

## INTERPRETATION

1. In these Conditions the following words shall have the following meanings:

**Conditions:** these terms and conditions of purchase;

**the Company:** Ni-Met Metals (USA) Inc.

**the Contract:** The Order and the Seller's acceptance of the Order;

**Goods:** Any goods agreed in the Contract to be purchased by the Company from the Seller (including any part or parts of them);

**Order:** The Company's written instruction to the Seller to supply the Goods, upon and incorporating these Conditions;

**Seller:** the person, firm or company who accepts the Company's Order.

## GENERAL

2. (a) The Company shall buy and the Seller shall sell the Goods in accordance with the provisions set out in the Contract subject to these Conditions.
- (b) No contract between the Seller and the Company in relation to the Goods shall come into existence unless and until an offer in the form of the Order has been signed on behalf of the Company, sent to the Seller and accepted by the Seller in writing [or by e-mail or other form of electronic communication], or by performance. All prior performance between the Company and the Seller shall be deemed "subject to contract" negotiations.
- (c) These Conditions are the only terms and conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- (d) Each Order for Goods by the Company to the Seller shall be deemed to be an offer by the Company to purchase Goods subject to these Conditions only.
- (e) No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of Order, specification or similar document will form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- (f) These Conditions apply to all the Company's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the Company.
- (g) Any reference in these Conditions to charging interest shall mean charging interest at the rate of 2 per cent per annum above the United States Prime Rate for the time being as published by the Federal Reserve Board of the United States of America (both before and after any judgment), such interest to accrue on a day to day basis, to be compounded quarterly in arrears on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December in each year and to be paid on demand therefor by the Seller.
- (h) Reference in these Conditions to any Act, Statute or statutory provision shall include a reference to that Act, Statute or statutory provision as amended, re-enacted or replaced from time to time (whether before or after the date of any contract to which these terms and conditions apply) and any former Act, Statute or statutory provision replaced (with or without modification) by the Act, Statute or statutory provision referred to and any subordinate legislation made thereunder respectively.
- (i) Where the context so admits:
- words importing the singular shall include the plural and vice versa;
  - words importing the masculine gender shall include the feminine gender; and
  - words importing persons shall include bodies corporate and partnerships, joint ventures, trusts and other unincorporated associations.
- (j) Condition headings are for ease of reference only and shall not affect the construction of these terms and conditions.

## QUANTITY AND SPECIFICATIONS

3. (a) The Goods shall be of the best design, manufacture, quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Seller to the Company and be fit for their normal use and or purpose.
- (b) The Seller shall be responsible to the Company for ensuring the accuracy of the terms of the Contract (including any applicable specification) and for giving the Company any necessary information relating to this Contract within a sufficient time to enable the Company to fulfil this Contract in accordance with its terms.
- (c) At any time prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods at all times.
- (d) If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Contract or to any specifications and/or patterns supplied or advised by the Seller to the Company, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- (e) Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- (f) If any of the Goods fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 16.
- (g) The weight and size of the Goods shall be subject to the tolerance margins specified in the Order.
- (h) The weight, size and quality or grade of the Goods shall be determined in the manner specified in the Order and such determination shall be final and binding on the Seller and the Company.

## PACKING AND DELIVERY

4. The Goods, where applicable, shall be delivered loose in bulk unless the Goods are required to be packaged and marked in accordance with any requirements specified in the Order.
5. (a) The Goods shall be delivered in accordance with the delivery terms specified in the Contract. In the event that the terms of delivery incorporate a term defined by Incoterms 2010 or any amendment, re-enactment or replacement thereof then, in the event of any conflict between the obligations contained in such definition and these Conditions or any of the matters specified in the Contract, these Conditions or such matters specified in the Contract (as the case may be) shall prevail.
- (b) Time for delivery shall be of the essence.
- (c) Unless otherwise stipulated by the Company in the Order, the Company shall only accept deliveries during normal business hours.
- (d) If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- cancel the Contract in whole or in part;
  - refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
  - recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
  - claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date.
- (e) If the Seller requires the Company to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Seller at the cost of the Seller.
- (f) Where the Company agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Notwithstanding, failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- (g) If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

## PRICE AND PAYMENT

6. The price of and terms of payment for the Goods shall be specified in the Contract.
7. (a) The price of the Goods shall be as stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of sales and local taxes but inclusive of all other charges.
- (b) No variation in the price nor extra charges will be accepted by the Company.
8. (a) Unless otherwise agreed in writing, the Company shall pay the price of the Goods within 28 days of delivery of the Goods to the Company, but time for payment shall not be of the essence of the Contract.
- (b) Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

