



Oetiker Group General Terms and Conditions of Supply

1. General

- 1.1 The contract shall be deemed entered into upon Oetiker's issuance of a written acknowledgement accepting the customer's order. Offers and quotations issued by Oetiker shall not be binding unless an acceptance period is expressly stipulated therein.
- 1.2 These general terms and conditions of supply shall be binding if and to the extent expressly referenced in Oetiker's offer or in the order acknowledgement. Any conflicting, deviating, additional or supplementary terms proposed by the customer shall apply only if expressly agreed in writing by Oetiker.
- 1.3 Any agreement or legally relevant declaration between the parties must be in written form to be valid. Declarations in text form which are transmitted by or recorded on electronic media shall be equivalent to written declarations if expressly agreed by the parties.
- 1.4 If any provision of these general terms and conditions of supply is found to be wholly or partly invalid or unenforceable, the parties shall jointly seek a legally valid provision that most closely reflects the intent and purpose of the original.

2. Scope of Supplies and Services

The supplies and services of Oetiker are exhaustively specified in the order acknowledgement and in appendices expressly referenced therein. Oetiker shall be entitled to make changes, modifications or improvements to the supplies or services, provided that the essential agreed characteristics are not materially impaired.

3. Technical Documentation

- 3.1 Unless otherwise expressly agreed in writing, information set forth in brochures, catalogues, websites, drawings, plans, technical documents or other materials shall be non-binding and for general information only. Data in technical documents, plans, drawings and other documents provided by Oetiker shall be legally binding only if expressly confirmed as binding in the order acknowledgement or in another written agreement signed by Oetiker.
- 3.2 Technical documents, plans, drawings and other documents provided by Oetiker shall remain the property of Oetiker.
- 3.3 The customer shall not, without the prior written consent of Oetiker, disclose, copy or use such documents other than for the agreed contractual purpose.

4. Standards, Compliance and Regulations

- 4.1 Unless otherwise expressly agreed in writing, the supplies and services shall comply only with the regulations, standards and technical requirements applicable at Oetiker's place of business. Any additional statutory, regulatory, industry-specific, customer-specific or technical standards, regulations or compliance requirements applicable to the customer's country, industry, use, application, installation, integration, resale, export, import, further processing or assembled system must be expressly agreed in writing. In the absence of such written agreement, Oetiker shall have no responsibility for such additional requirements, and all integration, regulatory, safety and application compliance outside Oetiker's premises shall remain the customer's sole responsibility.
- 4.2 The customer warrants that it will perform its obligations under the contract in compliance with all applicable laws and regulations, including those relating to environmental protection, health and safety, export controls, anti-bribery, anti-corruption and anti-money laundering.
- 4.3 The customer agrees to adhere to Oetiker's Standards/Code of Conduct, as amended from time to time (available at <https://www.oetiker.com/en-us/downloads>), and ensures that its affiliates, agents, and subcontractors also adhere to such standards.
- 4.4 The customer represents that it has not, directly or indirectly, offered or paid any unlawful commission, fee, rebate, gift, entertainment, or other benefit to Oetiker personnel, its customers, public officials, or any third party in connection with the contract.
- 4.5 Any breach of this clause shall constitute a material breach. The customer shall indemnify and hold harmless Oetiker from all claims, losses, or damages arising from such breach.

5. Prices

- 5.1 Unless otherwise agreed by the Parties in writing, all prices shall be deemed to be ex works (EXW, Incoterms © 2020), excluding packing, in the currency of the offering Oetiker entity without any deductions whatsoever.

All ancillary costs, including, 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 as well as the related administrative costs which are levied out of or in connection with the contract or its fulfilment. If such costs, taxes etc. are charged to Oetiker or to persons employed or appointed by Oetiker to perform any of its obligations, they shall be refunded by the customer upon presentation of the receipts.

- 5.2 Oetiker reserves the right to adjust the prices if wage rates or raw material prices vary between the submission of the offer and the contractually agreed performance/delivery to reflect any increase in cost beyond Oetiker's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs).

In addition, an appropriate price adjustment shall apply in case

- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, or
- the nature or the scope of the agreed supplies or services has changed (also as a result of significant changes in exchange rates), or
- the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete, or
- an amendment has been made to laws, regulations or the principles of interpretation or application.

6. Terms of Payment

- 6.1 Payments shall be made by the customer at Oetiker's place of business according to the agreed terms of payment, without set-off or any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Unless otherwise agreed in writing, the payment in full shall be made within thirty (30) days from the date of the invoice.

