

## **GENERAL TERMS AND CONDITIONS OF SALE OF CELLMARK RAW MATERIALS AB/ CELLMARK METALS**

In these General Terms and Conditions of Sale (the “Conditions”), CellMark Raw Materials AB/ CellMark Metals, the seller, shall be referred to as “we”, “us” etc. and the party buying from us, shall be referred to as the “Buyer”.

“Parties” shall mean us and Buyer.

“CellMark Group” shall mean CellMark Raw Materials AB and any company in which CellMark Raw Materials 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 sale 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 any purchase order for the Goods by Buyer placed with us.

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 Buyer.

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

### **2. Quotations, Orders and Agreement**

2.1. Quotations made by us in whatever form shall be without engagement and are not binding upon us. All quotations issued by us are revocable and subject to change without notice. Orders are not binding until accepted by us in writing (“Sales Order Confirmation”) and upon Sales Order Confirmation, the Contract between us and Buyer, shall be formed.

2.2. Oral statements and agreements made by our employees, representatives and/or agents are not binding upon us unless and to the extent that such oral statements are confirmed in writing by duly authorized representative(s) of us.

2.3. Buyer shall be responsible for the accuracy and functional suitability of all data, drawings, calculations, designs and all other documentation provided to us in connection with Buyer's request for an offer and/or (price)quotation by us.

2.4. Any samples supplied to Buyer are supplied solely for information purposes and in no way imply any express or implied warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods.

2.5. No amendment, addition, complement and/or any other variation whatsoever to the Contract and/or these Conditions shall apply unless expressly accepted in writing by us.

### **3. Prices**

3.1. Unless explicitly agreed otherwise, our prices do not include value added tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Goods or the delivery thereof. The amount of any taxes, duties and similar levies or charges levied in connection with the sale of the Goods shall be for Buyer's account and we will add such taxes, duties, levies or charges to each invoice or will invoice Buyer separately in connection herewith.

3.2. In case of an increase in cost-determining factors, including but not limited to raw and auxiliary materials, energy, products obtained by us from third parties, governmental charges, freight costs and insurance premiums, we shall be entitled to increase the price of the ordered Goods accordingly. We shall notify Buyer of

such increase and Buyer shall pay such price increase at the same time as the respective principal amount or the next instalment is paid.

#### **4. Payment**

4.1. Unless explicitly agreed otherwise, net payment, free of any set-off or deduction, shall be received by us within three (3) working days of the date of our invoice for the Goods by means of transfer into the bank account mentioned on such invoice. All bank charges relating to the transfer of money to us shall be for Buyer's account.

4.2. Buyer shall have no right to withhold or reduce any payments to be made to us or to set off existing and/or future claims against any payments due to us for Goods sold under the Contract or under any other agreement that Buyer may have with us or any company of the CellMark Group.

4.3. Payment shall be considered effected as soon as we can dispose of the amount credited to our account.

4.4. With respect to payment of the price for the Goods, time is of the essence. In the event Buyer fails to pay any amount when due, without prejudice to any other rights of us, we shall be entitled to charge on any overdue payment from the due date computed on a daily basis until all amounts outstanding are paid in full. The rate of interest shall be according to the Swedish Interest Act (Sw: Räntelag (1975:635)).

4.5. Notwithstanding Section 4.4., in the event of any default by Buyer in the payment of any invoice, fees or charges due or any other default by Buyer, we shall, without prejudice to our other rights, have the right to refuse performance and/or delivery of any Goods and we may suspend, delay or cancel any credit, delivery or any other performance by us until all amounts outstanding are paid in full.

4.6. All costs, including judicial and extra-judicial costs, and expenses incurred by us with respect to collection of overdue payments (including but not limited to reasonable attorney's fees, expert fees, courts and other expenses of litigation) shall be for Buyer's account. We reserve the right to apply payment to the longest outstanding invoice items plus related interest for default, and costs, including but not limited to judicial and extra-judicial costs and expenses as set out above, if any, and to do so in the following sequence: costs, interest, principal amount regardless of any contrary advice from Buyer.

