
TERMS AND CONDITIONS OF BUSINESS FOR BALINIT COATING

These Conditions shall apply to every contract (Contract) between Oerlikon Balzers Coating UK Limited registered in England and Wales with company number 00667762 (Oerlikon Balzers) and any person, body, firm or company (Customer) placing an order with Oerlikon Balzers for the Balinit thin film coating of any tool, component, wear parts or other items (Substrates) supplied by the Customer or by a third party and/or for the supply of any other services specified on the face of these Conditions.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 11 (LIMITATION OF LIABILITY).

1. Interpretation The following definitions and rules of interpretation apply in these Conditions:

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with Clause 6 (Charges and payment).

Commencement Date: has the meaning given in Clause 2.3.

Conditions: these terms and Conditions as amended from time to time in accordance with Clause 20.3.

Contract: the contract between Oerlikon Balzers and the Customer for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases Services from Oerlikon Balzers.

Customer Default: has the meaning set out in Clause 5.3.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. Oerlikon Balzers:

Oerlikon Balzers Coating UK Limited registered in England and Wales with company number 00667762.

Order: the Customer's order for Services as set out on the purchase order form.

Services: the Balinit thin film coating and the other services supplied by Oerlikon Balzers to the Customer as set out in the Schedule.

Schedule: the description or specification of the Services set out in the "Technical Schedule for Balinit Coating" provided in writing by Oerlikon Balzers to the Customer.

Substrates: the materials belonging to and provided by the Customer which are the subject of the Services.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax (or any similar sales tax).

1.2 Interpretation: A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.1 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.2 A reference to writing or written includes email.

2. Basis of contract

2.1 Any quotation given by Oerlikon Balzers shall not constitute an offer and is only valid for the period stated on the quotation.

2.2 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.3 The Order shall only be deemed to be accepted when Oerlikon Balzers issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date). Delivery dates and turnaround times are indicative unless specifically agreed in advance and time of delivery is not of the essence of the contract.

2.4 Any discrepancies relating to the order will cause the Order to be null and void.

2.5 Any Customer request to vary the Contract must be made in writing to Oerlikon Balzers and no variation shall be effective without the prior written consent of Oerlikon Balzers. Oerlikon Balzers may, at its sole discretion, increase the Charges for any agreed variation.

2.6 An Order, once accepted, may only be cancelled by the Customer with the prior written consent of Oerlikon Balzers. All cancelled Orders shall be subject to a cancellation fee of 20% of the value of the Order. The Customer agrees to pay any cancellation fee upon written demand from Oerlikon Balzers.

2.7 Any samples, drawings, descriptive matter or advertising issued by Oerlikon Balzers, and any descriptions or illustrations contained in the Oerlikon Balzers' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.8 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Supply of Services

3.1 Oerlikon Balzers shall supply the Services to the Customer in accordance with the Schedule in all material respects.

3.2 Oerlikon Balzers shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 Oerlikon Balzers reserves the right to amend the specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Oerlikon Balzers shall notify the Customer in any such event.

4. Warranty for defects in the Services

4.1 Subject to the remaining provisions of this Clause 4 and Clause 11, Oerlikon Balzers warrants to the Customer that the Services will be provided using reasonable care and skill and that the Balinit coating will be free from defect in material and workmanship.

4.2 Substrates submitted for coating will not be accepted by Oerlikon Balzers if it appears from visual inspection that they do not conform to the Schedule. This visual inspection does not affect the Customer's responsibility to observe the terms of the Schedule nor does it affect the Customer's liability for any loss or damage arising from the Substrates failing to meet such specification or the limitations in these Conditions.

4.3 Substrates supplied to Oerlikon Balzers which are identified as requiring additional inspection upon receipt will be quarantined. The Customer will be contacted regarding either returning of the Substrates or Oerlikon Balzers carrying out inspection for an agreed additional charge.

