

## **GENERAL TERMS AND CONDITIONS OF PURCHASE OF CELLMARK AB/ CELLMARK METALS**

In these General Terms and Conditions of Purchase (the “Conditions”), CellMark AB/ CellMark Metals, the buyer, shall be referred to as “we”, “us” etc. and the party selling to us, shall be referred to as the “Seller”.

“Parties” shall mean us and Seller.

“CellMark Group” shall mean CellMark AB and any company in which CellMark AB directly or indirectly has the ownership of at least fifty (50) percent of the voting rights/shareholding.

### **1. General**

1.1. A contract for purchase of Metals and/or Services (the “Goods”) shall be concluded upon our written confirmation of the Order (the “Contract”) and be governed by the Conditions, which are an integral part of the Contract.

The “Order” shall mean the purchase order for Goods issued in writing by us to the Seller, containing, amongst other things, the description of the Goods to be supplied and include all documents, standards and drawings therein referred to, and incorporated these Conditions.

1.2. Any terms and conditions which are contrary to or deviate from the Contract, including the Conditions, shall not be valid unless agreed upon in writing between us and the Seller.

1.3. In case of conflict between these Conditions and the terms of the Contract, the Contract shall prevail.

### **2. Conclusion of Contract**

2.1. Seller’s offers, including but not limited to Seller’s price quotations shall be considered an irrevocable offer with respect to the prices, quantities, times of delivery and other essential parts of such offer. All costs incurred by Seller in preparing and submitting any acceptance of our request for an offer or Seller’s Order shall be for the account of Seller.

2.2. We shall issue an Order in writing to Seller and such written Order shall be binding on the Seller and shall be deemed accepted as is by Seller (“Contract”), unless such Order is rejected in writing or accepted with modifications, within two (2) working days from the date of the Order. If Seller’s notice of acceptance and/or Seller’s confirmation of an Order contains any modifications whatsoever or differs in any other aspect from the original Order places, this will constitute a new offer to us, which has to be accepted by us explicitly in writing. Orders placed in person or by telephone shall require our written confirmation in order to be valid.

2.3. We reserve the right to revoke any Order placed with Seller if Seller has not responded to our Order in conformity with Clause 2.2. In the event of revocation Seller shall not be entitled to payment of (any or part of) the purchase price for the Goods, or any kind of compensation and/or damages whatsoever.

### **3. Prices and Payment**

3.1. All prices quoted in the Contract are fixed firm and not subject to revision. Prices are inclusive of all taxes (VAT excepted), duties, charges, contributions, insurances and all other costs, including but not limited to the costs of packing or packaging required to prevent damage or deterioration of the Goods while in transport to us, incurred by Seller in performing the Order up to and including Goods’ delivery at the location indicated by us.

3.2. If the transaction as described in the Contract are subject to any applicable VAT or any other similar tax, Seller shall be allowed to charge VAT or any other similar tax to us, which shall be pay by us on top of the

purchase price. Seller is responsible for paying any applicable VAT or any other similar tax to the appropriate (tax) authorities.

3.3. Subject to acceptance of the Goods by us, payment shall be made by bank transfer within sixty (60) days from the day of invoice after receipt of the Goods and pertinent documents stipulated in the Contract (eg analysis, packing list, insurance document, bill of lading etc) and of the receipt of the correct invoice in the proper form. Each invoice shall specify our name, a reference to the respective Order, the applicable Order number, date of the Order, our VAT number, description of the delivered Goods, the invoice amount and separately the amount of any applicable VAT, Seller's identification and all legally required details with respect to the tax deduction and shall conform the customs regulations. The invoice shall be received at the address of us indicated in the Order.

3.4. If Seller fails to fulfil any obligations under the Contract or if we have justifiable grounds to believe that Seller has failed to deliver and/or perform as agreed, we may withhold payment to Seller and Seller shall not suspend performance of its obligations.

3.5. We shall at all time have the right to set off and deduct from any amounts owing from us or any company of the CellMark Group to Seller against any amount owing from Seller to us or any company of the CellMark Group, irrespective of the nature of any such claim. Seller shall not have the right of retention.

3.6. Payment by us or on behalf of us will not be constructed as acknowledgment that Goods were delivered without non-conformities and do not discharge Seller from any warranty, duty and/or liability under the Contract and under these Conditions.

