

Oerlikon Metco (US) Inc. general terms and conditions of sale (United States)

1. General

1.1. Definitions

“**AFFILIATE**” means, with respect to any entity, any other entity or person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such entity.

“**BUYER**” means the party which signs the CONTRACT documents as counterparty of OERLIKON METCO (US) INC. or otherwise purchases any SCOPE OF SUPPLY from OERLIKON METCO (US) INC.

“**COATING AND MACHINING SERVICES**” means services provided by OERLIKON METCO (US) INC. on goods provided by BUYER.

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

“**CONTRACT**” means the PURCHASE ORDER and all documents referred to therein, and these General Terms and Conditions of Sale.

“**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 2010 or, after replacement of the Incoterms 2010, the then effective Incoterms.

“**FINAL ACCEPTANCE**” means the document issued by 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 (US) INC.

“**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.

“**OERLIKON METCO (US) INC.**” means the company pertaining to the Oerlikon Metco (US) Inc. Business Unit which accepted the PURCHASE ORDER.

“**ORDER CONFIRMATION**” means the document provided by OERLIKON METCO (US) INC. 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 to OERLIKON METCO (US) INC. (which documents shall be subject to these GENERAL TERMS) in the version confirmed by OERLIKON METCO (US) INC. in the corresponding 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 BUYER and OERLIKON METCO (US) INC.

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

“**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 (US) INC.

1.2. Notwithstanding anything to the contrary:

(a) These GENERAL TERMS shall apply to each CONTRACT (including, without limitation, each PURCHASE ORDER) and to each delivery made by OERLIKON METCO (US) INC. hereunder or thereunder, all of which shall be subject to the terms and conditions set forth in these GENERAL TERMS.

(b) Any terms or conditions contained in any purchase order document, invoice acknowledgment or other document or instrument of BUYER or proposed at any time by BUYER in any manner that vary from or conflict with any of the terms and conditions in these GENERAL TERMS are hereby objected to by OERLIKON METCO (US) INC. without the need for any further notice of objection (and BUYER hereby waives any right or requirement to receive any further notice of objection) and shall be of no force or effect nor in any circumstances binding upon OERLIKON METCO (US) INC. (or any of its AFFILIATES) unless expressly accepted in a

writing signed by a duly authorized manager of OERLIKON METCO (US) INC.

(c) If BUYER’s purchase order documents are provided to OERLIKON METCO (US) INC., the terms and conditions in and related to those purchase order documents will be superseded by these GENERAL TERMS. Written acceptance or rejection by OERLIKON METCO (US) INC. of any such terms or conditions provided to OERLIKON METCO (US) INC. shall not constitute an acceptance of any other additional terms or conditions.

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

1.4. In case of, and to the extent of, any conflict or contradiction between CONTRACT documents, the following descending order of precedence shall apply:

- (a) These GENERAL TERMS;
- (b) PURCHASE ORDER or other negotiated, agreed and mutually signed document, including all documents made a part thereof;
- (c) OERLIKON METCO (US) INC.’S offer;
- (d) BUYER’S request for an offer; and
- (e) BUYER’S Purchase Terms and Conditions.

1.5. These GENERAL TERMS may be changed only in a written document signed by an authorized representative of BUYER and an authorized manager of OERLIKON METCO (US) INC.

1.6. OERLIKON METCO (US) INC.’S sales and service personnel are not authorized to enter into any indemnity, defense or hold harmless agreements on behalf of OERLIKON METCO (US) INC. or modify any limitation of liability set forth herein.

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

2. Delivery date

2.1. OERLIKON METCO (US) INC. 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 (5) days after the date of OERLIKON METCO (US) INC.’s receipt of such down-payment.

2.2. In case of late delivery of SCOPE OF SUPPLY (other than MATERIAL) for reasons for which OERLIKON METCO (US) INC. or its sub-suppliers are directly responsible, BUYER shall be entitled to require OERLIKON METCO (US) INC. to pay liquidated damages as follows: For each full calendar week of delay exceeding a grace period of two (2) calendar weeks, the CONTRACT price for the goods or services delayed will, at BUYER’s written request to be made before payment of the respective invoice, be reduced by 0.5% of the said CONTRACT price, up to a maximum of five percent (5%) thereof. These liquidated damages shall be the sole and exclusive remedy of BUYER for late delivery.

2.3. For MATERIAL deliveries, Article 2.2 hereof shall not apply, and OERLIKON METCO (US) INC. shall not assume responsibility for late delivery related thereto.

