

Oerlikon Metco (US) Inc. general terms and conditions of purchase (United States)

1. General

1.1. Definitions

“**AFFILIATE**” means, with respect to any entity, any other entity or person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such entity.

“**CONTRACT**” means the PURCHASE ORDER issued by OERLIKON METCO (US) INC. and all documents referred to therein, and these PURCHASE TERMS.

“**OERLIKON METCO (US) INC.**” means the company pertaining to the Oerlikon Metco Business Unit which issued the PURCHASE ORDER.

“**PURCHASE ORDER**” means the purchase order issued by OERLIKON METCO (US) INC. to VENDOR (which purchase order shall be subject to these PURCHASE TERMS).

“**PURCHASE TERMS**” means these General Terms and Conditions of Purchase of OERLIKON METCO (US) INC..

“**SCOPE OF SUPPLY**” means the goods and/or services ordered by OERLIKON METCO (US) INC. under the PURCHASE ORDER.

“**VENDOR**” means the legal entity, vendor or contractor providing goods and/or services or otherwise performing work pursuant to a CONTRACT and/or PURCHASE ORDER issued by OERLIKON METCO (US) INC.

1.2. Notwithstanding anything to the contrary:

- (a) These PURCHASE TERMS shall apply to each CONTRACT and each purchase by OERLIKON METCO (US) INC. of any SCOPE OF SUPPLY, unless OERLIKON METCO (US) INC. has expressly agreed otherwise in a writing signed by a duly authorized manager of OERLIKON METCO (US) INC.
- (b) Any terms or conditions contained in, referenced in or attached to any order confirmation, invoice or other document of VENDOR or proposed at any time by VENDOR that vary from or conflict with these PURCHASE TERMS are hereby objected to by OERLIKON METCO (US) INC. without the need for any further notice of objection (and VENDOR hereby waives any right or requirement to receive any further notice of objection) and shall be of no force or effect nor binding upon OERLIKON METCO (US) INC. (or any of its AFFILIATES) unless expressly accepted in a writing signed by a duly authorized manager of OERLIKON METCO (US) INC. Written acceptance or rejection by OERLIKON METCO (US) INC. of any such terms or conditions provided or proposed to OERLIKON METCO (US) INC. shall not constitute acceptance of any other additional terms or conditions.
- (c) In case of any conflict or contradiction between the documents related to a CONTRACT, the following order of precedence shall apply:
 1. These PURCHASE TERMS;
 2. PURCHASE ORDER or other negotiated, agreed and mutually signed document, including all documents made a part thereof;
 3. OERLIKON METCO (US) INC.'s request for offer;
 4. VENDOR's offer; and
 5. VENDOR's sales terms and conditions.

1.3. OERLIKON METCO (US) INC. may regard as binding upon VENDOR all written data and information submitted by VENDOR in connection with the tendering or placing of a PURCHASE ORDER or any CONTRACT, unless such data and information is clearly marked as being non-binding.

1.4. Unless otherwise agreed upon by VENDOR and OERLIKON METCO (US) INC. in writing, delivery of the SCOPE OF SUPPLY shall be made by VENDOR on a Delivery Duty Paid (DDP) basis. Trade terms like DDP, FOB, CIF, EX WORKS, etc. shall be interpreted in accordance with the Incoterms 2010 or, after replacement thereof, the then effective Incoterms.

2. Offers in reply to invitations

- 2.1. All offers in reply to OERLIKON METCO (US) INC.'s requests for offer shall be submitted to OERLIKON METCO (US) INC.
- 2.2. Unless otherwise agreed upon by VENDOR and OERLIKON METCO (US) INC. in writing, offers shall be open for acceptance by OERLIKON METCO (US) INC. for ninety (90) days following receipt by OERLIKON METCO (US) INC.

3. Purchase orders, data delivered by Oerlikon Metco (US) Inc.

3.1. PURCHASE ORDERS shall be valid only if they are placed in writing on OERLIKON METCO (US) INC.'s official form and transmitted to VENDOR by either, facsimile, mail or e-mail. Any oral agreement, amendment or change of any PURCHASE ORDER shall be valid only if confirmed by OERLIKON METCO (US) INC. in writing. Sketches, drawings, comments, specifications, etc. shall form an integral part of the CONTRACT insofar as they are expressly mentioned as such in a PURCHASE ORDER.

3.2. The CONTRACT shall be deemed to have been entered into upon receipt of the PURCHASE ORDER, unless VENDOR takes exception to the PURCHASE ORDER in writing within five (5) working days after VENDOR's receipt of the PURCHASE ORDER. Notwithstanding the preceding sentence, upon VENDOR'S start of the execution of the PURCHASE ORDER, the PURCHASE ORDER shall in any case be deemed to have been accepted by VENDOR.

3.3. VENDOR shall be obliged to refer to OERLIKON METCO (US) INC. should VENDOR perceive an error or open point regarding essential parts of the CONTRACT, particularly in respect of quantity, price or term. VENDOR is responsible for becoming acquainted with all essential data and circumstances as well as the respective intended purpose.

4. Subcontracting

VENDOR shall not subcontract all or substantial work on any goods or services to be supplied under the CONTRACT without the prior written approval of OERLIKON METCO, and VENDOR shall submit to OERLIKON METCO (US) INC. containing all subcontractors. VENDOR must provide to permitted subcontractors all necessary information so that all requirements of the CONTRACT will be fulfilled. VENDOR shall ensure that its subcontractors comply with these PURCHASE TERMS. VENDOR accepts full responsibility for the acts and omissions of its subcontractors. The provisions in this Article 4 shall not apply to VENDOR's purchases of standard commercial products, nationally advertised products or raw materials.

5. Prices and payment

5.1. Unless otherwise specified in the PURCHASE ORDER, the prices set forth in the PURCHASE ORDER shall be fixed prices and shall remain unchanged until completion of the CONTRACT and shall be inclusive of all applicable packaging and shipping/freight costs, taxes and duties.

5.2. Even if they are included within the prices set forth in the PURCHASE ORDER, value added taxes (VAT), sales taxes or other taxes, as well as packaging costs and shipping/freight costs shall be stated separately in the invoice.

