

## GENERAL TERMS AND CONDITIONS FOR SALE (BASE METALS)

Nizi International S.A. (hereinafter referred to as "Seller") has entered the Sale and Purchase agreement (hereinafter referred to as "Agreement") of the "Goods" subject to these General Terms and Conditions of Sale (hereinafter referred to as "Conditions of Sale") with counterparty (hereinafter referred to as "Purchaser").

Seller's acceptance of the purchase order is expressly conditioned upon Purchaser's consent to these Conditions of Sale. Seller objects to any different or additional terms or conditions contained in Purchaser's purchase order or any other document submitted by Purchaser.

These Conditions of Sale shall apply only to sale of base metals, as defined by the LME.

### 1. Scope of application

- 1.1. Unless otherwise specifically agreed in writing, the following Conditions of Sale shall be regarded as an integral part of each agreement entered into by Seller and shall prevail over and above any other terms and conditions stated or expressed by any other party to such agreement. Purchaser acknowledges that no representation or warranty other than those contained in these Conditions of sale have been made by Seller or relied upon.
- 1.2. By placing a purchase order Purchaser accepts the exclusive binding force of these Conditions of Sale.
- 1.3. No employee or agent of the Seller has the authority (either express or implied) to vary or waive these Conditions of Sale and the Purchaser shall not rely upon any variation or waiver unless confirmed in writing by Seller acting through a Commercial Director and CEO and marked as special conditions.

### 2. Conclusion of and Modifications to the Agreement

- 2.1. The offers made by Seller shall be non-binding and is subject to Seller's final confirmation; the offers solely represent a request to the Purchaser to make an offer to buy.
- 2.2. By the respective order the Purchaser makes an offer to which it is bound. An agreement shall not become effective until it has been explicitly confirmed by Seller in a written sales confirmation and shall be governed exclusively by the contents of the sales confirmation and by the Conditions of Sale. Seller's silence or failure to react to Purchaser's offer or purchase order shall not constitute acceptance.
- 2.3. Oral promises and agreements, as well as all statements scheduled to conclude, amend or terminate agreements must be recorded in writing to become valid.

### 3. Delivery and documentation

#### 3.1. Delivery term

- 3.1.1. Delivery of Goods, including the transfer of damage risk to Goods, shall be governed by the applicable provision of INCOTERMS 2010 defined in the Agreement.
- 3.1.2. Delivery period and delivery deadlines are always estimated and might be only binding if they have been confirmed by Seller as binding in writing and Purchaser has provided Seller in a timely manner with all information, documents, permits and releases required for the performance of such delivery and has paid any advance payments in the manner and amount as agreed upon by the parties.
- 3.1.3. Delivery time shall be extended to a reasonable extent if there are obstacles to delivery for which Seller is not responsible. This applies, in particular, in the event of any case foreseen by Article 11. Seller will notify the Purchaser immediately of any such obstacles to delivery according to Article 11.

- 3.1.4. If deliveries by Seller are delayed, Purchaser shall be entitled to cancel the Agreement only if Seller is responsible for the delay and after a reasonable grace period set by Purchaser has expired without any success.
- 3.1.5. Seller has the right to make partial deliveries.

### **3.2. Purchaser's obligations**

- 3.2.1. If the Purchaser defaults on acceptance of the contractual delivery, Seller has the right – with reservation of all other claims – to store the Goods at its reasonable discretion at the expense and risk of the Purchaser and to invoice said Goods as if they had been delivered.
- 3.2.2. If the Purchaser is in delay with fulfillment of contractual obligations (in particular does not make the payment and/or collect Goods within the delivery time specified), the Seller has the right to consider the agreement as null and void for the remaining quantities, which the Purchaser accepts without any reservation and waives all claims in the future.
- 3.2.3. The Seller retains the right to claim from Purchaser further damages.

### **3.3. Documents to be provided**

- 3.3.1. The Purchaser agrees to provide the Seller with all the necessary documents and information that might be required by law and common business practice for Seller to perform delivery, export, import formalities (if applicable), receive payments and other actions related with the sales.

