

MECHEM S.A.

GENERAL TERMS AND CONDITIONS OF SALE

PART I: INTRODUCTION

1. GENERAL

1.1 These general terms and conditions (the "**GTCs**") shall apply to and form part of all contracts for the sale of Product by Mechem S.A..

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.

1.3 No additional terms proposed by Buyer shall be incorporated into an Agreement or be binding on Seller (notwithstanding Seller's delivery of documents or Product) except when and insofar as Seller expressly accepts those additional terms in writing, in which case any conflict between the terms proposed by Seller and the terms proposed by Buyer shall be resolved in favour of the former.

1.4 The Parts of these GTCs shall apply as follows:

1.4.1 Part I and Part V of these GTCs shall apply to all Agreements.

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.

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.

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. DEFINITIONS AND INTERPRETATION

2.1 "**Affected Party**" has the meaning given to it in clause 12.4.

2.2 "**Affiliate**" 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 "**Agreement**" has the meaning given to it in clause 1.2 above.

2.4 "**Buyer**" means the entity buying Product from Mechem S.A. on the basis of the Agreement.

2.5 "**Confirmation**" means the agreement prepared by Seller or, provided Seller has agreed expressly in writing to the terms of that Confirmation, prepared by Buyer, into

which these GTCs are incorporated by reference, to form an Agreement.

2.6 "**CIF**" 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.

2.7 "**DAP**" 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.

2.8 "**DDP**" 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.

2.9 "**Defaulting Party**" has the meaning given to it at clause 13.2.

2.10 "**Delivery**" means, in respect of Product sold on a (i) CIF or CFR 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. "**Deliver**" and "**Delivery**" shall be construed accordingly.

2.11 "**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 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

2.12 "**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.

2.13 "**Event of Default**" has the meaning given to it in clause 13.1.

2.14 "**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.

2.15 "**Force Majeure**" has the meaning given to it in clause 12.2.

2.16 "**GTCs**" has the meaning set out in clause 1.1 above.

2.17 "**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.

<p>2.18 "Insolvency Event" means an event in which a Party:</p> <p>2.18.1 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;</p> <p>2.18.2 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);</p> <p>2.18.3 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;</p> <p>2.18.4 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</p> <p>2.18.5 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 2.18.1 to 2.18.4.</p> <p>2.19 "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.</p> <p>2.20 "LIBOR" means the rate for one month deposits in USD which appears on the relevant Reuters page (or any successor page) as of 11:00 London time on the date of determination or, in the event that such rate is unavailable, the mean average of the rates at which USD rates are quoted by the principal offices of three banks nominated by Seller in the London interbank market.</p> <p>2.21 "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.</p> <p>2.22 "Material Adverse Change" means, any change which, in the sole opinion of Seller, may be expected to adversely affect Buyer'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 Buyer.</p> <p>2.23 "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.</p> <p>2.24 "Non-Defaulting Party" has the meaning given to it at clause 13.2.</p> <p>2.25 "Party" means either Seller or Buyer each and "Parties" means Seller and Buyer together.</p> <p>2.26 "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</p>	<p>on a FCA basis, the place at which the Product shall be handed over to the carrier or another person nominated by Buyer.</p> <p>2.27 "Product" means the goods, product or material sold by Seller and purchased by Buyer as specified in the relevant Confirmation.</p> <p>2.28 "Sanctioned Person" means any person who is, from time to time: (i) listed on or targeted in; or (ii) owned or controlled by, or acts 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.</p> <p>2.29 "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.</p> <p>2.30 "Sanctions Authority" means:</p> <p>2.30.1 the European Union ("EU");</p> <p>2.30.2 an EU member state;</p> <p>2.30.3 the United States of America;</p> <p>2.30.4 the United Nations;</p> <p>2.30.5 the United Kingdom;</p> <p>2.30.6 Switzerland; and/or</p> <p>2.31 any other jurisdiction applicable to the Parties.</p> <p>2.32 "Seller" means Mechem S.A..</p> <p>2.33 "Shipment" means a quantity, consignment or parcel, as determined by the relevant Confirmation, of Product Delivered by Seller to Buyer pursuant to the Agreement.</p> <p>2.34 "Tax" means all forms of tax, duties, imposts and levies, of any country or jurisdiction, whether payable directly or by withholding, including income tax, and any interest, penalty, surcharge or fine relating thereto.</p> <p>2.35 "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.</p>
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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 Seller shall select and charter the vessel for each Shipment. Buyer shall unload the Product from the Seller's vessel promptly upon its arrival at the discharge port.