2.4. 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 CONTRACT price of the returned MATERIALS will be charged. The acceptance of such returns will be at the sole discretion of OERLIKON METCO (US) INC. Returns of other SCOPE OF SUPPLY other than MATERIALS will not be accepted.

3. Price and Payment

3.1. The prices for the SCOPE OF SUPPLY are those stated in the PURCHASE ORDER as confirmed in the ORDER CONFIRMATION. If any prices stated in the ORDER CONFIRMATION exceed the corresponding prices stated in the PURCHASE ORDER, the prices stated in the ORDER CONFIRMATION shall control and apply unless BUYER expresses its dissent to OERLIKON METCO (US) INC. by e-mail, facsimile or hard copy document delivered within three (3) working days after BUYER’s receipt of the ORDER CONFIRMATION. **All wire orders are accepted with the understanding that 10% variance in quantity and price is acceptable to the customer.** For work carried out on a time basis, the prices shall be determined in accordance with the hourly rates specified in the PURCHASE ORDER as confirmed in the ORDER CONFIRMATION. If no

agreement on hourly rates has been made, the hourly rate applied by OERLIKON METCO (US) INC. for other customers and comparable work shall apply. All prices are exclusive of VAT, sales taxes, excise duties, or similar taxes and duties. Unless a lower price has been offered by OERLIKON METCO (US) INC. in writing, OERLIKON METCO (US) INC. shall be entitled to charge a minimum invoice amount of one hundred fifty United States Dollars (US\$150.00), plus sales taxes.

- 3.2. With respect to any purchases made by BUYER under any CONTRACT, if any tax is required by applicable law to be collected from BUYER by OERLIKON METCO (US) INC., (i) OERLIKON METCO (US) INC. shall, in compliance with applicable law, invoice BUYER for such tax as a separately stated item at the time that the related SCOPE OF SUPPLY is invoiced, (ii) BUYER shall timely remit such tax to OERLIKON METCO (US) INC., and (iii) OERLIKON METCO (US) INC. shall timely remit such collected tax to the applicable taxing authorities; provided, however, that the requirements set forth in this Article 3.2 shall not apply to the extent that BUYER has provided OERLIKON METCO (US) INC. with tax exemption certificates that are acceptable to the applicable taxing authorities.
- 3.3. (a) The payment terms for each SYSTEM shall be as follows: BUYER shall pay 30% of the total payment amount (the total payment amount being the sum of the total CONTRACT price for the SYSTEM and the total taxes (as described in Article 3.2 herein above), if any, related thereto) to OERLIKON METCO (US) INC. within five (5) days of the date of the corresponding ORDER CONFIRMATION; BUYER shall pay another 30% of the total payment amount to OERLIKON METCO (US) INC. by or before the date that is two (2) months after the date of the corresponding ORDER CONFIRMATION; BUYER shall pay another 30% of the total payment amount to OERLIKON METCO (US) INC. before shipment; and BUYER shall pay the remaining 10% of the total payment amount (or, if greater, the entire then remaining balance) to OERLIKON METCO (US) INC. after FINAL ACCEPTANCE, but within thirty (30) days after shipment. Above payments shall be made within thirty (30) days after announcement of readiness for shipment.
- (b) The payment terms for all other SCOPES OF SUPPLY shall be as follows: BUYER shall pay 100% of the total payment amount to OERLIKON METCO (US) INC. within thirty (30) days after the invoice date.
- 3.4. 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) calendar days after the invoice date.
- 3.5. If BUYER fails to comply with any of the agreed dates of payment, as provided for herein, 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.
- 3.6. All payments shall be made in the specified currency agreed upon in the CONTRACT (or, if no currency is specified in the CONTRACT, in United States Dollars), and without any deductions or offsets of any kind.
- 3.7. In case of late payment, OERLIKON METCO (US) INC. may, after having notified BUYER in writing, suspend its performance of the SCOPE OF SUPPLY until the open and due invoices have been paid in full.
- 3.8. If BUYER and OERLIKON METCO (US) INC. agree that BUYER shall obtain a Letter of Credit in favor of OERLIKON METCO (US) INC., BUYER shall promptly obtain and deliver such Letter of Credit to OERLIKON METCO (US) INC., and such Letter of Credit shall (i) be irrevocable, extendable, and issued and confirmed by a first class worldwide active bank, and (ii) provide that OERLIKON METCO (US) INC. may withdraw the money under such Letter of Credit upon presentation of the corresponding invoice and bill of lading or warehouse receipt.
- 3.9. If OERLIKON METCO (US) INC. extends credit to BUYER, then, as consideration for such extension of credit, BUYER, if requested by OERLIKON METCO (US) INC., shall grant OERLIKON METCO (US) INC. a continuing first priority security interest in the SCOPE OF SUPPLY purchased by BUYER and a continuing security interest in the proceeds of any sale of goods manufactured using such SCOPE OF SUPPLY and in accounts receivable related to the sale of any such goods.
- 3.10. OERLIKON METCO (US) INC. shall retain title to and a purchase money security interest in the SCOPE OF SUPPLY sold hereunder until the total CONTRACT price (and related taxes, if any) is fully paid to OERLIKON METCO (US) INC. BUYER shall perform all acts that may be necessary to assure retention of title to the SCOPE OF SUPPLY by OERLIKON METCO (US) INC. and to perfect its purchase money security interest in the SCOPE OF SUPPLY (in accordance with the preceding sentence) and, if requested