Payment shall be deemed to be effected when it has been made freely available in the currency of the Oetiker place of business to Oetiker at Oetiker's place of business. If payment by bills of exchange or letter of credit is agreed, the customer shall pay the cost of discounting such bills, bill of exchange taxes and collection charges and the cost of issuing, notifying and confirming the letter of credit.

- 6.2 The dates of payment shall also be observed if transport, delivery, installation, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond Oetiker's control, or if unimportant parts are missing, or if post-delivery work is to be carried out, which does not prevent the supplies from being used.
- 6.3 If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, Oetiker shall be entitled to continue to perform or terminate the contract, and shall in both cases be entitled to claim damages.

If the customer, for any reason whatsoever, is in delay with a further payment, or if Oetiker is seriously concerned that it will not receive payments in full or in due time because of circumstances arising after entering into the contract, Oetiker, without being limited in its rights provided for by law, shall be entitled to refuse further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery have been agreed and Oetiker has received satisfactory security. If such an agreement cannot be reached within a reasonable time, or if Oetiker does not receive adequate security, Oetiker shall be entitled to terminate the contract and to claim damages.

- 6.4 If the customer does not adhere to the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current policy rate of the Swiss National Bank. The right to claim further damages is reserved.

7. Reservation of Title

Oetiker shall remain the owner of all supplies until it has received full payment in accordance with the contract.

The customer shall cooperate in any measures necessary for the protection of Oetiker's title. In particular, upon entering into the contract the customer authorizes Oetiker to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and to fulfil all corresponding formalities, at the customer's expense.

During the period of the reservation of title, the customer shall, at its own cost, maintain the supplies and insure them for the benefit of Oetiker against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that Oetiker's title is in no way compromised or rescinded.

8. Delivery Time

- 8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time Oetiker has sent a notice to the customer informing it that the

