery, paper, electronic medium, etc.). However, BUYER shall be granted a limited right to use such know-how, invention, patents, copyright or the like for the operation, maintenance and repair of the SCOPE OF SUPPLY on a non-exclusive basis, which right shall **not** include the use of the said intellectual property for the reproduction of the SCOPE OF SUPPLY or parts thereof. If the SCOPE OF SUPPLY consists of ENGINEERING SERVICES, BUYER shall be permitted to use, on a non-exclusive basis, the documentation received for the purpose described in the PURCHASE ORDER. In case of doubt, ENGINEERING SERVICES provided for the development of a SYSTEM or COATING AND MACHINING SERVICES shall be deemed to be made available for the procurement of such goods or services from OERLIKON METCO.
- 4.4. a) OERLIKON METCO warrants that the SCOPE OF SUPPLY and any part thereof, in the particular form sold by OERLIKON METCO, shall not infringe any intellectual property rights of third parties. In the event of any patent infringement relating to the said SCOPE OF SUPPLY, OERLIKON METCO may, in its sole discretion, procure the right to use the SCOPE OF SUPPLY without impairing its suitability, or modify or replace it so that it is rendered non-infringing. The obligations of OERLIKON METCO set forth herein are contingent upon (i) OERLIKON METCO receiving prompt written notice from BUYER of such infringement; (ii) OERLIKON METCO receiving assistance from BUYER in the defense; and (iii) the right of OERLIKON METCO to settle or defend.
- b) This obligation of OERLIKON METCO shall not apply to (i) the SCOPE OF SUPPLY or part thereof which has been manufactured according to BUYER'S design, (ii) services performed by using BUYER'S documentation, (iii) the use of the SCOPE OF SUPPLY or any part thereof in conjunction with any other product in a combination not furnished by OERLIKON METCO as part of the SCOPE OF SUPPLY, (iv) products fabricated by using the SCOPE OF SUPPLY. As to any such equipment, service, product, part or use in such combination, OERLIKON METCO assumes no liability whatsoever for infringement of intellectual property rights of third parties, and BUYER shall indemnify OERLIKON METCO against any respective infringement claims. OERLIKON METCO shall co-operate with BUYER in the same manner as required by OERLIKON METCO under 4.4 a) (i) to (iii) herein above.
- 4.5. OERLIKON METCO'S copyrighted material shall not be copied by BUYER except for archiving purposes or to replace a defective copy.

## 5. Installation and site preparation

- 5.1. If installation services are a part of the SCOPE OF SUPPLY, it is the responsibility of the BUYER to prepare the site environmentally and to provide the required services, electrical wiring and conduit, dry compressed air and piping, gas supply and piping, tools for installation, water drain, permits, including work permits, licenses, approvals, etc. as well as whatever is required to uncrate and move the equipment into its location.
- 5.2. BUYER also undertakes to maintain the facilities, upon which OERLIKON METCO'S service personnel may be required to enter, in a safe condition, and to comply with all applicable laws, statutes and regulations governing workplace health and safety, and to give OERLIKON METCO'S personnel all instructions necessary. OERLIKON METCO shall make sure that its personnel will follow all instructions reasonably made by BUYER. The same applies vice versa in case BUYER'S personnel have to enter upon OERLIKON METCO'S facilities.
- 5.3. BUYER'S failure to comply with the obligations stated in Articles 5.1 and 5.2 above shall entitle OERLIKON METCO to either stop rendering its services, and/or postpone the delivery terms, and/or ask for additional charges for the lost time of its service personnel, such time to be calculated and charged in accordance with Articles 3.1 and 3.3 herein above.

## 6. Warranty

Articles 6.1 through 6.7 contain specific warranties referring to various SCOPES OF SUPPLY. Only the warranty provision(s) referring to a specific SCOPE OF SUPPLY shall apply.

### 6.1. SYSTEMS and COMPONENTS

OERLIKON METCO shall remedy any defect resulting from faulty materials or faulty workmanship. To the extent OERLIKON METCO is responsible for the design the same obligation applies to defects resulting from faulty design. If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, OERLIKON METCO agrees to, at its sole option, either repair or replace the faulty parts of the SCOPE OF SUPPLY, or supply BUYER with non-defective SCOPE OF SUPPLY or part thereof. These remedies shall be provided for the defects notified to OERLIKON METCO during the warranty period under the conditions defined in Article 6.9 herein below and are granted for twelve (12) months.

