

Conditions of Sale**MANGANESE METAL COMPANY (Pty) Ltd****GENERAL CONDITIONS OF SALE****1. DEFINITIONS**

1.1. For the purposes of these conditions, unless the context indicates otherwise, the following words will have the following meanings:

- 1.1.1. "agreement" will mean the agreement to which these conditions are annexed, and any appendices thereto, including these conditions;
- 1.1.2. "MMC" will mean Manganese Metal Company (Proprietary) Limited of Heynecke Street, Nelspruit, Mpumalanga, Republic of South Africa;
- 1.1.3. "material" will mean the product/s forming the subject matter of the agreement;
- 1.1.4. "parties" will mean MMC and the purchaser.

1.2. Any reference to the singular includes the plural and vice versa.

1.3. Any reference to a natural person includes a legal person and vice versa.

1.4. Any reference to a gender includes the other genders.

1.5. The clause headings in these conditions have been inserted for convenience only and will not be taken into account in their interpretation.

1.6. Words and expressions defined in any sub-clause will, for purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

1.7. Save where specifically provided to the contrary, all trade terms used in the agreement will be governed and interpreted in accordance with the provisions of the Official Rules for the Interpretation of Trade Terms published by the International Chamber of Commerce which came into force on 1 January 2000 ("Incoterms 2000").

2. PASSING OF TITLE AND RISK

Ownership in and to the material will pass to the purchaser when the contract price has been paid to MMC in full. Risk will pass on delivery.

3. LOSS OR DAMAGE

3.1. In the event of a total loss of the material after delivery, the purchaser will pay to MMC an amount equal to the value of the entire shipment based where applicable on MMC's official certificate of weight, sampling, analysis and size grading.

3.2. In the event of only partial loss or damage to the material, the amount to be paid by the purchaser in respect of the material lost or damaged will be the difference between the bill of lading weight and the discharge weight of the remaining material and will be based on the analysis and moisture content determined for the remaining material at the port of discharge. If, however, the remaining material is less than 10% (ten percent) of the total shipment, the provisions of total loss as above will apply.

3.3. In the event of loss or damage, whether partial or total, to a shipment of the material following delivery, the tonnage lost or damaged will be deemed to have been delivered to the purchaser and MMC will not be obliged to replace the lost or damaged quantity.

3.4. The purchaser will be liable to pay for the material that has been lost or damaged at the time it would ordinarily be obliged to effect payment in terms of the agreement, and MMC will not be obliged to await the settlement of any insurance claim.

4. PAYMENT

4.1. Any balance outstanding which has not been settled by the purchaser by due date will be subject to interest charges at the London Interbank US Dollar borrowing rate (48 hours call rate) ruling at the time plus 2% (two per cent), calculated from the due date for payment to the date of receipt by the seller.

4.2. All bank charges, including costs of telegraphic payment and foreign bill stamps incurred, will be for the account of the purchaser, unless otherwise agreed in writing by the parties.

5. CIRCUMSTANCES BEYOND THE CONTROL OF A PARTY

5.1. If either party should be prevented or restricted directly or indirectly by circumstances beyond its control (hereinafter referred to as "force majeure") from performing all or any of its obligations under the agreement other than the obligation to make monetary payments, the party so affected (the "affected party") will be relieved of performance of its obligations hereunder during the period that such circumstances and the consequences thereof will continue, but only to the extent so prevented, and will not be liable for any delay or failure in the performance of any of its obligations hereunder or loss or damage whether general, special, or consequential which the other party (the "unaffected party") may suffer due to or resulting from such delay or failure, provided always that notice will be given by the affected party to the unaffected party at the earliest possible opportunity by fax, telephone or cablegram of the occurrence of the event constituting force majeure, together with details thereof and an estimate of the period of time for which it will endure.

5.2. The term "force majeure" will include strike, labour dispute, lock-out, fire, explosion, flood, riot, war, accident, act of God, embargo, legislation, regulation or directive having the force of law, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbance, compliance with any order or instruction of any port, transportation, local or other authority, non-availability or rationing of electricity, coal, fuel or raw material, failure of the seller's supplier to supply, breakdown or malfunction of plant or, without any limitation, any other cause beyond the control of the affected party, whether similar or dissimilar to the causes enumerated

above.

5.3. The affected party will use its best endeavours to terminate the circumstances giving rise to the force majeure, and upon termination of the event giving rise thereto, will forthwith give notice thereof by fax, telephone or cablegram to the unaffected party.

5.4. Notwithstanding any other obligations of this clause 5, the purchaser will be obliged to accept delivery of and pay for any material which has been booked aboard a vessel prior to MMC being advised by the purchaser of any force majeure.

5.5. The requirement that any force majeure will be remedied with all possible diligence will not require the settlement of strikes, lockouts or other labour difficulties by the other party concerned on terms contrary to its reasonable wishes. The manner in which all such labour difficulties will be handled will be entirely within the discretion of the party concerned.

5.6. The onus of proving force majeure is on the party relying thereon.

6. DEFAULT

6.1. In the event of either party ("the defaulting party") committing a breach of any of the provisions of the agreement, the party not in breach ("the aggrieved party") will be entitled to give the defaulting party notice in writing to remedy the breach.