#### **4. Transport**

4.1. Seller shall pack the Goods properly and, in such manner, as to prevent damage to the Goods during transportation and to facilitate efficient unloading, handling and storage. The Seller shall at his own costs insure all Goods up to the point when deliver is complete in according with Clause 3.1.

4.2. All Goods shall be properly marked, including but not limited to clearly marked as specified by us in the Order and/or Contract and shall contain a certificate of country of origin and all other markings required for proper delivery.

4.3. Seller shall take all measures necessary to perform proper transportation of the Goods by all appropriate means and using all appropriate equipment and accessories, with the assistance of competent agents or subcontractors where necessary. And Seller shall organise transportation of the goods to the agreed place of delivery in such manner that the Goods will be delivered in good condition and will be unloaded in a safe, secure and efficient way. And the agreed shipping conditions shall be observed strictly, and the Seller shall be liable in full for any damage and costs arising from non-compliance with such shipping conditions. Shipment by the forwarding agent shall be subject to our consent.

4.4. Without prejudice to Clause 4.1., 4.2. and 4.3., all information held by, or reasonably available to the Seller regarding any potential hazards known or believed to exist in connection with the Goods, including but not limited to the transport, handling or use of the goods to be supplied, shall be promptly communicated to us. The Seller shall provide us with a safety data sheet and/or accident instruction sheet in accordance with the applicable laws and regulations including but not limited to health, safety and environmental regulations, with respect to Goods which, due to their nature, qualities, or state may be harmful to human life, health and/or the environment, and which therefore may be subject to laws and regulations requiring special treatment in terms of packing, labelling, transportation, storage, handling and waste disposal.

## 5. Inspection

5.1. Upon our first request, we shall be entitled to inspect and/or to assay the Goods before, during or after delivery, including the conduct of any quality investigations and/or testing it deems necessary.

5.2. We reserve the right to entrust the inspection and/or testing of the Good to third parties. For the purpose of such inspections and the inspections and/or assaying as set out in Clause 5.1, Seller shall grant us and our representatives' free access to the relevant location at all times and shall fully co-operate and provide all necessary information and documentation with respect to the Goods at the Seller's own expense.

5.3. Inspection of the Goods by or on behalf of us shall not constitute acceptance by us or shall not release Seller from any of its obligations and warranties under the Contract and/or the Conditions.

5.4. If the result of such inspection or assay cause us not to accept the Goods, we shall as soon as possible notify the Seller of such rejects and Clause 8 NON-COMPLIANCE shall apply.

## 6. Delivery, Quantity and Dates

6.1. Seller shall deliver the Goods in accordance with the agreed upon INCOTERMS (as defined in the latest version of the Incoterms as issued by the International Chamber of Commerce, Paris, France) and at the agreed place and time, as all specified in the Order.

6.2. Seller shall deliver the quantity and quality specified in the Order. All Goods supplied on a price for weight basis shall be delivered to the agreed place of delivery and the weight of the Goods shall be determined by or on behalf of us, by weighing at the agreed place of delivery. The net weight so recorded by or on behalf of us shall be the decisive weight for the Contract. As far as the chemical and physical composition of the Goods is concerned, the values determined by us or by our surveyor acting on our behalf shall be the binding values for such deliveries with regards to establishing the supplied quality and for the final settlement. We shall be entitled to a reasonable period of time within which to prepare the quality assessment.

6.3. All delivery times set out in the Contract shall be firm. Seller shall immediately notify us in writing of any (possible) delays or any other issue which may have a material adverse effect on delivery of the Goods or on Seller's performance or its other obligations under the Contract, including but not limited to a change in Seller's or Seller's sub-suppliers' financial condition, business or prospects. Simultaneously Seller shall provide us all information in writing concerning the reason and/or extent of the delay, as well as all details relating to the efforts Seller intends to make in order to avoid delay or expedite delivery.

6.4. We reserve the right to refuse partial deliveries or delivery prior to the agreed delivery date(s), and in such case may return the Goods or, at our choice, store them, storage and/or return of the Goods and any costs in connection therewith shall be at Seller's costs and for Seller's risk.

