

GENERAL CONDITIONS OF SALE AND DELIVERY CBMM EUROPE B.V.
VERSION APRIL 2008

1. Definitions

- 1.1 In these General Conditions:
- "Agreement" means an agreement for the supply of Products by CBMM to Purchaser.
 - "General Conditions" means these general conditions of sale and delivery.
 - "CBMM" means CBMM Europe B.V., having its registered office in Amsterdam, the Netherlands.
 - "Purchaser" means any person, legal or natural, that has entered into or wishes to enter into an Agreement with CBMM.
 - "Offer" means any written offer for the supply of Products submitted by CBMM to Purchaser.
 - "Order" means an order of the Purchaser for the supply of Products, specifying the quantity and specifications of the Products requested.
 - "Products" means FeNb, Nb-Oxide and FeNb Powder, FeNb Cored Wire, NiNb and FeNb Vacuum Grade and all other products CBMM markets.
 - "Sales Confirmation" means the formal agreement of terms and conditions of CBMM for the delivery of Products. A Sales Confirmation can only be issued in writing, by email, letter or fax.
- 1.2 If not explicitly otherwise agreed, the interpretation of a delivery condition used in the General Conditions or the Agreement shall be governed by the latest edition of INCOTERMS established by the International Chamber of Commerce.

2. Applicability

2.1 The General Conditions shall apply to and be part of any Agreement between CBMM and Purchaser. These General Conditions also apply to all pre-contractual situations between CBMM and Purchaser.

2.2 Any general conditions put forward by Purchaser shall not apply, are expressly not accepted and shall not be binding, unless and to the extent that they have been specifically accepted by CBMM in writing.

3. General Conclusion of Contract

- 3.1 Unless otherwise explicitly agreed in writing, any Offer will only be valid for 10 (ten) days.
- 3.2 All Orders and Offers are not binding on CBMM unless they are confirmed and accepted by CBMM by written Sales Confirmation. CBMM reserves the right to refuse an Order, such at its sole discretion. Unless the Purchaser disputes the Sales Confirmation within 10 (ten) days after receipt thereof, the Sales Confirmation shall be binding upon the parties. Statements of acceptance, verbal Agreements and all other acts intended to have legal effect (rechtshandelingen) by CBMM's representatives shall only become binding in so far as they have been confirmed by CBMM in a Sales Confirmation.

4. Prices

- 4.1 Unless otherwise agreed, prices agreed upon shall be based on FCA warehouse, as the case may be. Any additional costs as for example incurred by packaging, freight, import duty, installation, insurance premiums etc. as well as the legal value added tax (VAT) are for the Purchaser's account.
- 4.2 The price applicable shall be the price confirmed in the Sales Confirmation.

5. Terms of Payment

- 5.1 CBMM shall invoice the Purchaser for each separate delivery of the Products upon conclusion of the agreement further to article 3 hereof. Payment of all invoices shall be made before the date scheduled for delivery, or within the payment term agreed between the parties.
- 5.2 If payment has not been received before scheduled date for delivery, Purchaser shall be in default, without further notice being required and CBMM shall postpone delivery of the Products until payment is made. In case other payment terms are agreed between the parties, the delivery will then be performed accordingly.
- 5.3 If payment has not been made in accordance with the article 5.1 hereof CBMM will charge interest, without prior notice being required, at an interest rate equal to CBMM's actual cost of money. Interest will be compounded on a daily basis. This shall not prejudice CBMM's right to seek full compensation for damages incurred as a result of or in connection with violation of payment obligations.
- 5.4 Payments to CBMM shall be made without deduction of taxes, customs duties, withholding taxes, value added tax and/or any other tax that might be levied ("Tax"). In the event that the Purchaser is under a legal obligation to withhold Tax, the amounts due and payable by the Purchaser to CBMM shall be grossed up with such amount that following the withholding, CBMM receives the same amount as it would have received without the imposition of such Tax.
- 5.5 Unless otherwise agreed, all costs associated with payment such as, but not limited to banking costs, shall be for the account of the Purchaser. CBMM receives the same amount as it would have received without the imposition of such costs.
- 5.6 Save in the event that a counterclaim has expressly and in writing been acknowledged by CBMM, all payments shall be made without set-off, counterclaim, recourse or other defence.

