

## **AURUBIS General Terms and Conditions for Sales and Purchases of Copper Cathodes (April 2020 version)**

### **1. General**

- 1.1. Any agreement between Buyer and Seller as to sales or purchases (Agreement) of copper cathodes (Material) and any implementation thereof and performance thereunder (Transaction) shall exclusively be governed by these AURUBIS General Terms and Conditions for Sales and Purchases of Copper Cathodes, which are an integral part of the Agreement.
- 1.2. These AURUBIS General Terms and Conditions for Sales and Purchases of Copper Cathodes only apply vis-à-vis entrepreneurs within the meaning of § 310 (1) German Civil Code (BGB).
- 1.3. Any terms and conditions of the other party which are contrary to or deviate from these AURUBIS General Terms and Conditions for the Sale and Purchase of Copper Cathodes shall not be recognised. AURUBIS does not accept alternative conditions of the other party, even if AURUBIS has not expressly contradicted such conditions or accepted a delivery, unless AURUBIS has expressly acknowledged the validity of such alternative conditions in writing.

### **2. Performance Obligations**

Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and take delivery from Seller of the Material on the terms and conditions set out herein and in the Agreement.

### **3. Quality and Quantity of the Material, Weight Determination**

- 3.1. The Material shall meet the specifications agreed upon as set out in the Agreement or as otherwise agreed in writing.
- 3.2. Seller shall deliver the Material in such quantity as set out in the Agreement within any tolerance stated therein.
- 3.3. The weights shall be determined by the Seller and shall constitute the basis for all invoicing. The Buyer is entitled to verify the weights determined by the Seller at Buyer's own expense.

### **4. Deliveries**

- 4.1. Unless otherwise agreed in writing, Seller shall be entitled to make partial deliveries to a reasonable extent.
- 4.2. If the Agreement provides for the delivery of partial quantities on call, Buyer shall, unless otherwise agreed between the Parties, be obliged to call uniform quantities on a monthly basis. If no period for delivery on call has been determined, the call and – where applicable – specification of the call quantity shall take place by the fifteenth day of the month preceding the month of delivery.
- 4.3. Seller shall make commercially reasonable best efforts to meet Buyer's delivery timing request, with effective execution of the delivery subject to transport vehicle availability, and timely fulfilment of obligations by Buyer that have to be carried out before the delivery, such as executing payments, opening a letter of credit, etc. without limitation. Any delay in the fulfilment of such obligations by Buyer entitles Seller to withhold loading and shipping arrangements.
- 4.4. In the event of delay in delivery, Buyer may only withdraw from the Agreement and/or Transaction if an appropriate period of respite for performance has been given to Seller by Buyer in writing and such period of respite has elapsed. In cases of doubt, a respite of 30 days shall be appropriate. If Buyer terminates the Agreement and/or Transaction pursuant to this clause 4.4., payments already made by Buyer shall be reimbursed to Buyer by Seller.
- 4.5. If Buyer fails to accept delivery, Seller may, after an appropriate period of respite, collect and/or resell the material, hold any further deliveries to Buyer and withdraw from the Agreement and/or Transaction. Payments already made by Buyer may be retained by Seller and may be offset against any costs that occurred as a result of Buyer's default of accepting delivery including but not limited to warehouse rent, demurrage and detention fees, transport costs, etc.

### **5. Transfer of Risk**

The Risk shall transfer from Seller to Buyer in accordance with the Incoterm specified in the Agreement.

**6. Title**

Unless agreed otherwise, Seller retains legal title to the Material until payment has been made in full.

**7. Price**

Buyer shall pay Seller the price specified in the Agreement.

**8. Quotational Period, Fixation**

8.1. The Quotational Period shall be the one agreed upon in the Agreement.

8.2. If one of the Parties may determine the Quotational Period pursuant to the Agreement, this Party's written declaration shall be received not later than 11:30 a.m. CET on the first day of the requested Quotational Period, and such Quotational Period shall be considered well fixed only upon the other Party's written confirmation. In any event, no fixation shall be carried out before the Quotational Period is well fixed pursuant to this clause 8.2.

Where it has been agreed that prices shall be fixed on one unknown settlement quotation, the other Party's written confirmation is not required, provided that the Party entitled to fix the price has informed the other Party both in writing and via telephone about the determined fixation date.

8.3. After the Quotational Period has been confirmed by both parties, it shall be irrevocable and binding and shall not change subsequently for any reason except by the Parties' mutual agreement.

8.4. If a Party fails to exercise its option to declare the Quotational Period for tonnages already delivered, the other Party shall, after giving written notice to the Party that failed to declare the Quotational Period, have the right to fix the price on the last day of the period that has been contractually agreed as the period in which the pricing has to be carried out. This fixation shall be considered irrevocable and binding without being reconfirmed by the Party in default.

