

<b>01 DEFINITIONS</b>	
"Agreement"	means the agreement for the supply of Products by CBMM to Buyer. Any and all documents that support each sale shall be deemed a part of the Agreement.
"CBMM"	means CBMM EUROPE B.V., having its registered office at WTC H-Tower, Zuidplein 96, 1077 XV Amsterdam.
"GTC"	means these general terms and conditions of sale and delivery.
"Party"	means the Buyer or CBMM, and collectively, the "Parties".
"Products"	means all Niobium products produced and supplied by CBMM .
"Purchase Order"	means any order, whether written or not, issued by the Buyer to purchase the Products in agreement to the Quote previously submitted by CBMM.
"Buyer"	means any person, legal or natural, that has entered into or wishes to enter into an agreement with CBMM to buy the Products.
"Request"	means the initial request, whether written or not, made by Buyer to CBMM for the supply of Products, that may include information regarding the intended purchase such as the quantity, specifications, and the date of delivery of the Products requested.

"Confirmation"	means the written confirmation issued by CBMM in relation to the Purchase Order (or equivalent document) submitted by Buyer.
"Quote"	means any written document issued by CBMM in response to a Request and submitted to Buyer's appreciation describing the offer/conditions for the supply of Products.

## **02 APPLICABILITY**

2.1. All sales by CBMM are made subject to the following terms and conditions. These GTC shall apply to and shall be part of any Agreement, Quote, Request, Confirmation and any other equivalent document for supply of Products by CBMM to Buyer and shall then form the complete Agreement between the Parties. These GTC also apply to all pre-contractual situations between CBMM and Buyer and shall have the same force and effect as if expressly set out in the Quote, Confirmation and any other equivalent document. This GTC should be interpreted together with any supply agreement duly executed by the Parties.

2.2. If these GTC differ in any way from the terms and conditions of Buyer's Purchase Order or if these GTC are construed as an acceptance or as a confirmation acting as an acceptance, then CBMM's acceptance is EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S PURCHASE ORDER. Further, this writing shall be deemed notice of objection to such terms and conditions of Buyer. If these GTC are construed as an offer, acceptance hereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. In any event, Buyer's acceptance of the Products shall manifest Buyer's assent

to these GTC. No addition to or modification of these GTC will be effective unless set forth in writing and accepted in writing by CBMM.

2.3. Products supplied under these GTC are for the sole consumption of Buyer and shall not be resold without prior written permission of CBMM.

### **03 GENERAL CONCLUSION OF SALE**

3.1. Buyer shall send a Request to CBMM, which may include the description, quantity, and specification of the Product as well as the expected date of delivery and any specific requirements, notably regarding packaging and transportation of the Product.

3.2. No Request made by Buyer shall be binding on CBMM. CBMM shall analyze the Request and send a Quote which shall include relevant information regarding the sales of the Products, including but not limited to the price, conditions, terms of payment. The Quote shall be valid for a period of 15 (fifteen) days unless otherwise stated by CBMM.

3.3. If Buyer agrees with the Quote, it shall send to CBMM, within 15 (fifteen) days after receipt thereof, a Purchase Order. The submission of the Purchase Order by Buyer shall be deemed as the formal acceptance of these GTC as well as CBMM's terms and conditions for the delivery of Products.

3.4. Notwithstanding the above, Buyer may send the Request together with a Purchase Order. In this case, the submission of a Quote by CBMM will be expendable and the confirmation by CBMM shall be made solely through a Confirmation.

3.5. No Purchase Order made by Buyer shall be binding on CBMM unless confirmed and accepted by CBMM in writing through a Confirmation. For the avoidance of doubt, CBMM shall have the right to refuse any Purchase Order at its sole discretion.

3.6. Unless Buyer disputes the Confirmation within 10 (ten) days, the

Confirmation shall be binding upon the Parties leading to a complete Agreement.

3.7. CBMM offers its Products in several standard chemistry specifications and sizes. The exact Product specifications agreed upon by the Parties will be set forth in the Confirmation.

3.8. The Products will be packaged in accordance with the Confirmation. If Buyer requests and CBMM agrees, CBMM may deliver Products in a package different of what was agreed between Parties provided that Buyer shall be responsible for the eventual costs of such alteration.

