

OERLIKON GROUP General Terms and Conditions for Purchase and Ordering of Products and Services

Oerlikon Group General Terms and Conditions for purchasing and ordering of products and services (the "Group GT&C") shall apply to all contractual relationships between the Supplier and the Ordering Party (the "Parties"), respectively as defined below.

1. Definitions and Applicability

1.1. The following defined terms shall have the following meanings:

"Contract" shall mean the contract between the Supplier and the Ordering Party consisting of these Group GT&C and the Purchase Order.

"Contract Price" shall mean the total sum set forth in the Contract to be paid by the Ordering Party to the Supplier for the due and timely delivery of the Products.

"Ordering Party" shall mean any affiliates of OC Oerlikon Corporation AG, Pfäffikon.

"Product" shall mean any equipment, instruments, materials, articles, documentation, packaging, computer hardware and software and items of all kinds to be provided by the Supplier under the Contract.

"Purchase Order" and "PO" shall mean the purchase order to which these Group GT&C apply, issued by the Ordering Party to the Supplier for the Products or Services (including all documents belonging to the Purchase Order, if any) and excluding other general terms and conditions of purchase of the Ordering Party if referred to in the PO.

"Service" shall mean the service required by the Ordering Party and provided by the Supplier.

"Supplier" shall mean the person supplying Products and Services to the Ordering Party pursuant to the Contract.

1.2. In case of conflict between these Group GT&C, the PO and any other documents belonging to the PO or referred to in the PO (such as other general terms and conditions of purchase of the Ordering Party), the documents shall be interpreted and prevail in the following order: (i) the PO including other documents included in the PO (excluding any reference to other general terms and conditions of purchase of the Ordering Party), (ii) these Group GT&C, (iii) other general terms and conditions of the Ordering Party (if referred to in the PO).

1.3. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Contract.

1.4. Any general terms and conditions of the Supplier are herewith rejected, unless the Ordering Party has expressly agreed thereto in writing.

1.5. If any provision of the Contract is held to be invalid, illegal or unenforceable under applicable law, all other provisions shall remain in full force and effect.

- 1.6. Except where the Contract expressly states otherwise, any amendments, alterations or variations to the Contract shall be binding only if in writing and signed by duly authorized representative of the Ordering Party and the Supplier.

2. Order

The Supplier shall acknowledge acceptance of the PO within 5 days after receipt thereof. In case the Supplier fails to respond within such period the PO shall be deemed accepted. In any event, (i) the Supplier's commencement of performance in any manner, (ii) sending of an invoice or (iii) acceptance of any payment in relation to the PO, shall constitute unconditional acceptance of the PO.

3. Terms of Payments

- 3.1. The Contract Price shall be firm and fixed. Unless otherwise agreed in the PO, the Contract Price includes all levies, taxes, fees and duties applicable to the performance of the Service or the delivery of the Product at the named destination and the Supplier shall promptly pay all such taxes, fees or duties and immediately indemnify the Ordering Party if the Ordering Party is called upon to pay the same. The Contract Price also includes the cost of packaging.
- 3.2. Any payment shall be made in accordance with the terms specified in the PO. Unless agreed otherwise in the PO, the Supplier shall be entitled to invoice for payment for the Products and Services only when delivery of the Products or performance of the Services has occurred in accordance with the Contract. Payments due by the Ordering Party shall then be made within and in accordance with the terms of payment specified in the PO. The Ordering Party shall not be under any obligation to make any payment if the Supplier is in breach of the Contract and for so long as such breach continues. Payment by the Ordering Party shall not be deemed to constitute an acceptance of the Product or Service.
- 3.3. The invoice shall at least include the Supplier's reference number, the date and number of the PO, the payment due date, the quantity and Product reference or description of Services performed, the date of the delivery or performance, the agreed price.

4. Inspection and Quality Assurance

- 4.1. The Supplier shall implement an appropriate and recognised quality assurance programme and conform to the agreed technical specifications and any quality requirements specified in the PO.

The Supplier shall conform to the Work Instruction - P.Q. 6.2 Supplied Parts Quality Assurance applicable from time to time (available in the Ordering Party web site: www.oerlikon.com/graziano) as well as all the Engineering Specifications and other Work Instructions as indicated in the P.Q. 6.2.

- 4.2. The Ordering Party has the right to inspect the work in progress. Any inspection shall not relieve the Supplier from any liability nor imply the Ordering Party's acceptance of the Product.
- 4.3. The Supplier shall inspect the quality of the Products before delivery.