4.7. Buyer shall promptly inform us by written notice to be sent to us by registered mail or by fax if at any time there occurs a change in Buyer's or Buyer's bank's financial condition, business, prospects or other circumstances that have or may have a material adverse affect on Buyer's performance and/or fulfillment of its obligations under this Contract, and in such notice Buyer shall provide us with all information with respect to such circumstances and how this may or will affect Buyer's performance of its obligations under the Contract.

#### **5. Delivery**

5.1. The Goods shall be delivered on the delivery terms as stated in the Contract and such terms shall be interpreted in accordance with the latest version of the INCOTERMS, issued by the International Chamber of Commerce, Paris, France as at the date of the Contract.

5.2. Any times or dates for delivery are approximate only and are based on the circumstances as they're valid at the time of the closing of the Contract, such times and dates are given for information only and shall under no circumstances be of the essence. We shall use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by us provided Buyer shall provide all necessary Order and delivery information sufficiently prior to such delivery date. We shall be entitled to deliver the Goods in parts and to invoice each part separately.

5.3. The risk of loss or damage to the Goods shall pass from us to the Buyer in accordance with the agreed Incoterm as stated in the Contract. Goods for which delivery is suspended pending payment by Buyer as well as

Goods of which delivery is wrongfully rejected or not accepted by Buyer shall be held and stored by us at the risk and expense of Buyer.

5.4. Delay in delivery of any Goods shall not constitute a breach of contract and Buyer shall not be entitled to terminate the Contract and/or to claim for compensation whatsoever. A delay in delivery shall not relieve Buyer of its obligation to accept delivery thereof. As set out in Section 10 we shall in no event be liable for any kind of indirect or consequential damages caused by any delay in delivery. We will notify Buyer of the delay and Buyer shall allow us thirty (30) days from the date of receipt of such notice, within which to cure. Without prejudice to the above, in the event of a delay in delivery due to Force Majeure Section 15 shall apply.

5.5. All deliveries of Goods by us shall at all times be subject to credit approval of us. If, in our reasonable judgement, Buyer's financial condition at any time does not justify production or delivery of the Goods on the agreed payment terms, we may require full or partial payment in advance, request the provision of securities or request any other payment conditions, as a condition to delivery and we may at our option also decide to suspend fulfilment of (part of) the Contract in the meantime, or terminate the Contract by written notice as set out in Section 16, without prejudice to our right to compensation for damages in connection thereto and any other right under the Contract or at law and without Buyer being entitled to claim any compensation.

## **6. Collection of Goods**

Unless explicitly agreed otherwise, Buyer shall collect the Goods within five (5) days from the date of receipt of our notification that the Goods are ready for collection. If Buyer fails to comply with this obligation, we may at our option store such Goods at the Buyer's risk and maintain storage of such Goods at the Buyer's expense and require Buyer to first pay such Goods before shipping them to Buyer, without prejudice to our right to terminate the Contract as set out in Section 16.

## **7. Quality and Quantity**

Unless explicitly agreed otherwise, weights and assays of the ordered Goods established by or on behalf of us shall be binding.

## **8. Inspection and Complaints**

8.1. On delivery Buyer shall inspect the Goods exercising such care as is customary or appropriate in the circumstances.

8.2. Complaints about the Goods shall be made in writing, accurately describing the nature and the extent of the defect and/or non-compliance and must reach us not later than two (2) days from the date of delivery in respect of any (visible) defect or non-compliance which would be apparent upon careful inspection and/or reasonable testing on delivery. In case this obligation is not fulfilled by Buyer, it is assumed that the Goods have been accepted by Buyer and are compliant with the requirements of the Contract. In case of complaints about any other defect or non-compliance the Buyer shall be deemed to have accepted the Goods if Buyer does not provide us with a written complaint, immediately upon discovery and in any event not more than fifteen (15) days from the date of delivery of the Goods. Full particulars of such claim, including an accurate description of the nature and the extent of the defect and/or non-compliance shall be given in writing to us fifteen (15) days after the abovementioned notification. In case the quality or amount of the delivered Goods is the subject of the complaint Buyer shall in addition also submit to us a sworn surveyor's report. Filing of a complaint shall not affect Buyer's obligation to pay as defined in Section 4.