8.5. If Seller fails to deliver or Buyer fails to accept delivery and/or to effect due payments under the Agreement and/or a Transaction for which a Quotational Period has already been agreed or the price has otherwise been fixed, the other Party shall, after a reasonable period after notifying the Party in default, have the right to close the open positions with a separate futures contract, and charge to the Party in default the difference between the fixed price or the price based on the agreed Quotational Period and the price of the futures contract as well as any other related costs and losses, including hedging losses and interest losses without limitation.

**9. Payment**

9.1. Payment shall be effected as specified in the Agreement and shall, unless agreed otherwise, be free of any set-off, counterclaim or deduction.

9.2. All payments due under the Agreement shall be made in freely transferable funds by means of telegraphic transfer to Seller's bank account, the details of which Seller shall provide to Buyer.

9.3. Bank charges, if any, levied by Buyer's bank or due to Buyer's fault in respect of payments or in the country of Buyer shall be for the account of Buyer. Bank charges, if any, levied by Seller's bank or due to Seller's fault in respect of payments hereunder or in the country of Seller shall be for the account of Seller.

9.4. Buyer shall automatically be in default if the respective invoiced amount is not paid by the agreed payment deadline. Default in accordance with any of the applicable statutory provisions shall remain unaffected.

9.5. Each overdue payment shall accrue interest from and including the due date to but excluding the date such amount is paid, at an interest rate of overnight LIBOR plus 2% per annum or otherwise agreed between the Parties.

9.6. In the event that Buyer is in default with payment, Seller shall be entitled to

- (i) immediately withhold further deliveries or pricings or require provision of (additional) security prior to further deliveries or pricings,
- (ii) collect and/or resell any unpaid quantity after a period of 14 (fourteen) days after the due date and request from Buyer reimbursement of all losses (reasonably incurred) resulting from these remedies including but not limited to transport costs, demurrage fees, price differences, hedging losses and
- (iii) terminate the Agreement and/or Transaction with Buyer forthwith and without prejudice to its other rights.
- (iv) request a change in payment terms, including, without limitation, the request for additional means of security, in any other pending contract with the Buyer to secure further payments. Should no agreement on altered payment terms be reached between the Parties, Seller shall also be entitled to terminate these other contracts with the Buyer as set out in section 9.6 (iii) above.

## **10. VAT, other Taxes**

- 10.1. All amounts payable under the Agreement shall exclude value added tax (VAT) or analogous taxes (if any), and where applicable Buyer shall pay all VAT chargeable by and due to Seller in addition to any other amounts due under the Agreement.
- 10.2. In case Material is dispatched to an EU country and the sale by Aurubis as a consequence should be VAT-exempt according to applicable VAT laws, the Buyer is obligated to cooperate in providing any required information such as (but not limited to) its VAT ID-code as well as all related proofs of delivery and/or other documents required pursuant to applicable VAT laws. Should the Buyer fail to provide the information / documents as required and the consignment should therefore be subject to value added tax, Aurubis is entitled to change the final invoice for the respective consignment accordingly and to claim any VAT amount payable on the final amount in accordance with applicable VAT laws. If Aurubis is the Buyer, Aurubis shall reasonably cooperate in providing information required by VAT laws applicable in Seller's country accordingly.
- 10.3. All taxes, tariffs, fees and duties, whether existing or new, applicable to the Material and imposed or to be imposed in the country of destination shall be borne by Buyer. All taxes, tariffs, fees and duties imposed or to be imposed in the country of origin shall be for Seller's account. To avoid doubt, this clause 10.3. shall not apply to VAT which shall be subject to clause 10.1. and clause 10.2 only.

## **11. Claims**

- 11.1. Buyer shall examine the Material for deviations in both quality and quantity immediately upon arrival at the destination given in the Agreement and shall give notice to Seller of any such deviation, if any, in writing
  - (i) within twenty (20) days after arrival of the Material at the destination given in the Agreement for deviations in quantity and apparent deviations in quality or
  - (ii) within thirty days after arrival of the Material at the destination for any other deviation in quality.

A deviation in quantity shall only give rise to a claim if the weight determined by Buyer differs by more than 0.2% from the quantity specified in the Agreement or the bill of lading.