- 4.4. The Supplier shall notify the Ordering Party in writing at least 6 months (or a different reasonable term agreed with the Ordering Party depending on the changes in order to enable the Ordering Party to carry out all due analysis) in advance of any intention to make changes of materials or parts provided by sub-suppliers for the Products, changes in the production methods, the relocation of production sites and changes in the analysis methods used for and in connection with the Products. Such changes require prior written approval of the Ordering Party.

5. Packaging and Delivery

- 5.1. Products shall always be packed so as to exclude the possibility of damage from applicable transport and storage handling.
- 5.2. The delivery terms set out in the PO are binding. In case the delivery terms are not expressly stated in the PO then the delivery terms shall be FCA according to the INCOTERMS. Any deviation from the agreed delivery terms requires the written approval of the Ordering Party.
- 5.3. The Products shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation, regardless of whether mentioned or described in the specifications set forth in or related to the PO.
- 5.4. The risk of loss of or damage to the Product shall pass from the Supplier to the Ordering Party upon delivery of the Product at the named destination in accordance with the INCOTERMS or in the event that INCOTERMS are not applicable at the named destination.

6. Delays

- 6.1. The Supplier shall notify the Ordering Party immediately in writing if any delivery or performance is delayed or likely to be delayed beyond its specified date.
- 6.2. Except with prior written consent of the Ordering Party, if the performance of the Service or delivery of the Product at the named destination is delayed beyond the performance date or delivery date, the Supplier shall be liable for liquidated damages without prejudice to the Ordering Party's right to claim compensation from the Supplier for any additional damage arising out of or in connection with the delay. Unless stated otherwise, the liquidated damages due by the Supplier for a delay shall be 1% of the Contract Price for each commenced week of delay up to a maximum of 10% of the Contract Price without any requirement to prove actual damage.
- 6.3. The liquidated damages shall be due from the time that such liquidated damages are claimed and may be deducted by the Ordering Party from the invoiced purchase price. The payment of any liquidated damages does not release the Supplier from its duty to deliver the Products or perform the Services.
- 6.4. The Ordering Party may arrange for substitute performance by a third party or undertake performance itself at the expense of the Supplier if a further deadline for performance has expired. If any materials are necessary for such substitute performance and the Supplier is in possession of such materials, such materials shall be provided to the Ordering Party without delay. In so far as any industrial property rights limit any delivery or performance by a third party, the Supplier shall provide all necessary declarations in order to make such rights available.

- 6.5. Nothing herein shall be deemed to limit any other remedy that may be available to the Ordering Party, nor shall the Ordering Party's enforcement of any other rights it may have be deemed or construed to affect or waive any of its rights hereunder.
- 6.6. Neither Party shall be liable for any delay or failure to perform due to an event of force majeure, which shall include governmental action, war, civil disturbance, riot, general lockout and strike, sabotage, embargo, natural disaster, or any other unforeseen condition beyond the control of either Party, and not due to its negligence or misconduct. The Party suffering an event of force majeure shall provide the other Party with prompt written notice and shall be excused from performing its obligations for so long as conditions persist, provided that, the suffering Party shall made any reasonably possible effort to recover the force majeure event and its consequences. If requested by the other Party, the suffering Party shall, within ten (10) days following the other Party's request, provide adequate assurances that the delay shall not exceed thirty (30) days. If a force majeure event lasts for a period of thirty (30) days or more or no adequate assurances can be provided by the suffering Party as set out above, the other Party shall have the right to terminate the Contract with written notice to the suffering Party without liability.

7. Environment, Health and Safety

- 7.1. The Supplier represents and warrants that the Products shall not include any hazardous and/or contaminated substances, elements or waste of any kind (such as arsenic, asbestos, lead) that are restricted by law or regulation at the place of origin and/or final destination of the Product or any part thereof pursuant to the Contract.
- 7.2. The Supplier represents and warrants that the Products and Services are in strict compliance with all applicable health and safety requirements. The Ordering Party is entitled to demand evidence if there is reason to assume the health and safety requirements are not complied with.
- 7.3. The Supplier must be a certified member of a supply chain security program (such as AEO in the European Union or C-TPAT in the USA) or must have equivalent supply chain security measures in place in order not to disrupt the Ordering Party's security supply chain.
- 7.4. The Supplier represents and warrants that the Products shall not include any substance otherwise prohibited or restricted under, as applicable, Regulation (EC) No 1907/2006 ("REACH") and/or Section 6 of the U.S. Toxic Substances Control Act ("TSCA").

