

- 1.1 Any contract between New Metals & Chemicals Ltd. ("the Seller") and the customer ("the Buyer") shall be on these terms and conditions only which override any stipulations conditions or reservations of the Buyer in conflict herewith and which the Seller hereby expressly rejects, save where expressly agreed in writing by the Seller.
- 1.2 Any quotation by the Seller constitutes an invitation to treat only and is without engagement on its part. A contract shall only come into existence between the Seller and the Buyer when the Seller has accepted the Buyer's order in writing or by taking steps to fulfil it.
- 2.1 Cancellation of the Buyer's order for goods and/or services or any part thereof will not be valid after the Buyer has ordered them (unless such a cancellation is accepted by the Seller in writing; any such cancellation shall be subject to agreement between the Buyer and Seller as to revision of prices quoted by the Seller).
- 2.2 The prices are based upon current costs of materials energy labour freight insurance and foreign currency (where applicable) and upon current taxes and conditions of trading and are subject to increase without notice to take account of changes in the same. The Seller accordingly reserves the right to adjust the invoice price in the event of any such increase in the cost and/or to take account of any other costs which may arise as a result of legislation or by reason of any other fact not applying at the date of the Seller's Quotation.
- 2.3 Any contract between the Seller and the Buyer is conditional upon all governmental consents approvals or licences which may be required by the Seller to perform its obligations being obtained.
- 3.1 The Buyer shall be deemed to have full knowledge of the nature and properties of the goods being supplied and any hazards they involve and the proper treatment storage and handling thereof.
- 3.2 By entering into a Contract, the Buyer undertakes for the purposes of all necessary UK legislation and in particular but not by way of limitation, the Control of Substances Hazardous to Health Regulations 1994 and the Health and Safety at Work Act 1974, that it will take such steps as are necessary to ensure that the goods will be safe and without risk to health when properly used. Without prejudice to the generality of the foregoing the Buyer specifically undertakes that:-
 - 3.2.1 it will take such steps as are necessary to ensure that any defects in the goods which could cause a danger to safety and/or a risk to health shall be made good and until the same are made good it will not permit the goods to be used. For the purpose of determining if any such defect exists it shall prior to each use of the goods or (in the event that the goods are in constant use) at such intervals as may be prudent having regard to the type of goods make a detailed inspection of the goods including but not limited to all electrical connections;

- 3.2.2 it will not use or permit the goods to be used beyond the limits and capacities set out in the relevant manufacturer's specification.
- 3.3 All the goods and services supplied by the Seller are supplied on the footing that the Seller's skill or judgement does not extend to the performance or suitability of the goods for any specific or general purpose but instead that the Buyer has identified for itself the materials it requires, having greater knowledge of its requirements than the Seller, and being expert as to the properties of the materials.
- 3.3.1 All materials are sold for manufacturing, laboratory or diagnostic use only and are not intended for administration as a drug. The use of any product for medical or veterinary purposes may come within the scope of the Medicines Acts 1968-72 and the Seller does not imply the suitability of its products for such use nor does the Seller accept any liability whatsoever should these products be used for such purposes.
- 3.3.2 Goods sold are not intended for food use.
- 3.4 Notwithstanding that a sample of the goods has been exhibited to and inspected by the Buyer it is hereby declared that such sample was exhibited and inspected solely to enable the Buyer to judge for himself the quality and performance capabilities of the bulk and not so as to constitute a sale by sample under this Contract.
- 3.5 when ordering on the basis of drawings or samples or when specific goods or goods in accordance with the Buyer's specifications are ordered, the Buyer is responsible for not infringing patents, copyright and any other industrial and/or commercial property rights of third parties and will fully indemnify the Seller in respect of all claims for such infringement together with all costs incurred by the Seller as a result thereof. The Seller gives no warranty that the use or sale of goods supplied by the Seller will not cause the Buyer to infringe any letters patent or other industrial property rights.
- 4.1 Any dates given by the Seller for delivery or otherwise are given in good faith but in no way or form are to form part of any contract between the Seller and the Buyer and the Seller will not be liable for any loss injury damage or expenses arising directly or indirectly from any delay however caused. Any time limits in the contract for the performance of the Seller of its obligations shall not be and cannot ever be part of the essence.
- 4.2 If the manufacture delivery or supply of goods or services shall be delayed as a result of circumstances beyond the control of the Seller the obligations of the Seller shall be suspended for so long as such circumstances prevail. By way of illustration only and without limiting the generality of the foregoing, such circumstances include war civil commotion and strikes, lock outs and industrial disputes failure of deliveries by suppliers for any reason shortage of materials power fuel or labour failure of plant acts of competent authorities fire and the elements whether affecting the Seller directly or any supplier to or haulier for the Seller.

