

MANGANESE METAL COMPANY (PTY) LTD

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 these conditions, the purchaser's order, the order confirmation/contract confirmation by Manganese Metal Company (Pty) Ltd and any appendices thereto;
 - 1.1.2. "MMC" will mean Manganese Metal Company (Proprietary) Limited of 15 Heyneke Street, Mbombela, Mpumalanga Province, Republic of South Africa;
 - 1.1.3. "material" will mean the product forming the subject matter of the agreement, namely Electrolytic Manganese Metal or related products;
 - 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 person includes any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality.
- 1.4. A reference to any gender, whether masculine, feminine or neuter, includes the other two.
- 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 the 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 use 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 ("Incoterms 2010").

2. PASSING OF TITLE AND RISK

- 2.1. Ownership in and to the material will pass to the purchaser when the contract price has been paid to MMC in full.
- 2.2. The risk and benefit will pass on delivery.

3. LOSS OR DAMAGE

- 3.1. In the event of partial or total loss or damaging of material after delivery, the purchaser will be liable to pay to MMC the full purchase price as agreed upon in terms of the agreement and MMC will not be obliged to await the settlement of any insurance claim by the purchaser for the loss or damage.



- 3.2. In the event of partial loss or damage to the material prior to delivery, to the extent that MMC deliver less material than what was agreed upon, then the amount to be paid by the purchaser in respect of the material will be the discharge weight of the material and will be based on the analysis and moisture content determined for the material at the port of discharge, multiplied by the agreed price per metric tonne.

4. PAYMENT

- 4.1. Any amount or balance outstanding which has not been settled by the purchaser by due date will be subject to interest charges at the US Dollar LIBOR rate (overnight) applicable at the time plus 2% (two percent) calculated from the due date for payment to the date of final payment.
- 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, e-mail or registered mail 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, local or other authority, non-availability or rationing of electricity, coal, fuel or raw material, failure of the seller's suppliers to supply, breakdown or malfunctioning 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, e-mail or registered mail 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, lock-outs or other labour difficulties by the other party concerned on terms which are detrimental and 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 so 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 give the defaulting party notice in writing, by either e-mail or fax, to remedy the breach.
- 6.2. If the defaulting party fails to comply with the notice within 21 (twenty one) days of the date of the notice, 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 right 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 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.
- 6.4. In the event of default by the purchaser, MMC will be entitled to any remedy available to it in terms of the South African Law, as well as *mora* interest.

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 MMC's Material Safety Data Sheet (the aforementioned data sheet is to be found at www.mmc.co.za) and relevant codes of practice and factory inspectorates with regard to; adequate hygiene, safety, environmental standards and enforcement thereof, with respect to handling and processing of the material, its products and waste 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.
- 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.
 - 7.3.1. MMC does not warrant that the material is reasonably suitable for the specific purpose the purchaser has indicated.
 - 7.3.2. The material is sold *voetstoots* (as it stands). MMC will not be responsible for any defects, latent or patent, if MMC pointed out the defects to the purchaser or if the defects were known to the purchaser at the time of the sale. MMC acknowledges that it has made the purchaser aware of the quality of the material and the purchaser agrees to accept the material as it stands with all defects that were pointed out.
- 7.4. Notwithstanding anything to the contrary contained herein, MMC will in no event be liable for any general, special, direct, indirect or consequential damages, including, but not limited to loss of profit, loss of production, loss of opportunity or contracts or any other consequential or general 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 7 (seven) days from the date on which such failure could reasonably have been expected to come to its knowledge. Thereafter MMC will have an option to;
 - 7.5.1. replace the material with conforming material at MMC's expense; or



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

7.5.3. offer a rebate to the purchaser if he elects to retain non-conforming material.

7.6. 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.

7.7. Each party warrants to the other party that he/she has power, authority and legal right to sign and perform the agreement and that the agreement has been duly authorised by all necessary actions of its liquidators, directors, members or trustees (as the case may be) and constitutes valid and binding obligations on it in accordance with the terms of this agreement.

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 agreement 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. 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.

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



11.2.3.if transmitted by fax or sent by e-mail, be deemed to have been received by the addressee 1 (one) day after dispatch.

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 South Africa by an arbitrator or arbitrators appointed by the parties, alternatively will be finally resolved by institution of an action or application in an appropriate court with jurisdiction.

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 South Africa will act as the appointing authority, alternatively any disputes may be resolved by institution of an action or application in an appropriate court with jurisdiction within the Republic of South Africa.

12.3. The arbitration, contemplated by clause 12.2, will be held in Johannesburg, Gauteng Province, Republic of South Africa and the language will be English.

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

12.5. Foreign purchasers consent to the jurisdiction of the North Gauteng High Court, Pretoria, Gauteng Province, Republic of South Africa, alternatively any other High Court within the boundaries of the Republic of South Africa.

13. GOVERNING LAW

The agreement will be interpreted and implemented in all respects in accordance with the laws of the Republic of South Africa.