

**GENERAL CONDITIONS OF SALE AND DELIVERY**  
**CBMM ASIA PTE. LTD.**  
**VERSION [January 3, 2019]**

**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.
- 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 Agreement**

- 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 its sole discretion and in accordance with Singapore law. Notwithstanding articles 5.2 and 5.3, CBMM shall have the right to (i) immediately stop any further shipments until the CBMM has received full payment, or, (ii) demand from the Purchaser a full prepayment of any further shipment of the Products.
- 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.

## **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 10, 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.

## **8. Inspection, Complaints and Warranty**

- 8.1 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 or use by the Purchaser, whatever happens first, 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.

- 8.2 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, conforming to the specifications of the Products. CBMM does not make any warrant with regard to the suitability of the Products for the intended purpose of the Purchaser and Purchaser must make their own assessment, determination of the suitability and completeness of the Products for the intended purpose.
- 8.3 Except as provided in clause 8.2, 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.
- 8.4 CBMM's weight and chemical and physical analysis shall be final for settlement unless Purchaser determines that there is a discrepancy between CBMM's certificates and Purchaser's analysis of the same Products. If such discrepancy does occur, the results shall be confirmed by an impartial accredited inspection agency (agreed to by both parties) by issuing a quality certificate which shall be binding on both contracting parties. All costs thus incurred shall be charged to the party which was in error, as determined by the independent inspector. A variation of the niobium content of the FeNb, FeNb Powder, FeNb Cored Wire, NiNb and/or FeNb Vacuum Grade up to half percentage point shall not be deemed a discrepancy.
- 8.5 Should CBMM breach its warranty, and Purchaser submit a valid and timely written complaint, CBMM shall at its option, repair or replace the defective Products, take the Products back and credit Purchaser for the purchase price, or grant the Purchaser a reduction in the purchase price corresponding to the extent of the breach.
- 8.6 The lodging of a complaint does not discharge Purchaser from its payment obligations towards CBMM.
- 8.7 If a complaint is justified and timely submitted, 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.
- 8.8 CBMM's obligations under this Agreement shall be deemed to have been duly performed and discharged on the expiry of the time limitations stated in clause 8.1 of the General Conditions. After expiry of these limitations Purchaser shall not submit to CBMM any further complaint of any possible defects in the product and CBMM may disregard any such complaint. This limitation period can only be interrupted in writing sent by registered mail.
- 8.9 The filing of a complaint by Purchaser does not discharge or suspend its payment obligations.
- 8.10 Products supplied under this Agreement are for the sole consumption of Purchaser and shall not be resold without prior written permission of CBMM.

## **9. General Limitation of Liability**

- 9.1 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.
- 9.2 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.

## **10. Force Majeure**

- 10.1 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.
- 10.2 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.
- 10.3 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.

## **11. Confidentiality**

- 11.1 The Parties acknowledge and agree that any and all business commercial information of which they have knowledge or access as a result of the business relationship established herein and/or the Agreement, with respect to the other Party or its businesses activities, will be deemed as sensitive and confidential information ("Confidential Information"). The Party to disclose or give access to Confidential Information shall be hereinafter referred to as "Disclosing Party" and the Party to receive or have access to Confidential Information shall be hereinafter referred to as "Receiving Party".
- 11.2 The Parties undertake, for itself and for its successors, partners, directors, employees, representatives, service providers, contractors, subcontractors, advisors, agents, consultants, directors of subsidiaries and affiliates or any other related persons, to maintain the most complete and absolute confidentiality and not disclose, reveal, publish, reproduce, communicate, lend, sublicense, sell, assign, transfer, distribute, lease, modify, translate, do reverse engineer, discuss and/or use for their own benefit or third parties', in whole or in part and in any way, Confidential Information that each Party becomes aware, without the prior written consent of the Disclosing Party.
- 11.3 For the purposes of these General Conditions, the following shall not be deemed as Confidential Information:
  - (a) Information that was duly proven in possession of Receiving Party, as evidenced by its written records, before the reception of said information, either directly or indirectly from Disclosing Party;
  - (b) Information that, at the time of disclosure, was or entered the public domain with no breach to any nondisclosure obligation and through no act or omission from the Receiving Party;
  - (c) Information that substantially corresponds to information that, until current date or onwards, was disclosed to Receiving Party by third parties, in regards to rights, with no confidentiality obligation;
  - (d) Information that was duly developed independently by employees of Receiving Party with no knowledge of (or access to) Confidential Information; and
  - (e) Information that the Receiving Party is requested to disclose due to legal or administrative proceedings, provided that the Disclosing Party is previously and properly notified in writing about such disclosure in order to argue it, and the Receiving Party agrees to collaborate with the Disclosing Party during the presentation of such argument.
- 11.4 The exceptions set forth in item 11.3 above shall not be interpreted as granting to the Receiving Party, either expressly or impliedly, of any right.
- 11.5 The obligations of confidentiality and non-disclosure herein assumed by the Parties shall enter into

