

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 or the Services, as the case may be.

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

"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 The 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 10 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. It is clarified that no condition placed by the Supplier at the time of acceptance shall be construed as valid and binding against the Ordering Party unless the Ordering Party has agreed to be bound by such conditions.

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 90 days net or 60 days net with 3% discount after receipt of the invoice. 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 and the name and address of the Ordering Party.

4. Inspection and Quality Assurance

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

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 have appropriate supply chain security measures in place in order not to disrupt the Ordering Party's security supply chain.

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. 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 prior written permission. If such prior written permission is granted by the Ordering Party, the Supplier shall procure such third party to execute appropriate document confirming to be bound by the standards of confidentiality, for the benefit of the Ordering Party, not less than that provided herein.
- 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, royalty free, perpetual 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.

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 patent defects.

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

- (i) demand proper performance of the Contract by the Supplier,
- (ii) remedy itself the defect and demand the Supplier for reimbursement of the incurred expenses occurred in the necessary remedial measures,
- (iii) rescind the Contract or claim reduction of the purchase price, and/ or
- (iv) demand damages in lieu of performance of the Contract,

as the Ordering Party may consider appropriate.

- 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 without limitation, 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 or otherwise.

10.6. Defect in the Products:

10.6.1. If a defect or nonconformity is discovered in any Product or part thereof supplied by the Supplier under any Contract and the Ordering Party has reasonable cause to believe that other Products or parts thereof, supplied or to be supplied by the Supplier under any Contracts with the same or any other Ordering Parties, are likely to have similar defects or nonconformities, then the Ordering Party may, at its option, require the Supplier:

- to investigate, at the Supplier's costs, all other similar Products or parts thereof supplied or to be supplied to the Ordering Parties; and/or
- at the Ordering Party's option, to replace or repair, at the Supplier's costs, all similar Products or parts thereof, and/or to propose any other corrective action satisfactory to the Ordering Party.

10.6.2. If the defect or nonconformity in question is so serious that the Ordering Parties cannot reasonably be expected to accept or keep other similar Products or parts thereof, the Ordering Party shall be entitled to reject all such other Products or parts thereof.

11. Insurance Coverage

11.1 The Supplier shall at its own expense 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. In the absence of specific instructions of the Ordering Party with regard to covered amounts, the insurance coverage shall provide adequate coverage for all claims against and liabilities of the Supplier. 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 from the date of completion of the supply of the Product.

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 confidential or business-sensitive information, 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 direct or indirect affiliates (i.e., any person which exercises control over the Ordering Party or is under control by the Ordering Party or is under common control with the Ordering Party) 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 which consent may be granted at the discretion of the Ordering Party and subject to such conditions as the Ordering Party may impose.

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 otherwise acted in a manner that could violate the rules and regulations of the Indian government in this regard (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. This applies in particular with regard to any government official or representative or to anyone acting on behalf of a public international organisation, or to anyone employed by a government-owned or controlled company or entity.
- 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.
- 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 Contract shall be governed by, construed and interpreted in accordance with the laws of India 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 Any and all disputes between the Parties in relation to or arising under or pursuant to the Contract shall be attempted to be resolved through mutual discussions. For any dispute that is not resolved in such manner, the place of jurisdiction shall be the seat of the Ordering Party, the seat of business of the Supplier or the place of performance of the Contract at the exclusive choice of the Ordering Party