



Terms and Conditions of Sale for Canada

1. Governing Terms and Conditions of Sale

- 1.1 Except as may otherwise be specifically provided for by written agreement accepted by both parties, these terms and conditions of sale ("**Conditions**") and the attached sales contract ("**Sales Contract**") and any product specifications included in the Sales Contract or provided under separate cover ("**Product Specifications**") constitute the entire agreement ("**Agreement**") between the seller ("**Seller**") and the buyer ("**Buyer**") with respect to the supply of the product described in the Sales Contract and Product Specifications, as the case may be, and in the quantity stated in the Sales Contract attached to these Conditions ("**Material**"). All other terms, conditions, warranties and any other terms contained in the documents of the Buyer, including but not restricted to, terms and conditions, forms and purchase orders of the Buyer are excluded except those expressly provided in the Agreement.
- 1.2 In the event of any inconsistency between the Conditions, the Sales Contract and the Product Specifications, the Sales Contract prevails.
- 1.3 Incoterms 2010 edition – ICC Official Rules for the Interpretation of Trade Terms apply to matters not covered in the Agreement. In the event of any inconsistency between the Agreement and Incoterms 2010, the Agreement prevails. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to the Agreement.

2. Payment

- 2.1 Unless otherwise agreed in writing, the Buyer must pay the Seller either:
 - (a) by the payment due date, which shall be the date specified in the Sales Contract as being the due date for payment, or if unspecified, no later than 30 days after the date of shipment; or
 - (b) immediately if the Seller considers that an event specified in clause 9.1 has occurred or is likely to occur.
- 2.2 If full payment is not made by the payment due date, the Seller may charge interest from the payment due date until full payment is made on the overdue payment at 18% per annum. The Seller reserves the right to allocate any amount received from the Buyer against any payment obligation of the Buyer where such payment is delinquent at the time of receipt of the funds.
- 2.3 Seller reserves the right to reduce the credit or payment terms set forth herein or to require Buyer to provide security in the form of a letter of credit, guaranty or other security (which security shall be in a form and substance and in an amount acceptable to Seller), at any time, on written notice to Buyer, if Seller determines, in its sole discretion, that any such change in credit or payment terms or any such security is required as a result of any negative change to Buyer's financial condition, creditworthiness or payment history or if a bank or other financial institution does not, or ceases to, accept the assignment by Seller of any of Buyer's accounts receivable in relation to Material supplied under the Sales Contract pursuant to factoring or other similar accounts receivable financial arrangements.

- 2.4 Except as otherwise expressly provided in the Agreement, the parties shall bear their own expenses incurred in enforcing their respective rights under the Agreement.
- 2.5 Unless otherwise provided in the Sales Contract, and subject to clause 2.6, all payments under the Agreement shall be payable, in full, without set-off or counter-claim, in United States Dollars, regardless of the country(ies) in which sales are made.
- 2.6 Notwithstanding the designation of a payment currency in the Sales Contract, the Seller may, in its entire discretion, elect to receive and make payments under the Agreement in any other major currency of its choice (the "**Currency Option**"). For the avoidance of doubt, the Seller may exercise the Currency Option irrespective of whether the Delivery (defined below) of the relevant Material has already been scheduled or performed or of whether the relevant payment is already due. The Seller may only exercise the Currency Option by notice to the Buyer. Should the Seller exercise the Currency Option, the paying party shall make the relevant payment in the currency so designated by the Seller using the conversion rate as shown by Reuters at noon on the last banking day (in the country from where payment is to be made) before the day where such payment is made.

3. Title

- 3.1 Title to and ownership of the Material and any products manufactured from the Material ("**Products**") do not pass to the Buyer until all amounts owed by the Buyer to the Seller under the Agreement in connection with the sale and delivery of such Material (on a shipment per shipment basis) have been paid (the "**Relevant Date**") and until the Relevant Date:
- (a) the Buyer shall hold the Material and Products as bailee for the Seller and, if required by the Seller, store the Material and Products in such a manner that they are clearly identifiable as the property of the Seller; and
 - (b) if the Buyer sells the Material, or any Products, the Buyer's right to receive payment from its customer will be held in trust for the Seller and any proceeds of sale will be the property of the Seller and the Buyer will hold the proceeds of any such sale on account of the Seller and keep the proceeds separately from its own money.
- 3.2 The Buyer acknowledges that the Seller may be entitled under relevant law to register its interest in the Material as a security interest and may be required, for that purpose, to file financing statements necessary and other relevant information, as appropriate, in order to evidence the Seller's ownership of the Material. The Buyer further agrees to cooperate with the Seller to ensure that such financing statements are properly filed and/or recorded and to cooperate with the Seller, as necessary, to perfect or continue the perfection of its security interest.