	supplies are ready for dispatch.		services shall be deemed to be accepted.
8.2	Compliance with the delivery time is conditional upon the customer's fulfilment of its contractual obligations.	12.3	If Oetiker has been notified of deficiencies in accordance with Clause 12.2, it shall remedy them as soon as reasonably possible, and the customer shall give Oetiker the possibility to do so. After remedy of such deficiencies, an acceptance test in accordance with Clause 12.4 will be carried out at the request of the customer or Oetiker.
8.3	The delivery time shall be reasonably extended:	12.4	Subject to Clause 12.3, the execution of an acceptance test as well as the stipulation of the conditions related thereto require a special agreement. In the absence of such an agreement the following shall apply:
	a) if the information required by Oetiker for the performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services; or b) if hindrances occur which Oetiker cannot prevent despite exercising the required care (force majeure), regardless of whether they affect Oetiker, the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, pandemics, mobilization, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semifinished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, travel advice issued by authorities, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes; or c) if the customer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to observe the terms of payment; or d) if other circumstances arise for which Oetiker is not responsible.		- Oetiker shall advise the customer of the execution of the acceptance test in good time so that the customer or its representative can attend. - An acceptance report shall be prepared which shall be signed by both the customer and Oetiker or by their representatives. Such report shall either state that the acceptance has taken place, or that it has taken place under reservations, or that the customer has refused it. In the last two cases, the deficiencies shall be listed individually in the report. - In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse acceptance of the supplies or services and refuse to sign the acceptance report. Oetiker shall remedy such deficiencies without delay. - In case of significant deviations from the contract or serious deficiencies, the customer shall give Oetiker the possibility to remedy these within a reasonable time. Thereafter, a further acceptance test shall take place.
8.4	The customer shall be entitled to claim liquidated damages for delayed delivery insofar as it can be proven that the delay has been caused solely by Oetiker's default and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay. The customer may, after a grace period of 14 days, claim liquidated damages calculated at 0.5 per cent of the value of the delayed supplies for each full calendar week of delay, provided that such liquidated damages shall in no case exceed 5 per cent of the value of the delayed supplies. For the avoidance of doubt, the liquidated damages according to this Clause 8.4 are the customer's sole and exclusive remedy and no further rights or claims shall apply.		If during this test significant deviations from the contract or serious deficiencies appear again, the customer shall give Oetiker a further reasonable opportunity to repair or replace the affected parts. Only if such remedy fails may the customer claim a reasonable price reduction or refund limited to the defective parts, provided this has been agreed beforehand or is required by mandatory law. Any further rights or claims are excluded.
8.5	In case a specific date is fixed instead of a delivery period, this date shall correspond to the last day of a delivery period; Clauses 8.1 to 8.4 apply by analogy.	12.5	Acceptance shall also be deemed completed
8.6	Any delay of the supplies or services shall not entitle the customer to any rights or claims other than those expressly stipulated in this Clause 8. Any liquidated damages or other claims under this Clause 8 shall count towards, and not exceed, the liability limitations under Clause 19. Mandatory liability remains unaffected.		- if the customer does not participate in the acceptance despite being requested in advance to do so; - if the acceptance test cannot be carried out on the date provided for due to reasons beyond Oetiker's control; - if the customer refuses the acceptance without being entitled to do so; - if the customer refuses to sign the acceptance report prepared in accordance with Clause 12.4; - as soon as the customer uses the supplies or services.
9. Packing	Packing shall be charged for separately by Oetiker and shall not be returnable. However, if it is declared as Oetiker's property, it shall be returned by the customer, carriage paid to the place of dispatch.	12.6	Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 12.4 and 13 (warranty, liability for defects).
10. Transfer of Risk		13. Warranty, Liability for Defects	
10.1	Unless otherwise agreed by the Parties in writing, risk of loss of or damage to the supplies shall pass to the customer upon the supplies being made available for collection at Oetiker's place of business, and in any event no later than upon their departure from Oetiker's place of business. For the avoidance of doubt, ownership of the supplies shall pass only in accordance with Clause 7 and subject to Oetiker having received full payment in accordance with the contract.	13.1	Warranty period The warranty period is 12 months. It starts when the supplies leave Oetiker's place of business, or, if acceptance of the supplies and services has been agreed upon in advance, upon acceptance, or, if Oetiker undertakes the installation, upon completion thereof. If dispatch, acceptance or installation are delayed due to reasons beyond Oetiker's reasonable control, the warranty period shall end in any event no later than 18 months after Oetiker's notification that the supplies are ready for dispatch. For replaced or repaired supplies, the warranty period shall not exceed the original warranty period specified above. The warranty expires prematurely if the customer or a third party undertakes modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give Oetiker the possibility to remedy the defect.
10.2	If dispatch of the supplies is delayed at the request of the customer or for reasons beyond Oetiker's reasonable control, risk of loss of or damage to the supplies shall pass to the customer at the time originally scheduled for their departure from Oetiker's place of business. From this moment on, the supplies shall be stored and insured at the customer's cost and risk.	13.2	Liability for defects in material, design and workmanship Upon the written request of the customer, Oetiker may choose to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the warranty period, are proven to be defective due to defective material, faulty design or poor workmanship. Oetiker does not make any representations or give any warranty or guarantee of any nature whatsoever in respect of the supplies, including any warranty that the supplies are fit for a particular purpose. Replaced parts shall become Oetiker's property unless Oetiker expressly waives this. Oetiker shall bear only reasonable direct repair or replacement costs for the defective parts, excluding removal, installation, access, travel, accommodation, testing, sorting, recall, transport, customs and customer internal costs, unless mandatory law requires otherwise.
11. Forwarding, Transport and Insurance		13.3	Liability for express warranties
11.1	Oetiker shall be notified in good time of any special requirements regarding forwarding, transport and insurance.		Express warranties are only those which have been expressly specified as such in the order acknowledgement or in the specifications. An express warranty is valid until the expiry of the warranty period at the latest. If an acceptance test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant characteristics.
	Transportation shall be at the customer's expense and risk.		
11.2	Objections regarding forwarding or transport shall be immediately submitted by the customer to the last carrier upon receipt of the supplies or of the shipping documents.		
11.3	The customer shall be responsible for taking out insurance against damage of any kind.		
12. Inspection and Acceptance of the Supplies and Services			
12.1	Where customary, Oetiker shall inspect the supplies and services before dispatch. If the customer requests further testing, such testing must be specially agreed and paid for by the customer.		
12.2	The customer shall inspect the supplies and services within a reasonable period of time and shall immediately notify Oetiker in writing of any deficiencies. If the customer fails to do so, the supplies and		

