

## **NIOBEC STANDARD TERMS AND CONDITIONS**

These terms and conditions (Terms and Conditions) will apply to and are a part of any transaction between Niobec Inc. (Niobec) and the Customer (Customer) for the supply of ferroniobium (Product) governed by a Sales Confirmation. For the purposes of these Terms and Conditions, "Sales Confirmation" means any written order or other document or instrument issued by Niobec, or any email or other written or electronic communication sent by Niobec to Customer, setting out or confirming the commercial terms and conditions by which Niobec will supply Customer with Product that refers to these Terms and Conditions. Where a Sales Confirmation refers to these Terms and Conditions, they are incorporated by reference into and form an integral part of such Sales Confirmation. Where the terms of a Sales Confirmation conflict with these Terms and Conditions, the terms of the Sales Confirmation will govern.

### **1. Offer and Acceptance**

1.1 Niobec is not bound by an order or offer to purchase unless it is confirmed and accepted via a Sales Confirmation. Niobec reserves the right to refuse any order or offer to purchase in its sole discretion. Any statement of acceptance, verbal statement or other act made by a Niobec representative or agent will only be binding if and when confirmed by Niobec via Sales Confirmation.

### **2. Product Specifications**

2.1 Product specifications will be as described in a Sales Confirmation.

### **3. Pricing and Terms of Payment; Security Interest**

3.1 Pricing will be as indicated in a Sales Confirmation.

3.2 Niobec shall invoice Customer for each separate shipment of Product. Payment by Customer for Product shall be made as specified in the invoice (Invoice) for such Product issued by Niobec.

If payment to Niobec has not been made by the due date, Niobec may either suspend delivery of further shipments of Product to Customer until payment is made in full, or demand from Customer full prepayment as a condition to making further shipments of Product to Customer. If Customer fails to make any payment when due, and fails to cure such non-payment within fifteen (15) days after receiving written notice of non-payment from Niobec, such non-payment will be deemed a material breach and will give Niobec the right, in addition to pursuing the collection of all unpaid amounts, to terminate future orders from Customer and be released without liability from any further obligations to deliver Product to Customer.

3.4 If payment is not made when due, then Customer shall pay interest on the outstanding amount at a rate equal to 18 percent per annum. If legal action is taken by Niobec to pursue the collection of amounts due and owing under any Invoice, Niobec will be entitled to recover its legal and other costs of recovery.

3.5 Payment to Niobec will be made without deduction of customs duties, withholding taxes, value added tax and/or any other tax. If Customer is under legal obligation to withhold tax, the amounts due and payable by Customer will be grossed up so that following the withholding, Niobec receives the same amount as it would have received without the imposition of such withholding tax.

3.6 All payments due under an Invoice shall be made without set-off, counterclaim, recourse or other defence.

3.7 Customer grants to Niobec, and Niobec shall retain, a continuing security interest or lien in Product until Niobec receives payment in full.

#### **4. Delivery; Transfer of Risk and Title; Insurance**

4.1 The destination of Product shall be the destination (Destination Point) indicated in the Sales Confirmation provided that the Destination Point may be amended with the mutual agreement of Niobec and Customer. The mode for shipment of Product to Customer shall be the Incoterms<sup>®</sup> 2010 Rule indicated in the Sales Confirmation.

4.2 Risk of loss of or damage to Product shall be assumed by Customer at the point (Delivery Point) where delivery to Customer is deemed to occur under the Incoterms<sup>®</sup> 2010 Rule used to ship the Product.

4.3 Title to Product shall be conveyed to Customer at the Delivery Point subject to Niobec's security interest or lien in the Product granted under subsection 3.7 above.

4.2 Any date for shipment of Product will be non-binding unless specifically indicated by Niobec as being binding in a Sales Confirmation.

4.3 Niobec shall arrange for carriage of the Product and cargo insurance in accordance with the Incoterms<sup>®</sup> 2010 Rule specifying the mode of transport for Product in the Sales Confirmation. Where Niobec is required by the specified Incoterms<sup>®</sup> 2010 Rule to obtain cargo insurance, it will obtain cargo insurance for 110% of Invoice value, covering "All Risks" of physical loss or damage to Product, subject to Institute Cargo Clauses (A) and (C) 1.1.82. and Institute War Clauses (Cargo) 1.1.82.

