

Ni-Met Metals (USA) Inc. GENERAL TERMS AND CONDITIONS OF SALE

GENERAL

1. (a) Ni-Met Metals (USA) Inc. (the "Seller") shall sell, and the customer named in the accompanying Sales Contract (the "Buyer") shall purchase the goods described in the accompanying Sales Contract (the "Goods") in accordance with the provisions set out in the accompanying Sales Contract and subject to these terms and conditions.
 - (b) No contract between the Seller and the Buyer in relation to the Goods shall come into existence unless and until an offer in the form of the accompanying Sales Contract has been signed on behalf of the Seller and the Buyer in writing. All prior communications between the Seller and the Buyer shall be "subject to contract" negotiations.
 - (c) No modifications or variations to these terms and conditions shall be valid or effective unless such modifications or variations are expressly accepted in writing by authorized representatives of the Seller, and in particular (but without limitation) no modifications or variations to these terms and conditions shall apply if the Seller exceptionally accepts in writing a purchase order from the Buyer deviating from these terms and conditions of sale.
 - (d) Subject as provided in condition 1(c) above, these terms and conditions shall apply to the exclusion of any other terms and conditions, unless otherwise mutually agreed by the Seller and Buyer in writing in the contract, whereas the specific terms and conditions set out in the contract shall prevail.
 - (e) All references in these terms and conditions to "these terms and conditions" shall be deemed to be references to these terms and conditions as modified or varied (if at all) in accordance with condition 1(c) above.
 - (f) In these terms and conditions:
 - (i) the "Seller's Group" shall consist of the Seller, any parent undertaking of the Seller and any subsidiary undertaking of the Seller or of any such parent undertaking; and
 - (ii) The "Buyer's Group" shall consist of the Buyer, any parent undertaking of the Buyer and any subsidiary undertaking of the Buyer or of any such parent subsidiary.
 - (g) Any reference in these terms and conditions to charging interest shall mean charging interest at the rate of 5 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 the basis of a financial year consisting of 360 days, to be compounded quarterly in arrears on 31st March, 30th June, 30th September and 31st December in each year and to be paid on demand therefore by the Seller.
 - (h) Reference in these terms and 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:
 - (i) words importing the singular shall include the plural and vice versa;
 - (ii) words importing the masculine gender shall include the feminine gender; and
 - (iii) 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.
2. Any subsequent orders placed by the Buyer with the Seller shall be deemed to be placed subject to these terms and conditions, unless expressly agreed otherwise in writing by authorized representatives of the Seller.

ORDERS AND SPECIFICATIONS

3. (a) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) and for giving the Seller any necessary information relating to the contract within a sufficient time to enable the Seller to fulfill the contract in accordance with its terms.
 - (b) Any descriptions and illustrations in the Seller's catalogues, lists, samples or other advertising material merely present a general idea of the goods described therein and shall not form part of any contract and, in particular, shall not give rise to any sale by description or sample unless expressly so agreed in writing by authorized representatives of the Seller.
 - (c) The weight and size of the Goods shall be subject to the tolerance margins specified in the accompanying Sales Contract.
 - (d) The weight, size and quality or grade of the Goods shall be determined in the manner specified in the accompanying Sales Contract and such determination shall be final and binding on the Seller and the Buyer.
4. Any advice or recommendation given by the Seller, its employees or agents to the Buyer, its employees or agents as to the storage, application or use of the Goods is relied on, or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any consequences whatsoever arising from such advice or recommendation

