

Oerlikon Metco general terms and conditions of purchase (India)

These Terms and Conditions can be found on the Internet under www.oerlikon.com/metco.

1. General

- 1.1. These General Terms and Conditions of Purchase (hereinafter "PURCHASE TERMS") apply to all purchases of OERLIKON METCO (hereinafter "SCOPE OF SUPPLY"), unless OERLIKON METCO has expressly agreed otherwise in writing. "OERLIKON METCO" means the company pertaining to the Oerlikon Metco Business Unit which provided the PURCHASE ORDER as defined in 1.2.2.
- 1.2. In case of contradiction between contract documents, i.e. the PURCHASE ORDER of OERLIKON METCO plus all documents referred to therein (the said documents hereinafter called "CONTRACT"), the following order of precedence shall apply:
 1. Negotiated, agreed and mutually signed document
 2. OERLIKON METCO'S Purchase Order (hereinafter "PURCHASE ORDER")
 3. OERLIKON METCO'S PURCHASE TERMS
 4. OERLIKON METCO'S request for offer
 5. SUPPLIER'S offer
 6. SUPPLIER'S Sales Terms and Conditions
- 1.3. All documents making part of the CONTRACT can be changed only in a written, duly signed document.
- 1.4. OERLIKON METCO may regard as binding upon the SUPPLIER, all written data and information submitted by SUPPLIER in connection with the tendering or placing of a PURCHASE ORDER process, unless such data and information is clearly marked as being non-binding.
- 1.5. Unless otherwise agreed, delivery shall be made DDP. Trade terms like DDP, FOB, CIF, EX WORKS etc. shall be interpreted in accordance with the INCOTERMS 2000 or, after replacement thereof, the then effective INCOTERMS.

2. Offers in reply to invitations

- 2.1. All offers shall be without cost for OERLIKON METCO, even if they have been submitted on OERLIKON METCO'S request.
- 2.2. Unless otherwise agreed upon, offers shall be open for acceptance for 90 days following receipt by OERLIKON METCO.

3. Purchase orders, data delivered by Oerlikon Metco

- 3.1. PURCHASE ORDERS shall be valid only if they are placed in writing on OERLIKON METCO'S official form and transmitted to the SUPPLIER by either, facsimile, mail or e-mail. Any oral agreement, amendment or change of any PURCHASE ORDER shall be valid only if confirmed by OERLIKON METCO in writing. Sketches, drawings, comments, specifications, etc. shall form an integral part of the CONTRACT insofar as they are expressly mentioned as such in a PURCHASE ORDER.
- 3.2. The CONTRACT shall be deemed to have been entered into upon receipt of the PURCHASE ORDER, unless SUPPLIER takes exception to the PURCHASE ORDER in writing within five (5) working days after receipt of the PURCHASE ORDER. Upon SUPPLIER'S start of the execution of the PURCHASE ORDER, the PURCHASE ORDER shall in any case be deemed to have been accepted by the SUPPLIER.
- 3.3. SUPPLIER shall be obliged to refer to OERLIKON METCO should SUPPLIER perceive an error or open point regarding essential parts of the CONTRACT, particularly in respect of quantity, price, or term. SUPPLIER is responsible for becoming acquainted with all essential data and circumstances as well as the respective intended purpose.

4. Subcontracting

SUPPLIER shall not subcontract all or substantial work on any goods or services to be supplied under the CONTRACT without prior written approval of OERLIKON METCO and shall submit to OERLIKON METCO a list containing all subcontractors. SUPPLIER must provide to subcontractors all necessary information such that all purchasing requirements will be fulfilled, including key characteristics where required. This provision shall not apply to purchases of standard commercial products, nationally advertised products, or raw materials.

5. Prices and Payment

- 5.1. Unless otherwise specified in the PURCHASE ORDER, the prices agreed shall be fixed prices and shall remain unchanged until completion of the CONTRACT and shall include packaging and freight costs, taxes and duties without Value Added Taxes. Price adaptations to changes in raw material prices are permitted if foreseen in the PURCHASE ORDER.

