

## General Terms and Conditions of Sale

### **1. Terms of this Agreement**

This document contains the general terms and conditions (“GTC’s”) which apply to and supplement all contracts and confirmations for the sale of metals and metals products by GMI Commodities S.A. These GTC’s together with any Contracts and Confirmations constitute the entire Agreement between the parties named in this Agreement as buyer (“Buyer”) and GMI Commodities S.A. as seller (“Seller”) and shall supersede all prior oral or written representations, warranties, terms, conditions or agreements, express or implied, to the contrary. Incoterms 2010 shall apply to and be incorporated by reference to the Agreement. In the event of any inconsistency between the GTC’s, and any other provisions of the Agreement, the Agreement shall prevail. Execution of the Agreement by the Buyer or payment of any Payment Amount by the Buyer shall be deemed to be an acceptance of these GTCs.

### **2. Price**

Prices shall be determined and calculated by the Seller in accordance with the terms of this Agreement and shall be conclusive absent manifest error.

### **3. Payment Terms**

Invoices submitted by Seller under this Agreement are due and payable in accordance with the terms in the sales Agreement between Seller and Buyer. All payments made by the Buyer to the Seller under this Agreement shall be made without offset, deduction, withholding or counterclaim into the Seller’s nominated bank account. Where payment is not made when due, (including but not limited to the price of the cargo and any undisputed money due in relation to the performance of the Agreement), Buyer agrees that it shall be liable to pay Seller (i) interest on such overdue amounts at a rate equal to the lesser of 12 per cent per annum over 30 day LIBOR (or its successor rate) or the highest rate permitted by applicable law; and (ii) Seller’s costs of collection of such overdue amounts (plus interest,) including, without limitation, any expenses incurred, for legal fees, court costs and collection agency fees. The acceptance by Seller of any payment in less than the full amount shall not be a waiver of any rights of Seller. If payment falls due on a Saturday or a bank holiday other than a Monday, the payment due date shall be the preceding business day. If payment falls due on a Sunday or a Monday bank holiday, the payment due date shall be the next business day. Where the applicable Payment Method is Documentary Collection Method all documentary collection advising and negotiating charges shall be for the Buyer’s account and Buyer shall pay to Seller a handling fee of US Dollars 250.00 (Two Hundred Fifty) for each presentation of Payment Documents.

### **4. Delivery**

The Seller shall deliver or cause to be delivered the metal in accordance with the applicable Incoterm in the sales Agreement and the Buyer shall take delivery of the metal in the applicable Incoterm as well. Where Buyer fails to give timely delivery instructions to enable Seller to make delivery in accordance with the terms of this Agreement. Seller may at its option (i) hold the goods due at the shipping point for Buyer’s account, in which case Buyer shall be liable to pay storage charges for such goods at appropriate storage rates as established by Seller; and/or (ii) following notice to Buyer, cancel the order for the goods, in which case Buyer shall be liable to pay appropriate cancellation charges as established by Seller. Shipping dates and delivery dates are approximate and shall not operate to bind Seller to ship or make deliveries on the dates stated herein. Seller shall have no liability for delays in shipment resulting from circumstances beyond its reasonable control. Unless specific tolerances are set forth in this Agreement, Seller shall have the right to deliver such quantities of the goods ordered within limits reasonable in trade practice and Buyer shall be obligated to accept and pay for the quantity actually delivered. Where a specific source for the goods is indicated in this Agreement, Buyer agrees that Seller is obligated only to deliver goods manufactured by the designated mill, plant or such other source. Buyer agrees that, in the event that Seller is unable to obtain the goods from such designated source, Seller shall have the exclusive option (i) to replace the contracted for goods with similar goods from another source; or (ii) to allocate its available goods from the designated source among its own uses and its customers in such manner as Seller in its absolute discretion deems fit; or (iii) to cancel this Agreement without any further liability or obligation to Buyer.

**5. Title and Risk of Loss**

Risk of loss and damage shall pass from the Seller to the Buyer in accordance with the terms of the sales Agreement. Title to the goods shall pass from the Seller to the Buyer once full payment for the goods has been received by Seller.

**6. Quality Claims**

Notwithstanding any other provision of this Agreement to the contrary, the agreed upon mechanism to settle any and all quality claims is as follows:

Buyer must advise seller in writing no later than 15 days after vessel has arrived at discharge port that upon visual inspection of the material that it differs from the photos taken prior to loading of the containers. An official claim, must be submitted to Seller, in writing, within this 15-day timeframe. Once a claim has been submitted, Buyer and Seller agree to try to settle the claim and have 7 business days to do so failing which the following additional procedures to apply:

Buyer and Seller to agree on a representative sample of the material to be considered.

