

**GENERAL CONDITIONS OF SALE AND DELIVERY CBMM ASIA PTE LTD.
VERSION JANUARY, 1ST 2008**

1. Definitions

1.1. In these General Conditions:

- a. "Agreement" means the agreement for the supply of any Product by CBMM to the Purchaser entered into or to be entered into between CBMM and the Purchaser, pursuant to an Offer and the Sales Confirmation, including these General Conditions and any other terms and conditions agreed between CBMM and such Purchaser,
- b. "CBMM" means CBMM Asia Pte Ltd., having its registered office in Singapore,
- c. "Encumbrance" shall mean mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest of any kind securing any obligation of any person or any other type of preferential arrangement (including without limitation title transfer and/or retention arrangements having a similar effect),
- d. "Force Majeure Event" means, in relation to either party, any circumstances beyond the reasonable control of that party (including without limitation any act of God, epidemic, war or act of war (whether declared or undeclared), insurrection, riot, strike, lock out or other form of industrial or governmental intervention,
- e. "General Conditions" means these general conditions of sale and delivery,
- f. "Offer" means any offer for the supply of Products submitted by CBMM to the Purchaser,
- g. "Order" means an order of the Purchaser for the supply of Products, specifying the quantity and specifications of the Products requested and the date of delivery of such Products,
- h. "person" shall include an individual, corporation, company, partnership, firm, trustee, trust, executor, administrator or other legal personal representative, unincorporated association, joint venture, syndicate or other business enterprise, any governmental, administrative or regulatory authority or agency (notwithstanding that "person" may be sometimes used herein in conjunction with some of such words), and their respective successors, legal personal representatives and assigns, as the case may be, and pronouns shall have a similarly extended meaning,
- i. "Products" means FeNb, Nb-Oxide and FeNb Powder, FeNb Cored Wire, NiNb and/or FeNb Vacuum Grade and/or any other product marketed by CBMM,
- j. "Purchaser" means any person that CBMM has made an Offer to or any person that has entered into an Agreement with CBMM (as the case may be),
- k. "Sales Confirmation" shall have the meaning ascribed to it in article 3.2. A Sales Confirmation can only be issued by CBMM in writing, by email, letter or fax,
- l. "Tax" shall have the meaning ascribed to it in article 5.4.

1.2. If not explicitly otherwise agreed, the interpretation of a delivery condition used in the General Conditions or the Agreement shall be governed by the latest edition of INCOTERMS established by the International Chamber of Commerce.

2. Applicability

2.1. These General Conditions shall apply to and shall form part of any Offer and/or Agreement and shall have the same force and effect as if expressly set out in the body of such Offer or Agreement.

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2.2. Any general conditions put forward by the Purchaser shall not apply, are expressly not accepted and shall not be binding, unless and to the extent that they have been specifically accepted by CBMM in writing.

3. General Conclusion of Contract

3.1. Unless otherwise explicitly agreed to by CBMM in writing and subject to Article 3.2 below, any Offer shall be valid for 10 (ten) days only.

3.2. No Order, placed pursuant to an Offer or otherwise, shall be binding on CBMM unless confirmed and accepted by CBMM in writing ("Sales Confirmation"). For the avoidance of doubt, CBMM shall have the right to refuse to accept any Order at its sole discretion.

4. Prices

4.1. Unless otherwise agreed to by CBMM in writing, the price of any Product shall be the price listed in the relevant Sales Confirmation and shall include costs of delivery based on FCA warehouse. Any additional costs incurred to deliver the Products to the Purchaser, including but not limited to packaging costs, freight import duty, installation costs, insurance premiums and any applicable goods and services tax (GST) shall be borne by the Purchaser.

5. Terms of Payment

5.1. CBMM may invoice the Purchaser for an Order upon issuance of a Sales Confirmation. Payment of all invoices shall be made by the Purchaser to CBMM before the date scheduled for delivery of the Products, or within such other period agreed to between CBMM and the Purchaser in writing.

5.2. Unless otherwise agreed to in writing between CBMM and the Purchaser, CBMM shall not be required to deliver any Product until payment is made in accordance with the relevant invoice.

5.3. If payment of an invoice has not been made in accordance with article 5.1, CBMM shall be entitled to charge interest at a rate based on, among other things, CBMM's cost of money. Notwithstanding articles 5.2 and 5.3, CBMM shall have the right to seek full compensation for any loss or damage incurred as a result of or in connection with or arising out of any violation of payment obligations by the Purchaser.