3.9. Statements of acceptance, verbal Agreements and all other acts intended to have legal effect (in Dutch: *rechtshandelingen*) by CBMM's representatives shall only become binding in so far as they have been confirmed by CBMM in writing.

### **04 PRICE AND TERMS OF PAYMENT**

4.1. The price applicable shall be the price confirmed in the Confirmation.

4.2. Unless otherwise agreed to by CBMM, prices agreed upon shall be based on the applicable Incoterm.

4.3. Any additional costs incurred to deliver the Products to Buyer, including but not limited to packaging, freight, import duty, installation, insurance premiums, as well as any applicable taxes, customs duties, withholding taxes, value added tax and/or any other tax that might be levied ("Tax"), as well as any additional costs associated with payments made pursuant to the Agreement, including but not limited to banking costs, shall be for the account of Buyer unless otherwise agreed between the Parties and stated in a Confirmation.

4.4. Payments by Buyer to CBMM shall be made without deduction of Tax. If Buyer is under a legal obligation to withhold Tax or make any other deduction on account of any payments from such Buyer to CBMM,

the payments by Buyer to CBMM shall be grossed up to the extent necessary to ensure that following the withholding or deduction, CBMM receives the same amount as it would have received without the imposition of such withholding or deduction. Likewise, if CBMM is required to make direct payment of any banking cost, Buyer shall gross up the amount paid to CBMM by the amount of such costs.

4.5. CBMM shall invoice Buyer for each separate delivery of the Products upon issuance of a Confirmation. Payment of all invoices shall be made before the date scheduled for delivery of the Products, or within other payment term agreed between the CBMM and Buyer in writing.

4.6. Unless otherwise agreed to in writing between CBMM and Buyer, CBMM shall not be required to deliver any Product until payment is made in accordance with the relevant invoice. With respect to all payment dates, time will be of the essence. If payment of an invoice has not been timely made, CBMM shall be entitled to charge interest on a daily basis at a rate up to but not exceeding the highest rate permitted by law.

4.7. Notwithstanding the provisions above mentioned, CBMM shall also have the right to (i) immediately stop any further shipments under one or more Purchase Orders until CBMM has received full payment, or, (ii) demand from Buyer a full prepayment of any further shipment of Products under one or more Purchase Orders.

4.8. If Buyer fails to cure the non-payment within fifteen (15) days after receiving written notice of non-payment from CBMM, such non-payment will be deemed a material breach and will give CBMM the right to terminate one or more outstanding Purchase Orders immediately.

4.9. If legal action is taken to pursue the collection of amounts due and owing, CBMM will be entitled to recover its attorneys' fees and costs of suit.

4.10. Save if a counterclaim has expressly and in writing been acknowledged by CBMM, all payments shall be made by Buyer to CBMM without set-off, counterclaim, recourse or other defense and shall constitute a waiver of any claims Buyer may have against CBMM arising out of, in relation to and pursuant to the Agreement.

## **05 DELIVERY**

5.1. Unless otherwise agreed, all deliveries are FCA warehouse (Incoterm 2020). Transport is always to take place in the name of, and for the account and risk of Buyer. Buyer is liable for all damages and losses caused during transport unless otherwise agreed in writing between CBMM and Purchaser. Buyer shall hold sufficient insurance to cover risk of loss or damage to the Products until the date that title in the Products passes to Buyer.

5.2. CBMM may deliver the Products in parcels and/or lots, unless it is agreed upon differently in writing between CBMM and Buyer.

5.3. Buyer shall co-operate with the delivery of the Products and shall timely take receipt of the Products. If Buyer refuses to receive the Products delivered by CBMM pursuant to the Agreement or if CBMM is unable to complete the delivery by reasons attributable to Buyer, delivery of the Products to such Buyer shall be deemed to have occurred on the day the Products are presented for delivery. In such case the Products will be stored for the risk of Buyer and Buyer shall bear all costs incurred in respect of storage and handling of Products thereafter

5.4. Periods and dates of delivery shall be non-binding unless they have been expressly designated by CBMM as binding in the Confirmation. All the changes shall be negotiated in good faith and shall be expressly accepted by both Parties.