6. Time of Delivery

- 6.1 Periods and dates of delivery shall be non-binding, unless they have been designated by CBMM as binding expressly in the Sales Confirmation.
- 6.2 If Purchaser requests a change as to the terms and conditions of delivery, the parties shall agree on good faith on such change in writing. In such event, CBMM shall be entitled to extend the period of delivery accordingly.
- 6.3 The agreed period of delivery shall be based on the circumstances as foreseen at the time of conclusion of the Agreement. In the event that delivery is prevented by unforeseen circumstances CBMM shall be entitled to extension of the period of delivery for the term of the impediment. CBMM shall notify the Purchaser of such impediment forthwith.
- 6.4 If delivery is prevented for a reason other than an unforeseen circumstance of force majeure as set under article 11 hereof, CBMM shall only be in default after the Purchaser has served notice upon CBMM granting a reasonable period for delivery, and delivery has not been made within this period.

7. Delivery

- 7.1 Unless explicitly otherwise agreed in writing, delivery shall be made FCA warehouse.
- 7.2 Transport is always to take place in the name of, and for the account and risk of the Purchaser. Purchaser is liable for all damages and losses caused during transport unless otherwise agreed in writing.
- 7.3 CBMM shall be entitled to deliver the Products in parcels and/or lots, unless it is agreed upon differently in writing.
- 7.4 Purchaser shall co-operate with the delivery of the Products and shall timely take receipt of the Products. If Purchaser refuses delivery, the day on which Purchaser refuses to take delivery shall constitute the day of delivery. Purchaser shall be deemed to have refused delivery, if the Products have been presented for delivery, but delivery has proved impossible by reasons attributable to the Purchaser. In such case the Products will be stored for the risk of Purchaser. The costs of storage and handling will be for the account of Purchaser.

7.5 CBMM shall deliver the Products with packaging to be determined by CBMM. If the Purchaser requires different packaging and in case such a pack aging is possible to be processed by CBMM or its third party servicing companies this will be charged separately.

7.6 This article 7 shall not prejudice CBMM's retention of title as set out under article 8 hereof.

8. Retention of Title

8.1 The title to all Products delivered by CBMM to Purchaser shall remain with CBMM until full and final settlement of all amounts payable under the Agreement or any other agreement between CBMM and Purchaser.

8.2 If the delivered Products are meant for export, the effects in rem of the retention of title are subject to the law of the state of destination, insofar as such law regarding the retention of title is more favourable to CBMM than the law applicable further to article 12 hereof will be applicable.

8.2 The Purchaser shall be entitled to process the Products under the right of retention only in the course of normal business transactions and at its normal terms. The Purchaser hereby agrees that upon request of CBMM, Purchaser shall undertake to create a pledge as provided in article 3:239 Dutch Civil Code on any claims Purchaser has on its customers as security for the claims for CBMM's claims on Purchaser.

8.4 The authorisation to process the Products shall lapse without prior notice being required, if the Purchaser defaults its payments obligations under the Agreement or any other agreement or in the event that CBMM has reasons to expect that Purchaser will default its payment obligations.

8.5 If the authorisation of the Purchaser to process the Products lapses, Purchaser shall be obliged to provide CBMM with information concerning the Products falling under CBMM's right of retention and to return the Products to CBMM, upon first request of CBMM. In order to enforce the claim for return of the Products, CBMM has the right to remove the Products to which CBMM retains title.

9. Inspection, complaints and warranty

9.1 Purchaser shall upon delivery of the Products immediately and as thoroughly as possible inspect the Products. Purchaser shall notify CBMM in writing of any complaints regarding the Products within 60 days after delivery of the Products.

