

**GENERAL TERMS AND CONDITIONS OF SALE OF NICROMET SPÓŁKA Z  
OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ SPÓŁKA KOMANDYTOWA**

**HEREINAFTER REFERRED TO AS THE SELLER**

**Article 1**

1. These general terms and conditions of sale shall apply to the sales of goods by the Seller and are hereinafter referred to as the terms and conditions. The provisions of these terms and conditions shall apply to all agreements of which the subject is the sale of goods by the Seller, including any actions relating to or preceding the conclusion of a sale agreement.
1. The Seller's terms and conditions shall apply, unless the parties have explicitly provided otherwise in writing. The application of any master forms of agreements other than these terms and conditions of the Seller shall be excluded.
2. Agreement forms, conditions that are contrary or different than the terms and conditions of the Seller shall not be recognised, unless the Seller has explicitly confirmed their application in writing. Agreement forms, terms and conditions of Buyers shall likewise not be applied even when the Seller makes no explicit objection to them, though he is aware of them, and in particular about provisions that are contrary or different than these terms and conditions.
3. If it has not been agreed or these terms and conditions do not provide otherwise, they shall be applied to all agreements, concluded by the parties, of which the subject involves the sales of goods. Agreements shall be governed by the terms and conditions applicable at the time of their conclusion. Valid terms and conditions shall be delivered to the Buyer at the stage of the submission of a tender, as well as at any time upon a party's request, including a party other than the Seller.
4. A valid version of the terms and conditions shall be available at any time in an electronic version on the Seller's website. The Buyer may not refer to circumstances relating to being unaware or not knowing these terms and conditions.
5. In the event of a discrepancy between the content of an agreement (order) concluded by the Seller with the Buyer and the content of these terms and conditions, the provisions of an agreement (order) shall prevail.

**Article 2**

1. Pursuant to these terms and conditions the Seller undertakes to deliver and sell goods to the Buyer.
1. The venue where the contracted services are to be provided, and in particular obligations concerning the Seller shall be its registered office.

2. A sales agreement (order) may be performed in accordance with the definition adopted in Incoterms 2000 or subsequent versions of Incoterms that may replace Incoterms 2000. The price formula, as well as prices referred to in an order, shall include any additional services relating to an order, such as drawings, packaging, taxes, fees, or customs duties that are applied to goods delivered to the Buyer.
3. Prices shall be expressed in EUR or PLN, net pursuant to the formula agreed upon by the parties. The minimum elements of an order allowing its acceptance for execution - which, however, shall be at the Seller's discretion pursuant to an order confirmation drafted by him shall be: the price, the currency, the product range, the payment date, the execution date, technical conditions of the Buyer or standard technical conditions applied by the Seller.
4. Any offer by the Seller shall not be binding and each must be finally confirmed by him, unless the Seller has explicitly defined the binding nature of the offer and a period time for which the offer presented by him is binding.
5. The Seller must explicitly confirm the acceptance of the order for execution. The Acceptance form constitutes Attachment 1 to these terms and conditions. Confirmation of the acceptance of the order may also be realized by the issuance of an invoice, execution of the delivery or partial delivery.
6. In justified cases, the Seller may withdraw from the execution of an order, that has already been confirmed for execution, within a period of two working days

### **Article 3**

1. The Buyer's Orders must be made in writing or by e-mail.
1. After an order has been placed and accepted, the agreed rules of commercial co-operation relating to the order placed by the Buyer shall not change, unless both Parties have explicitly stated in writing that the previous arrangements are not binding. The acceptance of an order requires that its confirmation is sent in writing or by e-mail. Each and every negotiations and talks and the resultant arrangements relating to the placed order or submitted confirmation of order acceptance require confirmation in writing or by e-mail in order to be effective. Lack of confirmation of the arrangements in the above-mentioned form shall result in the allegation that the arrangements have not been accepted.
2. Agreement on all technical issues between the Buyer and the Seller shall be a condition for the commencement of the process of the delivery execution date.
3. Deliveries shall be executed in accordance with the Buyer's technical specification, only if the Parties have explicitly agreed on that. In other cases deliveries shall be executed in accordance with Polish standards.
4. The Parties agree that the Agreement shall be implemented at the time indicated below:

in the case of EXW – at the Seller's warehouse, in the case of DAP – at the Buyer's warehouse.

