

General Conditions of Sale - valid as from 1 July 2010

1. Application

- 1.1 These general conditions of sale ("Conditions") shall apply to the sale of all goods ("Goods") by Nyrstar Sales & Marketing AG, Tessinerplatz 7, 8002 Zurich Switzerland ("Nyrstar") to you ("Customer").
- 1.2 A variation of these Conditions is valid only if it is in writing and specifically included in Nyrstar's special conditions contained in its order confirmation or sales contract ("Order Confirmation").
- 1.3 These Conditions, the Customer's order ("Order") and any Order Confirmation shall constitute the entire agreement (an "Agreement") between Nyrstar and the Customer in relation to the sale and purchase of any Goods and shall supersede any previous agreement or arrangement between them relating to the subject matter thereof. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Agreement except as expressly stated in that Agreement. The Customer shall not have any remedy in respect of any untrue statement made by Nyrstar upon which the Customer relied in entering into an Agreement (unless such untrue statement was made fraudulently) and the Customer's only remedies shall be for breach of contract as provided for in these Conditions.
- 1.4 If there is any conflict between the provisions of any Order Confirmation and these Conditions or an Order, the provisions of the Order Confirmation shall prevail but only to the extent of such conflict. If there is any conflict between the provisions of these Conditions and an Order, these Conditions shall prevail over the Order but only to the extent of such conflict.
- 1.5 The Agreement shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with the Agreement) contained or referred to in any documentation submitted by the Customer to Nyrstar or in correspondence between the Customer and Nyrstar (regardless of when such documentation is submitted or when such correspondence occurs) or implied by trade custom, practice or course of dealing.

2. Acceptance and Order Confirmation

- 2.1 An Order can be made by the Customer in writing or verbally. An Order for the purchase of a quantity or weight of Goods at a price is an irrevocable offer by the Customer to purchase those Goods from Nyrstar upon and subject to these Conditions.
- 2.2 Subject to clause 2.3, an Order is accepted and a binding Agreement is formed when the Customer receives from Nyrstar an Order Confirmation, or the Order is acknowledged verbally by Nyrstar or delivery occurs, whichever occurs first.
- 2.3 Nyrstar reserves the right to cancel an Order at any time prior to delivery, for the avoidance of doubt if an Order is cancelled there will be no payment due for the Goods under that Order.
- 2.4 When an Order is accepted by an Order Confirmation, the Customer shall sign and return the Order Confirmation within ten (10) days from receipt and a failure by the Customer to do so shall be deemed to constitute Customer's acceptance of the Order Confirmation. For the avoidance of doubt, the Customer's failure to sign and return the Order Confirmation shall not affect the enforceability of any Agreement.

3. Price

- 3.1 The price (including premium) for the Goods per metric tonne to be delivered to the Customer by Nyrstar shall be the price set out in the Agreement.
- 3.2 The price charged for the Goods shall be exclusive of VAT and all other applicable taxes and duties. Where any tax applies to any sale made under an Agreement, Nyrstar may recover from the Customer an additional amount on account of that tax.

4. Payment

- 4.1 Subject to Clause 4.3, payment for Goods supplied under an Agreement shall be made in full (without any set off or any deduction or withholding, except as required by law) and received by Nyrstar on the payment date set out on the invoice or statement of account ("Due Date"). Payment is only received by Nyrstar when it receives cash or when the proceeds of other methods of payment are credited and cleared in Nyrstar's bank account.
- 4.2 Nyrstar reserves the right to suspend the delivery of any Goods to the Customer under an Agreement where any amounts remain overdue until all such amounts (including interest) have been paid in full.
- 4.3 If, in the opinion of Nyrstar, the credit-worthiness of the Customer deteriorates before delivery of the Goods, Nyrstar may require full or partial payment of the price prior to delivery or the provision of security for payment by the Customer in a form acceptable to Nyrstar (including, without limitation, an irrevocable letter of credit).
- 4.4 Nyrstar may at any time, without limiting any other rights or remedies it may have against the Customer, set off any amount owing to it by the Customer (or any of its affiliates) under an Agreement, against any amount payable by Nyrstar to the Customer, under an Agreement or otherwise.
- 4.5 If the Customer fails to pay on the Due Date, interest is payable on the outstanding amount at the rate of LIBOR plus 5% per annum accruing on a daily basis commencing from the Due Date until the date of payment of the overdue amount (including any accrued interest).
- 4.6 Notwithstanding any purported contrary appropriation by the Customer, all payments made by the Customer to Nyrstar shall be apportioned first to Goods that have been resold by the Customer and then to Goods which remain in the possession or under the control of the Customer.

