

# MECHEM S.A.

## GENERAL TERMS AND CONDITIONS OF PURCHASE

<b>PART I: INTRODUCTION</b>	2.6	<b>"CBAM Goods"</b> means products subject to CBAM, as specified in Annex I of the CBAM Regulation, as may be amended from time-to-time.
<b>1. GENERAL</b>		
1.1 These general terms and conditions (the <b>"GTCs"</b> ) shall apply to and form part of all contracts for the purchase of Product by Mechem S.A..	2.7	<b>"CBAM Implementing Regulation"</b> means Commission Implementing Regulation (EU) 2023/1773 of 17 August 2023 laying down the rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as regards reporting obligations for the purposes of the carbon border adjustment mechanism during the transitional period.
1.2 These GTCs are intended to be supplemented by a Confirmation. The GTCs and the relevant Confirmation shall together form a binding agreement ("Agreement"), whether or not the GTCs and/or the Confirmation have been signed. In the case of any conflict, ambiguity or inconsistency between the provisions of these GTCs and the Confirmation, the provisions of the Confirmation shall prevail.	2.8	<b>"CBAM National Competent Authority"</b> means the authority designated by each Member State to carry out the functions and duties under CBAM in accordance with Article 11 of the CBAM Regulation.
1.3 No additional terms proposed by Seller shall be incorporated into an Agreement or be binding on Buyer (notwithstanding Buyer's acceptance of Product or documents) except when and insofar as Buyer expressly accepts those additional terms in writing, in which case any conflict between the terms proposed by Buyer and the terms proposed by Seller shall be resolved in favour of the former.	2.9	<b>"CBAM Regulation"</b> means Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, as may be amended from time-to-time.
1.4 The Parts of these GTCs shall apply as follows:	2.10	<b>"CBAM transitional period"</b> means the period between 1 October 2023 and 31 December 2025 where Buyer as an importer of CBAM Goods is obliged to report embedded emissions of CBAM Goods sold by Seller and purchased by Buyer.
1.4.1 Part I and Part VI of these GTCs shall apply to all Agreements.	2.11	<b>"Confirmation"</b> means the agreement prepared by Buyer or, provided Buyer has agreed expressly in writing to the terms of that Confirmation, prepared by Seller, into which these GTCs are incorporated by reference, to form an Agreement.
1.4.2 Part II of these GTCs shall apply to Shipments, which according to the Confirmation, are to be Delivered on a CIF or CFR basis.	2.12	<b>"CIF"</b> means "Cost, Insurance and Freight" and shall have the meaning given to it in Incoterms, save to the extent inconsistent with the express terms of the Agreement.
1.4.3 Part III of these GTCs shall apply to Shipments, which according to the Confirmation, are to be Delivered on a DAP or DDP basis.	2.13	<b>"CFR"</b> means "Cost and Freight" and shall have the meaning given to it in Incoterms, save to the extent inconsistent with the express terms of the Agreement.
1.4.4 Part IV of these GTCs shall apply to Shipments, which according to the Confirmation, are to be Delivered on a FCA basis.	2.14	<b>"DAP"</b> means "Delivered at Place" and shall have the meaning given to it in Incoterms, save to the extent inconsistent with the express terms of the Agreement.
1.4.5 Part V of these GTCs shall apply to Shipments, which according to the Confirmation, are to be Delivered on a FOB basis.	2.15	<b>"DDP"</b> means "Delivered Duty Paid" and shall have the meaning given to it in Incoterms, save to the extent inconsistent with the express terms of the Agreement.
<b>2. DEFINITIONS AND INTERPRETATION</b>	2.16	<b>"Defaulting Party"</b> has the meaning given to it at clause 16.2.
2.1 <b>"Affected Party"</b> has the meaning given to it in clause 15.4.	2.17	<b>"Delivery"</b> means, in respect of Product sold on a (i) CIF, CFR or FOB basis, the placing of the Product on the performing vessel at the Loading Port; (ii) DAP or DDP basis, the placing of the Product at the disposal of Buyer on the arriving means of transport ready for unloading by Buyer at the Place of Delivery; and (iii) FCA basis, the handing over of the Product to the carrier or another person nominated by Buyer at the Place of Delivery. <b>"Deliver"</b> and <b>"Delivery"</b> shall be construed accordingly.
2.2 <b>"Affiliate"</b> means, with respect to a Party, any entity controlled directly or indirectly by that Party, or any entity that controls directly or indirectly that Party, or any entity directly or indirectly under the same control as that Party; control means ownership of a majority of the voting power of that entity or the right, however derived, to appoint a majority of the directors of that entity.		
2.3 <b>"Agreement"</b> has the meaning given to it in clause 1.2 above.		
2.4 <b>"Buyer"</b> means Mechem S.A..		
2.5 <b>"CBAM"</b> means the EU Carbon Border Adjustment Mechanism as regulated in the CBAM Regulation, and related implementing and delegated regulations.		

