

General terms

1. General

1.1 These general terms and conditions of sales (hereinafter referred to as General Terms) are applicable to every order placed by the customer, any confirmation of order, if any, and any offer made by Oerlikon Balzers Coating. Placing an order by the customer implicate his agreement with this General Terms with the exclusion of any other general conditions of the customer. Other conditions defined by the customer are only valid if they have been expressly accepted by Oerlikon Balzers Coating in writing.

1.2 Only the written confirmation of an order is binding. If Oerlikon Balzers Coating does not give a confirmation of the order the invoice shall serve as the confirmation of the order.

1.3 To be valid, all arrangements and legal declarations must be agreed in writing.

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

2. Placing an order. The order must contain all information relevant to Oerlikon Balzers Coating such as: description of the substrate, number of items, dimensions, material specification, any previous treatment and instructions as to the surfaces to be coated. Any changes in the composition of the material and the preparatory treatment shall be notified to Oerlikon Balzers Coating in good time. Oerlikon Balzers Coating is entitled to require the customer to provide any additional information which it might consider necessary for the proper treatment of the substrate.

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

4. Delivery of the substrates. Upon delivery of the substrates the customer shall indicate the number of items, description and value of the substrates in an accompanying document (delivery note). The substrates delivered have to be in a state fit for coating. Oerlikon Balzers Coating reserves the right to return substrates which do not comply with these requirements at the customer's expense.

5. Labeling of the substrates. The customer shall mark the substrates to be supplied appropriately.

6. Entry control. Substrates received to be coated are only summarily and in a non-binding way controlled and compared with the order. There is no obligation to control the substrates. If the customer asks Oerlikon to perform entry controls and if Oerlikon agrees to such control it shall be limited to an inspection of the substrates and the recording and notifying of the defects noted. This service shall be charged extra.

7. Technical documentation

7.1 Sales brochures and catalogues are not binding unless expressly stated otherwise.

7.2 Oerlikon Balzers Coating reserves all rights to any technical documentation supplied to the customer. Without prior written consent of Oerlikon, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to the customer.

8. Price

8.1 Prices are net, based on delivery EXW Oerlikon Balzers Coating's facility (INCOTERMS 2010), and exclusive of value added tax, sales tax and packing. The customer shall bear any and all taxes, fees, levies, customs duties and the like, which are levied out of or in connection with the contract, or shall refund them to Oerlikon against adequate evidence in the event that Oerlikon is liable for them.

8.2 The prices will be adjusted appropriately if: the coating material or the execution of the coating of the substrates has undergone changes because the information and/or documents provided by the customer were not in conformity with the actual conditions or were incomplete, -the nature or the scope of the agreed supplies or services has changed. If such additional services (e.g. pretreatments or special fixtures) are required, Oerlikon Balzers Coating will notify the customer of the additional price before coating starts.

9. Terms of payment

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

9.2 Unless otherwise agreed the invoices are payable within 30 days starting from the date of invoice. When the customer not pays within the agreed or legal term, Oerlikon Balzers Coating has from the following day, - of law and without notice right to interest of 10% per annum on the unpaid amount.

9.3 No interest will be reimbursed for advance payments. The fact the interests are stipulated doesn't preclude that the payments are claimable on their due date.

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

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

10. Right of retention

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

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

10.3 If the customer does not pay the amounts due within 90 days, Oerlikon Balzers Coating is entitled to sell upon notification of its intention the substrates.

11. Delivery time

11.1 Except as otherwise agreed, the time for delivery shall start as soon as:

- a) the contract is entered into
 - b) the date on which Oerlikon Balzers Coating receives a prepayment, if the offer stipulates a prepayment before the beginning of the coating procedure.
 - c) Oerlikon is in possession of the substrates and the relevant, complete documentation as specified in clause 2,
- whichever a) through c) is the latest date.

11.2 Unless otherwise agreed, the lead time in the contract is only indicative and in no way binding, a delay can never lead to a breach of the contract or a right of the customer to receive compensation.

11.3 The time for delivery will be extended correspondingly in case of, and Oerlikon Balzers Coating is not responsible for claims or damages resulting from, contingencies beyond the reasonable control of Oerlikon Balzers Coating, including but not limited to, all matters set out in clause 21 below. As soon as the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.

12 Packaging. If the delivered packing cannot be used to resend the coated substrates to the customer; the packing of Oerlikon Balzers Coating will be charged.

13. Passing of benefit and risk

13.1 Benefit and risk of the coated substrates shall pass to the customer by the date of shipment

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

14. Shipping, transport and insurance

14.1 Special requirements concerning shipment, transport and insurance have to be communicated on time to Oerlikon Balzers Coating. The transport is the risk and expense of the customer. Objections concerning the shipment or transport will be presented by the customer to the last transporter by receiving the coated substrates or the shipment note.

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

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

15.1 Oerlikon Balzers Coating shall check the coated substrates before dispatch and the services upon completion as far as usual. Any further controls requested by the customer have to be agreed upon separately and paid for by the customer.

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

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

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

- In the case of obvious defects as soon as possible but no later than 2 weeks after delivery.
- In the case of non-obvious defects as soon as possible after discovery, but no later than 6 months after delivery.