4.4 Provided that the Substrates supplied to Oerlikon Balzers for the Balinit thin film coating comply with the Schedule in every respect Oerlikon Balzers shall coat the Substrates with the requested Balinit coating (and if there is no specific request Oerlikon Balzers shall apply such Balinit coating as, in their experience, they think appropriate) to Oerlikon Balzers' standard specifications for that coating. Oerlikon Balzers will carry out any previously agreed levels of visual inspection prior to despatching the coated Substrates to the Customer.

4.5 Oerlikon Balzers shall have no liability for and no warranty claim will be accepted in the following circumstances:

4.5.1 all defects, deficiencies, non-conformities and damages which are due to late, incorrect, incomplete or inaccurate information or unsuited treatments prescribed by the Customer in the order, or treatment specifications designated by Oerlikon Balzers as being unsuited prior to the performing of the order;

4.5.2 all defects, deficiencies, non-conformities and damages which are due to the unsuitable state of the Substrates supplied (including the presence of defects in the material, finishing residues, foreign substances, manufacturing faults, other coatings, 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);

4.5.3 for any stains or other faults that were not visible prior to coating, owing to the heightening of contrast in the coating process;

4.5.4 for the corrosion of the coat-workpiece combination in an electrolytic environment; this only applies if the Customer has not advised Oerlikon Balzers in writing prior to the conclusion of the Order of the electrolytic environment prevailing at the place where the coated Substrates are to be deployed;

4.5.5 damage which despite taking all reasonable care may arise out of the storage of the Substrates (rust spots, etc.);

4.5.6 defects where the coated Substrates were improperly modified by the Customer or by any third parties without Oerlikon Balzers' prior written consent or if the coated Substrates are used or processed irrespective of the defect;

4.5.7 a reduction of quality, changes in dimensions, changes in surface roughness and damage during coating of Substrates not pre-treated by Oerlikon Balzers; and

4.5.8 slight colour deviations or consistency of the colour of the coated Substrate.

4.6 The Customer shall notify Oerlikon Balzers in writing of any apparent failures in coating adhesion or major inconsistencies of colour or other defects in the Services within:

4.6.1 in the case of visible defects, as soon as possible, but no later than 4 weeks from the date of delivery of the coated Substrates; and

4.6.2 in the case of non-obvious or poorly visible defects, as soon as possible after their discovery but no later than 4 weeks after the date of delivery.

4.7 If no warranty claims are made within the time limits set out in Clause 4.6, the Customer shall be deemed to have finally approved and accepted the Services in relation to the relevant Substrates.

4.8 Subject to a claim made in accordance with Clause 4.6, Oerlikon Balzers has the right to correct the defect, 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.

4.9 If it is not technically possible to correct the fault, Oerlikon Balzers shall reimburse the Customer of an amount up to the maximum value of the Services relating to the affected Substrates (or an appropriate proportion if only some of the Substrates are affected). No reimbursement or other compensation will be payable in excess of the value of the Services relating to the affected Substrates or where the invoice in respect of the Services is outstanding.

4.10 Where Customer specifications or substrates restrict the ability to correct the fault, Oerlikon Balzers shall not reimburse the Customer.

4.11 No compensation shall be paid by Oerlikon Balzers where the coated Substrates have been processed by the Customer or a third party after coating by Oerlikon Balzers. No re-warranty shall apply to any repaired or remedied coating.

4.12 No warranty is given that the Services or coated Substrates are of any particular quality that will enable the Customer to attain any particular performance or result or will be suitable for any particular purpose or use under specific conditions or will provide any particular capacity, notwithstanding that the requirement for such performance, result or capacity or that such particular purpose or conditions may be known (or ought to have been known) to Oerlikon Balzers, its employees or agents.

4.13 No warranty is given that the Substrates will retain their chemical, physical and other properties following the Balinit thin film coating process.