4. Risk

- 4.1 Risk, including of loss and damage to and in the Material, passes to the Buyer from the time of Delivery.
- 4.2 The Seller is not liable to the Buyer for any loss or damage or deterioration of the Material after Delivery, even if the Seller arranges freight.

5. Limitation of liability

- 5.1 Unless any such claim is subject to a shorter limitation period as set out under clauses 6.2 or 11.1, any claim that the Buyer may have against the Seller under the Agreement is deemed to be waived unless the Buyer: (i) gives written notice of that claim to the Seller within 30 days of Effective Collection of the Material; and (ii) gives the Seller a reasonable opportunity to investigate the claim. For the purpose of the Agreement, "**Effective Collection**" means the time when Buyer, or any of its

affiliates or agents, take effective control over the Material from Seller or the carrier (as applicable) and, specifically for CIF shipments, the time when the Material is unloaded from the vessel at the port of discharge, cleared from customs and available for collection by the Buyer.

- 5.2 Notwithstanding any provision of the Agreement to the contrary, the Seller's total aggregate liability to the Buyer in relation to a shipment of Material, whether arising out of or in connection with the Agreement, under statute, in tort (for negligence or otherwise) or any other basis in law or equity shall not exceed the purchase price of that shipment paid by the Buyer (the "**Seller's Limitation**"). The Seller shall have the option (in the absence of any alternative solution agreed between the parties) either of replacing or repairing the Material; or paying damages to the Buyer, damages that, depending on the Buyer's loss as determined by the Seller acting reasonably, may be less than the Seller's Limitation but which in any event shall not exceed the Seller's Limitation.
- 5.3 The Buyer shall exercise reasonable endeavours to mitigate any losses, suffered, sustained or incurred that might be the subject of a claim by the Buyer against the Seller under the Agreement.
- 5.4 Notwithstanding any provision of the Agreement to the contrary, to the maximum extent permitted by law, the Seller is not liable for any consequential loss, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contract, loss of goodwill or loss arising from business interruption, special or contingent losses or damages whether arising out of or in connection with the Agreement under statute, in tort (for negligence or otherwise) or any other basis in law or equity.

6. Warranties and descriptions

- 6.1 The Buyer must accept the Material supplied under the Agreement if it is in accordance with the description stated in the Agreement and within the tolerances with regard to the quantity, weight, dimensions, chemical composition, physical properties and finish as may be specified in the Sales Contract or Product Specifications, as the case may be, except where the Buyer, pursuant to clause 6.2, disputes that the Material supplied is within Product Specifications or where the Buyer, pursuant to clause 11.1, disputes that the quantity of Material supplied is less than the quantity ordered under the Agreement, with a shortfall exceeding agreed tolerances.
- 6.2 For the purpose of clause 6.1, manifests and certificates of analysis that the Seller provides to the Buyer are deemed to be conclusive evidence of the matters stated in them except where the Buyer disputes the quality of the Material supplied as stated in the manifests and certificates of analysis ("**Quality Dispute**") by providing written notice of the Quality Dispute to the Seller within 21 days of Effective Collection of the Material. The Seller and Buyer shall then exercise reasonable endeavours to resolve the Quality Dispute. If Seller and Buyer fail to reach an agreement within the abovementioned 21-day period, the Quality Dispute shall then be referred to an independent expert mutually agreed between the parties.

Should the independent expert determine that the Material does not meet the Product Specifications, the Seller and Buyer shall exercise reasonable endeavours to reach agreement on possible solutions. If the parties fail to reach agreement within 60 days of the independent expert's decision, the Buyer may commence arbitration procedures in accordance with clause 16.3. The escalation procedure described in clause 16.2 will not apply to such Quality Dispute.

