

General terms of tender and supply Umicore Thin Film Products AG, Balzers („TFPL“)

1. General provision

1.1 These General terms of tender and supply (hereinafter referred to as "General terms") govern the supply of goods and services by Umicore Thin Film Products AG, Balzers, Liechtenstein (hereinafter referred to as TFPL). They are binding if they have been declared applicable in the tender or confirmation of order. Any other terms defined by the customer are only valid if they have been expressly accepted by TFPL in writing.

1.2 TFPL's offers are subject to change without notice, i.e. they do not constitute an obligation for TFPL. Only the written or electronic confirmation of order is binding. If no confirmation of order is issued, the invoice shall serve as confirmation of order.

1.3 All agreements and legally relevant statements of the parties shall be in writing in order to be valid.

1.4 If any one or more of the provisions of these General terms or any part or parts thereof shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of these General terms and the illegal, invalid or unenforceable provision shall be replaced by a new provision the content of which shall be as close to the legal and economic effect of the replaced provision as possible.

1.5 These General terms as respectively valid are accessible at www.thinfilmproducts.umicore.com.

2. Scope of supply and services

2.1 TFPL's scope of supply and services is exhaustively specified in the order confirmation and in appendices thereto. Further goods or services not specified therein shall be charged extra.

3. Technical documentation, product information

3.1 Technical documentation, sales brochures and catalogues are not binding unless expressly stated otherwise in writing. Specifications in technical documents are only binding as far as they have been expressly guaranteed. Information on TFPL's products and on applications is based on extensive research and considerable experience in the field of process engineering. TFPL provides such information to the best of its knowledge. However, this does not imply that TFPL assumes any liability except as expressly agreed in writing. TFPL reserves the right to make technical modifications in the course of product development.

3.2 The customer shall not be relieved of his obligation to verify the suitability of TFPL's products for the use or application intended by him. This shall also apply to the protection of third party proprietary rights as well as to applications and processes.

3.3 TFPL reserves all rights in any technical documentation and drawings provided to the customer. Without prior written consent of TFPL, such documentation shall either in whole or in part be disclosed to others or used for any purposes other than those for which they have been provided to the customer. The same applies to tools and models. They remain in TFPL's property even if the customer pays for them in full or in part. In particular the customer is not entitled to reproduce or replicate any products of TFPL and/or provided by TFPL.

4. Confidentiality

4.1 Each party shall keep confidential the manufacturing and business secrets as well as any other proprietary information received from the other party to the contract and shall neither directly nor indirectly disclose the same to any third party whatsoever nor publish them in any manner whatsoever nor use them for any other purpose, in particular but without limitation for the reproduction or replication of any products.

5. Prices

5.1 Prices are net, ex works according to INCOTERMS 2010, and exclusive of sales tax and packaging unless expressly otherwise provided for in TFPL's offer. Payment shall be without any deductions whatsoever. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to TFPL against adequate evidence in case TFPL is liable for them.

5.2 The prices will be adjusted appropriately if the term of delivery has been subsequently extended due to any reason for which the customer is responsible, or the nature or the scope of the agreed supplies or services has changed, or the material or the execution has undergone changes because any information and/or document supplied by the customer was not in conformity with the actual circumstances or incomplete.

6. Terms of payment and security

6.1 Payments have to be effected in accordance with the confirmation of order or invoice as the case may be. Payment will be deemed to have been made where the total price agreed on has been paid to TFPL.

6.2 TFPL reserves the right to request in writing a prepayment or security amounting to the invoice value of the delivery if circumstances arise or become known to it subsequently which could endanger the collection of the purchase price. If the customer fails to make the prepayment or provide the security within a reasonable delay after such written request, TFPL has the right to rescind the contract forthwith.

6.3 No interest will be reimbursed for advance payments.

6.4 Any dates agreed for payment shall remain in full effect even where through no fault of TFPL delays arise in the performance of the contract.

6.5 If TFPL does not receive payment by the date stipulated interest shall thereafter accrue on the sum due and owing and shall be charged immediately to the customer at the current base lending rate at the customer's domicile and such rate shall not be less than 5 percent per annum.

6.6 The retention of or deduction from payments because of complaints, disputes or claims on the part of the customer which have not been expressly agreed by TFPL is inadmissible. The customer may only set off possible counterclaims against payments due under these General terms where TFPL has expressly agreed to the same in writing.

7. Retention of title

7.1 All goods sold shall remain the property of TFPL until the full payments in accordance with the contract have been received and/or until all claims arising under the business relationship with the customer have been satisfied.

7.2 If TFPL's goods have been combined, mixed or processed to produce new goods, its title shall extend to the new product. The customer hereby assigns his rights to the new products to TFPL. When a third party's right of ownership continues to exist when TFPL's goods are processed, combined or mixed with its goods, TFPL shall acquire co-ownership pro rata of the processed goods at the time of such processing, combination or mixing. If the customer combines or mixes TFPL's reserved goods with the main goods of a third party for compensation, the customer hereby assigns his right to compensation from such third party to TFPL.

7.3 The customer may, in the ordinary course of his business, resell any goods which are subject to TFPL's retention of title. The customer hereby assigns to TFPL all claims arising from such resale up to the amount of TFPL's outstanding claims.