PACKING AND DELIVERY

5. The Goods shall be delivered loose in bulk unless the Goods are required to be differently packaged and marked in accordance with any requirements specified in the accompanying Sales Contract.
6. (a) The Goods shall be delivered in accordance with the terms of delivery specified in the accompanying Sales 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 terms and conditions or any of the matters specified in the accompanying Sales Contract, these terms and conditions or such matters specified in the accompanying Sales Contract (as the case may be) shall prevail.
- (b) Any times stated for delivery are a bona fide estimate only and, whilst the Seller will use its reasonable endeavours to meet any such times stated for delivery, they shall not be liable for any delay in delivery howsoever caused.
- (c) Where it is provided in the accompanying Sales Contract that any Goods are to be delivered within a particular calendar month or other period of time, the Seller shall be entitled at its sole discretion to deliver such Goods at any time during such calendar month or other period of time.
- (d) The Seller shall be entitled to withhold delivery of any Goods to the Buyer where, at the time delivery is due, payment is due and owing and, remains due and owing to the Seller in respect of this contract or in respect of any other goods or services supplied to the Buyer or any member of the Buyer's Group under any other contract whatsoever with the Seller or any member of the Seller's Group.
- (e) If the Buyer fails to take delivery at the time stated for delivery or fails to give the Seller adequate instructions in a timely manner in relation to any matter on which the Buyer's instructions are required in order to enable the Seller to effect delivery in accordance with the contract, then, without prejudice to any right or remedy available to the Seller, the Seller reserves the right to:
 - (i) store the Goods until actual delivery and charge the Buyer:
 - (a) the reasonable costs (including insurance) of storage; and
 - (b) interest on the amount payable by the Buyer for the Goods from the date payment for the Goods would have been due if the Buyer had taken delivery of the Goods at the time stated for delivery or had given the Seller adequate instructions in a timely manner (as the case may be) to the date of receipt of such amount by the Seller; and

- (ii) sell the Goods and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract, or charge the Buyer for any shortfall below the price under the contract and in each case charge the Buyer interest on the amount payable by the Buyer for the Goods from the date payment for the Goods would have been due if the Buyer had taken delivery of the Goods at the time stated for delivery or had given the Seller adequate instructions in a timely manner (as the case may be) to the date of receipt of the proceeds of sale of the Goods by the Seller.

PRICE AND PAYMENT

7. The price of and terms of payment for the Goods are specified in the accompanying Sales Contract. The time of payment shall be of the essence of the contract.
8. Unless otherwise stated, all prices are exclusive of:
 - (i) value added tax or any similar tax, which the Buyer shall be additionally liable to pay to the Seller; and
 - (ii) any taxes payable in the location where the Goods are to be delivered, which the Buyer shall be responsible for discharging or reimbursing to the Seller.
9. (a) The Seller shall be entitled to invoice the Buyer for the price of the Goods upon delivery of the Goods, or at any time thereafter.
- (b) Any Goods which remain undelivered by reason of the Buyer's refusal for any reason whatsoever to accept delivery upon the due date may be invoiced to the Buyer at any time following such due date, and the Seller shall be entitled to recover the price therefore notwithstanding that delivery may not have taken place and the property in the Goods may not have passed to the Buyer.
10. Failure by the Buyer to pay for any Goods on the due date for payment shall entitle the Seller:
 - (i) to cancel the balance (if any) of the contract and to recover from the Buyer damages for any loss suffered by the Seller as a result of such cancellation; and/or
 - (ii) to cancel any other contract or the balance of any other contract which the Seller may have with the Buyer, and to recover from the Buyer damages for any loss suffered by the Seller as a result of such cancellation; and/or
 - (iii) to charge the Buyer interest on the amount unpaid from the due date for payment to the date of receipt of payment thereof by the Seller.
11. In respect of any pending order and or shipment, the Seller reserves the right (without any liability to the Buyer and without the need for prior notice) to:
 - (a) amend payment terms, and/or
 - (b) delay shipment, and/or
 - (c) cancel any order prior to shipment, and/or
 - (d) rescind an order in transit,if in the opinion of the Seller there is a material adverse change in the Buyer's financial position.
12. Without prejudice to Condition 11 above, the Buyer shall be liable, on a full indemnity basis, for all costs, expenses and liabilities of whatever nature incurred by the Seller in the recovery of any sum due to the Seller from the Buyer.

LOSS

13. The Buyer acknowledges that, in the event of the Buyer being in breach of any of the terms of the contract, any loss suffered by the Seller as a consequence of such breach may include any liability, which the Seller may have to its suppliers of the Goods.