#### **Article 4**

1. The delivery date agreed upon by the Parties shall be kept if the goods have been delivered to the Buyer or the Buyer has been notified about the goods being ready for shipment.
1. If the delivery date has been exceeded, the Buyer shall be obliged to accept the entire delivery. If the delivery date has been exceeded by a period of more than 7 days as a result of circumstances that are the responsibility of the Buyer, he shall be obliged to reimburse the Seller with the costs of warehousing.
2. The Buyer shall be obliged to accept the quantity of ordered goods. Any deviations in the accepted quantities must be agreed upon in an order or an order change each and every time.
3. The Buyer undertakes to accept the goods on working days at the Seller's registered office between 6:00am and 2:00pm.
4. The Seller shall inform the Buyer by telephone or e-mail about the date of the planned delivery/acceptance at least one working day before the planned delivery/acceptance of goods.

#### **Article 5**

1. The Buyer shall make payment for the deliveries executed by the Seller by transfer on the basis of an issued invoice into a bank account indicated on the invoice.
1. The date when the Seller's account is credited shall be deemed the payment date. Payment must be made after the Buyer has received the goods, however, not later than within thirty days from the delivery date and/or delivery of an invoice, unless the Parties have agreed otherwise.
2. Payment shall include the amount due for the delivered lot of goods at the price determined in the order. Prices agreed upon in an order shall be unchanged, unless the Parties have agreed otherwise in writing. The Seller may change a price, particularly in the case of a force majeure, significant fluctuations in the prices for raw material (+5% quotations of Metal Bulletin casts during the period from order acceptance to its actual execution). The Seller shall notify the Buyer about the above circumstances and the Parties may commence negotiations concerning the placed order.
3. An amount due for the delivery may not be subject to assignment, and the Buyer shall not be entitled to issue drafts to pay invoices. The Seller shall not receive any issued promissory notes.

## **Article 6**

1. Goods delivered under the delivery shall become the property of the Buyer once the agreed price has been paid in full.
1. The ownership title shall pass to the Buyer once the entire price for this and previous deliveries has been paid. In the event of a delay in payment, the Seller may collect the goods to which his ownership has been stipulated and in the event whereby bankruptcy or composition proceedings of the Buyer have commenced. If the Seller has delivered goods that were next changed, mixed, or combined with other items so that they have become an integral part of a new item, the ownership title of the Seller shall remain in proportion to the value of the delivered goods pursuant to invoices and the value of a new item.

## **Article 7**

1. Unless the Parties have agreed otherwise, the Seller shall set for the deliveries of goods (ingots) standards relating to packaging, stamping, and documentation, as well as the analysis of chemical composition and inspection tests. The Seller sets forth the following standards:

### **1) packing ingots:**

The Seller shall deliver aluminium ingots laid in packets bound by a metal or plastic strip.

The Seller shall pack ingots in bundles of the same height. Each bundle shall comprise ingots from a single batch. The weight of a single bundle shall not exceed 700kg, while a double bundle shall not weigh more than 1400kg. Unless the Parties have explicitly decided otherwise.

The packaging shall be sufficiently strong enough for the bundles to be transported with a fork-lift truck and stacked on each other.

### **2) stamping of goods:**

Marking of ingots and the bundles.

If an order does not indicate otherwise, a bundle of ingots shall have:

- manufacturer's mark
- name of the alloy

- batch number
- bundle total weight

The mark should not be erasable and should not be a source of contamination.

**3) delivery documents:**

a) Certificate.

The Seller shall include with the delivery a certificate containing:

- mark or name of the manufacturer
- order number
- alloy marking
- batch (s) number
- batch(s) weight
- total delivery weight
- analysis of the chemical composition of elements with threshold content pursuant to the Buyer's requirements.

a) Inspection sample.

Together with a certificate, and a printout of the analysis of the chemical composition, the Seller shall deliver an inspection sample collected from the batch. The inspection sample shall be marked with the batch number.

### **Article 8**

1. The Seller guarantees the proper quality of the delivered goods and the Buyer may, however, lodge a complaint only until the time when the processing of the goods is to commence, taking into consideration, however, the provisions of clause 4. After the processing of the goods has commenced and during such a process, and following its completion not complaints shall be reviewed.
2. The Buyer's primary obligation shall be to immediately check and inspect the delivered goods as soon as they arrive in terms of quality and quantity. Checking and inspecting may in particular include a visual inspection of the delivered goods performed by the Buyer, spectrometer analysis and other checking methods used by the Buyer that are aimed at determining the quality and quantity of goods.
3. Any defects, and particularly those relating to weight, must be immediately notified to the Seller under the penalty of rejection of the complaint. Other defects, including hidden ones, must be reported within two working days from their detection. Failure to comply with these obligations shall result in the automatic loss of rights to any claims relating to quality and/or quantity.