Buyer and Seller to nominate a mutually acceptable Independent Claims Settling Agent ("ICSA") to be present at the Buyer's plant prior to the drawing of the samples to be tested. If Buyer and Seller cannot agree on an ISCA, then the parties are to use Alfred H. Knight International Ltd or SGS (Societe Generale Surveillance S.A.)

Seller's representative to be present for the sampling if they should choose to be there. Buyer to give Seller minimum 24 hours advance notice of time for sampling.

A sample to be taken by the ICSA and evaluated in accordance with generally accepted procedures.

The findings of the ICSA are to be issued in a written report, which findings will be binding upon the parties. Seller to pay fees of the ICSA if the ICSA awards a claim amount of 50% or more of the claim submitted. Buyer to pay ICSA if less than 50% of the submitted claim amount is awarded.

Funds due from one party to the other to be remitted within two (2) working days of finding by claims agent.

**7. Force Majeure**

Seller shall not be liable for any damages resulting from any delay or failure of performance arising from any cause not reasonably within its control including, but not limited to: acts of God, fire, earthquake, hurricane or other weather conditions, labor disputes, unavailability or shortage of power, transportation, materials or energy sources, wars, civil disorders, acts of government or governmental agencies. Where Seller is affected by any such force majeure event, Seller shall as soon as reasonably practicable after becoming aware of the occurrence of Force Majeure notify the Buyer of its intention to claim relief and provide details of the Force Majeure. The Seller shall use all reasonable efforts to rectify or avoid the Force Majeure and, as soon as reasonably possible after the end of such Force Majeure, shall notify the Buyer Party in writing that such Force Majeure has ended. Any additional costs or charges incurred as a result or in consequence of any force majeure event shall be for the account of Buyer. In the event of an occurrence of a force majeure event, the time for performance under this Agreement shall be extended for any period reasonably necessary due to such occurrence during which the Agreement will remain in full force and effect, provided that where the force majeure event continues for greater than 90 days, Seller shall have the right to terminate this Agreement without liability or further obligation to Buyer. Seller shall have the right to terminate this Agreement without liability or further obligation to Buyer. Buyer cannot declare Force majeure on any goods in the event pricing has been agreed, final or partial pricing has been established, freight has been firmly booked by Seller, or provisional and/or final payment(s) have been remitted to Seller.

**8. Taxes: VAT, GST, HST, QST, or any tax other than a tax on Income or Capital (the "Indirect Tax")**

Unless otherwise expressly provided in the Agreement, the Price specified in the Agreement is exclusive of Indirect Tax. Each Party recognizes that Indirect Tax may be due on deliveries made under the Agreement at different rates in different countries, provinces or states and each Party agrees to supply to all necessary information required to: (a) issue invoices compliant with the tax laws of the country in which Delivery takes place or is treated as taking place for tax purposes; and (b) file complete and accurate returns with the appropriate taxing authorities.

If Indirect Tax is not to be assessed on the transaction envisaged under the Agreement, the Buyer shall be responsible for supplying all necessary documentation which Seller needs to not assess the Indirect Tax on the transaction. If the Buyer fails to provide such documentation to the Seller, the Seller may assess Indirect Tax on the transaction at the rate applicable in the country in which the transaction is assessed for Indirect Tax. If the Seller assesses Indirect Tax on the transaction, the Buyer shall pay Indirect Tax as specified in the Seller's invoice. Seller shall have the right to assess, on a commercially reasonable basis, Indirect Tax on the transaction in the local currency of the country in which Delivery takes place or is treated as taking place for Indirect Tax purposes, if different from the Payment Currency. If the Buyer delays paying any Indirect Tax assessed on the transaction, the Buyer shall be responsible for and shall indemnify the Seller in respect of any interest, penalties, or costs (including without limitation any collection fees, attorney fees and foreign exchange rate loss) incurred by the Seller in relation to such Indirect Tax liability.

If, at any later date, it is determined by the Seller or the Tax Authorities that the Indirect Tax is due on the transaction, the Seller reserves the right to assess Indirect Tax on the transaction at such time. If the Indirect Tax is so assessed, the Seller shall invoice the Buyer specifying the amount and currency in which the Indirect Tax is due, any interest or penalties assessed by an authorized taxing agency and any additional costs (including without limitation any collection fees, attorney fees and foreign currency exchange rate loss) incurred by the Seller as a result of the delayed determination of the Indirect Tax status. The Buyer shall pay to the Seller in full into the Seller's bank account the amounts specified in the Seller's invoice within 3 (three) Business Days of receipt of the Seller's invoice.