5. Delivery

- 5.1 Goods shall be delivered in accordance with the relevant INCOTERM (INCOTERMS 2000) specified in the Agreement.
- 5.2 Nyrstar shall use all reasonable endeavours to deliver the Goods on the delivery date specified in the Agreement. However, agreed dates of delivery and/or delivery periods are estimates only and the time of delivery is not of the essence and shall not be made so by the service of any notice. Failure to deliver on a delivery date or within an agreed delivery period does not entitle the Customer to any damages, nor to non-fulfilment by it of any of its own obligations arising from an Agreement. For the avoidance of doubt, the Customer is not relieved of any obligation to accept delivery of or pay for Goods as a result of any failure to deliver on a delivery date or within an agreed delivery period.
- 5.3 For the avoidance of doubt, section 32(2) of the Sale of Goods Act 1979 ("Act") will not apply, and Nyrstar is not required to give the Customer the notice specified in section 32(3) of the Act, in respect of any Agreement.

6. Risk and Title

- 6.1 The risk shall pass to Customer in accordance with the relevant INCOTERM (INCOTERMS 2000) specified in the relevant Agreement.
- 6.2 Nyrstar shall retain title to and ownership of the Goods until payment in full is received for:
- (a) the Goods (including any accrued interest); and
  - (b) any other sums owed to Nyrstar by the Customer (or any of its affiliates) on any other account whatsoever.
- 6.3 Until payment is received, the Customer holds the Goods as bailee for Nyrstar and that a fiduciary relationship exists between the Customer and Nyrstar whereby the Customer shall:
- (a) not part with possession of the Goods;
  - (b) if required by Nyrstar, deliver the Goods up to Nyrstar;
  - (c) take proper care of the Goods and take all reasonable steps to prevent any damage to or deterioration of them;
  - (d) keep the Goods free from any charge, lien or other encumbrance and store the Goods in such a way to enable them to be identified as the property of Nyrstar and keep them insured at its own expense; and
  - (e) give Nyrstar such information relating to the Goods as Nyrstar may from time to time require.
- 6.4 Nyrstar reserves an irrevocable right and licence to repossess and resell any Goods to which it has retained title and the Customer hereby grants an irrevocable right and licence to Nyrstar's employees and agents to enter upon all or any premises where the Goods are stored without prior notice for this purpose. This right and licence shall continue to subsist notwithstanding the termination for any reason of an Agreement and is without prejudice to any accrued rights of Nyrstar under an Agreement or otherwise.
- 6.5 Notwithstanding the above, Nyrstar may:
- (a) bring an action against the Customer for the price of the Goods in the event of non-payment by the Customer by the Due Date even though title in the Goods has not passed; and
  - (b) by notice to the Customer at any time after delivery, pass title in the Goods to the Customer with effect from the date of the notice.

7. Inspection and Acceptance

- 7.1 The Customer is obliged to inspect the weight and quantity of the Goods within ten (10) days from the date of delivery and before the Goods undergo any further processing ("Inspection Period"). No claims may be made by the Customer for shortages of Goods unless such claim is notified to Nyrstar in writing within the Inspection Period.
- 7.2 Nyrstar reserves the right to make minor alterations and/or amendments to the actual quantity or weight of Goods delivered under an Agreement as Nyrstar reasonably thinks fit or to round up or down the quantity or weight of Goods delivered to the nearest available individual size of the Goods and the Customer will be obliged to pay for the actual quantity or weight delivered.
- 7.3 Delivery of up to and including +/- 2% (two percent) of the quantity or weight of Goods specified under an Agreement ("Delivery Tolerance") will constitute fulfillment of that Agreement and the Customer will be obliged to pay for the actual quantity or weight delivered.
- 7.4 If the Customer provides valid notice of a claim to Nyrstar in accordance with Clause 7.1 and:
- (a) Nyrstar has delivered more than 2% (two percent) less than the quantity or weight of Goods specified under an Agreement:
    - (i) Nyrstar will endeavour to rectify the shortage to within the Delivery Tolerance as soon as practicable after receiving the notice but will not suffer any liability from or in respect of such rectification; and
    - (ii) the Customer will be obliged to pay for the actual quantity or weight delivered; or
  - (b) Nyrstar has delivered more than 2% (two percent) greater than the quantity or weight of Goods specified under an Agreement:
    - (i) the Customer shall have the option to reject delivery of the quantity or weight in excess of the Delivery Tolerance provided that written notice of rejection is provided to Nyrstar within the Inspection Period; and
    - (ii) if the Customer fails to provide notice in accordance with Clause 7.4(a)(i), the Customer will be obliged to pay for the actual quantity or weight delivered.