### 6.2. MATERIALS

OERLIKON METCO warrants that when dispatched from OERLIKON METCO'S factory, all MATERIALS meet the specifications described in the respective product data sheet. If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, OERLIKON METCO agrees to replace, at OERLIKON METCO'S own cost, any MATERIALS which do not meet the specifications described in the said product data sheet or which have been specifically agreed upon in the CONTRACT. These remedies shall be provided for the defects notified to OERLIKON METCO during the warranty period under the conditions defined in Article 6.9 herein below and are granted for two (2) months.

### 6.3. COATING AND MACHINING SERVICES

OERLIKON METCO shall remedy any defect resulting from not using the materials specified, or from faulty workmanship. OERLIKON METCO assumes no warranty or representation regarding the fitness of the coating or machining applied for the purpose for which the coated goods are intended to be used. If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, OERLIKON METCO shall at its sole option repair the defective coating or machining or remove and re-process it. These remedies shall be provided for the defects notified to OERLIKON METCO during the warranty period under the conditions defined in Article 6.9 herein below and are granted for six (6) months.

### 6.4. MAINTENANCE / REPAIR / INSTALLATION SERVICES

OERLIKON METCO'S obligations consist of using proper care and skill in performing the work described in the CONTRACT and, if parts (SPAREPARTS or other parts) are supplied by OERLIKON METCO in connection with such SERVICES, to deliver parts, which are free of defects. If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, OERLIKON METCO shall to re-do any faulty service work at its own cost. Defects resulting from insufficient or inappropriate documentation delivered by BUYER shall be remedied at BUYER'S cost. These remedies shall be provided for the defects notified to OERLIKON METCO during the warranty period under the conditions defined in Article 6.9 herein below and are granted for six (6) months.

### 6.5. SPAREPARTS

OERLIKON METCO shall remedy any defect resulting from faulty materials or faulty workmanship. If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, OERLIKON METCO agrees to, at its sole option, either repair or replace the faulty SPAREPARTS, or supply BUYER with non-defective SPAREPARTS. These remedies shall be provided for the defects notified to OERLIKON METCO during the warranty period under the conditions defined in Article 6.9 herein below and are granted for twelve (12) months except as otherwise agreed upon in the CONTRACT or as can normally be expected for such types of SPAREPARTS and the specific use, whichever time period is the shortest.

### 6.6. ENGINEERING SERVICES

OERLIKON METCO'S obligations consist of using proper care and skill in performing the work described in the CONTRACT. However, OERLIKON METCO does not provide any warranty for successful achievement of the results envisaged in the CONTRACT. If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, OERLIKON METCO shall re-do any faulty service work at its own cost. These remedies shall be provided for the faults notified to OERLIKON METCO during the warranty period under the conditions defined in Article 6.9 herein below and are granted for six (6) months.

### 6.7. TRAINING

OERLIKON METCO'S obligations consist of using proper care and skill in performing the TRAINING. OERLIKON METCO shall assume liability regarding correctness of the content, communicated orally or in writing, only to the extent that damages resulting from TRAINING are based on OERLIKON METCO'S gross negligence or willful misconduct.

## 6.8. Performance Guarantee

Unless explicitly specified in the CONTRACT, OERLIKON METCO shall not provide performance guarantees. If a performance guarantee has been agreed upon, it shall be fulfilled if the guaranteed values have been reached in a performance test, or, if no such test has been agreed upon, if the SCOPE OF SUPPLY goes into commercial operation. OERLIKON METCO'S liability for not reaching the guaranteed values, although the pre-conditions for which the BUYER or the end-user are responsible have been fulfilled, shall be limited to liquidated damages amounting to maximum ten percent (10 %) of the CONTRACT price for all SCOPE OF SUPPLY, except for SYSTEMS, for which OERLIKON METCO'S liability shall be limited to liquidated damages amounting to maximum five percent (5%) of the CONTRACT PRICE.

## 6.9. General Conditions applicable to OERLIKON METCO'S Warranty

a) Place where Warranty Work is executed  
OERLIKON METCO reserves the right to require that the BUYER or the end-user returns the SCOPE OF SUPPLY or parts thereof to OERLIKON METCO'S production facility to provide proper warranty service.