5.3. Where the price is not definitely and unambiguously agreed upon by OERLIKON METCO (US) INC. in writing, OERLIKON METCO (US) INC. shall be entitled to return the SCOPE OF SUPPLY or parts thereof.

5.4. Payment terms shall be net sixty (60) days from OERLIKON METCO (US) INC.'s receipt of the SCOPE OF SUPPLY together with the corresponding delivery note and shipment documents as set forth in Article 11.1 herein. However, OERLIKON METCO (US) INC. shall be entitled to a discount of two percent (2%) on the invoice amount (excluding the amounts referenced in Article 5.2 herein), if such amount is paid within fourteen (14) days after the later of receipt of scopy of supply or of invoice date.

5.5. If OERLIKON METCO (US) INC. makes advance payments, VENDOR shall, at OERLIKON METCO (US) INC.'s written request and at VENDOR'S sole cost, obtain for the benefit of, and provide to, OERLIKON METCO (US) INC. an irrevocable first demand bank guarantee in the amount of the advance payments, issued by a first class bank acceptable to OERLIKON METCO (US) INC.

5.6. If there is any delay of requested certificates of material, quality documents, or other documents pertaining to the SCOPE OF SUPPLY, OERLIKON METCO (US) INC. shall be entitled to extend any agreed payment period appropriately.

5.7. OERLIKON METCO (US) INC. reserves the right to recoup, set-off or credit against any payments owed to VENDOR any amounts that VENDOR owes to OERLIKON METCO (US) INC. or any of its AFFILIATES.

6. Free issue material/tooling

6.1. The title to all materials and/or tools (such as dies, jigs, fixtures, patterns, gauges, molds, and test equipment) supplied by OERLIKON METCO (US) INC. (“**FREE ISSUE MATERIALS**”) for execution of a PURCHASE ORDER shall remain with OERLIKON METCO (US) INC. even following machining or processing. Such materials and/or tools shall be marked as OERLIKON METCO (US) INC.'s property and shall be stored separately until machined or processed. On demand by OERLIKON METCO (US) INC., machining waste from FREE ISSUE MATERIALS shall be returned to OERLIKON METCO (US) INC.. VENDOR shall immediately notify OERLIKON METCO (US) INC. in writing of any faulty or insufficient quantity of material; otherwise, that defense or claim shall be forfeited. FREE ISSUE MATERIALS made available by OERLIKON METCO (US) INC. must be used exclusively for the execution of the PURCHASE ORDER placed by OERLIKON METCO (US) INC. They must neither be copied nor used for other

purposes unless VENDOR has obtained OERLIKON METCO (US) INC.'s prior written approval. Such property, while in VENDOR's care, custody or control, shall be held at VENDOR's risk, shall be kept free of encumbrances and insured (in accordance with Article 14.8 herein) by VENDOR at VENDOR's expense in an amount at least equal to the replacement cost thereof with loss payable to OERLIKON METCO (US) INC. and shall be subject to removal at OERLIKON METCO (US) INC.'s written request, in which event VENDOR shall prepare such property for shipment and deliver such property to OERLIKON METCO (US) INC. in the same condition as originally received by VENDOR, reasonable wear and tear excepted, all at VENDOR's expense.

6.2. If tooling and/or tool design is provided by VENDOR under the PURCHASE ORDER (tooling and tool design ordered by OERLIKON METCO (US) INC. under a PURCHASE ORDER are within the definition of SCOPE OF SUPPLY), it will be priced separately and when finished must be invoiced separately, unless otherwise agreed upon by OERLIKON METCO (US) INC. and VENDOR in writing. If the cost of tooling and/or tool design is to be amortized and included in the unit price of goods being supplied under present and future PURCHASE ORDERS, then the invoice must state the total cost of the tooling and/or tool design, the number of units the tooling and/or tool design cost is to be amortized over, the portion charged to past PURCHASE ORDERS and the portion charged to the current PURCHASE ORDER. Tooling and tool design paid for by OERLIKON METCO (US) INC. become OERLIKON METCO (US) INC.'s property and are to be used exclusively to perform OERLIKON METCO's PURCHASE ORDERS unless otherwise expressly authorized in writing by OERLIKON METCO (US) INC. OERLIKON METCO (US) INC. reserves the right to accelerate payment on tooling and tool design being amortized for the purpose of ownership.

6.3. Tooling and tool designs belonging to OERLIKON METCO (US) INC., independent of whether provided by OERLIKON METCO (US) INC. or delivered by VENDOR, as well as FREE ISSUE MATERIALS, shall be at OERLIKON METCO (US) INC.'s disposal for any purpose, and VENDOR agrees to deliver such tooling, tool designs and FREE ISSUE MATERIALS on request of OERLIKON METCO (US) INC., at VENDOR's expense. The said tooling, tool designs and FREE ISSUE MATERIALS shall be insured (in accordance with Article 14.8 herein) by VENDOR against damage and loss, and VENDOR agrees to be responsible for normal maintenance and storage thereof and for any damage or loss of tooling while on consignment in VENDOR's facility, at no expense to OERLIKON METCO (US) INC.

7. Date of delivery and consequences of delays

7.1. Notwithstanding anything to the contrary herein, TIME IS OF THE ESSENCE in the performance of each CONTRACT and the delivery of all SCOPE OF SUPPLY thereunder. VENDOR will be deemed to have complied with the delivery date provided for in the CONTRACT if:

- (a) for EX WORKS deliveries (which, per Incoterms 2010, means that VENDOR delivers when it places all applicable goods at the disposal of OERLIKON METCO (US) INC. at VENDOR's premises), readiness for dispatch of the SCOPE OF SUPPLY (including all documents related thereto) has been communicated to OERLIKON METCO (US) INC. (department responsible for the CONTRACT) before expiry of the applicable delivery date; or
- (b) in all other cases, the SCOPE OF SUPPLY (including all documents related thereto) has arrived at the place of destination designated by OERLIKON METCO (US) INC. and/or the performance of the services has been accepted by OERLIKON METCO (US) INC., in each case before expiry of the applicable delivery date.