5.5. The agreed period of delivery shall be based on the circumstances as foreseen at the time of issuance of the Confirmation. If delivery is prevented by unforeseen

circumstances, CBMM shall notify Buyer of such impediment forthwith and Parties will discuss a new delivery date, provided that CBMM is entitled at least to extension of the period of delivery for the term of the impediment.

5.6. If delivery is prevented for a reason other than an unforeseen circumstance or force majeure as set under article 8 hereof, and CBMM has committed to a binding delivery date in the Confirmation, CBMM shall only be in default after Buyer has served notice upon CBMM granting a reasonable period for delivery, and delivery has not been made within this period.

## 06 INSPECTION, COMPLAINTS AND WARRANTY

6.1. Buyer shall upon delivery of the Products immediately and as thoroughly as possible inspect the Products.

6.2. Buyer shall notify CBMM in writing of any complaints regarding the Products (i) prior to using the Products claimed to be defective; or (ii) 45 (forty-five) days after their delivery, whichever happens first, failing which the Buyer shall be deemed to have accepted the Products and to have waived any claims against CBMM in respect of the Products.

6.3. CBMM's obligations under the Agreement and any Confirmation shall be deemed to have been duly performed and discharged on the expiry of the time limitations stated in clause 6.2 of these GTC. After expiry of these limitations, Buyer shall not submit to CBMM any further complaint of any possible defects in the Product and CBMM may disregard any such complaint.

6.4. CBMM warrants that the Products sold to Buyer shall be free from defects at the time of sale. **CBMM DISCLAIMS ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS SOLD, AND WARRANTIES**

**ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. BUYER MUST MAKE ITS OWN DETERMINATION OF THE SUITABILITY AND COMPLETENESS OF THE PRODUCTS FOR THE INTENDED PURPOSE.**

6.5. CBMM's weight, chemical and physical analysis shall be final for settlement unless Buyer determines that there is a discrepancy between CBMM's certificates and Buyer's analysis of the same Products.

6.6. 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.

6.7. All costs thus incurred shall be charged to the Party which was in error, as determined by the independent inspector. A variation of the niobium content of the FeNb, FeNb Powder, FeNb Cored Wire, NiNb and/or FeNb Vacuum Grade up to half percentage point shall not be deemed a discrepancy.

6.8. The lodging of a complaint does not discharge Buyer from its payment obligations towards CBMM.

6.9. If a complaint is justified and timely submitted CBMM shall at its discretion (i) replace the defective Products; (ii) take the Products back and credit Buyer for the purchase price; or (iii) grant Buyer a reduction on the purchase price corresponding to the extent of the justified claim.

6.10. The foregoing are the sole and exclusive remedies for any defect or nonconformity of the Products. Buyer's obligations under this Section 8 will be applicable to such replaced Products.

## 07 GENERAL LIMITATION OF LIABILITY

7.1. CBMM's liability is restricted to direct loss or damage, whether caused by breach of the Agreement, breach of

warranty or indemnification, tort or otherwise and shall be limited to amount of payment received by CBMM in respect of the applicable Products.

**7.2. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOSSES WHICH WERE NOT FORESEEABLE AS A NATURAL CONSEQUENCE OF THE BREACH, IRRESPECTIVE OF THE PARTIES WERE MADE AWARE OF THE POSSIBILITY OF SUCH LOSS, INCLUDING 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 AND/OR FROM A BREACH OF THE AGREEMENT.**

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

#### **08 FORCE MAJEURE**

8.1. CBMM shall not be liable for any loss or damage of any nature whatsoever incurred or suffered as a result of any failures or delays in performance due to any cause or circumstance beyond its control, including, but not by way of limitation, any failures or delays in performance caused by any strikes, lockouts, or labor disputes, fires, floods, compliance with any federal, state, or local laws, regulations, orders or policies, pandemics, epidemics, action or responses advised or required by a governmental or public authority related to an epidemic or pandemic, or delays in transit or delivery on the part of transportation companies (each a "Force Majeure Event"). In such event, CBMM may, at its option, be excused from performance or allocate deliveries as CBMM, in its sole discretion, deems appropriate.

8.2. In the case of CBMM, a Force Majeure Event shall include the situation in

which CBMM is not or only partially supplied with Products by its supplier.

