

## **1. GENERAL**

- 1.1 The terms and conditions (“ the Terms”) contained herein shall apply to all and any sale contract with any party (“ the Buyer”), unless a modification is expressly stipulated and accepted in writing by Heraeus Materials Malaysia Sdn Bhd (“ the Seller”).
- 1.2 If the Terms of this quotation or order acknowledgement differ from terms of the Buyer’s purchase order or inquiry, this quote or acknowledgement shall be considered as a “COUNTEROFFER” subject to acceptance by the Buyer and shall not be an acceptance of any Buyer’s terms which conflict herewith. The Terms contained herein are the complete and exclusive statement of the terms of acknowledgement between the parties. The Buyer’s acceptance of the goods or services sold hereunder will manifest the Buyer’s assent to the Terms hereof. Any reference to the Buyer’s purchase order or inquiry noted herein shall not affect or limit the applicability of these Terms. No addition to or modification of these Terms will be effective unless made in writing and signed by an authorized representative of the Seller.
- 1.3 Information contained within the commercial documents issued by the Seller may be modified by the Seller at any time and without prior notice in order to take into account technical developments or economic conditions.

## **2. ORDERS AND SPECIFICATIONS**

- 2.1 All orders by the Buyer to purchase based on the Seller’s quotation and specifications are subject to the final acceptance by the Seller and all terms herein are incorporated.
- 2.2 When no particular technical specifications are given by the Buyer and the order is accepted by the Seller, the specifications of the products sold shall be those set out in the Seller’s quotation.
- 2.3 If the products are to be manufactured or any process is to be applied to the products by the Seller in accordance with the Buyer’s specifications, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller’s use of the Buyer’s specifications.
- 2.4 Any claim by the Buyer regarding the conformity of products supplied, according to the Buyer’s specifications shall, in order to be admitted and to allow the application of the following provisions, be carried out in accordance with the instructions given by the Seller contained in documents accompanying the products supplied or within 30 days after the delivery date (whichever is the earlier).
- 2.5 If the Buyer estimates, after testing the products delivered, that a batch of products delivered is not totally or partially in conformity with technical specifications as defined in Clause 2.2, he shall inform the Seller by facsimile not later than 30 days after the delivery date. After such 30 days period is expired, all products shall be deemed accepted; except with the agreement of

the Seller, the Buyer shall not return the whole or partial batch of non-accepted products.

- 2.6 Notwithstanding any past dealings of any nature whatsoever between the Seller and the Buyer, the Seller does not at any time bind itself to deliver products of any particular specification unless the Buyer has at the time of placing an order, stated precisely what specifications are required of the products, and the Seller has subsequently confirmed in writing that it will supply products with such specifications. In the absence of such confirmation, the Seller binds itself only to deliver products in accordance with the general description under which they were agreed to be sold.
- 2.7 Notwithstanding any past dealings of any nature whatsoever between the Seller and the Buyer, the Seller reserves the right to alter, change, modify or in any way vary the specifications of any products at any time, so as to conform materially with the description of the products set out in an order, without giving the Buyer any prior notice of the same.
- 2.8 No warranty, representation or conditional description, as to the state, quality, suitability or fitness of any products is given by the Seller nor is any warranty, representation or conditional description given or be implied by anything said or written in any negotiations between the Seller and the Buyer or their respective representatives, whether from any past dealings between the Seller and the Buyer or otherwise, and any statutory or other warranty, condition, representation or description express or implied as to the state, quality, suitability or fitness of the products is hereby excluded. The Seller binds itself only to deliver products in accordance with the general description under which they were agreed to be sold.
- 2.9 The Seller may from time to time make changes in the specifications of the products, which are required to comply with any applicable safety or statutory requirements, or so long as such changes do not materially affect the quality or fitness for purpose of the products.

### **3. PRICE**

- 3.1 The price of the products shall be the Seller's quoted price, which shall be binding on the Buyer once the Buyer has accepted in writing the Seller's quotation. The price is exclusive of any applicable prevailing Goods and Services Tax, which the Buyer shall be additionally liable to pay to the Seller. All prices quoted are valid for 30 days from the Seller's date of quotation, or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer. Unless otherwise specified in the quotation, quotations for components containing precious metal material are valid on the date of quotation only (end of business day).
- 3.2 Except as otherwise stated under the terms of the Seller's quotation, and unless agreed otherwise in writing between the Seller and the Buyer, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the products otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport and insurance. The cost of packaging is included unless otherwise stated; all directions outside of Malaysia concerning packaging, weight customs shall be abided by the Seller provided that the Buyer had given precise information at the time it had accepted the Seller's quotation.