8.3. Use, processing and/or (re)sale of the Goods by Buyer shall be deemed an unconditional acceptance of the Goods by Buyer and a waiver of all claims in respect of the Goods.

8.4. Defects in parts of the Goods do not entitle Buyer to reject the entire delivery of the Goods.

8.5. In case of complaints the Buyer has to allow upon our first request, us or a third party appointed on our behalf to inspect, assay and/or to take samples of the respective Goods. Such inspection, assaying and/or sampling will be carried out by an independent and internationally recognized surveyor or laboratory.

8.6. Goods that are the subject of a complaint shall be warehoused in the appropriate manner and shall be kept separately in order to enable the inspection, assaying and/or sampling as set out in Section 8.5. If the Buyer does not fulfil such obligation(s) in time or in the requested manner, we may reject such claim and the Goods are deemed to have been accepted free of defects.

8.7. We shall be entitled to refuse to accept any Goods that are returned without our prior written consent, even if such Goods are returned undamaged and together with the legally required documentation. Goods that we consent or direct in writing to be returned shall be returned to us at the risk of Buyer, to the destination directed by us. Goods returned by Buyer and accepted by us as defective shall at our option be replaced or repaired without charge. In case of Goods returned to us which are not found to be defective or non-conforming Buyer shall pay for the freight, testing, handling costs and any other costs and/or damages associated therewith.

8.8. Notwithstanding the foregoing, we shall have no obligations whatsoever if the alleged defect or non-compliance is found to have occurred as a result of misuse, neglect, improper installation, accident, as result of improper repair, lack of proper maintenance, alteration, modification, defective or careless storage, transportation or improper handling.

## **9. Retention of Title**

9.1. Title to the Goods shall not pass to Buyer and full legal ownership of the Goods shall remain with us unless and until Buyer has fulfilled all its obligations arising from or in connection with the Contract and all other (past and future) Contracts between Buyer and us for the sale of Goods to Buyer, including but not limited to receipt by us of all payments due in connection with all such Contracts, including payment of all applicable costs such as interest, expenses, charges, costs related to loss of value of the Goods and other costs relating to Buyer's failure to meet its obligations. Up and until such moment, the Goods are subject to retention of title.

9.2. If Buyer fails to perform any of its obligations arising out of or in connection with the Contract between Buyer and us as set out in Section 9.1 or if we have justified reasons to assume that Buyer may not be able to fulfil such obligations, we shall be entitled without prior written notification of default, to invoke a retention of title and to require immediate re-delivery of the Goods. The costs in connection with such re-delivery shall be at the expense of Buyer.

9.3. As long as title to and ownership of the Goods remains with us pursuant to this Section 9, Buyer is entitled to deliver or process the Goods solely to the extent required in its ordinary course of business, and to the extent possible, shall

(i) keep the Goods separate and in a clearly identifiable manner,

(ii) notify us immediately of any claims by third parties which may affect the Goods,

(iii) shall not lease, pledge and/or encumber in anyway whatsoever the Goods for the benefit of a third party and

(iv) adequately insure the Goods.

9.4. If we in such case (re-) sells the Goods without a reservation with respect to the retention of title, Buyer hereby in anticipation agrees to establish to the benefit of us, an undisclosed pledge upon the receivables which are to accrue to the Buyer from the resale to his customers or other third parties, for the total amount due to us (including VAT). In case the Buyer fails to meet its payment obligations towards us, upon our first request Buyer shall fully cooperate with us with respect to the execution of our right in connection with such pledge.

9.5. Notwithstanding the above we shall at all times be entitled by way of notification of the Buyer to waive its retained interest in the Goods from the moment that the Goods are identified as destined for the Buyer, or at

any moment thereafter. Moreover, the Buyer is obliged to take out such insurance as is commercially available to cover the liability of the owner of the Goods or any party interested therein.