8. Export Control and Foreign Trade

- 8.1. The Supplier agrees that it will fully comply with all applicable laws and regulations including, without limitation, all applicable export control regulations, included but not limited all applicable regulations related to Conflict Minerals (i.e., natural resources extracted in a conflict zone and used to finance and perpetuate conflicts). In addition, the Supplier agrees that it will fully comply with all applicable policies from the Ordering Party, including without limitation, all applicable export control policies.
- 8.2. The Supplier will provide, for each line item in all trade documents, full correct data required for export control purpose such as export control classification number, country of origin and HS number. For Products which do not fall under international export controls, the Supplier shall provide a clear statement per line item confirming that no export controls apply. In

addition, the Supplier shall provide to the Ordering Party the relevant preferential trade documents or statements relating to import duties needed by the Ordering Party in accordance with the applicable preferential trade agreements. The Supplier shall provide to the Ordering Party, if applicable, a long term declaration for preferential trade purpose at the end of each year without prior written request.

- 8.3. The Supplier agrees that it will not export, re-export, sell, resell or transfer any data or any export-controlled commodity, technical data or software provided under this Contract (i) in violation of any law, regulation, order, policy or other limitation imposed by any government authority with jurisdiction; or (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or equivalent.
- 8.4. In the event that any of the Product, technology, data or information provided under this Contract is or becomes classified or listed as subject to export or re-export restrictions in the context of applicable export regulations, the Supplier shall immediately inform the Ordering Party in writing of such export control requirements, and if requested, the Supplier will provide other relevant export control information and documentation. In the event of Supplier's failure to comply with the above, Supplier shall hold the Ordering Party fully harmless from all damages arising out of or in connection with any violation.

9. Intellectual Property Rights

- 9.1. All information and know-how including drawings, specifications and other data provided by the Ordering Party in connection with the Contract as well as any documents or data shall remain at all times the property of the Ordering Party and may be used by the Supplier only for the purpose of performing the Contract. Any such information and documents are confidential information and subject to Clause 13 (*Confidentiality*).
- 9.2. The Supplier shall not copy, reproduce or use the Products or any information and know-how provided by the Ordering Party, nor give them or allow their use by a third party, without the Ordering Party's written permission.
- 9.3. The Supplier warrants that no third party intellectual property rights have been infringed by the production, delivery or operation of the Products or the performance of the Services and the Supplier shall indemnify and hold harmless the Ordering Party against any claims by third parties resulting from any infringements of intellectual property rights.
- 9.4. The Supplier shall grant the Ordering Party and the customers or end-users of the Ordering Party the irrevocable, perpetual, royalty free and unrestricted worldwide right to use all systems, programmes, documentation, know-how or other intellectual property rights related to or embodied into the Service or Product delivered to the Ordering Party.
- 9.5. All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items furnished by Ordering Party, either directly or indirectly, to the Supplier to perform the Contract, or for which the Supplier has been reimbursed by Ordering Party, shall be and remain property of the Ordering Party and held by the Supplier on a bailment basis. Supplier shall bear any and all risk of loss and damage to Ordering Party's property. Ordering Party's property shall at all times be properly housed and maintained by Supplier, at its expense, shall not be used for any purpose other than the performance of this Contract. Ordering Party's property (i) shall be marked by Supplier as the property of the Ordering Party, (ii)

shall not be moved from Supplier, and (iii) shall be duly recorded. Upon request by the Ordering Party, Ordering Party's property shall be immediately released or delivered to the Ordering Party.

10. Warranties and Liabilities

10.1 The Supplier expressly warrants that:

(i) the Service and Product will be new, that the Product will be constructed, and the Service will be performed, in a safe and workmanlike manner by qualified and efficient personnel and be of the highest professional quality;

(ii) the Service and Product will be of good and satisfactory quality and fit for the purposes for which it is intended, in strict conformity with all requirements of the Contract and free from any defect or lack of conformity;

(iii) the Service and Product have been tested and controlled and meet all industry standards and all legal requirements under existing laws, regulations and directives relating to design, safety, fire and environmental protection; and

(iv) the Service and Product have been designed in a manner not to endanger life and health if the Service and Product are used as directed.

10.2. The Ordering Party is not obliged to inspect the Services or Products for defects or notify the Supplier of defects or non-conformity in order to maintain the Ordering Party's warranty claims except for warranty claims in respect of obvious defects.

10.3. In case of defect the Ordering Party is entitled to:

(i) to demand proper performance of the Contract by the Supplier, or

(ii) to remedy itself the defect and demand the Supplier for reimbursement of the incurred expenses occurred in the necessary remedial measures, or

(iii) to rescind the Contract or claim reduction of the purchase price, or

(iv) to demand damages in lieu of performance of the Contract.