### **3.4. Deviations**

- 3.4.1. Deviations in delivery of Goods in dimensions, weight and quality are permitted in compliance with customary practice. Goods will be deemed to conform to the Agreement despite minor discrepancies which are usual in the trade or through course of dealing between the parties.
- 3.4.2. The Seller reserves the right to deliver up to 0,2% more or 0,2% less than the contracted quantity, and the Goods so delivered shall be good and complete delivery under the Agreement. Unless otherwise agreed between the parties in such case no price changes shall be made.
- 3.4.3. Unless otherwise agreed in writing, the liability of the Seller to supply the Goods shall be also fulfilled if the goods are supplied with a quantity tolerance of +/- 2% compared to the quantity agreed upon in the Agreement (the "Agreed Tolerance"). In this case Purchaser shall pay the price for the factually delivered quantity and shall waive any and all claims regarding the delivered quantity of Goods.

## **4. Price and payment**

### **4.1. Price**

- 4.1.1. The prices are indicated in the Agreement. For the calculation of the amount of purchase price the quantity of the Goods specified in the loading list or bill of lading shall be decisive.
- 4.1.2. Prices do not include any kind of taxes, in particular VAT, GST or other sales tax. Seller keeps the right to charge the Purchaser with any and all applicable taxes, including but not limited to VAT, excise, sales, use or similar taxes as required by the applicable tax rules. Purchaser is liable for the payment of any VAT due according to the applicable legislation. The division between the parties of excise duties, customs duties and/or any other duty or tax due in relation with import or export shall be determined on the basis of the delivery terms agreed in accordance with Article 3.1.1. However any new tax, customs duty or charges enacted or

imposed on the object of the Agreement after the Agreement has entered into force, are to be borne by Purchaser.

#### **4.2. Payment**

- 4.2.1. The payment terms are indicated in the Agreement and shall be met by Purchaser. If the period for payment expires without success, Purchaser shall be in default. Payments by Purchaser shall only be deemed effected if Seller can dispose the amount.
- 4.2.2. Unless otherwise agreed in writing, payment shall be made by electronic transfer to the Seller's nominated bank account in accordance with the payment terms and in the currency specified by the Seller.
- 4.2.3. If Purchaser is late to perform the payment under the terms of the Agreement or if Seller becomes aware of the risk that Purchaser may possibly not be able to perform after conclusion of the Agreement, Seller is entitled to make any still outstanding deliveries only against advance payment or provision of security. If such advance payments or securities have not been made or rendered even after expiration of a reasonable grace of period, Seller may rescind, in full or in part, the individual or all agreements concerned. Seller's assertion of further rights remains unaffected. In such case Purchaser shall not have the right to claim for any damages.
- 4.2.4. In the event that Purchaser is in default of payment, Seller is entitled to demand liquidated damages in the amount of 20% of the value of the Goods subject to the Agreement. The Seller's right to assert a claim for further damages caused by such default of payment shall remain unaffected.
- 4.2.5. The Purchaser shall not be entitled to retain or defer payment of any sums due to the Seller on account of any dispute, cross claim or set-off which it may allege against the Seller.
- 4.2.6. The Purchaser shall not be entitled to stop any payments without a prior written approval of Seller's Commercial director or CEO.

#### **4.3. Suspension and Quotations**

- 4.3.1. The metal price quotations specified under this contract are the quotations currently in general use for the pricing of the metal contents of the Goods.
- 4.3.2. In the event that any of these price quotations ceases to exist, ceases to be published or should no longer be internationally recognized as the basis of the settlement of Goods contracts, then upon the request of either party Purchaser and Seller will promptly consult together with a view to agreeing on a new pricing basis and on the date for bringing such basis into effect. The basic objective will be to secure continuity of fair pricing.

