

Oerlikon Balzers offers, services and deliveries will be provided solely on the basis of these General Terms and Conditions. These also apply to all and any future business relationships even if not separately agreed at such time. Oerlikon Balzers does not recognise, and will not be bound by, any diverging terms and conditions employed by the customer. Such diverging terms and conditions will not be binding even if the customer issues counter-confirmations, including without limitation the acceptance of an offer submitted by Oerlikon Balzers Coating, and in doing so refers to its own terms and conditions. The same shall apply if Oerlikon Balzers performs any service or delivery, or accepts any payments, subject to no reservation. No derogation from these Terms and Conditions shall be valid unless confirmed in writing by Oerlikon Balzers Coating. Any waiver of this or any other written form requirement under these General Terms and Conditions shall require the written form to be valid.

#### **I. Offer, Technical Documents**

1. Oerlikon Balzers offer is subject to change without notice and is not binding unless otherwise stated in the order confirmation. An order will only be accepted by Oerlikon Balzers Coating' written confirmation (order confirmation). The order confirmation is decisive for Oerlikon Balzers scope of services. If the order confirmation contains any derogation from the offer, such derogation shall be deemed agreed only upon express written confirmation. Collateral agreements and changes need to be confirmed in writing by Oerlikon Balzers Coating. If an order is not confirmed by Oerlikon Balzers Coating, the delivery note created by Oerlikon Balzers after filling the order and/or the invoice shall be deemed an order confirmation.
2. Any information given in brochures, catalogues and technical documents are not binding save where these were expressly designated as binding in the order confirmation in accordance with Sec. I 1. Oerlikon Balzers reserves its ownership rights and copyrights in any illustrations, drawings, cost estimates and other documents. Absent written approval, no documents may be made available in whole or in part to any third parties or may be used beyond the purpose for which they were submitted to the customer.

#### **II. Placing of Orders**

1. When placing an order, the customer shall provide all and any information that is important for Oerlikon Balzers in relation to the goods provided by the customer and to be coated by Oerlikon Balzers (hereinafter also referred to as the "Items Provided"), such as article description, number of items, measurements, material, material number and/or material composition, any preparatory treatment, and provisions applicable to the surfaces to be coated, coating specifications, heat treatment, international standards and itemised value of the Items Provided. This also includes information on any other treatment specifications and requirements for the storing of the Items Provided.
2. Any changes in the material composition and in the preparatory treatment, if any, of the Items Provided (including without limitation heat treatment) must be notified to Oerlikon Balzers in good time.
3. Oerlikon Balzers is entitled to obtain from the customer any supplementary information that appears necessary for the proper treatment and coating of the Items Provided.

#### **III. Scope of Services, Changes to Services, Coating Centre**

1. The order confirmation conclusively lists Oerlikon Balzers Coating' services. Where there is no order confirmation respectively where Oerlikon Balzers Coating' delivery note and/or invoice is deemed an order confirmation in accordance with Sec. I (1) above, the order placed by the customer shall be decisive if no objections have been raised thereto.
2. Oerlikon Balzers reserves the right to modify the content of the service appropriately at any time where the customer did not, prior to or upon concluding the contract, provide the information, or provided incomplete or incorrect information pursuant to Sec. III (1) above as required for the making of a final offer by Oerlikon Balzers Coating. Any costs or delays resulting from such incorrect or incomplete information shall be charged to the customer.
3. To the extent this can reasonably be required of the customer, Oerlikon Balzers reserves the right to perform the coating of the Items Provided in a Oerlikon Balzers coating centre other than the centre accepting the order, without additional cost to the customer. Such change of the coating centre may be considered in particular if
  - the other coating centre is more suitable in the individual case;
  - the coating centre accepting the order cannot reasonably be expected to perform the service, or the service cannot be performed by it;
  - the coating centre accepting the order is unable, due to unforeseeable circumstances for which it is not responsible, to perform the service; or
  - for other reasons which are not unreasonable for the customer.

#### **IV. Impossibility of Performance**

1. If it is impossible for Oerlikon Balzers to perform as agreed, both parties may withdraw from the contract.
2. To the extent that the impossibility of performance, or the deterioration or perishing thereof is due to a circumstance for which the customer is responsible, Oerlikon Balzers shall have a claim to receive the appropriate compensation for the services already performed by it, and expenses incurred by it. Any further claims Oerlikon Balzers may have against the customer shall not be affected thereby.

