

## TRADMET LIMITED TERMS OF SALE

### 1. Interpretation

**Definitions.** In these Terms of Sale, the following definitions apply:

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

**Buyer:** the party purchasing the Material from the Seller.

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

**Closing Price:** the price for the Material at close of trading on the Relevant Market on a Market Day.

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

**Final Invoice:** an invoice raised by the Seller following agreement of the Price.

**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 or delay in loading or discharging 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.

**Invoice:** a Provisional Invoice or a Final Invoice.

**Insolvency Event:** a party threatens to suspend payment of its debts or becomes unable to pay its debts as they fall due, or commences an insolvency procedure.

**Margin Call:** a request from the Seller to the Buyer for the remittance by the Buyer of funds, to be held to the Buyer's account by the Seller, such remittance to be in the sum of the difference between the Relevant Market Price on the Market Day on which the request is made and the Provisional Invoice.

**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 specified in the Contract.

**Price:** the price to be paid by the Buyer to the Seller for the Material.

**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 the notification by the Seller to the Buyer of its intention to price at the Relevant Market Price on the Market Day of the notification.

**Provisional Invoice:** an invoice raised by the Seller in accordance with clause 6.4.

**Quotational Period:** a period specified in the Sale 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 as agreed by the Buyer and the Seller and specified in the Sale Confirmation.

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

**Sale Confirmation:** a summary of the key terms of the sale of Material appended, and subject, to these Terms of Sale.

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

**Surveyor:** an internationally recognised surveyor or inspector as approved by the Seller.

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

**Specification:** the description and composition of the Material as set out in the assay certificate or such other certificate of quality, including the Sale Confirmation, as may correspond to the Material and the quantity of the Material specified in the Contract.

**Warranty Period:** the period of 30 days from the date of Delivery.

### 2. Basis of contract

2.1 These Terms of Sale apply to the Contract to the exclusion of any other terms that the Buyer 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 Sale Confirmation and these Terms of Sale the Terms of Sale shall prevail.

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

2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

### 3. Quality and Quantity

3.1 The Seller warrants that on delivery, and for the Warranty Period, the Material shall conform with the Specification.

3.2 Subject to clause 3.3, if:

3.2.1 the Buyer gives notice in writing to the Seller during the Warranty Period that some or all of the Material does not comply with the warranty set out in clause 3.1;

3.2.2 the Seller is given a reasonable opportunity of examining such Material; and

3.2.3 the Buyer (if asked to do so by the Seller) instructs a Surveyor to produce an independent report as to the conformity of the Material with the Specification and such report confirms the defect complained of;

the Seller shall pay the costs of the Surveyor and, at its option, replace or refund the price of the defective Material in full subject to release to the Seller of any such defective Material.

3.3 The Seller shall not be liable for any failure to comply with the warranty set out in clause 3.1 in any of the following events:

3.3.1 the Buyer alters, processes, mixes in any way or makes any further use of such Material after giving notice in accordance with clause 3.2;

3.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Material or (if there are none) good trade practice regarding the same;

3.3.3 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

3.3.4 In the case of a claim for short weight, any discrepancy in weight is not fully documented through a Surveyor.

3.4 Except as provided in this clause 3 and subject to the limitations set out in clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 3.1.

3.5 Except as set out in these Terms of Sale, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

3.6 These Terms of Sale shall apply to any replacement Material supplied by the Seller.

### 4. Delivery

4.1 The place and time of delivery shall be established in accordance with the Applicable Incoterms.

### 5. Title and risk

5.1 The risk in the Material shall pass to the Buyer in accordance with the Applicable Incoterms. Title to the Material shall not pass to the Buyer until the Seller has received payment in full for the Material.

5.2 From Delivery until title to the Material has passed to the Buyer, the Buyer shall:

5.2.1 hold the Material on a fiduciary basis as the Seller's bailee;

5.2.2 store the Material separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

5.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Material;

5.2.4 maintain the Material in satisfactory condition and keep the Material insured against all risks from the date of Delivery; and

5.2.5 notify the Seller immediately if it becomes subject to an Insolvency Event;

but the Buyer may resell or use the Material in the ordinary course of its business;

5.3 If before title to the Material passes to the Buyer the Buyer suffers an Insolvency Event or the Seller reasonably believes that an Insolvency Event is about to occur and notifies the Buyer accordingly, then, provided that the Material has not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the

Buyer to deliver up the Material and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Material is stored in order to recover the Material.

### 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 inform the Buyer of its Pricing Request 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: the Buyer or Seller, in accordance with the terms of the Contract, 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 If the Price is at the Buyer's option and the Buyer does not make a Pricing Request within the Quotational Period the Closing Price on the last Market Day of the Quotational Period will apply.

#### Invoices

6.4 Where the Price is not fixed at the date of shipment of the Material:

6.4.1 the Seller will raise a Provisional Invoice at the Relevant Market Price on the date the Provisional Invoice is raised and the Provisional Invoice will be treated as the Seller's Invoice for the purposes of presentation of the Shipping Documents and triggering the obligation to pay;

6.4.2 on agreement of the Price in accordance with the Contract the Seller shall raise a Final Invoice; and

6.4.3 the Buyer shall pay to the Seller the difference between any payment made under a Provisional Invoice and the sum due under the Final Invoice unless the Final Invoice is for a sum lower than a payment made under a Provisional Invoice in which case the Seller shall reimburse the Buyer accordingly.

6.5 If on any Market Day, before issue by the Seller of the Final Invoice, the Relevant Market Price is higher than the Provisional Invoice the Seller may, at its sole discretion, make a Margin Call. Notwithstanding any Margin Call the Buyer's obligation to pay will be calculated in accordance with the terms of payment stated in the Sale Confirmation and with reference to the date of issue of the Provisional Invoice.

#### Payment

6.6 The Buyer shall pay all Invoices in full and in cleared funds as required by the Sale Confirmation. Time for payment is of the essence.

6.7 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment (Due Date), then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above LIBOR from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount to the Seller.

6.8 The Buyer shall pay all amounts due to the Seller under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

### 7. Termination

7.1 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### 8. Limitation of liability

8.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

8.1.2 fraud

8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

8.1.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

8.2 Subject to clause 3 and clause 8.1 :

8.2.1 the Seller shall not be liable to the Buyer, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;

8.2.2 the Seller's total liability to the Buyer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price of the Material; and

8.2.3 the Seller shall not be liable for any claim raised outside the Warranty Period.

### 9. Force majeure

9.1 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.

9.2 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.

### 10. General

#### Assignment and subcontracting

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

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

#### Severance

10.3 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.

10.4 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

10.5 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

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

#### Variation

10.7 Except as set out in these Conditions, 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 Seller.

#### Arbitration and Governing law

10.8 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.