- 6.3 Subject to any written warranty provided by the Seller or any rights that cannot be excluded by law, the Agreement expressly excludes any warranties, conditions, liabilities or representations (express or implied) as to the quality of the Material or its fitness for any purposes (whether or not made known to the Seller). The Agreement is not a sale by sample.
- 6.4 The Seller warrants only that the Material conforms to the description stated in the Agreement (subject to the tolerances referred to in clause 6.1) and that it will give good title to the Material.

- 6.5 The Buyer warrants that by instructing the Seller to supply the Material under the Agreement, it will not cause the Seller to infringe any letters patent, registered design, trademarks or trade names in the performance of the Agreement.
- 6.6 Buyer's right to raise a Quality Dispute after Effective Collection under clause 6.2 shall not limit the effect of section 4 in accordance to which risk of loss and damage to and in the Material passes to the Buyer upon Delivery, which may take place before Effective Collection. Any loss or damage to and in the Material after Delivery remains Buyer's responsibility and Seller will provide reasonable assistance to Buyer to address the discrepancy, including with respect to insurance claims to be conducted by Buyer.

7. Intellectual property infringement

- 7.1 No license is granted for the use of trademarks or brands under which Material is delivered and these may not be used by Buyer for the Products manufactured from the same nor for any other purpose, especially advertising purposes, without the Seller's prior written approval.
- 7.2 Seller reserves all rights, title, interest and copyright to specimens, illustrations, drawings and other documents as well as tools, which include embossing dies, press rollers or permanent moulds developed by Seller. This applies if Buyer pays a portion of the costs for such articles.
- 7.3 In the event that the Material was manufactured and sold by Seller according to drawings or other specifications of Buyer, Buyer will indemnify Seller against all damages, penalties, costs and expenses with respect to any suit alleging that the manufacture or sale of Material under the Agreement infringes any patent, copyright or trademark.
- 7.4 Should Seller manufacture Material from confidential drawings and specifications supplied and identified as such by Buyer, Seller will maintain the confidentiality of these drawings and specifications and shall not, without the Buyer's prior written consent, disclose the same to third parties. Seller's confidentiality obligation under this clause 7.4 shall remain in force for as long as Seller supplies Material to Buyer and for a period of three years thereafter.

8. Indemnity

- 8.1 The Buyer agrees to release, hold harmless, indemnify and defend the Seller against all actions, claims, demands, liabilities, losses, damages, costs, charges and expenses ("**Liabilities**") suffered or incurred by the Seller as a result of or in connection with any of the following:
- (a) the Seller's compliance with the Buyer's instructions regarding the Material;
 - (b) the Buyer's failure to provide or display safety information on or relating to the Material, comply with laws relating to the use, sale, marketing, labelling or marking of the Material or detect and bring to the Seller's attention matters for which the Seller may become liable, whether for negligence, under legislation or otherwise;
 - (c) any statement the Buyer makes about the Material without the Seller's written approval;
 - (d) the use of Material by the Buyer or a third party;
 - (e) the Buyer's negligence, willful misconduct or breach of the Agreement; or
 - (f) any breach by the Buyer of the warranty set out in clause 6.5.
- 8.2 The Buyer agrees that:

- (a) the Material is not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- (b) the Buyer is acquiring the Material for resupply or for using it or transforming it in the course of a process of production or manufacture in the Buyer's business.

8.3 Each indemnity provided by the Buyer is a continuing obligation separate and independent from the parties' other obligations and survives the expiry or earlier termination of the Agreement.

9. Cancellation

9.1 The Seller may, by written notice, immediately terminate the Agreement for the delivery of any future instalment of Material and resell the Material and/or demand immediate payment of all amounts outstanding (whether or not then due and payable):

- (a) if the Buyer fails to perform or observe any material term of the Agreement (including payment terms);
- (b) if the Buyer, in the reasonable opinion of the Seller, has unsatisfactory credit worthiness or fails to comply with revised payment terms, or provide the security, as required by the Seller under clause 2.3;
- (c) if the Buyer has any of its property seized by a holder of any security;
- (d) if an Insolvency Event occurs with respect to the Buyer; or
- (e) if any of the situations in clauses 9.1(b), (c) or (d) apply to any Affiliate of the Buyer (as defined in clause 18.7).