3.3 Notwithstanding clauses 3.1 and subject to clause 3.4, title to the Product shall remain with Seller until such time as Seller has received payment of the price specified in the Confirmation in respect of the Product (or, where a provisional price is specified, has received payment of that provisional price). Prior to the transfer of title, Buyer shall keep the Product Delivered by Seller segregated from any other product and clearly identified as Seller's property and shall not be entitled to dispose of the Product (whether by pledging, assigning security over, processing or transferring the Product) without Seller's consent in writing.

3.4 Where Buyer is an entity registered in the Federal Republic of Germany or where Delivery takes place in the Federal Republic of Germany, the retention of title pursuant to clause 3.3 shall be deemed to be made pursuant to Articles 158, 449 BGB; Bürgerliches Gesetzbuch; German Civil Code.

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.

PART III: DAP AND DDP DELIVERIES

5. TITLE AND RISK

5.1 Transfer of risk shall be in accordance with Incoterms.

5.2 Notwithstanding clause 5.1 and subject to clause 5.4, title to the Product shall remain with Seller until such time as Seller has received payment of the price specified in the Confirmation in respect of the Product (or, where a provisional price is specified, has received payment of that provisional price). Prior to the transfer of title, Buyer shall keep the Product Delivered by Seller segregated from any other product and clearly identified as Seller's property and shall not be entitled to dispose of the Product (whether by pledging, assigning security over,

processing or transferring the Product) without Seller's consent in writing.

5.3 Seller shall select the means of transport for each Shipment. Where the Product is ready for collection by Buyer at the Place of Delivery during the Delivery Period, Buyer shall take Delivery of the Product and unload the Product from the performing means of transport promptly. In the event that Buyer fails to do so, Seller shall be entitled to store the Product, in which case all resultant expenses/costs/losses/delays shall be for Buyer's account and Buyer must pay such sums whether or not the Product is eventually Delivered to Buyer or whether Seller exercises its rights pursuant to clause 13.

5.4 Where Buyer is an entity registered in the Federal Republic of Germany or where Delivery takes place in the Federal Republic of Germany, the retention of title pursuant to clause 5.2 shall be deemed to be made pursuant to Articles 158, 449 BGB; Bürgerliches Gesetzbuch; German Civil Code.

PART IV: FCA DELIVERIES

6. TITLE AND RISK

6.1 Transfer of risk shall be in accordance with Incoterms.

6.2 Notwithstanding clause 6.1 and subject to clause 6.4, title to the Product shall remain with Seller until such time as Seller has received payment of the price specified in the Confirmation in respect of the Product (or, where a provisional price is specified, received payment of that provisional price). Prior to the transfer of title, Buyer shall keep the Product Delivered by Seller segregated from any other product and clearly identified as Seller's property and shall not be entitled to dispose of the Product (whether by pledging, assigning security over, processing or transferring the Product) without Seller's consent in writing.

6.3 Where the Product is ready for collection by the carrier or another person nominated by Buyer at the Place of Delivery during the Delivery Period, Buyer shall take Delivery of the Product at once. In the event that Buyer fails to do so, Seller shall be entitled to store the Product, in which case all resultant expenses/costs/losses/delays shall be for Buyer's account and Buyer must pay such sums whether or not the Product is eventually Delivered to Buyer or whether Seller exercises its rights pursuant to clause 13.

6.4 Where Buyer is an entity registered in the Federal Republic of Germany or where Delivery takes place in the Federal Republic of Germany, the retention of title pursuant to clause 6.2 shall be deemed to be made pursuant to Articles 158, 449 BGB; Bürgerliches Gesetzbuch; German Civil Code.