The Buyer shall indemnify and hold Seller harmless for any Indirect Tax charged or not charged on the transaction in reliance upon the Buyer's presentation, or non-presentation, of documents to determine the Indirect Tax status of the transaction.

Upon the Seller's request the Buyer shall pay the Indirect Tax amount in the local currency of the country in which Delivery takes place or is treated as taking place for Indirect Tax purposes, if different from the Payment Currency.

#### **9. Acceleration and/or Termination of Agreement; Set-Off**

Where Buyer fails to pay any invoice when due to Seller or is otherwise in material breach of this Agreement or any other Agreement with Seller; or in the event of any moratorium of any indebtedness, bankruptcy, insolvency, liquidation, arrangement with creditors, or appointment of receiver of, or in favor of, the Buyer, or any analogous procedure in any jurisdiction, any and all payments due from Buyer to Seller under this Agreement shall become immediately due and payable. In addition to other remedies available at law, Seller further reserves the right to cancel this Agreement or retain or take possession of the goods and to withhold and/or stop goods in transit or take any other action to protect the rights of Seller. On the occurrence of any of the foregoing, Buyer agrees to indemnify and hold harmless Seller for all Seller's costs and losses arising therefrom. Seller may set off any claim of the Seller to the Buyer (or any of its affiliates) against any claim of the Buyer (or any of its affiliates) to the Seller. Where amounts to be set off are in different currencies, Seller may convert amounts from one currency into the relevant currency at the market rate then prevailing.

#### **10. Credit Support**

The Buyer is aware that the payment terms in the Agreement may be subject to a specific credit line approved for the Buyer and/or the Buyer's country by a specific organization, which reserves the right to withdraw or reduce it without notice.

In the event of such a withdrawal or reduction, the Seller may, by Notice to the Buyer: (i) suspend performance of any one or more of its obligations under the Agreement (including without limitation any obligation to ship or deliver any Metal); and (ii) seek to renegotiate any term(s) of the Agreement and/or require that the Buyer provide either advance payment or security satisfactory to the Seller for the performance by Buyer of its obligations under the Agreement;

If, within 15 (fifteen) days of the Seller's Notice pursuant to (a) above, no agreement has been reached upon the renegotiation of the term(s) of the Agreement and/or any security required by the Seller has not been provided, the Seller may, in its sole discretion, terminate the Agreement by Notice to the Buyer. Upon termination in accordance with this clause, neither Party shall have any further liability to the other in respect of the Agreement except for any rights and remedies previously accrued under the Agreement, including any payment obligations.

#### **11. Remedies and Limitation of Liability**

Any claims by Buyer of whatever nature arising under this Agreement shall be made in writing to Seller within 15 days of the date of tender of delivery to Buyer, absent which any claim by Buyer in respect thereof shall be barred. Where Buyer makes such a claim, Seller's liability shall be limited to, at Seller's option (i) replacement of the non-conforming goods with goods conforming to the description of such goods; or (ii) repayment of the purchase price actually paid to Seller in respect of that part of the goods that are non-conforming, in each case subject to the redelivery (at Seller's expense) to Seller of the non-conforming goods in the same condition as the same had been delivered to Buyer. If it is not possible for the non-conforming goods to be redelivered to Seller for whatever reason, Seller's liability shall be limited to the difference in value in the unit price of the goods on account of the nonconformity. Other than as expressly set out herein, Seller shall not be liable to Buyer, either directly or indirectly, for any direct, special, punitive, consequential or incidental damages, such as, but not limited to, property damage, loss of profit, loss of use of goods, arising out of or in connection with the performance, failure to perform or termination of the Agreement or any Transaction; provided that Seller shall remain liable for any direct loss attributable to the death or personal injury of Buyer resulting from Seller's negligence. The rights and remedies herein provided for are cumulative and not exclusive of any legal or equitable rights and/or remedies that may be available to either party. No failure or delay to exercise, nor single or partial exercise of, any right, power or remedy in connection with this Agreement will operate as a waiver thereof nor preclude any other or further exercise of any such right, power or remedy. Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