For the purpose of this section 9, "**Insolvency Event**" means, in relation to party:

- (i) that party becoming insolvent or bankrupt,
- (ii) the appointment of a liquidator, provisional liquidator or administrator appointed to the party;
- (iii) the party passes a resolution for winding up, proposes a compromise or scheme of arrangement with its creditors or files for protection from its creditors;
- (iv) if a receiver, receiver and manager, official manager, mortgagee in possession or other external administrator is appointed to the party or any of its property;
- (v) the party comes under administration (whether voluntary or involuntary);
- (vi) the party becomes unable to pay its debts as they fall due; or
- (vii) anything occurs in relation to the party that is (under the laws of any applicable jurisdiction) analogous to any of the events just described.

9.2 Upon an event listed under clause 9.1, the Seller shall also have the right to, as the case may be:

- (a) suspend or withhold any current or future shipments until the event listed under clause 9.1 has been corrected;
- (b) set off any amounts or obligations it, or any of its Affiliates (as defined in clause 18.7), owes or has to the Buyer or any of its Affiliates, with any amounts or obligations the Buyer or any of

its Affiliates owes or has to the Seller or any of its Affiliates, in connection with any business dealing between them under the Agreement or any other contract;

- (c) obtain from the Buyer any other losses or damages, including reasonable attorney's fees but excluding any other indirect, incidental, consequential, special, exemplary or punitive damages, incurred in connection with the event listed under clause 9.1;
 - (d) any other remedies the Seller may have whether by agreement, operation of law or otherwise.
- 9.3 The Seller may extend the time of delivery or shipment (and make alternative delivery or shipping arrangements), or terminate the Agreement if the Seller does not receive the following in ample time to enable it to make delivery or shipping arrangements for the delivery of the Material:
- (a) marking and shipping instructions from the Buyer;
 - (b) import certificates and documents from the Buyer required to obtain governmental licenses and authorization in order to make shipments; or
 - (c) advice that an irrevocable letter of credit (if applicable) has been issued by a bank and upon terms acceptable to the Seller. A draft of any such irrevocable letter of credit shall be provided to the Seller for approval at least 10 days prior to its issuance.
- 9.4 If the Seller terminates the Agreement pursuant to clauses 9.1 or 9.3, the Seller may stop the delivery or shipment or further delivery or shipment of the Material and:
- (a) recover from the Buyer any sum due at the time of termination of the Agreement and any loss or damage suffered by the Seller as a result of terminating the Agreement; or
 - (b) if the Material has been produced specifically for the Buyer, or is in the process of being produced the Buyer shall pay to the Seller as liquidated damages the full Agreement price thereof and any costs incurred by the Seller.
- 9.5 The Seller may terminate the Agreement by giving written notice if the Material remains undelivered or uncollected after 14 days from when the Seller informs the Buyer that the Material is ready for collection.
- 9.6 The Buyer may, by written notice, immediately terminate the Agreement for the delivery of any future instalment of Material:
- (a) if the Seller fails to perform or observe any material term of the Agreement and fails to remedy the breach within a reasonable time after being notified of the breach by the Buyer; or
 - (b) if an Insolvency Event occurs with respect to the Seller.

10. Delivery

- 10.1 "**Delivery**" occurs in accordance with the relevant Incoterm set out in the Agreement.
- 10.2 If the Agreement does not provide for an Incoterm or substantially equivalent terms, but provides for a place of destination, unless expressly set forth on the Sales Contract or otherwise agreed to by the parties in writing, the Delivery will occur in accordance with the following Incoterm: CPT (place of destination). For the avoidance of doubt, the CPT Incoterm will only apply with respect to the place of Delivery, excluding any other provisions under the said Incoterm.

- 10.3 If the Agreement does not provide for a place of destination, nor for an Incoterm or substantially equivalent terms, then the Material shall be delivered in accordance with the following Incoterm: Ex-Works (source of Material).
- 10.4 The Seller must use its best endeavours to effect Delivery of the Material by the date that is specified in the Agreement as being the delivery due date (the "**Delivery Due Date**").
- 10.5 The Seller is not liable for any loss or damage accruing to the Buyer as a result of late delivery.
- 10.6 The Buyer must accept and pay for the Material even if the Seller's delivery is late.
- 10.7 The Seller may deliver the Material in instalments. Each instalment will be treated as a separate shipment under the Agreement. However, if the Buyer does not pay for an instalment, the Seller may treat the non-payment as a breach of contract relating to the other instalments.
- 10.8 Subject to clause 10.7, the Buyer may cancel an instalment under the Agreement if the Seller fails to effect delivery of the instalment within thirty (30) days from the Delivery Due Date unless that failure to deliver is as a result of any of the reasons specified in section 12.
- 10.9 Unless the Sales Contract specifies the means by which the Material is to be transported, it shall be transported by means determined by the Seller, at its entire discretion.
- 10.10 If the Agreement does not state a specific source of the Material, then the Seller may declare the source of the Material and the Agreement becomes a contract for the supply of Material from that source.

