

General Conditions of Sale - valid as from March 2020

1. **Application**
- 1.1 These general conditions of sale ("**Conditions**") shall apply to the sale of all goods ("**Goods**") by Nyrstar Sales & Marketing SA, 1 Rue de Jargonant, 1207 Geneva, Switzerland and/or its affiliates (combined "**Nyrstar**") to you ("**Buyer**").
- 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 sales contract ("**Contract**").
- 1.3 These Conditions and any Contract shall constitute the entire agreement (an "**Agreement**") between Nyrstar and the Buyer in relation to the sale 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 Buyer shall not have any remedy in respect of any untrue statement made by Nyrstar upon which the Buyer relied in entering into an Agreement (unless such untrue statement was made fraudulently) and the Buyer'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 Contract and these Conditions, the provisions of the Contract shall prevail 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 Buyer to Nyrstar or in correspondence between the Buyer 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. **Offer and Acceptance**
- 2.1 Following a verbal or written request or order by the Buyer Nyrstar shall provide an offer ("**Offer**") for the sale of a quantity or weight of Goods at a price upon and subject to these Conditions.
- 2.2 Subject to clause 2.3, a binding Agreement is formed when Buyer accepts the Offer or delivery occurs, whichever occurs first.
- 2.3 Nyrstar reserves the right to cancel an Offer at any time prior to acceptance of the Offer by the Buyer. For the avoidance of doubt, if an Offer is cancelled there will be no payment due for the Goods under that Offer.
- 2.4 When an Offer is accepted by the Buyer and hence an Agreement is formed, the Buyer shall sign and return the Contract within ten (10) days from receipt and a failure by the Buyer to do so shall be deemed to constitute Buyer's acceptance of the Contract. For the avoidance of doubt, the Buyer's failure to sign and return the Contract shall not affect the enforceability of any Agreement save as otherwise indicated by Nyrstar.
3. **Price**
- 3.1 The price (including premium) for the Goods per metric tonne to be delivered to the Buyer 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 Buyer an additional amount on account of that tax.
- 3.3 Where transport is not arranged for by Nyrstar, Buyer shall forward all relevant documentation demonstrating the effective shipment of the Goods to the destination identified under this Agreement.
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 within 5 calendar days of the date of 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 Buyer 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 Buyer 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 Buyer 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 Buyer, set off any amount owing to it by the Buyer (or any of its affiliates) under an Agreement, against any amount payable by Nyrstar (or any of its affiliates) to the Buyer (or any of its affiliates), under this Agreement or any other agreement.
- 4.5 If the Buyer fails to pay on the Due Date, interest is payable on the outstanding amount at the rate of 3 month LIBOR as on the Due Date 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 Buyer, all payments made by the Buyer to Nyrstar shall be apportioned first to Goods that have been resold by the Buyer and then to Goods which remain in the possession or under the control of the Buyer.
5. **Delivery**
- 5.1 Goods shall be delivered in accordance with the relevant INCOTERM (INCOTERMS 2010) specified in the Agreement.
- 5.2 Nyrstar shall use all reasonable endeavors 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 Buyer to any damages, nor to non-fulfillment by it of any of its own obligations arising from an Agreement. For the avoidance of doubt, the Buyer 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 If Buyer is unfit to accept delivery according to the terms of the Agreement, all costs including but not limited to storage costs will be borne by the Buyer.
- 5.4 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 Buyer 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 Buyer in accordance with the relevant INCOTERM (INCOTERMS 2010) 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 Buyer (or any of its affiliates) any other account whatsoever.
- 6.3 Until payment is received, the Buyer holds the Goods as bailee for Nyrstar and that a fiduciary relationship exists between the Buyer and Nyrstar whereby the Buyer 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;
 - (e) give Nyrstar such information relating to the Goods as Nyrstar may from time to time require; and
 - (f) until such time as payment is received, if the Buyer resells or uses the Goods in the ordinary course of its business, he shall account to Nyrstar for the proceeds of sale or otherwise of the Goods, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer or third parties.
- 6.4 Nyrstar reserves an irrevocable right and licence to repossess and resell any Goods to which it has retained title and the Buyer 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 Buyer for the price of the Goods in the event of non-payment by the Buyer by the Due Date even though title in the Goods has not passed; and
 - (b) by notice to the Buyer at any time after delivery, pass title in the Goods to the Buyer with effect from the date of the notice.
7. **Inspection and Acceptance**
- 7.1 The Buyer 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 Buyer 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 Buyer will be obliged to pay for the actual quantity or weight delivered.