- 5.2. Value added taxes (VAT), sales taxes or other taxes, as well as packaging and freight costs shall be stated separately in the invoice.
- 5.3. Where the price is not definitely and unambiguously agreed upon, OERLIKON METCO shall be entitled to return the SCOPE OF SUPPLY or parts thereof.
- 5.4. Unless otherwise agreed upon, the purchase price shall be paid within sixty 60 days net after acceptance of the SCOPE OF SUPPLY and issuing of invoice, whichever date is later.
- 5.5. If OERLIKON METCO makes advance payments, SUPPLIER shall, at OERLIKON METCO'S written request, provide an irrevocable first demand bank guarantee in the amount of the advance payments, issued by a first class bank acceptable to OERLIKON METCO.
- 5.6. On delay of requested certificates of material, quality documents, or other documents pertaining to the SCOPE OF SUPPLY, OERLIKON METCO shall be entitled to extend any agreed payment period appropriately.
- 5.7. OERLIKON METCO reserves the right to set off counter-claims of OERLIKON METCO or affiliated Oerlikon companies against payments owed to SUPPLIER. SUPPLIER shall only be entitled to assign claims against OERLIKON METCO to third parties with OERLIKON METCO'S prior written approval, which OERLIKON METCO shall not refuse unreasonably.
- 5.8. OERLIKON METCO shall be entitled to a discount of 2% on the invoice amount, excluding the amounts to be stated separately in accordance with section 5.2 above, for payment within 14 days after the invoice receipt.

6. Free issue materials / tooling

- 6.1. The title to materials and/or tools (such as dies, jigs, fixtures, patterns, gauges, molds, test equipment) supplied by OERLIKON METCO ("FREE ISSUE MATERIALS") for execution of an order shall remain with OERLIKON METCO even following machining or processing. Such materials and/or tools shall be marked as OERLIKON METCO'S property and shall be stored separately until machined or processed. On demand by OERLIKON METCO, machining waste from FREE ISSUE MATERIALS shall be returned to OERLIKON METCO. The SUPPLIER has to notify OERLIKON METCO immediately of any faulty or insufficient quantity of material; otherwise this defense shall be forfeited. FREE ISSUE MATERIALS made available by OERLIKON METCO must be used exclusively for the execution of the PURCHASE ORDER placed by OERLIKON METCO. They must neither be copied nor used for other purposes except SUPPLIER has obtained OERLIKON METCO'S prior written approval.
- 6.2. If tooling and tool design is provided by SUPPLIER on the PURCHASE ORDER, it will be priced separately and when finished must be invoiced separately, unless otherwise agreed. If the cost of tooling and tool design is to be amortized and included in the unit price of goods being supplied under present and future orders, then the invoice must state the total cost of the tooling, the number of units the tooling cost is to be amortized over, and the portion charged to past orders as well as the portion charged to the current orders. Tooling and tool drawings paid for by OERLIKON METCO become OERLIKON METCO'S property and are to be used exclusively to perform OERLIKON METCO'S PURCHASE ORDERS unless otherwise expressly authorized in writing by OERLIKON METCO. OERLIKON METCO reserves the right to accelerate payment on tooling being amortized for the purpose of ownership.
- 6.3. Tooling and tool designs belonging to OERLIKON METCO, independent of whether provided by OERLIKON METCO or delivered by SUPPLIER, as well as FREE ISSUE MATERIALS, shall be at OERLIKON METCO'S disposal for any purpose, and the SUPPLIER agrees to deliver such tooling, tool designs and FREE ISSUE MATERIALS on request of OERLIKON METCO at no expense, except however of shipping expenses. The said tooling, tool designs and FREE ISSUE MATERIALS shall be insured by SUPPLIER against damage and loss, and the SUPPLIER agrees to be responsible for normal maintenance, storage, damage or loss of tooling while on consignment in his facility, at no expense to OERLIKON METCO.

7. Date of delivery and consequences of delays

- 7.1. **TIME IS OF THE ESSENCE. The date of delivery shall be deemed to have been met, if:**
 - a) for EX WORKS deliveries, readiness for dispatch of the SCOPE OF SUPPLY including all documents, has been announced to OERLIKON METCO (department responsible for the CONTRACT) before expiry of the delivery date;

b) in all other cases, the SCOPE OF SUPPLY, including all documents, has arrived at the place of destination and/or the performance of the services has been accepted before expiry of the delivery date.