5.4. Payments by the Purchaser to CBMM shall be made free of any applicable taxes including but not limited to customs duties, withholding taxes, goods and services tax and/or any other tax ("Tax"). In the event that the Purchaser is required, by law or any competent authority, to withhold Tax or make any other deduction on account of any payments from such Purchaser to CBMM, the payments by such Purchaser to CBMM shall be grossed up to the extent necessary to ensure that following the withholding or deduction, CBMM receives the same amount as it would have received without the imposition of such withholding or deduction.

5.5. Unless otherwise agreed in writing between CBMM and the Purchaser, all costs associated with payments made pursuant to the Agreement, including but not limited to banking costs, shall be borne by the Purchaser.

5.6. All payments made by the Purchaser to CBMM shall be made without set-off and shall constitute a waiver of any claims the Purchaser may have against CBMM arising out of, in relation to and pursuant to the Agreement.

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6. Time of Delivery

- 6.1. CBMM shall not be deemed to have agreed to any delivery date for any Products unless expressly agreed to in the Sales Confirmation.
- 6.2. If the Purchaser requests a change in the terms and conditions of delivery, the parties shall negotiate in good faith. No change to the terms and conditions of delivery shall be valid unless it is by agreement of the parties and in writing. In the event of any change, CBMM shall be entitled to extend the period of delivery accordingly.
- 6.3. Subject to Article 11, if CBMM is unable to deliver any Product in accordance with the Agreement by the relevant delivery date, CBMM shall notify the Purchaser as soon as reasonably practicable.
- 6.4. The Purchaser shall be entitled to serve a notice on CBMM requiring CBMM to deliver the Products within a reasonable period of time but in any event not earlier than 30 days from the original delivery date, failing which, CBMM shall be deemed to be in breach of the Agreement.

7. Delivery

- 7.1. Unless otherwise agreed in writing between CBMM and the Purchaser, delivery of any Products pursuant to the Agreement shall be made FCA warehouse.
- 7.2. The risk of loss or damage to the Products shall pass to the Purchaser on delivery by CBMM in accordance with Article 7.1. The Purchaser shall be liable for all damage and loss caused during or pursuant to the delivery of Products to such Purchaser unless otherwise agreed to in writing between CBMM and such Purchaser. The Purchaser shall hold sufficient insurance to cover risk of loss or damage to the Products until the date that property in the Products passes to the Purchaser.
- 7.3. CBMM shall be entitled to deliver the Products in parcels and/or lots, unless otherwise agreed in writing between CBMM and the Purchaser.
- 7.4. A Purchaser shall timely take receipt of the Products. If a Purchaser refuses to take delivery of Products delivered by CBMM pursuant to the Agreement, CBMM shall be deemed to have delivered the Products to such Purchaser on the day on which such Purchaser refuses to take delivery. A Purchaser shall be deemed to have refused delivery, if the Products have been presented for delivery by CBMM, but CBMM is unable to complete the delivery by reasons attributable to the Purchaser. In such a case, the Purchaser shall bear all costs incurred in respect of the storage and handling of Products thereafter.
- 7.5. CBMM shall deliver the Products in such packaging as be determined by CBMM in its sole discretion. CBMM may deliver Products in a packaging requested by a Purchaser provided that the Purchaser shall be responsible for the costs of such packaging.
- 7.6. For the avoidance of doubt, this article 7 shall be without prejudice to article 8.

8. Retention of Title

- 8.1. Notwithstanding anything in these General Conditions, the title to Products delivered by CBMM to a Purchaser shall remain with CBMM until full and final settlement of all amounts payable under the Agreement or any other agreement between CBMM and such Purchaser. For the avoidance of doubt, CBMM shall be entitled to recover the price of the Products notwithstanding that property in any of the Products has not passed from CBMM.

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- 8.2. Until property in the Products passes to a Purchaser in accordance with article 8.1 above, the Purchaser shall hold the Products and each of them on a fiduciary basis as bailee for CBMM. The Purchaser shall store the Products separately from all other goods in its possession and marked in such a way that they are clearly identified as CBMM's property.
- 8.3. Notwithstanding that the Products (or any of them) remain the property of CBMM, the Purchaser may sell or use the Products in the ordinary course of the Purchaser's business at full market value for the account of CBMM. Any such sale or dealing shall be a sale or use of CBMM's property by the Purchaser on the Purchaser's own behalf and the Purchaser shall deal as principal when making such sales or dealings. Until property in the Products passes from CBMM the entire proceeds of sale or otherwise of the Products shall be held in trust for CBMM and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as CBMM's money.
- 8.4. Until such time as property in the Products pass from CBMM, a Purchaser shall upon request deliver up such of the Products as have not ceased to be in existence or resold to CBMM. If the Purchaser fails to do so, CBMM may enter any premises owned, occupied or controlled by the Purchaser where the Products are situated and repossess the Products. On the making of such request, the rights of the Purchaser under article 8.3 shall cease.
- 8.5. Save as herein provided, a Purchaser shall not create or permit to subsist any Encumbrance or any other security interest over all or any part of the Products which are the property of CBMM. Without prejudice to the other rights of CBMM, if the Purchaser does so all sums whatever owing by the Purchaser to CBMM shall forthwith become due and payable.