- 4.3 In the event that the Seller requires information from the Buyer at any time, the obligations of the Seller shall be suspended until the Seller receives such information.
- 4.4 The goods shall be at the Buyer's risk when the goods are delivered to a carrier by loading them on to the collection vehicle (if the agent of the Buyer) or when the goods are delivered to the Buyer or its agent by unloading them from the delivery vehicle (if the agent of the Seller), or when collected by the Buyer or its agent from the Seller's place of business.
- 4.5 The goods shall remain the legal property of the Seller (notwithstanding 4.4 above) until full payment of the contract price has been received by the Seller. Until such time as the Seller has been paid in full, the Buyer shall ensure that the goods are stored separately and in such a way as to be readily identifiable as the property of the Seller, and the Buyer shall hold the goods as bailee on behalf of and in a fiduciary capacity for the Seller.
- 4.6 The Seller may at any time recover and resell the goods if any of the events specified in Clause 8.4 below shall occur.
- 5.1 Unless otherwise agreed in writing the goods are to be collected by the Buyer from the Seller and the quoted price excludes the cost of delivery.
- 5.2 If it is agreed that the Seller shall deliver any goods:-
- 5.2.1 The Buyer shall give adequate forwarding instructions to the Seller;
- 5.2.2 The Seller may choose any means of transport and shall not be required to offload the goods at their destination. The Buyer shall offload the goods in those circumstances;
- 5.2.3 The Seller shall be under no liability to the Buyer if the Seller is unable to secure adequate or any transport;
- 5.2.4 No claims will be entertained unless notification in writing is received by the Seller's Shipping Department and the Carriers entrusted with the delivery of the goods
within 3 (three) days from the day of delivery in respect of any shortage or damage;
within 10 (ten) days from the date of Seller's advice note in the case of non delivery; or
within 10 (ten) days from the date of delivery in the case of any claim that the goods do not comply with specification or are otherwise contrary to the terms of the contract; the Buyer should therefore examine them promptly after delivery.
- 5.3 If the Seller does not receive forwarding instructions or if the Buyer fails to tender the price and collect the goods within seven days following notification by the Seller that the goods are ready for dispatch the Seller shall cease to be under any liability for the goods and shall be entitled to charge one-half per centum of the contract price for each week or part thereof during which the Seller stores the goods.