- 7.2.** Foreseeable delays in delivery shall be notified immediately, stating the reasons and the expected duration of the delay, regardless of whether the whole or part of the SCOPE OF SUPPLY is concerned.
- 7.3.** In cases of delayed delivery, OERLIKON METCO shall be entitled to pursue all claims provided by law, irrespective of whether the SUPPLIER has notified the delay or a penalty has been agreed upon.
- 7.4.** Subject to section 7.3 above, if a fixed date has been agreed upon for the execution of the SCOPE OF SUPPLY, and if this date will not be observed due to reasons attributable to SUPPLIER or its subcontractors, OERLIKON METCO reserves the right to (i) either terminate the CONTRACT and to ask for the reimbursement of all up-front and down payments made, after having given SUPPLIER a last opportunity to fulfill its obligations, or (ii) ask the SUPPLIER to hand over the commenced work against payment of the value which this work has for OERLIKON METCO.
- 7.5.** If the delivery date has not been met, and provided OERLIKON METCO does not exercise its rights described in section 7.4 above, SUPPLIER shall pay a penalty for the delay in addition to the damages caused by the delay. This penalty shall amount to one and a half percent (1.5 %) per full week of the purchase price for the entire SCOPE OF SUPPLY. The aggregate penalty for delay shall not exceed nine percent (9%) of the entire purchase price. Penalties paid shall be deducted from actual damages claimed by OERLIKON METCO.
- 7.6.** SUPPLIER shall not be entitled to use the non-arrival of essential documents, FREE ISSUE MATERIALS or other objects to be supplied by OERLIKON METCO as a defense, unless the same had been demanded in good time from OERLIKON METCO, or, if dates of delivery had been agreed, a reminder had been sent in due time to OERLIKON METCO.

8. Packaging, shipment

- 8.1.** Unless otherwise agreed upon, the SCOPE OF SUPPLY shall be shipped DDP to the place of destination. SUPPLIER shall be liable for suitable and appropriate packaging, protecting the goods against damage and corrosion during shipment, and, where applicable, any subsequent short term storage (i.e. up to a maximum of 60 days). Where special packaging is agreed, OERLIKON METCO'S instructions have to be observed. SUPPLIER shall be liable for damages due to improper packaging and/or failure to conform to OERLIKON METCO'S instructions.
- 8.2.** OERLIKON METCO reserves the right to return packaging material against credit of the amount charged to OERLIKON METCO. The cost of return shipment shall be for account of OERLIKON METCO.
- 8.3.** Where special care is required during unpacking, SUPPLIER shall notify OERLIKON METCO about the specifics thereof in due course. In particular, a suitable and conspicuous warning shall be attached to the packaging.

9. Compliance with applicable laws

- 9.1.** SUPPLIER warrants that it will comply with all applicable laws, statutes, rules, regulations or orders in the performance of the SCOPE OF SUPPLY, and shall provide all documents required for the export from the place of production and import to the place of end-use, such as but not limited to certificates of origin, export licenses, material safety data sheets, etc.

10. Delivery / export control

- 10.1.** Partial deliveries and/or deliveries made prior to the agreed date of delivery shall not be permitted without OERLIKON METCO'S express prior written approval.
- 10.2.** SUPPLIER undertakes to inspect the goods before shipment to ensure that they comply in terms of quality and quantity with the PURCHASE ORDER. Only material which has passed the inspection shall be delivered.
- 10.3.** Each shipment has to include a detailed delivery note containing OERLIKON METCO'S references, confirmation of the herein above mentioned inspection, and in particular **OERLIKON METCO'S purchasing order number**. For shipments to different delivery addresses, OERLIKON METCO requires separate delivery notes.
- 10.4.** Unless otherwise agreed upon, the invoice, in duplicate, and the second document marked as "COPY", has to be sent to OERLIKON METCO by separate mail. Any costs caused by non-compliance shall be borne by the SUPPLIER.

10.5. All correspondence (letters, delivery notes, invoices etc.) must show OERLIKON METCO'S purchasing order number, order date, article designations with indication of quantities, delivery notes also with indication of gross and net weight. The delivery note must indicate OERLIKON METCO'S delivery address according to the CONTRACT.

10.6. The SUPPLIER 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, the SUPPLIER 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 state. The SUPPLIER 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.

11. Transfer of ownership and risk

- 11.1.** Transfer of ownership shall take place at the time when the SCOPE OF SUPPLY or parts thereof have been finished. Between transfer of ownership and delivery, SUPPLIER will store the SCOPE OF SUPPLY without costs to OERLIKON METCO and mark them as owned by OERLIKON METCO. Furthermore, SUPPLIER undertakes to store and insure the SCOPE OF SUPPLY as if the ownership would not have been transferred.
- 11.2.** Risk shall pass to OERLIKON METCO at the time of arrival of the delivery at the agreed place of delivery.
- 11.3.** Should the requested shipment documents not be supplied in accordance with the CONTRACT and/or OERLIKON METCO'S instructions, the goods shall be stored at the SUPPLIER'S charge and risk until arrival of the same.