#### **5. Taxes**

- 5.1. Both Seller and Purchaser recognize that VAT and other applicable taxes may be due on individual deliveries made under the Agreement at different rates in different countries, and both parties agree to supply all necessary information and documents required to invoice compliant with the VAT laws and other tax, excise duties and similar taxes regulations of the country in which the delivery occurs, and all necessary documentation which Seller needs to assess accurate returns with the appropriate taxing authorities.
- 5.2. In all events Purchaser shall indemnify and hold Seller harmless for any VAT or any other taxes/duties charged or not charged on the transaction when Seller has relied on Purchaser's presentation or non-presentation of documents to determine the VAT and other taxes/duties status of the transaction.

5.3. If a sale of Goods may be zero rated for VAT purposes under the applicable tax rules, the Goods may be invoiced without VAT, provided that Purchaser provides Seller with the appropriate VAT identification number prior to delivery and that Purchaser, if applicable, within 2 weeks after delivery, provides Seller with documentation that is satisfactory to the authorities of the relevant country to allow zero VAT rating. If such evidence is not supplied by Purchaser with said time, Purchaser shall pay any VAT payable on the goods, inclusive of default interest and penalties for which seller is or becomes accountable as a consequence of the non compliance of Purchaser.

## **6. Retention of Title and Transfer of Risk**

### **6.1. Retention of Title**

- 6.1.1. The Purchaser acquires the title to the Goods only upon complete payment of the purchase price.
- 6.1.2. Until title has passed to the Purchaser the Goods and any delivery documents delivered under the Agreement remain the Seller's property and are held by the Purchaser. The Purchaser shall store the Goods held separately from all other goods and ensure that the Goods are clearly marked and remain identifiable as belonging to the Seller. In the event that the effectiveness of the retention of Seller's title is subject to registration or compliance with any other formalities the Purchaser is required to take all necessary steps at its own cost to ensure Seller's title is duly retained.
- 6.1.3. If nevertheless the goods subject to this reservation of title are processed or converted the reservation of title shall extend to the product of such processing and Seller shall be entitled if the necessity arises to select for separation such amount of the said product as shall cover the value of the goods supplied by Seller. In the event of an encroachment by a third party, the Purchaser shall inform Seller immediately of the manner and perpetrator thereof.
- 6.1.4. The Goods may be resold by the Purchaser only in the normal and ordinary course of business. All Purchasers' claims it will have against its customers deriving from a resale of the Goods are hereby assigned to the Seller, and the latter is authorized to collect the claims against third parties. This assignment shall also include any rights arising from the fact and to the extent that the Goods are mixed or combined with other property. In case the Goods are resold, the Purchaser is obliged to notify the Seller about the claim assigned, provide the Seller with details of the third party debtor and all information required for the collection of payment by the Seller. The Purchaser must immediately transfer any amounts collected by it to the Seller, to the extent that and as soon as the Seller's claims are due.
- 6.1.5. In jurisdictions where reservation of title cannot be made effective against third parties by simple declaration on invoices or other written instruments, the Purchaser, by acceptance of these Conditions of Sale, affirms that a security agreement exists between him and the Seller and undertakes to cooperate with the Seller in completing and filing with the proper authorities the financing statements or other documents needed to perfect the Seller's security interests in the goods sold and in the proceeds from any disposition of the Seller's interests herein by the Purchaser.

### **6.2. Risk**

- 6.2.1. Risk shall pass from the Seller to the Purchaser, in accordance with the rules set out in international chamber of Commerce publication "Incoterms 2010" specified in the Agreement.

## **7. Representations and Warranties**

- 7.1. The Goods have the agreed characteristics upon the passage of risk; these characteristics shall exclusively be determined by the specific document issued by Seller (e.g., sales confirmation,

specification) made in writing with regard to the characteristics, features and characteristics of performance of the Goods.