by OERLIKON METCO (US) INC., shall execute a security agreement and UCC financing statement covering the SCOPE OF SUPPLY.

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 (US) INC. for the performance of the SCOPE OF SUPPLY by OERLIKON METCO (US) INC. or its subsuppliers, respectively. In case BUYER would not be authorized to order said performance from OERLIKON METCO (US) INC. without violation of intellectual property rights of third parties, or if such right should be challenged, BUYER shall inform OERLIKON METCO (US) INC. without any delay. In this case, OERLIKON METCO (US) INC. shall stop the work until the approvals needed for the performance have been obtained.
- 4.2. OERLIKON METCO (US) INC. 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 (US) INC. and used for or developed in the course of the fulfillment of the CONTRACT by OERLIKON METCO (US) INC. shall remain OERLIKON METCO (US) INC.'S property, and no ownership shall be transferred to BUYER with respect to such know-how, inventions, patents and copyrights and the like, independent of the hardware on which such know-how, inventions, patents or copyrights or the like 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 any 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 the performance of COATING AND MACHINING SERVICES shall be deemed to be made available for the procurement of such goods or services from OERLIKON METCO (US) INC.
- 4.4. (a) OERLIKON METCO (US) INC. warrants to BUYER that the SCOPE OF SUPPLY and any part thereof, in the particular form sold by OERLIKON METCO (US) INC., shall not infringe any intellectual property rights of third parties.
- (b) In the event of a breach of the warranty set forth in Article 4.4(a), above, OERLIKON METCO (US) INC. 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. Any obligations of OERLIKON METCO (US) INC. set forth in this Article 4.4(b) are contingent upon (i) OERLIKON METCO (US) INC. receiving prompt written notice from BUYER of the infringement; (ii) OERLIKON METCO (US) INC. receiving assistance from BUYER in the defense of any action or claim arising from the infringement; and (iii) the right of OERLIKON METCO (US) INC. to settle or defend such action or claim.
- (c) The warranty and obligations of OERLIKON METCO (US) INC. set forth in Article 4.4 hereof shall not apply to (i) the SCOPE OF SUPPLY or part thereof which has been manufactured according to BUYER's design, (ii) services performed based on or 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 (US) INC. 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 (US) INC. assumes no liability whatsoever for infringement of intellectual property rights of third parties, and BUYER shall, to the fullest extent permitted by applicable, indemnify, defend and hold harmless OERLIKON METCO (US) INC. and its AFFILIATES and its and their respective directors, officers, employees, agents, representatives, successors and assigns (hereafter collectively referred to as the "**OERLIKON METCO (US) INC. INDEMNIFIED PARTIES**") from and against any and all liabilities, losses, damages, demands, claims, actions, lawsuits, legal, administrative or arbitration proceedings, judgments, costs and expenses (including, but not limited to, attorneys' fees and related costs) arising out of or in any manner related to any infringement claims related to any item(s) or service(s) within the scope of the preceding sentence of this Article 4.4(c). OERLIKON METCO (US) INC. shall co-operate with BUYER in the same manner as required by OERLIKON METCO (US) INC. under Article 4.4(b) (i) to (iii) herein above.
- 4.5. OERLIKON METCO (US) INC.'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 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 (US) INC.'S 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 (US) INC.'s personnel all instructions necessary which relate to the site and facilities.

OERLIKON METCO (US) INC. shall make sure that its personnel will follow all instructions reasonably made by BUYER that are given to OERLIKON METCO (US) INC. The same applies vice versa in case BUYER's personnel have to enter upon OERLIKON METCO (US) INC.'s facilities.

