

## **TERMS AND CONDITIONS**

### **General**

- a) The 'SELLER' means BLACK COUNTRY METALS LTD or any of its subsidiaries
- b) The 'BUYER' means the person, firm or company to whom this Sales order is addressed.
- c) 'DOCUMENT INSTRUCTIONS' shall mean the document in which the SELLER confirms destination port and authorities for the vessel, as well as details of all required documentation. The **related documents** are '1/3 clean original Bill of Lading on-board the vessel, 2/3 original and 3/3 copies of on-board Bill of Lading sent to destination(s) specified by BCM in Document Instructions, a signed commercial invoice and all other documents as defined in the Document Instructions.
- d) The 'GOODS' means the articles/ materials or services with related documents as described in the Sales Order of the Seller.
- e) 'SERVICES' means work and/or services or any of them to be performed by the SELLER for the BUYER pursuant to this Sales order.
- f) The 'CONTRACT' means the contract for the sale of the goods and/or provision of Services made between the SELLER and the BUYER to which these conditions apply.

### **APPLICATION**

- a) These Conditions shall apply to and be incorporated in the Contract and shall be in substitution for any oral arrangements made between the BUYER and the SELLER and shall prevail over any inconsistent terms or conditions contained in or referred to in the Seller's quotation or acceptance of order or correspondence or elsewhere or implied by trade custom or practice or course of dealing and no addition to or variation of or exclusion or attempted exclusion of the Sales Order and/or there conditions or any of them shall be binding upon the Buyer unless in writing and signed by a duly authorised representative of the Buyer.

### **CONTRACT ACCEPTANCE**

- a) The acceptance of the Sales Contract is limited to and conditional upon acceptance by the Seller of these conditions.
- b) The performance of services or delivery of Goods by the Seller pursuant to the Order shall constitute acceptance of these Conditions of Purchase when acceptance has not previously been communicated to the Buyer.

### **QUALITY AND DESCRIPTION**

- a) It is a condition of the Contract that the Goods shall conform with the quality and description and other particulars of the Goods stated in the Sales Order, shall conform to all samples, drawings, descriptions and specifications furnished by the SELLER to the BUYER, shall be of merchantable quality and fit for any intended use expressly or impliedly made known to the Seller and free from all defects. Except insofar as the specifications otherwise indicate the Goods shall conform to the latest relevant British Standards specifications or in none exist with the best standards of the industry.
- b) Prior to dispatching the same, the Buyer shall inspect and/or test the Goods in conformity with the specifications in the Sales Contract. The Seller shall be responsible for the production of a radioactive-free certificate, an SGS survey of quality and a draft survey. The Seller shall be entitled but not obliged to attend such inspection or tests.
- c) All services shall be supplied in full accordance with the terms of the Sales Contract and shall be executed in a proper and skilful manner by properly qualified and experienced persons. These provisions shall survive any delivery, inspection, acceptance or payment pursuant to the Sales Contract and shall extend to any replacement, repaired, substitute or remedial Goods, and/or Services provided by the Seller with the consent of the Buyer.

- d) The Seller represents and warrants that the Goods:
- Shall be delivered in full and unencumbered ownership
  - Shall be in accordance with the agreed quantity, dimensions, quality and description in the Sales Contract
  - Shall be in all respects, be in conformity with possible samples and with the reported specifications
  - Shall be free of all defects, radioactivity, asbestos and all other pollution and dangerous substances and shall be fit for the purpose for which the Goods have been sold; it being understood and consented to by the Buyer that the Seller associated with the detection, safeguarding, storing, return shipment, remediation or disposal of the contaminated goods to the Buyer shall be for the account of the Buyer
  - Shall conform to legal requirements and other national and/ or European government regulations.
- e) The Goods shall be weighed and tested on radioactivity and asbestos after arrival at specified destination. After discharge the Goods shall be inspected on conformity with the Sales Confirmation and on absence of (other) defects, pollution and dangerous substances by an independent surveyor appointed by the Seller
- f) Not carrying out inspections on behalf of the Seller, and inspections and test results which later on appear to be incorrect, shall not mean any waiver by the Seller of any of its rights.
- g) Notwithstanding the mandatory notification of the authorities, in case BCM establishes non-conformity of the Goods, BCM shall as soon as possible inform the seller thereof, and will invite the Seller by email or fax, sent to the Seller's office, for a joint inspection. In case the seller does not respond within 1 working day, BCM will appoint an independent surveyor, whose findings shall be binding in respect of quality and quantity and otherwise, the (non) conformity of the Goods with the Purchase Confirmation. The costs of such an inspection shall be for account of the Seller. After receipt of the independent surveyor's findings BCM may process the Goods as per its sole discretion.
- h) In case the Goods do not comply with the Sales agreement, the Seller shall have the option of putting the Buyer on notice to comply with its obligation within a certain period of time, or to rescind the agreement and to instruct the carrier/forwarder who delivered the Goods or another carrier/forwarder to return the Goods to the Seller for risk and account of the Seller, or to retain the Goods as security for payment by the Seller of the damage that the Buyer suffers or may suffer as a consequence of the non-compliance with the Purchase Confirmation, or to keep the agreement in place and adjust the payment for damages and/or the price.
- i) In case the Seller has delivered Goods which do not comply with the Sales agreement, the Buyer shall be entitled to annul possible future deliveries, whether under the same Purchase Confirmation or under separate Purchase Confirmations, without carrying any liability for damages.