7.2. VENDOR shall immediately notify OERLIKON METCO (US) INC. in writing of any foreseeable delays in delivery, stating the reasons for and the expected duration of the delay, regardless of whether the whole or part of the SCOPE OF SUPPLY is concerned. No such notice will have any effect whatsoever on the fact that time is of the essence in the performance of each CONTRACT and the delivery of all SCOPE OF SUPPLY thereunder.

7.3. In cases of delayed delivery, OERLIKON METCO (US) INC. shall be entitled to pursue all claims and remedies that may be available under applicable law or in equity, irrespective of whether VENDOR has notified OERLIKON METCO (US) INC. of the delay.

7.4. In addition to any and all other remedies that may be available to OERLIKON METCO (US) INC., if a fixed date has been agreed upon by VENDOR and OERLIKON METCO (US) INC. for the delivery of SCOPE OF SUPPLY and if that date will not be complied with due to any reason attributable to VENDOR or its subcontractors (including, but not limited to, any such reason of which OERLIKON METCO (US) INC. receives notice under Article 7.2 herein, or any event described in the first sentence of Article 12.2 herein), OERLIKON METCO (US) INC. shall be entitled to:

(a) terminate the CONTRACT upon written notice to VENDOR and obtain from VENDOR reimbursement of all up-front and down payments made by OERLIKON METCO (US) INC. thereunder (except that OERLIKON METCO (US) INC. shall not be entitled to such reimbursement by virtue of this Article 7.4 to the extent that such up-front or down payments are for or allocable to any discrete, separate good(s) constituting a discrete, separate line item on the PURCHASE ORDER that (i) as of the date of such termination is fully-prepared in

accordance with the specifications set forth in the CONTRACT and otherwise ready for delivery to OERLIKON METCO (US) INC., AND (ii) is not a component of, or interdependent with, any part of the SCOPE OF SUPPLY that is not fully-prepared and ready for delivery to OERLIKON METCO (US) INC. as of the date of such termination); and

(b) obtain from VENDOR the commenced work (or any part thereof) in exchange for payment of the amount calculated as set forth in the next sentence.

Regarding clause (b) of the preceding sentence, (X) to the extent that the commenced work that OERLIKON METCO (US) INC. seeks to obtain from VENDOR consists of a fully-prepared or fully-completed (i.e., meeting the applicable specifications set forth in the CONTRACT) item of SCOPE OF SUPPLY, the amount to be paid for that item shall be determined in accordance with the related price set forth in the corresponding PURCHASE ORDER (e.g., if the PURCHASE ORDER provides that OERLIKON METCO (US) INC. shall pay US\$10.00 for 10 widgets and VENDOR has fully-prepared only 5 of those widgets, OERLIKON METCO (US) INC. may obtain each of the 5 widgets from METCO (US) INC. in exchange for a payment of US\$1.00 per widget), and (Y) to the extent that the commenced work that OERLIKON METCO (US) INC. seeks to obtain from VENDOR consists of a partially-prepared or partially-completed item of SCOPE OF SUPPLY, the amount to be paid for that partially-prepared or partially-completed item shall be determined using a commercially acceptable methodology selected by OERLIKON METCO (US) INC. in its sole discretion that takes into account the related price (i.e., for a fully-prepared or fully-completed version of such item) set forth in the corresponding PURCHASE ORDER (e.g., a percentage of completion methodology). In all events, payment by OERLIKON METCO (US) INC. shall be subject to Article 5.7 herein.

7.5. If a delivery date provided for in the CONTRACT has not been met, and provided OERLIKON METCO (US) INC. does not exercise its rights described in Article 7.4 above with respect to the CONTRACT, VENDOR shall pay to OERLIKON METCO (US) INC. liquidated damages for the delay as follows: For each full week of delay, VENDOR shall pay to OERLIKON METCO (US) INC. an amount equal to one and a half percent (1.5%) of the purchase price for the entire SCOPE OF SUPPLY under the CONTRACT, up to an aggregate amount of nine percent (9%) of that purchase price.

7.6. VENDOR shall not be entitled to use the non-arrival of essential documents, FREE ISSUE MATERIALS or other objects to be supplied by OERLIKON METCO (US) INC. as a defense, unless the same had been demanded in good time from OERLIKON METCO (US) INC., or, if dates of delivery thereof had been agreed to by OERLIKON METCO (US) INC. in the CONTRACT, a reminder had been sent in due time to OERLIKON METCO (US) INC.

8. Packaging, shipment

8.1. Unless otherwise agreed upon by VENDOR and OERLIKON METCO (US) INC. in writing, the SCOPE OF SUPPLY shall be shipped on a DDP basis to the place of destination designated by OERLIKON METCO (US) INC. VENDOR shall be responsible for all suitable and appropriate packaging, protecting the goods against damage and corrosion throughout shipment, and, where applicable, any subsequent short-term storage (i.e., up to a maximum of sixty (60) days). Where special packaging is agreed upon by VENDOR and OERLIKON METCO (US) INC. in writing, VENDOR shall comply with OERLIKON METCO (US) INC.'s instructions regarding such packaging. VENDOR shall be liable for damages due to improper packaging and/or failure to comply with OERLIKON METCO (US) INC.'s instructions.

8.2. OERLIKON METCO (US) INC. reserves the right to return packaging material in exchange for a credit to OERLIKON METCO (US) INC. of the portion of the purchase price that was charged to OERLIKON METCO (US) INC. that is allocable to such packaging material (such portion to be determined based on the packaging costs stated separately on the corresponding invoice). The cost of return shipment shall be for account of OERLIKON METCO (US) INC.

8.3. Where special care is required during unpacking, VENDOR shall notify OERLIKON METCO (US) INC. in writing about the specifics thereof a reasonable time in advance. In addition, a suitable and conspicuous warning shall be attached to the packaging.