11. Quantity and weight discrepancies

- 11.1 If the total quantity of Material delivered during the entire term of the Agreement is less than the total quantity the Buyer ordered under the Agreement, the Buyer must notify the Seller in writing of the shortfall within 5 (five) days after the Effective Collection of the last shipment; otherwise, the Seller will deem that the correct quantity of Material has been delivered and the Buyer must accept the Material and pay for it in full despite the shortfall. However, if the total quantity of Material delivered under the Agreement is within 5% in the event that the Material is a Value Added Product and 2% in the event that the Material is an unalloyed primary aluminium product for remelting purposes, Seller shall be deemed to have complied with its obligations and the price will vary accordingly.

For the purpose of this clause 11.1, "**Value Added Products**" shall mean the following products:

- Billets;
- Sheet Ingots/Slabs;
- Foundry T-Bar;
- Foundry Ingot;
- Specialty Aluminium products;
- Rods;
- Busbars; and
- High Purity Aluminium Ingot.

- 11.2 If the quantity of Material delivered is more than the amount the Buyer ordered, the Buyer must immediately inform the Seller in writing and the Seller is entitled to charge the Buyer for the excess or recover the excess from the Buyer.
- 11.3 For weight discrepancies with respect to a particular shipment, the Buyer will notify the Seller within 5 (five) days from Effective Collection of the Material, in case determined weights differs by more than 0.2% from the invoiced weights, provided the number of delivered units corresponds to the number of units mentioned in transport documents. Such notice must include full details of weight protocols, also evidencing how calibration of used weight facility was ensured. The Seller will have the right to request re-weighing of the Material in the presence of his nominated representative. Findings established by such procedures described above shall be binding as final for both parties. Costs thereof shall be borne by the losing party. In all other cases, the weight of the delivered metal specified in the bill of lading, manifest, certificate of weight and analysis or other similar document, or warehouse weight, as applicable, shall be final, conclusive and binding on the parties, except for fraud or manifest error.
- 11.4 Buyer's right to make a claim for weight discrepancies after Effective Collection under clause 11.3 shall not limit the effect of section 4 in accordance to which risk of loss and damage to and in the Material passes to the Buyer upon Delivery, which may take place before Effective Collection. Any loss or damage to and in the Material after Delivery remains Buyer's responsibility and Seller will provide reasonable assistance to Buyer to address the discrepancy, including with respect to insurance claims to be conducted by Buyer.

12. Force Majeure

- 12.1 Neither the Seller nor Buyer shall be liable for any delay in performing or failure to perform their respective obligations under the Agreement (except for delay or failure to pay money when due) caused by any circumstance beyond the reasonable control of, and not caused by the fault of the Seller and/or its source supplier or the Buyer ("**Force Majeure**").

A party who is unable to deliver or to accept delivery in whole or in part because of an event of Force Majeure shall not be obliged to deliver or take delivery of that part (as the case may be) or be subject to any liability in respect of that part for the duration of the event of Force Majeure and its effects, if any.

- 12.2 Upon the occurrence of any event of Force Majeure, the party affected by the event of Force Majeure shall, within 10 days of the occurrence, notify the other party hereto in writing, with such notice to contain full particulars of the Force Majeure, including its nature and likely duration.
- 12.3 For the purposes of this section 12, events of Force Majeure include but are not limited to strikes, lockouts or other labor disturbances, accidents, incidences of sabotage, embargo, war (whether or not declared), fires, floods, revolutions, riots, civil commotions, explosions, shortages of power, breakdowns of plant or machinery, shortages of raw or other materials from normal sources of supply, acts of God, the imposition of Sanctions, and any order or direction of any local, provincial, state or federal government, government authority or instrumentality.
- 12.4 Both Seller and Buyer shall exercise reasonable endeavours to cure any event of Force Majeure to the extent that it is reasonably possible to do so, it being understood that the settlement of strikes, lockouts and other labor disputes shall be within the sole discretion of the party asserting Force Majeure.
- 12.5 If an event of Force Majeure causes a reduction in the total quantity of material the Seller is obliged to deliver pursuant to the Agreement, the Seller shall allocate its available supplies of such Material, if any, among any or all of its existing customers in a fair and reasonable manner. In addition, where the Seller is the affected party, it may (but shall not be required to) offer to supply, from other sources,