5.3. BUYER's failure to comply with any of the obligations stated in Articles 5.1 and 5.2 above shall entitle OERLIKON METCO (US) INC. 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 herein below contain specific warranties referring to various SCOPES OF SUPPLY. Only the warranty provision(s) referring to a specific SCOPE OF SUPPLY shall apply to that specific SCOPE OF SUPPLY. The warranties in these GENERAL TERMS are made solely to BUYER.

6.1. SYSTEMS and COMPONENTS

OERLIKON METCO (US) INC. shall remedy any defect to the extent resulting from faulty materials provided by OERLIKON METCO (US) INC. or faulty workmanship of OERLIKON METCO (US) INC. To the extent OERLIKON METCO (US) INC. is responsible for the design, the same obligation to remedy 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 (US) INC. agrees to, in its sole discretion, either repair or replace the faulty parts of the SCOPE OF SUPPLY, or supply BUYER with non-defective SCOPE OF SUPPLY or part thereof. Subject to the terms and conditions set forth in Article 6.9 herein below, these remedies shall be provided for the defects described in this Article 6.1 that are notified to OERLIKON METCO (US) INC. during the applicable warranty period. The warranty period for the warranty set forth in this Article 6.1 is twelve (12) months, which warranty period will start on the date determined as set forth in Article 6.9(b) herein below, and may be subject to adjustment and/or early termination as set forth in Article 6.9 herein below.

6.2. MATERIALS

OERLIKON METCO (US) INC. warrants solely to BUYER that when dispatched from OERLIKON METCO (US) INC.'s factory, all MATERIALS meet the specifications set forth in the respective product data sheet agreed upon in writing by OERLIKON METCO (US) INC. and BUYER and the specifications which have been otherwise specifically agreed upon in the CONTRACT, as applicable. If requested to do so by BUYER in writing, and as BUYER's sole and exclusive remedy, OERLIKON METCO (US) INC. agrees to replace, at OERLIKON METCO (US) INC.'s own cost, any MATERIALS which, when dispatched from OERLIKON METCO (US) INC.'s factory, do not meet the specifications set forth in the respective product data sheet agreed upon in writing by OERLIKON METCO (US) INC. and BUYER and the specifications which have been otherwise specifically agreed upon in the CONTRACT, as applicable. Subject to the terms and conditions set forth in Article 6.9 herein below, these remedies shall be provided for the defects described in this Article 6.2 that are notified to OERLIKON METCO (US) INC. during the applicable warranty period. The warranty period for the warranty set forth in this Article 6.2 is two (2) months, which warranty period will start on the date determined as set forth in Article 6.9(b) herein below, and may be subject to adjustment and/or early termination as set forth in Article 6.9 herein below.

6.3. COATING AND MACHINING SERVICES

OERLIKON METCO (US) INC. shall remedy any defect to the extent resulting from OERLIKON METCO (US) INC. not using the agreed upon materials, or from faulty workmanship of OERLIKON METCO (US) INC. OERLIKON METCO (US) INC. does not make, and hereby disclaims, any 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 (US) INC. shall, in its sole

discretion, repair the defective coating or machining or remove and re-process it. Subject to the terms and conditions set forth in Article 6.9 herein below, these remedies shall be provided for the defects described in this Article 6.3 that are notified to OERLIKON METCO (US) INC. during the applicable warranty period. The warranty period for the warranty set forth in this Article 6.3 is six (6) months, which warranty period will start on the date determined as set forth in Article 6.9(b) herein below, and may be subject to adjustment and/or early termination as set forth in Article 6.9 herein below.

6.4. MAINTENANCE / REPAIR / INSTALLATION SERVICES

OERLIKON METCO (US) INC.'s obligations to BUYER consist of using proper care and skill in performing the work agreed upon in the CONTRACT and, if parts (SPAREPARTS or other parts) are supplied by OERLIKON METCO (US) INC. 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 (US) INC. shall, at its own cost, re-do any faulty service work performed by OERLIKON METCO (US) INC. Notwithstanding anything to the contrary, any defects resulting from insufficient or inappropriate documentation delivered by BUYER shall be remedied at BUYER's own cost. Subject to the terms and conditions set forth in Article 6.9 herein below, these remedies shall be provided for the defects described in this Article 6.4 that are notified to OERLIKON METCO (US) INC. during the applicable warranty period. The warranty period for the warranty set forth in this Article 6.4 is three (3) months, which warranty period will start on the date determined as set forth in Article 6.9(b) herein below, and may be subject to adjustment and/or early termination as set forth in Article 6.9 herein below.