#### **V. Delivery of Goods and Incoming Inspection**

1. The customer shall when delivering the Items Provided and to be coated by Oerlikon Balzers in accordance with the individual order or in accordance with the order confirmation state the number, description and value of the goods on an accompanying document (delivery note). Furthermore, the goods shall be accompanied by all information required for coating them, in particular detailed treatment specifications. This also applies to any special requirements for the storage of highly sensitive substrates that may have to be observed; Oerlikon Balzers shall receive a separate, appropriate remuneration for the observance of such requirements unless this had been expressly agreed in writing. For any deliveries from abroad, furthermore, the following information is required, to be indicated on a pro forma invoice: individual price and total value, number of packaging items, gross and net weight, country of origin of the goods, type of transport when delivered and requested type of transport for return of goods, if transport has been agreed. To the extent that it has been contractually agreed that Oerlikon Balzers pick up the goods, the above information shall be enclosed with the Items Provided and to be coated, duly packed and ready for transport.
2. Oerlikon Balzers accepts no liability for any loss, delay in delivery, confusion etc. arising as a result of inaccurate labelling and identification of the goods by the customer, its forwarding agent etc.
3. The goods delivered shall be labelled by the customer in an appropriate manner, shall correspond to the specifications and drawings agreed in the order and shall be in a condition capable of being coated. A condition where items are not capable of being coated shall be deemed to exist in particular in those cases in which Oerlikon Balzers Coating' liability is excluded in accordance with Sec. XI (4) below.
4. The goods delivered by the customer for the purpose of being coated are subject to an incoming inspection by Oerlikon Balzers Coating, which shall be restricted to a rough check (freedom from external damage, identity, quantity). Any defects found to exist shall be notified to the customer immediately.
5. Any goods delivered which do not meet the above requirements may be returned by Oerlikon Balzers at the customer's cost and risk. Oerlikon Balzers reserves to exercise its rights under Sec. III (2) and Sec. IV. The customer is obliged to refund any damage, including lost profits, which arises due to the fact that Items Provided were not capable of being coated.

#### **VI. Prices and Terms of Payment**

1. Unless otherwise specified in Oerlikon Balzers Coating' order confirmation, the price list applicable at the time performance is being rendered shall apply to any materials, staff and incidental costs, in each case plus statutory VAT as applicable from time to time. Any services or deliveries not listed in the order confirmation shall be invoiced separately. This shall also apply to any additional expenses required to be incurred in the rendering of the performance due to any circumstances for which the customer is responsible.
2. Unless otherwise agreed, the prices quoted are "**ex works**", i.e. ex "Oerlikon Balzers centre completing the order", not including transport insurance, packaging or other duties (customs duties, fees).
3. Oerlikon Balzers is entitled to demand a reasonable advance payment upon conclusion of the contract. Invoices for advance payments and all other invoices are due for payment immediately upon receipt by the customer, subject to no deductions, and shall be paid within **10 days** from

the date of the invoice. Bills of exchange and cheques will be accepted in payment only, subject to Oerlikon Balzers Coating' consent. They will only be deemed a payment following unconditional credit of the relevant amount. Any costs and expenses shall be borne by the customer.

4. The customer is not entitled to any rights of setoff, save where its counter-claims have been accepted by Oerlikon Balzers Coating, are undisputed or have been recognised by declaratory judgment. The customer shall only have a right of retention if its counter-claim is based on the same contractual relationship, and is accepted, undisputed or recognised by declaratory judgment, or if Oerlikon Balzers has materially breached its duties under the same contractual relationship in spite of having received a written warning, and has not offered reasonable security.
5. If invoices due for payment are not paid within **10 days** from the date of the invoice, the customer shall be in default even with no reminder being sent. In such case of default, Oerlikon Balzers is entitled, subject to any further rights it may have, to invoice the customer for default interest at a rate of 8% p.a. above the base rate applicable from time to time.
6. No interest shall be paid on any advance payments made.
7. The agreed payment dates shall remain in effect even if a delay occurs in delivery for which Oerlikon Balzers is not responsible.
8. Oerlikon Balzers reserves the right to reasonably adapt its prices if reductions or increases in cost, in particular due to collective bargaining agreements or changes in materials prices or manufacturing costs, occur after the conclusion of the contract.
9. Oerlikon Balzers reserves the right to modify its prices respectively to invoice additional services if
  - changes occurred in the coating material or in the processing of the goods because the information and documents provided by the customer did not correspond to the factual circumstances or were incomplete; or
  - the type or scope of the services set forth in the order confirmation were modified at the customer's request.