- 2.18 **"Delivery Period"** has the meaning given to it in the Confirmation and means the period in which Seller shall Deliver and Buyer shall take Delivery of the Product, as specified in the Confirmation, being, in respect of Shipments sold on a (i) CIF, CFR or FOB basis, the period within which the Product shall be loaded on the performing vessel at the Loading Port; (ii) DAP or DDP basis, the period within which the Product shall be placed at the disposal of Buyer on the arriving means of transport, ready for unloading by Buyer at the Place of Delivery; and (iii) FCA basis, the period within which the Product shall be handed over to the carrier or another person nominated by Buyer at the Place of Delivery.
- 2.19 **"Dispute"** means dispute or claim (whether contractual or non-contractual) arising out of or in relation to the Agreement, including but not limited to any question regarding its existence, validity, breach or termination.
- 2.20 **"Event of Default"** has the meaning given to it in clause 16.1.
- 2.21 **"FCA"** means "Free Carrier" and shall have the meaning given to it in Incoterms, save to the extent inconsistent with the express terms of the Agreement.
- 2.22 **"FOB"** means "Free on Board" and shall have the meaning given to it in Incoterms, save to the extent inconsistent with the express terms of the Agreement.
- 2.23 **"Force Majeure"** has the meaning given to it in clause 15.2.
- 2.24 **"GTCs"** has the meaning set out in clause 1.1 above.
- 2.25 **"Incoterms"** means the International Rules for the Interpretation of Trade Terms as published by the International Chamber of Commerce, Paris, France, 2010 edition. In the case of any conflict, ambiguity or inconsistency between the provisions of the Agreement and Incoterms, the provisions of the Agreement shall prevail.
- 2.26 **"Insolvency Event"** means an event in which a Party:
- 2.26.1 becomes insolvent or is unable to pay its debts or fails or admits in writing its inability to pay its debts as they fall due;
- 2.26.2 files, or has filed against it, a petition or commences, or has commenced against it, any bankruptcy, insolvency, administration, liquidation or similar proceedings, or a court order is made for the winding up of the Party (which is not dismissed within 14 days);
- 2.26.3 is subject to the appointment of a liquidator (other than in respect of a solvent liquidation of that Party), receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar officer in respect of any of its assets;
- 2.26.4 commences, or becomes the subject of, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them; or
- 2.26.5 causes or is subject to any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses 2.26.1 to 2.26.4.
- 2.27 **"Law"** means any law, regulation, statutes, prohibition or restriction imposed by the United Nations, the European Union, Switzerland or the government of the country in which Seller has its primary place of business.
- 2.28 **"Licence"** means any licence, consent, exemption, filing, registration, notarisation, authorisation, official stamp and/or any other approval of a similar nature.
- 2.29 **"Loading Port"** has the meaning (if any) given to it in the relevant Confirmation and shall be the port at which the Parties agree the Product shall be loaded onto the performing vessel.
- 2.30 **"Material Adverse Change"** means, any change which, in the sole opinion of Buyer, may be expected to adversely affect Seller's ability to perform any of its obligations under the Agreement including, but not limited to any change in the financial condition, business, ownerships, prospects, credit worthiness and/or credit rating of Seller or its supplier or the producer of the Product.
- 2.31 **"Material Breach"** means any breach of the Agreement by a Party that is a breach of condition and serves to deprive the other Party of a substantial part of the benefit of the Agreement.
- 2.32 **"Non-Defaulting Party"** has the meaning given to it at clause 16.2.
- 2.33 **"Party"** means either Seller or Buyer each and **"Parties"** means Seller and Buyer together.
- 2.34 **"Place of Delivery"** means the place specified in the Confirmation at which Delivery shall occur, being, in the case of (i) Shipments to be Delivered on a DAP or DDP basis, the place at which Seller shall place the Product at Buyer's disposal on the arriving means of transport, ready for unloading; and (ii) Shipments to be Delivered on a FCA basis, the place at which the Product shall be handed over to the carrier or another person nominated by Buyer.
- 2.35 **"Product"** means the goods, product or material sold by Seller and purchased by Buyer as specified in the relevant Confirmation.
- 2.36 **"Sanctioned Person"** means any person who is, from time to time: (i) listed on or targeted in; or (ii) owned or controlled by, or acting on behalf, or at the direction, of any person which is listed on any of the lists of specifically designated or targeted nationals or designated or targeted persons or entities or equivalent (including but without limitation, the "Specially Designated Nationals and Blocked Person" list, the "Sectoral Sanctions Identifications" list and the "Foreign Sanctions Evaders" list maintained by the United States Office of Foreign Asset Control, and the Consolidated List of Financial Sanctions Targets (Asset Freeze Targets and Investment Ban Targets lists) maintained by Her Majesty's