4. The deadline for submitting complaints shall be five working days from the delivery date. A complaint shall be made in writing or by e-mail. The Seller shall review the submitted complaint and notify the Buyer about results within two working days from its submission.
5. In order to determine grounds for his liability the Seller may check the goods in the Buyer's warehouses or in his own warehouses after the goods have been returned - however, he must express his explicit consent to return the goods. During the complaint procedure until the final explanation of liability, the Buyer may not sell or use the goods that are subject to the complaint proceedings.
6. If the complaint is recognised by the Seller or the Seller's liability has been determined in that respect under any proceedings, he shall be held liable only to the maximum amount of payment for the delivery. In particular, the Seller shall not be held liable at all for loss of profits or other losses, including financial ones that the Buyer has incurred.
7. The goods weight that shall be the basis for settlements is the weight of goods determined by the Seller according to indications of weighing devices used by him. The Seller shall always have the right to participate in the process of goods weighing and in the event of glaring discrepancies or doubts concerning indications of weighing devices he may indicate using measurement devices other than those installed at the Buyer's. After weighing performed by another entity, the Parties shall determine the proper weight of goods by way of negotiations that shall be used as the basis for settlements.
8. A weight receipt of the Seller shall be the basis for marking the quantity of goods.
9. In the event of defects in part of the delivery, the Buyer shall not be entitled to lodge a complaint about the entire delivery and may not withdraw from the entire agreement, and in particular, the subsequent deliveries of lots.
10. In the event whereby the delivered goods are of improper quality and/or incomplete as compared with the arrangements made under the agreement, the Buyer shall have the right to demand the price be lowered or withdraw from the agreement in whole or in part.
11. The Seller may always appoint an independent expert to review a complaint or allow such actions to be taken by the Buyer.

#### **Article 9**

1. The Seller may, at his own discretion, condition the conclusion of the agreement and/or the execution of an order on obtaining insurance of the transactions to be concluded with the Buyer. In the case of no security of payment the Seller may demand cash payment from the Buyer in the form of an advance payment before the transaction is executed.

1. If the Seller has any doubts as to the actual financial standing of the Buyer, no intent of paying, arrears in payments, limitation or termination of insurance by an insurance institution insuring loans (transactions), commencement of bankruptcy, composition proceedings, all the Seller's debts arising from completed deliveries shall become immediately due and payable. In such an event the execution of each delivery shall be conditional upon the Buyer making a total pre-payment. In such cases the Seller may also withdraw, at his own discretion, at any time, from the realization of agreements (orders) in part or in whole or also demand compensation for no possibility of realizing an agreement (order).

#### **Article 10**

1. The Seller may be released from his liability for non-performance or undue performance of the agreement (order) in the event whereby non-performance or undue performance of the agreement (order) has been caused by the operation of a force majeure that shall be understood as an event that could not have been predicted while exercising due care required in commercial relations, and which is external to the Seller and the consequences of which he could not have predicted and prevented, while acting with reasonable care.
1. By the operation of a force majeure within this agreement the Parties shall understand: strikes, wars, riots, blockades of land roads or waterways, earthquake, floods, established in the form provided under regulations applicable to the occurrence of natural calamity in a given area, adverse weather conditions that make execution of an order difficult over a period that exceeds two weeks.
2. The Seller shall immediately inform the Buyer about the occurrence of force majeure in writing, by e-mail indicating the envisaged period of operation of the force majeure and its consequences for due and timely performance of a contractual obligation.
3. Additionally, the Seller may be released from his liability for non-performance or undue performance of the agreement (order) in the event of the occurrence of adverse weather conditions making the execution of an order difficult, as well as unlucky events, including fires, explosions, flooding of the production lines. The Seller shall immediately inform the Buyer about the above circumstances in writing or by e-mail. In such cases, the Parties shall commence negotiations concerning the execution of placed orders.