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

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

15.5 The customer has no other rights and claims in respect of any defects whatsoever in relation to the coated substrates than those expressly named in clause 16

16. Liability for coating defects

16.1 For claims made as defined in clause 15.4, the customer is entitled to and Oerlikon Balzers Coating has the right to correct the fault – if technically possible – when the coating thickness at the specified point on the functional surface is 50% or less of the specified coating thickness or when the coating does not adhere to those functional surfaces.

16.2 If it is not technically possible to correct the fault, the value of the faulty, coated substrate will be partly or wholly compensated by Oerlikon Balzers Coating when the coated substrates are not usable because of the fault. However, maximum compensation in such cases will be the value of the coating service at the time the claim is made.

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

17. Exclusion of liability for coating defects

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

17.2 Defective substrates. Oerlikon Balzers Coating liability is excluded for damages which are due to the unsuitable state of the substrates supplied, e.g. the presence of defects in the material, finishing residues, foreign substances, manufacturing faults, unsuited heat treatments, rust spots, non-removable residues, brazed connections, etc. as well as the reduced corrosion resistance of stainless steels caused by the coating process. The customer is liable for any damage caused by Oerlikon Balzers Coating equipment caused by residues or foreign substances remaining on the substrates sent for coating.

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

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

17.5 Minor defects. Except for intent or gross negligence, Oerlikon Balzers Coating is not liable for: - a reduction of quality, changes in dimensions, changes in surface roughness and damage during coating of substrates not pre-treated by Oerlikon Balzers Coating; individual small faults, damages or spots outside the functional areas;

- slight color deviations as well as for the constancy of the color of the coated substrate;

- faults that are directly or indirectly due to the customer having used an unsuited method for treating the substrates before the substrates were supplied to Oerlikon for coating.

17.6 Prescribed dimensions. Oerlikon Balzers Coating assumes no responsibility for holding to dimensions prescribed by the customer.

17.7 Limitation of liability for defects

In the case of defective coating a customer has no other rights and claims other than those expressly stipulated Clause 16.

17.8 Responsibility for additional obligations. Oerlikon Balzers Coating is not responsible for complaints of the customer due to insufficient information or incorrect advice or violation of any possible additional obligation except when this is due to bad faith or gross negligence of Oerlikon Balzers Coating

18. Exclusion of further liability

18.1 Oerlikon Balzers Coating assumes no other liability except as specifically provided in the general terms.

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

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

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

19 Applicable law. The General Terms and all orders hereunder are governed by and construed in accordance with the laws of Belgium without giving effect to its conflict of laws principles.

20 Adjudication

Any disputes arising out of or in relation to an order shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules. The seat of arbitration shall be Brussels, Belgium.

21 Export Control

21.1 Any order placed hereunder and any confirmation thereof, if any, is subject to the proviso that required export licenses of the competent export control authorities, including but not limited to those of Germany, EU, U.S., Singapore, Malaysia or other competent countries have been granted and that no impediment arises from the applicable export laws and regulations.

21.2 In case the order placed hereunder and any confirmation thereof, if any, and the grant of the required export licenses or other legally required approvals exceeds six (6) months such order shall be regarded as null and void, if the customer requests so after lapse of above specified period.

21.3 The customer shall comply with all export control relevant requisites for performance of the order. Further, the customer represents and warrants that (a) no military, paramilitary, police, intelligence agencies or civil administrations of such institutions or other institutions acting on behalf of them, are supplied with products, information, software or technology which are subject to export licensing requirements and (b) it does not intend to use any products, information, software and technology delivered by Oerlikon Balzers Coating in or in connection with nuclear technology or weapons of mass destruction (nuclear, biological or chemical) and carriers thereof. Should this representation and warranty be untrue, the customer must immediately inform Oerlikon Balzers Coating thereof in writing including all pertinent particulars of supply and use.

21.4 Prior to the first delivery of substrates and/or related drawings, and prior to the delivery following a change to the export classification of any substrate, the customer shall provide Oerlikon Balzers Coating written certification for each such part number of the information.

21.5 Each party shall inform the other party before or on delivery about any applicable export or re-export restrictions and regulations and the applicable export control classification numbers including but not limited to those of U.S., EU, or any other countries' export lists applicable to the products, information, software or technology supplied. In addition, each party shall inform the other party of any documents to be provided by the respective party, such as an end-use certificate, Partner Declaration, without undue delay after placement of an order or the confirmation of any order hereunder, if any.

21.6 Each party shall provide the other party before or on delivery with any customs data required in accordance with applicable customs and trade related laws and regulations including but not limited to those US, EU, and other competent authorities, if any, requiring, amongst other things, clear product descriptions, country of origin (in the two digit ISO code) and customs value. Such data shall be provided on every invoice. Upon request, the respective exporting party shall further provide a declaration or certificate of preferential treatment, if applicable to the services.

21.7 Customer represents and warrants that all substrates (including without limitation associated technical data) provided by Customer whether coated by Oerlikon Balzers Coating or not:

- (1) shall not be subject to any controls, requirements or restrictions under ITAR;
- (2) shall not be subject to any EAR 600 Series Export License Requirements;
- (3) shall not be subject to any Non-US Origin License Requirements due to military control;
- (4) shall be provided with their EAR Export Control Classification Number ("ECCN"), and Schedule B Number (for deliverables or parts thereof supplied from the United States);