DAMAGE OR LOSS IN TRANSIT

14. 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 Buyer in accordance with Condition 27 below, then, the Seller will replace free of charge all the Goods so lost or damaged in transit provided that:
 - (i) (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 Buyer and are advised to the Seller within 48 hours of delivery and confirmed in writing to the Seller with full particulars within seven days of delivery; and
 - (ii) 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 fourteen days of the date of the Seller's invoice in respect of the Goods.

SHORT DELIVERY

15. The Seller shall not be responsible for any short delivery unless details thereof are marked on the copy of the consignment note or delivery document signed by the Buyer and, in the case of loss in transit, all the requirements set out in Condition 14 above are fulfilled.

DEFECTIVE GOODS

16. The Seller shall replace any Goods which are defective or which do not otherwise comply with their specification provided that:
 - (i) the Seller is notified in writing of the alleged defect or non-compliance with full particulars thereof immediately upon discovery of the alleged defect or non-compliance according to the terms in Condition 20 below;
 - (ii) the Seller is afforded the opportunity of inspecting the Goods at the premises of the Buyer and have a re-weighing and/or re-analysis of the Goods conducted by a mutually appointed independent third party surveyor, whose results shall be final and binding on both parties;
 - (iii) the alleged defect or non-compliance is not caused by any act happening or omission occurring in each case after the time when risk in such Goods has passed from the Seller to the Buyer in accordance with Condition 25 below;
 - (iv) the alleged defect or non-compliance is not due to any act or omission on the part of the Buyer; and
 - (v) such Goods are not used by the Buyer.
17. The provisions contained in Condition 16 above are expressly in lieu of any and to entire exclusion of all conditions, warranties, liabilities whatsoever whether express or implied by statute, usage or otherwise.
18. Save and except as expressly stated in Conditions 16 and 17 above, the Seller shall not be liable for any defect in the Goods or for any failure of the Goods to otherwise comply with their specification or for any injury or loss resulting from the Goods or from any such defect or non-compliance, whether in contract, tort or otherwise and whether such liability is due to the negligence of any servant, employee or agent of the Seller or otherwise.
19. In the event that the Seller shall be liable to replace any Goods, in no circumstances shall the Seller's liability extend beyond the cost of replacing such Goods and in particular (but without limitation) the Seller shall not be liable for any consequential loss or loss of profit whether in contract, tort or otherwise.

CLAIMS

20. (a) The Buyer shall advise the Seller in writing of any discrepancy in quality and/or quantity of the delivered Goods as soon as possible, in any case any discrepancies in:
 - (i) shortage of weight have to be advised by the Buyer to the Seller in writing within 72 hours after receipt of the cargo stating the weight shortage measured by weighing over a regularly calibrated weighscale and supported with an electronic ticket print out specifying the amount claimed;

- (ii) discrepancy in quality have to be advised by the Buyer to the Seller in writing within 7 (seven) days after receipt of the cargo specifying the amount claimed;
- (iii) all other claims have to be advised by the Buyer to the Seller in writing within 7 (seven) calendar days.
- (b) All alleged claims have to be supported by relevant documents (certified by an independent surveyor), which shall be presented no later than the calendar days stipulated below after initial claim notification sent to the Seller:
 - (i) in relation to shortage of weight: within 30 (thirty) calendar days
 - (ii) in relation to quality discrepancy: within 30 (thirty) calendar days
 - (iii) in relation to all other issues: within 30 (thirty) calendar days.
- (c) The Seller shall reply to advised claims within 60 (sixty) calendar days after receipt of the notification of the alleged claim.
- (d) Has the Buyer failed to timely notify the Seller of any discrepancies in weight, quality or whatsoever, or has failed to specify the alleged claim and/or to present the supporting documents of an alleged claim in due time as set out in 20(a) and 20(b) above, the Buyer is deemed to unconditionally have accepted the delivered Goods, and the Seller reserves the right to reject satisfying a claim.
- (e) In the event the Buyer for some good reason could not manage to advise a claim and/or present the supporting documents in due time as set out in 20(a) and 20(b) above, it shall advise the reason to the Seller and the time in which it can specify the claim and/or present the supporting documents. However, in this case it is at the Seller's sole discretion to accept or reject the alleged claim in full or in part.