## **PACKING**

- a) In line with European Union regulations and prior to packing and loading, the Seller shall ensure that the Goods, by using adequate detection equipment, are physically checked against radioactivity, asbestos and all other dangerous substances, in accordance mentioned in Section: Quality and quantity: B
- b) In case different Goods and/or qualities are to be loaded by the Seller into one truck, trailer, container or ship, then the individual Goods and/or qualities must be packed and marked separately.
- c) The Seller has the obligation to send a pre-advice to the Buyer specifying the exact loading details of the Goods. Such pre-advice shall detail the location and type of material of each delivery against the Sales agreement

- d) In case the pre-advice and specification has not been received by the Buyer and/or in case the type and quantities of the Goods are different from the Sales agreement and/or the Goods are not packed and marked according to clause B, section Packing, the Buyer shall be entitled to charge for the additional costs of unpacking, sorting and analysis and any other of further costs that BCM incurs as a consequence

## **PRICES**

- a) All prices shall be as stated in the Sales Order.
- b) All prices are, in as far as applicable or unless stated otherwise in the Sales agreement, inclusive of import duties and value added tax.
- c) All prices are fixed, unless stated otherwise in the Sales agreement. Changes in duties and taxes as well as changes in factory and/or importer's prices and rate of exchange and/or other costs price-raising elements cannot be claimed by the Buyer.
- d) If the Seller is registered for VAT it shall be required to issue a proper tax invoice in accordance with the relevant legislation before the Buyer shall be required to make payment for Goods and/or Services supplied in accordance with the Order.

## **INSPECTION AND REJECTION**

The BUYER shall carefully inspect and test the Goods prior to delivery to ensure that they comply with the requirements of the Sales Contract and the Buyer shall if so requested by the Seller give the Seller reasonable notice of any such tests and the Seller shall be entitled to be represented thereat.

## **DELIVERY AND TRANSPORT:**

- a) Time of delivery shall mean the time within which performance must be concluded, as stipulated in the Sales Confirmation. Time is of the essence in the performance of Sales order. If delivery dates or the dates for the provision and/or performance of Services cannot be met, the Seller shall promptly notify the Buyer of the earliest possible date for delivery or the provision and/or performances of Services.
- b) Delivery will be as per Sales contract confirmation made by the Seller, as per Incoterms, latest version, duties paid.
- c) The Goods will remain at the risk of the Seller until the vessels has completed loading and left the port of origin
- d) Working hours for loading and discharging vessels, including any demurrage time, will be those specified by the ship owners, and will not be open to any challenge by the Buyer, unless prior agreement is reached with the Seller.
- e) Unless otherwise stated in the Purchase Confirmation, all costs for transportation to the place of delivery, all costs of customs clearance and all costs until end of discharge will be for the account of the Buyer
- f) The documents mentioned under clause DEFINITION, C shall be in the possession of BCM 72 hours prior to arrival of the Goods.
- g) Delivery shall be completed when the Goods have been unloaded at the point of delivery specified in the Order and the delivery has been accepted by a duly authorised agent, employee or site representative of the Buyer.

## **PAYMENT**

- a) Invoices must be sent in twofold and must be accompanied with the required documents and certificates in as far as they have not yet been handed over before or during delivery. For further details, reference is made to Section General, C, for documents required. Not correctly filled-in documents or non-completed documentation may lead to the return of

the invoice and a subsequent delay in payment without prejudice to the Seller other rights in such case.

