



Poststrasse 18  
CH-6300 Zug  
Switzerland

## General Terms and Conditions for the Sale of Aluminium and Aluminium Products

### 1. Application and hierarchy

1.1 These General terms and conditions of sale ("Conditions") as attached to the sales contract ("Sales Contract") and any product specifications included in the Sales Contract or provided under separate cover ("Product Specifications") constitute the entire agreement ("Agreement") between the seller ("Seller") and the buyer ("Buyer") with respect to the supply of the product described in the Sales Contract and Product Specification, as the case may be, and in the quantity stated in the Sales Contract attached to these Conditions ("Material"), unless it is expressly and specifically provided otherwise in a written agreement between both parties. All other terms, conditions, warranties and any other terms contained in the documents of the Buyer, including but not restricted to, terms and conditions of purchase, forms and purchase orders of the Buyer are excluded except as specifically provided for in this Agreement.

1.2 In the event of any inconsistency between the Conditions, the Sales Contract and the Product Specifications, the Sales Contract prevails.

### 2. Payment

2.1 Unless otherwise agreed in writing, the Buyer must pay the Seller either:

- (a) by the Payment Due Date, which shall be the date specified in the Sales Contract as being the due date for payment; or
- (b) immediately if the Seller considers that an event specified in Clause 8.1 has occurred or is likely to occur.

2.2 If full payment is not made by the Payment Due Date, the Seller may charge interest from the Payment Due Date until full payment is made on the overdue payment at 6% per annum above the one month US LIBOR rate quoted by Bloomberg on page LR on the Payment Due Date.

2.3 Seller reserves the right to reduce the credit or payment terms set forth herein or to require Buyer to provide security in the form of a letter of credit, guaranty or other security (which security shall be in a form and substance and in an amount acceptable to Seller), at any time, on written notice to Buyer, if Seller determines, in its sole discretion, that any such security is required as a result of any negative change to Buyer's financial condition, creditworthiness or payment history or if a bank or other financial institution does not, or ceases to, accept the assignment by Seller of any of Buyer's accounts receivable in relation to Material supplied under the Contract pursuant to factoring or other similar accounts receivable financial arrangements.

2.4 The parties shall bear their own expenses incurred in enforcing their respective rights under this Agreement unless expressly provided otherwise in this Agreement.

### 3. Title

3.1 Title to and ownership of the Material and any products manufactured from the Material ("Products") does not pass to the Buyer until all amounts owing by the Buyer to the Seller under this Agreement have been paid (the "Payment Date") and until the Payment Date:

- (a) the Buyer shall hold the Material and Products as Seller's agent and, if required by the Seller, store the Material and Products in such a manner that they are clearly identifiable as the property of the Seller; and
- (b) if the Buyer sells the Material, or any Products, the Buyer's right to receive payment from its customer will be held in trust for the Seller and any proceeds of sale will be the property of the Seller and the Buyer will hold the proceeds of any such sale on account of the Seller and keep the proceeds separately from its own money.

3.2 The Buyer acknowledges that the Seller may be entitled under relevant law to register its interest in the Material as a security interest and may be required, for that purpose, to file financing statements necessary and other relevant information, as appropriate, in order to evidence the Seller's ownership of the Material. The Buyer further agrees to cooperate with the Seller to ensure that such financing statements are properly filed and/or recorded and to co-operate with the Seller, as necessary, to perfect or continue the perfection of its security interest.

### 4. Risk

Risk in the Material shall pass from the Seller to the Buyer from the time of the delivery in accordance with the applicable delivery term of Incoterms 2010 (as provided for in Clause 15.7). The Seller is not liable to the Buyer for any loss or damage or deterioration of the Material after delivery, even if the Seller arranges freight.

### 5. Liability of the Seller

5.1 Any claim which the Buyer may have against the Seller under this Agreement is deemed to be waived unless the Buyer gives written notice of that claim to the Seller within 30 days after the Material is unloaded at the port of discharge or place of delivery and gives the Seller a reasonable opportunity to investigate the claim.

5.2 Notwithstanding any provision of this Agreement to the contrary, the Seller's total aggregate liability to the Buyer in relation to a shipment of Material, whether arising out of or in connection with this Agreement, under statute, in tort (for negligence or otherwise) or any other basis in law or equity shall not exceed the purchase



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price of that shipment paid by the Buyer ("the Seller's Limitation"). The Seller shall have the option (in the absence of any alternative solution agreed between the parties) either of replacing or repairing the Material; or paying damages to the Buyer, damages which, depending on the Buyer's loss as determined by the Seller acting reasonably, may be less than the Seller's Limitation but which in any event shall not exceed the Seller's Limitation.