5. Customer's obligations

5.1 The Customer shall:

5.1.1 ensure that the terms of the Order and any information it provides in the Schedule are complete and accurate;

5.1.2 co-operate with Oerlikon Balzers in all matters relating to the Services;

- 5.1.3 provide Oerlikon Balzers with such information and materials as Oerlikon Balzers may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 5.1.4 obtain and maintain, at its own cost, all necessary licences (including export and import licences), permissions and consents which may be required for the Services (including in respect of the delivery of the Substrates to Oerlikon Balzers) before the date on which the Services are to start;
- 5.1.5 reimburse Oerlikon Balzers for any tariffs or taxes paid by it in connection with the import or export of the Substrates to and from the United Kingdom;
- 5.1.6 ensure that the Substrates are fully insured during the time of performance of the Services, including transit to and from Oerlikon Balzers; and
- 5.1.7 notify any defects in the Balinit Coating in accordance with Clause 4.6.
- 5.2 The Customer acknowledges and shall ensure that the Substrates, once coated, are used in accordance with any relevant information or advice which Oerlikon Balzers may make available to the Customer. Notwithstanding such advice the Customer shall be responsible for compliance with all health and safety laws and regulations in relation to the use of the Substrates.
- 5.3 If Oerlikon Balzers' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 5.3.1 without limiting or affecting any other right or remedy available to it, Oerlikon Balzers shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Oerlikon Balzers' performance of any of its obligations;
- 5.3.2 Oerlikon Balzers shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Oerlikon Balzers' failure or delay to perform any of its obligations as set out in this Clause 5.3; and
- 5.3.3 the Customer shall reimburse Oerlikon Balzers on written demand for any costs or losses sustained or incurred by Oerlikon Balzers arising directly or indirectly from the Customer Default.

6. Charges and payment

- 6.1 The Charges for the Services shall be set out on the Order. The Charges do not include any import duty, licence fees and customs tariffs, delivery charges and packaging which shall be payable by the Customer in addition to the Charges.
- 6.2 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by Oerlikon Balzers to the Customer, the Customer shall, on receipt of a valid VAT invoice from Oerlikon Balzers, pay to Oerlikon Balzers such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.3 If the Charges for the Services are quoted in, or by reference to, a currency other than sterling, the sterling price shall be calculated by Oerlikon Balzers as at the date of the invoice by reference to exchange rates at such date and, in the absence of manifest error, shall be conclusive.
- 6.4 Where a Customer receives a quoted price per unit and subsequently orders less than the number of units upon which the quotation was based, Oerlikon Balzers reserves the right to increase the price per unit and apply a standard minimum invoice charge.
- 6.5 Oerlikon Balzers shall invoice the Customer on completion of the Services. Oerlikon Balzers reserves the right to require payment in full from the Customer before delivery (or allowing collection by the Customer) of the Substrates back to the Customer
- 6.6 The Customer shall pay each invoice submitted by Oerlikon Balzers in sterling within 30 days of the date of the invoice. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Time for payment shall be of the essence of the Contract.
- 6.7 If any of the events in Clause 12.2 occur in relation to the Customer, all outstanding invoices shall automatically become immediately due and payable.
- 6.8 If the Customer fails to make a payment due to Oerlikon Balzers under the Contract by the due date, then, without limiting Oerlikon Balzers' remedies under Clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 6.8 will accrue each day at 2% a year above the Bank of England's base rate from time to time, and at 2% a year for any period when that base rate is below 0%.