6.5. In the event of any breach with respect to the agreed delivery time Seller shall be in default, without any prior written notification of default to Seller and notwithstanding our other rights under the Contract or at law, we may at our option:

- a) notify Seller that we insist on delivery by Seller and Seller's performance of its other obligations under the Contract, and in addition we shall be entitled, without any prior notification of default to Seller, to withhold liquidated damages from Seller in the amount of 1% of the Order value for each full week of delay, not to exceed a maximum of 10% of the total Order value until complete delivery has been effected. Such liquidated damages shall be without prejudice to our right to claim compensation for all damages incurred in connection with such breach including but not limited to lost profits as well as any indirect financial and consequential damage suffered by us in connection with such breach, or
- b) we may decide to rescind the Contract and notwithstanding our other rights under the Contract or at law, we shall also have the right to claim compensation for all damage incurred in connection with such breach including but not limited to lost profits as well as any indirect financial and consequential damage.

In case the Seller prior to the agreed date of delivery becomes aware that timely delivery will be partly or fully impossible, Seller shall promptly inform us in writing to this effect stating the reasons as well as the expected

delay. Such circumstances shall also entitle us at our option to rescind the Contract with immediate effect, even if this prior to the agreed delivery date, and to claim compensation for all damages incurred in connection with such breach.

6.6. Unless explicitly agreed otherwise, we shall have the right to postpone delivery of the Goods. Upon our request to postponed delivery of the Goods, Seller will pack such Goods properly and clearly mark them as destined for us. Seller shall then store such Goods in a secured environment and shall arrange for proper insurance of such goods.

6.7. Signing of a receipt and/or bill of lading by or on behalf of us upon delivery shall be deemed to only relate to receipt of the Goods and shall not constitute acceptance of the Goods in any way whatsoever.

## **7. Warranties**

7.1. The Seller explicitly warrants that:

- all Goods shall comply with all specifications, approved samples and all other requirements set out in the Contract, including but not limited to the agreed volume and/or quantity and quality;
- all Goods shall be state of the art, are fit for the intended purposes, shall be of good quality and free from defects, deficiencies and non-conformities in design, materials and workmanship and that they shall satisfactorily fulfil the performance requirements expected by us;
- all Goods shall comply with all applicable laws and regulations, including but not limited to European and national laws and regulations, international conventions including without limitation the applicable laws and regulations concerning both international and national transport of dangerous and/or chemical and/or waste products, and all other applicable national, European and international laws and regulations with respect to health, (product) safety and environment and;
- Title to all Goods transferred shall be free of seizures, restricted rights, title retentions and/or any liens or encumbrances whatsoever and;
- all required licenses in relation to the Goods are and shall remain valid and in place, and the scope of such licenses shall properly cover the intended use of the Goods and all such licenses shall include the right to transfer the Goods;
- Goods shall be provided with all instructions and information for safe and proper use and in case the Goods and/or Services incorporate or contain chemicals or dangerous hazardous goods or substances, such Goods and/or Services shall be provided with written and detailed specifications of the composition and characteristics of such Goods or substances and of all laws, regulations and other requirements relating to such Goods in order to enable us to transport, store, process, use and dispose of such Goods in a proper and safe manner.

7.2. The warranties given under this Clause 7 shall be extended to any repaired or replacement Goods.

## **8. Non-Compliance**

8.1. If the Goods are defective or are otherwise not in conformity with the requirements of the Contract including these Conditions we shall notify Seller thereof and may, without prejudice to our right to compensation for any losses and/or damages suffered or to be suffered by it as a result of such breach or any other right available to us under the Contract or at law, at our sole discretion:

- a) reject the non-conforming Goods and return them to the Seller at the risk and cost of the Seller (including without limitation, inspection, handling and storage costs incurred by us in connection therewith) and to require Seller at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within a period acceptable to us. If Seller fails to fulfil its obligations above within the prescribed time, we may, without prejudice to any other available rights, undertake or engage a third party to completely fulfil all of Seller's obligations under the Contract at the risk and expense of Seller, including but not limited to cost of freight, disassembly and re-assembly or to obtain substitute goods elsewhere and recover from the Seller any expenditure reasonably incurred by us in obtaining such goods; or

b) to terminate the Contract in whole or in part, by written notification to Seller but without judicial intervention and without any liability to Seller and without prejudice to our right to (alternative and/or additional or other) compensation for any losses and/or damages suffered or to be suffered by it as a result of such termination, and we may return the Goods already delivered against repayment by Seller. Returning of such Goods shall be for the account and risk of Seller.