6.5. SPAREPARTS

OERLIKON METCO (US) INC. shall remedy any defect to the extent resulting from faulty materials provided by OERLIKON METCO (US) INC. or faulty workmanship of OERLIKON METCO (US) INC. If requested to do so by BUYER in writing, and as BUYER's sole and exclusive remedy, OERLIKON METCO (US) INC. agrees to, in its sole discretion, either repair or replace the faulty SPAREPARTS, or supply BUYER with non-defective SPAREPARTS. Subject to the terms and conditions set forth in Article 6.9 herein below, these remedies shall be provided for the defects described in this Article 6.5 that are notified to OERLIKON METCO (US) INC. during the applicable warranty period. The warranty period for the warranty set forth in this Article 6.5 is 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, which warranty period will start on the date determined as set forth in Article 6.9(b) herein below, and may be subject to adjustment and/or early termination as set forth in Article 6.9 herein below.

6.6. ENGINEERING SERVICES

OERLIKON METCO (US) INC.'s obligations to BUYER consist of using proper care and skill in performing the work agreed upon in the CONTRACT. However, OERLIKON METCO (US) INC. does not provide, and hereby disclaims, 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 (US) INC. shall, at its own cost, re-do any faulty service work performed by OERLIKON METCO (US) INC. Subject to the terms and conditions set forth in Article 6.9 herein below, these remedies shall be provided for the faults described in this Section 6.6 that are notified to OERLIKON METCO (US) INC. during the applicable warranty period. The warranty period for the warranty set forth in this Article 6.6 is three (3) months, which warranty period will start on the date determined as set forth in Article 6.9(b) herein below, and may be subject to adjustment and/or early termination as set forth in Article 6.9 herein below.

6.7. TRAINING

OERLIKON METCO (US) INC.'s obligations to BUYER consist of using proper care and skill in performing the training. OERLIKON METCO (US) INC. shall assume liability to BUYER regarding correctness of the content communicated by OERLIKON METCO (US) INC., orally or in writing, only to the extent that damages suffered by BUYER resulting from TRAINING are caused by OERLIKON METCO (US) INC.'S gross negligence or willful misconduct.

6.8. Performance Guarantee

Unless explicitly specified and agreed upon in the CONTRACT, OERLIKON METCO (US) INC. shall not provide any performance guarantees. If a performance guarantee has been explicitly specified and agreed upon in the CONTRACT, it shall be fulfilled if the guaranteed values have been reached in a performance test, or, if no such test has been agreed upon in the CONTRACT, if the SCOPE OF SUPPLY goes into commercial operation. OERLIKON METCO (US) INC.'s liability, if any, for not reaching the guaranteed values, although the pre-conditions for which BUYER or the

end-user are responsible have been fulfilled, shall be limited to liquidated damages amounting to a maximum of ten percent (10%) of the agreed upon CONTRACT price for that applicable SCOPE OF SUPPLY, except for SYSTEMS, for which OERLIKON METCO (US) INC.'s liability, if any, shall be limited to liquidated damages amounting to a maximum of five percent (5%) of the agreed upon CONTRACT price for the applicable SYSTEM.

6.9. General Conditions applicable to OERLIKON METCO (US) INC.'s Warranty

(a) Place where Warranty Work is executed:

OERLIKON METCO (US) INC. reserves the right to require BUYER or the end-user to return the SCOPE OF SUPPLY or parts thereof to OERLIKON METCO (US) INC.'s production facility to provide proper warranty service. Regarding SYSTEMS, OERLIKON METCO (US) INC. shall use its best efforts to perform the warranty work at BUYER's or the end-user's facility, and as soon as reasonably practicable after OERLIKON METCO (US) INC.'s receipt of written notification from BUYER; provided, that BUYER provides written notification to OERLIKON METCO (US) INC. within the applicable warranty period. If OERLIKON METCO (US) INC. requires that BUYER or the end-user return the SYSTEM or part thereof to OERLIKON METCO (US) INC.'s facilities, OERLIKON METCO (US) INC. shall reimburse BUYER or the end-user, as the case may be, solely the costs paid for sea or land transportation to return the SYSTEM or part thereof to OERLIKON METCO (US) INC.'s facilities as requested by OERLIKON METCO (US) INC., with the exclusion of any internal costs. Regarding COATING AND MACHINING SERVICES, OERLIKON METCO (US) INC. shall bear the costs for the corresponding repair or reprocessing work which occurs outside its facilities if it is not possible to carry out such repairs or reprocessing work in OERLIKON METCO (US) INC.'s facilities, 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 the end-user, as applicable, has obtained OERLIKON METCO (US) INC.'s prior written approval.