#### **Article 11**

1. In the event of delay in payment for any delivery or its part (in the case of partial deliveries having been agreed) the Seller shall have the right to suspend the execution of further deliveries until the Buyer has paid in full the debts with regard to both the principal amount and interest.
1. In the event of delay in payment, the Seller shall charge the Buyer with statutory interest, which, however, does not exclude the Seller claiming additional

compensation for damage caused as a result of no timely payment. In the event of delay in payment, payments made by the Buyer shall first be accounted towards the liabilities that are most past the due date.

#### **Article 12**

1. During the term of the agreement, and also within a year from its termination, the Parties undertake to keep confidential any information concerning the content and performance of the said agreement, costs, and agreed prices under pain of vindication against the Party that is liable for disclosure of confidential information that shall equal the amount of damage suffered.
1. The Buyer shall be obliged to treat any information, documents, data obtained from the Seller relating to the preparation of an offer, contents of the agreement and its performance as the company secret of the Seller.
2. The Parties have resolved that a default on the above-mentioned rules and obligations concerning confidentiality and other obligations as defined in these terms and conditions, the agreement (order) may be the basis for instituting further procedures by the Seller against the Buyer, including the termination of legal relations binding the Parties, and the right to seek compensation against the Buyer under general rules.

#### **Article 13**

1. The Buyer shall not be authorised to suspend performance of his payment towards the Seller irrespective of the reason, unless the Seller has expressly authorised such action in writing.
1. The Buyer authorises the Seller to make deductions, including contractual ones, of any receivables due to the Buyer against any receivables due from the Buyer to the Seller. The above shall also apply to receivables of entities related to the Buyer.
2. The Buyer shall be entitled to make deductions of his own liabilities due towards the Seller only when they have been legally established, are undisputed or when they are recognised by the Seller.
3. If the Buyer defaults on the provisions of these terms and conditions, agreements (orders), in particular delays with making payments or avoids other obligations that he has been charged with, the Seller shall have the right to withdraw from the further execution of orders with immediate effect without the Buyer's right to seek any claims against him, to which the Buyer expresses his irrevocable consent.
4. In the event whereby the Buyer has ceased making any payments due to the Seller or further to his insolvency has filed a motion for bankruptcy, composition, and/or there occurs reasonable allegation that the Buyer shall fail to make payment within the agreed period, then the Seller shall have the right

to withdraw from the concluded agreement (confirmed order) with immediate effect with regard to the part that has not yet been realised.

#### **Article 14**

1. Any notices to the Parties shall be made in writing and delivered in person upon acknowledgement or by registered mail to representatives authorised by the parties or to addresses of the Parties given in the agreement (order) under the pain of the invalidity of such provisions. The Parties may also make mutual notifications by way of e-mail correspondence, however, to that extent confirmation of the receipt of correspondence shall be required with an explicit statement that the Parties accept statements of intent included therein.
1. Any claims by the Buyer arising under these terms and conditions, the concluded agreement (order) may not be assigned, even in part, to third parties without the express written consent of the Seller in that respect.
2. In the event whereby any of the provisions of these terms and conditions and other arrangements binding for the Parties are or were to be ineffective or unenforceable, and particularly during future periods, it shall not affect the remaining provisions included in these terms and conditions or agreements (orders).

#### **Article 15**

1. Matters that have not been provided herein shall be governed by the provisions of the Polish Civil Code.
1. These terms and conditions, agreements (orders) shall be governed in accordance with Polish substantive and procedural law.
2. Pursuant to Art. 6 the Parties exclude application of the United Nations Convention on Contracts of the International Sale of Goods drafted in Vienna on 11 April 1980 (so-called the Vienna Convention) to their mutual commercial relations. Additionally, unless it has been agreed otherwise in writing, the Parties exclude the application of the provision governing the international sale of goods, including the Convention on the Limitation Period in the International Sale of Goods.

#### **Article 16**

1. Any disputes that may arise from or in connection with the interpretation of the provisions of these terms and conditions, agreements (orders) shall be submitted by the parties for settlement by a common court having material competence for the registered office of the Seller, who may, however, ascertain his claims before a court competent for the registered office of the Buyer. The Parties shall first pursue actions aimed at conciliatory settlement of the occurred disputes.

1. Any amendments to these terms and conditions or agreements (orders) concluded by the Parties shall be made in writing only, especially those on an order and its confirmation. Otherwise they shall not be binding.
2. In the event of disputes concerning the interpretation relating to the terms and conditions of sale the Polish language version shall prevail.