

Version January 3rd, 2019.

CBMM NORTH AMERICA, INC.

FeNb AGREEMENT AND SALES CONFIRMATION [year]

Company [Exact Legal Name]
[Address]

Attn: _____

**RE: Agreement and Sales Confirmation for Supply of Ferroniobium between
XXX Corporation (“Purchaser”) and CBMM North America, Inc.
 (“Seller” or “CBMM”) (“Agreement and Sales Confirmation”) for
 [year]**

Term: [date]

Material: [xxxxxxx]

Terms and Conditions: All sales of Products under this Agreement and Sales Confirmation are subject to the Terms and Conditions attached hereto as Schedule 1 (the “Terms and Conditions”).

Chemistry: All products to be provided hereunder (“Products”) will generally conform to CBMM’s Standard Chemistry (“Standard Chemistry”). In any instance where Products fall outside the Standard Chemistry, CBMM will require Purchaser’s written approval before shipping. If Purchaser fails to provide such written approval, CBMM will have no obligation to ship product unless and until additional product meeting Standard Chemistry is received from CBMM Brazil. CBMM’s chemistry analysis will be final and binding.

[Products Specification]

Origin of the Material: CBMM, Araxa, Brazil

Size: [xxxxxxx]

Packaging: [xxxxxxx].

Estimated Quantity: The Estimated Quantity is mt with a variance of +/- 20%. CBMM’s weight declaration will control. Approximate quarterly deliveries will be as follows:

1st Qtr [year] - ____ mt
2nd Qtr [year] - ____ mt

3rd Qtr [year] - ____mt
4th Qtr [year] - ____mt

Within the term specified in this Agreement and Sales Confirmation, Purchaser agrees to purchase from CBMM and CBMM agrees to sell to Purchaser the Estimated Quantity of Ferroniobium. If any quantity in excess of the Estimated Quantity is requested by Purchaser, Purchaser will provide CBMM with enough lead-time to order and ship such additional needs, but CBMM's sole obligation will be to use reasonable commercial efforts to obtain such additional product from CBMM Brazil.

Price and Conditions:

The price for the Products will be CBMM NA's quarterly list price, less a discount of ____%. The list price will be determined quarterly and announced no later than the fifteenth (15th) of the prior month for the new quarter(s). The price will be expressed in \$USD per pound (lb) of niobium.

Payment Terms: Thirty (30) days after delivery, FOB CBMM's warehouse. Incoterms 2010 will apply. If Purchaser fails to make any payments strictly in accordance with the terms hereof, CBMM may defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and/or CBMM may terminate any order or this Agreement without further obligation to Purchaser.

Purchase Orders: If Purchaser has multiple plants, each plant will provide CBMM with either a blanket Purchase Order, or a separate Purchase Order for each shipment, at Purchaser's option. Orders should be made out to CBMM North America, Inc., 1000 Old Pond Road, Bridgeville PA 15017. No Products will be shipped without a valid Purchase Order. All Purchase Orders will conform to the terms and conditions of this Agreement and Sales Confirmation. Any contrary or different terms will be void and of no effect unless specifically agreed to in writing by CBMM.

Miscellaneous:

Representations

Each party hereby warrants that it has not entered into this Agreement and Sales Confirmation relying on any warranty, representation or undertaking except for any warranty, representation or undertaking expressly set out in this Agreement and Sales Confirmation.

Authority

Each person signing this Agreement and Sales Confirmation for an on behalf of a party hereto hereby warrants in his/her personal capacity that he/she is duly authorized by such party to do so.

Intending to be legally bound, the parties have signed this Agreement and Sales Confirmation on the dates hereinafter set forth.

XXX Corporation

By: _____
Name: _____
Title: _____
Date: _____

CBMM North America, Inc.

By: _____
Date: _____

Schedule 1

TERMS AND CONDITIONS OF SALE

1 Applicability

1.1 These Terms and Conditions of Sale (the “Terms and Conditions”) will apply to and be part of any agreement or offer and sales confirmation for supply of Products between CBMM and Purchaser. These Terms and Conditions also apply to all pre-contractual transactions between CBMM and Purchaser. Any additional terms or conditions put forward by Purchaser in any purchase order or other document will not apply, are expressly not accepted and will not be binding, unless and to the extent that they have been specifically accepted by CBMM in writing.