12. Termination for convenience, cancellation for default

- 12.1** Termination for Convenience
Work may be terminated under the CONTRACT by OERLIKON METCO at the sole discretion of OERLIKON METCO in whole or in part at any time by written notice. In this case, OERLIKON METCO shall reimburse the SUPPLIER'S actual and non-cancelable expenses, which it necessarily incurred for the appropriate execution of the CONTRACT until the termination, all as determined by generally accepted accounting principles. Such reimbursable expenses shall not include the business profit, fixed overhead, royalties, development cost for serial machines and other similar cost of the SUPPLIER. In consideration of the payment made, SUPPLIER shall deliver or assign to OERLIKON METCO any work in progress, and OERLIKON METCO shall be entitled to use said work in progress at its own discretion.
- 12.2** Cancellation for Default
In the event SUPPLIER shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of SUPPLIER'S insolvency, or in the event SUPPLIER is in default of any provisions or requirements under the CONTRACT, OERLIKON METCO may, by written notice to SUPPLIER, without prejudice to any other rights or remedies which OERLIKON METCO may have under the CONTRACT, cancel further performance by SUPPLIER under the PURCHASE ORDER. In the event of such cancellation, OERLIKON METCO may complete the performance of the PURCHASE ORDER by such means as OERLIKON METCO selects, and SUPPLIER shall be responsible for any additional costs incurred by OERLIKON METCO in so doing. SUPPLIER shall deliver or assign to OERLIKON METCO any work in progress as OERLIKON METCO may request and shall grant OERLIKON METCO the right to use or have used all SUPPLIER documentation required for the completion of the SCOPE OF SUPPLY. Any amounts due to SUPPLIER for goods and services completed by SUPPLIER in full compliance with the terms of the CONTRACT prior to such termination shall be subject to set off of OERLIKON METCO'S additional costs of completing the PURCHASE ORDER and other damages incurred by OERLIKON METCO as a result of SUPPLIER'S default.

13. Inspection, drawings, test certificates, operating instructions spare parts

- 13.1.** OERLIKON METCO or its representatives shall be entitled, with reasonable notice, to carry out inspections and ongoing examinations of the production, respectively to reject faulty parts during manufacturing.

Inspections or examinations shall not relieve SUPPLIER from its exclusive responsibility for the whole SCOPE OF SUPPLY. During the execution of the CONTRACT, SUPPLIER shall allow free access to the manufacturing plants as well as to those of its subcontractors during reasonable business hours.

- 13.2. OERLIKON METCO'S approval of final construction drawings shall not relieve SUPPLIER of its responsibility for the SCOPE OF SUPPLY.
- 13.3. Final construction drawings, test certificates, maintenance and operating instructions and spare parts' lists required for the proper maintenance of the SCOPE OF SUPPLY shall be handed over to OERLIKON METCO in the quantities and languages requested together with the delivery at the latest.
- 13.4. SUPPLIER undertakes to deliver to OERLIKON METCO spare parts related to the SCOPE OF SUPPLY, at OERLIKON METCO'S request, within ten (10) years after acceptance as described in Article 14 hereof.

