



## General Terms of Sale

### 1. Scope

1.1. These terms and conditions are part of all contracts concluded between buyer and us even if we do not expressly refer thereto. Any conflicting, deviating or additional general terms and conditions of buyer are not binding for us unless accepted in writing, even if we do not expressly object. These terms and conditions are also binding even if we are aware of conflicting, deviating or additional general terms and conditions of buyer.

1.2. These terms and conditions are only binding for entrepreneurs within the meaning of section 14 of German Civil Code (*Bürgerliches Gesetzbuch*). An entrepreneur is an individual, legal entity or partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

1.3. To the extent that INCOTERMS clauses apply, they shall apply in their current version as amended from time to time (currently in the 2010 version).

1.4. Buyer shall keep in strict confidence all technical or commercial know-how, offers, prices specifications, inventions, processes or initiatives (regardless of form) which are of a confidential nature and which we have disclosed to buyer, its employees, agents or subcontractors, and any other confidential information (regardless of form) concerning our business and products. Buyer may disclose confidential information to the extent such information is publically known or it is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

### 2. Offers, Prices

2.1. Our offers are non-binding and subject to change.

2.2. If not agreed otherwise, the prices are EXW (INCOTERMS 2010).

### 3. Delivery and Shipment

3.1. Unless agreed otherwise, delivery and shipment of the goods takes place in accordance with EXW (INCOTERMS 2010).

3.2. All delivery periods and deadlines are only approximate, except if expressly agreed otherwise.

3.3. In case of non-observance of the delivery periods, we shall only be in default and buyer shall only be entitled to the respective statutory rights if buyer has issued a warning notice vis-à-vis us.

### 4. Packaging

Packaging, protective aids and transport aids will not be taken back. Packaging beyond transportation packaging or any other special protection requires an express agreement.

### 5. Passing of Risk

Unless agreed otherwise, the risk of accidental loss and accidental deterioration of the goods passes to buyer in accordance with EXW (INCOTERMS 2010).



## **6. Impediments of Performance**

6.1. Neither party shall be liable for any impossibility of performance or any delay in performance, to the extent such impossibility of, or delay in performance is caused by a force majeure event (e.g. interruption of operations of any kind, strike, lawful lockouts, shortages of man power, energy or raw materials, including fuel, mobilization, war, blockades, import and export bans, fire, traffic blocks) beyond the party's control.

6.2. The party wishing to claim relief under section 6.1. shall without undue delay notify the other party in writing on the intervention and on the cessation of such circumstance.

6.3. In case of a force majeure event pursuant to section 6.1., the term for production and delivery of the goods extends by the time of the force majeure event's duration in addition to a reasonable restart period. To the extent buyer cannot reasonably be expected to accept such delayed performance of the contract, buyer is entitled to rescind the contract by written declaration to us.

## **7. Terms of Payment**

7.1. Unless otherwise agreed in writing, payment shall be effected reciprocally against release of the goods. Our right to demand advance payment or provision of security shall remain unaffected (see section 7.3. below). Our representatives, drivers, co-drivers, etc. are only entitled to collect cash payments if they present our written collection power of attorney.

7.2. Payments shall only be deemed made when the due amount is credited to our bank account. Buyer has to pay interest on the purchase price while in default. The interest rate shall be 9 percentage points over the base rate interest per year. We reserve the right to assert further damages.

7.3. We are entitled to make delivery of the (outstanding) goods dependent on buyer's advance payment or provision of security, if and to the extent that it becomes apparent, after conclusion of the contract, that our payment claims are jeopardized a) by buyer's inability to pay or b) by lack of sufficient commercial credit insurance to secure the payment claim. If buyer, within a reasonable period, neither pays in advance nor provides security, we are entitled to rescind the contract.

## **8. Right of Retention, Offsetting**

Buyer is not entitled to exercise any right of retention unless it is based on the same contractual relationship, or to set-off unless the respective claim is undisputed or has been declared final and non-appealable by a court. This does not affect our right to set off against buyer's existing claims against us with all our claims.

## **9. Non-Assignability**

Buyer may not assign its claims under the contract to third parties without our express written consent.

## **10. Retention of Title**

10.1. All goods handed over to buyer shall remain our property ("Reserved Property") until all of our accounts receivable resulting from the business relationship with buyer have been fully settled. In case of breach of contract, e.g. default of payment, we shall have the right to reclaim the Reserved Property provided that we determined an appropriate period of time for curing the breach.



10.2. Buyer is obliged to handle the goods with the diligence of a prudent businessman, especially to store the goods appropriately and, at its own expenses, insure the goods at their replacement value against fire, water or theft.

10.3. Buyer shall immediately inform us in writing about any seizure or other intervention of a third party in order to give us the opportunity to file a law suit pursuant to section 771 of the German Civil Procedure Code (*Zivilprozessordnung*). If the law suit is successful buyer will be liable like a guarantor who waived the defence of unexhausted remedies for our claim of reimbursement of court and out-of-court expenses.

10.4. With regard to processing and manufacturing of the Reserved Property, we shall be deemed manufacturer within the meaning of section 950 of the German Civil Code (*Bürgerliches Gesetzbuch*), without us assuming any obligation. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of section 10.1. If buyer manufactures combines or mixes the Reserved Property with other goods, we shall obtain co-ownership of the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such manufacturing, combining or mixing, our ownership ends, buyer herewith transfers to us any rights which buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property. Our co-ownership rights shall be regarded as Reserved Property within the meaning of section 10.1.