If the necessity to provide such additional services arises prior to the commencement of the coating process (e.g. special preparatory treatment or special mountings), Oerlikon Balzers shall notify the additional costs to the customer prior to commencing the coating process.

#### **VII. Transport, Packaging and Insurance, Storage**

1. At the customer's request, Oerlikon Balzers shall perform the pickup and delivery of the goods at the customer's cost and risk. Transport shall at the customer's request be covered by a transport insurance the cost of which shall be borne by the customer. Any special requirements the customer may have with regard to shipment, transport and transport insurance shall be made known in good time.
2. Any objections concerning shipment or transport shall be raised by the customer upon receipt of the goods or freight documents immediately with the last haulage contractor.
3. If the packaging delivered cannot be used for the return transport, any packaging supplied by Oerlikon Balzers shall be invoiced to the customer.
4. The Items Provided shall be kept carefully while they remain in the Oerlikon Balzers centre, and shall be treated with the same care which Oerlikon Balzers applies in its own affairs. Unless otherwise agreed in writing, Oerlikon Balzers shall in particular not be liable for any damage that may occur through the storage of the goods in spite of reasonable care having been applied (rust stains etc.). Oerlikon Balzers shall pay a compensation for damage caused to the Items Provided only if Oerlikon Balzers is under an obligation to do so under Sec. XIII below. Any further liability is excluded. Oerlikon Balzers is not obliged to take out insurance. This shall apply unless expressly agreed otherwise in writing; and, in this case, at the customer's cost.

#### **VIII. Time Limits and Dates**

1. Time limits and dates specified by Oerlikon Balzers will be binding only if expressly designated as binding in writing, and if such were specified with Oerlikon Balzers being aware of all circumstances material to the rendering of its services. The observance of Oerlikon Balzers Coating' obligation to deliver shall be conditional, in particular, upon the customer's obligations being fulfilled duly and in good time. The defence of non-performance of the contract is reserved. Time limits and dates specified as binding by Oerlikon Balzers in writing may be reasonably modified unilaterally if it turns out that they were based on Oerlikon Balzers Coating' ignorance of material circumstance, for which ignorance Oerlikon Balzers is not responsible.
2. If the customer is in default of acceptance or if it negligently infringes any other duties to cooperate, Oerlikon Balzers is entitled to demand that it be compensated for the damage suffered by it in connection therewith, including any additional expenses incurred by it. Further claims are reserved.
3. If the rendering of the service is delayed by measures taken within the framework of any industrial action, in particular strike or lockout or other circumstances for which Oerlikon Balzers is not responsible, including at Oerlikon Balzers Coating' sub-contractors, then the time limits and dates shall be extended or postponed as appropriate to the extent it can be proven that such obstacles materially affect the completion of the services. This shall also apply if such circumstances arise after Oerlikon Balzers is already in default. If the extension or postponement of the time limits and dates exceeds a period of six weeks, both parties are entitled to withdraw from the contract with regard to the scope of service concerned thereby, with all other claims being excluded in such case.
4. If the customer suffers a damage which can be proven to be a result of Oerlikon Balzers Coating' default, the customer is entitled to demand that it be compensated for such damage, up to an amount of 0.3% for each full week of delay but no more than 5% of Oerlikon Balzers Coating' price for the services performed on those goods which cannot, due to such delay, be utilised in good time. Oerlikon Balzers is in any event entitled to prove that no damage occurred, or that the damage that occurred was considerably lower. Further claims of the customer are excluded, save where the default is due to wilful intent, gross negligence or the breach of a material contractual obligation.

If the customer stipulates a reasonable grace period during Oerlikon Balzers Coating' default, and if such grace period is not observed, then the customer is entitled to withdraw from the contract, with all further claims being excluded and subject to the provisions of Sec. XIII.