- 11.2. Buyer shall provide full particulars of any such claim and any relevant documentation within 15 days after the date of the notice given under clause 11.1. If the claim is wholly or partly based on deviations in quantity, Buyer must, within the same period, provide to Seller full details of weighing protocols and an explanation of the calibration of the weighing facility used.
- 11.3. If Buyer fails to comply with clauses 11.1. and 11.2., the delivered Material shall be deemed to meet the agreed upon specifications and quantity, and Buyer shall not be entitled to make any claim.
- 11.4. If, however, Buyer complies with clauses 11.1. and 11.2., Seller shall be entitled to request inspection, sampling, assaying and/or re-weighing of the relevant Material carried out by a sworn surveyor, who will be selected jointly by both Parties Said surveyor's findings shall be binding for the Parties and surveyor's costs shall be borne by the Party whose claim has been disproved. If the surveyor reports that the Material is defective in quality or quantity, the Parties shall try to agree on the measures required for the remedy of such deviation in quality or quantity. If the Parties do not reach an agreement on the remedy measure within a reasonable time after either Party receives the surveyor's report, Seller shall, at its own

option, replace without charge or credit the price paid for any defective Material which Buyer has returned to Seller.

- 11.5. Seller may refuse to accept any Material that is returned without its prior written consent, even if such Material is returned undamaged and with all legally required documents.
- 11.6. Any Material for which a claim has been reported to Seller shall be segregated completely and shall not be released for transportation and/or processing until the claim is resolved. Seller may reject any claim where the relevant Material has been moved and/or consumed without Seller's prior written consent.

## **12. Limitation of Liability**

- 12.1. Except as otherwise provided herein or in the Agreement, no Party shall be liable to the other Party in its performance of or failure to perform the Agreement, whether in contract, tort or otherwise, for any indirect or consequential loss or damage of any nature whatsoever including but not limited to business interruption, loss of production, loss of revenue, loss of profit, loss of use of any equipment, loss of contract, loss of business opportunity and loss of good-will. Each Party hereby irrevocably waives any right to recover punitive, exemplary or similar damages with respect to any dispute, controversy or claim arising out of or in connection with the Agreement.
- 12.2. No warranties are made by Seller other than that the Material conforms to the specifications as to quality and quantity agreed upon in the Agreement within any tolerance stated therein. Any warranties, conditions or other terms implied by law, custom or statute, whether as to merchantability, quality or fitness for a particular purpose of the Material, or otherwise, are excluded.
- 12.3. Either Party can assert a claim for damages instead of performance only after having granted the other Party an appropriate grace period for the performance of its obligations .
- 12.4. The limitations of liability and exclusion of warranties as set out in the Agreement shall be to the maximum extent permitted by applicable law. Nothing in the Agreement purports to limit liability for fraud, wilful misconduct, death or personal injury.

## **13. Force Majeure**

- 13.1. Neither Party shall be liable for any failure or delay in the performance of its obligations under the Agreement (other than obligations which have accrued prior to Force Majeure or failure to make any payment due or which becomes due) to the extent that and for as long as (i) such failure or delay is caused by an Act of God or any other reason which is beyond the control of the affected Party, (ii) prevents or hinders or delays such Party from performing its obligations under the Agreement, and (iii) by the exercise of due diligence, such Party is unable to overcome or avoid or cause to be avoided (herein referred to as Force Majeure), such as acts of the public enemy, wars, sabotage, insurrections, riots, vandalism, strikes, lockouts, labour disputes or other industrial disturbances, blockages, fires, explosions, vapour releases, floods, lightning, wind or other natural disasters, actions of governmental authority, national or international trade sanctions, accidents or failure of equipment or machinery, inability to obtain or maintain any easement or right-of-way, allocation or failure of normal sources of supply of materials, transportation, energy or utilities, or other causes of a similar nature.
- 13.2. Should a Force Majeure event occur, the Party whose performance is prevented, hindered or delayed by such Force Majeure event (the Affected Party) shall, as soon as reasonably practical, however no later than ten (10) business days from becoming aware of the occurrence of the Force Majeure event, notify the other Party in writing of the nature, extent, probable duration and the express cause of such prevention from, suspension of or delay in its performance. The Affected Party shall use its due diligence to resume full performance of its obligations at the earliest practical date and shall notify the other Party in writing as soon as the condition of Force Majeure has ended.
- 13.3. If a Force Majeure condition which wholly prevents or delays performance of any of either Party's obligations under the Agreement continues for more than sixty (60) days, then either Party may initiate a negotiation process to determine further action acceptable to both Parties. If such process of negotiations fails to result in an Agreement, and Force Majeure persists, then either Party may by written notice to the other Party terminate this Agreement.
- 13.4. To avoid doubt, nothing contained in this section 13. will be interpreted as requiring either Party to settle labour disruptions.

## **14. Confidentiality**

All information contained in or related to the Agreement or obtained in performing the Agreement shall be strictly confidential, and neither Seller nor Buyer shall disclose such information to any third party without prior written consent of the other Party, except as may be ordered by a court of competent jurisdiction or as required by applicable laws or as contemplated by the Agreement.