5.3 The Buyer shall exercise reasonable endeavours to mitigate any losses, suffered, sustained or incurred which might be the subject of a claim by the Buyer against the Seller under this Agreement.

5.4 Notwithstanding any provision of this Agreement to the contrary, to the maximum extent permitted by law, the Seller is not liable for any consequential loss, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contract, loss of goodwill or loss arising from business interruption, special or contingent losses or damages whether arising out of or in connection with this Agreement under statute, in tort (for negligence or otherwise) or any other basis in law or equity.

## 6. Guarantee and Description

6.1 The Buyer must accept the Material supplied under the Agreement if it is in accordance with the description stated in the Agreement and within the tolerances with regard to the quantity, weight, dimensions, chemical composition, physical properties and finish as may be specified in the Sales Contract or Product Specifications, as the case may be, except where the Buyer, pursuant to Clause 6.2, makes a claim that the Material supplied does not conform to specification.

6.2 For the purpose of Clause 6.1, certificates of analysis that the Seller provides to the Buyer are deemed to be conclusive evidence of the matters stated in them except where the Buyer makes a claim that the quality of the Material supplied does not conform to the certificates of analysis ("Quality Claim") by providing written notice of the Quality Claim to the Seller within 20 days of delivery of the Material. The Seller and Buyer shall then exercise reasonable endeavours to resolve the Quality Claim, failing which the Quality Claim shall then be referred to an independent expert mutually agreed between the parties.

Should the independent expert determine that the Material does not meet the Product Specifications, the Seller and Buyer shall exercise reasonable endeavours to reach agreement on possible solutions. If the parties fail to reach agreement within 60 days of the independent expert's decision, the Buyer may commence legal proceedings in accordance with this Agreement.

6.3 Subject to any written guarantee provided by the Seller or any rights which cannot be excluded by law, the Agreement expressly excludes any warranties,

guarantees, conditions, liabilities or representations (express or implied) as to the quality of the Material or its fitness for any purposes (whether or not made known to the Seller). The Agreement is not a sale by sample.

6.4. Nothing in this Clause 6 shall make the Seller liable to the Buyer for loss of material, shortage, or other claims that arise whilst the Material is at the risk of the Buyer pursuant to the Incoterms.

6.5. Any warranty, guarantee or condition (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in a Contract shall be excluded. The Seller guarantees only that the Material conforms to the description stated in the Agreement (subject to the tolerances referred to in Clause 6.1) and that it will give good title to the Material.

6.6 Any material for which Buyer intends to lodge a claim under this Clause 6 must be kept intact, unused and stored under cover until such time as the inspection mentioned above has been completed. The Seller shall have the right to reject any claims for material delivered under this contract which has already been consumed by Buyer or any third party.

## 7. Intellectual Property Infringement

7.1 No license is granted for the use of trademarks or brands under which Material is delivered and these may not be used by Buyer for the Products manufactured from the same nor for any other purpose, especially advertising purposes, without the Seller's prior written approval.

## 8. Termination

8.1 The Seller may by written notice immediately terminate the Agreement and cancel the delivery of any future instalment of Material and re-sell the Material and/or demand immediate payment of all amounts outstanding (whether or not then due and payable):  
(a) if the Buyer fails to perform or observe any material term of this Agreement (including payment terms);  
(b) if the Buyer, in the reasonable opinion of the Seller, has unsatisfactory credit worthiness;  
(c) if the Buyer has any of its property seized by a holder of any security;  
(d) if an Insolvency Event occurs with respect to the Buyer; or  
(e) if any of the situations in Clause 8.1(b), (c) or (d) apply to any Affiliate of the Buyer (as defined in Clause 15.6).

For the purpose of this Clause, "Insolvency Event" means, in relation to party:  
(i) that party becoming insolvent or bankrupt,  
(ii) the appointment of a liquidator, provisional liquidator or administrator appointed to the party;  
(iii) the party passes a resolution for winding up, proposes a compromise or scheme of arrangement with its



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creditors or files for protection from its creditors;  
(iv) if a receiver, receiver and manager, official manager, mortgagee in possession or other external administrator is appointed to the party or any of its property;  
(v) the party comes under administration (whether voluntary or involuntary);  
(vi) the party becomes unable to pay its debts as they fall due; or  
(vii) anything occurs in relation to the party which is (under the laws of any applicable jurisdiction) analogous to any of the events just described.