9.2 CBMM's obligations under the Agreement shall be deemed to have been duly performed and discharged on the expiry of the time limitations stated in clause 9.1 of the General Conditions. After expiry of these limitations Purchaser shall not submit to CBMM any further complaint of any possible defects in the product and CBMM may disregard any such complaint.

9.3 CBMM warrants that the Products sold to Purchaser shall be free from defects at the time of sale. CBMM shall not make any further warranty with regard to the suitability of the Products for the intended purpose of the Purchaser.

9.4 CBMM does not make warranty of any kind, express or implied, including without limitation, any warranty of merchantability or fitness for particular purpose with respect to the Products sold. The Purchaser must make its own determination of the suitability and completeness of the Products for the intended purpose.

9.5 CBMM's weight and chemical and physical analysis shall be final for settlement unless Purchaser determines that there is a major discrepancy between CBMM's certificates and Purchaser's analysis of the same Products. If such a discrepancy does occur, the results shall be confirmed by an impartial accredited inspection agency (agreed to by both parties) by issuing a quality certificate which shall be binding on both contracting parties. All costs thus incurred shall be charged to the party which was in error, as determined by the independent inspector.

9.6 The lodging of a complaint does not discharge Purchaser from its payment obligations towards CBMM.

9.7 If a complaint is justified and timely submitted CBMM shall at its discretion replace the defective Products, or take the Products back and credit Purchaser for the purchase price. CBMM is also entitled to grant the Purchaser a reduction on the purchase price corresponding to the extent of the justified claim.

9.8 Notwithstanding the time limitations of article 9.1., Claims of the Purchaser based on defects in the Products shall be prescribed after lapse of a period of 12 months after delivery. This limitation period can only be interrupted in writing sent by registered mail.

10. General Limitation of Liability

10.1 CBMM's liability is restricted to direct loss or damage, whether caused by breach of contract, tort or otherwise and shall be limited to the invoice value of the respective delivery.

10.2 Neither party shall be liable to the other party for any consequential or indirect loss or damage, such as but not limited to, loss of production, loss of revenues or profit, loss of interest, costs of recall, loss resulting from interruption in the operations, loss suffered by third parties, costs of delays or any loss or damage resulting therefrom.

10.3 The above provision shall not apply to claims arising from personal injury or damage to privately used objects under Product Liability Law.

11. Force majeure

11.1 Neither party shall be liable for any default or delay in the performance of its obligations if such default or delay is caused by events beyond the control of the party affected, provided that such events were unforeseeable on the date of signing of this Agreement.

11.2 In the case of CBMM, force majeure shall include the situation in which CBMM is not or only partially supplied with Products by its supplier and the failure in supply cannot be attributed to the supplier since it is neither attributable to its fault nor for its account pursuant to law, or generally accepted principles

11.3 If any force majeure event substantially prevents, hinders, or delays performance under the Agreement for more than 7 (seven) consecutive months, then each party may terminate the Agreement without incurring any liability.

12. Applicable law and Jurisdiction

12.1 If the Purchaser has its principle place of business in one of the member states of the European Union, any dispute arising out of or in connection with an Agreement shall in first instance exclusively be submitted to the competent courts in Amsterdam, the Netherlands.

12.2 If the Purchaser does not have its principal place of business in a member state of the European Union, any dispute arising in connection with an Agreement, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The place of arbitration shall be Amsterdam, the Netherlands and the arbitral procedure shall be conducted in the English language. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided in art. 1046 of the Netherlands Code of Civil Procedure, is excluded.

12.3 Dutch law is exclusively applicable to these General Conditions, as well as to all Offers and Agreements to which these General Conditions apply. The Vienna Sales Convention is not applicable.

13. Data of the Purchaser

13.1 CBMM is entitled to register personal data of the Purchaser by electronic data processing.