

# NATIONAL MATERIAL of MEXICO GENERAL TERMS AND CONDITIONS OF SALE

## 1. The Contract

**1.1 Agreement.** Buyer and Seller have entered into a Sales Contract, pursuant to which Buyer will issue Purchase Orders or Releases consistent with the terms of the Sales Contract. The Sales Contract and these General Terms and Conditions (as amended from time to time by Seller without notice) and any other documents specifically incorporated or separately agreed to in writing, such as specifications, drawings, requirements of Seller customer, or quality requirements, are a binding contract between Seller and Buyer. Any alternate terms or printed language on any document or form submitted by Buyer are specifically rejected and shall not alter or modify these Terms and Conditions. The terms of the Contract, together with these Terms and Conditions, will take priority over any inconsistent terms or provisions in the Purchase Orders or Releases and any other documents submitted by Buyer, which together comprise the Contract.

**1.2 Changes.** Buyer may from time to time by notice to SELLER request reasonable changes, within the scope of the Contract, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Contract. Contract changes must be in writing signed by Buyer and accepted in writing signed by Seller. If such change increases or decreases the cost or time required to perform this Contract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease, and must reach agreement before the changes are implemented.

**1.3 Mill Acceptance.** All customer orders are subject to steel mill part review and mill acceptance, heat or tundish lot quantities, and credit approval.

## 2. Delivery

**2.1 Packing and Shipment.** Method of transportation will be as specified in the Contract. No changes will be made unless accepted and agreed to by Seller in writing. Seller will pack and ship Material in accordance with Buyer's instructions, including labeling, material certifications, if required, at Buyer's expense. If Buyer has not provided packing or

shipping instructions, Seller will pack and ship Material in accordance with sound commercial practices.

**2.2 Delivery Schedules.** Seller will deliver Material in accordance with the Contract terms. Unless otherwise stated in the Contract, Material will be delivered FOB Seller's dock and title and risk of loss will transfer to Buyer upon receipt of the Material by the freight carrier.

## 3. Taxes

Unless otherwise stated in the Contract, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

## 4. Payment Terms

Payment terms are net 30 days from invoice date unless otherwise agreed upon by the Parties in writing.

## 5. Product Warranties

**5.1 Seller's Warranties.** Seller warrants to Buyer that the Material will be free from defects in workmanship and materials to the extent caused by Seller, and will conform to the specifications and drawings provided by the Buyer. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES AND ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.**

**5.2 Non-Conforming Material.** Within thirty (30) days of delivery, except claims for damage from transportation which shall be made within three (3) days of delivery, Buyer shall inspect the Material and, if any product furnished hereunder is rejected because of nonconformity to specifications, Buyer shall have the right to return same to Seller, but only after inspection by Seller and receipt of definite shipping

instructions from Seller, such inspection to be made and instruction given within thirty (30) days after notice of rejection by Buyer. Buyer shall comply with any applicable Seller's Claim Policy.

### **5.3 Liability for Non-Conforming Material.**

Seller's sole liability in respect to non-conforming Material delivered hereunder shall be limited to replacement, repair or refund of purchase price, at Seller's sole option. Under no circumstances will Seller be liable for any indirect, incidental or consequential or punitive damages, losses, costs, or expenses incurred by Buyer resulting from the failure of Seller to deliver conforming Material or to comply with the shipping and delivery or other requirements of Buyer.

## **6. Compliance with Laws**

The Parties shall comply with applicable laws, rules and regulations of the country where the Material are manufactured. Upon Buyer's request, Seller will provide Buyer with material safety data sheets regarding the Material and other information reasonably required in order to comply with applicable laws.

## **7. Anti-Corruption**

The Parties hereby represent, certify and warrant that no agent, affiliate, employee or other person associated with or acting on behalf of the Parties directly or indirectly, have in the past offered to pay or provide or have or will pay or provide anything of value in the form of any unlawful contribution, gift, entertainment or other unlawful expense to any foreign official or foreign political party for the purpose of gaining or retaining business or obtaining any unfair advantage, nor violated any provision of the U.S. Foreign Corrupt Practices Act, as amended ("FCPA"); the United Nations Convention Against Corruption, (GA Res. 58/4, UN Doc. A/58/422 (2003)) nor the Organization for Economic Co-operation and Development ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, DAFNE/IME/BR(97)20 nor made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

## **8. Export Controls**

The Parties hereby represent, certify and warrant that they are now and will remain in the future compliant with all export control statutes, regulations, decrees, guidelines and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this agreement including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2007)) of the U.S. Department of State; the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2007)) of the U.S. Department of Commerce; the antiboycott and embargo regulations and guidelines issued under the EAR; the various embargo regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended.