- 3.3 Prices are based on current economic and financial conditions at the date of quotation: they are liable at any time to be adjusted to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery duties, quantities or specifications for the products which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

#### **4. CONDITIONS OF PAYMENT**

- 4.1 Payment shall be made to the Seller for the delivered products in accordance with the conditions laid down by the Seller's quotation or at the time of the acceptance of order. Invoicing shall be made with delivery of products ordered. The time of payment of the price shall be the essence of the order. Receipts for payment will be issued only upon request.
- 4.2 If the Buyer contends that any invoice is incorrect, the Buyer shall notify the Seller's accounting department, in writing, within 14 days after receipt of such invoice and specify the reason for such contention. If the Buyer does not notify the Seller, the Buyer waives the right to further dispute such invoice and the Buyer agrees to the accuracy of such invoice.
- 4.3 Failure to pay an invoice in the stipulated period of time shall permit the Seller, without prejudice to any other rights it may have, (i) to suspend any delivery, whatever the conditions of the relevant order, until full payment, (ii) to cancel any discount which may have been granted to the Buyer on the said invoice, (iii) to refuse to make further deliveries, (iv) to declare due and payable immediately all unpaid amounts for goods or services previously provided to the Buyer and/or in process. In addition, the Seller may assess the Buyer a 1.5 % per month service charge on any past due balances for the full duration of the payment delay.
- 4.4 The Buyer shall submit, in writing, any request for change to any order accepted by the Seller. Changes in the services to be performed hereunder may be made only by the authority of the Buyer's written instructions and written acceptance of the Seller. Any changes in scope, drawings, materials, or design of the parts, units, tools, fixtures, or any other elements, which effect costs, will require re-pricing. If work had been started, the Buyer shall reimburse the Seller for work already performed if the units already produced are not acceptable to the Buyer. The Seller similarly reserves the right to re-price if changes involve an increase or decrease in the quantity due at the time of the required performance for the order. Once the Buyer approves samples, the Buyer must pay for services performed or goods produced thereafter, or changes, even if approved samples differ from the Buyer's drawings or specifications.

## **5. PACKAGING AND CONDITIONS OF ACCEPTANCE OF DELIVERIES BY THE BUYER**

- 5.1 Packaging is in accordance with the Seller's standard practice unless otherwise stated in writing.
- 5.2 Delivery of the products shall be made by the Buyer collecting the products at the Seller's premises at any time after the Seller has notified the Buyer that the products are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller turning over to the carrier for shipment.
- 5.3 Any times quoted for delivery by the Seller are estimates only and take effect as from the date of the acknowledgement of order. Time for delivery shall not be of the essence of the order unless previously agreed by the Seller in writing. The time for delivery shall be respected when the order has been written with all details, all necessary authorizations and permits have been given and the Seller has received in due time all necessary documents, payments and guarantees or warranties which have to be delivered by the Buyer. The products may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. Unless an express stipulation to the contrary is accepted by the Seller, the Seller shall be under no liability for failure to make deliveries where such failures to deliver may be due to fires, strikes, terrorist actions, terroristic threats, public health emergencies, accidents, acts of God, labor or transportation difficulties, inability to obtain delivery of materials, action of a state, federal or local government, or other causes beyond Seller's reasonable control. The Buyer agrees to accept any delayed delivery where such delay may be due to such events beyond the Seller's control. The Seller also reserves the right to deliver in installments, and delay in delivery or other default of any installments shall not relieve the Buyer of its obligation to accept and pay for remaining deliveries.
- 5.4 Claims for errors in quantity, weight or number must be notified to the Seller in writing within 7 days after receipt of the materials and/or parts, otherwise the Seller may deny such claims.

## **6. TRANSPORT – INSURANCE**

- 6.1 Carriage of the products shall be at the Buyer's own risk. It is for the latter to check them on arrival and, if necessary, to notify any damage to the carriers within 2 days of receipt.
- 6.2 On receipt of special instructions from the Buyer, shipments may be insured by the Seller, who will then correspondingly invoice the Buyer for the additional insurance costs.