## DAMAGE OR LOSS IN TRANSIT

9. In the event that any Goods are lost or damaged in transit prior to the risk in such Goods passing from the Seller to the Company in accordance with 14 below, then, the Seller will replace free of charge all the Goods so lost or damaged in transit provided that:
- save in respect of a total loss or non delivery of the Goods) details of any loss or damage have been marked on the copy of the consignment note or delivery document signed by the Company and are advised to the Seller within seven days of delivery and confirmed in writing to the Seller with full particulars within fourteen days of delivery; and
  - in respect of a total loss or non delivery of the Goods, details are advised to the Seller in writing (otherwise than on a consignment note or delivery document) with full particulars within twenty-one days of the date of the Seller's invoice in respect of the Goods.

## INDEMNITY

10. The Seller shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- defective design, manufacture, workmanship, quality or materials;
- infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods;
- any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company, its employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

## FORCE MAJEURE

11. The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## CONFIDENTIALITY

12. The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

## OWNERSHIP AND RISK

13. The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) at which point ownership of the Goods shall pass to the Company.

## TERMINATION

14. (a) The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- (b) The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:
- the Seller commits a breach of any of the Conditions of the Contract;
  - any distress, execution or other process is levied upon any of the assets of the Seller;
  - the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller;
  - the Seller ceases or threatens to cease to carry on its business; or
  - the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- (c) The termination of the Contract, however arising, will be without prejudice to the rights and duties of the Company accrued prior to termination. Those Conditions, which expressly or impliedly have effect after termination, will continue to be enforceable notwithstanding termination.

## REMEDIES

15. (a) Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:
- to rescind the Order;
  - to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
  - at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
  - to refuse to accept any further deliveries of the Goods but without any liability to the Seller;
  - to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and
  - to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## ASSIGNMENT

16. (a) The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- (b) The Company may assign the Contract or any part of it to any person, firm or company.

## MISCELLANEOUS

17. If any of the provisions of these Conditions shall be found to be void or unenforceable such provision shall be deemed to be deleted from these Conditions and the remaining provisions of these Conditions shall continue in full force and effect and the Seller and the Company shall use their respective reasonable endeavours to procure that any such provision is replaced by a provision which is valid and enforceable and which gives effect to the spirit and intent of these Conditions.
18. (a) The waiver by the Company of any breach of any of the provisions of this Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed a waiver of any subsequent breach.
- (b) The rights of the Company shall not be prejudiced or restricted by any time, indulgence or forbearance extended to the Seller.
19. Dates of bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. The Company agrees to accept documents containing the Chamber of Shipping War Deviation Clause and/or other usual War Risk Clauses. In the event of shipping documents not being available when called for by the Company, or on arrival of the vessel at destination, the Seller is to provide an indemnity entitling the Company to obtain delivery of the Goods.
20. For C.I.F. contracts or where the Seller otherwise procures insurance the Seller shall provide insurance appropriate to the Goods on the terms set out hereunder e.g.:
- Risks covered:
    - Institute Cargo Clauses (A) (01.01.1982)
    - Institute War Clauses (Cargo) - (01.01.1982) or (Commodity trades) (05.09.1983)
    - Institute Strikes Clauses (01.01.1982) or (Commodity trades) (05.09.1983) (Cargo)
  - Insurable Value - Insured amount to be for not less than the invoice amount.
  - War and Strike Risks/Premium (only to be purchased by the Seller if readily available on the market) - Any premium to be for account of the Company.
21. For a CIF or similar contract discharge shall be as fast as the vessel can deliver in accordance with the customs of the port, but in the event of shipment being made under a liner bill of lading, discharge shall be as fast as the vessel can deliver in accordance with the terms of the bill of lading. The cost of discharge from hold to ship's rail shall be for the Company's account.
22. For DDU, FCA or similar contracts, the Company shall be responsible for all import and customs duty and for customs clearance. For DDU delivery shall be made directly to the Company's working site and discharge shall be undertaken with all reasonable speed.
23. A person who is not a party to the contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract.
24. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to this contract.

## ARBITRATION AND GOVERNING LAW

25. (a) Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this Condition 25.
- The number of arbitrators shall be one.
  - The seat, or legal place, of arbitration shall be Delaware, USA.
  - The language to be used in the arbitral proceedings shall be English.
  - The governing law of this contract shall be the substantive laws of the State of Delaware, USA.