#### **5. Inspection, Claims and Warranty**

5.1 Niobec will inspect and analyse Product prior to shipment and will issue to Customer an assay certificate or certificate d'analyse (C of A) regarding the chemical composition of such Product shipment. Any C of A issued by Niobec will be final and deemed accepted by the Customer unless the Customer provides a written objection in accordance with subsection 5.2.

5.2 The Customer may, after a Product shipment arrives at the Destination Point, at its own cost, inspect the Product shipment. If, based on such inspection, the Customer has reasonable grounds to: (1) believe that there is a significant discrepancy in the outturn weight from the invoiced weight of contained niobium; or (2) object to the C of A on the basis that there is a significant discrepancy in the conformity of Product to the content for niobium and for non-niobium constituents indicated in the relevant C of A, it may advise Niobec of any such discrepancy or objection by providing written notice with reasonably detailed particulars. No action, claim or demand relating to Product quality may be made or brought by Customer against Niobec unless such written notice is given to Niobec within thirty (30) days of the arrival of the Product at the Destination Point.

5.3 Niobec's obligations as to Product quality will be deemed to have been fully performed and discharged on the expiry of the time limitation stated in subsection 5.2 of these Terms and Conditions, and thereafter, for greater certainty, the Customer shall not be entitled to make or bring any Product quality related action, claim or demand against Niobec.

5.4 Except as may be provided in the Sales Confirmation, Niobec makes no representation or warranty of any kind, express or implied, including without limitation, any representation or warranty of merchantability, suitability or fitness for a particular purpose with respect to Product. Customer agrees

that it is making its own determination without reliance on Niobec as to the suitability of Product for its intended use.

5.5 If the Customer has provided a written objection to the Seller under subsection 5.2, then Niobec and the Customer shall consult together regarding Product quality to assess if a significant discrepancy exists. For the purposes of section 5 of these Terms and Conditions, a "significant discrepancy" is: (1) a discrepancy in the outturn weight from the invoiced weight of contained niobium that would cause a reasonable purchaser to seek a material reduction in the purchase price of the Product; or (2) a discrepancy in the conformity of Product to the content for niobium and for non-niobium constituents indicated in the relevant C of A that would reasonably be considered to render the Product commercially unusable by the Customer.

5.6 If Niobec and Customer mutually determine after consulting together under subsection 5.5 above that a significant discrepancy exists, then Niobec and Customer shall, acting reasonably, seek to mutually agree on appropriate remedial measures to address any such discrepancy.

5.7 The foregoing are Customer's sole remedies for any significant discrepancy in Product quality.

5.8 The filing of a Product quality claim by the Customer does not discharge or suspend its payment obligations to Niobec.

## **6. Limitation of Liability**

6.1 Niobec's liability in all circumstances is restricted to direct loss or damage, whether caused by breach of contract, tort or otherwise and will be limited to the purchase price of Product indicated in the Sales Confirmation. Niobec shall not be liable to Customer for any consequential, special, incidental or indirect losses or damages, including but not limited to, loss of production, loss of revenue or profit, interruption in operations, third party claims, or other non-direct losses or damages, however caused.

## **7. Force Majeure**

7.1 Neither Niobec nor Customer will be liable, in any circumstances, for a default or delay in the performance of its obligations under a Sales Confirmation where such default or delay is caused by an event beyond its reasonable control (force majeure), including without limitation, labour disputes affecting Niobec however arising and whether or not employee demands are reasonable or within the power of Niobec to grant, if the party affected by the force majeure (affected party) gives written notice (notice) to the other of such force majeure event, provided that a force majeure event shall not include inability to pay or an adverse change in financial condition.

7.2 If force majeure substantially prevents performance of an affected party's material obligations under a Sales Confirmation for a period of more than 90 consecutive days after the date it gave notice under subsection 7.1, then the other party may terminate the Sales Confirmation without incurring any liability on its part.