- 7.3 Delivery of up to and including +/- 5% (five percent) of the quantity or weight of Goods specified under an Agreement ("**Delivery Tolerance**") will constitute fulfillment of that Agreement and the Buyer will be obliged to pay for the actual quantity or weight delivered.
- 7.4 If the Buyer provides valid notice of a claim to Nyrstar in accordance with Clause 7.1 and:
 - (a) Nyrstar has delivered more than 5% (five 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 Buyer will be obliged to pay for the actual quantity or weight delivered; or
 - (b) Nyrstar has delivered more than 5% (five percent) greater than the quantity or weight of Goods specified under an Agreement:
 - (iii) the Buyer 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
 - (iv) if the Buyer fails to provide notice in accordance with Clause 7.4(a)(i), the Buyer 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 <http://www.nyrstar.com/products/Pages/productmaterialinfo.aspx> at the time Nyrstar submits its Offer. 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 Buyer, a third party or Nyrstar (or any of its affiliates)) or use by or an act, neglect or default of the Buyer or any other party.
- 8.3 No claims may be made by the Buyer for defect in the Goods unless such claim is notified to Nyrstar in writing within the Inspection Period. In such case Nyrstar has the right to request inspection, sampling and assaying of the Goods in question, to be conducted by a London Metal Exchange ("**LME**") Approved Listed Sampler and Assayer ("**LSA**"). Findings established by such LSA shall be binding as final for both parties for determination of the actual quality of the Goods delivered. Costs thereof shall be borne by the losing party.
- 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 Buyer agrees that if it is aware (or should be aware) that the Goods, the subject of an Agreement, are for a particular purpose or are required to possess special or uniform characteristics, the Buyer will clearly specify that purpose in writing or those characteristics in the Agreement.
- 8.6 Subject to the rest of this Clause 8, Nyrstar's liability to the Buyer (and any party claiming through the Buyer 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 Buyer 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 Buyer, 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 Buyer 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 Buyer 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 Buyer is not entitled to do so under an Agreement or otherwise), Buyer 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 LME broker or forward 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 Buyer cancelling or amending an Agreement or refusing to accept delivery of Goods, the cost, damage or loss incurred or suffered by Nyrstar for which Buyer 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 Buyer. For the avoidance of doubt, the Buyer's maximum liability under this Clause 9 shall be the price of the relevant Goods.
10. **Margin Calls on Fixed Forward Sales**
- 10.1 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. Nyrstar reserves the right to execute a margin call against the Buyer due to an adverse price movement on the LME or FX position ("**Margin Call**"). The Buyer will indemnify Nyrstar on demand for the full amount of the Margin Call.
- 10.2 Any financial losses incurred by the Nyrstar due to changes of the fixed forward priced deliveries that the Buyer may request shall be charged to the Buyer accordingly.
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) circumstances 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-lose 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;
 - (c) failure of a supplier to Nyrstar;
 - (d) change of control of Nyrstar's plant or any other corporate action or divestmentsuch 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 deems.
12. **Suspension and Termination**
- 12.1 Without prejudice to Clause 2.3, if the Buyer:
 - (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 Buyer are immediately and totally due and payable and Nyrstar is relieved of any further obligation to supply Goods to the Buyer pursuant to the Agreement.
13. **Assignment**
- 13.1 Nyrstar may without the consent of the Buyer 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 Buyer will contract as principal and not as agent for any person, and may not without Nyrstar's prior written consent assign, novate, sub-contract, transfer or otherwise dispose of any of its rights or obligations under an Agreement.
14. **Intellectual Property**
- The Buyer must not use or deal with any intellectual property owned or licensed to Nyrstar without Nyrstar's prior written consent.
15. **Anti-Corruption**
- The Buyer agrees to fully comply with all applicable anti-corruption laws and Nyrstar's Anti-Corruption Policy available on <http://www.nyrstar.com/about/Pages/corporategovernance.aspx>.
16. **Export Control and Sanctions Rules**
- 16.1 The Buyer agrees to fully comply with all applicable export control and trade sanctions laws, regulations, rules and licences, including without limit those of the U.S. and the E.U. ("**Export Control and Sanctions Rules**"). In particular, but without limit, the Buyer will not, and will procure that none of its affiliates will, use, sell, resell, export, re-export, dispose of or otherwise deal with the Goods, directly or indirectly, to any country, destination or person in breach of any Export Control and Sanctions Rules. The Buyer shall ensure that as a result of or in connection with the Agreement, no Sanctioned Persons are involved or could benefit from the Agreement.