## **7. RISKS**

- 7.1 Risk of damage to or loss of the products shall pass to the Buyer:
  - a in the case of products to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the products are available for collection; or

b in the case of products to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the products, the time when the Seller has tendered delivery of the products.

7.2 However if a given price has been agreed upon, including any effective amendment or modification, stating a different risk transfer status at the date of signature of contract, such derogatory rules shall apply.

## **8. RESERVATION OF TITLE**

8.1 Property in the products shall remain in the Seller until it has received full payment for such products, notwithstanding delivery and the passing of risk to the Buyer.

8.2 If the Buyer fails to make any payment on the due date, or any one due date (in the case of payment by way of installments), then without prejudice to any of the Seller's other rights, the Seller may:

a take delivery of the products delivered;

b suspend or cancel deliveries of any other products due to the Buyer; and/or

c appropriate any payment made by the Buyer to such products (or products supplied under any other contract with the Buyer),

as the Seller may in its sole discretion think fit.

8.3 Until such time as the property in the products passes from the Seller, the Buyer shall hold the products as the Seller's fiduciary agent and bailee, and shall keep the products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

8.4 Until such time as the property in the products passes from the Seller, the Buyer may not sell or use the products in the ordinary course of the Buyer's business. If in breach of this Clause, the Buyer sells or uses the products, the entire proceeds of sales or otherwise of the products shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

8.5 Until such time as the property in the products passes from the Seller (and provided the products have not been resold), the Buyer shall upon request deliver up such of the products as have not ceased to be in existence. If the Buyer fails to do so, the Seller may enter upon any premises owned, occupied or contracted by the Buyer where the products are situated and repossess the products.

8.6 Until full payment for the products is made by the Buyer to the Seller, the Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the products which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

## 9. WARRANTY

- 9.1 The Seller guarantees that his products have, for 6 months from the date of the delivery, the characteristics as defined in Clause 2.2, provided that the Buyer notifies the Seller in writing of any defects within 20 days of the end of the warranty period. This is the Seller's sole warranty. The Seller's warranty shall be limited to the replacement or repair of the products accepted as being defective.
- 9.2 This warranty will not apply if the goods have been damaged, misapplied or misused. The Buyer acknowledges that it alone has determined that the goods or services purchased hereunder will suitably meet the requirements of their intended use. The Buyer has the sole obligation and responsibility to undertake quality control testing of purchased goods in accordance with applicable law. The Seller makes no representation or warranty regarding the testing of the goods purchased and/or the Buyer's product or the Buyer's published specifications or descriptions. All such testing shall be at the Buyer's sole risk. Every warranty claim from any cause shall be deemed waived by the Buyer unless made in writing within 30 days of the receipt by the Buyer of the goods or services to which such claim relates. No legal proceeding shall be brought for any breach of these Terms more than 1 year after the cause of action therefore. The Seller shall have no obligation for any nonconforming Product caused by misuse, mishandling, neglect, accident or abuse by the Buyer. The Seller expressly disclaims all other warranties, express or implied, including any implied warranty of merchantability and fitness for a particular purpose. The Seller will not be liable for any direct, indirect, special, incidental, consequential or other damages of any type arising out of the goods or services purchased by the buyer, or the use thereof. The Buyer shall indemnify, protect, defend and hold the Seller, its parent corporation, and their respective successors and assigns and the shareholders, directors, officers, employees and agents of each, harmless from and against any and all costs, claims, losses, damages, liabilities and expenses (including reasonable attorney fees) howsoever incurred arising out of or resulting from the testing, use, sale or distribution of the goods or the Buyer's product in any manner unless it is conclusively shown that such loss resulted from a breach of the Seller's sole express warranty.
- 9.3 In case of the sale of medical components or services provided relating to medical components, the warranty is solely defined by this paragraph. The sole and exclusive warranties given by the Seller with respect to medical components sold or services provided relating to medical components are that it has title to goods sold free and clear from any lien or encumbrance and that such goods shall conform to the published description and specifications for the goods. The Seller makes no representation or warranty of any kind, and undertakes no independent investigation, regarding the quality of any raw materials or components obtained from the Buyer or third party suppliers which are used. The Seller relies solely on a raw material or components certificate obtained from the Buyer or third party certifying that such raw materials conform to the published specifications. This is the Seller's sole warranty.
- 9.4 This warranty will not apply if the goods have been damaged, misapplied or misused. The Buyer acknowledges that it alone has determined that the goods or services purchased hereunder will suitably meet the requirements of