10.5. Buyer is entitled to resell the Reserved Property in the usual course of business. Any claims resulting from such resale shall hereby be assigned to us. We hereby accept such assignment. Buyer is entitled to collect the claim even after such assignment. Our right to collect the claim remains unaffected. Nevertheless, we undertake not to collect the claims ourselves if buyer fulfils its payment obligations out of the proceeds received, is not in default of payment and particularly if no petition to open insolvency or similar proceedings has been filed or if buyer has generally stopped to make payments. Should this, however, be the case, we shall be entitled to demand from buyer to disclose the assigned claims and the respective obligors, provide all information required for collecting the claims, hand over all related documentation and notify the obligors about the assignment.

10.6. Should the value of existing collateral exceed the nominal amount of the secured claims by more than 10 %, we will, upon buyer's request, release, at our discretion, portions of the Reserved Property to such extent.

## **11. Weighing, sampling and assaying**

11.1. Unless otherwise agreed in writing, buyer is obliged to check the quantity and quality of the goods upon receipt. If buyer finds a difference of more than 0.5 % in weight and/or of more than 0.5 % in assays per lot, buyer shall inform us within a maximum period of 15 calendar days after release/delivery by/from us. A difference in weight or assays of 0.5 % or less does not constitute a defect of the goods and shall constitute full performance of the respective contract.

11.2. Buyer and we can agree to have the consignment reweighed/re-assayed by an independent umpire mutually agreed by buyer and us (the "**Umpire**"). The Umpire will re-weigh sample and/or re-assay the complete lot according to IMO's guidelines on procedure for the weighing and sampling of Ferro Molybdenum, to the extent these guidelines are applicable. Buyer and we shall have the right to have a representative present at the reweighing/resampling. If the Umpire's results are between buyer's and ours, then the Umpire's results will be taken as final for settlement of the consignment; if not, the results closest to the Umpire's results will be taken as final for settlement. Cost of the Umpire will be borne by the losing party i.e. the party whose results are furthest from the Umpire's results.

## 12. Liability for Defects

12.1. Unless otherwise provided for in these terms and conditions, we are liable for defects towards buyer according to applicable statutory law. In any event, buyer's rights pursuant to sections 478, 445a of the German Civil Code (*Bürgerliches Gesetzbuch*) shall remain unaffected.

12.2. The warranty period is one year as of delivery of the goods. Sentence 1 does not apply to buyer's damage claims resulting from injury to life, body or health or intentional or grossly negligent breach of duty by us or a party engaged by us, which all become time-barred pursuant to statutory law. Likewise, sentence 1 does not apply to claims resulting from buyer regress in case of final delivery to a consumer (sections 478, 445a of the German Civil Code (*Bürgerliches Gesetzbuch*)) and pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).

12.3. Buyer's remedies in case of defect depend on buyer's fulfilment of its statutory examination and notification obligations as follows: In case of a defect apparent upon reasonable inspection, buyer must notify us within 14 days after delivery. In case of hidden defects, buyer must notify us within 14 days after buyer discovered, or should have discovered through the exercise of reasonable investigations, knowledge of the defect. In case of failure to notify us in accordance with this section 12.3. or section 11.1. above, buyer shall not have any remedy right for the defect.

12.4. In case of defect, we may choose, at our sole discretion, whether to cure the defect by replacing or by repairing the defective good. This does not affect our right to refuse cure of the defect in accordance with statutory law.

12.5. Our obligation to remedy a defect does neither include the obligation to disassemble the defective goods nor the obligation to assemble the newly delivered goods, unless we have assumed an obligation to assemble in the underlying sales contract.

12.6. We shall bear all expenses required for the purpose of cure, in particular transport, workmen's travel, work and materials costs if the goods prove to be defective. If the request for cure is unjustified, we are entitled to compensation for the costs resulting from such unjustified request for cure, except for where the lack of defect is not recognizable for buyer.

## 13. Limitation of Liability

13.1. Our liability – irrespective of its legal basis – shall be limited to damages caused by wilful intent or gross negligence. However, we are liable for simple negligence in case of damages which result from the breach of material contractual obligations (i.e. an obligation which is material for the performance of the contract and compliance with which the other party regularly expects and may expect) whereas, in this case, our liability shall be limited to typical damages which we could have foreseen as a possible consequence of such breach at the time of entering into the contract.

13.2. The limitations of liability pursuant to section 13.1. of these terms and conditions do not apply

- a) in case of damages to life, body or health,
- b) if and to the extent we have maliciously deceived (*arglistig verschwiegen*) a defect,
- c) if and to the extent we have assumed a guaranty for the quality of goods, or
- d) for claims of buyers under the German Product Liability Act (*Produkthaftungsgesetz*).



#### **14. Export Certificate**

14.1. If the international transport or shipment of the goods by buyer or its authorized agent is subject to VAT, buyer is obliged to submit to us the export certificate.

14.2. If buyer does not provide the export certificate until the invoice date, it must, in relation to the invoiced amount, pay the value added tax applicable for deliveries within the Federal Republic of Germany.

#### **15. Place of Performance and Place of Jurisdiction**

15.1. Our registered seat is the place of performance for all obligations under this contract.

15.2. All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt am Main, Germany. The language of the arbitration shall be English; however, evidence can be submitted in either English or German.

15.3. The contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

#### **16. Final Provision**

If individual provisions of the contract including these terms and conditions are or become invalid either in whole or in part this shall have no effect on the validity of the remaining provisions.

A list of the companies using these General Terms and Conditions of Business in the CRONIMET Mining Group and the latest version of the General Terms and Conditions of Business can be found on the CRONIMET Mining website at [www.cronimet-mining.com](http://www.cronimet-mining.com).