

# **General Terms and Conditions of Oerlikon Friction Systems Germany GmbH for Supplies and Services outside Germany**

Updated: [November 2022]

## **1. Scope of application**

- 1.1. These General Terms and Conditions for Supplies and Services ("GTCs") apply to all contracts regarding supplies of goods ("Supplies") and regarding the provision of services ("Services"), within the meaning of 1.2 below, of Oerlikon Friction Systems Germany GmbH ("FS") to its customers as long as they do not have their registered office in Germany ("Customers").
- 1.2. Supplies and Services within the meaning of these GTCs in particular include, but are not limited to, coating services, surface treatments, components, materials and other consumer goods, 3D printing products, spare parts, coating systems and devices and, where appropriate, applicable procedures resulting thereof (collectively "Supplies and Services").
- 1.3. These GTCs apply exclusively. Any terms and conditions of the Customer which conflict with, differ from or supplement these terms and conditions are hereby rejected and do not become an integral part of the contract, unless FS has expressly consented to their application. For example, consent will not be deemed to be given if, even with knowledge of the Customer's terms and conditions, FS – without any reservation – accepts orders, provides Supplies and Services, or directly or indirectly refers to letters etc. which contain the Customer's or third-party terms and conditions.

## **2. Conclusion and content of contract; Written form; reservation of rights; Confidentiality**

- 2.1. Offers submitted by FS are non-binding and may be amended without notice unless they are expressly designated as binding or contain a deadline by which an offer must be accepted.
- 2.2. Any statements and information which the Customer sends to FS after the contract has been concluded and which are of legal relevance (e.g. deadlines, reminders, notice of defects) are valid only if they comply with the written form requirement. Communication by email is sufficient to comply with the written form requirement.
- 2.3. With the exception of the managing directors, holders of special commercial power of representation and other employees of FS expressly named to the Customer as a contact – each acting according to the company rules on representation – the employees of FS are not authorised to conclude contracts or issue any other legally binding statements.
- 2.4. FS reserves all title, copyrights and property rights in all documents and materials provided to the Customer. The Customer may not disclose or make such items or their content available to third parties, use them, reproduce them or alter them without the prior written consent of FS. It may use them solely for the purposes defined in the contract and will return them to FS in full at the request of FS and destroy (or erase) any copies whether physical or electronic in as far as it no longer needs them in the proper course of business or in order to comply with statutory archiving requirements. It will confirm or prove to FS upon request that the above documents and materials have been returned and destroyed/erased in full or provide evidence as to which of them it claims to still need and for what reasons.

## **3. Terms of supply and service; Transfer of risk; Delay in delivery**

- 3.1. Delivery dates will be stated in each case individually in writing.
- 3.2. All deliveries of FS will be made as per "EXW Incoterms (2020)" (based on location from which FS ships) unless otherwise agreed. The transfer of risk for deliveries is also based on "EXW Incoterms (2020)" unless otherwise agreed. For deliveries of FS, "EXW Incoterms (2020)" applies accordingly.
- 3.3. Notwithstanding 3.2 and only if agreed with the Customer, FS will ship the supply and service item to the place of destination stipulated by the Customer, in which case the costs of shipment – and also of packaging – will be borne by the Customer. FS will be entitled to specify the type of shipment (in particular, the transport company and the shipping route) and the packaging at its due discretion. In these cases, risk will pass to the Customer upon the Customer's receipt of FS's notice that the order is ready for shipment, or – if such notice is not provided for by contract – no later than upon handover of the supply or service item to the carrier, freighter or other transporting entity. This will also apply

if partial supplies or partial services are provided, or if FS has additionally assumed other Services (such as shipment, transport or assembly).

- 3.4. Where performance is impossible or delayed, FS is not liable to the extent that it is attributable to force majeure or other occurrences which were unforeseeable when the contract was concluded and for which FS is not responsible (including without limitation any disruption to operations, fire, natural disasters, weather, flooding, war, insurgency, terrorism, transport delays, strikes, lawful lockouts, shortage of energy, raw or human resources, delays in the issue of necessary official permits, official/sovereign measures).
- 3.5. In the event of a delay in delivery, the Customer is entitled to a claim for compensation totalling 5% of the respective net order value. There are no further claims for compensation resulting from delay.