Material of similar quality in substitution for the Material subject to the Force Majeure event in order to satisfy that quantity that would otherwise have been sold and purchased under the Agreement.

- 12.6 Failure to deliver or accept delivery of Material that is excused by or results from the operation of an event of Force Majeure shall not extend the term of the Agreement and the quantity of Material to be delivered and accepted under the Agreement shall be reduced by the quantity affected by such failure.
- 12.7 Where a delay in delivering or accepting delivery of Material by reason of an event of Force Majeure exceeds more than 120 consecutive days, either party shall have the right, by written notice, to cancel the quantity of Material not delivered or accepted with immediate effect, and any payment already made by Buyer to Seller for undelivered Material shall be refunded to the Buyer. However, this clause 12.7 shall not apply to any Material that has been shipped or for which a shipping berth has been firmly booked and/or which has already been loaded onto the Buyer's ship.

13. E-commerce and e-documents

13.1 Continuous e-commerce improvement

The parties undertake to continually monitor and review their business processes in order to identify e-commerce opportunities and must use their best endeavours to develop and use such opportunities in their dealings with each other.

13.2 E-Commerce and electronic documents

The Buyer acknowledges that it is the Seller's preference to conduct business by way of e-commerce using electronic documents (such as shipping documents and security documents) and systems supporting the issuance or transmission of such electronic documents (such as Bolero, essDOCS or equivalent systems recognized in the shipping industry) wherever possible.

13.3 Use of electronic documents or systems

The Buyer agrees that, upon request by the Seller, the Buyer will consider in good faith the implementation and use of any systems supporting the issuance or transmission of electronic documents, as nominated by the Seller, to conduct business with the Seller. Once the parties have implemented such system, the parties shall treat documents issued, signed and transmitted in electronic form as having the same effect between themselves as their paper equivalent.

13.4 Costs of electronic document systems

Each party must bear the costs of required changes to its business systems when moving to, and ongoing fees and charges in relation to, the use of electronic document systems.

14. Storage and handling

If the Buyer does not collect the Material, or provide adequate delivery instructions, within 14 days of request by the Seller, or the Seller agrees to the Buyer's request to delay delivery, the Seller may charge for storage. The Buyer must pay such storage charges monthly at commercial rates. The Material will be stored at the Buyer's risk.

15. Taxes and duties

- 15.1 The prices of Material established hereunder are exclusive of any value-added tax, goods and services tax, sales and use tax, consumption or harmonized tax and any other similar tax, and, in the event Material has been manufactured in a jurisdiction other than the jurisdiction where the

Material is sold or delivered hereunder (which the Buyer acknowledges may be the case), any customs duty, tariff, registration tax, import or export tax (including any form of tax penalty for imports), and any other similar duty, tariff, tax, charge or fee that may be imposed, claimed or levied by any governmental agency or authority on the Material or the Products, their manufacture, sale, import, export or delivery, shall be the sole responsibility of and shall be paid by Buyer.