#### **IX. Acceptance and Passage of Risk**

1. The customer is obliged to effect acceptance as soon as it was notified of the completion of Oerlikon Balzers Coating' services. If the customer fails to accept the service within 2 weeks from such notification, acceptance shall be deemed performed to the extent the notification pointed out this fictitious effect. Acceptance shall be deemed effected even if the customer refuses acceptance without being entitled to do so.
2. The risk of a destruction or loss of or damage to the goods shall pass to the customer upon their being shipped, or in case the goods are being picked up by the customer, upon their being made available for pickup, or in cases of Sec. VIII (2) at the time at which the customer is in default of acceptance or debtor's delay.
3. If the customer fails to observe a date or time limit set by Oerlikon Balzers for picking up any items owned by it, then Oerlikon Balzers may from this date or from the expiry of this time limit demand appropriate storage charges for storing the customer's items. In such case, Oerlikon Balzers is also authorised to freely choose another suitable place for storing such items and to have the Items Provided insured, it being understood that this shall always be solely at the customer's cost and risk.

#### **X. Reservation of Title, Lien**

1. Oerlikon Balzers reserves its title to all and any parts and auxiliary materials used by it until all outstanding claims under the business relationship with the customer have been satisfied. The customer is entitled, in the ordinary course of business, to dispose of the item on which Oerlikon Balzers Coating' services were performed; in such case, the claim arising in connection with such disposal shall be deemed assigned to Oerlikon Balzers in a proportion that corresponds to the relationship between the value of Oerlikon Balzers Coating' services secured by the extended reservation of title and the total value of the item disposed of.
2. As regards all and any claims arising under the contract, Oerlikon Balzers is entitled to a right of lien over all and any items owned by the customer which have come to be in Oerlikon Balzers Coating' possession. This right of lien may also be asserted in connection with claims based on work previously performed, spare parts delivered or other services rendered to the extent such are related to the Items Provided. The right of lien shall apply to other claims arising from the business relationship if these are undisputed or have been recognised by declaratory judgment.

**XI. Warranty Claims and Inspection of Goods**

1. Oerlikon Balzers undertakes a warranty for all and any defects existing at the time of the passing of the risk save where such defect is due to any circumstance for which the customer is responsible; this shall apply in particular with regard to the parts provided by the customer.
2. Oerlikon Balzers does not undertake a warranty for the preservation of the prescribed mass of the Items Provided.
3. The customer shall have no claims based on defects where the Items Provided were improperly modified by the customer or by any third parties without Oerlikon Balzers Coating' prior written consent or if the Items Provided are used or processed irrespective of the defect.
4. Moreover, no claims based on defects shall exist
  - for any differences or damage attributable to any missing, incorrect, incomplete or inaccurate information provided by the customer when placing the order or attributable to treatment specifications which Oerlikon Balzers designated as being unsuitable prior to performing the order;
  - for any damage attributable to the fact that the goods provided were of an unsuitable nature (faulty materials, deviations from measurements, surface treatments, processing residues or other foreign objects, defects due to workmanship, improper heat treatment, rust stains, non-removable residues, soldered joints etc.); this shall apply only if the fact that the nature of the Items Provided was unsuitable for coating was not obvious to Oerlikon Balzers Coating;
  - for the becoming evident of any stains or other faults that were not visible prior to coating, owing to the heightening of contrast in the coating process;
  - for any reduction in corrosion resistance of stainless steel caused by coating;
  - and 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 contract of the electrolytic environment prevailing at the place where the Items Provided and to be coated are to be deployed.
5. Unless expressly stated otherwise in Oerlikon Balzers Coating' order confirmation, Oerlikon Balzers shall in particular not be liable for the coated Items Provided being suitable for any use other than the customary use or their fulfilling any further expectations of the customer.
6. The defects shall be removed by subsequent performance, at Oerlikon Balzers Coating' option in the form of a subsequent improvement or new production. In the event of such subsequent performance, all and any expenses required to be incurred to remove the defects (transport, cost of travel, work and materials) shall be borne by Oerlikon Balzers unless such costs are increased owing to the fact that the Items Provided were taken to a place other than the place of performance. If subsequent performance is not possible or has failed for technical reasons, or if subsequent performance is not rendered within a reasonable period of time stipulated by the customer, for which Oerlikon Balzers is at fault, then the customer has a right to a reduction in price. A withdrawal from the contract is not admissible other than for material defects for which Oerlikon Balzers is responsible. In multiple delivery contracts, only a partial withdrawal may be considered, relating to the defective partial delivery, unless adherence to the contract as a whole is unreasonable. Any further claims of whatever kind are excluded, notwithstanding Sec. XIII.
7. The customer's claims based on defects are subject to the customer examining the delivered Items Provided pursuant to Sec. 377 of the German Commercial Code (*HGB*) and immediately notifying any defects in due form. Obvious defects shall be notified within 3 working days from delivery, hidden defects, immediately upon their being discovered. Such notifications of defects shall be made in writing, with the defect being specified. Claims based on defects become statute-barred one year from the passing of the risk.
8. To the extent that any claims based on defects are being asserted with regard to coated wearing parts, Oerlikon Balzers Coating' liability for defects shall not exist in the case of normal wear and tear. In case of doubt, it is incumbent upon the customer to show that the event is not normal wear and tear.
9. Prior to shipment, Oerlikon Balzers shall examine the coated goods to the customary extent. If the customer requires any more detailed examinations, such shall be separately agreed and paid by the customer. Goods delivered whose coating is faulty within the functional surface will be separated out and marked by a red "faulty" ribbon. No coating services will be invoiced for these goods.