9. Inspection, complaints and warranty

- 9.1. A Purchaser shall upon delivery of the Products immediately and as thoroughly as possible inspect the Products. Purchaser shall notify CBMM in writing of any complaints regarding the Products within 60 (sixty) days after delivery of the Products by CBMM to the Purchaser pursuant to these General Conditions, failing which the Purchaser shall be deemed to have accepted the Products and to have waived any claims against CBMM in respect of the Products.
- 9.2. CBMM warrants that the Products sold to Purchaser shall be free from defects on delivery by CBMM to the Purchaser in accordance with these General Conditions. CBMM shall not make any further warranty with regard to the suitability of the Products for the intended purpose of the Purchaser.
- 9.3. CBMM does not make warranty of any kind, express or implied, including without limitation, any warranty of merchantability or fitness for particular purpose with respect to the Products. A Purchaser shall make its own determination of the suitability and completeness of the Products for the intended purpose.
- 9.4. The lodging of a complaint does not discharge Purchaser from its payment obligations towards CBMM.
- 9.5. CBMM may at its sole discretion replace the defective Products upon notification by a Purchaser in accordance with these General Conditions, or collect the defective Products and issue a credit note to the Purchaser for the purchase price. CBMM is also entitled to grant the Purchaser a reduction on the purchase price corresponding to the extent of the justified claim.
- 9.6. No claim shall be brought by a Purchaser against CBMM unless notice in writing of any such claim (specifying in reasonable detail the nature of the breach and the amount claimed in respect thereof and all matters relied upon together with supporting evidence) has been given to CBMM by registered mail with acknowledgement of receipt by CMM on or prior to 12 months after delivery of the Products by CBMM to the Purchaser pursuant to these General Conditions.

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10. General Limitation of Liability

- 10.1. CBMM shall only be liable for direct loss or damage, whether caused by breach of the Agreement, tort or otherwise and only up to a sum equal to payment received by CBMM in respect of the relevant delivery.
- 10.2. Neither CBMM nor the Purchaser shall be liable to the other party for any consequential or indirect loss or damage, such as but not limited to, loss of production, loss of revenues or profit, loss of interest, costs of recall, loss resulting from interruption in the operations, loss suffered by third parties, costs of delays or any loss or damage resulting from a breach of the Agreement.

11. Force Majeure

- 11.1. Neither CBMM nor the Purchaser shall be liable for any default or delay in the performance of its obligations caused by a Force Majeure Event, to the extent that the default or delay in performance is due to such Force Majeure Event.
- 11.2. In the case of CBMM, a Force Majeure Event shall include the situation in which CBMM is not or only partially supplied with Products by its supplier and the failure in supply cannot be attributed to the supplier.
- 11.3. If any Force Majeure Event substantially prevents, hinders, or delays performance under the Agreement for more than seven (7) consecutive months, then either CBMM or the Purchaser may terminate the Agreement by written notice to the other party.

12. Applicable law and Jurisdiction

- 12.1. These General Conditions and the Agreement shall be governed by, and construed in accordance with the laws of Singapore.
- 12.2. Any dispute, controversy or claim arising out of or relating to these General Conditions and/or the Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in Singapore in accordance with the International Chamber of Commerce Arbitration Rules by one [or more] arbitrators appointed in accordance with the said Rules. The language to be used in the arbitral proceedings shall be English.
- 12.3. A person who is not a party to these General Conditions or the Agreement shall have no rights under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of their respective terms.
- 12.4. If any provision of these General Conditions or the Agreement or part thereof is rendered void, illegal or unenforceable by any legislation to which it is subject, it shall be rendered void, illegal or unenforceable to that extent and it shall in no way affect or prejudice the enforceability of the remainder of such provision or the other provisions of these General Conditions or the Agreement. The invalidity, illegality or unenforceability of any provision in these General Conditions or the Agreement under the laws of any one jurisdiction shall not in itself affect the validity, legality and enforceability of such provisions under the laws of any other jurisdiction.
- 12.5. Save for expressed and specific waiver given in writing or as provided in these General Conditions, no failure or delay on the part of any party in exercising any right hereunder or under the Agreement shall operate as a waiver thereof.
- 12.6. The Purchaser shall not assign nor transfer these General Conditions or the Agreement or any of its respective rights, interest or obligations under these General Conditions or the Agreement without the prior written consent of CBMM.