8.2. In case of rejection title to and risk for the rejected Goods shall be with Seller again from the date of sending the rejection notice to Seller.

## **9. Ownership and Risk**

9.1. Title to the Goods shall transfer to us upon delivery thereof.

Risk for the Goods shall pass from Seller to us in accordance with the agreed upon Incoterm as stated in the Contract (such Incoterm shall have the meaning as defined in the latest version of the Incoterms as issued by the International Chamber of Commerce, Paris, France). In case of absence of a specific Incoterm clause the risk for the Goods remains with Seller until arrival of the Goods at the agreed place of delivery and acceptance thereof in writing by us by a person or company (on behalf of us) duly authorized to do so.

9.2. Seller is obliged to transfer title to the Goods free of seizures, restricted rights, title retentions and/or any liens or encumbrances whatsoever.

9.3. Upon first demand of us, Seller shall disclose itself as party in interest and owner of the Goods as far as public legislation is concerned until the Goods are effectively in control and possession of us, who at all times has the right to decline to accept title in the Goods or to redeliver the Goods with immediate effect in case of events during storage or transportation which might involve public law responsibility of the owner of the Goods, regardless of whether the Seller has breached any contractual obligation. The Seller shall be obliged as also set out in Clause 10.3. to insure himself and any other party in interest for liability towards third parties, again regardless of any breach of contractual obligations by Seller.

## **10. Liability**

10.1. Seller shall be liable for any direct, indirect or consequential losses and/or liabilities (all three of which terms include, without limitation, environmental liability, loss of profit, loss of business), increased cost, loss, damages, injury, claims, actions, proceedings, charges, cost and expenses (including but not limited to attorney fees, litigation costs and other professional fees and expenses), suffered or incurred by or brought against us, any company of the CellMark Group or any third party, resulting from or connected with the non-fulfillment or late or improper fulfillment of Seller's obligations and warranties under the Contract, or any other breach of Seller's obligations under the Contract or at law.

10.2. Seller shall keep us harmless from and indemnified in full against all suits, actions, legal or administrative proceedings, charges, claims, demands, damages, liabilities, loss (including loss of profits), attorney's fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages) resulting from or connected with the nonfulfillment or late or improper fulfillment of Seller's obligations and warranties under the Contract or any other breach of Seller's obligations under the Contract or at law.

10.3. Seller shall take out and maintain in force all insurance policies necessary to cover its liability under the Contract including these Conditions. At the request of us Seller will provide the insurance certificates evidencing Seller's coverage and shall keep us informed of any changes. Seller shall procure that all its sub-suppliers will also meet the insurance requirements.

## **11. Confidentiality**

11.1. Seller shall keep confidential the existence and content of the Contract and all technical, commercial and financial data and all other information of a confidential nature ("Confidential information") provided by or on behalf of us to Seller in connection with the (preparation) of the Contract. All such information shall remain our property and may be used by Seller only for the purpose of the Contract. And upon our request Seller shall promptly return to us all such information and Seller shall not retain any copy thereof.

11.2. Seller may only disclose such Confidential information to third parties provided we have given its prior written consent and Seller shall ensure that such third parties engaged by Seller in the execution of Seller's duties shall undertake in writing to be bound by the same confidentiality undertaking.

11.3. Seller is not entitled to refer to (part of) the Order and/or the Contract in external communication or publication without prior written consent of us.

## **12. Export Control Laws and Customs**

Seller shall obtain all international and national export licences or similar permits required under all applicable export control laws and regulations and shall provide us with all information required to enable us and our customers to comply with such laws and regulations. Upon our request Seller shall provide us with an appropriate certification stating the country of origin for Goods and all other information required, sufficient to satisfy the requirements of the customs authorities of the country of receipt and any applicable export licensing regulations.

## **13. Anti-corruption, anti-money laundering and tax laws compliance**

Seller warrants, represents and undertakes to Buyer that it will comply with all applicable laws, rules and regulations including without limitation sanctions, anti-corruption, anti-money laundering and tax laws in performing this contract.

## **14. Force Majeure**

14.1. Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by "Force Majeure", meaning any of the following circumstances: wars, sabotage, insurrections, riots, vandalism, strikes, lockouts, labour disputes or other industrial disturbances, blockages, fires, explosions, vapour releases, floods, lightning, wind or other natural disasters, actions of governmental authority, customs duties and tariffs imposed by a country, national or international trade sanctions, accidents or failure of equipment or machinery, inability to obtain or maintain any easement or right-of-way, allocation or failure of normal sources of supply of materials, transportation, energy or utilities, or other circumstances of a similar nature.