Treasury in the United Kingdom) maintained by any Sanctions Authority (each as amended, supplemented or substituted from time to time in relation to Sanctions) or any similar list.

2.37 **“Sanctions”** means any applicable laws, regulations, directives, legislations, statutes, treaties, writs, decrees, ordinances, orders, rules, prohibitions or restrictions enacted, administered or enforced by the Sanctions Authority relating to the adoption, implementation and enforcement of international boycotts, economic sanctions, trade sanctions, foreign trade controls, export controls, trade embargoes, non-proliferation, anti- terrorism or similar laws.

2.38 **“Sanctions Authority”** means:

2.38.1 the European Union (“EU”);

2.38.2 an EU member state;

2.38.3 the United States of America;

2.38.4 the United Nations;

2.38.5 the United Kingdom;

2.38.6 Switzerland; and/or

2.38.7 any other jurisdiction applicable to the Parties.

2.39 **“Seller”** means the entity selling Product to Mechem S.A. on the basis of the Agreement.

2.40 **“Shipment”** means a quantity, consignment or parcel, as determined by the relevant Confirmation, of Product Delivered by Seller to Buyer pursuant to the Agreement.

2.41 **“Tax”** means all forms of tax, duties, imposts and levies, of any country or jurisdiction, whether payable directly or

2.42 by withholding, including income tax, and any interest, penalty, surcharge or fine relating thereto.

2.43 **“VAT”** means, with the European Union, such Tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC, and outside the European Union, any Tax levied by reference to turnover, added value, sales and/or consumption.

## **PART II: CIF OR CFR DELIVERIES**

### **3. TITLE AND RISK**

3.1 Transfer of risk shall be in accordance with Incoterms. If the Product is sold afloat, transfer of risk shall be deemed to have taken place upon the placing of the Product on board the performing vessel at the Loading Port.

3.2 Notwithstanding clause 3.1, title to the Product shall transfer from Seller to Buyer on the earliest of: (i) transfer of risk in accordance with clause

3.1; (ii) payment of the provisional price (if any) specified in the Confirmation; or,

3.3 (iii) payment of the final price specified in the Confirmation.

## **4. INSURANCE**

In respect of all CIF Shipments, Seller shall procure and pay for insurance cover with a limit of indemnity in respect of any given Shipment of not less than the full value of the Shipment as stated on Seller’s invoice plus ten per cent (10%). Such insurance shall be in accordance with the provisions of a marine cargo policy subject to Institute Cargo Clauses (A). The benefit of such insurance shall accrue to Buyer at the point at which risk passes to Buyer under clause 3.1 and shall continue until, at the earliest, discharge of the Product from the performing vessel at the discharge port. Within 3 (three) working days (in Seller’s primary place of business) of a request from Buyer, Seller shall arrange additional insurance against war, strikes, riots and civil commotion risks on the terms of Institute War Clauses (Cargo) and Institute Strike Clauses (Cargo). Buyer shall reimburse Seller for the costs of such additional insurance. Upon Buyer’s request, Seller shall provide Buyer with the original certificate of insurance or broker’s cover note in respect of insurance obtained pursuant to this clause 4.