9. Compliance with applicable laws

9.1. VENDOR hereby warrants and represents that VENDOR and its subcontractors, if any, shall comply with all applicable laws, statutes, rules, regulations and orders in connection with its work under each CONTRACT and all SCOPE OF SUPPLY, and shall provide all documents required for the export from the place of production and import to the place of end-use, such as, but not limited to, certificates of origin, export licenses, material safety data sheets, etc.

9.2. VENDOR hereby warrants and represents that VENDOR (and, to the extent necessary, its subcontractors, if any) has obtained and shall maintain all required product certifications and regulatory approvals necessary for the manufacture, sale and use of the SCOPE OF SUPPLY as contemplated by any CONTRACT and by these PURCHASE TERMS and that VENDOR (and, to the extent necessary, its subcontractors, if any) possesses all intellectual property rights necessary for the manufacture, sale and use of the SCOPE OF SUPPLY entirely free of infringement of the rights, including intellectual property rights, of third parties.

9.3. VENDOR hereby warrants and represents that VENDOR is and shall remain in compliance (and shall ensure that its subcontractors, if any, and vendors of every tier comply) with all applicable laws and regulations, including, but not limited to, export, import and environmental laws and regulations, and other requirements of

any governmental authority where the SCOPE OF SUPPLY are produced, delivered, or intended to be sold.

10. Delivery / export control

- 10.1. Partial deliveries and/or deliveries made prior to the delivery date provided for in the CONTRACT (or prior to the delivery date otherwise agreed to by VENDOR and OERLIKON METCO (US) INC. in writing) shall not be permitted without OERLIKON METCO (US) INC.'s express prior written approval.
- 10.2. Prior to shipment, VENDOR shall carefully inspect the goods to be shipped and ensure that the goods comply with the CONTRACT, including in terms of quality and quantity.
- 10.3. VENDOR shall ensure that each shipment includes a detailed delivery note that includes the following: (i) OERLIKON METCO (US) INC.'s PURCHASE ORDER number and date, (ii) for each item included in the shipment, OERLIKON METCO (US) INC.'s name/designation for the item and the quantity of the item, (iii) a statement of the gross weight and net weight of the shipment, (iv) OERLIKON METCO (US) INC.'s delivery address, as set forth in the CONTRACT, and (v) VENDOR's written certification that VENDOR successfully completed the inspection required under Article 10.2 herein for the items included in the shipment. For shipments to different delivery addresses, VENDOR shall provide separate delivery notes as set forth in this Article 10.3.
- 10.4. Unless otherwise agreed upon by VENDOR and OERLIKON METCO (US) INC. in writing, VENDOR's invoice, in duplicate and the second document marked as "COPY", has to be sent to OERLIKON METCO (US) INC. by separate mail. Any costs caused by non-compliance shall be borne by VENDOR.
- 10.5. All correspondence (i.e., letters, delivery notes, invoices, etc.) sent by VENDOR to OERLIKON METCO (US) INC. must, at a minimum and in addition to any and all other information required to be provided therein, identify OERLIKON METCO (US) INC.'s PURCHASE ORDER number and date to which the correspondence relates.
- 10.6. VENDOR hereby represents and warrants that VENDOR and its subcontractors, if any, are and shall remain in compliance with the requirements of all applicable export laws and regulations, including, but not limited to, Canada's Export and Import Permits Act, the U.S. Export Administration Regulations and the International Traffic in Arms Regulations. Such requirements include, but are not limited to, obtaining all required authorizations or licenses for the export or re-export of any controlled item, product, article, commodity, software or technology. Without limiting the generality of the foregoing, VENDOR hereby represents and warrants that VENDOR and its subcontractors, if any, have not been, and are not currently, debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of any country, province or state. VENDOR shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless OERLIKON METCO (US) INC. and its AFFILIATES and its and their respective directors, officers, employees, agents, successors and assigns (hereafter collectively referred to as the "OERLIKON METCO (US) INC. INDEMNIFIED PARTIES") from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, lawsuits, legal, administrative or arbitration proceedings, judgments, costs and expenses (including, but not limited to, attorneys' fees and related costs) arising out of or in any manner related to any breach of VENDOR's representations or warranties set forth in these PURCHASE TERMS.

11. Transfer of ownership and risk

- 11.1. Ownership and risk of loss of SCOPE OF SUPPLY shall transfer to OERLIKON METCO (US) INC. when that SCOPE OF SUPPLY has been properly delivered to the corresponding place of delivery designated by OERLIKON METCO (US) INC. in writing, together with the corresponding delivery note (meeting the requirements of Article 10.3 herein) and all other shipment documents required under the CONTRACT (including these PURCHASE TERMS).
- 11.2. Until ownership and risk of loss have transferred to OERLIKON METCO (US) INC. as set forth in this Article 11, VENDOR shall bear the risk of loss with respect to the applicable SCOPE OF SUPPLY and VENDOR shall adequately insure against the loss, destruction and/or damage thereof and thereto, including in accordance with Article 14.8 herein.
- 11.3. Should any item of SCOPE OF SUPPLY fail to be delivered together with the corresponding delivery note and shipment documents as set forth in Article 11.1 herein, OERLIKON METCO (US) INC. shall endeavor to notify VENDOR of such failure and, unless OERLIKON METCO (US) INC. otherwise agrees in writing, (i) ownership and risk of loss of that item will not transfer to OERLIKON METCO (US) INC. until OERLIKON METCO (US) INC. receives those documents for that item, and (ii) until OERLIKON METCO (US) INC. receives those documents for that item, that item shall be stored at VENDOR's expense and risk until OERLIKON METCO (US) INC. receives those documents for that item.