their intended use. The Buyer has the sole obligation and responsibility to undertake quality control testing of purchased goods in accordance with applicable law. The Seller makes no representation or warranty regarding the testing of the goods purchased and/or the Buyer's product or the Buyer's published specifications or descriptions. All such testing shall be at the Buyer's sole risk. Every warranty claim from any cause shall be deemed waived by the Buyer unless made in writing within 30 days of the receipt by the Buyer of the goods or services to which such claim relates. No legal proceeding shall be brought for any breach of these Terms more than 1 year after the cause of action therefore. The Seller shall have no obligation for any nonconforming product caused by misuse, mishandling, neglect, accident or abuse by the Buyer. The Seller expressly disclaims all other warranties, express or implied, including any implied warranty of merchantability and fitness for a particular purpose. The Seller will not be liable for any direct, indirect, special, incidental, consequential or other damages of any type arising out of the goods or services purchased by the buyer, or the use thereof. The Buyer shall indemnify, protect, defend and hold the Seller, its parent corporation, and their respective successors and assigns and the shareholders, directors, officers, employees and agents of each, harmless from and against any and all costs, claims, losses, damages, liabilities and expenses (including reasonable attorney fees) howsoever incurred arising out of or resulting from the testing, use, sale or distribution of the goods or the Buyer's product in any manner unless it is conclusively shown that such loss resulted from a breach of the Seller's sole express warranty.

#### **10. RETURNED GOODS**

No goods, product, or parts may be returned by the Buyer to the Seller without first obtaining the Seller's permission which will not be unreasonably withheld and with written consent of the Seller's Returned Material Authorization ("RMA"). Whether an RMA is authorized, or not, the Buyer holds the Seller harmless for any loss, suit, claim, costs, including without limitation attorneys' fees and court costs, or damage arising from the use of materials received from the Seller, pursuant to the requirements of this contract. In the case of the Buyer supplied materials, the Seller accepts responsibility only for the value of the work performed pursuant to the contract. If requested, a credit will be issued for the price of product originally invoiced by the Seller when the products or parts are returned and received by the Seller and determined by the Seller to be non-conforming.

#### **11. LIMITATION OF LIABILITY**

Except as expressly provided otherwise herein, the Seller shall not indemnify nor be liable to the Buyer, the Buyer's customers, or to any other person or entity for any claims, losses, expenses or judgments arising out of or resulting in any way from the goods or services supplied hereunder or sale or use or testing of goods purchased or the Buyer's product thereof, where liability is premised upon any theory including, but not limited to, warranty, negligence or strict liability. Except as expressly otherwise provided, the Seller's total, complete and exclusive liability shall be limited as provided herein. THE SELLER SHALL NOT BE LIABLE FOR PRODUCTION LOSSES, LOST PROFITS, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, AND CONSEQUENTIAL OR ANY OTHER DAMAGES UNDER THESE TERMS OR FROM ANY CAUSE WHATSOEVER.

## **12. CUSTOMER OWNED OR PROVIDED PROPERTY**

The Seller will attempt to protect and safeguard the Buyer's owned or provided property in the possession of the Seller, but the Seller does not undertake to cover the loss or damage of any such property by any insurance carried by the Seller. The Seller shall exercise care and will maintain property in its possession during the normal productive life of the property as determined by the Seller, except that its liability to do so shall be limited to a period of one year after completion of the most recent production order and the Seller shall not be liable for the continued retention or availability of any such property after the expiration of such period. The Seller reserves the right to make tool repairs deemed necessary by the Seller and approved by the Buyer, and charge the Buyer for such repairs, and the Seller reserves the right to discontinue use of property when in the Seller's opinion they are worn out or obsolete. The Seller may invoice service charges to the Buyer for: storage of inactive property, returning and shipping inactive property to the Buyer, and disposal of inactive property. The Seller shall have a lien upon the right of possession to Buyer's property for any payments due to the Seller.

