

1. Exclusive validity

1.1 These General Terms of Purchasing (hereinafter referred to as “GTP”) shall govern procurement by Umicore Thin Film Products AG, Balzers, Liechtenstein (hereinafter referred to as “TFPL”).

1.2 Contrary or inconsistent terms of the supplier shall not be deemed accepted by TFPL unless TFPL shall have agreed thereto in writing.

1.3 These GTP shall apply even in cases where TFPL unreservedly accepts delivery from the supplier, knowing that the supplier has contrary or different terms and conditions.

1.4 The specifications, objectives, and prices for deliveries pursuant hereto shall be set forth in separate orders. Upon the supplier’s acceptance of an order, an individual delivery agreement shall come into effect. These GTP constitute an integral part of such agreements. As a general rule, conditions and provisions in the order shall prevail over the GTP.

2. Offer

2.1 By a tender invitation, the supplier acting as specialist is asked to submit an offer at no charge. The supplier shall focus the offer on the specifications and objectives of TFPL and explicitly point out any deviations; the supplier, therefore, acknowledges its duty to inform.

2.2 If the supplier does not limit the validity of its offer, it will be considered to be binding for 90 days.

3. Order

3.1 To be effective, orders must be placed in writing. Acceptance of an order by the supplier shall be deemed effective if the order confirmation is in writing or if, irrespective of this, the supplier does not object in writing within 48 hours after receipt of order.

3.2 If the conclusion of a delivery agreement is made dependent on an order confirmation, TFPL shall only be bound if this confirmation does not deviate from the content of the order.

3.3 The scope of delivery includes everything required for the proper operation and functioning of the product, regardless of whether mentioned or described in the order specification. The scope of service shall also comprise packing of the product and packing for transport.

4. Prices and terms of delivery

4.1 The supplier’s prices are considered to be fixed prices in the currency indicated on the order. The terms of supply shall be based on the international commercial terms INCOTERMS 2010. Different terms of delivery shall be set forth in writing by the parties.

4.2 The supplier shall be liable for any loss or damage arising during transport due to inadequate packing (regardless of the term of delivery).

4.3 A delivery note with all order-specific indications shall be enclosed with each delivery (including invoice and MSDS if available). Partial and residual shipments shall be described as such on all shipping papers and invoices.

5. Terms of payment

5.1 The order number, exact description of goods, and drawing number or part number shall be indicated on all correspondence, confirmations, delivery notes, invoices, etc.

5.2 Two copies of a separate invoice shall be issued for each order as well as for each delivery.

5.3 Payment of each invoice shall be made by TFPL according to the terms of payment agreed in writing in the order.

6. Dates of delivery and late delivery

6.1 The delivery is due at the destination on the agreed date. The delivery date stated in the orders shall be understood as the date of entry of the goods or service at TFPL.

If a fixed delivery date has been agreed, late delivery automatically places the supplier in default, unless the supplier communicates its delivery difficulties early and the parties agree a different solution.

6.2 If compensation for delay has been agreed in case of late delivery, such compensation shall be one percent of the net sale price for each whole or partial week by which the delivery date is exceeded, up to a maximum total of five percent of the net sale price of the delivery. In cases of specific investment transactions, differently worded provisions for delay may apply by contractual agreement. If the supplier is in default for a part of the delivery, the compensation for damage caused by delay shall be calculated on the price of the supplier’s total performance that is affected by the late part-delivery. TFPL reserves the right to claim compensation.

6.3 The supplier may plead omission of essential services to be performed by TFPL only if it has requested them in time and in writing.

6.4 Partial or early deliveries are admissible only if agreed.

6.5 If the supplier is in default with its delivery and if in transactions without a fixed delivery date the supplier remains in default with its delivery after a given reasonable grace period, TFPL shall thereafter be entitled to refuse acceptance of the delivery, to withdraw from the contract, and/or to claim damages for nonfulfillment of the delivery obligation.

6.6 If it becomes evident already prior to the delivery date that the supplier will not be able to meet the agreed delivery date, TFPL may also withdraw from the contract and waive delivery.

6.7 The possibility of withdrawal shall also exist if, in the course of production, it becomes evident that the item to be delivered will not be suitable for the purpose intended.

6.8 In the supplier evaluation, deliveries made no more than five workdays too early and no more than three workdays too late will be rated “good;” and all others as “poor.”

7. Warranty, liability

7.1 The supplier expressly warrants product features in the corresponding delivery agreements. Notwithstanding, the supplier warrants that each product to be delivered has been tested and meets the recognized rules of technology, the statutory requirements, and the regulations and directives relating to execution, occupational health and safety, fire and environmental protection and has been designed not to endanger life and health if handled with due care and used for the purpose intended.

7.2 In the appropriate transactions, the supplier shall enclose all required EU Declarations of Conformity or EU Manufacturer’s Declarations with each delivery.

7.3 Within the scope of the supplier’s liabilities pursuant to clause 7.1 above as well as to the Quality Assurance Agreement(s), TFPL is not obliged to inspect and complain immediately in order to preserve its warranty entitlements, except for warranty claims in respect of obvious defects or of any other defects which, on other grounds, TFPL in good faith can be reasonably expected to notify.

7.4 Contrary to the statutory provisions, the warranty period shall be twenty-four (24) months from delivery to TFPL. The supplier, at its own expense and free of charge, shall, immediately upon request, repair all defects (which shall also include missing guaranteed dates and the absence of guaranteed features) of which TFPL notifies the supplier during the warranty period. In addition, TFPL shall be entitled to the statutory warranty entitlements unabridged. Notwithstanding the foregoing, TFPL may, at its discretion, require replacement or repair of a defective item. In the exercise of this right of discretion, TFPL shall reasonably consider whether the supplier is capable of making repairs due to the nature of its business operation. In either case, the supplier shall bear all expenses arising from the repair or replacement of the defective item.