2 Offer and Acceptance

2.1 No orders and offers will be binding on CBMM unless confirmed and accepted by CBMM by written Sales Confirmation. CBMM reserves the right to refuse an order, at its sole discretion. Unless Purchaser disputes the Sales Confirmation within two (2) business days of receipt, the Sales Confirmation will be binding upon the parties. Statements of acceptance and all other verbal statements or acts intended to have legal effect by CBMM’s representatives will only become binding if confirmed by CBMM in a written Sales Confirmation.

3 Specifications

3.1 CBMM offers its Products in several standard chemistry specifications and sizes. The exact Product specifications agreed upon by the parties will be set forth in the Sales Confirmation.

4 Prices

4.1 Unless otherwise agreed, prices agreed upon will be FOB CBMM’s warehouse. Any additional costs, for example those incurred for packaging, freight and insurance, are for Purchaser’s account.

4.2 The price applicable will be the price set forth in the Sales Confirmation.

5 Terms of Payment

5.1 CBMM shall invoice Purchaser for each separate delivery of the Products. Payment of all invoices will be made before the date scheduled for delivery, or within the payment terms agreed in writing between

the parties. With respect to all payment dates, time will be of the essence.

5.2 If payment has not been received by the agreed upon date, Purchaser will be in default, without further notice being required, and CBMM may suspend delivery of all orders for Products until payment is made, or demand from Purchaser a full prepayment of any further shipment of the Products as a condition to further shipments of Products. If Purchaser fails to make any payment when due under this Agreement, and fails to cure such non-payment within fifteen (15) days after receiving written notice of non-payment from CBMM, such non-payment will be deemed a material breach and will give CBMM the right to terminate this Agreement immediately.

5.3 If payment is not made in accordance with Section 5.1, Purchaser agrees to pay interest, without prior notice being required, at a rate equal to 1 1/2 % per month or the highest rate permitted by law, whichever is less. The parties agree that the foregoing rate is a reasonable estimate of the potential damages of Seller. If legal action is taken to pursue the collection of amounts due and owing, CBMM will be entitled to recover its attorneys’ fees and costs of suit.

5.4 Payments to CBMM will be made without deduction of customs duties, withholding taxes, value added tax and/or any other tax. In the event that Purchaser is under a legal obligation to withhold tax, the amounts due and payable by Purchaser will be grossed up so that following the withholding, CBMM receives the same amount as it would have received without the imposition of such tax.

5.5 Unless otherwise agreed in writing, all costs associated with payment, such as banking costs, will be for the account of Purchaser. CBMM will receive the same amount as it would have received without the imposition of such costs. If CBMM is required to make direct payment of any banking cost, Purchaser shall gross up the amount paid to CBMM by the amount of such costs.

5.6 Save in the event that a counterclaim has expressly and in writing been acknowledged by CBMM, all payments will be made without set-off, counterclaim, recourse or other defense.

6 Time of Delivery

6.1 Dates of delivery will be non-binding unless specifically designated by CBMM as binding in the Sales Confirmation.

6.2 If Purchaser requests a change as to the terms and conditions of delivery, the parties shall negotiate the requested changes in good faith. If the parties agree to a change, such change will become binding only when documented in writing and expressly accepted by both parties. In such event, CBMM will be entitled to extend the period of delivery accordingly.

6.3 Dates of delivery are based on the circumstances foreseen at the time of execution of the Agreement and Sales Confirmation. In the event that delivery is prevented by unforeseen circumstances, CBMM will be entitled to an extension for the term of the impediment. CBMM shall notify Purchaser of such impediment promptly.

6.4 If delivery is prevented for a reason other than an unforeseen event of force majeure, CBMM will only be in default after Purchaser has served notice upon CBMM granting a reasonable period of time to make delivery and delivery has not been made within that period.

7 Delivery

7.1 Unless explicitly otherwise agreed in writing, delivery will be made FOB CBMM's warehouse.

7.2 Transport will be in the name of and for the account and risk of Purchaser. Purchaser is liable for all damages and losses caused during transport, unless otherwise agreed in writing.