PART V: GENERAL

7. QUALITY AND QUANTITY CLAIMS

7.1 Seller warrants that the Product shall conform to the specifications set out in the Confirmation.

7.2 Quality claims, if any, shall be notified to Seller in writing within 30 (thirty) calendar days from Delivery. Seller 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.		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.
7.3	The weight and quality of the Product on Delivery shall be measured at the Loading Port by Seller or Seller's supplier 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.	10.5	Buyer shall pay interest on late payments from the due date until Seller receives payment at a rate of LIBOR + 4%.
7.4	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.	11. SANCTIONS	
7.5	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.	11.1	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.
8. DELIVERY		11.2	Neither Party shall nominate a performing vessel under this Agreement where:
8.1	Seller shall Deliver and Buyer shall take Delivery of each Shipment within the Delivery Period(s) specified in the Confirmation.	11.2.1	the nomination, charter or use of that vessel would be in breach of Sanctions; or
8.2	The Delivery Period(s) specified in the Confirmation shall be subject always to Seller's best estimates and to the intended method of transport being available.	11.2.2	any of the registered owner, beneficial owner, disponent owner, manager, operator or charterer of that vessel is or becomes a Sanctioned Person.
8.3	Seller shall be entitled to Deliver and Buyer shall accept the Product in partial Shipments and/or Deliveries in instalments. Buyer shall pay separately for such partial and/or instalment Shipments and/or Deliveries.	11.3	Each Party shall use reasonable endeavours to ensure that:
9. PRICE AND TAXES		11.3.1	it complies with any Sanctions that are applicable to it and its performance of this Agreement;
9.1	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.	11.3.2	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
9.2	The price specified in the Confirmation shall be exclusive of VAT but inclusive of all Taxes other than VAT.	11.3.3	it does not engage in any activity that can reasonably be expected to result in it or the other Party becoming a Sanctioned Person.
10. PAYMENT		11.4	Each Party shall promptly notify the other Party upon it becoming aware that:
10.1	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. Any such payments shall be made by Buyer without set-off, withholding or counterclaim.	11.4.1	it has breached the Sanctions or has become a Sanctioned Person; or,
10.2	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 its invoice.	11.4.2	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.
10.3	Seller shall send promptly to Buyer its invoice and any other payment documents specified in the Confirmation.	11.5	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.
10.4	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	11.6	In the event that:
		11.6.1	a Party commits a breach of Sanctions or becomes a Sanctioned Person;
		11.6.2	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;

- 11.6.3 a Party has chartered a vessel for 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.
- 12. FORCE MAJEURE**
- 12.1 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.
- 12.2 For the purposes of the Agreement, an event of “**Force Majeure**” shall include but not be limited to:
- 12.2.1 fire, flood, ice, frost, fog, hurricane, storm, landslide, lightning, perils of the sea, accidents of navigation, tidal wave, tornado, typhoon, plague or other epidemic or other acts of God;
- 12.2.2 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, warlike conditions, intervention by military authorities, insurrection, mobilisation or civil unrest;
- 12.2.3 strikes, lockdowns, slowdowns, sabotage, labour disputes or other form of industrial action, nationalisation or any other kind of disturbance or interruption of work regardless of its origin;
- 12.2.4 prolonged failure or shortage of electric current or other utilities;
- 12.2.5 in the case of Seller, any circumstance that adversely affects the ability of Seller or Seller’s supplier or a third party contracted by Seller to produce, transport or Deliver the Product to Seller or to Buyer, including failure or breakdown of, or damage to or loss of, any of the Seller’s, or Seller suppliers’ or Seller manufacturers’ facilities used or involved in the production, transportation or Delivery of the Product; and/or
- 12.2.6 any acts, orders or restrictions of government, local authorities or any court or port authority or agency, including delay or interruptions resulting from any restrictions imposed by government or local authorities and also including import and export restrictions of any kind.
- 12.3 Neither Party shall be entitled to claim Force Majeure for economic reasons, due to a change in the market price of the Product.
- 12.4 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. Where Seller is the Affected Party, Seller shall not be obliged to incur additional expense when undertaking such steps, nor shall Seller be obliged to source product from a source of supply other than Seller’s original intended source of supply.
- 12.5 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.
- 12.6 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.
- 12.7 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 90 (ninety) days from the Affected Party’s notice of Force Majeure, Seller may, without liability, with immediate effect from its notice, either cancel the affected Shipment(s) and reduce the quantity to be supplied under the Agreement by the equivalent amount or terminate the Agreement.
- 12.8 Any additional or increased freight or insurance premium or other charges relating to any sale, loading, unloading, delivery, storage handling and transportation which may be incurred as a result of any event of Force Majeure shall be for Buyer’s account.
- 13. EVENTS OF DEFAULT**
- 13.1 Each of the following events, acts, occurrences or conditions shall be an event of default (an “**Event of Default**”) by the Party specified:
- 13.1.1 the occurrence of any Insolvency Event in respect of either Party shall be an Event of Default by that Party.
- 13.1.2 a failure by Buyer to pay for any Product under the Agreement when due where such failure is not remedied on or before the 5th (fifth) day following the day on which Seller provides written notice of such failure to Buyer, shall be an Event of Default by Buyer;
- 13.1.3 a failure by Buyer to take Delivery of the Product within the Delivery Period when such failure is not remedied on or before the 15th (fifteenth) day following the day on which Seller provides written notice to Buyer of such failure, shall be an Event of Default by Buyer;
- 13.1.4 the occurrence of a Material Breach which is either not capable of remedy or is not remedied by the 15th (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