- 6.1 Except as provided in 6.2 and 6.3 below the liability of the Seller in respect of defective goods supplied or faulty workmanship or for any loss injury or damage attributable thereto shall continue for a period of fourteen days from the date of receipt of the goods by the Buyer and be strictly limited at the Sellers option to the supply of replacement goods or to the Sellers crediting the Buyers with an amount not exceeding the invoice value of the defective goods and shall not extend to any other damage or loss suffered by the Buyer and in particular but without prejudice to the generality of the foregoing the Seller shall not be liable for loss of profit damage to plant personal injury (except where the same is caused wholly or partly by the negligence of the Seller) or for any expenditure incurred on goods supplied or remedial work performed or any consequential or special loss or damage including environmental loss or damage sustained by the Buyer.
- 6.2 The Seller will indemnify the Buyer against damage or injury (including death) caused to his property or person or that of others directly by or as a result of any failure or malfunction of goods supplied by the Seller where such failure or malfunction is caused directly by the negligent acts or omissions of the Seller or its agents provided that:-
the Seller's total liability for such damage in respect of property shall not exceed 3 (three) times the price payable by the Buyer for the goods supplied under this contract; and
the Seller shall not be liable to the Buyer for any loss of revenue profits or contracts consequential loss or save as aforesaid for any loss or damage of any kind whatsoever.
- 6.3 The Buyer shall fully indemnify the Seller for any claim or claims made under Part 1 of the Consumer Protection Act 1987 in respect of physical damage or personal injury (including death) caused to an individual directly or indirectly as a result of defective goods (within the meaning of the Consumer Protection Act 1987).
- 6.4 Subject to 6.3 above the Seller shall be under no liability to the Buyer in respect of defects in goods supplied
if any defect is caused wholly or to any material extent by the negligence of the Buyer or the failure to maintain or use the goods properly or was drawn to the attention of the Buyer before the sale of the goods;
if the goods were examined by the Buyer before sale;
if the goods were sold "as is" or "in existing condition" which terms are used to denote that goods require the fullest examination by the Buyer before purchase of them;
if the goods were manufactured or adapted to the special order or specification of the Buyer; or
if the goods are sold by the Buyer.
- 6.5 Any claim by the Buyer under sub-clause 6.1 of this Clause must be made in writing to the Seller not more than fourteen days from the date of receipt of the goods by the Buyer.

- 7.1 Unless special arrangements are otherwise agreed in writing, payment shall become due and be paid on notification to the Buyer that the goods are ready for despatch. In the event of the Buyer being in default of any agreed credit or delayed payment terms the Seller shall be entitled to charge interest at the rate of 5% per month above the base rate of Barclays Bank PLC from time to time on the sum outstanding for the period in which the Buyer remains in default.
- 7.2 An overseas Buyer unless otherwise agreed in writing must instruct his banker to issue an irrevocable letter of credit for the entire contract price to be confirmed by a London banker acceptable to the Seller such letter of credit in all other respects to be in the usual form and free of any conditions except those contained herein and the issue and confirmation of such letter shall be conditions precedent to any contract between the Seller and an Overseas buyer.
- 7.3 The Buyer shall have no right of set-off.
- 8.1 Goods returned without the consent of the Seller shall not be available for credit and the fact that the Seller takes delivery of them shall not be construed as an admission that the goods do not accord with the contract and shall not impose any liability on the Seller as bailee for them. The Buyer shall pay the Seller the cost of storing returned goods at the rate specified in condition 5.3 above.
- 8.2 No representation or statement made or purporting to be made by any person on behalf of the Seller shall be binding on the Seller nor shall it be relied upon by the Buyer unless confirmed in writing by the Seller.
- 8.3 The contract shall be governed by and construed in accordance with English law and the Buyer (if not English) hereby submits to the non-exclusive jurisdiction of the English courts.
- 8.4 If the Buyer shall make or offer to make any arrangement or composition with creditors or commit any acts of bankruptcy or if any petition or receiving order is presented or made against the Buyer, or if the Buyer is a company, any resolution or petition to wind it up or to appoint an administrator shall be passed or presented or a receiver manager or administrative receiver of all or any of its assets shall be appointed then the Seller may immediately and without notice terminate this contract without prejudice to any rights which may have accrued to the Seller prior to termination.
- 8.5 All packing cases skids crates pallets or other materials will be charged for at cost and are non-returnable unless otherwise stated. Returnable items must be returned "carriage paid".
- 9.1 Orders for poisons included in the First Schedule of the Rules under section 7 of the Poisons Act 1972 must be signed by the Buyer in his own handwriting; stating his name address trade or business and the purpose for which the goods are required.