The Parties acknowledge that the sale of the products hereunder shall be subject to the export control laws of the United States which may include, without limitation, the U.S. Export Administration Regulations ("EAR"), the trade sanctions programs administered by the Office of Foreign Assets Control ("OFAC") within the U.S. Treasury Department and the International Traffic In Arms Regulations ("ITAR"), as amended from time to time (collectively the "Export Control Laws"). Buyer agrees that all actions taken by it in furtherance of fulfillment of this Agreement shall be in compliance with applicable Export Control Laws, including the following:

(a) Buyer acknowledges that the purchase of the Products may be subject to export licensing requirements and/or restrictions on resale to certain destinations and parties under the Export Control Laws. If such restrictions apply: (1) Buyer shall comply with the terms and provisions of all licenses and authorizations as may be required for the delivery and use of the Products; (2) Buyer will not sell, export, reexport or deliver any EAR-controlled Products or technology supplied under this Agreement to any parties other than as authorized under applicable export license authorizations, without the express written consent of the U.S. Government; (3) Buyer will obtain all applicable U.S. export approvals required by the U.S. Government prior to the reexport or retransfer of any of the Products; and (4) Buyer will comply with all other applicable requirements under the Export Control Laws.

(b) It is the Seller's policy to verify the end use and end user of all products sold to assure compliance with the Export Control Laws. If Buyer has provided the Seller an End Use Statement or similar undertaking in connection with the purchase of the Products, Buyer shall not sell, export, reexport, transfer or deliver the Products to destinations and parties other than as set forth in such End Use Statements nor permit any third parties to do the same without the express written consent of the Seller.

(c) Buyer shall not sell, export, reexport, transfer or deliver the products supplied under this Agreement to any parties located in Iran, Cuba, North Korea, Syria, the Crimea region of Ukraine, Balkans, Belarus, Burundi, Central African Republic, Democratic Republic of the Congo, Iraq, Lebanon, Libya, Somalia, Venezuela, Yemen, Zimbabwe or any other countries prohibited under U.S. embargoes or trade sanctions programs maintained by OFAC or otherwise prohibited under the Export Control Laws unless specifically authorized under such laws.

(d) Buyer shall not sell, export, reexport, transfer or deliver the products supplied under this Agreement to any parties that are designated: (i) on the List of Specially Designated Nationals and Blocked Persons or other Sanctions Lists maintained by OFAC (currently published at the Internet address <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or to any entities that are owned or controlled by any of such parties, or (ii) on the Denied Persons List, Unverified List or Entity List published by the Bureau of Industry and Security within the U.S. Department of Commerce (currently published at the Internet address [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp)). Buyer further represents that neither it nor any of its officers, directors, shareholders, principals or employees are listed on any of such lists.

(e) Buyer agrees that the Products will not be used in nuclear products, projects or activities, the design, development, production, use or stockpiling of nuclear, chemical or biological weapons, missiles or missile delivery systems, in products or facilities which engage in activities relating to such weapons or systems, terrorist activity nor any other activities prohibited under Part 744 of the Export Administration Regulations.

(f) Buyer represents that it shall cooperate fully with the Seller in furnishing the Seller with all necessary information and certificates, including end-user certificates, that it may require in order to obtain licenses, comply with export recordkeeping requirements and otherwise comply with the Export Control Laws, and further represents that to the best of its knowledge all such information and certificates shall be correct and complete.

## **9. Forecasts**

Unless otherwise agreed by the parties in writing, Buyer shall provide seller with monthly forecasts, submitted by EDI, providing a twelve (12) week look, eight (8) weeks order window and four (4) weeks firm. This forecast schedule is important to enable Seller to order material within established mill lead times in order to meet Buyer delivery schedules. The foregoing does not apply to spot orders or to contracts of three (3) months duration or less.

## **10. Termination**

(a) Termination for Cause. The Seller may terminate a Purchase Order, in whole or in part, without liability, upon written notice to Buyer if the Buyer fails to comply with any of the requirements of the Purchase Order or these Terms and Conditions.