(b) Start of Warranty Period:

Unless otherwise agreed upon by BUYER and OERLIKON METCO (US) INC. 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 ninety (90) days after announcement of readiness for shipment in case of delivery of goods, or completion of services. FINAL ACCEPTANCE shall not be deferred due to minor defects. For MATERIALS, COATING AND MACHINING SERVICES and SPARE PARTS, the warranty period starts at the date of delivery EX WORKS.

(c) Early termination of Warranty Period:

Notwithstanding anything to the contrary in these GENERAL TERMS, the warranty period (as set forth in Article 6.1, 6.2, 6.3, 6.4, 6.5, 6.6 or 6.7 herein above, as applicable) (including, if applicable, as adjusted pursuant to Article 6.9(d) herein below) shall automatically immediately terminate (i) if BUYER or any third party undertakes any inappropriate or improper modifications or repairs, (ii) if 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 (US) INC. in writing of its obligation to remedy such defect, or (iii) if BUYER sells, transfers, assigns or otherwise conveys the particular SCOPE OF SUPPLY to any other entity or person.

(d) Maximum Warranty Period:

Any warranty period (including but not limited to new warranty periods for replaced or repaired goods, or repeated services) shall expire after adding half of the number of months of the original warranty period to the original warranty period. However, if, with respect to any specific SCOPE OF SUPPLY, there are no replacements, repairs or repeat services within the original warranty period for that specific SCOPE OF SUPPLY, the warranty period for that specific SCOPE OF SUPPLY will expire at the end of the original warranty period for that specific SCOPE OF SUPPLY.

(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 and/ or MATERIALS used for the production of medical devices, (iii) MAINTENANCE/REPAIR/INSTALLATION SERVICES on SYSTEMS, etc. as mentioned under (ii) herein before, OERLIKON METCO (US) INC. shall not assume any liability for biocompatibility, sterility or other requirements typically asked for in the medical industry. BUYER shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless each of the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES from and against any and all liabilities, losses, damages, demands, claims, actions, lawsuits, legal, administrative or arbitration proceedings, judgments, costs and expenses (including, but not limited to, attorneys' fees and related costs) arising out of or in any manner related to any claims made by any third parties. BUYER shall cause its insurance carriers to waive all rights of

subrogation against the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES, individually and collectively.

(f) Exclusion from OERLIKON METCO (US) INC.'S Warranty:

Excluded from OERLIKON METCO (US) INC.'s warranty and liability for defects are all deficiencies which BUYER cannot prove to have their origin in bad material chosen or created by OERLIKON METCO (US) INC., faulty design (if applicable) by OERLIKON METCO (US) INC., or poor workmanship of OERLIKON METCO (US) INC. – for example, OERLIKON METCO (US) INC.'s warranty and liability for defects excludes all deficiencies resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, and all deficiencies to the extent caused by or resulting from any acts or omissions of any entity(ies) or person(s) other than OERLIKON METCO (US) INC. or any other reasons beyond OERLIKON METCO (US) INC.'S reasonable control, including damages caused by erosion, corrosion or cavitation. Replaced parts shall become the property of OERLIKON METCO (US) INC..

BUYER or the 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.

Notwithstanding anything to the contrary in these GENERAL TERMS, total liquidated damages as described under Articles 2.2 and 6.8 above shall be limited to five percent (5%) of the CONTRACT price.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) OERLIKON METCO (US) INC. MAKES NO WARRANTY OR REPRESENTATION OTHER THAN THE WARRANTIES AND REPRESENTATIONS MADE SOLELY TO BUYER THAT ARE SET FORTH IN THESE GENERAL TERMS, AND (B) OERLIKON METCO (US) INC. (ON BEHALF OF ITSELF AND ITS AFFILIATES) HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF THE TRADE. NEITHER BUYER NOR ANY OTHER ENTITY OR PERSON SHALL MAKE OR HAVE ANY AUTHORITY TO MAKE ANY REPRESENTATION, WARRANTY OR STATEMENT THAT CONTRADICTS OR CONFLICTS WITH THIS PARAGRAPH OR ANY PART HEREOF. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THESE GENERAL TERMS OR ANY CONTRACT(S) OR ANY RELATED DOCUMENT(S).