force upon signing these General Conditions and shall remain valid and in force for a period of 05 (five) years from the termination of the business relationship between the Parties, regardless the reason.

## **12. Sanction Clause**

- 12.1 The Purchaser hereby certifies that the Products purchased from CBMM will not be sold or transferred to a restricted destination, person or entity, or be transported on a vessel or by other carrier owned, flagged or chartered by any country, person, or entity or shipped through any country which may cause CBMM or any of the CBMM's affiliate to be in violation of or be penalized by any economic sanctions laws, regulations or restrictions ("Restricted Entity/Zone") and any applicable export control laws.
- 12.2 Purchaser shall also not apply the Products as raw materials to its end-products which would be sold to or shipped through any Restricted Entity/Zone. Purchaser ensures that the use of the Products shall be in compliance with any applicable export control laws. CBMM has the right to reject any sale if it would relate to any restricted destination, vessel, person or entity.
- 12.3 CBMM has determined as an internal policy matter that it will not sell its Products to or through Crimea, Cuba, Iran, North Korea, or Syria.
- 12.4 In this sense, Purchaser agrees not to use or transfer to third parties the Products or its end-products which contain the Products to or through Crimea, Cuba, Iran, North Korea, or Syria.
- 12.5 CBMM has determined as an internal policy matter that it will not sell its products for use in Russian energy export pipelines. In this sense, Purchaser agrees that it will not sell the Products or its end-products which contain the Products directly or indirectly for use in Russian energy export pipelines (where this term refers to pipelines that originate in the Russian Federation and transport hydrocarbons across an international land or maritime border for delivery to another country).
- 12.6 In addition CBMM has determined as an internal policy matter that it will not sell its products to any restricted party on the U.S., EU, or UN sanctions lists or to any party owned or controlled fifty percent or more in the aggregate by one or more blocked persons or other persons identified on such lists. In this sense, Purchaser agrees that it will not sell the Products or its end-products which contain the Products to any restricted party on the U.S., EU, or UN sanctions lists, or to any party owned or controlled fifty percent or more in the aggregate by one or more blocked persons or other persons identified on such lists.
- 12.7 Purchaser represents and warrants that it is not blocked, sanctioned or in any way identified on the U.S., EU, or UN sanctions lists, and that it is not owned or controlled fifty percent or more in the aggregate by one or more blocked or sanctioned persons or other persons identified on such lists.
- 12.8 Purchaser shall immediately inform CBMM in writing if there is any change in any representation in this section.
- 12.9 If, during the term of this Agreement, CBMM becomes aware of any possible violation of the representations and warranties given under this clause, or of any violation of, or other conduct or omission that may expose CBMM, any of its affiliates, or the Purchaser to restrictions, sanctions, or penalties under, any economic sanctions or export control laws, CBMM may unilaterally and immediately terminate or suspend this Agreement, without any further liability on CBMM and without prejudice to the payment of indemnification by the Purchaser to CBMM for any losses and damages arising from or related to the violation or imposition of restrictions, sanctions, or penalties committed by the Purchaser, it being hereby agreed that such indemnification is not be subject to any Purchaser's limitation of liability eventually provided in this Agreement.

## **13. Applicable Law and Jurisdiction**

- 13.1 These General Conditions and the Agreement shall be governed by, and construed in accordance with the laws of Singapore.
- 13.2 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.
- 13.3 A person who is not a party to these General Conditions or the Agreement shall have no rights under the Agreements (Rights of Third Parties) Act (Cap. 53B) to enforce any of their respective terms.
- 13.4 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.
- 13.5 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.
- 13.6 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.