## **13. INDUSTRIAL PROPERTY RIGHTS**

- 13.1 Because of the complexity of manufacturing techniques for electronic components and of the industrial property rights pertaining thereto, the Seller does not warrant title in the products nor that the products do not in any way infringe the industrial property rights of any third party.
- 13.2 In case that a third party shall make a claim alleging that the products delivered by the Buyer infringe his industrial property rights, the Seller undertakes at his option and at his charge, to defend the claim or to offer a compromise: if an unfavourable definite judgment is rendered against the mentioned third party, the Seller shall modify the offending products in such a way as to avoid the infringement or if such a solution shall prove impossible for economic and/or technical reasons, the Seller shall accept the return of the Products supplied and shall proceed to reimbursement at the buying price.
- 13.3 The above undertaking shall only apply if the Buyer informs the Seller within 7 days/months from the date such infringement was made known to the Buyer, in writing of any infringement claim concerning the products supplied by the Seller.
- 13.4 The responsibility of the Seller is expressly excluded if the infringement or claimed infringement results from the combination of the products supplied with any other product, in case the infringement or claimed infringement results from the Seller's manufacturing of product's to the Buyer's specifications, or from any modification made other than by the Seller. Furthermore, the Seller shall not be held responsible for any costs or expenses incurred by the Buyer without his authorisation, for damages, direct or indirect which may result from any loss of use, for any reason whatsoever of the products supplied.
- 13.5 The above provisions constitute the entire undertaking of the Seller towards the Buyer in the case of an industrial property rights claim of a third party with regard to products supplied by the Seller.

## **14. FORCE MAJEURE**

- 14.1 Each Party shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, act of God, earthquake, fire, flood, labour disputes, riots civil, commotion war (declared or not), novelty or products or other unanticipated manufacturing problems, governmental requirements, inability to secure materials on a timely basis (except if such inability results from negligence of the responsible party) and transportation difficulties. The obligations and rights of the party so excused shall be extended on a day to day basis for the time equal to the period of such excusable delay.
- 14.2 In order to obtain a suspension under this Clause, the Party delayed shall send written notice of the delay and the reason therefore to the other Party within 7 calendar days from the time the Party delayed knew of the cause of delay in question.
- 14.3 If the Force Majeure in question prevails for a continuous period exceeding 7 days, the parties shall enter into negotiations in good faith with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

## **15. JURISDICTION AND APPLICABLE LAW**

- 15.1 In the case of dispute and in the absence of an amicable settlement, the only competent jurisdiction shall be that of Malaysia whatever conditions of sale and method of payment have been accepted even on the question of guarantees or in the case of multiple defendants.
- 15.2 The applicable law shall be the laws of Malaysia. For the execution and interpretation of the present conditions of sales, the application of the Vienna Convention (1980), pursuant to the Sale of Goods (United Nations Convention) Act whenever applicable is excluded.
- 15.3 Each provision of these Conditions of Sale is distinct and severable from the others so that if any such condition or clause is held to be invalid, void, illegal or unenforceable under any applicable law or by any court of competent jurisdiction, the remaining conditions and provisions shall not be impaired or affected by such invalidity or illegality or unenforceability and shall remain in full force and effect.

## **16. ASSIGNMENT**

- 16.1 The sale contract may not be assigned by the Buyer, whether voluntarily or by operation of law, to a third party without the prior written consent of the Seller.
- 16.2 The sale contract may be assigned by the Seller to a third party.

## **17. TERMINATION**

- 17.1 The Seller reserves the right at any time to terminate the sale contract in whole or in part, without any liability to the Buyer if (i) the Buyer is insolvent, files or has filed against it an application for bankruptcy or winding up, has a

receiver or trustee appointed for it or its assets, or makes a general assignment for the benefit of creditors, or is subject to other similar proceeding, (ii) the Buyer fails to timely pay the purchase price for any outstanding orders, or (iii) the Seller reasonably apprehends that any of the events mentioned in (i) and/or (ii) above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 17.2 If the Buyer terminates or cancels this agreement for any cause other than breach by the Seller, then, at the Seller's options, and in addition to all other remedies available at law or in equity: (i) the Buyer shall accept delivery of and pay the contract price for all goods which are either finished or ready for shipping; and (ii) the Buyer shall reimburse the Seller for (1) all actual costs incurred by the Seller in connection with the uncompleted order as of receipt of notice of cancellation; and (2) all other costs, including but not limited to, general, selling and administrative expenses, cancellation charges incurred by the Seller (if any), and a reasonable profit on the terminated portion of this sales contract.