14. Acceptance, warranty and guarantees

- 14.1. Unless otherwise agreed upon in writing, acceptance shall take place after delivery at the place of destination or after placing into operation, whichever occurs later. Payment for work in whole or part will not constitute acceptance.
- 14.2. SUPPLIER expressly warrants that the entire SCOPE OF SUPPLY covered by the CONTRACT will conform to the specifications, drawings, samples, performance guarantees, or any kind of description furnished by or specified by OERLIKON METCO, and will be merchantable of good material and workmanship and free from defects. SUPPLIER expressly warrants that the material covered by the CONTRACT will be fit and sufficient for the purpose specified. If certificates, test reports or similar documents form part of the agreed SCOPE OF SUPPLY, the data contained therein shall be deemed as warranted characteristics, even if such certificates etc. originate from subcontractors.
- 14.3. Unless otherwise agreed upon in writing, SUPPLIER expressly warrants that in executing the CONTRACT, SUPPLIER and the subcontractors have applied the principles of quality assurance according to the relevant ISO or equivalent standards. Quality records have to be safely archived for the period required by the applicable law for the respective goods, however not less than ten (10) years after acceptance as defined in Article 14.1 hereof.
- 14.4. Should SUPPLIER fail to meet the warranties or guarantees during the warranty and guarantee period, SUPPLIER shall at OERLIKON METCO'S option forthwith remedy the defects on the spot, or have them remedied at SUPPLIER'S costs. Should SUPPLIER fail to remedy defects forthwith or in case of emergency, OERLIKON METCO shall be entitled to remedy the defects itself or cause them to be remedied by a third party, in each case at the SUPPLIER'S charge and risk.
- 14.5. OERLIKON METCO shall not be obliged to inspect the SCOPE OF SUPPLY or parts thereof immediately. Defects will be notified after detection. SUPPLIER hereby waives the defense of tardy notification.
- 14.6. Unless otherwise agreed in the CONTRACT, and if the SCOPE OF SUPPLY encompasses erection and/or commissioning services, the warranty and guarantee period shall be 24 months from date of acceptance of the SCOPE OF SUPPLY. In all other cases, the warranty and guarantee period shall extend twelve (12) months from acceptance by OERLIKON METCO or putting into commercial operation of the part(s) or materials provided under the PURCHASE ORDER, whichever occurs later. For repaired or replaced goods, the warranty and guarantee period shall start anew from the date at which they are put into operation.

Goods produced by other materials than those specified, or by defective materials, shall be replaced by SUPPLIER free of charge within five (5) years from delivery.

- 14.7. Where substitute delivery is made, the items originally delivered to OERLIKON METCO shall be left with OERLIKON METCO for use free of charge until impeccable substitute delivery is ready for operation to OERLIKON METCO. The same shall apply in case of whole or partial termination of the contract due to faulty supply.
- 14.8. In the event of disputes on quality parameters, an expert opinion will be obtained. Unless otherwise agreed upon in writing, the opinion of the competent laboratory (LAB) accredited to National Accreditation Board for Testing and Calibration Laboratories (NABL) will be requested. The parties undertake to accept the findings of the agreed expert or the LAB as the case may be. The costs of the expert opinion will be borne by the party at fault.
- 14.9. SUPPLIER will defend and indemnify OERLIKON METCO and its directors, officers, and employees, and the successors and assignees, and OERLIKON METCO'S customers (OERLIKON METCO and each of the aforementioned persons and/or companies referred to as "OERLIKON METCO Indemnitee"), and hold each OERLIKON METCO

Indemnitee harmless from and against any and all liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other expenses of litigation) arising out of any claim, complaint, suit, proceeding or cause of action brought against a OERLIKON METCO Indemnitee by a third party alleging damage, personal injury, death or otherwise, arising from or occurring as a result of (i) Product defects, (ii) any breach by SUPPLIER of its representations and warranties and obligations under this Agreement, (iii) the negligent, fraudulent or wilful acts, omission or misrepresentations of SUPPLIER, or (iv) SUPPLIER'S violation of any applicable law in the performance of its obligations under the CONTRACT.

15. Work carried out in Oerlikon Metco's works or at site

If work is carried out in OERLIKON METCO'S or its customer's works, or on construction or erection sites, these PURCHASE TERMS shall be supplemented by OERLIKON METCO'S or its customer's safety instructions and rules for external companies. SUPPLIER shall request them and acknowledge receipt in writing. Furthermore, SUPPLIER shall instruct its employees, consultants, etc. to comply with such instructions and rules.

16. Intellectual property and secrecy

- 16.1. OERLIKON METCO retains all intellectual property rights on all documents, such as drawings, sketches, calculations, models, etc., which OERLIKON METCO hands over to SUPPLIER before or after the conclusion of the CONTRACT. SUPPLIER will use these documents for the exclusive purpose of executing the CONTRACT. Without OERLIKON METCO'S prior written approval, SUPPLIER shall **NOT** be entitled to manufacture products based on these documents for third parties, or to copy such documents, or to make them known in whatever way to third parties, which are not directly involved in the execution of the CONTRACT or parts thereof. On demand, all documents, together with all copies or reproductions thereof, shall immediately be handed over to OERLIKON METCO. After completion of the delivery, or should the SCOPE OF SUPPLY not be delivered, SUPPLIER shall immediately return all documents to OERLIKON METCO without OERLIKON METCO'S request. SUPPLIER however shall be entitled to retain one copy for legally or contractually required archiving purposes.
- 16.2. SUPPLIER warrants that the SCOPE OF SUPPLY and any component part thereof shall not infringe any intellectual property rights of third parties. In the event of any infringement relating to the SCOPE OF SUPPLY, OERLIKON METCO may, in its sole discretion, ask SUPPLIER to procure the right to use the equipment without impairing its suitability, or modify or replace it to make the use by OERLIKON METCO or its customer non-infringing.
- 16.3. SUPPLIER undertakes to provide OERLIKON METCO all documents and information produced in connection with the SCOPE OF SUPPLY. OERLIKON METCO shall have an unrestricted right to use said documents for the purposes of operation, maintenance, repair, training and enlargement of the SCOPE OF SUPPLY.
- 16.4. OERLIKON METCO and/or its customer shall not be mentioned in any publications for advertising purposes without OERLIKON METCO'S prior written approval.

