

## TRADMET LIMITED TERMS OF PURCHASE

### 1 Interpretation

**Definitions.** In these Conditions, the following definitions apply:

**Applicable Incoterms:** the Incoterms applying to the Contract as specified in the Purchase Confirmation.

**Buyer:** Tradmet Limited (registered in England and Wales with company number 03477749).

**Contract:** the contract between the Buyer and the Seller for the sale and purchase of the Material comprising the Purchase Confirmation together with these Terms of Purchase.

**Delivery:** delivery of the Material by the Seller to the Buyer as specified in the Contract.

**Force Majeure Event:** any event or circumstance beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, embargoes, blockade, prohibitions of export or import, failure of energy sources or transport network, loss delay detention or non-availability of a carrying vessel, interference by civil or military authorities, sabotage, acts of God, war, terrorism, riot, civil commotion, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, earthquakes, epidemics or natural disasters.

**Incoterms:** the International Chamber of Commerce official rules for the interpretation of trade terms that came into force on 1 January 2011.

**Market Day:** a day when the Relevant Market is open for business.

**Material:** the goods (or any part of them) to be sold by the Seller and purchased by the Buyer as set out in the Purchase Confirmation.

**Pricing Request:** in accordance with the Contract, either a request by the Buyer to the Seller to price at the Relevant Market Price on the Market Day of the request or a notification by the Seller to the Buyer of its intention to price at the Relevant Market Price on the Market Day of the notification.

**Purchase Confirmation:** a summary of the key terms of the sale of Material signed by the Buyer and the Seller appended, and subject, to these Terms of Purchase.

**Quotational Period:** a period specified in the Purchase Confirmation during which the price to be paid for the Material is to be agreed between the Seller and the Buyer.

**Relevant Market:** a commodities market whether official or unofficial as agreed by the Buyer and the Seller and specified in the Contract.

**Relevant Market Price:** the price at which the Material is trading on the Relevant Market on a particular Market Day.

**Seller:** the person or firm from whom the Buyer purchases the Material.

**Shipping Documents:** the documents to be presented to the Buyer by the Seller in return for payment by the Buyer to the Seller.

### 2 Basis of contract

2.1 These Terms of Purchase apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 In the event of any inconsistency between the Purchase Confirmation and the Terms of Purchase the Terms of Purchase will prevail.

2.3 Notwithstanding clause 2.1, the Contract incorporates Incoterms and Incoterms shall apply except where contradicted by the express terms of these Terms of Purchase.

2.4 The Contract constitutes the entire agreement between the parties.

### 3 The Material

The Seller shall ensure that the Material shall correspond with its description and any applicable specification.

### 4 Delivery

The place and time for delivery shall be established in accordance with Applicable Incoterms.

### 5 Title and risk

Title and risk in the Material shall pass to the Buyer in accordance with the Applicable Incoterms.

### 6 Price and payment

6.1 Where the Contract provides that the Price is to be agreed within a Quotational Period and:

6.1.1 the Price is at the Buyer's option the Buyer will make a Pricing Request to the Seller on any Market Day during the Quotational Period and the Price will be agreed on execution of the Pricing Request by the Seller;

6.1.2 the Price is at the Seller's option the Seller will make a Pricing Request to the Buyer on any Market Day during the Quotational Period and the Price will be agreed on execution of the Pricing Request by the Seller;

6.2 Where a Pricing Request is not executed by the Seller, in accordance with the terms of the Contract either the Buyer or the Seller will make a further Pricing Request within the Quotational Period save that if a Pricing Request is made on the last Market Day of the Quotational Period and the Pricing Request is not executed by the Seller the Quotational Period will be extended by one Market Day.

6.3 The Buyer may, without limiting any other rights or remedies it may have, set off any amount owed to the Seller by the Buyer against any amounts payable by the Buyer to the Seller under the Contract.

6.4 If the Price is at the Seller's option and the Seller does not make a Pricing Request within the Quotational Period the Buyer may, at its sole discretion,

terminate the Contract and claim damages for any losses, costs and or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Contract.

6.5 The Buyer shall pay against correctly presented and conforming Shipping Documents in accordance with the Purchase Confirmation.

### 7 Remedies

7.1 The Seller shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Buyer as a result of or in connection with:

7.1.1 any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Material, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller, its employees, agents or subcontractors; and

7.1.2 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Material, to the extent that the defect in the Material is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors.

This clause 7.1 shall survive termination of the Contract.

7.2 These Terms of Purchase shall apply to any replacement Material supplied by the Seller.

7.3 The Buyer's rights and remedies under these Terms of Purchase are in addition to its rights and remedies implied by statute and common law.

### 8 Force majeure

8.1 If either party is prevented or substantially hindered from carrying out its obligations under the Contract by reasons of a Force Majeure Event the period for performance of the relevant obligation shall be extended for as long as the Force Majeure Event shall prevail. The party declaring force majeure shall immediately notify the other party of the commencement and termination of the Force Majeure Event. Without prejudice to the admissibility of any other suitable evidence a certificate issued by the Chamber of Commerce of the Seller's country or country in which the Force Majeure Event occurred shall be sufficient proof of the existence and duration of such circumstances.

8.2 Should the Force Majeure Event prevail for more than 90 days then the unaffected party may terminate this agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights and remedies that have accrued to either party in respect of performance of the Contract occurring prior to such termination.

### 9 General

#### Assignment and subcontracting

9.1 The Buyer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

9.2 The Seller may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Buyer's prior written consent.

#### Severance

9.3 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

9.4 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### Waiver

9.5 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

#### Third party rights

9.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.

#### Variation

9.7 Except as set out in these Terms of Purchase, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Buyer.

#### Governing law and jurisdiction

9.8 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, English law, and settled by arbitration in London in accordance with the Rules and Regulations of the London Metal Exchange.