12. Termination for convenience and for default

- 12.1. Termination for Convenience
Work under the CONTRACT may be terminated, in whole or in part, by OERLIKON METCO (US) INC., in its sole discretion, at any time upon written notice to VENDOR. If OERLIKON METCO (US) INC. terminates work under the CONTRACT, in whole or in part, and the termination does not qualify as a termination under Articles 7.4 or 12.2 herein, (1) OERLIKON METCO (US) INC. shall have the right to obtain from VENDOR the commenced work (or any part thereof) as set forth in Article 7.4 herein, and (2) to the extent that the actual, non-cancelable expenses that VENDOR necessarily incurred prior to such termination

for the appropriate execution of the CONTRACT (as determined in accordance with generally accepted accounting principles) exceed the total compensation paid by OERLIKON METCO (US) INC. to VENDOR for SCOPE OF SUPPLY under the CONTRACT (including, but not limited to, any payment in connection with the exercise of the right referenced in clause (1) of this Article 12.1), OERLIKON METCO (US) INC. shall, subject to Article 5.7 herein, reimburse VENDOR for such expenses; provided, however, that such reimbursable expenses shall not include any business profit, fixed overhead, royalties, development cost for serial machines or any other similar costs of VENDOR.

12.2. Termination for Default

In the event that (i) VENDOR is adjudged bankrupt or makes a general assignment for the benefit of its creditors or a receiver is appointed on account of VENDOR's insolvency, or (ii) VENDOR breaches any provision or requirement under the CONTRACT and fails to cure such breach within a cure period (the length of the cure period shall be decided by OERLIKON METCO (US) INC. in its sole discretion) after VENDOR receives written notice of the breach from OERLIKON METCO (US) INC. (which notice shall specify the length of the cure period), OERLIKON METCO (US) INC. may, upon written notice to VENDOR and without prejudice to any other rights or remedies that OERLIKON METCO (US) INC. may have, terminate the CONTRACT. In the event of such termination, OERLIKON METCO (US) INC. shall be entitled to:

(a) obtain from VENDOR the commenced work (or any part thereof) as set forth in Article 7.4 herein;

(b) complete the performance of the CONTRACT by such commercially reasonable means as OERLIKON METCO (US) INC. selects in its sole discretion, and VENDOR shall be responsible for, and shall reimburse OERLIKON METCO (US) INC. for, any additional costs incurred by OERLIKON METCO (US) INC. in so doing; and

(c) obtain from VENDOR all VENDOR documentation required to complete the performance of the CONTRACT (and VENDOR hereby grants OERLIKON METCO (US) INC. and its AFFILIATES the irrevocable right to use and to have used all such documentation to complete the performance of the CONTRACT).

Any amounts payable to VENDOR shall be subject to set off of the additional costs incurred by OERLIKON METCO (US) INC. to complete the performance of the CONTRACT and any and all other damages incurred by OERLIKON METCO (US) INC. as a result of any of the events described in the first sentence of this Article 12.2.

13. Inspection, drawings, test certificates, operating instructions spare parts

- 13.1. OERLIKON METCO (US) INC. (inclusive of its AFFILIATES), its representatives and customers, and regulatory authorities shall be entitled, with reasonable notice to VENDOR, to carry out inspections and ongoing examinations of the production and work under the CONTRACT, and all applicable records, and to reject faulty parts and faulty work during the production. Inspections or examinations shall not relieve VENDOR from its exclusive responsibility for the whole SCOPE OF SUPPLY. During the execution of the CONTRACT, VENDOR shall allow such access to the manufacturing plants (and other relevant facilities, if any) as well as to those of its subcontractors at any level of the supply chain during reasonable business hours.
- 13.2. OERLIKON METCO (US) INC.'s approval of any final drawings or designs shall not relieve VENDOR of its responsibility for the SCOPE OF SUPPLY.
- 13.3. Final drawings, test certificates, maintenance and operating instructions and spare parts lists required for the proper maintenance of the SCOPE OF SUPPLY shall be delivered to OERLIKON METCO (US) INC. (in the quantities and languages requested by OERLIKON METCO (US) INC.) together with the delivery of the SCOPE OF SUPPLY.
- 13.4. During the ten (10) year period after the commencement of the applicable warranty and guarantee period (determined as set forth in Article 14.5 herein), VENDOR shall, at OERLIKON METCO (US) INC.'s written request, promptly deliver to OERLIKON METCO (US) INC. spare parts related to the SCOPE OF SUPPLY.

14. Warranty and guarantees

- 14.1. VENDOR hereby represents and warrants that the entire SCOPE OF SUPPLY covered by the CONTRACT will conform to the specifications, drawings, samples, performance guarantees, or any kind of description furnished by or specified by OERLIKON METCO (US) INC., and will be merchantable, of good material and workmanship and free from defects. VENDOR hereby represents and warrants that the material covered by the CONTRACT will be fit and sufficient for the purpose specified in the CONTRACT. If certificates, test reports or similar documents form part of the agreed SCOPE OF SUPPLY, VENDOR hereby represents and warrants that the data contained therein shall be complete and accurate, even if such certificates, etc. originate from subcontractors. VENDOR hereby represents and warrants that all SCOPE OF SUPPLY sold under or pursuant to these PURCHASE TERMS and/or any CONTRACT will be free and clear of any and all liens, encumbrances, claims, charges, security interests, rights or interests of any other entity or person of any kind or nature whatsoever. Payment for any SCOPE OF SUPPLY in whole or in part will not constitute acceptance of any SCOPE OF SUPPLY that does not meet the warranties specified herein or any additional warranties set forth in the CONTRACT.
- 14.2. Unless otherwise agreed upon by VENDOR and OERLIKON METCO (US) INC. in writing, VENDOR hereby represents and warrants that in executing the

CONTRACT (including the performance of all obligations and duties thereunder), VENDOR and its subcontractors, if any, have applied and shall apply the principles of quality assurance according to the relevant ISO or equivalent quality standards. VENDOR shall prepare and safely archive for the period required by applicable law for the respective goods, and, in any case, for not less than ten (10) years after the commencement of the applicable warranty and guaranty period (determined as set forth in Article 14.5 herein), all relevant quality and quality assurance records, which shall be prepared by VENDOR (and its subcontractors, if any, as applicable) in accordance with applicable law and the relevant ISO or equivalent quality standards.