## **4. Prices, terms of payment, Rights of set-off and retention**

- 4.1. Unless otherwise agreed, prices are always the net prices of FS which apply at the time the contract is concluded plus the statutory VAT; the prices are based on "EXW Incoterms (2020)" for Supplies and Services alike, excluding insurance, transport and packaging.
- 4.2. If the agreed prices are FS's list prices – and if no fixed price is agreed – and the Supplies and Services are not supposed to be provided until more than two (2) months after the contract has been concluded, FS's current list prices at the time the Supplies and Services are provided apply. Any agreed percentage or fixed discount will be deducted unchanged from the price which applies at the time the Supplies and Services are provided. In all other respects, 4.1 applies.
- 4.3. Invoices from FS are to be paid within 30 working days after delivery or acceptance and receipt of invoice without any deduction and in euros (€). The date on which payment is received will determine whether payment has been made in due time. Delivery in the aforementioned sense will mean arrival at the Customer premises of FS's dispatch note/note stating that goods are ready for collection or – if so agreed – surrender of the goods to the transporting entity.
- 4.4. The Customer will be entitled to set-off and to assert a right of retention only insofar as its counterclaim used for this purpose is undisputed, is ready for court decision or has been established finally and absolutely.

## **5. Customer's obligations**

- 5.1. Where applicable, the Customer has to supply material, tools, devices and all other items (such as finished and semi-finished products) which it provides to FS in order to fulfil an existing contract with FS ("Provided Items") and other necessary and contractually specified technical documents for performing the contract (such as current drawings, descriptions, diagrams, instructions, specifications, all collectively the "Technical Documents"). The Customer confirms that it is fully entitled to make the Provided Items and the Technical Documents available to FS.
- 5.2. For coating services and surface treatments, the Customer is required to supply FS with all significant information on the Provided Items (such as item description, material, material number and/or material composition, any pretreatments). Changes to the material composition and the pretreatment of the Provided Items are to be agreed upon with FS in advance.
- 5.3. The Customer ensures that the Provided Items are in a condition that enables them to be coated for the coating services and surface treatments and that they are in accordance with the specific Technical Documents defined under 5.1. If the Customer does not meet this obligation, FS is entitled to send the Provided Items back to the Customer at the Customer's expense.
- 5.4. If the Customer is in default with acceptance, if it fails to cooperate as required or if FS's Supplies and Services are delayed for other reasons for which the Customer is responsible, FS may charge for any ensuing damage including additional expenditure incurred (such as storage costs). This applies in particular in the event that the Customer does not supply the Provided Items in a condition that enables them to be coated in due time. Delivery dates/times will be extended automatically by an appropriate period if the Customer does not fulfil its contractual obligations or other duties to cooperate or other obligations.

## 6. Warranty for defects

6.1. FS is liable for defects according to the legal provisions unless regulated otherwise in this clause 6. In contracts regarding Supplies and Services, FS is entitled to the right of choice in relation to the type of subsequent fulfilment.

### 6.2. Material defects

FS is not liable

- for defects which are attributable to missing, incorrect, incomplete or inaccurate information provided by the Customer when placing the order;
- for defects attributable to the unsuitable nature of the Provided Items (such as material defects, processing residues or other foreign bodies, improper heat treatment, rust stains, solder joints), insofar as the unsuitability of the Provided Items was not obvious to FS;
- for the emergence of stains and other defects not visible before the coating services and surface treatments due to increased contrast in the respective process;
- for the reduced corrosion resistance of stainless steels caused by coating performance and surface treatments;
- for corrosion in an electrolytic environment. This applies only if the Customer did not indicate the electrolytic environment of the operating site in writing before placing the order
- for defects attributable to an error in the CAD file or template provided by the Customer or a faulty transfer of data to the CAD file. FS is also not liable for the suitability for a specific purpose, unless such a purpose has been agreed in writing. If the CAD file is delivered by the Customer for 3D printing products, it must indicate for which 3D printing process the CAD file is intended. If this information is missing and a defective 3D printing product results from choosing a printing process which was not intended, FS is not liable for this defect;
- for biocompatibility, sterility or other properties typically required in medical technology, provided that the Supplies and Services are those typically used in medical technology.