Regarding SYSTEMS, OERLIKON METCO shall use its best efforts to perform the warranty work at

BUYER'S or end-user's facility, and as soon as reasonably practicable after receipt of written notification by the BUYER or the end-user. In case OERLIKON METCO requires that the BUYER or end-user returns the SYSTEM or part thereof to OERLIKON METCO'S facilities, OERLIKON METCO shall reimburse BUYER or end-user solely the costs paid for sea or land transportation, with the exclusion of any internal costs. Regarding COATING AND MACHINING SERVICES, OERLIKON METCO shall bear the costs for the corresponding repair or reprocessing work which occurs outside its works if it is not possible to carry out such repairs or reprocessing work in OERLIKON METCO'S works, or if this would involve unreasonable expenses. Such costs shall be borne to the extent that they are reasonable under the circumstances prevailing, and provided BUYER or end-user has obtained OERLIKON METCO'S prior written approval.

### b) Start of Warranty Period

Unless otherwise agreed upon in writing, the warranty period for SYSTEMS, COMPONENTS, and MAINTENANCE / REPAIR / INSTALLATION SERVICES starts at the date of FINAL ACCEPTANCE of the respective SCOPE OF SUPPLY, in any case not later than 90 days after announcement of readiness for shipment in case of delivery of goods, or completion of the services. FINAL ACCEPTANCE shall not be deferred due to minor defects. For MATERIALS, COATING AND MACHINING SERVICES and SPAREPARTS the warranty period starts at the date of delivery EX WORKS.

### c) Early termination of Warranty Period

The warranty periods stipulated in 6.1 through 6.7 above shall terminate if BUYER or a third party undertakes inappropriate or improper modification or repairs, or if the BUYER, in case of a defect, does not as soon as reasonably possible take all appropriate steps to mitigate damages and to notify OERLIKON METCO in writing of its obligation to remedy such defect.

### d) Maximum Warranty Period

Any warranty period (including but not limited to new warranty periods for replaced, or repaired goods, or repeated services, and including cases when commencement of the warranty period is deferred, etc.) shall expire after adding half of the number of months of the original warranty period.

### e) Deliveries to Medical Industry

If the SCOPE OF SUPPLY is delivered for use in the medical industry - such as but not limited to (i) COATING AND MACHINING SERVICES applied on medical devices, (ii) SYSTEMS, COMPONENTS, SPARE PARTS, MATERIALS used for the production of medical devices, (iii) MAINTENANCE/REPAIR/INSTALLATION SERVICES on SYSTEMS etc. as mentioned under (ii) herein before - OERLIKON METCO shall not assume any liability for biocompatibility, sterility or other requirements typically asked for in the medical industry. BUYER shall indemnify and hold OERLIKON METCO harmless from any and all claims made by third parties against OERLIKON METCO and shall make sure that BUYER'S insurance carriers shall waive their right of subrogation against OERLIKON METCO.

### f) Exclusion from OERLIKON METCO'S Warranty

Excluded from OERLIKON METCO'S warranty and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design (if applicable), or poor workmanship, e.g. for deficiencies resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions or deficiencies resulting from other reasons beyond OERLIKON METCO'S control, including damages caused by erosion, corrosion or cavitation. Replaced parts shall become the property of OERLIKON METCO.

The BUYER or end-user shall at its own expense arrange for any dismantling and reassembly of equipment other than the dismantling and reassembly of the equipment pertaining to the SCOPE OF SUPPLY, to the extent that this is necessary to remedy the defect.

OERLIKON METCO MAKES NO WARRANTY OR REPRESENTATION TO THE SCOPE OF SUPPLY OTHER THAN AS SPECIFIED IN THIS SECTION. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

## 6.10. Hazard Warning Responsibility

BUYER and OERLIKON METCO acknowledge that each have respective obligations with respect to maintaining compliance with all safety and health related regulations concerning SCOPE OF SUPPLY. BUYER is familiar with the SCOPE OF SUPPLY and acknowledges its separate and independent knowledge of such risks, which are known in BUYER'S industry. BUYER shall maintain compliance with all safety and health related governmental requirements concerning SCOPE OF SUPPLY and shall take all reasonable and practical steps to inform, warn, and familiarize its employees, agents, contractors, and customers with all hazards associated therewith, including handling, shipment, storage, use, and disposal. BUYER assumes as to its employees, independent contractors, and subsequent purchasers of the SCOPE OF SUPPLY sold hereunder, all responsibility for all such necessary warnings or other precautionary measures. BUYER shall defend at its own expense, indemnify fully and hold harmless OERLIKON METCO and its parents, subsidiaries, and affiliates and its and their agents, officers, directors, employees, representatives, successors, and assigns from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, suits, legal, administrative or arbitration proceedings, judgments of any jurisdiction, costs and expenses (including, but not limited to, attorney's fees and related costs) arising out of or in any manner related to BUYER'S failure to provide necessary warnings or other precautionary measures in connection with the SCOPE OF SUPPLY sold hereunder.