- 13.1.5 a failure by Buyer to notify Seller of a Material Adverse Change promptly upon the occurrence of such Material Adverse Change shall be an Event of Default by Buyer;
- 13.1.6 the occurrence of a Material Adverse Change which is either not capable of remedy or is not remedied by the 3rd (third) day following the day on which Seller gives Buyer notice of the Material Adverse Change shall be an Event of Default by Seller. Such remedy shall, if acceptable to Seller on a case-by-case basis, include payment in advance of Delivery or the issuance of a documentary letter of credit or guarantee by a bank or entity and in a form acceptable to Seller.
- 13.2 If an Event of Default has occurred with respect to a Party (the "**Defaulting Party**"), the other Party (the "**Non-Defaulting Party**") may, without prejudice to its other rights and remedies under the Agreement or at law, take any or all of the following actions:
- 13.2.1 suspend performance of the Agreement for so long as the Event of Default is continuing; and/or
- 13.2.2 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
- 13.2.3 terminate the Agreement upon written notice to the Defaulting Party; and/or
- 13.2.4 claim damages against the Defaulting Party; and/or
- 13.2.5 in the case of an Event of Default on the part of Buyer, Seller shall be entitled to recover Product that has been Delivered but not paid for.
- 13.3 In the event that the Seller exercises any right under clause 13.2 to suspend performance of the Agreement and/or terminate the Agreement, any outstanding sums for payment for partial or entire Shipments Delivered to date shall immediately become due.
- 14. GOVERNING LAW AND JURISDICTION**
- 14.1 The Agreement and any Dispute shall be governed by and construed in accordance with English law.
- 14.2 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.
- 14.3 In no event shall either Party be liable in respect of any claim or Dispute where legal proceedings in respect of that claim or Dispute have 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 (one) year of the date on which the Product should have been Delivered.
- 14.4 Any Dispute shall, subject to clauses 14.5 and 14.6 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.
- 14.5 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.
- 14.6 Nothing in this clause 14 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.
- 15. LIMITATION OF LIABILITIES**
- 15.1 Notwithstanding any other provision of this Agreement, 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:
- 15.1.1 any indirect or consequential losses or expenses; and
- 15.1.2 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.
- 15.2 Seller's liability for a failure to Deliver the quantity or specifications of Product set out in the Agreement or a failure to Deliver within the Delivery Period shall be limited to the extent that Seller can recover such sums from its supplier
- 16. ENTIRE AGREEMENT**
- 16.1 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.
- 16.2 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.
- 16.3 No amendments or modifications of the Agreement shall be valid unless agreed in writing by both Parties.
- 17. WAIVER**
- 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.

18. CONFIDENTIALITY

18.1 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.

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

19. NOTICES

19.1 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:

19.1.1 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

19.1.2 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).

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

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

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

19.2.3 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.

20. MISCELLANEOUS

20.1 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.

20.2 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.

20.3 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.

20.4 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.