## **8. Confidentiality**

8.1 Each of Niobec and Customer acknowledge and agree that all business and commercial information of the other of which it has knowledge or access as a result of the business relationship established between them is commercially sensitive and confidential information (Confidential Information). Accordingly, each of Niobec and Customer undertakes to keep confidential and not disclose the Confidential Information of the other to anyone else or use such Confidential Information except in the

course of their business dealings with each other.

## **9. Sanctions and Niobec Improper Payments Standard**

9.1 The Customer confirms and agrees that Product will not be sold or shipped to or through any restricted person, entity, vessel or carrier (Restricted Entity), or sold or shipped to or through any restricted country or region (Restricted Jurisdiction), which may cause Niobec to be in violation of or be penalized under economic sanctions or other laws of Canada, the U.S. or the European Union, or under United Nations restrictions or sanctions. For the avoidance of doubt, Customer shall not apply Product as a raw material to its own end products sold to any Restricted Entity or sold in or shipped through any Restricted Jurisdiction. Customer confirms and agrees that Niobec has the right to reject the use of any Restricted Entity or Restricted Jurisdiction in connection with the transportation of any order placed with it by Customer.

9.2 Where applicable to Customer's use of Product, Customer shall comply with Niobec's "Standard: *Preventing improper payments*", the most recent version of which is posted on Niobec's website ([www.niobec.com](http://www.niobec.com)).

9.3 Customer agrees to confirm its compliance with subsection 9.1 above and with Niobec's Standard: *Preventing Improper Payments* as Niobec may reasonably request from time to time.

## **10. Applicable Law and Jurisdiction**

10.1 All issues and questions concerning the construction, validity, enforcement and interpretation of a Sales Confirmation, including these Terms and Conditions, shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice of law or conflict of law, rules or provisions (whether of such Province or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than such Province. The application of the United Nations Convention on Contracts for the International Sales of Goods to the sale or supply of Product is expressly excluded. Niobec and Customer hereby each irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

## **11. Waiver**

11.1 The failure or delay by either Niobec or Customer to enforce at any time or for any period any one or more of these Terms and Conditions or a Sales Confirmation will not act as a waiver of the right to enforce such Sales Confirmation or these Terms and Conditions at any time.

## **12. Severability**

12.1 If any provision of these Terms and Conditions or a Sales Confirmation is held by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, then these Terms and Conditions and the Sales Confirmation will continue to be valid and effective as to their other provisions and the remainder of any affected provision.

## **13. Entire Agreement**

13.1 The Sales Confirmation and these Terms and Conditions constitute the entire agreement between Niobec and the Customer for the supply of Product under such Sales Confirmation.

13.2 Nothing in these Terms and Conditions or a Sales Confirmation is intended or will be construed to confer upon or give to any person, firm or corporation, other than Niobec or Customer and their

respective successors and permitted assigns or personal representatives, any rights or remedies under or by reason of these Terms and Conditions or such Sales Confirmation.

**14. Amendment**

14.1 No waiver, alteration or modification of any of these Terms and Conditions or a Sales Confirmation will be valid or binding unless it is in writing and confirmed by Niobec and Customer.

**15. Remedies Cumulative**

15.1 Except as expressly provided in these Terms and Conditions or a Sales Confirmation, all remedies available for breach are cumulative and may be exercised concurrently or separately; the exercise of any one remedy will not be to the exclusion of the exercise of any other available remedies.

**16. Language**

16.1 Niobec and Customer have each requested that any Sales Confirmation and these Terms and Conditions be prepared in the English language. Chacun de Niobec et le Client ont demandé que la présente entente soit rédigée en anglais. English will be the language of these Terms and Conditions, the Sales Confirmation and all related documentation.

**19. Assignment and Transfer**

The rights and/or obligations of Customer under a Sales Confirmation and these Terms and Conditions may not be assigned or transferred to a third party without Niobec's prior written consent.

**20. Effective Date**

These Terms and Conditions are effective as of January 14, 2019. Niobec reserves the right to revise these Terms and Conditions as it deems necessary. The most recent version of these Terms and Conditions is posted on Niobec's website ([www.niobec.com](http://www.niobec.com)). If the version of these Terms and Conditions posted on Niobec's website is different from a printed version, then the version on the website will govern.

01/2019