7.5 TFPL shall be entitled to cancel a sale or to get a sales price reduction on account of a material defect only if the supplier fails to replace or repair a defective item. Repair/replacement shall in particular be deemed to have failed if the supplier refuses this beyond such reasonable deadlines as may be set by TFPL or refuses to act.

7.6 If, due to special urgency or other pressing operational reasons, TFPL cannot reasonably be expected to give the supplier an opportunity to repair a defective item, TFPL shall be entitled, without setting a period of grace, to have the defective item repaired by a third party at the supplier’s expense. In this case, TFPL shall notify the supplier of the defect immediately.

7.7 The supplier warrants that the product delivered by it is free of defects which will reduce its fitness for purpose, working reliability, and ordinary useful life under known conditions of use.

7.8 The supplier shall be liable, within the scope of the properties warranted by it in an individual contract, for all losses, including consequential losses, caused by the product delivered by it.

7.9 If act or omission of the supplier causes personal injury or damage to the property of any third party, and TFPL is pursued on these grounds, TFPL shall have a right of recourse against the supplier.

7.10 The supplier is liable for its subcontractors to the same degree as for its own performance.

7.11 For replacement deliveries and repairs the supplier shall grant a warranty period of twenty-four (24) months.

8. Obligation to notify changes of material and process

8.1 The supplier undertakes to notify TFPL of relevant changes to material used and processes. Depending on TFPL’s assessment, new product samples shall be produced.

8.2 The supplier undertakes to notify such changes promptly in writing, as a rule at least twelve (12) months before implementation thereof, so that TFPL can respond in good time.

8.3 If the supplier discontinues the product and is no longer able to supply it, TFPL shall have the further option of securing an all-time requirement (its required quantities for at least two years), in order to build up new possibilities of supply.

8.4 We expect our suppliers to systematically record SPC data and to control the processes accordingly. At the same time, we require a notification obligation if deviating values are outside the specification limits defined in the process (keyword: Maverick).

9. Product liability, indemnification, insurance coverage

9.1 If responsible for a product claim, the supplier shall, upon first request, indemnify TFPL against any third-party claim for damages insofar as the cause of the damage lay within the supplier’s control and organization.

9.2 The supplier shall also indemnify TFPL for all expenses arising in connection with any recall measure taken by TFPL. To the extent it may reasonably be expected to do so, TFPL will notify the supplier of recall measures to be taken.

9.3 The supplier shall obtain and maintain in full force and effect during the term of the related delivery contracts and for at least five years following the termination thereof, a product liability insurance policy to cover all the claims above or otherwise related to the product; such insurance shall provide coverage of at least CHF 5,000,000.00 per damage event.

10. Service and repairs

10.1 The supplier shall provide a repair and maintenance service by qualified technical experts for a period of at least ten years after delivery of the respective product.

10.2 The supplier warrants the availability of original spare parts for a period of at least ten years after delivery of the product.

10.3 All repair and maintenance work shall be performed according to the rules of technology and at reasonable terms and conditions.

11. Right to inspect work in progress

11.1 TFPL is entitled to inspect the work in progress and performance on the supplier’s premises (by arrangement).

12. Drawings and operating instructions

12.1 Before work on the product is started, the supplier shall submit to TFPL, on request, working drawings for approval.

12.2 Approval by TFPL does not relieve the supplier from its responsibility to ensure that the product can be built and that it will function according to the specifications.

12.3 With the delivery of the product, TFPL shall be provided with the final working drawings, maintenance instructions, and operating manuals, as well as the spare parts lists for proper maintenance, free of charge.

13. Secrecy and product-related exclusivity agreement

13.1 The supplier shall not use for any purpose outside this contract or render accessible to any third party any trade or manufacturing secret or customer data of TFPL which may come to the supplier’s knowledge in connection with the performance of contracts of supply. In particular, the supplier shall not use any manufacturing know-how made available to it by TFPL in any form to manufacture or have manufactured similar products for other customers. The supplier shall ensure, by suitable contractual agreements, that its employees and subcontractors are bound to adhere to the foregoing secrecy provisions.

13.2 Clause 13.1. shall be deemed effective for an indefinite time. However, it shall lapse if and insofar as manufacturing know-how of TFPL made available in figures, drawings, calculations, or other documents enter the public domain.

14. Third parties’ intellectual property rights

14.1 The supplier shall be liable that the delivery and use of the offered products shall not infringe any intellectual property rights of third parties (patents, patterns, designs, etc.). In any case it shall indemnify TFPL.

14.2 The supplier shall fulfil phytosanitary standard ISPM 15 as set out in the International Plant Protection Convention (IPPC) and comply with any notification obligations required.

15. Applicable law, place of jurisdiction

15.1 Applicable law: the individual agreement, the present GTP, and the relevant Swiss law.

15.2 The place of performance and jurisdiction shall be the domicile of TFPL.

16. Miscellaneous provisions

16.1 Any modifications and supplements to these GTP, any delivery agreements concluded hereunder, and any modifications and supplements hereto shall require written form. This shall also apply to agreements canceling the said requirement of written form, in whole or in part.

16.2 Neither party may assign or transfer any of its rights and duties under these GTP or any delivery agreement concluded hereunder without the prior written consent of the other party.

16.3 In the event any term or provision of these GTP shall for any reason be ineffective, this shall not affect the validity of the other provisions. In such case the parties undertake to agree a suitable substitute provision which shall come as close as possible to the ineffective provision and shall be legally permissible.

16.4 Origin or preference criteria: the provisions of the current conventions and free trade agreements between Switzerland and the EU/EFTA apply.