8.2 Upon an event listed under Clause 8.1, the Seller shall also have the right to, as the case may be:  
(a) suspend or withhold any future shipments until the event listed under Clause 8.1 has been corrected;  
(b) set-off any amounts or obligations it, or any of its Affiliates (as defined in Clause 15.6), owes or has toward the Buyer or any of its Affiliates, with any amounts or obligations the Buyer or any of its Affiliates owes or has toward the Seller or any of its Affiliates, in connection with any business dealing between them under this Agreement or any other contract;  
(c) obtain from the Buyer any other losses or damages, including reasonable attorney's fees but excluding any other indirect, incidental, consequential, special, exemplary or punitive damages, incurred in connection with the event listed under Clause 8.1;  
(d) any other remedies the Seller may have whether by agreement, operation of law or otherwise.

8.3 The Seller may extend the time of delivery or shipment (and make alternative delivery or shipping arrangements), or terminate the Agreement if the Seller does not receive the following in ample time to enable it to make delivery or shipping arrangements for the delivery of the Material: (a) marking and shipping instructions from the Buyer; or (b) import certificates and documents from the Buyer required to obtain governmental licences and authorisation in order to make shipments.8.4 If the Seller terminates the Agreement under Clause 8.1, the Seller may stop the delivery or shipment or further delivery or shipment of the Material and:

(a) recover from the Buyer any sum due at the time of the termination of the Agreement and any loss or damage suffered by the Seller as a result of the termination of the Agreement; or  
(b) if the Material has been produced specifically for the Buyer, or is in the process of being produced the Buyer shall pay to the Seller as liquidated damages the full Agreement price thereof and any costs incurred by the Seller.8.5 The Seller may terminate the Agreement by giving written notice if the Material remains undelivered or uncollected after 14 days from when the Seller informs the Buyer that the Material is ready for collection.8.6 The Buyer may by written notice immediately terminate the Agreement for the delivery of any future instalment of Material:

(a) if the Seller fails to perform or observe any material

term of this Agreement and fails to remedy the breach within a reasonable time after being notified of the breach by the Buyer; or  
(b) if an Insolvency Event occurs with respect to the Seller.

## 9. Delivery

9.2 The Seller must use its best endeavours to effect delivery of the Material by the date that is specified in the Agreement as being the delivery due date (the "Delivery Due Date").

9.3 The Seller is not liable for any loss or damage accruing to the Buyer as a result of late delivery.

9.4 The Buyer must accept and pay for the Material even if the Seller delivers late.

9.5 The Seller may deliver the Material in instalments. Each instalment will be treated as a separate shipment under this Agreement. However, if the Buyer does not pay for an instalment, the Seller may treat the non-payment as a breach of contract relating to the other instalments.

9.6 Subject to Clause 9.5, the Buyer may cancel an instalment under the Agreement if the Seller fails to effect delivery of the instalment within thirty (30) days from the Delivery Due Date unless that failure to deliver is as a result of any of the reasons specified in Clause 11.

9.7 Unless the Sales Contract specifies the means by which the Material is to be transported, it shall be transported by means determined by the Seller, at its entire discretion.

## 10. Quantity and weight discrepancies

10.1 If the total quantity of Material delivered pursuant to the Agreement is less than the total quantity the Buyer ordered under the Agreement, the Buyer must notify the Seller in writing of the shortfall within 5 (five) days after the last delivery, otherwise the Seller will take it that the correct quantity of Material has been delivered and the Buyer must accept the Material and pay for it in full despite the shortfall. However, if the total quantity of Material delivered under the Agreement is within 5 percent in the event that the Material is a Value Added Product and 2 percent in the event that the Material is an unalloyed primary aluminium product, Seller shall be deemed to have complied with its obligations and the price will be varied accordingly.

For the purpose of this Clause 10.1, "Value Added Products" shall mean the following products: Billets; Sheet Ingots/Slabs; Foundry T-Bar; Foundry Ingot; Specialty Aluminium Products; Wire Rods; and High Purity Aluminium Ingot.



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10.2 If the quantity of Material delivered is more than the amount the Buyer ordered, the Buyer must immediately inform the Seller in writing and the Seller is entitled to charge the Buyer for the excess or recover the excess from the Buyer.