16. Dispute resolution

- 16.1 The Buyer and the Seller acknowledge that it is their expectation that any disputes will be settled by them. Subject to clause 16.8, before resorting to external dispute resolution mechanisms, the parties must attempt to settle any dispute under the Agreement (except Quality Disputes under clause 6.2, which shall be subject to the process set out in clause 6.2) by negotiation, using the procedure set out in clause 16.2. Each party must bear its own costs in attempting to settle a dispute under clause 16.2.
- 16.2 Any disputes must be referred initially to the Buyer's relevant General Manager (or equivalent) and the Seller's General Manager, Sales and Marketing, who the parties will procure to endeavour to resolve the dispute within 10 days of the giving of notice. If the dispute is not resolved within that time period, it will be referred to the Buyer's Managing Director (or equivalent) and the Seller's Managing Director, who will endeavour to resolve the dispute within a further 10 days or such other period as may be agreed in writing by those persons.
- 16.3 If a dispute is not settled by the parties in accordance with clause 16.2, either party may commence mediation:
- (a) by giving notice to the other party; and
 - (b) referring the matter to the International Chamber of Commerce requesting the appointment of a mediator and the conduct of a mediation pursuant to this section 16.
- 16.4 The Rules of Optional Conciliation of the International Chamber of Commerce will apply to any mediation under the Agreement. Those rules and guidelines set out the procedures to be adopted, the process of selection of the mediator, the costs involved and which terms are deemed to be incorporated in the Agreement. The Buyer and the Seller must comply with those rules and guidelines in connection with all matters relating to the mediation.
- 16.5 If an unsettled dispute is not referred to the International Chamber of Commerce within 15 days of the procedure in clause 16.2 concluding or, if so referred, the matter has not been settled by mediation within 60 days (or such other period as agreed by the parties) of the referral date, either party may commence arbitration by:
- (a) giving notice to the other party; and
 - (b) referring the matter to the Court of Arbitration of the International Chamber of Commerce, requesting the appointment of an arbitrator and the conduct of an arbitration pursuant to this section 16.
- 16.6 If the matter is referred to the Court of Arbitration of the International Chamber of Commerce under clause 16.5:
- (a) the Court of Arbitration of the International Chamber of Commerce will determine the place of arbitration, which will be outside the Buyer's country and the Seller's country, but will, if the New York Convention is then in force, be in a country that is a party to the New York Convention, provided that if both the Seller's and the Buyer's countries are parties to the New York Convention, the place of arbitration shall be the Seller's country. The New York

Convention means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, and includes any modification of the Convention or any successor to the Convention;

- (b) the Rules of Arbitration of the International Chamber of Commerce will apply to any arbitration under this section 16, and the Buyer and the Seller must comply with the rules in connection with all matters relating to the arbitration; and
 - (c) the decision of the arbitrator will be final and binding upon the Buyer and the Seller.
- 16.7 Notwithstanding the existence of a dispute, both parties must continue to perform their obligations under the Agreement, subject always to their rights of termination under the Agreement.
- 16.8 Either party may commence court proceedings relating to any dispute arising from the Agreement at any time where that party seeks urgent interlocutory relief.
- 16.9 Other than as set out in clause 16.8, neither party may commence court proceedings relating to any dispute arising under the Agreement, except to enforce any mediation settlement, agreement or arbitral award.

17. Sanctions

- 17.1 Buyer represents and warrants that neither it nor any of its Affiliates nor any of their directors, employees, agents, or representatives:
- (i) is the target of economic or financial sanctions laws or regulations imposed, administered or enforced by relevant governments, including, the US government, the European Union or its Member States, the United Nations, Australia, Canada, or the United Kingdom ("**Sanctions**") (a "**Restricted Party**");
 - (ii) will resell or deliver the Material to a Restricted Party, directly or indirectly;
 - (iii) will tranship or transit the Material through a country/territory that is the target of trade embargos or comprehensive sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine and subject to change of the Sanctions);
 - (iv) will make payment to or receive payment from, directly or indirectly, any Restricted Party in connection with the Material or transportation thereof, which may cause the Seller to breach or be exposed to adverse action under any Sanctions (whether under secondary sanctions or otherwise); or
 - (v) otherwise will transact with any Restricted Party, directly or indirectly, or in violation of the Sanctions in connection with the purchase or sale of the Material.
- 17.2 In case of breach of any of the Buyer's representations and warranties under clause 17.1, the Seller may terminate the Agreement, or suspend the performance of any of its obligations under the Agreement, with immediate effect.

18. General

18.1 Notices

Notices under the Agreement must be in writing. A notice must be delivered personally or sent electronically, or by facsimile transmission or post to the other party at their last known address.

18.2 Waiver

Even if the Seller does not insist on the strict performance of the Agreement, the Seller is not taken to have waived its rights to later require strict performance. Even if the Seller provides an express waiver, this is not to be taken as a waiver of a subsequent breach of a term or condition.