### 6.3. Legal defects

a) According to this clause 6.3, FS is responsible for ensuring that the supply and service items in the countries of the European Union and Switzerland are free of industrial property rights of third parties. FS and the Customer will inform each other without delay if claims are filed against them owing to the infringement of such rights.

b) Claims arising from infringement of industrial third-party property rights or copyright are excluded if the infringement is attributable to a directive issued by the Customer, a modification initiated by the Customer or use of the supply or service item by the Customer in a manner which is inconsistent with the contract. FS does not warrant the admissibility of the coating services and surface treatments of a Provided Item or of an item commissioned by the Customer.

c) In the event that a supply or service item of FS infringes an industrial property right or copyright, FS will be entitled to render subsequent performance in such a way that the rights of third parties are no longer infringed, but the relevant supply or service item still has the contractually agreed function.

6.4. Claims due to defects will become statute-barred within one year of handover or acceptance, unless a case exists like the one in 7.1. In such a case, the Customer's claims become statute-barred within the statutory time limits.

6.5. Any claims for compensation caused by defects exist only according to 7.

## 7. Liability; Duty to inform with regard to official measures

7.1. FS is liable under statutory provisions in the event of intent, gross negligence, culpable injury to life, limb or health, assumption of a warranty or a procurement risk and in the event of liability under the German Product Liability Act (Produkthaftungsgesetz).

7.2. In addition, FS is liable in the event of culpable breach of material contractual duties, thus such duties the fulfilment of which make the due performance of the contract possible in the first place, and on compliance with which the Customer generally depends and may depend. In such event, however, FS's liability is limited to damage that is typical of this type of contract and that was foreseeable at the time the contract was concluded.

7.3. Any further liability is excluded.

7.4. To the extent FS's liability is excluded or limited pursuant to the provisions above, the same will apply to the personal liability of the corporate bodies, legal representatives, employees and other vicarious agents of FS.

7.5. If official measures are undertaken at or against the Customer (in particular with respect to product safety law) which would lead to the Supplies and Services provided by FS (in particular official measures regarding market monitoring, such as instructing withdrawal or recall) or if the Customer intends to take its own such measures (in particular report to a market monitoring authority or a recall) it will inform FS without undue delay in writing. This also applies in each case if the Customer learns of such measures at or against its purchaser(s).

## 8. Acceptance

8.1. To the extent that the Supplies and Services require acceptance by law or according to a separate contractual agreement (for example in contracts regarding coating services and surface treatments) the Customer is required to carry out formal acceptance at the request of FS. Acceptance may not be refused on the grounds of immaterial defects. As a rule, acceptance will be carried out at the site from which FS ships unless otherwise agreed.

8.2. Pursuant to 8.1, Supplies and Services will be deemed to have been accepted if FS has given the Customer a reasonable period to accept and the Customer has not refused acceptance within this period stating at least one material defect. Supplies and Services of FS will also be deemed to have been accepted pursuant to 8.1 if the Customer uses, integrates or otherwise (further) processes the Supplies and Services.

8.3. If the Customer is in delay of acceptance, it will bear any additional costs (for example costs for storage and custody)..

## 9. Reservation of title

9.1. FS reserves the title to the supply item for all Supplies until all claims to payment have been settled in full.

9.2. The Customer is not entitled to use, process, alter, combine, mix and/or sell the supply items subject to reservation of title of FS or the items which replace them pursuant to the provisions of this clause 9 which are also covered by retention of title (each a "Reserved Item") without the prior written consent of FS unless this is done within the Customer's ordinary course of business. In the event that the Customer sells the Reserved Item, all claims in the amount of the final invoice (including value added tax) arising from the resale against its purchasers or third parties will be assigned to FS already at this time.

9.3. The Customer will remain authorised to collect this claim even after such assignment; however, FS's authorisation to collect the claim itself will remain unaffected. FS undertakes to refrain from collecting the claim as long as the Customer meets its obligations to pay, is not in delay of payment and, in particular, no petitions to initiate insolvency proceedings have been filed and payments have not been suspended.