17. FORCE MAJEURE

- 17.1. SUPPLIER shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labor difficulty, governmental actions, acts of God, acts of OERLIKON METCO or its customer, delays in transportation, or other causes beyond the reasonable control of SUPPLIER. 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 two (2) months, either OERLIKON METCO or SUPPLIER may terminate the CONTRACT upon seven (7) days written notice to the other party.
- 17.2. SUPPLIER shall be entitled to be compensated in case of termination, for the work done prior to termination and the expenses for non-cancelable procurements. OERLIKON METCO shall be entitled to receive all work results for which it has paid.

18. Miscellaneous

- 18.1. a) Applicable Laws and Arbitration
The CONTRACT is construed and shall be interpreted in accordance with the laws of India under exclusion of the conflict of law rules. Nothing contained in these PURCHASE TERMS shall limit the rights of OERLIKON METCO available under the applicable law.
- b) Arbitration

Any dispute arising out of or in connection with this CONTRACT (including a dispute regarding the existence, validity or termination of this CONTRACT or the consequences of its nullity) ("Dispute") shall be referred to and finally resolved by arbitration. This CONTRACT and the rights and obligations of the Parties under this CONTRACT shall remain in full force and effect pending the award in such arbitration proceedings and the award shall determine whether and when the termination of this CONTRACT, if relevant, shall become effective.

- I. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be in Chennai and the language of the arbitration shall be English.
- II. The arbitral tribunal (the "Tribunal") shall consist of three (3) arbitrators. One arbitrator shall be appointed by OERLIKON METCO, one arbitrator shall be appointed by SUPPLIER. The two arbitrators appointed in the manner hereinabove shall appoint the third arbitrator.
- III. The Tribunal shall give a reasoned decision or award which shall be final and binding on the Parties.
- IV. Each Party to the Dispute shall bear its own costs, in relation to the arbitration proceedings.

18.2. 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 OERLIKON METCO shall render such attempted assignment or transfer null and void.

18.3. Waiver of Rights

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

18.4. Severability

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

18.5 Conflict Minerals

Conflict minerals are defined by the SEC as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which are limited to tantalum, tin, gold and tungsten. Conflict minerals originating in the Democratic Republic of the Congo ("DRC") or an adjoining country, collectively defined as the "Covered Countries" may sometimes be mined and sold, "under the control of armed groups", to "finance conflict characterized by extreme levels of violence". Some of these minerals can make their way into the supply chains of the products used around the world, including those in the thermal spray industry.

OERLIKON METCO expects our VENDORS to have in place policies and due diligence measures that will enable us to reasonably assure that products and components supplied to us containing conflict minerals are DRC conflict free. OERLIKON METCO expects our VENDORS to comply with the EICC Code of Conduct (<http://www.eiccoalition.org/standards/code-of-conduct/>) and conduct their business in alignment with OERLIKON METCO's supply chain responsibility expectations.

OERLIKON METCO expects our VENDORS to cooperate in providing due diligence information to confirm the tantalum, tin, tungsten and gold in our supply chain are conflict free. VENDORS are expected to implement a supply chain system of controls and transparency through the use of due diligence tools created by the Conflict-Free Sourcing Initiative ("CFSI") or other industry wide initiatives which includes the Conflict Minerals Reporting Template ("CMRT"), a supply chain survey designed to identify the smelters and refiners that process the necessary conflict minerals contained in our products.

OERLIKON METCO direct VENDORS that have smelter and refiner facilities within their supply chain that have not received a "conflict free" designation from an independent third party audit program are encouraged to participate in such a program and request country of origin and chain of custody information.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be executed by their duly authorized representatives as of the day and year first above written.