- 14.3. If VENDOR fails to meet any warranty or guarantee during the applicable warranty and guarantee period (which period shall be as set forth in Article 14.5 herein), VENDOR shall, at OERLIKON METCO (US) INC.'s option and request, forthwith remedy the defects on the spot or have them remedied forthwith at VENDOR's cost. If VENDOR fails to remedy any defects forthwith or in case of emergency, OERLIKON METCO (US) INC. shall be entitled to remedy the defects itself or cause them to be remedied by a third party, in each case at VENDOR's expense and risk, and VENDOR shall reimburse OERLIKON METCO (US) INC. for the associate charges.
- 14.4. OERLIKON METCO (US) INC. shall not be obliged to inspect the SCOPE OF SUPPLY or parts thereof immediately. Defects will be notified after detection. Provided that OERLIKON METCO (US) INC. notifies VENDOR of a defect within the applicable warranty and guarantee period, (i) VENDOR hereby acknowledges and agrees that that notice will be deemed timely for purposes of the warranty and guarantee provided for herein, and (ii) VENDOR hereby waives any defense or claim that that notice was tardy.
- 14.5. **Warranty and Guarantee Period.** Unless otherwise agreed upon by VENDOR and OERLIKON METCO (US) INC. in the CONTRACT, the warranty and guarantee period for each item of SCOPE OF SUPPLY shall (i) commence on the date that ownership and risk of loss of that item of SCOPE OF SUPPLY transfers to OERLIKON METCO (US) INC. as set forth in Article 11 herein, and (ii) extend until the earlier of (X) the end of the twelfth (12th) month after the date that that item of SCOPE OF SUPPLY is placed into operation after such transfer of ownership and risk of loss to OERLIKON METCO (US) INC., and (Y) the end of the eighteenth (18th) month after the date that ownership and risk of loss of that item of SCOPE OF SUPPLY transfers to OERLIKON METCO (US) INC. under Article 11 herein.
- 14.6. Where substitute delivery is made, the items originally delivered to OERLIKON METCO (US) INC. shall be left with OERLIKON METCO (US) INC. for use free of charge until impeccable substitute delivery is ready for operation to OERLIKON METCO (US) INC.. The same shall apply in case of whole or partial termination of the CONTRACT due to faulty supply. 14.7. VENDOR shall, to the fullest extent permitted by applicable law, defend, indemnify, release and hold harmless each of the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES from and against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, damages, costs, expenses, or liabilities (including, without limitation, claims for personal injury or property or environmental damage, claims or damages payable to customers of OERLIKON METCO (US) INC., and breaches of Articles 9 and/or 10 herein) arising from any act or omission of VENDOR or any of its agents, employees, or subcontractors, except to the extent attributable to the sole and direct gross negligence of OERLIKON METCO (US) INC. VENDOR shall include a clause substantially similar to the preceding sentence in all subcontracts it enters into related to its fulfillment of any CONTRACT. VENDOR further agrees to reimburse OERLIKON METCO (US) INC. for any attorneys' fees or other costs that OERLIKON METCO (US) INC. incurs in the event that OERLIKON METCO (US) INC., in its discretion, determines that it has to file a lawsuit to enforce any provision set forth in Article 14 of these PURCHASE TERMS.
- 14.8. For the duration of each CONTRACT and for a period of at least ten (10) years from the date of delivery of the goods to OERLIKON METCO (US) INC. or performance of the services, VENDOR shall maintain, through insurers with a minimum A.M. Best rating of A- VII (or a minimum S&P Global rating of A) and licensed in each jurisdiction where goods are manufactured and/or sold and where services are performed and/or sold, the following insurance:

- (a) Commercial General Liability Insurance, on an occurrence form, in the minimum amount of US\$5,000,000.00 per occurrence, with coverage for, among other things: (i) bodily injury/property damage, including, but not limited to, coverage for contractual and other liability assumed and/or arising under or in connection with each CONTRACT and these PURCHASE TERMS; (ii) products/completed operations liability; and (iii) all of the following types of coverages to the extent applicable to any CONTRACT or any SCOPE OF SUPPLY: (A) contractors protective liability; (B) collapse or structural injury; and/or (C) damage to underground utilities, with each such policy being endorsed to name the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES (as defined in Article 10.6 above) as additional insureds;
- (b) Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles used in the performance of any CONTRACT in the amount of US\$5,000,000.00 combined single limit, each occurrence, with

each such policy being endorsed to name the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES as additional insureds;

- (c) Employers' Liability Insurance in the amount of US\$5,000,000.00 each occurrence;
- (d) Property Insurance on an "all-risks" basis covering the full replacement cost value of all property owned, rented or leased by VENDOR in connection with this CONTRACT and covering damage to OERLIKON METCO (US) INC.'s property in VENDOR's care, custody and control, with each such policy being endorsed to name OERLIKON METCO (US) INC. as "Loss Payee" relative to its property in VENDOR's care, custody and control;
- (e) Workers' Compensation Insurance meeting VENDOR's workers' compensation insurance obligation, if any, under the applicable laws of each jurisdiction referenced in the introductory portion of this Article 14.8; and
- (f) VENDOR shall obtain coverage similar to Workers' Compensation Insurance and Employers' Liability Insurance for each VENDOR employee performing work under this CONTRACT outside of the United States.

VENDOR shall ensure that all insurance policies required under this Article are endorsed to provide that the underwriters and insurance companies of VENDOR shall not have any right of subrogation against any of the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES or any of their respective insurance companies. The application and payment of any self-insured retention or deductible or similar obligation under any policy carried by VENDOR shall be the sole responsibility of VENDOR. Should OERLIKON METCO (US) INC. be called upon to satisfy any self-insured retention or deductible or similar obligation under VENDOR's policies, OERLIKON METCO (US) INC. may, to the fullest extent permitted by applicable law, seek indemnification and/or reimbursement from VENDOR.

The insurance coverages required under this Article, through the policy or an endorsement thereto, shall include: (i) a provision that the policy and endorsements required under this Article may not be canceled or modified without thirty (30) days' prior written notice to OERLIKON METCO (US) INC.; and (ii) a provision that VENDOR's insurance coverage will be primary and non-contributory with respect to any insurance, self-insurance or self-retention maintained by any entity or person within the definition of OERLIKON METCO (US) INC. INDEMNIFIED PARTIES and that any insurance, self-insurance or self-retention maintained by such entities and persons will be for their interests only.