- b) The Seller operates a credit note system, whereby the final weight, analysis and final value of the Goods is calculated. In case of differences between Seller's invoice and Buyer's credit note, the latter shall prevail at all times.
- c) Payment shall only be due after it has been established that the Goods are in strict conformity with what has been agreed, both in respect of quantity and in respect of quality. Payment shall be made as per the Sales agreement
- d) The Buyer shall be entitled to withhold payment in the Goods do not strictly conform to the Sales Confirmation.
- e) The Buyer shall be entitled to set-off payment with everything it has to claim from whatever cause the Seller, or, in as far as non-due claims of the Buyer are concerned, shall be entitled to suspend the payment. In such cases the Seller shall not be entitled to suspend its obligations and/or to rescind the agreement, nor to take any conservatory measure or measure of recovery.
- f) In case the financial situation or reputation of the Seller at any time gives rise thereto, the Seller shall at first request of the Buyer put up security for the due fulfilment of its obligations as against the Seller in the form as to be advised by Buyer. In case no such security is put up the Seller shall be entitled to rescind the agreement one-sidedly without being held to pay any damages. The Seller shall always have such rights in case of (application for) bankruptcy or suspension of payment of the Buyer or arrest of assets of the Buyer.

#### **INFORMATION**

All specifications, drawings, sketches, models, samples, tools, designs, technical information or data and other information, (whether written in oral or otherwise) furnished to the Seller by the Buyer or on its behalf shall remain the property of the Seller and shall be returned promptly to the Buyer (together with all copies) at the Seller's request. Such information shall be treated by the Buyer as strictly confidential, shall be kept safely and shall not be used or disclosed by the Buyer except strictly as required in the course of performance of this or any other Sales Agreements for the Seller.

Unless the Seller has otherwise agreed in writing, information furnished or disclosed by the Seller to the Buyer shall not be considered confidential or proprietary information and shall be acquired by the Buyer free of restrictions of any kind. The Buyer shall be wholly responsible for any discrepancies, errors or omissions in any information furnished to the Seller whether such information has been approved by the Seller or not.

#### **INDEMNITY**

The Buyer shall indemnify and hold the Seller harmless from any and all claims, liabilities, damages or expenses (including consequential loss and damage)

- a) Arising from or in connection with any alleged or actual infringement by reason of the use or sale of the Goods or the performance or utilisation of the results of Services of any patent, utility model, registered design, copyright, trade mark or other proprietary right vested in any other person. The indemnity shall extend to any country where the Buyer knows or has reason to believe that the Seller intends to use, transfer or market the Goods or utilise or deal with Services and the Seller shall defend all such claims or actions and proceedings brought against the Seller at the Buyer's expense;
- b) Sustained by the Seller or for which the Seller may be liable as a result of the failure of the Buyer to perform its obligations to the Seller hereunder

- c) In respect of death or injury caused by or being in any way whether directly or indirectly, a result of the performance of this Sales Order, to any employee of the Seller, or if its agents or sub-contractors or any other person on the Seller's premises.
- d) In respect of any loss of or damage to any property, real or personal, of the Seller or any third party whether sustained by the Seller or by any person to whom the Seller may be responsible. Save for death or injury caused by the negligence of the Seller to the Buyer shall be solely responsible for the health and safety of any employee of the Buyer, its agents or sub-contractors whilst on the premises of the Seller.

#### **ARBITRATION AND GOVERNING LAW**

All disputes, differences or questions arising of this agreement or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties. If the parties are unable to agree upon the arbitrator within 14 days of a party proposing arbitration to the other party the arbitrator will be appointed at the request of either party by the president for the time being of the law society of England and Wales having due regards to any representations made to him as to the appropriate qualifications of such arbitrator. The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force.

#### **FORCE MAJEURE**

Neither party shall have any liability or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period or more than 6 months either party may terminate this agreement by written notice to the other party.

#### **TRADE TERMS**

In the Sales order refers to any international trade term such term shall be interpreted in accordance with INCOTERMS current at the date of the Sales Order save insofar as such meaning shall be inconsistent with the express provisions of these Conditions of Sales of the Sales Order.