## **18. NOTICES**

Any notice or other communications required to be served pursuant to these terms and conditions shall be in writing and served (i) by personal delivery, (ii) by postage prepaid registered mail or (iii) by facsimile (with postage prepaid mail confirmation) on the Seller at its registered address or place of business or such other address as the Seller may from time to time notify the Buyer. Notice so sent will be deemed effective when delivered by hand or upon receipt of the confirmation (if notice was sent by way of facsimile).

## **19. SET-OFF**

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Seller may have or allege to have or for any reason whatsoever.

## **20. WAIVER**

Waiver by the Seller of any breach of any of the Terms shall not be construed as a waiver of any other breach, and the failure of the Seller to exercise any right arising from any default of the Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time.

## **21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

Other than the Seller and the Buyer, any other third party has no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) (the "Act") to enforce any of these terms and conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **22. OUTSOURCING**

The Seller reserves the right to outsource part or all of the product or service quoted, and in such event has the Buyer's permission to share the Buyer's information as needed to complete such work.

## **23. ACKNOWLEDGEMENT OF POTENTIALLY HAZARDOUS GOODS SHIPPED**

The Buyer acknowledges that there may be hazards associated with the storage, use and/or disposal of Goods shipped by the Seller. The Buyer agrees that only qualified and trained individuals who have been made aware of these potential hazards will handle the goods.

## **24. ADDITIONAL TERMS FOR PRECIOUS METAL AGREEMENTS**

**Metal Disposition:** the Seller may hold precious metal belonging to the Buyer in a pool account, in not-yet-settled refining lots, of different types, mixes and states of composition, or in other ways at the Seller or in transit, any of which is defined as "Buyer Metal" in this section. The Seller may, at its sole discretion, sell Buyer Metal in whole or in part upon the occurrence of one or more of the following events: (i) failure of the Buyer to pay timely any invoice of the Seller; (ii) any default by the Buyer under any agreement with the Seller; or (iii) the filing of a bankruptcy, insolvency, or similar law of any jurisdiction. In any such event when the Seller opts to sell, the Seller shall sell Buyer Metal at market price (including by sale to the Seller itself) and apply the proceeds after reasonable costs against any amounts due to the Seller by the Buyer for any service or sale previously and/or hereafter made, regardless of whether or not such service or sale has any relationship at all to the Buyer Metal.

**Price:** Metal prices quoted by the Seller are estimates which are subject to change in accordance with metal markets, except where specifically confirmed a fixed price by written agreement. In the event an error or omission is discovered as to the amount or price of precious metal within 45 days of delivery of the goods to the Buyer, the Seller may recompute the purchase price and deliver a revised invoice to the Buyer for payment. Unless specifically stated to the contrary in writing by the Seller, written agreements between the Buyer and the Seller covering the Buyer-supplied metal ("pool account agreements") which are in effect as of the date of the sales contract will govern in the case of a difference in terms between the sales contract and the pool account agreement. The Buyer shall not hold and retain title to the precious metal received into the Buyer's pool account or to an equivalent amount of the like metals substituted therefore. Such substitution and the commingling and use of such precious metals by the Seller are hereby authorized. The Seller shall indemnify the Buyer against risk of loss or destruction of metals credited to the Buyer's pool accounts while such metals are in the Seller's possession. The Seller reserves the right to charge a pool account surcharge on various precious metals. The Buyer grants the Seller the right to offset and charge the Buyer's pool account, if any, with past due amounts owed by the Buyer.

**25. CREATED INTELLECTUAL PROPERTY**

The Buyer recognizes and acknowledges that, in the course of manufacturing goods, the Seller may invent, develop or discover methods, techniques, processes, technology, know-how, formulas or software that have application in the Seller's business in general and are not specific to the goods ("Seller's Developments"). The Seller's Developments shall be the sole and exclusive property of the Seller.

**26. NO REVERSE ENGINEERING**

In consideration of receipt of goods, the Buyer covenants and agrees not to reverse engineer any goods purchased, not to assist any other party (including a parent, member, subsidiary, affiliate or otherwise) to do so.