## **PART III: DAP OR DDP DELIVERIES**

### **5. TITLE AND RISK**

5.1 Transfer of risk shall be in accordance with Incoterms.

5.2 Notwithstanding clause 5.1, title to the Product shall transfer from Seller to Buyer on the earliest of: (i) transfer of risk in accordance with clause 5.1; (ii) payment of the provisional price (if any) specified in the Confirmation; or,

5.3 (iii) payment of the final price specified in the Confirmation.

## **PART IV: FCA DELIVERIES**

### **6. TITLE AND RISK**

6.1 Transfer of risk shall be in accordance with Incoterms.

6.2 provisional price (if any) specified in the Confirmation; or,

6.3 (iii) payment of the final price specified in the Confirmation.

## **PART V: FOB DELIVERIES**

### **7. TITLE AND RISK**

7.1 Transfer of risk shall be in accordance with Incoterms.

- 7.2 Notwithstanding clause 7.1, title to the Product shall transfer from Seller to Buyer on the earliest of: (i) transfer of risk in accordance with clause 7.1; (ii) payment of the provisional price (if any) specified in the Confirmation; or,
- 7.3 (iii) payment of the final price specified in the Confirmation.

**PART VI: GENERAL**

**8. QUALITY AND QUANTITY CLAIMS**

- 8.1 Seller warrants that the Product shall conform to the specifications set out in the Confirmation.
- 8.2 Seller further warrants that the Product sold pursuant to the Agreement is free from asbestos, radioactive material and any other hazardous, dangerous, poisonous or harmful substances or conditions.
- 8.3 Quality claims, if any, shall be notified to Seller in writing within 90 (ninety) calendar days from Delivery. Buyer has the right to request inspection, sampling and chemical analysis of the material in question in accordance with terms and conditions set by the London Metal Exchange (LME). Such operation will be carried out by a mutually agreed and internationally recognized laboratory and surveyor. If the quality claim is determined to be valid, the cost of any inspection, sampling or analysis is to be borne by Seller.
- 8.4 The weight and quality of the Product shall be measured at the Place of Delivery or, in the case of a CIF, CFR or FOB Delivery, at the port of discharge by Buyer or Buyer's customer and recorded in a warehouse receipt, warrant, bill of lading, certificate of quantity or quality or other document as required by the Confirmation. Such document shall be final and binding on the Parties, save for fraud or manifest error.
- 8.5 Where the determined weights on Delivery differ by more than 0.2 percent from the invoiced weights, Buyer will notify Seller of the discrepancy in writing within 5 (five) calendar days from Delivery.
- 8.6 Any material for which the Buyer intends to start a claim procedure must be kept intact, unused and stored under cover until such time that inspection mentioned above is completed. Seller has the right to reject any claim for material which has already been consumed by Buyer or any third party.

**9. DELIVERY**

- 9.1 Seller shall Deliver and Buyer shall take Delivery of each Shipment within the Delivery Period(s) specified in the Confirmation which time shall be deemed to be of the essence.
- 9.2 Notwithstanding clause 6.1, title to the Product shall transfer from Seller to Buyer on the earliest of: (i) transfer of risk in accordance with clause 6.1; (ii) payment of the

9.3 Notwithstanding clauses 3.2, 5.2, 6.2 and 7.2, it is a condition of the

9.4 Agreement that at the time that title to the Product passes to Buyer:

9.4.1 Seller is entitled to possession of the Product, has title to the Product free of any liens, charges and encumbrances of any kind (not disclosed or known to Buyer before the Agreement was made), and has the] right to sell the Product to Buyer;

9.4.2 Buyer will have the benefit of the warranty as to enjoyment of quiet possession implied by law; and

9.4.3 no action, litigation or administrative proceeding with respect to the Agreement or the Product has been commenced or is pending or threatened against Seller or any of Seller's Affiliates.

**10. PRICE AND TAXES**

10.1 The price for the Product shall be the price (including any provisional price and final price) specified in, or determined in accordance with, the Confirmation.

