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 Thin Film Products AG, Balzers (TFP), Lichtenstein (hereinafter referred to as TFP). They are binding if they have been declared applicable in the tender or confirmation of order and if the goods as described or claimed by the customer are only valid if they have been expressly accepted by TFP in writing.

2. Scope of supply and services
2.1 TFP’s scope of supply and services is exhaustively specified in the order confirmation and in appendices thereto. Further, the services not specified therein shall be charged extra.

3. Technical documentation, product information
3.1 Technical documentation, catalogues and brochures are not binding unless expressly stated otherwise in writing. Speciﬁcations in technical documents are only binding as far as they have been contracted. Information in TFP’s products and on applications is based on extensive research and considerable experience in the ﬁeld of process engineering. TFP reserves the right to alter information to the best of its knowledge. However, this does not imply that TFP assumes any guarantee or liability in respect of written information. TFP 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 TFP’s products for the use or application for which they were supplied. This shall also apply to the protection of third party proprietary rights as well as to applications and processes.

3.3 The customer shall not be relieved of any technical information and drawings provided to the customer. Without written consent of TFP, 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 TFP’s property even if the customer pays for them in full or in part. In particular the customer is not entitled to reproduce or redistribute any products of TFP and/or provided by TFP.

4. Conﬁdentiality
4.1 Each party shall keep conﬁdential the manufacturing and business information, 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 shall they use them for any purpose other than 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 otherwise provided for in TFP’s offer. Payment shall be made 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 TFP against evidence in case TFP is liable for them.

5.2 The prices will be adjusted appropriately if the term of delivery of the goods has been extended or shortened 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 performance requirements have been cancelled, changed or otherwise altered in any way or in any manner by any information and/or document supplied by the customer was not in conformity with the actual circumstances or incomplete.

6. Terms of payment and settlement
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 when the total price agreed has been paid to TFP.

6.2 The customer’s 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 give rise to any material disadvantage in the purchase price, the customer fails to make the prepayment or provide the security required, he must inform TFP in writing. TFP 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 without fault of TFP delays arise in the performance of the contract.

6.5 If TFP 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 of the Swiss National Bank plus 5% and such rate shall not be less than 5% per annum.

6.6 The retention of or deduction from payments because of disputes or claims by the customer, which have not been expressly agreed by TFP is inadmissible. The customer shall have no right to or possibility of counterclaims against payments due under these General terms where TFP has expressly agreed to the same in writing.

7. Retention of title
7.1 All goods sold shall remain the property of TFP until the full payment for them has been received and/or all claims arising under the business relationship with the customer have been satisﬁed. 7.2 If TFP’s goods have been combined, mixed or produced to new goods, its title shall extend to the new goods. The title to the goods sold shall also pass to the new products. TFP shall acquire ownership pro rata of the processed goods at the time of such processing, combination or mixing. If the customer combines or mixes TFP’s reserved goods with the main goods of a third party for compensation, the customer hereby assigns his right to compensate to TFP as third party to TFP. 7.3 The customer may, in the ordinary course of his business, resell any goods which are subject to TFP’s retention of title. The customer however shall inform TFP of the resale of such remaining goods, and he shall sell such resale up to the amount of TFP’s outstanding claims. The customer shall always allow TFP to collect his claims for such resale for as long as he meets his obligations towards TFP in due form. If so requested by TFP, the customer shall advise his customer of the resale and provide TFP with the information and documents necessary to enforce its rights vis-à-vis these parties. 7.4 The customer shall notify TFP in writing of any seizure by third parties of the goods and claims belonging to it. 7.5 If in the event that the realizable value of the security provided to TFP exceeds its secured claims by more than 10 percent, TFP 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 time in which each order is to be completed is to be determined in writing. 8.2 Compliance with the term of delivery is conditional upon the customer’s due payment. 8.3 The term of delivery will be extended correspondingly in case of contingencies beyond the reasonable control of TFP, whether these occur on the part of TFP 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 miscon duct of TFP.

9. Passing of beneﬁt and risk
9.1 Beneﬁt and risk of the goods shall pass to the customer on delivery by the day the goods shall have arrived according to INCOTERMS 2010 at the latest. 9.2 If dispatch is arranged at the customer’s own risk, the goods shall be deemed to have been accepted. 9.3 TFP’s risk shall end in accordance with clause 10.2 as soon as the possible and the customer shall give TFP, the possible date of so.

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

10. Warranty
10.1 TFP 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 TFP 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 TFP shall be liable in accordance with clause 10.2 as soon as the possible and the customer shall give TFP, the possible date of so. 10.4 The customer has no other rights and claims in respect of any defects whatsoever in relation to goods than those expressly recognized in clauses 10 and 11.

11. Warranty
11.1 The term 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 to which TFP is not or will not be materially responsible for, the warranty period shall terminate not later than eighteen months after TFP has been notified to that effect. If the goods have been delivered without the right to 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 TFP the possibility to make good such defect.