#### **12. Representations and Warranties**

Buyer agrees that it has not been induced to enter, nor has it relied in entering, into this Agreement on any oral or written representation, guaranty or warranty made by Seller, its employees, agents or representatives other than as expressly set out in this Agreement. Seller warrants that the goods supplied hereunder will conform to the description of such goods in this Agreement and that Seller will convey good title free from any lawful security interest, lien or encumbrance other than as stated herein. Other than as set out above, Seller makes no warranty that the goods shall be of satisfactory quality or fit for any particular purpose (whether or not it shall be aware of any such purpose) and further makes no other warranty, express or implied, except as is expressly set forth herein. Buyer and Seller represent and warrant each on behalf of itself that (i) It has all requisite power, authority, licenses and approvals to enter into and perform its obligations under the Agreement; (ii) it or any person designated by it (including any signatory hereto) has due authorization to act in all respects relating to this Agreement; and (iii) this Agreement and the transaction relating thereto are its valid and legally binding obligations enforceable against it in accordance with its terms. Buyer further represents and warrants that it has before signing this Agreement, satisfied itself about all matters relevant to your rights and obligations under this Agreement and, if necessary, have sought legal advice and that such execution, delivery and performance does not violate any law applicable to it, any provisions of its formulation, constitutional or other organizational documents, or any order or judgment of any court or agency of government applicable to it or its assets; all governmental and other consents required to have been obtained by it with respect to the Agreement have been so obtained and are in full force and effect and all conditions of any such consent have been complied with; its obligations under the Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their terms (subject to applicable insolvency and bankruptcy laws and general principles of equity) and it has complied and will comply with all applicable laws, rules and regulations, including without limitation, Sanctions, anti-money laundering and anti-corruption laws, in entering into and performing its obligations.

#### **13. Confidentiality**

This Agreement and the existence of and terms of the Agreement is strictly confidential among the parties and should only be disclosed to a third party if approved in writing by the other parties, except that either Party may disclose such provisions to the extent necessary to its employees, banks, legal and accounting advisors, auditors, provided that each agrees to be held to same standard of confidentiality as if they were a party to this agreement; or, as may otherwise be required by law.

#### **14. Arbitration and Choice of Law**

All disputes, controversies or claims between the Parties arising out of or in connection with this Agreement will be fully and finally resolved under the Rules of Arbitration of the International Chamber of Commerce in effect at the time of the request for arbitration (the "Rules") before three (3) arbitrators selected in accordance with the Rules. The arbitral award will be final and binding on the Parties. The language of the arbitration shall be English. The seat of arbitration shall be in Geneva, or in any other location in Switzerland if mutually agreed upon by the parties. This Agreement will be governed by and construed in accordance with Swiss substantive law, to the exclusion (i) of its provisions governing conflicts of laws and (ii) of the Vienna convention on the international sale of goods.

#### **15. Assignment**

This Agreement shall be binding upon the successors and assigns of the Parties and the name of a Party appearing herein shall be deemed to include the names of its successors and assigns. No Party may assign, delegate or transfer all or any of its respective rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Buyer or Seller may assign this Agreement upon notice and without consent of the other to (a) a wholly owned affiliate, so long as the assigning Party unconditionally guarantees the obligations of such affiliate or (b) any successor of the assigning Party's business in the event of a merger, acquisition or consolidation involving such Party or its affiliates. Notwithstanding the foregoing, Seller may assign, without the Buyer's consent, all or a portion of its rights, title and/or interest to any payment due under the Agreement to a bank or financial institution, including any payments due from the Buyer.

#### **16. Severability**

To the extent that any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, that provision notwithstanding, the remaining provisions of this Agreement shall remain in full force and effect and such invalid or unenforceable provision shall be deleted.

#### **17. Notices**

Any and all notices required hereunder shall be in writing and shall be sent to the Party at the address set forth by that Party in this Agreement (a) by internationally recognized overnight courier or (b) by hand delivery to the addresses of the other Party as set forth in the Agreement; or (c) by email as set forth in the Agreement. Any such notices shall be effective (a) in the case of personal delivery on receipt and in the case of courier at the time of delivery (pursuant to the delivery receipt), or (b) in the case of email at the time of successful transmission to the recipient. A party shall notify a change of address to the other party in writing. If no such address is set out in the Agreement, any notice or communication shall be delivered to a Party's registered address.

#### **18. Amendment**

No alternation, waiver, cancellation, or any other change or modification in any term or condition of this Agreement, or any agreement contemplated to be negotiated or reached pursuant to the terms of this Agreement, shall be valid or binding on either Party unless made in writing and signed by duly authorized representatives of all Parties.