## **10. Limitation of Liability**

10.1. No warranty is given, and no representation is made by us, whether express or implied, as to the usefulness, sufficiency, merchantability or fitness for any purpose whatsoever of the Goods delivered, unless explicitly agreed otherwise.

10.2. Under no circumstances shall we be liable to Buyer or third parties for any kind of special, incidental, indirect, consequential or punitive damage or loss, environmental damage, cost or expense, including without limitation damage based upon loss of sales or profits, loss of reputation, loss of goodwill, work stoppage, production failure, whether arising out of or in connection with the Contract, the sale of any Goods by us or the use of the Goods and whether or not such damages are based on breach of warranty, any other breach of contract, tort (including negligence) or otherwise. The liability of us for any and all claims shall under no circumstances exceed the invoice value for the Goods that are the subject of the claim.

10.3. Buyer shall indemnify and hold us harmless from and against any claims by third parties with respect to any damage, losses, costs including attorney's fees, expenses, and liabilities suffered by such third parties arising out of or in connection with the Goods and/or use of the Goods.

10.4. We shall exercise due diligence when engaging goods and/or services of third parties. We shall not be liable however for any defaults or non-compliance on the part of such third parties.

10.5. Buyer's claim for damages must be brought by Buyer within thirty (30) days of the date of the event giving rise to any such claim, and any lawsuit relating to any such claim must be filed within one (1) year of the date of such event. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

10.6. Buyer shall take out and maintain in force all insurance policies necessary to cover its liability arising out or in connection with the Contract. At the first request of us Buyer will provide the insurance certificates evidencing Buyer's coverage and shall keep us informed of any changes.

## **11. Set off**

We shall at all times have the right to deduct and/or set off any amounts owing from us and/or any company of the CellMark Group to Buyer, irrespective of the nature of such claim against any amount owing from Buyer to us or any company of the CellMark Group.

## **12. Confidentiality**

12.1. Buyer 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 provided by or on behalf of us to Buyer in connection with the (preparation of) the Contract. All such information may be used by Buyer only for the purpose of the Contract. And upon our request Buyer shall promptly return all such information to us and Buyer shall not retain a copy thereof.

12.2. Buyer may only disclose such confidential information to third parties provided we have given our prior written consent and provided Buyer shall ensure that such third parties shall undertake in writing to be bound by the same confidentiality undertaking.

### **13. Use of information**

Buyer must utilize and solely rely on its own expertise, know-how and judgment in relation to the Goods and Buyer's use thereof and Buyer's application of any information obtained from the part of us for the purposes intended by Buyer. Details and information provided with regards to the suitability and use of the Goods shall not be binding and we do not assume any liability in connection thereto.

### **14. Compliance with Laws and Standards**

Buyer acknowledges that the handling, use, processing, transportation, storage, disposal and sale of the Goods may be subject to requirements or limitations under any law, regulation, code or standard. Buyer should, for its own safeguard, consult the producers Material Safety Data Sheet, relevant codes of practice with regards to adequate hygiene, safety and environmental standards and enforcement thereof, with respect to handling, processing and storage and disposal of the Goods. Buyer shall be exclusively responsible for or ensuring compliance with all laws, regulations, codes and standards, including without limitation all health, safety and environmental laws and regulations, with respect to Buyer's intended handling, use, processing, transportation, storage, disposal and sale of the Goods and Buyer shall assume all liability resulting therefrom.

### **15. Force Majeure**

15.1. Force Majeure shall mean any circumstances or occurrences beyond our control, whether or not foreseeable at the time of the Contract including without limitation acts of God, legislative measures, acts, orders or regulations of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, wars, riot, sabotage, accident, epidemic, strike, lock out, slow down, labour disturbances, industrial dispute, delay on the part of any subcontractor or supplier, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, customs duties and tariffs imposed by a country.