**XII. Liability Arising from Warranty of Title**

1. Oerlikon Balzers Coating' liability arising from warranty of title shall be governed by Sec. XI and the following provisions:
2. Oerlikon Balzers Coating' liability for any infringements of industrial property rights in connection with the utilisation of the coated Items Provided in any industrial processes or their conditions of utilisation, or in connection with the joining of the coated Items Provided to any other products, or their use with any other products, is excluded.
3. To the extent that the combination coat-Item Provided infringes any industrial property rights, Oerlikon Balzers shall be liable only if such infringement was apparent for Oerlikon Balzers on the basis of the information on the Item Provided submitted by the customer upon the conclusion of the contract, or could have been noticed.
4. In the event of any defects in title, Oerlikon Balzers shall be entitled, in addition to its rights under Sec. XI, at its option,
  - to obtain the required licences relating to the infringed industrial property rights;
  - or to remedy the infringement caused by the coated Item Provided by making available a coated Item Provided and modified to a degree reasonable for the customer (i.e. coating with another coat which is as suitable).
5. Subject to Sec. XIII, any further claims of whatever nature are excluded.
6. The customer is obliged to immediately notify Oerlikon Balzers in writing of any claims asserted by third parties and to reserve the right for Oerlikon Balzers to perform all and any defensive measures and settlement negotiations.

**XIII. Liability**

1. The customer may not assert against Oerlikon Balzers any further claims for compensation in excess of the claims granted to it in these Terms and Conditions, in particular no claims for damages, and no claims arising from any non-contractual liability (with the exception of claims covered by Secs. 1 and 4 of the German Product Liability Act [*Produkthaftungsgesetz*]), nor any other rights relating to any disadvantages in connection with the contractual performance, regardless of the legal ground on which such claims may be founded. This exclusion of liability does not apply to the liability for any injury to life, body or health. The exclusion moreover does not apply if the damage was caused by Oerlikon Balzers Coating' wilful intent or gross negligence or the negligent infringement of a cardinal duty or material contractual duty.

In the event of the infringement of a cardinal duty or material contractual duty, the duty to compensate shall be restricted in each case to the foreseeable damage. The customer shall advise Oerlikon Balzers of any particular risks, any possible atypical damage and unusual damage amounts in writing prior to concluding the contract.
2. To the extent that Oerlikon Balzers Coating' liability is excluded or restricted in accordance with the above, the customer is obliged to hold Oerlikon Balzers harmless from any third party claims upon first request.

**XIV. Place of Jurisdiction**

The place of jurisdiction for all and any disputes arising out of the contractual relationship shall be Bingen. Oerlikon Balzers may also bring the case before the court where the customer has its place of residence of business. Even for transactions abroad, solely German law shall apply, with the UN Sales Convention being excluded. Should any provision of these General Terms and Conditions be or become invalid, this shall not affect the validity of any other provisions or agreements.