10.2 The price specified in the Confirmation shall be exclusive of VAT but inclusive of all Taxes other than VAT. Buyer shall therefore not be responsible for paying any Taxes in connection with the Product or its Delivery other than applicable VAT and Taxes accruing after Delivery. Seller shall bear any Taxes accruing prior to Delivery.

10.3 Seller warrants that all Taxes which it is liable to pay in order to enable it to perform its obligations under the Agreement have been paid.

**11. PAYMENT**

11.1 Buyer shall be liable to pay the price (including any provisional price and final price) specified in the Confirmation in accordance with the payment method specified in the Confirmation and the applicable terms of these GTCs.

11.2 In the absence of any agreement to the contrary in the Confirmation, the price shall be paid by Buyer by telegraphic transfer to Seller's nominated bank account within 30 (thirty) days of Seller's presentation of the documents set out in Clause 11.3.

11.3 Seller shall send promptly to Buyer its invoice, standard shipping documents, including (where the Product has been transported by oceangoing vessel) a full set of clean original bills of lading made out or endorsed to Buyer, originals of any certificates or reports of quality, packing and weight or warrants and warehouse receipts required pursuant to the Agreement and any other payment documents specified in the Confirmation.

11.4 In the event that the Confirmation allows for a provisional price to be invoiced before the final price can be calculated, Seller shall calculate the

final price as soon as reasonably practicable once the necessary information is available and shall issue an invoice or credit note for the difference between the provisional and the final price. The Party required to pay the difference between the provisional and the final price shall settle the payment due within 10 (ten) days of issuance of the Seller's invoice or credit note.

## 12. LAWS AND LICENCES

12.1 Seller shall, in its performance of the Agreement, comply with all applicable Laws, in particular, but not limited to, Laws concerning health, product safety, CBAM, the environment and/or the transportation, whether international or not, of dangerous and/or chemical and/or waste products.

12.2 Without limitation to clause 12.1, Seller warrants that all Licences as are necessary or appropriate for the performance by Seller of its obligations under the Agreement, or the proper execution, delivery, validity or enforceability of the Agreement, have been obtained or procured and shall be maintained for the duration of the Agreement.

## 13. SANCTIONS

13.1 In this Sanctions clause unless otherwise stated, any reference to either Party, Seller or Buyer, includes reference to their Affiliates, representatives, employees, officers, directors, contractors and sub-contractors.

13.2 Neither Party shall nominate a performing vessel under this Agreement where:

13.2.1 the nomination, charter or use of that vessel would be in breach of Sanctions; or

13.2.2 any of the registered owner, beneficial owner, disponent owner, manager, operator or charterer of that vessel is or becomes a Sanctioned Person.

13.3 Each Party shall use reasonable endeavours to ensure that:

13.3.1 it complies with any Sanctions that are applicable to it and its performance of this Agreement;

13.3.2 it does not engage in any activity that would cause the other Party to be in breach of Sanctions that are applicable to it; and

13.3.3 it does not engage in any activity that can reasonably be expected to result in it or the other Party becoming a Sanctioned Person.

13.4 Each Party shall promptly notify the other Party upon it becoming aware that:

13.4.1 it has breached the Sanctions or has become a Sanctioned Person; or,

13.4.2 by continuing to perform its obligations under the Agreement it will breach Sanctions or become a Sanctioned Person or cause the other Party to

breach Sanctions or become a Sanctioned Person.

13.5 Each Party shall, subject to compliance with Laws and any applicable confidentiality requirements, provide the other Party with such information that it possesses and as may be reasonably requested by the other Party from time to time to enable that Party to comply with its legal obligations under Sanctions and/or to enable that Party to verify that its performance of its obligations under this Agreement would be lawful under Sanctions.

13.6 In the event that:

13.6.1 a Party commits a breach of any Sanctions or becomes a Sanctioned Person;

13.6.2 a Party, through its acts or omissions whether under the Agreement or otherwise, has caused, or is likely to cause, the other Party to violate any Sanctions or to become a Sanctioned Person;

13.6.3 a Party has chartered a vessel for the performance of the Agreement that is or has become owned, chartered, operated or controlled by a Sanctioned Person or whose use is likely to cause one or more of the Parties to be in breach of any Sanctions applicable to it,

then, in each case, the other Party ("**Innocent Party**") shall, without limitation to any other right or remedy available to it be automatically entitled to suspend further performance of this Agreement without either Party being liable to the other in respect of that suspension. If the period of suspension continues for more than 60 (sixty) days then the Innocent Party shall have the right to terminate this Agreement with immediate effect. Such termination shall be without prejudice to either Party's rights and liabilities accrued prior to the period of suspension provided always that the exercise of the rights or discharge of the liabilities is not itself a breach of the Sanctions.