FORCE MAJEURE

- 21. (a) The Seller shall not be responsible for any loss, damage, delay or non-performance of this contract arising whether directly or indirectly from any cause beyond the reasonable control of the Seller including (but without limitation) any cause arising from or attributable to strikes, lock-outs or other industry disputes, shortage of labour or materials, governmental order, rule, regulation or direction of any jurisdiction, acts of authority, civil commotion, riot, war, sabotage, storm, flood, earthquake, fire, explosion, drought, machinery breakdown, failure of plant or collapse of structures, voluntary or mandatory compliance with any direction, request or order of any person having or appearing to have authority whether for defense or other governmental or national purpose, inability to obtain materials, equipment, fuel power, components or transportation.
- (b) In the event of any delay or non-performance of this contract arising whether directly or indirectly from any cause referred to in Condition 21(a) above for a period in excess of three months, the Seller shall be entitled at any time thereafter (but before such cause ceases) to cancel this contract by notice in writing to the Buyer without compensation to the Buyer in respect of any loss or damage or otherwise.

PROPERTY

- 22. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these terms and conditions, the Goods shall remain the sole and absolute property of the Seller until such time as the Seller has in respect of the Goods received in full, cash or cleared funds of and payment in full of all other sums due by the Buyer to the Seller or any other member of the Seller's Group for whatever reason and whether or not under the contract.
The Seller reserves the right to rescind the contract and claim the return of the delivered material.
- 23. Until such time as property in the Goods shall pass to the Buyer (if ever), or until such time (if any) as the Buyer shall desire to use the Goods in any process carried out by it, the Buyer shall keep the Goods:
 - (i) separate from any goods of the Buyer or of any third parties; and
 - (ii) properly stored, protected and (if requested by the Seller in writing) identified as the Seller's property.
- 24. Until such time as property in the Goods shall pass to the Buyer (if ever), the Buyer shall not be entitled to sell or otherwise dispose of the Goods without the prior written consent of the Seller.
- 25. Until such time as property in the Goods shall pass to the Buyer, and provided that the Goods are still in existence and have not been used by the Buyer in any process carried out by it, the Buyer's right to possession of the Goods shall cease forthwith on the occurrence of any of the events specified in Condition 27 below, or at such earlier time as the Seller may at any time stipulate. For the purposes of recovering possession of the Goods, the Seller shall be entitled to enter into any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same.
- 26. Notwithstanding that property in the Goods shall not have passed to the Buyer and subject as provided in Condition 23 above, the Buyer may, subject to these terms and conditions, use the Goods in the ordinary course of its business.

RISK

- 27. Risk in the Goods shall pass to the Buyer in accordance with the terms of delivery specified in the accompanying Sales Contract. If dispatch is delayed or prevented by circumstances beyond the Seller's control, the Goods shall be stored at the Buyer's expense and risk.

TERMINATION

- 28. (a) In the event of the occurrence of any of the following events, the Seller shall have the right to forthwith terminate the contract by notice in writing to the Buyer sent or delivered to the Buyer's last known address or (in the case of a company) registered office or address, whereupon this contract shall be deemed to have terminated without prejudice to any claim or right the Seller might otherwise make or exercise:
 - (i) the Buyer shall fail to make any payment under this contract within seven days after the due date for such payment;
 - (ii) the Buyer shall make default in or commit a breach of any other provision of this contract and shall fail to remedy such default or breach (where it is capable of remedy) within twenty-one days of a notice in writing from the Seller to the Buyer specifying such default or breach;
 - (iii) any distress or execution shall be levied upon all or any of the Buyer's property or assets, or in each case an analogous event shall occur in any jurisdiction;
 - (iv) the Buyer shall become insolvent or be unable to pay its debts as they fall due, shall propose or make a general assignment or arrangement or composition with or for the benefit of its creditors, or a moratorium shall be agreed or declared in respect of or affecting all or a

material part of its indebtedness, or in each case an analogous event shall occur in any jurisdiction;