7. Delivery

- 7.1 Place of delivery. Unless the Customer notifies Oerlikon Balzers in writing that it will collect the Substrates from Oerlikon Balzers' premises, Oerlikon Balzers shall, at the Customer's risk and cost, deliver or arrange for the delivery of the Substrates to any address in the United Kingdom specified by the Customer. The Customer shall, at its risk and expense, off-load all Substrates and shall be responsible for any expense arising from any delay in such off-loading and shall indemnify Oerlikon Balzers accordingly. The Customer shall be responsible for arranging lifting tackle where required to off-load the Substrates.
- 7.2 Use of carriers. If the Customer does not notify Oerlikon Balzers that it will collect the Substrates, Oerlikon Balzers may use whichever means (including the use of third party carriers) it sees fit to deliver the Substrates. Oerlikon Balzers shall be under no liability arising from its choice of carriers, or from the acts or omissions of such carriers, and the Customer waives all of its rights under section 32(2) of the Sale of Goods Act 1979 (or any similar enactment) in addition to any other rights which are hereby excluded or restricted.
- 7.3 Time of delivery. Oerlikon Balzers shall use all reasonable efforts to deliver the Substrates in accordance with quoted times but such times are estimates only and time of delivery shall not be of the essence. Oerlikon Balzers shall not be liable for any loss or damage arising from late delivery or supply of Services and delay shall not entitle the Customer to rescind the Contract.
- 7.4 Delivery in instalments. Where the Substrates are to be delivered in instalments failure by Oerlikon Balzers to deliver one or more instalment or any claims by the Customer in respect of one or more instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 7.5 Packaging / containers. Where the Substrates are submitted in containers which in the opinion of Oerlikon Balzers are reusable these may be reused for the despatch of coated Substrates to the Customer. Otherwise new packaging may be used and charged to the Customer. Oerlikon Balzers do not accept any liability for subsequent transit damage whilst using Customer supplied packaging.

8. Loss or damage in transit

- 8.1 Inspection. The Customer shall examine the Substrates on their delivery for any damage or shortage.

8.2 Damage and short delivery. Any claim that the Substrates are damaged or short delivered must be communicated to both Oerlikon Balzers and the carrier within 24 hours of delivery.

8.3 Non-delivery. Non-delivery shall be reported to both Oerlikon Balzers and the carrier within 5 working days of the date of despatch notified to the Customer.

8.4 Failure to claim. If the Customer fails to give notice or report in accordance with this Clause 8 all of the Substrates specified in the advice note (or packing list) shall be deemed to have been delivered to the Customer in a satisfactory condition and the Customer shall be bound to pay for the Services in respect of the same.

9. Risk in the Substrates

9.1 Oerlikon Balzers will only accept the risk of loss or damage to the Substrates from the time of delivery to Oerlikon Balzers' premises until the time of their despatch from Oerlikon Balzers' premises back to the Customer.

9.2 Where a third party courier is utilised by Oerlikon Balzers to despatch the Substrates to the Customer, Oerlikon Balzers' liability for damage to any of the Substrates shall be limited to the extent of the value of the Services relating to the affected Substrates.

9.3 Oerlikon Balzers shall not be liable for any loss or damage caused to the Substrates during the provision of the Services unless such loss or damage is caused by Oerlikon Balzers' negligence. Further Oerlikon Balzers shall not be liable where such liability is otherwise excluded by these Conditions.

10. Intellectual property rights

The Customer acknowledges that all Intellectual Property Rights used in connection with its performance of the Services (other than the Intellectual Property Rights in the Substrates) are and remain the exclusive property of Oerlikon Balzers or, where applicable, the third party licensor from whom Oerlikon Balzers derives the right to use them.

11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1 Oerlikon Balzers has obtained insurance cover in respect of its own legal liability and has not been able to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this Clause reflect the insurance cover Oerlikon Balzers has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

11.2 The restrictions on liability in this Clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.3 Neither party may benefit from the limitations and exclusions set out in this Clause in respect of any liability arising from its deliberate default.

11.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

11.4.1 death or personal injury caused by negligence;

11.4.2 fraud or fraudulent misrepresentation; or

11.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.5 Subject to Clause 11.4, Oerlikon Balzers' total liability to the Customer shall not exceed 100% of the amount invoiced to the Customer (excluding VAT) in respect of the value of the Services relating to the affected Substrates which are the subject of the claim.