## 14. CBAM

14.1 During the transitional period, Seller shall promptly provide complete and accurate data regarding the emissions embedded in the CBAM Goods sold by Seller and purchased by Buyer. This includes but is not limited to: (i) the total quantity of each type of CBAM Goods; (ii) the actual total embedded emissions; (iii) the total indirect emissions; (iv) the carbon price due in a country of origin for the embedded emissions in the imported CBAM Goods (including its relevant precursors where applicable), taking into account any rebate or other form of compensation available. For this purpose, Seller shall use the latest template prepared by the European Commission, as updated from time to time, available at [https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism\\_en#guidance](https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en#guidance) (or successor page).

14.2 When calculating emissions embedded in CBAM Goods, Seller shall comply with the method laid out in the CBAM Implementing Regulation, and in particular, Article 4, and use the correct

- calculation methodology per different timelines as follows: (i) the EU method, which uses the calculation-based approach or the measurement-based approach; or (ii) equivalent third country methods, only available until 31 December 2024; or (iii) default value published by the European Commission, available only until 30 June 2024.
- 14.3 Seller shall endeavour to provide the data referred to in this clause at the same time as providing the payment documents, including those listed in clause 11.3. The deadline for each CBAM report is one month after the end of that quarter.
- 14.4 Seller acknowledges that it is aware that when Buyer receives embedded emission of CBAM Goods from Seller, Buyer shall include this data in CBAM reports submitted quarterly.
- 14.5 When Seller identifies errors in the embedded emissions of CBAM Goods it has previously provided, Seller shall immediately inform Buyer and provide corrected data.
- 14.6 Seller shall indemnify and hold Buyer harmless from any liability, penalty and financial consequences, including penalties imposed by the CBAM National Competent Authorities, caused by non-compliance with the obligation listed in this clause 14, and in particular inaccurate or incomplete data regarding the emissions embedded in CBAM Goods.
- 15. FORCE MAJEURE**
- 15.1 Neither Party shall be liable for any delay or inability to perform, in whole or in part, the Agreement (other than payment or indemnification obligations) to the extent such performance is delayed, hindered or prevented by an event of Force Majeure (as defined below) which is beyond its reasonable control.
- 15.2 For the purposes of the Agreement, an event of **"Force Majeure"** shall include but not be limited to:
- 15.2.1 fire, flood, ice, frost, fog, hurricane, storm, landslide, lightning, perils of the sea, tidal wave, tornado, typhoon, or other acts of God;
- 15.2.2 acts of public enemies, piracy, war (whether civil or otherwise, and whether declared or undeclared) or the threat or reasonable apprehension thereof, blockade, embargo, sabotage, terrorist activity or the threat or reasonable apprehension thereof, explosion, riot, unrest or delay resulting from political instability, intervention by military authorities, insurrection, mobilisation or civil unrest;
- 15.2.3 strikes, labour disputes or other form of industrial action, nationalisation or any other kind of disturbance or interruption of work regardless of its origin; and/or
- 15.2.4 any acts, orders or restrictions of government, local authorities or any court, including delay or interruptions resulting from any restrictions imposed by government or local authorities and
- also including import and export restrictions of any kind.
- 15.3 either Party shall be entitled to claim Force Majeure for economic reasons, due to a change in the market price of the Product.
- 15.4 The Party declaring Force Majeure ("**Affected Party**") shall take commercially reasonable steps to remove, relieve or minimise the effects of the circumstance that gave rise to the event of Force Majeure.
- 15.5 As soon as reasonably practicable following the occurrence of an event of Force Majeure, the Affected Party shall give notice in writing to the other Party setting out in reasonable detail the nature of the event of Force Majeure, its likely duration and its effect, or anticipated effect on the Affected Party's performance of the Agreement.
- 15.6 The Affected Party shall give notice in writing to the other Party as soon as reasonably practicable once the event of Force Majeure has come to an end.
- 15.7 Save for payment obligations, the Parties' obligations under the Agreement shall be suspended from the date of the Force Majeure notice and the time for performance of the Agreement shall be extended to the extent reasonably necessary following the end of the Force Majeure. In the event that the Force Majeure or its effects continue for a period greater than 60 (sixty) days from the Affected Party's notice of Force Majeure, the Affected Party may, without liability, on 5 (five) days' notice, cancel the affected Shipment(s) and
- 16. EVENTS OF DEFAULT**
- 16.1 Each of the following events, acts, occurrences or conditions shall be an event of default (an **"Event of Default"**) by the Party specified:
- 16.1.1 the occurrence of any Insolvency Event in respect of either Party shall be an Event of Default by that Party.
- 16.1.2 a failure by Buyer to pay for any Product under the Agreement when due where such failure is not remedied on or before the 15<sup>th</sup> (fifteenth) day following the day on which Seller provides written notice of such failure to Buyer, shall be an Event of Default by Buyer;
- 16.1.3 a failure by Seller to Deliver the Product within the Delivery Period when such failure is not remedied on or before the 15<sup>th</sup> (fifteenth) day following the day on which Buyer provides written notice to Seller of such failure, shall be an Event of Default by Seller;
- 16.1.4 the occurrence of a Material Breach which is either not capable of remedy or is not remedied by the 15<sup>th</sup> (fifteenth) day following the day on which notice of the Material Breach is provided to the Party in Material Breach shall be an Event of Default by that Party; and
- 16.1.5 a failure by Seller to notify Buyer of a Material Adverse Change promptly upon the occurrence