(b) Termination by Buyer Without Cause. In the event Buyer terminates any Purchase Order without cause, in whole or in part, Buyer shall be liable to Seller for (i) all finished goods at the contract price, (ii) all work-in-process and (iii) all material identifiable to the Purchase Order or Contract that is on non-cancellable order with the mill or supplier, as of the date of termination notice.

(c)

## **11. Limitation of Damages**

**ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE GENERAL TERMS AND CONDITIONS TO THE EXTENT PERMITTED BY APPLICABLE LAW.** In no event shall Seller's liability exceed the purchase price of the material sold or services

rendered by Seller. Buyer must immediately discontinue use of any item claimed to be defective.

## **12. Confidential Information**

Each Party shall (i) keep all of the other Party's information confidential and disclose it only to its employees who need to know such information in order for the Parties to perform under the Contract and (ii) use the other Party's information solely for the purpose of performing under the Contract. "Confidential information" means all information provided by one Party to the other Party, or its representatives or subcontractors, in connection with the business, programs, and Material covered by the Contract, including without limitation, pricing and other terms of the Contract, trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data. Confidential information shall remain the sole property of the disclosing Party. Each Party shall use the same degree of care to safeguard the other Party's Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure but not less than a reasonable degree of care. Upon request by the disclosing Party, the receiving Party will promptly return or destroy the original and all copies of Confidential Information received.

## **13. Assignment and Subcontracting**

Neither Party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other Party. Unless otherwise stated in the consent, any assignment or subcontracting, with or without the required consent, will not relieve the assigning Party of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor.

## **14. Excusable Non-Performance**

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from the following force majeure events

("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, plague, epidemic, pandemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake; (c) explosion, fire, destruction of machines, equipment, factories; (d) war, armed conflict, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) government order or law; (f) actions, embargoes, or blockades in effect on or after the date of this Agreement; (g) action by any governmental authority, including an order, rule, regulation or direction, curfew restriction; (h) national or regional emergency; (i) strikes, labor stoppages or slowdowns, or other industrial disturbances; (j) breakdown or shortage of adequate power or transportation facilities, telecommunication or electric current; and (k) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event (the "Impacted Party").

The Impacted Party shall give notice as soon as possible of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue, if reasonably known. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ninety (90) days following written notice given by it under this Section, either party may thereafter terminate this Agreement upon thirty (30) days' written notice.

An event of force majeure does not relieve a party from liability for, nor does that event affect, an obligation to pay money which arose prior to the occurrence of that event.

## **16. Security Interest**

Buyer hereby grants to Seller a security interest in all of the Material now or hereafter acquired by the Buyer hereunder, including Material stored on Seller's or Buyer's premises, until such time as

Buyer has paid Seller in full for all Material. Buyer hereby authorizes Seller or any of its assignees to file Financing Statements and any extensions thereto, including notifying other secured parties in order to perfect its security interest, signed only by Seller or its assignee in all places where desirable or necessary to evidence Seller's absolute ownership of the product in all jurisdictions where such authorization is permitted by the Uniform Commercial Code. Further, Buyer agrees that it will upon request execute any Financing Statements reasonably intended to evidence such absolute ownership by Seller. Seller may designate its nominee as the owner of the product in the Financing Statement. Buyer shall notify Seller thirty (30) days prior to the relocation of Buyer's business premises, or a change in Buyer's name or state of organization.

## **17. Miscellaneous**

**17.1 Updates and Amendments.** SELLER may amend, revise, and update these Terms and Conditions at any time without prior notice. Any such amendment, revision or update will be published, shall apply from the date of publication forward, and shall apply to all future Purchase Orders or Releases under the Contract issued after the publication date.

**17.2 Relationship of the Parties.** Buyer and SELLER are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

**17.3 Waiver.** The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

**17.4 Entire Agreement.** The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the Parties with respect to the subject matter of the Contract, including Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. Except as authorized in Section 1.2, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both Parties.

**17.5 Severability.** A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

**17.6 Interpretation.** When used in these General Terms and Conditions, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

**17.7 Notices.** Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

**17.8 Governing Law.** Unless otherwise agreed in writing, the Contract will be governed by and interpreted according to the internal laws of the State of Illinois, United States of America, without giving effect to its conflicts of laws rules. The *United Nations Convention on Contracts for the International Sale of Goods* will not apply to the Contract.