7.3 CBMM will be entitled to deliver the Products in parcels and/or lots, unless it is agreed upon differently in writing.

7.4 Purchaser shall co-operate with the delivery of the Products and shall timely take receipt of the Products. If Purchaser refuses delivery, the day on which Purchaser refuses to take delivery will constitute the day of delivery. Purchaser will be deemed to have refused delivery, if the Products have been presented for delivery, but delivery has proved impossible by reasons attributable to Purchaser. In such case the Products will be stored for the risk of Purchaser. The costs of storage and handling will be for the account of Purchaser.

7.5 CBMM offers various standard packaging options. The Products will be packaged in accordance with the option selected by Purchaser. If Purchaser requires

different packaging and CBMM agrees, the costs will be charged to Purchaser.

8 Inspection, Complaints and Warranty

8.1 Purchaser shall upon delivery immediately and thoroughly inspect the Products. Purchaser shall notify CBMM in writing of any complaints regarding the Products prior to using the Products claimed to be defective or thirty (30) days after their delivery, whichever happens first. Any action for breach of these Terms and Conditions and Sales Confirmation must be commenced within one (1) year after the cause of action has accrued, provided that no action relating to the quality of the Products may be brought unless a complaint was made to Seller prior to using the Products or thirty (30) days after their delivery, whichever happens first.

8.2 CBMM's obligations under these Terms and Conditions and any Sales Confirmation will be deemed to have been duly performed and discharged on the expiry of the time limitations stated in Section 8.1 of these Terms and Conditions. After expiry of these limitations Purchaser shall not submit to CBMM any further complaint of any possible defects in the Products and CBMM may disregard any such complaint.

8.3 CBMM warrants that the Products will comply with all written specifications and be free from defects in material and workmanship at the time of sale. This warranty will run until the Products are used or thirty (30) days after their delivery, whichever happens first.

8.4 Except as provided in Section 8.3, CBMM makes no warranty of any kind, express or implied, including without limitation, any WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR PARTICULAR PURPOSE with respect to the Products. Purchaser must make its own determination as to the suitability of the Products for their intended use.

8.5 CBMM's weight and chemical and physical analysis will 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 a discrepancy does occur, the results will be confirmed by an impartial accredited inspection agency (agreed to by both parties) by issuing a quality certificate which will be binding on both contracting parties. 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 will not be deemed a discrepancy. All costs of the impartial accredited inspection will be

charged to the party which was in error, as determined by the independent inspector.

8.6 Should CBMM breach its warranty, and Purchaser submit a valid and timely written complaint, CBMM shall at its discretion, repair or replace the defective Products, take the Products back and credit Purchaser for the purchase price, or grant Purchaser a reduction in the purchase price corresponding to the extent of the breach.

8.7 Claims of Purchaser based on defects in the Products will be prescribed after lapse of a period of 30 (thirty) days after the shipment or its use, what happens first, as per Section 8.1 above. This limitation period can only be interrupted in writing sent by registered mail.

8.8 The filing of a complaint by Purchaser does not discharge or suspend its payment obligations.

8.9 The foregoing are Purchaser's sole remedies for the failure of the defect or nonconformity of the Products. Purchaser's obligations under this Section 8 will be applicable to such replaced Products.

8.10 Products supplied under these Terms and Conditions are for the sole consumption of Purchaser and will not be resold without prior written permission of CBMM.

9 Limitation of Liability

9.1 CBMM's liability is restricted to direct loss or damage, whether caused by breach of contract, tort or otherwise and will be limited to the invoice value of the respective delivery.

9.2 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT LOSS OR DAMAGE, INCLUDING BUT NOT LIMITED TO, LOSS OF PRODUCTION, LOSS OF REVENUES OR PROFIT, LOSS OF INTEREST, COST OF RECALL, LOSS RESULTING FROM INTERRUPTION IN OPERATIONS, LOSS SUFFERED BY THIRD PARTIES, COST OF DELAYS OR ANY OTHER LOSS OR DAMAGE RESULTING THEREFROM.