18.3 Severability

If any provision of the Agreement is held to be invalid or unenforceable in any jurisdiction, it is, if possible, to be read down so as to be valid and enforceable. The read-down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

18.4 Governing law and jurisdiction

- (a) The Agreement is governed by the laws in force in the Province of Quebec, Canada without reference to its conflict of laws provisions, and the laws of Canada applicable therein. Subject to clause 18.4(b), the Seller and the Buyer both submit to the non-exclusive jurisdiction of the courts of the Province of Quebec in the district of Montreal and any courts that may hear appeals from those courts.
- (b) The Seller may take proceedings as it deems fit in the court of any country, province, state or territory in which the Buyer is resident or the Material is sold, delivered or situated and in such case the Buyer submits to the jurisdiction of that court.

18.5 Entire Agreement - Variation

This Agreement contains the entire agreement between the parties, superseding all previous negotiations, communications, representations, agreements, arrangements or understandings, howsoever occurring (written or oral). This Agreement may only be varied by written agreement signed between the parties' authorized representatives. Unless expressly set forth herein or in a subsequent written agreement signed between the parties' authorized representatives, any purported variation to the Agreement shall be deemed to be and will be treated as inapplicable and as having no effect.

18.6 Assignment

Neither party shall assign any of its rights or obligations hereunder without the prior written consent of the other party; except that Seller may, without Buyer's consent: (i) assign its rights and obligations under the Agreement to one or more of its Affiliates; and (ii) assign accounts receivable in relation to Material supplied under the Agreement to banks or other financial institutions pursuant to factoring or other similar accounts receivable financial arrangements.

18.7 Affiliates

For the purposes of the Agreement, "**Affiliate**" means any body corporate directly or indirectly Controlled by, under common Control or Controlling that party. For this purpose, "**Control**" shall mean the ownership directly or indirectly of greater than fifty (50) percent of the shares entitled to vote at a general meeting of a body corporate.

For the avoidance of doubt and notwithstanding anything else in the Agreement, in the case of the Seller, "**Affiliate**" includes:

- (a) any affiliate of the Rio Tinto Group (the Rio Tinto Group being the dual listed company structure incorporating Rio Tinto Limited (ABN 96 004 458 404) and Rio Tinto plc (Company No. 719885); and

- (b) any unincorporated joint venture in which Rio Tinto plc or Rio Tinto Limited or affiliate of Rio Tinto plc or Rio Tinto Limited has a participating interest of not less than 50%.

18.8 Rio Tinto Business Standards

For the purposes of the Agreement, Rio Tinto Business Standards means the Rio Tinto Group's policy entitled: "The way we work" and its Business integrity (anti-corruption) standard which is available at <http://www.riotinto.com>.

The Buyer acknowledges and agrees that:

- (a) it has received a copy of the Rio Tinto Business Standards;
- (b) it has read, understood and will respect the Rio Tinto Business Standards; and
- (c) neither the Buyer, its Affiliates nor any director, officer, employee, adviser, agent or representative of the Buyer or any of its Affiliates will directly or indirectly take any action that would result in the Seller, any member of the Rio Tinto Group, or a director, officer, employee, agent or representative of the Seller or any member of the Rio Tinto Group failing to comply with the Rio Tinto Business Standards.

18.9 No third-party rights

The provisions of the Agreement are intended to bind the parties to each other and are not intended to and do not create rights in any other person or confer upon any other person any benefits, rights or remedies, and no person is or is intended to be a third-party beneficiary of any of the provisions of the Agreement.

18.10 Data privacy

For the purpose of this clause 18.10:

"Personal Data" means information relating to an identifiable individual.

"Process" or **"Processes"** includes any action taken in relation to Personal Data including collecting, using, disclosing, storing, transferring, amending, deleting, accessing, hosting or otherwise handling.

- (a) Compliance with laws

Each party must comply with its obligations under applicable laws relating to privacy and data protection, in respect of any Personal Data it Processes in connection with the Agreement.

- (b) Data security

Each party must ensure:

- (i) adequate technical and organizational measures are implemented to secure Personal Data; and
- (ii) any data security incidents involving Personal Data disclosed to it by the other party are notified to that party without undue delay.

- (c) Privacy Statement

The Rio Tinto's Customer Privacy Statement is available at <http://www.riotinto.com/ourcommitment/publications-policies-10273.aspx> and/or has been made

available separately to the Buyer. The Buyer agrees to make the Rio Tinto Customer Privacy Statement available to those of its personnel who are likely to interact with the Rio Tinto Group.