6.2. If the defaulting party fails to comply with that notice within 21 (twenty one) days of the date of posting thereof, the aggrieved party will be entitled to cancel the agreement or to claim specific performance, in either event without prejudice to the aggrieved party's rights to claim damages.

6.3. If the purchaser fails to pay the amount due by it by due date, or applies for suspension of payments or is put into liquidation, trusteeship, receivership or the like, MMC will be entitled to recover material which has been delivered but has not been paid for, and to withhold delivery of further material.

7. GENERAL

7.1. The material supplied by the seller in the condition in which it is sold is considered not to constitute a hazard to health or safety, provided that it is handled and used in accordance with normally accepted safe working practices applicable to the material. The purchaser should, for its own safeguard, consult the producer's Material Safety Data Sheet, relevant codes of practice and factory inspectorates with regard to adequate hygiene, safety and environmental standards and enforcement thereof, with respect to handling and processing of the material, its products and wastes of any sort.

7.2. The purchaser accepts the inherent risks associated with the material as set out in clause 7.1 and will accordingly have no claim of any kind against the seller directly or indirectly arising from death, illness or injury of any person or damage to any property as a result of direct or indirect exposure to the material unless the damage is the result of a breach of contract by or gross negligence or wilful intent on the part of MMC.

7.3. No warranties are given other than that the material will conform to the specifications stated in the agreement within any tolerance stated and in no event will MMC be liable for special, direct, indirect or consequential damages incurred by the purchaser in respect of the material.

7.4. Notwithstanding anything to the contrary contained herein, MMC will in no event be liable for any special, direct, indirect or consequential damages, including, but not limited to, loss of profits, loss of production, loss of opportunity or contracts or any other consequential or special damages, arising out of or in connection with the agreement from whatsoever cause arising.

7.5. The purchaser will notify MMC in writing of any failure of the material to comply with specifications within seven (7) days of the date on which such failure could reasonably have been expected to come to its notice. Thereafter MMC will at its option:

7.5.1. replace the material with conforming material at MMC's expense; or

7.5.2. reimburse to the purchaser the price paid for the non-conforming material and thereby terminate the agreement with regard to that material.

7.6. Notwithstanding the provisions of clause 7.5, if the parties agree that the purchaser will retain non-conforming material, the purchaser will be entitled to a rebate of the purchase price to be agreed upon by the parties

7.7. Unless otherwise agreed, no action for lack of conformity of the material or any other matter arising from this contract can be taken by the purchaser after 6 (six) months from the date of delivery of the material.

8. VARIATION

No addition to, variation or deletion of any clause of the agreement (including this clause 8), consensual cancellation or novation of the agreement and no waiver of any right arising from the agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by duly authorised representatives of both parties.

9. WHOLE AGREEMENT

9.1. The agreement constitutes the entire contract between the parties as to the subject-matter hereof and no agreements, representations or warranties between the parties other than those set out herein are binding on the parties.

9.2. In the event of any conflict between these conditions and the provisions of the remainder of the agreement, the latter will prevail.

9.3. If the provisions of the agreement should be inconsistent with the provisions of any order, delivery instruction or any other document relevant to the agreement issued by the purchaser at any time, the provisions of the agreement will prevail.

9.4. If any term or provision of the agreement shall be found to be void, illegal or unenforceable then, notwithstanding, the remaining terms and provisions hereof shall be and remain binding on the parties hereto.

10. ASSIGNMENT

The purchaser will not be entitled to assign any of its rights or obligations hereunder without MMC's prior written consent, which will not be unreasonably withheld.

11. NOTICES

11.1. The parties choose their respective addresses set out in the agreement for all purposes arising out of or in connection with the agreement, at which addresses all processes and notices arising out of or in connection with the agreement, its breach or termination may validly be served upon or delivered to the parties.

11.2. Any notice given in terms of the agreement will be in writing and will:

11.2.1. if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

11.2.2. if posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;

11.2.3. if given by telegram, be deemed to have been received by the addressee 1 (one) day after despatch;

11.2.4. if transmitted by fax, be deemed to have been received by the addressee 1 (one) day after despatch, provided that it is confirmed by one of the means referred to in clauses 11.2.1 to 11.2.3.

12. DISPUTE RESOLUTION

12.1. Sales to purchasers located within the Republic of South Africa

Any dispute arising from or in connection with the agreement will be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.

12.2. Sales to purchasers located outside the Republic of South Africa

The parties agree to submit any dispute or difference between them arising out of the agreement to conciliation and arbitration as provided by the UNCITRAL Arbitration Rules in respect of which the Arbitration Foundation of Southern Africa will act as the appointing authority.

12.3. The place of arbitration will be Johannesburg and the language will be English.

12.4. Pending the obtaining of any arbitral award on any question or difference arising between them, neither party will be relieved or excused from the performance of all the obligations by which it is bound hereunder.

13. GOVERNING LAW

The agreement will be interpreted and implemented in all respects in accordance with the laws of the Republic of South Africa, without reference to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

11/28/2000