- (v) an order shall be made or an effective resolution shall be passed for winding up the Buyer, except for the purposes of a solvent winding up as part of a bona fide re-organization, amalgamation or reconstruction, the terms of which are approved in writing by the Seller (such approval not to be unreasonably withheld or delayed), or an analogous event shall occur in any jurisdiction;
 - (vi) a receiver, an administrative receiver, a receiver and manager or similar officer shall be appointed in respect of all or a material part of the assets or undertaking of the Buyer, or in each case an analogous event shall occur in any jurisdiction;
 - (vii) an administration order shall be made in respect of the Buyer or an analogous event shall occur in any jurisdiction;
 - (viii) the Seller shall reasonably apprehend that any of the events mentioned in (iii) to (vii) above is about to occur in relation to the Buyer; or
 - (ix) the Seller shall be entitled to terminate any other contract between the Seller or any other member of the Seller's Group and the Buyer or any other member of the Buyer's Group.
- (b) If any of the events referred to in Condition 28(a) above shall occur, then, without prejudice to any other right or remedy available to the Seller, the Seller shall also be entitled to:
- (i) cancel any other contract or the balance of any other contract which the Seller may have with the Buyer; or
 - (ii) suspend any further deliveries under any other contract which the Seller may have with the Buyer, without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price for the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

MISCELLANEOUS

- 29. If any of the provisions of these terms and conditions shall be found to be void or unenforceable, such provision shall be deemed to be deleted from these terms and conditions and the remaining provisions of these terms and conditions shall continue in full force and effect, and the Seller and the Buyer 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 terms and conditions.
- 30. (a) The waiver by the Seller of any breach of any of the provisions of the 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 Seller shall not be prejudiced or restricted by any time, indulgence or forbearance extended to the Buyer.
- 31. Dates of bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. The Buyer 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 Buyer, or on arrival of the vessel at destination, the Seller may provide other documents or an indemnity entitling the Buyer to obtain delivery of the Goods. No obvious clerical error in the documents shall entitle the Buyer to reject the Goods or documents or delay payment.
- 32. For CIF contracts, or where the Seller otherwise procures insurance, the Seller shall provide insurance appropriate to the Goods on the terms set out hereunder viz:
 - (a) Risks covered:
 - (i) Institute Cargo Clauses (A) (01.01.1982)
 - (ii) Institute War Clauses (Cargo) – (01.01.1982) or (Commodity trades) (05.09.1983)
 - (iii) Institute Strikes Clauses (01.01.1982) or (Commodity trades) (05.09.1983) (Cargo)
 - (b) Insurable Value – Insured amount to be for not less than the invoice amount.
 - (c) 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 Buyer.
- 33. For DDU, FCA or similar contracts, the Buyer shall be responsible for all import and customs duty and for customs clearance. For DDU delivery shall be made directly to the Buyer's working site and discharge shall be undertaken with all reasonable speed.
- 34. If not otherwise stated the standard terms of INCOTERMS 2010 shall be applicable.
- 35. 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 Buyer's account.
- 36. A person who is not a party to the contract shall have no rights under the contract to enforce any term of the contract.
- 37. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the contract and is strictly excluded.

ARBITRATION AND GOVERNING LAW

- 38. (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 by the International Court of Arbitration in accordance with the Rules of Conciliation Arbitration (ICC Rules) of the International Chamber of Commerce (ICC) in force on the date when the notice of arbitration is submitted in accordance with the ICC Rules, which Rules are deemed to be incorporated by reference into this Condition 38.
- (b) The number of arbitrators shall be one.
- (c) The seat of arbitration shall be London. It is however agreed that the Seller shall have the right to apply and to obtain provisional (urgency) measures or injunctions against the Buyer before the Courts of the registered offices of the Buyer or elsewhere if this shall appear more appropriate to protect its interests, it being however understood that the merit of any claim shall in any event, and without any exception, be settled by arbitration. The arbitration procedure shall be conducted in the English language. The parties agree that the written award made by the arbitrator shall be final and binding upon them as of its notification by the arbitrator to all parties. The award shall be rendered in the English language.
- (d) The language to be used in the arbitral proceedings shall be English.
Unless derogated herein the relationship between the Seller and the Buyer shall be governed by the provisions of English law, the conflict of laws rules however not to apply.