Upon request by OERLIKON METCO (US) INC., VENDOR shall provide OERLIKON METCO (US) INC. with a certificate(s) of insurance showing compliance with provisions of this Article, including evidence that the required types and amounts of insurance coverage are in effect. With respect to the insurance coverages identified in parts (a) and (b) of this Article, the corresponding certificate(s) of insurance shall state that: "OERLIKON METCO (US) INC. and its subsidiaries and affiliates and its and their respective directors, officers, employees, agents, successors and assigns are named as additional insureds". With respect to the insurance coverage identified in part (d) of this Article, the corresponding certificate(s) of insurance shall state that OERLIKON METCO (US) INC. is the loss payee relative to its property in VENDOR's care, custody and control. Copies of the endorsements evidencing the required additional insureds status and/or loss payee status, and the waiver of subrogation, shall be attached to the certificate(s) of insurance. OERLIKON METCO (US) INC. shall have no obligation to examine such certificate(s) of insurance or to inform VENDOR in the event that its insurance is not in compliance herewith. The acceptance of any certificate(s) of insurance shall in no way whatsoever imply that OERLIKON METCO (US) INC. has waived any of the insurance requirements set forth in this Article.

15. Work carried out in works or at sites of Oerlikon Metco (US) Inc. or its customers

If work is carried out in OERLIKON METCO (US) INC.'s or its customer's works, or in OERLIKON METCO (US) INC.'s or its customer's sites, these PURCHASE TERMS shall be supplemented by OERLIKON METCO (US) INC.'s or its customer's safety instructions and rules for external companies. VENDOR shall request such instructions and rules and acknowledge receipt thereof in writing. Furthermore, VENDOR shall instruct its employees, subcontractors, etc. to comply with all such instructions and rules.

16. Intellectual property and secrecy

- 16.1. OERLIKON METCO (US) INC. shall retain all rights, title and interest in and to all ideas, concepts, plans, designs, drawings, diagrams, patterns, formulas, instruments, materials, methods, inventions, improvements, discoveries, know-how, specifications, documentation, writings, processes, techniques and other data and information of any nature created, owned, furnished or otherwise made available by OERLIKON METCO (US) INC. (inclusive of its AFFILIATES), all intellectual property rights related to the foregoing (including all patents, copyrights and trademarks related thereto) and all other proprietary rights related to the foregoing, including in all improvements thereon and all derivations and

modifications thereof (all of the forgoing referenced in this sentence is hereafter collectively referred to as "INTELLECTUAL PROPERTY"). VENDOR shall keep strictly confidential and safeguard all INTELLECTUAL PROPERTY. VENDOR shall not use any INTELLECTUAL PROPERTY other than for the exclusive purpose of performing the CONTRACT, unless OERLIKON METCO (US) INC. specifically consents to such other use in writing in advance.

Without OERLIKON METCO (US) INC.'s prior written approval, VENDOR shall NOT manufacture any products for any third parties using, involving or based on any INTELLECTUAL PROPERTY, or copy any INTELLECTUAL PROPERTY, or make any INTELLECTUAL PROPERTY known in any way to any third parties that are not directly involved in the performance of the CONTRACT. On demand, all documents containing any INTELLECTUAL PROPERTY, together with all copies or reproductions thereof, shall immediately be handed over to OERLIKON METCO (US) INC. After completion of the delivery, or should the SCOPE OF SUPPLY not be delivered, VENDOR shall immediately return all such documents to OERLIKON METCO (US) INC. However, notwithstanding the two preceding sentences, VENDOR shall be entitled to retain one copy solely for legally or contractually required archiving purposes.

- 16.2. VENDOR hereby warrants that the SCOPE OF SUPPLY and each part thereof will not violate or infringe upon any intellectual property rights (or any other proprietary rights) of any third parties. In the event of any such violation or infringement relating to the SCOPE OF SUPPLY or any part thereof, or in the event of any restraining order or injunction that restrains or enjoins (for any period of time) the use of the SCOPE OF SUPPLY or any part thereof by OERLIKON METCO (US) INC. or any of its customers, VENDOR shall, at VENDOR's expense, upon OERLIKON METCO (US) INC.'s request and in OERLIKON METCO (US) INC.'s sole discretion, either (i) procure for OERLIKON METCO (US) INC. and its customers the right to use the affected SCOPE OF SUPPLY or the affected part thereof (without impairing its suitability), or (ii) modify or replace the affected SCOPE OF SUPPLY or the affected part thereof (without impairing its suitability) to make the use thereof by OERLIKON METCO (US) INC. and its customers non-violative and non-infringing.
- 16.3. VENDOR shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless each of the OERLIKON METCO (US) INC. INDEMNIFIED PARTIES and OERLIKON METCO (US) INC.'s customers from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, lawsuits, legal, administrative or arbitration proceedings, judgments, costs and expenses (including, but not limited to, attorneys' fees and related costs) arising out of or in any manner related to any claim that the SCOPE OF SUPPLY or any part thereof furnished under the CONTRACT, or any device or process necessarily resulting from the use thereof, violates or infringes upon any intellectual property right (or any other proprietary right) of any third party. Notwithstanding the foregoing, any settlement of any such suit, claim or proceeding shall be subject to OERLIKON METCO (US) INC.'s prior written consent, such consent not to be unreasonably withheld.
- 16.4. VENDOR shall provide OERLIKON METCO (US) INC. all documents and information produced in connection with the SCOPE OF SUPPLY. OERLIKON METCO (US) INC. shall have the unrestricted right to use said documents for the purposes of operation, maintenance, repair and training relating to the SCOPE OF SUPPLY.
- 16.5. OERLIKON METCO (US) INC. and its customers shall not be mentioned in any publications for any marketing or advertising purposes without OERLIKON METCO (US) INC.'s prior written approval.