	of such Material Adverse Change shall be an Event of Default by Seller;		(one) year of the date on which the Product should have been Delivered.
16.1.6	a failure by Seller to comply with clause 14;	17.6	Any Dispute shall, subject to clauses 17.5 and 17.6 below, be referred to arbitration in accordance with the arbitration rules of the London Metal Exchange, as current at the time of the referral. There shall be 3 (three) arbitrators. The language of the arbitration shall be English. English law shall govern the arbitration and this arbitration agreement. The seat of the arbitration shall be London.
16.1.7	the occurrence of a Material Adverse Change which is either not capable of remedy or is not remedied by the 3 <sup>rd</sup> (third) day following the day on which Buyer gives Seller notice of the Material Adverse Change shall be an Event of Default by Seller.		
16.2	If an Event of Default has occurred with respect to a Party (the “ <b>Defaulting Party</b> ”), the other Party (the “ <b>Non-Defaulting Party</b> ”) may, without prejudice to its other rights and remedies under the Agreement or at law, take any or all of the following actions:	17.7	Prior to referring any Dispute to arbitration, a Party shall give the other Party at least 30 (thirty) days’ notice in writing of its intention to refer a Dispute to arbitration.
16.2.1	suspend performance of the Agreement for so long as the Event of Default is continuing; and/or	17.8	Nothing in this clause 17 shall prevent either Party from seeking interim, provisional or conservatory measures from any court or other judicial authority of competent jurisdiction at any time whether before or after the formation of the arbitral tribunal.
16.2.2	propose to the Defaulting Party any revised terms under which the Non-Defaulting Party is prepared to continue the performance of the Agreement and if such terms are not agreed within 3 (three) days, terminate the Agreement upon written notice to the Defaulting Party; and/or	<b>18. NO CONSEQUENTIAL LOSS</b>	
16.2.3	terminate the Agreement upon written notice to the Defaulting Party; and/or	18.1	Notwithstanding any other provision of this Agreement save for clause 18.2, neither Party shall be liable to the other whether under this Agreement or otherwise in connection with it, whether in contract, tort (including in negligence), breach of statutory duty or otherwise in respect of the following, whether or not foreseeable and howsoever arising:
16.2.4	claim damages against the Defaulting Party.	18.1.1	any indirect or consequential losses or expenses; and
<b>17. GOVERNING LAW AND JURISDICTION</b>		18.1.2	to the extent not constituting indirect or consequential losses or expenses, any loss of anticipated profits, goodwill, use, market reputation, business receipts or contracts or commercial opportunities.
17.1	The Agreement and any Dispute shall be governed by and construed in accordance with English law.	18.2	The only exception to clause 18.1 shall be that, in the case of an Event of Default on the part of Seller under clause 16.1.3, Buyer shall be, without prejudice to its other rights and remedies under the Agreement or at law, entitled to recover any expenses and loss of anticipated profit it suffers as a result of such Event of Default.
17.2	This Agreement constitutes the entire agreement and understanding between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.	<b>19. ENTIRE AGREEMENT</b>	
17.3	Each Party agrees that it does not rely on and shall have no remedy in respect of any statement, representation, assurance or warranty (whether of fact or of law and whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.		No amendments or modifications of the Agreement shall be valid unless agreed in writing by both Parties.
17.4	The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11 April 1980, and any law enacting or giving force to the same or any parts of it, shall not apply to the Agreement.	<b>20. WAIVER</b>	
17.5	In no event shall either Party be liable in respect of any Dispute where legal proceedings in respect of that Dispute has not been commenced within 1 (one) year of the date of Delivery of the Product, or in the case of a total loss, within 1		A failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. A single or partial exercise of such right or remedy shall not prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under the Agreement or by law is only effective if given