- 16.2 Buyer hereby warrants that neither it nor any of its group companies (being subsidiaries or affiliates) is, or is owned or controlled by, a Sanctioned Person, and that no officer, director or holder of more than 10% of the equity interests in the Buyer is a Sanctioned Person. For the purposes of this clause, "**Sanctioned Person**" means any person, organisation or vessel (i) designated on the Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons or on any list of targeted persons issued under the Export Control and Sanctions Rules of any other country (including the European Union); (ii) that is, or is part of, a government of a Sanctioned Territory; (iii) owned or controlled by, or acting on behalf of, any of the foregoing; (iv) located within or operating from a Sanctioned Territory; or (v) otherwise targeted under any Export Control and Sanctions Rule. "**Sanctioned Territory**" means any country or other territory subject to a general export, import, financial or investment embargo under Export Control and Sanctions Rules.
- 16.3 Buyer shall not do anything which would cause Nyrstar to be in breach of any Export Control and Sanctions Rules and shall protect, indemnify and hold harmless Nyrstar from any fines, losses and liabilities incurred by Nyrstar as a result of the failure of Buyer to comply with this clause 16. Nyrstar reserves the right to refuse to enter into or to perform any Contract, or to cancel any Contract at its sole discretion, if Nyrstar believes Buyer has failed to comply with any part of this clause 16.
17. **Processing of Personal Data**
- 17.1 Within the framework of this Agreement, Nyrstar, in its capacity of data controller, will be processing personal data of representatives or other identifiable contact persons within the Buyer's organization, such as their name, title, address, telephone number, facsimile number and e-mail address.
- 17.2 This processing shall occur for the purposes of properly performing this Agreement and the obligations hereunder, for organizing and maintaining a proper buyer administration within Nyrstar and for contacting the Buyer in case of any problems or issues. Consequently, the legal grounds upon which this processing activity shall be based are the necessity for the performance of this Agreement and Nyrstar's legitimate interests in organizing and maintaining a proper buyer administration and communicating with its Buyers.
- 17.3 The personal data of representatives or other identifiable contact persons within the Buyer's organization may be shared with the following categories of recipients, some of which may be acting as data processor on behalf of Nyrstar: IT service providers, hosting providers, other entities within the Nyrstar group, public authorities, legal and tax advisors. In case of transfers outside the European Union, Nyrstar shall ensure suitable safeguards via appropriate contractual clauses in accordance with applicable data protection legislation.

- 17.4 The personal data of representatives or other identifiable contact persons within the Buyer's organization shall be stored for as long as necessary for the purposes described above, and in any event for a period of ten years as from the termination of this Agreement, which correlates to the applicable statute of limitations.
- 17.5 In accordance with applicable data protection legislation and to the extent allowed thereunder, representatives or other identifiable contact persons within the Buyer's organization of which Nyrstar is processing personal data have the right to request access to and rectification or erasure of their personal data, to restricting of the processing, to object to the processing as well as the right to data portability via your regular Nyrstar contact . In addition, these persons also have the right to lodge a complaint with the relevant Data Protection Authority:
- 17.6 The Buyer shall take the necessary measures to inform the representatives or other identifiable contact persons within the Buyer's organization of the processing of their personal data by Nyrstar and their associated rights as described in this clause 17.
- 18 Governing Law and Arbitration**
- 18.1 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.
- 18.2 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.
- 18.3 The application of the International Sale of Goods Act shall be excluded.
- 19 Costs**
- The Buyer must pay Nyrstar all costs and expenses incurred by Nyrstar in connection with enforcing its rights against the Buyer under an Agreement including legal expenses and other costs incurred in recovering monies owed by the Buyer to Nyrstar.
- 20 Variation**
- Nyrstar may vary these Conditions on written notice to the Buyer.
- 21 General**
- 21.1 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 Buyer 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.
- 21.2 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.
- 21.3 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.
- 21.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to any Contract.
- 21.5 Any notice to be given by the Buyer to Nyrstar pursuant to an Agreement shall be sent to: Nyrstar Sales & Marketing SA, 1 Rue de Jargonnant, 1207 Geneva, Switzerland, Att: GM Sales
- 21.6 Any notice to be given by Nyrstar to Buyer pursuant to an Agreement shall be sent to the Buyer's registered office address or any other address as notified from time to time.
- 21.7 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 dispatch if sent by post. All notices shall also be emailed to the other Party for the purpose of being correctly served.