6.10. Hazard Warning Responsibility

BUYER hereby acknowledges that it shall be obligated to maintain compliance with all safety and health related laws and regulations concerning the SCOPE OF SUPPLY. BUYER hereby represents that it is familiar with the SCOPE OF SUPPLY and hereby 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 laws and regulations, including governmental requirements, concerning the SCOPE OF SUPPLY and shall take all reasonable and practical steps to properly inform and warn each of its employees, agents, contractors and customers of, and properly familiarize each of them with, all hazards associated with the SCOPE OF SUPPLY, including, but not limited to, regarding the handling, shipment, storage, use, and disposal thereof. BUYER assumes as to its employees, agents, contractors and subsequent purchasers of the SCOPE OF SUPPLY sold hereunder (including under any CONTRACT), all responsibility for all such necessary warnings and other precautionary measures. BUYER shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless each of the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, lawsuits, legal, administrative or arbitration proceedings, judgments, costs and expenses (including, but not limited to, attorneys' fees and related costs) arising out of or in any manner related to BUYER'S failure to comply with its obligations under this Article 6.10 in connection with the SCOPE OF SUPPLY sold hereunder (including under any CONTRACT).

7. Overall Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) OERLIKON METCO (US) INC. (INCLUDING OF ITS AFFILIATES) SHALL NOT BE LIABLE (TO BUYER OR TO ANY OTHER ENTITY(IES) OR PERSON(S)) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF INCOME, LOSS OF OPPORTUNITY OR BUSINESS, LOSS OF USE, DELAY DAMAGES, OR INTERRUPTION OR LOSS OF PRODUCTION, IN EACH CASE EVEN IF INFORMED OF THE

POSSIBILITY OF SUCH DAMAGES (AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS EACH OF THE OERLIKON METCO (US) INC. INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS MADE BY END-USERS AND BUYER'S CUSTOMERS FOR ANY SUCH DAMAGES OR LOSSES), (B) OERLIKON METCO (US) INC. (INCLUSIVE OF ITS AFFILIATES) SHALL NOT, BY VIRTUE OF, IN CONNECTION WITH OR IN RELATION TO THESE GENERAL TERMS OR ANY CONTRACT(S) OR ANY RELATED DOCUMENT(S), OR ANY SCOPE(S) OF SUPPLY, GOOD(S) AND/OR SERVICE(S) PROVIDED OR PERFORMED HEREUNDER OR THEREUNDER, BE LIABLE TO ANY ENTITY OR PERSON OTHER THAN BUYER, (C) OERLIKON METCO (US) INC.'S TOTAL, CUMULATIVE AND AGGREGATE LIABILITY, IF ANY, WITH RESPECT TO ANY CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED ONE HUNDRED PERCENT (100%) OF THE APPLICABLE CONTRACT PRICE OR PORTION THEREOF UPON WHICH SUCH LIABILITY IS BASED, (D) NO ACTION ARISING FROM OR RELATING TO ANY ACT OR OMISSION ON THE PART OF OERLIKON METCO (US) INC. (INCLUSIVE OF ITS AFFILIATES) (OR ANY EMPLOYEE, REPRESENTATIVE OR AGENT OF OERLIKON METCO (US) INC. OR ANY OF ITS AFFILIATES) MAY BE COMMENCED MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED, AND (E) THE REMEDIES OF BUYER SET FORTH IN THESE GENERAL TERMS ARE EXCLUSIVE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE 7 WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE. THIS ARTICLE 7 (AND ALL INDEMNIFICATION, DEFENSE AND HOLD HARMLESS PROVISIONS SET FORTH IN THESE GENERAL TERMS) SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THESE GENERAL TERMS OR ANY CONTRACT(S) OR ANY RELATED DOCUMENT(S).

8. Export and other Governmental Documents

- 8.1. OERLIKON METCO (US) INC. undertakes to provide the documents required by the authorities at OERLIKON METCO (US) INC.'s place for the manufacturing and transportation EX WORKS of the SCOPE OF SUPPLY.
- 8.2. BUYER undertakes to provide all other documents required, including, for example, all 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 (US) INC. and BUYER shall support each other (and BUYER shall coordinate with BUYER's customer and cause its customer to reasonably cooperate with BUYER and OERLIKON METCO (US) INC. in accordance with this Article 8.3), without undue delay, if one of them (or BUYER's customer) needs information or documentation required by any authority and such information or documentation can be delivered easier by OERLIKON METCO (US) INC. or BUYER (or BUYER's customer), as the case may be, than by the one of them that is required to provide such information or documentation in the particular instance.
- 8.4. 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 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, 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 the United States or any other country or state. BUYER shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES from and against any and all costs, penalties or other losses caused by, or related to, any violation or breach of any of the representations or warranties set forth in this Article 8.4.