#### **CANCELLATION**

Notwithstanding and without prejudice to any other lawful right of the Buyer, the Buyer shall have the right to terminate the Contract in whole or in part at any time upon giving written notice to the Seller whereupon the Seller shall cease all work on the Order or on the cancelled part thereof as the case may be and the Buyer shall pay the Seller such portion of the Order price as may be fair and reasonable having regard to the value of the work done, of Goods previously delivered and of Services performed under the Order. The Buyer shall have no other liability to the Seller by virtue of such termination

#### **LICENSE**

If the performance of the Order requires the buyer to have any permit or license from any government or other authority at home or overseas, the Order shall be conditional upon such permit or licence available at the time required.

#### **PUBLICITY**

The Buyer shall not without the prior express written permission of the Seller, publicise in any way the name of the Seller or the destination or description of the Goods supplied or to be supplied under the order

## **JURISDICTION**

The validity construction and performance of this agreement shall be governed by English Law. Any dispute arising under or in connection with this agreement shall be subject to the exclusive jurisdiction of the English courts to which the parties to this agreement hereby submit.

## **RETENTION OF TITLE**

Ownership of the goods which are subject to this agreement shall not pass to the BUYER until they are fully paid for, but the risk in the goods shall be borne by the BUYER from the date of the delivery by the SELLER or its agents to the destination.

## **SUBCONTRACTING**

The SELLER may perform any or all of its obligations under this agreement as to delivery through agents or subcontractors provided the SELLER shall remain liable for such performances.

## **THIRD PARTIES**

This agreement shall not operate to confer any rights on any third party and no person other than the parties to this agreement may enforce any provision of this agreement by virtue of the contracts (Rights of Third Parties) Act 1999. Agreement to the Seller to assignment or transfer as aforementioned does not release the Buyer of its duties, responsibilities and liability.

## **LIABILITY**

- a) The Buyer shall be liable for all damages and costs (including demurrage, detention, penalties or other costs, however mentioned), which arise by, or as a consequence of the delivery due to incorrect, incomplete or untimely delivery of the Goods or any other non-compliance of its obligations as set out in the Sales Confirmation, these General Conditions of Sales or any other obligation resting upon the Buyer. Incorrect delivery of the Goods will include delivery of Goods, which do not strictly conform to the Sales Confirmation as stipulated in Section Quality and quantity.
- b) The Buyer shall be liable for all damages as afore described which may occur from or as a consequence of acts or negligence of the Buyer itself, its personnel or subcontractors, also including personnel of Seller which acts as per instructions of the Buyer, its personnel or subcontractors.
- c) The liability of the Buyer shall include, but not be limited to, damage to (goods of) third parties, consequential damages and other indirect damages which the Seller or others may suffer, including all costs and damages incurred as a consequence of pollution such as but not limited to radioactivity, asbestos, chemical pollution or toxic or explosive properties or any other dangerous substances found in the Goods.
- d) The Buyer shall indemnify and hold the Seller harmless from and against all claims of third parties, inclusive of directors and employees and subcontractors of the Seller, in connection with non-conformity of the Goods

## **Disputes and applicable law**

- a) All claims against the Seller shall, with the exclusion of normal courts, be decided by arbitration in conformity with the rules of Transport and Maritime Arbitration Rotterdam Amsterdam. Disputes solely in respect of quantity or quality will, by way of binding advice, be decided by one person to be appointed by the parties jointly and failing agreement within one week after notice of one party to the other, to be appointed by the parties jointly and failing agreement within one week after notice of one party to the other, to be appointed by the President of the District Court of Rotterdam. Place of arbitration shall be Rotterdam. Language of the arbitration proceedings shall be English.

- b) The jurisdiction of the President of the District Court in injunctive relief proceedings shall not be affected by this provision
- c) English law will solely govern these General Purchase Conditions and the agreements between the parties. Applicability of the Vienna Convention on the international Sale of Goods shall be excluded.

#### **OTHER TERMS AND CONDITIONS**

- a) All parties shall act according to the terms stipulated herein on signing this contract and assume legal responsibility
- b) Any amendments and/or supplements to the present contract shall be valid only if they are made in written form and signed by duly authorised representative of the parties.
- c) All correspondence and negotiations concerning the contract that have taken place prior to its signing shall be considered null and void.
- d) All duties and taxes on the consignment at loading port, if any shall be on the BUYERS account.
- e) Where it would be decided that an agreement has come into force without a Sales Contract having been sent or received, the word Sales Contract hereinafter shall have to be read as 'agreement'
- f) An agreement will only come into force by the signing of the Sales Contract by the SELLER