9.4. If the Reserved Item is processed or altered (section 950 German Civil Code, BGB) by the Customer, such processing or altering will always be carried out for FS as manufacturer in FS's name and for FS's account. FS will directly acquire title in the newly created item or – if processing or altering makes use of materials belonging to two or more owners – pro rata co-title (fractional ownership) in it commensurate with the ratio of the value of the Reserved Item (gross invoice value) to the value of the other processed/altered materials at the time of processing/altering.

9.5. If the Reserved Item is combined (section 947 German Civil Code) or mixed or mingled (section 948 German Civil Code) with items which do not belong to FS, FS will acquire directly pro rata co-title in the newly created item commensurate with the ratio of the value of the Reserved Item (gross invoice value) to the value of the other combined, mixed or mingled items at the time of such combining, mixing or mingling.

9.6. The Customer will take out sufficient insurance cover for the Reserved Item insured against damage of all kind.

9.7. If the Customer is in default of payment or fulfilment of other obligations arising from the reservation of title, the remaining debts will become due immediately.

## 10. Export Control

10.1. Offers on Supplies and Services provided by FS are subject to the condition that their implementation will not be prevented by restrictions on the basis of national or international export control regulations (in particular those of the EU and U.S.), for example embargoes or other sanctions.

- 10.2. If supply or service items of FS are subject to restrictions on the basis of national and/or international export control regulations (in particular those of the EU and U.S.), in whole or in part, the following applies:
- a) FS will inform the Customer of that fact and will mutually agree on the further procedure with it, in particular regarding the question of whether or not the supply or service items subject to restrictions of export control legislation will become part of the contract;
  - b) If necessary, the export control licences for the export/transfer of the supply or service items will be applied for by FS with the competent authorities. The Customer is required to provide FS with the information and documents necessary for this purpose which are inside its sphere of control/influence (for example end-use statements, data of customers/parties involved, transport routes/means) without delay and free of charge. FS does not assume any liability or warranty with regard to the application for or issue of export control licences;
  - c) Delays in providing Supplies and/or Services as well as complete or partial failure to deliver/failure to provide services resulting from compliance with national/international export control regulations (e.g. application/non-granting of transfer/export licences) will not constitute a unilateral rescission right on the part of the Customer or any other liability or compensation claims against FS. If necessary export control licences are not granted or if the supply or service items cannot be approved, the contract shall be deemed not to have been concluded with regard to these supply or service items;
  - d) Re-export/transfer by the Customer of goods of Part I A of the German Export List requiring a licence will be subject to the provisions of the original export/transfer licence granted to FS. If the Customer has not already received these provisions in the course of the original delivery, it is required to proactively request these provisions from FS prior to re-export/transfer.

- 10.3. When re-exporting or transferring Supplies and Services of the goods to third parties in Germany and abroad, the Customer must comply with the applicable provisions of national and international export control regulations (in particular those of the EU and U.S.). With regard to international export control regulations of third countries, this only applies to the extent that compliance with the aforementioned does not constitute an infringement of the provisions of Regulation (EC) No. 2271/96 and/or section 7 German Foreign Trade and Payments Ordinance.
- 10.4. For a period of up to three years after the final completion of the Supply or Service, the Customer undertakes to make available to FS all information and documents potentially relevant in terms of export control legislation (for example end-use declarations, data of customers/parties involved, transport routes/means, etc.) without delay and free of charge upon request.

## **11. Miscellaneous**

- 11.1. Should individual provisions of this contract be or become void or invalid in whole or in part, this will not affect the validity of the other provisions. The same will apply if the contract does not contain a provision which is actually necessary.
- 11.2. Place of performance for Supplies and Services is the site from which FS ships or performs.
- 11.3. If the Customer is a businessman, a legal person under public law or a special public fund, the place of jurisdiction shall be the registered office of FS for all claims based on the contractual relationship. In all cases, FS is entitled to choose to file action against the Customer at its general place of jurisdiction or at the place of performance under 11.2.
- 11.4. These GTCs shall be subject to German law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflicts of rules of "International Private Law.