9. Force Majeure

- 9.1. Notwithstanding anything to the contrary, OERLIKON METCO (US) INC. 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 BUYER or its customers, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of OERLIKON METCO (US) INC. In the event of any delay in performance by OERLIKON METCO (US) INC. due to any such

causes, the date of delivery or time for completion will be extended by the length of the delay due to such cause(s). If such a delay continues for more than six (6) months, either OERLIKON METCO (US) INC. or BUYER may terminate the affected CONTRACT upon seven (7) days' written notice to the other party.

- 9.2. OERLIKON METCO (US) INC. 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 (US) INC. (for example, 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 Articles 6 and 7 herein above, OERLIKON METCO (US) INC. shall be responsible for any damages to such materials caused by its negligence.

11. Miscellaneous

11.1. Dispute Resolution, Governing Law, Venue and Jurisdiction

(a) With respect to any dispute between the parties arising out of or relating to these GENERAL TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder, a party shall provide written notice to the other party of the existence of such dispute and the parties shall enter into good faith discussions and make reasonable efforts in an attempt to resolve such dispute. If the parties are unable to resolve a dispute within thirty (30) days after a party receives the written notice described in the preceding sentence hereof (or within a longer period of time mutually agreed upon by the parties in writing), either party may then, in its discretion, proceed to resolve the dispute in accordance with these GENERAL TERMS and applicable law.

(b) All matters connected with these GENERAL TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder, and the performance thereof, shall be construed, interpreted, applied and governed in all respects exclusively by the laws of the State of New York, without regard to any conflict or choice of law provisions thereof.

(c) Each party hereby agrees that the Supreme Court of the State of New York, County of Nassau, shall have sole and exclusive jurisdiction to determine any matter arising under these GENERAL TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder that cannot be resolved by the parties directly as set forth herein, and each party hereby waives, to the fullest extent permitted by applicable law, any claim that (i) the parties (or either of them) is not personally subject to the jurisdiction of such court, (ii) the venue is improper, (iii) the forum is inconvenient, or (iv) the subject matter may not be enforced by such court.

(d) Notwithstanding anything to the contrary, OERLIKON METCO (US) INC. reserves the right to bring a legal action in any court of competent jurisdiction located in the city or state where BUYER is located or where the SCOPE OF SUPPLY sold hereunder was provided or performed by OERLIKON METCO (US) INC.

(e) Each party hereby waives its respective rights to a trial by jury in any action, litigation or proceeding arising from or relating to these GENERAL TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder.

(f) BUYER hereby acknowledges and agrees that any breach of Article 4 herein above by BUYER will cause irreparable harm to OERLIKON METCO (US) INC., that monetary damages will not be a sufficient remedy for such breach and that, in addition to all other relief available, OERLIKON METCO (US) INC. shall, notwithstanding Article 11.1(a) herein above, be entitled to seek immediately and obtain injunctive relief and other equitable remedies (including, without limitation, a temporary restraining order, preliminary injunction, permanent injunction and/or specific performance) to enjoin or restrain any breach or threatened breach of Article 4 herein above, without the need to post any bond or other security or to prove that monetary damages would not provide an adequate remedy.

11.2. Independent Contractor

OERLIKON METCO (US) INC. (inclusive of its AFFILIATES) is not, and is not acting as, an employee, agent, representative or partner of, or joint venturer with, BUYER. OERLIKON METCO (US) INC. is performing hereunder exclusively as an independent contractor.

11.3. No Third Party Beneficiaries

These GENERAL TERMS shall not confer any rights or remedies upon any person or entity other than BUYER, OERLIKON METCO (US) INC. and the

other OERLIKON METCO (US) INC. INDEMNIFIED PARTIES as set forth herein.

11.4. Assignment

Any attempt by BUYER to assign, transfer, or delegate any of the rights, warranties, duties or obligations hereunder (or under any CONTRACT) to a third party without the prior written consent of OERLIKON METCO (US) INC. shall render such attempted assignment, transfer or delegation null and void.

11.3 Waiver of Rights

OERLIKON METCO (US) INC.'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 any provision of these GENERAL TERMS or any CONTRACT is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the parties agree that (i) such provision shall be enforced to the maximum extent permissible under the applicable law, and (ii) any invalidity, illegality, or unenforceability of such provision shall not affect any other provision of these GENERAL TERMS or such CONTRACT and these GENERAL TERMS and such CONTRACT shall otherwise remain in full force and effect.