11.6 The following types of loss are wholly excluded:

11.6.1 losses arising from any of the matters set out in Clause 4.5;

11.6.2 loss of profits;

11.6.3 loss of sales or business;

11.6.4 loss of agreements or contracts;

11.6.5 loss of anticipated savings;

11.6.6 loss of use or corruption of software, data or information;

11.6.7 loss of or damage to goodwill; and

11.6.8 indirect or consequential loss.

11.7 Unless the Customer notifies Oerlikon Balzers that it intends to make a claim in respect of an event within the notice period specified in Clause 4.6, Oerlikon Balzers shall have no liability for that event. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

11.8 This Clause 11 shall survive termination of the Contract.

12. Termination

12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party two months' written notice.

12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

12.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;

12.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.3 Without affecting any other right or remedy available to it, Oerlikon Balzers may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or

12.3.1 there is a change of Control of the Customer.

12.4 Without affecting any other right or remedy available to it, Oerlikon Balzers may suspend the supply of Services under the Contract or any other contract between the Customer and Oerlikon Balzers if the Customer fails to pay any amount due under

the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 12.2.2 to Clause 12.2.4 or Oerlikon Balzers reasonably believes that the Customer is about to become subject to any of them.

13. Consequences of termination

13.1 On termination of the Contract:

13.1.1 the Customer shall immediately pay to Oerlikon Balzers all of Oerlikon Balzers' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Oerlikon Balzers shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

13.1.2 Oerlikon Balzers shall return all of the Substrates to the Customer at the Customer's cost and risk.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

14. Consumer protection and indemnity

14.1 The Customer shall indemnify and keep indemnified Oerlikon Balzers in full against all direct and indirect losses, damages, costs, actions, claims, demands, fees and other expenses and liabilities whatsoever suffered or incurred by Oerlikon Balzers as a result of:

14.1.1 the Substrates being (whether in whole or in part and directly or indirectly) involved in a claim under the Consumer Protection Act 1987 except to the extent that the alleged defect in the Substrates the subject of such claim was directly caused by an act or omission or the negligence of Oerlikon Balzers;

14.1.2 the Substrates supplied by the Customer for coating by Oerlikon Balzers not complying with the Schedule;

14.1.3 the Substrates losing any of their chemical, physical or other properties as a result of the Balinit thin film coating process; and

14.1.4 Oerlikon Balzers unknowingly coating Substrates for uses or applications for which Oerlikon Balzers states in the Schedule it is unwilling to apply such coating.

14.2 Where the services are supplied under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.

15. Force majeure

15.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

15.1.1 acts of God, flood, drought, earthquake or other natural disaster;

15.1.2 epidemic or pandemic;

15.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

15.1.4 nuclear, chemical or biological contamination or sonic boom;

15.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

15.1.6 collapse of buildings, fire, explosion or accident; and

15.1.7 interruption or failure of utility service.

15.2 Provided it has complied with Clause

15.3, if Oerlikon Balzers is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, Oerlikon Balzers shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. 15.3 Oerlikon Balzers shall:

15.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

15.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.4 If the Force Majeure Event prevents, hinders or delays Oerlikon Balzers performance of its obligations for a continuous period of more than 8 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' written notice to Oerlikon Balzers.

16. Assignment and other dealings

16.1 Oerlikon Balzers may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. 16.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Oerlikon Balzers.

17. Confidentiality

17.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 17.2.

17.2 Each party may disclose the other party's confidential information:

17.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 17; and

17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

18. Entire agreement

18.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.3 Nothing in this Clause shall limit or exclude any liability for fraud.

19. Notices

19.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the address specified in the Order.

19.2 Any notice or other communication shall be deemed to have been received:

19.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

19.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

19.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 19.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

19.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

20. General

20.1 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

20.2 Data Protection. Both parties will comply with all applicable requirements of the Data Protection Legislation.

20.3 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.

20.6 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

20.7 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.