## 7. Overall Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, INCLUDING ALL DOCUMENTS MAKING PART THEREOF AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL OERLIKON METCO BE LIABLE TO THE BUYER OR ITS CUSTOMER FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THE CONTRACT, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR INTERRUPTION OF PRODUCTION, LOSS OF OPPORTUNITY OR BUSINESS, DELAY IN DELIVERY, OR CLAIMS BY THE BUYER'S CUSTOMER FOR SUCH DAMAGES, WHETHER SUCH LIABILITY IS BASED ON CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER BASIS OF LEGAL LIABILITY. THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE, AND OERLIKON METCO'S LIABILITY WITH RESPECT TO ANY CONTRACT OR SALE OR ANYTHING DONE IN CONNECTION THEREWITH, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED 100% OF THE PRICE OF THE CONTRACT, UNLESS CLAIMS ARISE DIRECTLY FROM WILLFUL MISCONDUCT OF OERLIKON METCO.

## 8. Export and other Governmental Documents

- 8.1. OERLIKON METCO undertakes to provide the documents required by the authorities at OERLIKON METCO'S place for the manufacturing and transportation EX WORKS of the SCOPE OF SUPPLY.
- 8.2. BUYER undertakes to provide all other documents required, e.g. documents required by an authority at BUYER'S or BUYER'S customer's place, or the place where the SCOPE OF SUPPLY will be used.
- 8.3. OERLIKON METCO, BUYER and BUYER'S customer shall support each other without undue delay if one party needs information or documentation required by any authority, if such information or documentation can be delivered easier by one of the other parties than the required party.
- 8.4. The BUYER hereby represents and warrants that it is, and will remain in compliance with the requirements of all applicable export laws and regulations, including but not limited to the Japan Foreign Exchange and Foreign Trade Act and other related laws and regulations applicable in Japan, U.S. Export Administration Regulations and International Traffic in Arms Regulations. Such requirements include, but are not limited to obtaining all required authorizations or licenses for the export or re-export of any controlled item, product, article, commodity, software or

technology. Without limiting the generality of the foregoing, the BUYER hereby represents and warrants that it has not been, and is not currently, debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of Japan, the United States or any other state. The BUYER agrees to indemnify and hold harmless OERLIKON METCO from any costs, penalties or other losses caused by, or related to, any violation or breach of the warranties contained in this provision.

## **9. Force Majeure**

- 9.1.** OERLIKON METCO shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labor difficulty, governmental acts such as but not limited to trade restrictions including embargoes, Acts of God, acts of the BUYER or its customer, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of OERLIKON METCO. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. If the grounds for Force Majeure continue for more than six (6) months, either OERLIKON METCO or BUYER may terminate the CONTRACT upon seven (7) days written notice to the other party.
- 9.2.** OERLIKON METCO shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination and the expenses for non-cancelable procurements. BUYER shall be entitled to receive the work for which it has paid.

## **10. Free Issue Materials**

Materials supplied by BUYER to OERLIKON METCO (e.g. parts to be coated or machined, materials to be used for implementation in the SCOPE OF SUPPLY, etc.) shall at all times remain the property of

BUYER. Subject to Article 6 and 7 hereinabove, OERLIKON METCO shall be solely liable for damages caused negligently to free issue materials.

## **11. Miscellaneous**

### **11.1. Applicable Laws, Dispute Resolution and Jurisdiction**

The CONTRACT is construed and shall be interpreted in accordance with the laws of Japan. The conflict of law rules shall be excluded.

In case of a dispute in conjunction with the GENERAL TERMS, the CONTRACT, or any other matters not mentioned in the said documents, the parties shall make their best endeavors to solve such dispute amicably.

The place for jurisdiction shall be the Tokyo District Court.

### **11.2. Assignment**

Any attempt to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other party shall render such attempted assignment or transfer null and void. OERLIKON METCO'S affiliated companies shall not be considered third parties for this purpose.

### **11.3 Waiver of Rights**

OERLIKON METCO'S or BUYER'S failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

### **11.4. Severability**

If a provision of the CONTRACT is determined to be void or unenforceable, this finding shall not render other provision void or unenforceable, and OERLIKON METCO and BUYER shall make their best endeavors to replace such provision by a valid one covering the original commercial intention as far as legally possible.