- If the express warranties are not or only partially achieved, the customer may first of all require Oetiker to carry out the improvements. The customer shall give Oetiker the necessary time and possibility to do so.
- If these improvements fail completely or in part, the customer may claim compensation agreed in advance for such case, or, if such an agreement has not been made, a reasonable reduction of price. Termination rights shall not apply in connection with express warranties, and the customer's sole remedy shall be limited to repair, replacement, or reasonable price reduction. In this case Oetiker's liability shall be limited to reimbursing the sums which have been paid to it for the parts affected by the price reduction.
- 13.4 Exclusions from the liability for defects
- All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or installation work not undertaken by Oetiker, or resulting from other reasons beyond Oetiker's control are excluded from Oetiker's warranty and liability for defects.
- 13.5 Supplies and services of subcontractors
- For supplies and services of subcontractors specified by the customer, Oetiker assumes warranty and liability for defects only to the extent of the subcontractors' warranty and liability obligations.
- 13.6 Exclusivity of warranty claims
- With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 13.1 to 13.5.
- If the customer reports a defect and no defect is found for which Oetiker is liable, the customer is responsible for compensating Oetiker for the work undertaken and other expenses and costs.
- 13.7 Liability for additional obligations
- Oetiker is only liable for unlawful intent or gross negligence for claims arising out of inadequate advice and the like or out of breach of any additional obligations.
14. **Non-performance, Bad Performance and Their Consequences**
- In all cases of non-performance or defective performance not expressly covered by these general terms and conditions of supply, in particular if Oetiker, without valid reason, starts the execution of the supplies and services so late that timely completion is unlikely, if performance contrary to the terms of the contract is clearly foreseeable due to Oetiker's fault, or if the supplies and services have been performed contrary to the terms of the contract due to Oetiker's fault, the customer shall only be entitled to request that Oetiker implement reasonable corrective measures within a reasonable period. Termination of the contract by the customer shall be permitted solely in the event of a material breach which substantially deprives the customer of the contractual purpose, provided that Oetiker has been given prior written notice of default and a reasonable opportunity to cure such breach. In such event, the customer's sole and exclusive remedy shall be a refund of payments actually made for those specific supplies or services demonstrably affected. In such case, Clause 19 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 5 per cent of the contract price for the supplies and services affected only.
15. **Termination of the Contract**
- The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of Oetiker, or if performance subsequently becomes impossible. If such an adaptation is economically not justifiable, Oetiker shall be entitled to terminate the contract or the parts affected thereby.
- If Oetiker wishes to terminate the contract it shall – after having recognized the consequences of the event – immediately inform the customer; this applies even if an extension of the delivery time has been agreed beforehand. In case of termination of the contract, Oetiker shall be entitled to payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.
16. **Export Control**
- The customer recognizes that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control, trade sanctions and embargoes and may not be sold, leased or otherwise transferred or used for any purpose other than the agreed purpose without an export or re-export permit from the competent authority. The customer undertakes to comply with such provisions and regulations. It is aware that these may change and that they apply to the contract in their then-current form.
17. **Data Protection**
- 17.1 Oetiker shall process personal data received in connection with the contract, including names, e-mail addresses, postal addresses, payment details and other contract-related data, in accordance with applicable data protection laws.
- 17.2 Oetiker may process such personal data for contract performance, administration, communication, delivery, payment processing, compliance and related business purposes and shall treat such data confidentially.
- 17.3 Where the customer requires Oetiker to process personal data on behalf of the customer beyond ordinary contract administration, the parties shall conclude any required data processing agreement.
18. **Software**
- If the supplies and services delivered by Oetiker include software, the customer is granted a non-exclusive, non-transferable right of use of the software together with the delivery item for the purpose of receiving, installing, operating and maintaining the supplies, unless otherwise agreed. The customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of Oetiker. In case of infringement, Oetiker may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as Oetiker, may also assert a claim in the event of infringement.
19. **Exclusion of Further Liability**
- All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective of the legal basis on which they are asserted, are exhaustively covered by these general terms and conditions of supply. In the event that claims of the customer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is restricted to the price paid by the customer. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for the costs of remedying defects in the supplies. This includes, without limitation, loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct, indirect or consequential damage. Liability is also excluded for compensation claims from third parties against the customer for infringements of intellectual property rights. Oetiker does not provide any indemnity for third-party intellectual property claims unless expressly agreed in writing.
- This exclusion of further liability on Oetiker's part does not apply to unlawful intent or gross negligence on the part of Oetiker but does apply to persons employed or appointed by Oetiker to perform any of its obligations. This exclusion of liability does not apply as far as it is contrary to compulsory law. Any exclusions or limitations of liability shall apply to the maximum extent permitted by applicable law in the relevant jurisdiction.
- Any limitations of liability, liability caps or restrictions of remedies set out in these general terms and conditions shall apply on a non-cumulative basis. Where more than one limitation or cap is applicable, the lowest applicable limitation or cap shall prevail. All specific limitations of liability are subject to the overall limitation of liability set out in this Clause 19.
20. **Right of Recourse**
- If personal injury or damage to the property of third parties occurs through actions or omissions of the customer or of persons employed or appointed by it to perform any of its obligations, and if a claim is made against Oetiker, then the latter shall be entitled to take recourse against the customer.
21. **Jurisdiction and Applicable Law**
- 21.1 The exclusive place of jurisdiction for both the customer and Oetiker shall be Oetiker's place of business. Oetiker shall, however, be entitled to sue the customer at the latter's registered address.
- 21.2 The contract shall be governed by the laws of Oetiker's place of business. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall be excluded.