10.4. The warranty in respect of each Product delivered by the Supplier or Service performed by the Supplier shall survive for a period of 36 months from the date the Product is delivered or the Service is performed or 24 months from usage whichever is later. The Supplier shall be liable for all damages, including consequential damages, caused by the breach of any warranty applicable to the Product or the Service.

10.5. The Supplier shall indemnify, hold harmless and defend the Ordering Party from and against claims, liabilities and expenses (including legal fees) arising out of or in relation to the performance or non-performance of the Contract and resulting in bodily injury or death or damage to or destruction of third-party property.

11. Insurance Coverage

- 11.1. The Supplier shall obtain and maintain in full force and effect a commercial general liability and product liability insurance to cover all claims or otherwise related to the Service or the Product. Unless otherwise agreed between the Ordering Party and the Supplier, such insurance shall provide coverage of at least the greater of CHF 3 million per damage event. Evidence shall be produced by the Supplier at least once per year.
- 11.2 The transport insurance shall be arranged in accordance with the delivery terms.

12. Service, Repairs and Obsolete Products

- 12.1. The Supplier shall provide a repair and maintenance service staffed by qualified technical experts for each Product delivered to the Ordering Party for a period of at least 10 years.
- 12.2. The Supplier warrants the availability of original spare parts for each Product delivered to the Ordering Party for a period of 10 years after delivery. In case the Supplier is unable to provide original spare parts to the Ordering Party during this period the Supplier is obliged to notify the Ordering Party thereof in writing 6 months in advance and give the possibility to the Ordering Party to place a last call order with respect to such Products.

13. Confidentiality

The Supplier shall not use for any purpose not authorized by the Ordering Party or shall not disclose to any third party any trade or manufacturing secret or customer data of the Ordering Party. This provision shall survive the termination of the Contract.

14. Data Protection

The Supplier acknowledges and agrees to the storage and the processing of data related to the Product by the Ordering Party.

15. Assignability

The Ordering Party may assign the Contract or any part thereof (i) to any of its affiliates without notification or (ii) to a third party upon written notice to the Supplier. The Supplier shall not assign the Contract or any part thereof without the Ordering Party's prior written consent.

16. Anti-Bribery Clause

- 16.1. Each Party undertakes that as of the effective date of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.
- 16.2. The Parties agree that they will comply with and that they will take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with Part I of the ICC Rules on Combating Corruption

2011, which is hereby incorporated by reference into the Contract, as if written out in the Contract in full. For the avoidance of doubt, this shall be without prejudice to the application any mandatory rules in this regard under applicable laws.

16.3. If a Party brings evidence that the other Party has been engaging in material or several repeated breaches of the provisions of Part I of the ICC Rules on Combating Corruption 2011, it will notify the other Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If such Party fails to take the necessary remedial action, or if such remedial action is not possible, it may invoke a defense by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures as described in Article 10 of the ICC Rules on Combating Corruption 2011. If no remedial action is taken or, as the case may be, the defense is not effectively invoked, the first Party may, at its discretion, either suspend the Contract or terminate it, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law.

17. Applicable law and Jurisdiction

17.1. The law of the jurisdiction of the Ordering Party shall apply to the Contract, without regard to the application of the principles of conflicts of law and excluding the United Nations Convention on Contracts for the International Sale of Goods (1980).

17.2. The place of jurisdiction shall be the seat of the Ordering Party, the seat of business of the Supplier, the place of performance of the Contract or another place, at the exclusive choice of the Ordering Party.

The Supplier _____

The Supplier hereby specifically approves, pursuant to Articles 1341 of the Italian Civil Code, the following provisions of these Group GT&Cs:

- 3.2 – Terms of Payments
- 6.2 – Liquidated Damages
- 6.3 – Obligation to Deliver
- 10.2 – Notify of defects
- 10.3 – Indemnity
- 10.5 – Indemnity and Third Party Damage
- 15 – Assignability
- 17 – Jurisdiction

The Supplier _____

THIS IS A TRANSLATION OF THE ORIGINAL ITALIAN VERSION OF THE GENERAL TERMS AND CONDITIONS FOR PURCHASE AND ORDERING OF PRODUCTS AND SERVICE. IN CASE OF DISCREPANCIES BETWEEN THE ENGLISH VERSION AND THE ITALIAN ONE, THE LATTER SHALL PREVAIL.