- 7.2. All warranties, conditions and other terms implied by statute or customary practice are, to the fullest extent permitted by law, excluded from these Conditions of Sale.
- 7.3. Seller warrants that the goods furnished hereunder are found to meet the specifications set forth in the Agreement. No other warranty, expressed or implied, shall apply, including any implied warranty of merchantability or fitness for a particular purpose, and any such implied warranties are expressly disclaimed. In the event that applicable law prevents the disclaimer of any implied warranties, then such implied warranty shall be limited to the fullest extent permitted by law. This warranty may be altered only in writing and signed by Seller through Commercial Director and CEO. It may not be altered or extended orally or in writing by any other person.
- 7.4. Seller shall not under any circumstances be liable for any consequential special, indirect or punitive damages incurred by the Purchaser or any third parties as a result of any alleged defects in the products, or otherwise arising from the sale of the products to the Purchaser or the Purchaser's use thereof.

## **8. Non-conformity and Claims Based on Defects**

- 8.1. Upon the delivery of the Goods to the place of destination the Purchaser is obliged to check and to ensure evidence for the need of claiming visible defects. If the delivery does not show visible defects, the Purchaser is obliged to receive it immediately from the carrier. In other case it shall bear all the pertaining expenses.
- 8.2. Any material for which Purchaser intends to lodge a quality claim must be kept intact, unused and stored under cover until such time as the inspection, sampling and assaying procedures mentioned above have been completed. The Seller shall have the right to reject any quality claims for material delivered under the Agreement which has already been consumed by Purchaser or any third party.
- 8.3. All claims with respect to any products alleged not to conform to the Seller's description and all claims for shortages must be made in writing immediately upon receipt of Goods but not later than 5 calendar days from arrival of Goods at agreed delivery place. Products shall not be returned to the Seller without the Seller's permission.
- 8.4. Lacks of conformity which, even with careful examination, could not be discovered within this time period are – with immediate discontinuation of any use or processing hereof – to be notified in writing without delay after discovery, at the latest two months after date of delivery.
- 8.5. Notifications of defects shall only be deemed to be valid if they are submitted in writing. To be valid the claim notification should contain:
  - a) Specification of goods – type
  - b) Production plant
  - c) Transport
  - d) Weight
  - e) Date of delivery and date of arrival or reception of the Goods
  - f) Description of the defect
  - g) Description if what is claimed
  - h) Weight loss over 2% (Agreed tolerance)
  - i) Quality (according to possibilities documented by discovered quality parameters in the Purchaser's laboratory or by an independent inspection laboratory providing that the sample for the inspection was withdrawn according to relevant standards)
  - j) Written evidence to prove the defects.
- 8.6. In the event that a valid claim is made within the timeframe as set out above and Seller agrees with the claim, the Seller at its discretion may replace the goods or refund the price (or a proportionate part of the price) in which case the Seller shall have no further liability to the Purchaser.

8.7. If a quality claim has been lodged by Purchaser within the time frame as set out above, but Seller does not agree with the claim, Seller has the right to request inspection, sampling and assaying of the Goods in question, in accordance with terms and conditions stipulated by the LME Organization, applicable for the commodity involved. Such operation shall be carried out by a mutually acceptable and internationally recognized LME approved surveyor or laboratory, respectively. Sample will be taken at random and analysis will be made on the impurities guaranteed by the Seller. Findings established by such procedure shall be binding as final for both parties for determination of the actual quality of Goods delivered. Cost thereof shall be borne by the losing party.

## **9. Remedies**

9.1. If the Goods supplied have a material defect and do not meet the specifications agreed between the parties in writing, Seller will remedy the defect, supply non-defective Goods or refund the price. The remedies stated in this article are to be the sole and exclusive remedies. When one of mentioned remedies is exercised Purchaser shall not be entitled for any damages.