17. Force Majeure

- 17.1. VENDOR shall not be liable for any non-performance, loss, damage or delay due to war, riots, fire, flood, governmental actions, acts of God or other similar causes beyond the reasonable control of VENDOR. In the event of any delay in performance by VENDOR due to any such causes, the date of delivery or time for completion will be extended by the length of the delay due to such cause(s). If such a delay continues for more than two (2) months, either OERLIKON METCO (US) INC. or VENDOR may terminate the affected CONTRACT upon seven (7) days' written notice to the other party.
- 17.2. If a CONTRACT is terminated due solely to delay caused solely by one or more events described in the first sentence of Article 17.1 herein, OERLIKON METCO (US) INC. shall be entitled to obtain from VENDOR the commenced work (or any part thereof) as set forth in Article 7.4 herein and VENDOR shall be entitled to reimbursement as and to the extent set forth in Article 12.1 herein.

18. Miscellaneous

18.1. Dispute Resolution, Governing Law, Venue and Jurisdiction

(a) With respect to any dispute between the parties arising out of or relating to these PURCHASE TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder, a party shall provide written notice to the other party of the existence of such dispute and the parties shall enter into good faith discussions and make reasonable efforts in an attempt to resolve such dispute. If the parties are unable to resolve a dispute within thirty (30) days after a party receives the written notice described in the preceding sentence hereof (or within a longer period of time mutually agreed upon by the parties in writing), either party may then, in its discretion, proceed to resolve the dispute in accordance with these PURCHASE TERMS and applicable law.

(b) All matters connected with these PURCHASE TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder, and the performance thereof, shall be construed, interpreted, applied and governed in all respects exclusively by the laws of the

State of New York, without regard to any conflict or choice of law provisions thereof.

(c) Each party hereby agrees that the Supreme Court of the State of New York, County of Nassau, shall have sole and exclusive jurisdiction to determine any matter arising under these PURCHASE TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder that cannot be resolved by the parties directly as set forth herein, and each party hereby waives, to the fullest extent permitted by applicable law, any claim that (i) the parties (or either of them) is not personally subject to the jurisdiction of such court, (ii) the venue is improper, (iii) the forum is inconvenient, or (iv) the subject matter may not be enforced by such court.

(d) Notwithstanding anything to the contrary, OERLIKON METCO (US) INC. reserves the right to bring a legal action in any court of competent jurisdiction located in the city or state where VENDOR is located or where the SCOPE OF SUPPLY purchased hereunder was provided or performed by VENDOR.

(e) Each party hereby waives its respective rights to a trial by jury in any action, litigation or proceeding arising from or relating to these PURCHASE TERMS or any CONTRACT, PURCHASE ORDER or other document related to the purchase of SCOPE OF SUPPLY hereunder.

(f) VENDOR hereby acknowledges and agrees that any breach of Articles 6, 9 or 16 herein will cause irreparable harm to OERLIKON METCO (US) INC., that monetary damages will not be a sufficient remedy for such breach and that, in addition to all other relief available, OERLIKON METCO (US) INC. shall, notwithstanding Article 18.1(a) herein, be entitled to seek immediately and obtain injunctive relief and other equitable remedies (including, without limitation, a temporary restraining order, preliminary injunction, permanent injunction and/or specific performance) to enjoin or restrain any breach or threatened breach of Articles 6, 9 or 16 herein, without the need to post any bond or other security or to prove that monetary damages would not provide an adequate remedy.

18.2. Assignment

Any attempt by VENDOR to assign, transfer, or delegate any of the rights, duties or obligations hereunder (or under any CONTRACT) to a third party without the prior written consent of OERLIKON METCO (US) INC. shall render such attempted assignment, transfer or delegation null and void.

18.3. Waiver of Rights

OERLIKON METCO (US) INC.'s or VENDOR's failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

18.4. Severability

If any provision of these PURCHASE TERMS or any CONTRACT is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the parties agree that (i) such provision shall be enforced to the maximum extent permissible under the applicable law, and (ii) any invalidity, illegality, or unenforceability of such provision shall not affect any other provision of these PURCHASE TERMS or such CONTRACT and these PURCHASE TERMS and such CONTRACT shall otherwise remain in full force and effect.

18.5. Independent Contractor

VENDOR is not, and is not acting as, an employee, agent, representative or partner of, or joint venturer with, OERLIKON METCO (US) INC. or any of its AFFILIATES. VENDOR is performing hereunder exclusively as an independent contractor.

18.6. Survival

The provisions of these PURCHASE TERMS which would require that they survive the termination of these PURCHASE TERMS or any CONTRACT in order to give them full force and effect shall survive the termination thereof, including, without limitation, Articles 14 and 16 herein.

18.7. Conflict Minerals

Conflict minerals are defined by the U.S. Securities and Exchange Commission as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which are limited to tantalum, tin, gold and tungsten. Conflict minerals originating in the Democratic Republic of the Congo ("DRC") or an adjoining country, collectively defined as the "Covered Countries" may sometimes be mined and sold "under the control of armed groups" to "finance conflict characterized by extreme levels of violence". Some of these minerals can make their way into the supply chains of the products used around the world, including those in the thermal spray industry.

VENDOR shall have in place and implement policies and due diligence measures that will provide OERLIKON METCO (US) INC. and VENDOR with reasonable assurance that products and components supplied to OERLIKON METCO (US) INC. containing conflict minerals are DRC conflict free. VENDOR shall comply with the EICC Code of Conduct (<http://www.eiccoalition.org/standards/code-of-conduct/>) and conduct its business in alignment with OERLIKON METCO (US) INC.'s supply chain responsibility expectations.

VENDOR shall cooperate in providing due diligence information to confirm that the tantalum, tin, tungsten and gold in OERLIKON METCO (US) INC.'s supply chain are conflict free. VENDOR shall implement a supply chain system of controls and transparency through the use of due diligence tools created by the Conflict-Free Sourcing Initiative or other industry-wide initiatives which includes the Conflict Minerals Reporting Template, a supply chain survey designed to identify

the smelters and refiners that process the necessary conflict minerals contained in OERLIKON METCO (US) INC.'s products.

If VENDOR has any smelter and/or refiner facilities within its supply chain that have not received a "conflict free" designation from an independent third party audit program, VENDOR is hereby encouraged to cause participation in such a program and request country of origin and chain of custody information.