

NON-FERRUM METAL POWDERS, LLC
STANDARD TERMS AND CONDITIONS OF SALE

1. **PAYMENTS:** Terms of payment by Seller to Buyer are net 30 days unless otherwise stated in writing by Seller. In the event Buyer fails to make payment in full within the time period set forth on the invoice or within the time period expressly agreed upon in writing by the parties, such failure to pay on time constitutes a material breach of contract by Buyer permitting Seller to suspend production, shipment or delivery under this or any other contract between Buyer and Seller, and Buyer shall pay to Seller interest on the unpaid amount at the maximum rate permitted by law, and Seller shall have, in addition, all other remedies permitted to Seller by law, equity and this contract. Buyer shall pay all court costs plus reasonable attorney's fees incurred by Seller in bringing any legal action to collect any amount due Seller from Buyer.

No payment by Buyer or receipt by Seller of a lesser amount than then due and owing by Buyer pursuant to all outstanding invoices shall be deemed to be other than on account of the earliest dated invoices, nor shall any endorsement or statement on or accompanying any check or other form of remittance by Buyer be deemed an accord and satisfaction without Seller's written consent and Seller may accept such check or other form of remittance as partial payment without prejudice to Seller's right to recover the balance of such invoice amounts or pursue any other remedy provided by law or equity.

2. **CREDIT APPROVAL:** Shipments, deliveries and performance of work shall be subject to the approval of the Seller. The Seller may decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Seller.
3. **ACCEPTANCE OF ORDERS:** All orders are received subject to acceptance and shall be accepted only by authorized personnel of Seller on Seller's acknowledgement forms for shipment when available and at Seller's prices in effect at time of shipment unless otherwise stated. All orders must be firm commitments giving complete item description including quoted prices, when applicable, quantity and shipping requirements.
4. **TOOLING:** Notwithstanding any molds, outfits, tool, die or pattern charges, or amortization in connection herewith, all special tooling and related items are and shall remain the exclusive property of Seller.
5. **SPECIFICATION VARIATIONS/INSPECTION:** Except as specified by Buyer in writing and expressly agreed to in writing by Seller, the goods furnished hereunder shall be produced in accordance with Seller's foundry tolerances and variations consistent with good foundry practice in respect to dimension, weight, composition and chemical, mechanical or physical properties, and to normal variations in quality; to deviations from tolerances and variations consistent with practical testing and inspection methods. Where foundry or plant inspection is made by Buyer, Buyer's inspector shall be deemed the agent of Buyer with authority to waive specified tests and details of test procedure and to accept goods as conforming to this contract with respect to all characteristics of such goods for which such inspection is made.
6. **RETURNS:** No material shall be returned unless approved in writing by Seller. The returned material is subject to a re-handling charge. Custom manufactured goods are not returnable.

7. **TAXES:** To the extent legally permissible, all present and future taxes imposed by any Federal, state, foreign or local authority which Seller may be required to pay or collect, upon or with reference to the sale, purchase, transportation, delivery, storage, use or consumption of goods or services, including taxes upon or measured by the receipts therefrom (except net income and equity franchise taxes), shall be for account of Buyer.
8. **FREIGHT COSTS/TIME OF SHIPMENT AND SHIPPING:** To the extent any freight costs are for Buyer's account hereunder, any upward or downward revisions of the freight charges shall also be for the Buyer's account effective immediately. *Time is not of the essence hereunder.* Each shipment is to be considered a separate sale. Seller reserves the right to ship all or any part of the goods from any shipping point designated by Seller.
9. **TITLE; INCIDENTAL TRANSPORTATION AND STORAGE CHARGES:** Unless otherwise agreed in writing, title to goods and risk of loss shall pass to Buyer upon tender of delivery at the F.O.B. point specified. Any charges at destination for spotting, switching, handling, storage and other accessorial services, and demurrage, shall be for Buyer's account. Seller shall have the right to assess a storage and handling charge for goods left in Seller's possession after notification to Buyer that the goods are available to ship.
10. **CANCELLATION/TERMINATION:** Orders suspended, terminated or any items cancelled by Buyer are subject to any expenses incurred by Seller. Termination or cancellation charges will be invoiced to Buyer at 100% of the selling price if the manufacture or processing has commenced. Allowance will be made if possible only for the salvage value of the materials as solely determined by Seller.
11. **PRODUCT CHARACTERISTICS:** Purchaser shall familiarize itself with the characteristics of the product, and shall comply with all laws, regulations and standards applicable to the possession, handling, transportation, processing, testing or use of the product by Purchaser, including, but not limited to, the most current version of the Occupational Safety and Health Act of 1970, and all regulations and standards issued pursuant hereto.
12. **WARRANTY: DISCLAIMERS:** SELLER WARRANTS THAT THE GOODS FURNISHED HEREUNDER WILL BE PRODUCED AND TESTED IN ACCORDANCE WITH SELLER'S PUBLISHED SPECIFICATIONS. HOWEVER, NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE NOR ANY OTHER REPRESENTATION OR WARRANTY (OTHER THAN TITLE), WHETHER EXPRESS OR IMPLIED, IS MADE RESPECTING SAID GOODS, OR THE PRODUCTION THEREOF AND THERE ARE NO OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED BY FACT OR LAW.