## **15. Anti-Corruption**

- 15.1 Each Party shall ensure that, in connection to this Agreement, neither the respective Party itself, nor any of its directors, officers, employees and agents shall offer, give or agree to give to any person or accept or agree to accept from any person (whether for itself or on behalf of another person and either directly or indirectly) any gift, payment, donation or finder's fee, consideration or benefit of any kind, which constitutes an illegal or corrupt practice under the applicable laws and regulations („Anti-Corruption-Obligation“). Moreover, no Party shall pay or offer or agree to pay any political contribution or donation in respect of any business for which it provides goods or services to the other Party. Each Party shall refrain from any behaviour, allowance, donation etc. that could under any law or regulation, including but not limited to US and UK anticorruption legislation, be seen or interpreted as an act of bribery.
- 15.2 Each Party shall at all times strictly comply with the Anti-Corruption-Obligation; and monitor its directors, officers, employees and agents to ensure their compliance with the Anti-Corruption-Obligation. At the other Party's request, each Party shall be obliged to take necessary actions, at its own cost and expense, against any of the aforesaid persons who acts in breach of the Anti-Corruption-Obligation.

## **16. Entire Agreement, Amendments**

The Agreement is the entire agreement between the Parties in relation to the matters described. Amendments to the Agreement, including this clause 16., must be made in writing in order to be valid.

## **17. Assignment**

Neither Party may assign, in whole or in part, this Agreement or any other rights or obligations hereunder, without the prior written consent of the other Party, whose consent may be withheld, conditioned and/or delayed in such other Party's sole discretion, but not unreasonably. Any attempted assignment in violation of this clause shall be void.

## **18. Waiver**

No provision of the Agreement, including this clause, may be waived except in writing and signed by the Party against whom such waiver is sought to be enforced. Any Party's failure to insist upon strict compliance with the provisions of the Agreement will in no event constitute a waiver by such Party of any right or privilege under the Agreement.

## **19. Governing Law, Severability**

- 19.1. The Agreement shall exclusively be governed by and construed in accordance with the substantive laws of Germany, that means without regard to principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 19.2. If any of the provisions of the Agreement is found to be unlawful, invalid or unenforceable, such provision shall be severed from the Agreement, but the remaining provisions shall remain in force and effect.

## **20. Arbitration**

- 20.1. Any dispute or controversy relating to or arising out of or in connection with the Agreement, including without limitation any question regarding its existence, validity and termination, ("Dispute"), shall ultimately be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution (Swiss Rules).
- 20.2. The place of arbitration shall be Zurich, Switzerland. The arbitration shall be conducted in the English language.
- 20.3. If the amount in Dispute (exclusive of interest and cost) is US\$ 1 million or more, or unknown, or if other form of relief is sought, then the arbitration shall be conducted by three (3) arbitrators, one of whom shall be appointed by Buyer, one by Seller, and the third by the two (2) so appointed. If Buyer and/or Seller fail(s) to choose an arbitrator within the time deadline established by the Court (as defined under the

Swiss Rules) under the Swiss Rules, or if the two (2) arbitrators selected fail to agree upon the third arbitrator within fourteen (14) days after their appointment has been confirmed by the Court, the Court shall, upon request of either Party, appoint the arbitrator(s) required to complete the tribunal.

20.4 For all other Disputes, the arbitration shall be conducted by one arbitrator appointed by the mutual agreement of the Parties. If the Parties fail to choose the arbitrator within the time deadline established by the Swiss Rules, the Court shall, upon request of either Party, appoint the arbitrator.

## **21. Term, Termination**

21.1. Unless terminated earlier, the Agreement shall terminate upon expiration of the term given in the Agreement.

21.2. Apart from any other cause for termination elsewhere provided herein or in law, the Agreement may be terminated in accordance with the following provisions:

21.2.1. In the event of mutual agreement of the Parties in writing to terminate the Agreement.

21.2.2. Either Party may terminate the Agreement if the other Party (defaulting Party) is in breach of any of its obligations under the Agreement and does not remedy such breach within a period of 30 days after receiving written notice of such default by the non-defaulting Party in sufficient detail to enable the defaulting Party to resolve the same. In such event, the non-defaulting Party shall have the option to terminate the Agreement by giving written notice to the defaulting Party.

21.2.3. Should any one of the following events occur, either Party may terminate this Agreement forthwith, in whole or in part, by notifying the other Party in writing:

- (i) insolvency, bankruptcy, liquidation or dissolution of the other Party,
- (ii) initiation of any proceeding against the other Party under the provision of any insolvency or bankruptcy law or any law for relief of debtors,
- (iii) appointment of a trustee, receiver or liquidator over any one of the other Party's assets or property,
- (iv) issuance of an order for the attachment of the other Party's assets or property or
- (v) general assignment by the other Party for the benefit of its creditors.