The customer is authorized to collect payments for claims for such resale for as long as he meets his obligations towards TFPL in due form. If so requested by TFPL, the customer shall advise his customers of such assignment of rights and provide it with the information and documents necessary to enforce its rights vis-à-vis these parties.

7.4 The customer must inform TFPL in writing of any seizure by third parties of the goods and claims belonging to it.

7.5 In the event that the realizable value of the security provided to TFPL exceeds its secured claims by more than 10 percent, TFPL shall, upon the customer's request, be obliged to release, at its discretion, the security in excess of said limitation.

8. Terms of delivery

8.1 The term of delivery set forth in the written confirmation of order shall be binding.

8.2 Compliance with the term of delivery is conditional upon the customer's fulfilling his contractual obligations.

8.3 The term of delivery will be extended correspondingly in case of contingencies beyond the reasonable control of TFPL whether these occur on the part of TFPL, the customer or a third party. As soon as the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.

8.4 In case of delayed delivery the customer has no rights and claims other than those expressly stipulated in writing; in particular he has no right to rescind the contract. This limitation does, however, not apply to gross negligence or willful misconduct of TFPL.

9. Passing of benefit and risk

9.1 Benefit and risk of the goods shall pass to the customer by the date of their shipment ex works according to INCOTERMS 2010 at the latest.

9.2 If dispatch is delayed at the request of the customer or otherwise due to no fault of TFPL, the risk shall pass to the customer at the date originally agreed for delivery ex works. From this date onwards the goods shall be stored and insured at the customer's expense and risk and all payments shall become due at the agreed date of delivery.

10. Inspection and acceptance of goods

10.1 TFPL shall check the goods before dispatch and the services upon completion as far as usual. If the customer requests any further controls these have to be agreed upon separately and to be paid for by the customer.

10.2 The customer shall inspect the goods upon receipt and shall notify TFPL of any visual defects in writing within five working days upon receipt (in the event of hidden defects without delay, however no later than five working days upon discovery thereof). If the customer fails to do so, the goods shall be deemed to have been accepted.

10.3 TFPL shall rectify the defects notified in accordance with clause 10.2 as soon as possible and the customer shall give TFPL the possibility of doing so.

10.4 The customer has no other rights and claims in respect of any defects whatsoever in relation to goods than those expressly named in clauses 10 and 11.

11. Warranty

11.1 The period of warranty for hidden defects as set forth in clause 10.2 is twelve months and shall commence upon dispatch of the goods ex works. If dispatch is delayed for reasons beyond TFPL's control, the warranty period shall terminate not later than eighteen months after TFPL has notified to the customer that the goods are ready for dispatch. In order to keep full warranty rights the customer must not make inappropriate modifications or repairs, take appropriate steps to mitigate the damage and/or give TFPL the possibility to make good such defect.

11.2 Upon written request of the customer TFPL undertakes at its choice to repair or to replace any products or parts thereof which, during such period of warranty, are proven to be defective in materials, design or workmanship at its earliest convenience. Any products or parts replaced shall become TFPL's property.

11.3 Express warranties are only those which have been specified as such in the specifications. An express warranty is valid until the expiry of the warranty period at the latest. If the express warranties are not or only partially achieved, the customer may first of all require TFPL to carry out the corresponding improvements immediately. The customer shall give TFPL the necessary time and possibility of doing so. If such improvements fail completely or in part, the customer may claim a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the goods cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective product or part thereof or, if partial acceptance is not economically reasonable, to terminate the contract. In such case TFPL can only be held liable for reimbursing the sums which have been paid to it for the part affected by the termination.

11.4 Excluded from TFPL's warranty and liability for defects are all defects which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper installation, maintenance or handling, failure to observe installation, operating and/or maintenance instructions of coating systems suppliers, excessive voltage or current, inadequate cooling, excessive use, use of any unsuitable material, influence of chemical or electrolytic action, or any defects which result from other reasons beyond TFPL's control.

11.5 With respect to any defective material, design or workmanship as well as to any failure to fulfill express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in clauses 11.1 to 11.4.

12. Exclusion of further liability

12.1 TFPL makes no representation or warranty of any character with respect to infringement or to the exemption of the goods and services from third parties' protective rights.

12.2 TFPL assumes no responsibility for any warranty, express or implied, including but not limited to, any implied warranty of merchantability or fitness for a particular purpose except as specifically provided in these General terms. Without limiting the generality of the foregoing, this exclusion from liability includes, but is not limited to, claims arising out of interference with the customer's production, expenses for downtime, lost profits, lost sales, injury to person or property or any other incidental or consequential loss. These exclusions, however, do not apply to gross negligence or willful misconduct of TFPL.

12.3 Notwithstanding the stipulations of clauses 12.1 and 12.2 TFPL's liability for damages, for any reason whatsoever, shall be limited to the invoice value of the defective goods delivered, with the exclusion of the value of the precious metals contained therein that have been provided by the customer.

13. Applicable law

These General terms shall be construed and the legal relations between the parties shall be determined in accordance with the substantive laws provisions but not the conflict of laws provisions of Switzerland. The uniform UN law of sales (CISG) shall not be applicable.