8. Specifications

- 8.1 The specification for any Goods shall be as per the technical datasheets for the relevant Goods set out on Nyrstar's website at [www.nyrstar.com/nyrstar/en/products](http://www.nyrstar.com/nyrstar/en/products) at the time the Customer submits its Order. Subject to the following, Nyrstar will use reasonable endeavours to deliver Goods that in all material respects comply with the specifications for the relevant Goods.
- 8.2 Nyrstar is not liable for a defect in the Goods caused after risk passes in accordance with Clause 6.1 including (without limitation) whether caused by fair wear and tear, any conditions of storage (whether on the premises of the Customer, a third party or Nyrstar (or any of its affiliates)) or use by or an act, neglect or default of the Customer or any other party.

- 8.3 No claims may be made by the Customer for defect in the Goods unless such claim is notified to Nyrstar in writing within the Inspection Period.
- 8.4 All representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are expressly excluded to the maximum extent permitted by law.
- 8.5 The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Agreement, are for a particular purpose or to possess special or uniform characteristics, the Customer will clearly specify that purpose in writing of those characteristics in the Agreement.
- 8.6 Subject to the rest of this Clause 8, Nyrstar's liability to the Customer (and any party claiming through the Customer against Nyrstar) for any claim for loss or damages (including legal expenses) made under or in connection with an Agreement whether in contract, tort (including negligence), under statute, in equity or otherwise shall be, where Nyrstar is in breach of an Agreement, strictly limited to the cost of providing replacement Goods as soon as reasonably practicable, the repair of the defective Goods or the reimbursement (or set-off) of the invoice price of the defective Goods, at the option of Nyrstar.
- 8.7 Subject to clause 8.9, Nyrstar is not liable to the Customer in contract, under statute, in equity or in tort (including negligence or otherwise) for any loss or damage to person or property arising from or caused in any way by the Goods.
- 8.8 Nyrstar shall not be liable to Customer, under or in connection with any Agreement, for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of, damage to or corruption of data, or indirect, special or consequential loss or damage of any nature, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or under, or caused by, breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 8.9 Nothing in these Conditions shall exclude or in any way limit Nyrstar's liability to Customer for:
- (a) death or personal injury resulting from negligence;
  - (b) fraud; or
  - (c) any liability to the extent the same may not be excluded or limited as a matter of law.
9. Cancellation
- 9.1 If the Customer purports to cancel or amend any Agreement or refuses to accept delivery of all or any portion of any Goods the subject of an Agreement (where the Customer is not entitled to do so under an Agreement or otherwise), Customer will indemnify Nyrstar on demand for any costs, damage or loss incurred or suffered by Nyrstar directly or indirectly as a consequence thereof (including, without limitation, any foreign exchange losses).
- 9.2 Where Nyrstar has contracted with a London Metal Exchange ("LME") broker or foreign exchange ("FX") broker(s) to hedge all or a portion of the LME price risk or FX risk associated with fixed forward sales of Goods and Nyrstar determines that it is necessary to adjust or settle its LME or FX position(s) as a consequence of the Customer canceling or amending an Agreement or refusing to accept delivery of Goods, the cost, damage or loss incurred or suffered by Nyrstar for which Customer will indemnify Nyrstar in accordance with Clause 9.1 includes (without limitation), any loss, cost or charge (including transactional costs or charges) incurred or suffered by Nyrstar directly or indirectly as a consequence thereof or any such loss, cost or damage that Nyrstar would have incurred or suffered had Nyrstar not been able to offset the relevant LME or FX position(s) against other position(s). Nyrstar's determination of such loss, cost or damage shall be final and binding on the Customer. For the avoidance of doubt, the Customer's maximum liability under this Clause 9 shall be the price of the relevant Goods.
10. Margin Calls on Fixed Forward Sales
- Where Nyrstar has contracted with a LME broker or FX broker(s) to hedge all or a portion of the LME price risk or FX risk associated with fixed forward sales of Goods and Nyrstar receives a margin call due to an adverse price movement on the LME or FX position ("Margin Call"), Nyrstar has the option to margin call the Customer to cover the Margin Call. The Customer will indemnify Nyrstar on demand for the full amount of the Margin Call.
11. Force Majeure
- 11.1 Nyrstar is not liable for failure to perform the Agreement to the extent and for so long as its performance is prevented or delayed because of:
- (a) circumstance's outside of Nyrstar's control (including without limitation, natural disasters, fire, epidemics, political unrest, war, mobilisation, revolution, site or building blockades, strikes, specific work interruptions of work-to-role slowdowns and lockout, transport interruptions, embargos, shortage of raw materials or energy, accidents and interruptions of business operations);
  - (b) failure or temporary or permanent closure of Nyrstar's plant; or
  - (c) failure of a supplier to Nyrstar,
- each a "Force Majeure Event".
- 11.2 If Nyrstar is prevented, hindered or delayed from or in supplying Goods in accordance with an Agreement by a Force Majeure Event, Nyrstar may, at its option (i) suspend deliveries while the Force Majeure Event continues; or (ii) if Nyrstar has insufficient stocks to meet its commitments, apportion available stocks between its customers as it decides.
12. Suspension and Termination
- 12.1 Without prejudice to Clause 2.3, if the Customer:
- (a) breaches an Agreement or fails to fulfill one or more of its obligations on time or adequately, including, failing to pay an amount owing on the Due Date or failing to comply with Clauses 4.3 or 10;
  - (b) is, or is determined by Nyrstar to be, insolvent, or unable to pay its debts as they fall due;
  - (c) makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or passes a resolution for its voluntary winding up or has a petition for its compulsory winding up presented against it; or
  - (d) ceases, or threatens to cease, to carry on business; or
  - (e) is subject to any event or proceeding equivalent or analogous to the events or proceedings in (a) - (d) above in any jurisdiction,
- Nyrstar has the right to suspend or to terminate an Agreement in whole or in part, without prior notice of default, by written notification, at its option and always reserving any rights to which it is entitled, including without limitation with respect to compensation for all costs, damage or loss (including, without limitation, any costs of adjusting or settling any related LME or FX contracts).
- 12.2 If an Agreement is terminated in accordance with Clause 12.1, all claims of Nyrstar in respect of the Customer are immediately and totally due and payable and Nyrstar is relieved of any further obligation to supply Goods to the Customer pursuant to the Agreement.
13. Assignment
- 13.1 Nyrstar may without the consent of the Customer assign, novate, sub-contract, transfer or otherwise dispose of an Agreement and any claims and receivables thereunder, whether in whole or in part and including by way of pledge or otherwise.
- 13.2 Customer will contract as principal and not as agent for any person, and may not without Nyrstar's prior written assign, novate, sub-contract, transfer or otherwise dispose any of its rights or obligations under an Agreement.
14. Intellectual Property
- The Customer must not use or deal with any intellectual property owned or licensed to Nyrstar without Nyrstar's prior written consent.
15. Governing law and Arbitration
- 15.1 Each Agreement and all non-contractual obligations arising from or connected with such Agreements shall be governed by, interpreted and construed in accordance with the laws of England.
- 15.2 Any dispute arising out of or in connection with an Agreement shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Clause. The seat, or legal place of arbitration shall be London. The language to be used in the arbitration shall be English. The parties waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority.
- 15.3 The application of the International Sale of Goods Act shall be excluded.
16. Costs
- The Customer must pay Nyrstar all costs and expenses incurred by Nyrstar in connection with enforcing its rights against the Customer under an Agreement including legal expenses and other costs incurred in recovering monies owed by the Customer to Nyrstar.
17. Variation
- Nyrstar may vary these Conditions on written notice to the Customer.
18. General
- 18.1 Failure by Nyrstar to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter. Nyrstar waives a right under an Agreement only by written notice to the Customer that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 18.2 If any provision or part of a provision of Agreement shall be, or shall be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of such Agreement, all of which shall remain in full force and effect.
- 18.3 A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision.
- 18.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to any Contract.
- 18.5 Any notice to be given by the Customer to Nyrstar pursuant to an Agreement shall be sent to:
- Nyrstar Sales & Marketing AG  
Tessinerplatz 7  
8002 Zurich  
Switzerland  
Attention: General Manager GMS
- 18.6 Any notice to be given by Nyrstar to Customer pursuant to an Agreement shall be sent to the Customer's registered office address or any other address as notified from time to time.
- 18.7 Notice shall be regarded as properly given if sent in writing and shall be deemed to have been served on delivery if sent by hand, 48 hours after despatch if sent by post.