14.2. A circumstance referred to in 14.1., whether occurring prior to or after the formation of the Contract, shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

14.3. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

14.4. If Force Majeure prevents the Seller from fulfilling its obligations, the Seller shall compensate us for expenses incurred in securing and protecting the Goods. If performance of the Contract is suspended under 14.1 for more than thirty (30) days, either party shall be entitled to terminate the Contract by notice in writing to the other party.

## **15. Suspension and Termination**

15.1. We shall be entitled to suspend the performance of our obligations under the Contract or to terminate the Contract in whole or in part, by written notification to Seller but without judicial intervention, and in each case without any obligation or liability of whatsoever kind to Seller, in the event:

- a) Seller has requested suspension of payment, becomes insolvent or unable to pay its debts, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceedings is instituted by or against Seller or Seller makes an arrangement for the benefit of its creditors; or
- b) substantial part of Seller's assets have been attached or in the event the control over Seller is being transferred to a third party or if Seller ceases or threatens to cease to carry on its business; or
- c) Seller fails to comply with any term or condition of the Contract including these Conditions or we in our reasonable discretion determines that Seller cannot or shall not deliver the Goods as required;

And all of the above shall be without prejudice to our right to claim for (alternative and/or additional or other) compensation for any losses and/or damages suffered or to be suffered by us as a result of such suspension and/or termination of the Contract.

15.2. In any of the above-mentioned events all outstanding claims of us on Seller shall become due and payable instantly and Seller may not set off any amounts owing from us to Seller against any amount owing from Seller to us.

## **16. Assignment and Subcontracting**

Seller shall not subcontract, transfer, pledge or assign any of its rights or obligations under this Contract without the prior written consent of us. Any such pre-approved subcontracting, transfer, pledge or assignment shall not release Seller from its obligations under the Contract. And Seller shall be liable for the selection and any default of its subcontractors and suppliers.

## **17. Waiver**

Failure by us to enforce at any time any provision of the Contract including these Conditions shall not be construed as a waiver of our right to act or enforce any such term or condition and our rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by us of any breach of Seller's obligations shall constitute a waiver of any other prior or subsequent breach.

## **18. Data protection**

18.1. Both parties agree to comply with applicable privacy laws in respect of personal data processed pursuant to the Contract. If, and to the extent that a party processes personal data on behalf of the other, the parties shall in good faith discuss and agree upon a separate data processing agreement.

18.2. We will electronically process personal data pertaining to the contact person of the Seller, such as contact information, in order to coordinate the purchase of the Goods and to administer the business relationship with the Seller. The data may also be used for statistical analysis and business reporting purposes, during fraud investigations and to comply with applicable laws and regulations. We may disclose the information to other companies within the Cellmark Group, which may also use the information for the purposes described herein. The data may be transferred outside the EU/EEA area to states that do not have the same level of protection of personal data. We are committed to protecting personal data and will put in place adequate safeguards in order to protect the data. Registered persons have upon written request the right of access to the data related to them. They also have the right to rectify such data.

18.3. We may use the Seller's contact data in order to send newsletters, to conduct surveys and for event invitations. We are entitled to submit data of the Seller including its contact persons to companies within the Cellmark Group which are entitled to use the data for the purpose described above, to the extent permitted by law. The recipient of such advertising can opt out from receiving further marketing communication by contacting us at [metals@cellmark.com](mailto:metals@cellmark.com).

BY PROVIDING PERSONAL DATA ABOUT OTHER PERSONS THE SELLER CONFIRMS THAT IT HAS CONSENT TO DISCLOSE SUCH DATA AND FOR THE DATA TO BE USED FOR THE PURPOSES AND IN THE WAYS DESCRIBED IN THIS SECTION 18.

## **19. Governing Law and Disputes**

19.1. The Contract shall be governed by the laws of Sweden, however with the exclusion of Swedish conflict of law rules and the United Nations Convention on International Sale of Goods.

19.2. Any dispute, controversy or claim arising out of or in connection with these Conditions or the respective Contract or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English.

CellMark AB/ CellMark Metals

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