10.3 For weight discrepancies, if any, the Buyer will notify the Seller within 5 (five) days from arrival or release at delivery point, in case determined weights differs by more than 0.2 percent from the invoiced weights, provided number of delivered units corresponds to number of units mentioned in transport documents. Such notice must include full details of weight protocols, also evidencing how calibration of used weight facility was ensured. The Seller will have the right to request reweighing of the Material in the presence of his nominated representative. Finding established by such procedures described above shall be binding and final for both parties. Costs thereof shall be borne by the losing party. In all other cases, the weight of the delivered metal specified in the bill of lading, manifest, certificate of weight and analysis or other similar document, or warehouse weight, as applicable, shall be final, conclusive and binding on the parties, except for fraud or manifest error.

#### **11. Force Majeure**

11.1 The Force Majeure (Exemption) clause of the International Chamber of Commerce (ICC Publication No. 650) with the addition of the words "or breakdown of smelting facilities" to paragraph 3 thereof shall be incorporated in each Contract and any circumstances in which that Clause applies shall be referred to as "Force Majeure Circumstances".

11.2 For the avoidance of doubt Force Majeure Circumstances shall not relieve a party of its obligation to make any payments due to be made under a Contract as and when those payments are due.

11.3 The party seeking relief due to Force Majeure Circumstances shall notify the other party in writing of the commencement and cessation of such Force Majeure Circumstances.

11.4 If the Force Majeure Circumstances for more than one hundred and twenty days the Seller or the Buyer shall be entitled to terminate the Contract unilaterally with a notice in writing to the other party.

#### **12. Storage and handling**

If the Buyer does not collect the Material, or provide adequate delivery instructions, within 14 days of request by the Seller, or the Seller agrees to the Buyer's request to delay delivery, the Seller may charge for storage. The Buyer must pay such storage charges monthly at commercial rates. The Material will be stored at the Buyer's risk.

#### **13. Taxes**

All amounts of money referred to in this Agreement shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Buyer is required under any applicable law to withhold or deduct any amount from the payments due to the Seller, the Buyer shall increase the sum it pays to the Seller by the amount necessary to leave the Seller with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

#### **14. Applicable law and Settlement of Disputes**

14.1 The Seller and the Buyer shall endeavour to solve any dispute, controversy or claim arising out of or relating to this Agreement amicably.

14.2. All Quality Claims concerning the quality of Material delivered shall be dealt with in accordance with the procedure set forth in Clause 6.2 of this Agreement.

14.3 If the parties fail to reach settlement of any dispute, controversy or claim, including Quality Claim, by means of negotiation, such dispute, controversy or claim shall be referred to and finally settled by arbitration according to the provision of section 14.4

14.4 Any dispute, controversy, difference or claim arising out of or relating to this Contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("HKIAC") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be three. The arbitration proceedings shall be conducted in English. The law of this arbitration clause is Hong Kong law.

14.5. Each Contract shall be subject to, governed by and construed in accordance with the laws of England and Wales.

#### **15. General**

15.1 Notices. Notices under the Agreement must be in writing. A notice must be delivered personally or sent by facsimile transmission, electronically or post to the other party at their last known address.

15.2 Waiver. Even if the Seller does not insist on strict performance of the Agreement, the Seller is not taken to have waived its rights to later require strict performance. Even if the Seller provides an express waiver, this is not



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to be taken as a waiver of a subsequent breach of a term or condition.

15.3 Severability. If any provision of the Agreement is held to be invalid or unenforceable in any jurisdiction, it is, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

15.4 Variation. The Seller is entitled to vary this Agreement at any time by giving Buyer written notice.

15.5 Assignment. The Buyer shall not be entitled, without the consent of the Seller, to assign to any other person (a) the rights, title and interest, including the existing and/or future claims and/or (b) the obligations under this Agreement. The Seller may, without the Buyer's consent, assign (a) the rights, title and interest, including the existing and/or future claims and/or (b) the obligations under this Agreement to one or more of its Affiliates or to any third party, and (c) assign accounts receivable in relation to Material supplied under this Agreement to banks or other financial institutions pursuant to factoring or other similar accounts receivable financial arrangements.

15.6 Affiliates. For the purposes of this Agreement, "Affiliate" means any corporate entity directly or indirectly Controlled by, under common Control or Controlling that party. For this purpose, "Control" shall mean the ownership directly or indirectly of greater than fifty (50) percent of the shares entitled to vote at a general meeting of a body corporate.

15.7 Incoterms 2010 (ICC Publication No. 715) applies to matters not covered in this Agreement. In the event of any inconsistency between this Agreement and the Incoterms 2010, the Agreement prevails.

Signature of the Buyer

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