13. **LIMITATION OF REMEDIES:** Seller will replace, at the delivery point specified herein, any goods furnished hereunder that are found to be defective or otherwise fail to conform to any warranty or this contract, or, at Seller's option, Seller will repay the price paid for such goods, plus any transportation charges paid by Buyer in addition to such price. Claims must be made promptly following delivery of the goods to Buyer and Seller must be given a reasonable opportunity to investigate and cure any nonconformance. *Buyer's exclusive remedies with respect to any goods furnished by Seller hereunder that are found to be defective or otherwise not in conformity with any warranty or this contract shall be limited exclusively to the right to replacement thereof or to repayment of the price, as above provided.* Seller's liability for any other breach of this contract shall be limited to the difference between the delivered price of the goods covered hereby and the market price of such goods at Buyer's destination at the time of such breach. IN NO EVENT SHALL SELLER BE LIABLE FOR PERSONAL INJURY, DISEASE, DEATH, PROPERTY DAMAGE, LOSS OF PROFIT, DELAY, OR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER ARISING FROM CONTRACT, BREACH OF CONTRACT, TORT, SELLER'S NEGLIGENCE, STRICT LIABILITY, OR ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
14. **FORCE MAJEURE: ALLOCATION OF PRODUCTION:** In the event either party's performance hereunder is delayed or made impossible or commercially impracticable due to causes such as fire, explosion, strike or other difference with workers, shortage of energy sources, facility, material or labor, delay in or lack of transportation, temporary or permanent plant shutdown, breakdown or accident, compliance with or other action taken to carry out the intent or purpose of any law, regulation, or other requirement of any governmental authority, or any cause beyond that party's reasonable control, that party shall have such additional time within which to perform this contract as may be reasonably necessary under the circumstances. However, the obligation of Buyer to pay for goods delivered is never suspended. In addition, if due to force majeure or any other cause, Seller is unable to produce sufficient goods to meet all demands from customers and internal uses, Seller shall have the right to allocate production among its customers and plants in any manner in which Seller in its sole discretion may determine to be equitable.
15. **PATENT INDEMNITY:** Seller shall indemnify Buyer (a) for all direct and actual damages recovered from Buyer by a third party in a legal action for infringement of a U.S. patent Claim covering goods furnished hereunder, on condition that Buyer promptly notifies Seller of the alleged infringement, affords Seller the opportunity to assume defense thereof, and cooperates with Seller in defense of the action and in any feasible mitigation of damages; and (b) for Buyer's directly and reasonably incurred expenses in defending such legal action if, after such notice and opportunity given by Buyer, Seller elects to assume such defense, provided that such election by Seller shall not otherwise affect Buyer's aforesaid obligations. In like manner, Buyer shall indemnify Seller, and Seller's indemnity of Buyer hereunder shall not apply, with respect to a claim arising out of Seller's compliance with special designs or specifications furnished by Buyer, now or hereafter forming a part of this contract, or with other written instructions given by Buyer for the purpose of directing the manner in which Seller shall perform this contract. *In no event shall a party hereto have any liability hereunder for indirect or consequential losses or damages suffered, or other expenses incurred, by the other party hereto or any third party by reason of any patent infringement claim.*

16. **COMPLIANCE WITH LAWS**: Seller shall comply with all applicable Federal, State and local laws as amended, and all rules and regulations issued thereunder.
17. **ASSIGNMENT**: Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.
18. **TITLES**: The titles used in these Standard Terms and Conditions of Sale are for convenience or reference only and are not to be considered in interpreting the substance of the condition.
19. **WAIVER**: The failure of Seller to insist in any one or more instances, upon the performance of any of the terms or conditions of this contract or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right thereunder and shall not affect the Seller's right to insist on strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.
20. **EXCLUSIVE TERMS AND CONDITIONS; ACCEPTANCE; MODIFICATION**: No terms or conditions other than those stated herein and no agreement or understanding, oral or written, in any way purporting to modify these terms and conditions shall be binding on Seller unless hereafter made in writing, specifically stating that it is a modification of these terms and conditions, and signed by Seller's authorized representative. If these conditions and this form constitute Seller's acceptance of Buyer's order, then this acceptance is expressly made conditional on Buyer's assent to these conditions as the only conditions for this sale. Acceptance of the products sold hereunder by Buyer shall constitute assent to these conditions and Seller hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's purchase order or shipping release forms, or elsewhere. All proposals, negotiations and representations, if any, made prior and with reference hereto are merged herein.
21. **CONDITIONS INCORPORATED BY REFERENCE**: Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein.
22. **EXCLUSION OF U.N. CONVENTION FOR THE INTERNATIONAL SALE OF GOODS**: The applicability of the United Nations Convention for the International Sale of Goods if the same would otherwise apply hereto, is hereby excluded from this transaction.
23. **CORRESPONDENCE**: Correspondence relating to this acknowledgment should be addressed to: Matthew Herbert: m.herbert@nonferrum.at