## **10. Liability**

- 10.1. The liability of Seller in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising in respect of any breach of agreement and/or failure to exercise due skill and care by Seller shall in no circumstances exceed a total aggregate sum equal to the limits of insurance held by the Seller, provided however that the Seller shall have no liability in respect of any claims for indirect or consequential loss including loss of profit and/or loss of future business and/or loss of production and/or cancellation of agreements entered into by the Purchaser. The Seller's insurance agreement may be provided to Purchaser upon a request.
- 10.2. Purchaser shall defend, indemnify and hold Seller harmless from and against any and all claims, liabilities, damages, expenses (including reasonable attorneys fees and costs) or injuries of any kind or nature whatsoever (including, but without limitation, property damage, personal injury or death, as well as economic loss or damage) caused by, resulting from, arising out of, relating to, or occurring in connection with the goods purchased by Purchaser and/or the performance by Seller hereunder, whether such claims are permitted on agreement, tort (including without limitation, strict liability), or otherwise, except where such damage or injury is attributable solely to the gross negligence of Seller.
- 10.3. Purchaser is obliged to take all reasonable measures to avert and mitigate damage. Seller will remedy only the minimum direct damages.

## **11. Force Majeure**

- 11.1. Neither party shall be liable, or be deemed to be in default, to the other party hereunder by reason or account of any delay or omission in performance caused by epidemic, fire, power outages, action of the elements, strikes, lockouts, sabotage, labor disputes, governmental law, regulations, ordinances, order of a court of competent jurisdiction, executive order, act of God or public enemy, war, riot, civil commotion, earthquake, flood, explosion, casualty, embargo or any other similar cause beyond the control of such party (hereinafter referred to as "Force Majeure").
- 11.2. The Seller may also invoke Force Majeure in the cases when its own supplier fails to supply the Goods under the terms agreed between Seller and its supplier because the latter undergoes the Force Majeure circumstances as described in Article 11.1.
- 11.3. The party affected by Force Majeure shall without delay after the occurrence of Force Majeure notify the other party in writing of such event and furnish the other party with all relevant information and proof relating thereto, and particularly to the period of time said event may delay the timely performance of the Agreement.

11.4. If the events described in article 11.1. last for more than 30 days, both parties have the right to rescind the Agreement with immediate effect. Neither party shall be liable to the other if it is rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition of the Agreement, except for any payment obligations, for so long as the event of Force Majeure exists and to the extent that performance is hindered by the event of Force Majeure.

## **12. Cancellation/Termination of Agreement**

12.1. Without prejudice to any other rights or remedies which it may have, the Seller may terminate any or all agreements without liability to the Purchaser immediately after giving notice to the Purchaser if:

- a) The Purchaser commits a breach of the Agreement, including the breach of Conditions of Sale and (if such breach is remediable) fails to remedy that breach within 30 days of the Purchaser being notified in writing of the breach; or
- b) An order is made, or documents are filed with a court of competent jurisdiction, for the appointment of an administrator to manage the affairs, business and property of the Purchaser; or
- c) The Purchaser ceases, or threatens to cease, to trade; or
- d) The Purchase takes or suffers any similar analogous action as insolvency, bankruptcy or liquidation in any jurisdiction in consequence of debt.

12.2. On termination of any or all agreements for any reason:

- a) The Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest; and
- b) The accrued rights of the parties as at termination shall not be affected.

## **13. Applicable law**

13.1. The Agreement between the parties is governed by English law.

## **14. Arbitration**

14.1. All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of LME Arbitration by one arbitrator appointed in accordance with the said Rules. The arbitral award shall be final and shall not be subject to appeal. The losing party shall bear all the costs of the proceedings and the reasonable legal and other costs of the overall winning party of the arbitration.

## **15. Final provisions**

15.1. If any provision (or part of a provision) of these Conditions of sale is found to be invalid, unenforceable or illegal, the other provisions will remain in force.

15.2. Should one or more provisions of these Conditions of purchase be or become void or unenforceable, the void or unenforceable provision shall, taking equitably into consideration the interests of both parties, be replaced by a provision which comes closest to the economic intent the parties had envisioned by the void or unenforceable provision.

15.3. Purchaser shall not assign this agreement or any rights or delegate any duties under this agreement, in whole or in part, without the prior written consent of the Seller.

15.4. English is the only official language of these Conditions of Sale.