10 Force Majeure

10.1 Neither party will be liable for any default or delay in the performance of its obligations if such default or delay is caused by events beyond its control, provided that such events were unforeseeable on the date of signing of the Agreement and Sales Confirmation.

10.2 In the case of CBMM, force majeure will include situations in which CBMM is not supplied or only is partially supplied with Products or services by its suppliers.

10.3 If any force majeure event substantially prevents, hinders, or delays performance under this Agreement for more than 90 consecutive days, either party may terminate the Agreement without incurring any liability.

11 Confidentiality

11.1 The parties acknowledge and agree that any and all business commercial information of which they have knowledge or to which they have access as a result of the business relationship established herein and/or pursuant to this Terms and Conditions, with respect to the other party or its businesses activities, will be deemed sensitive and confidential information ("Confidential Information"). The party disclosing or giving access to Confidential Information will be hereinafter referred to as the "Disclosing Party" and the party to receive or have access to Confidential Information will be hereinafter referred to as the "Receiving Party".

11.2 Each party undertakes, 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 to disclose, reveal, publish, reproduce, communicate, lend, sublicense, sell, assign, transfer, distribute, lease, modify, translate, reverse engineer, discuss and/or use for its own benefit or the benefit of any third parties, in whole or in part and in any way, Confidential Information of which each party becomes aware, without the prior written consent of the Disclosing Party.

11.3 For the purposes of these Terms and Conditions, the following will not be deemed as Confidential Information: (a) Information that was duly proven to be in the possession of Receiving Party, as evidenced by its written records, before the receipt of said

information, either directly or indirectly from Disclosing Party; (b) Information that, at the time of disclosure, was in or entered the public domain with no breach of any nondisclosure obligation and through no act or omission by the Receiving Party; (c) Information that substantially corresponds to information that, until the 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 Section 11.3 above will not be interpreted as granting to the Receiving Party any right, either expressly or impliedly.

11.5 The obligations of confidentiality and non-disclosure herein assumed by the parties will enter into force upon the signing of these Terms and Conditions and will remain valid and in force for a period of five (5) years from the termination of the business relationship between the parties, regardless of the reason for such termination.

12 Sanctions 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 Any dispute arising out or in connection with this Agreement will exclusively be submitted to the competent courts in County in the Commonwealth of Pennsylvania. Any such dispute will be determined in accordance with the law of the Commonwealth of Pennsylvania not including its laws on conflicts of law. Each party hereby submits to the jurisdiction of and venue in such courts, and specifically waives any defense of forum non conveniens.

14 Waiver

14.1 The failure or delay by either party to enforce at any time or for any period any one or more of the terms or conditions of these Terms and Conditions or any Sales Confirmation will not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Terms and Conditions.

15 Severance

15.1 If any provision of these Terms and Conditions or any Sales Confirmation is held by any court or other competent authority to be invalid or unenforceable in whole or in part, these Terms and Conditions or such Sale Confirmation will continue to be valid as to their other provisions and the remainder of the affected provision.

16 Entire Agreement

16.1 Each Sales Confirmation and these Terms and Conditions constitute the entire agreement between the parties relating to its subject matter and are in substitution of any previous written or oral agreement thereon between the parties.

16.2 Nothing in these Terms and Conditions or any Sales Confirmation is intended or will be construed to confer upon or give to any person, firm or corporation other than the parties and their respective successors and permitted assigns or personal representatives, any rights or remedies under, or by reason of, these Terms and Conditions or any Sales Confirmation.

17 Amendment

17.1 No waiver, alteration or modification of any of the terms and conditions of these Terms and Conditions or any Sales Confirmation will be valid or binding unless it is in writing and signed by the parties.

18 Remedies cumulative

18.1 Except as expressly provided in these Terms and Conditions or any Sales confirmation, all remedies available to the parties for breach of these Terms and Conditions and each Sales confirmation are cumulative and may be exercised concurrently or separately and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

19 Language

19.1 English will be the language of these Terms and Conditions and each Sales confirmation and all documentation prepared in relation to them.

20 Assignment or sub-contracting

21.1 The rights and/or obligations under this Agreement and each Sales Confirmation may not be assigned or transferred by one party to any third party without the other party's prior written consent.