in writing by the Party entitled to the benefit of such right or remedy and is effective only to the extent set out in the written waiver.

## 21. CONFIDENTIALITY

21.1 The Parties shall keep confidential the existence and terms of the Agreement, save that each Party may disclose the existence and terms of the Agreement pursuant to an order of any court or arbitral tribunal of competent jurisdiction, or as may be required by any applicable law, regulation, or by any governmental or other regulatory authority having jurisdiction over the Parties, or to any of its Affiliates, professional advisors, auditors, banks, insurers, if required to enable a Party to perform its obligations or enforce its rights under this Agreement, or in connection with any Dispute or court or arbitration proceedings.

21.2 The confidentiality obligations contained in the Agreement shall survive the termination or expiry of the Agreement for a period of 2 (two) years.

## 22. NOTICES

22.1 Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing and in English and shall be:

22.1.1 delivered by hand or by international courier delivery service at its registered office or at the address given for the Party in the Confirmation or its main place of business; or

22.1.2 sent by email to the address given for the Party in the Confirmation (save in the case of any notice or other communication relating to the service of any proceedings, termination of the Agreement or assignment).

22.2 Any notice or communication shall be deemed to have been received:

22.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

22.2.2 if sent by international courier delivery service, when delivered (at the time recorded by the delivery service);

22.3 if sent by email when delivered,

in each case unless delivered on a non-Business Day or after 5.00 pm (local time at the location of the receiving Party) on a Business Day, in which case it shall be deemed to have been delivered on the next Business Day. **Business Day** for these purposes means a calendar day other than a Saturday, Sunday or a public holiday in the country and region in which the receiving Party has its main place of business.

## 23. MISCELLANEOUS

23.1 Neither Party may assign or transfer its rights or obligations under the Agreement in full or in part without the prior written consent of the other

Party, such consent not to be unreasonably withheld, except that Seller may, without Buyer's consent, assign its rights to claim and receive any payment under the Agreement to any bank for the purpose of, or in connection with, any financing or securitisation arrangement provided that the assignee is not a party whom Buyer is restricted from dealing with by applicable laws or regulations

23.2 A person who is not a Party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999, or any other statute or other law, to enforce any term of this Agreement, save where the third party is an assignee and the assignment has been consented to pursuant to the terms of the Agreement.

23.3 If any provision (or part thereof) of the Agreement is declared invalid, illegal or unenforceable by a court or arbitral tribunal of competent jurisdiction or becomes invalid, illegal or unenforceable due to either Party's compliance with applicable laws, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part thereof shall be deemed deleted. Any modification to or deletion of a provision or part thereof under this clause shall not affect the validity and enforceability of the remainder of the Agreement.

23.4 The Agreement does not, and shall not be deemed to, establish any partnership or joint venture or any other similar association between the Parties nor, unless expressly provided otherwise, shall the Agreement constitute any Party as an agent, legal representative or employee of the other Party for any purpose whatsoever.