15.2. If we shall be prevented or hindered, directly or indirectly by an event of Force Majeure from performing all or any of our obligations under the Contract, the performance of such obligations by us will be suspended for the period such event of Force Majeure continues, without us being responsible or liable to Buyer for any damage resulting therefrom.

15.3. If, a Force Majeure event extends (or is expected to extend for a period of 90 (ninety) consecutive days or more after the agreed delivery date both Parties are entitled to terminate by written notice all or any part of the Contract without any liability on the part of us towards Buyer.

### **16. Breach and Termination**

16.1. Without prejudice to our other rights and remedies under the Contract or at law, we shall be entitled, without any intervention of the courts being required and without prior written notification of default, at our option to either terminate the Contract or any part thereof or to suspend any performance by us under the Contract, by written notice to Buyer, in any case liability for us of whatsoever kind arising out of or in connection with such suspension or termination, if

- (a) Buyer is in default of performance of any of its obligations under the Contract; or
- (b) we has reasonable doubts with respect to Buyer's performance of its obligations to us and Buyer fails to provide to us the adequate assurance of Buyer's performance; if Buyer suspends payments of its debts in whole or in part, or Buyer enters into any composition or arrangement with its creditors or any assignment for the benefit of its creditors, or any proceedings in insolvency, bankruptcy, liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, or if a trustee or receiver or administrator is appointed for all or substantial parts of the assets of Buyer.

16.2. In any such event of (a) and/or (b) set out in Section 16.1 the Buyer shall be liable towards us and herewith undertakes to indemnify us and any company of the CellMark Group for any and all damages, costs and/or expenses suffered or otherwise incurred on us and/or any company of the CellMark Group in connection with Buyer's failure to perform under the Contract.

16.3. In any such event of (a) and/or (b) set out in Section 16.1 all outstanding claims of us and any company of the CellMark Group shall become due and payable instantly and for the full amount and we shall be entitled to demand re-delivery and take repossession of any delivered Goods for which purpose Buyer shall allow us or our nominated representative to enter upon all or any of the premises where the Goods are or may be located. And Buyer shall undertake all necessary measures in connection thereto.

### **17. Export Certificate**

The Buyer must submit to us if applicable the export certificate, as required by tax law, if a Buyer, who is based outside of Sweden, or his authorized agent picks up Goods and transports or ships these to the foreign territory. In any and all cases, the Buyer will be fully responsible and liable towards us for all VAT or any other (export) duty imposed by the proper authorities or additional charges for which we might be held responsible with regards to the delivery to the Buyer.

### **18. Assignment and Subcontracting**

Neither party may assign or subcontract the Contract or any rights or obligations pursuant thereto, without the other party's prior written consent, which consent will not be unreasonably withheld, and no assignment shall be effective until the assignee agrees in writing with the other party to be bound by and to perform the obligations of the agreements assigned to it. We may however, at any time without Buyer's prior written consent assign or subcontract such rights and obligations, wholly or partly, to any company of the CellMark Group or to a third party acquiring all or a substantial part of our assets or business relating to the Goods.

### **19. Fraud Awareness**

Seller is not responsible for any losses suffered due to any third party fraud carried out through electronic communication means.

If Buyer notices any discrepancy in Seller's account details or any suspicious or unusual instructions, all details should be checked and agreed directly with Seller's member of the Accounting through fax or phone only.

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

Buyer warrants, represents and undertakes to Seller 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.

### **21. 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 Buyer's obligations shall constitute a waiver of any prior or subsequent breach.

## 22. Data protection

22.1. 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.

22.2. We will electronically process personal data pertaining to the contact person of the Buyer, such as contact information, in order to deliver the Goods to the Buyer and to administer the business relationship with the Buyer. 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.

22.3. We may use the Buyer's contact data in order to send newsletters, to conduct surveys, to advertise Goods and for event invitations. We are entitled to submit data of the Buyer 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 BUYER 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 22.

## 23. Governing Law and Disputes

23.1. 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.

23.2. 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 Raw Materials AB/ CellMark Metals

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