8.3. If any Force Majeure Event substantially prevents, hinders, or delays performance under the Agreement for more than seven (7) consecutive months, then either Party may terminate the Agreement by written notice to the other Party without incurring any liability.

#### **09 CONFIDENTIALITY**

9.1. The Parties acknowledge and agree that any and all business commercial information of which they have knowledge or access as a result of the business relationship established herein and/or the Agreement, with respect to the other Party or its businesses activities, will be deemed as sensitive and confidential information ("Confidential Information") and Confidential Information that each Party becomes aware of shall not be disclosed, revealed, published, reproduced, communicated, lent, sublicensed, sold, assigned, transferred, distributed, leased, modified, translated, reverse engineered, discussed and/or used, by the Party which receives the Confidential Information and its successors, partners, directors, employees, representatives, service providers, contractors, subcontractors, advisors, agents, consultants, directors of subsidiaries and affiliates or any other related persons, in whole or in part and in any way, without the prior written consent of the Party which discloses the Confidential Information. Confidential Information may also be disclosed by the receiving Party if requested to disclose due to legal or administrative proceedings, provided that the other Party is previously and properly notified in writing about such disclosure in order to argue it and/or to collaborate during the presentation of such argument.

9.2. The obligations of confidentiality and non-disclosure herein assumed by the Parties shall enter into force upon the disclosure of Confidential Information and shall remain valid and in force for a period of five (5) years from the termination of the



business relationship between the Parties, regardless the reason.

## **10 SANCTION CLAUSE**

10.1. Buyer hereby certifies that the Products purchased from CBMM will not be sold or transferred to a restricted destination, person or entity, or be transported on a vessel or by other carrier owned, flagged or chartered by any country, person, or entity or shipped through any country which may cause CBMM or any of the CBMM affiliates to be in violation of or be penalized by any economic sanctions laws, regulations or restrictions ("Restricted Entity/Zone") and any applicable export control laws.

10.2. Buyer shall also not apply the Products as raw materials to its end-products which would be sold to or shipped through any Restricted Entity/Zone. Buyer ensures that the use of the Products shall be in compliance with any applicable export control laws. CBMM has the right to reject any sale if it would relate to any restricted destination, vessel, person or entity.

10.3. CBMM has determined as an internal policy matter that it will not sell its Products to or through Crimea, Cuba, Iran, North Korea, or Syria.

10.4 In this sense, Buyer agrees not to use or transfer to third parties the Products or its end-products which contain the Products to or through Crimea, Cuba, Iran, North Korea, or Syria.

10.5. CBMM has determined as an internal policy matter that it will not sell its products for use in Russian energy export pipelines. In this sense, Buyer agrees that it will not sell the Products or its end-products which contain the Products directly or indirectly for use in Russian energy export pipelines (where this term refers to pipelines that originate in the Russian Federation and transport hydrocarbons across an international land or maritime border for delivery to another country).

10.6. In addition CBMM has determined as an internal policy matter that it will not sell its products to any restricted party on the U.S., EU, or UN sanctions lists or to any party owned or controlled fifty percent or more in the aggregate by one or more blocked persons or other persons identified on such lists. In this sense, Buyer agrees that it will not sell the Products or its end-products which contain the Products to any restricted party on the U.S., EU, or UN sanctions lists, or to any party owned or controlled fifty percent or more in the aggregate by one or more blocked persons or other persons identified on such lists.

10.7. Buyer represents and warrants that it is not blocked, sanctioned or in any way identified on the U.S., EU, or UN sanctions lists, and that it is not owned or controlled fifty percent or more in the aggregate by one or more blocked or sanctioned persons or other persons identified on such lists.

10.8. Buyer shall immediately inform CBMM in writing if there is any change in any representation in this section.

10.9. If, during the term of this Agreement, CBMM becomes aware of any possible violation of the representations and warranties given under this clause, or of any violation of, or other conduct or omission that may expose CBMM, any of its affiliates, or Buyer to restrictions, sanctions, or penalties under, any economic sanctions or export control laws, CBMM may unilaterally and immediately terminate (in Dutch: *opzeggen*) or suspend this Agreement, without any further liability on CBMM and without prejudice to the payment of indemnification by Buyer to CBMM for any losses and damages arising from or related to the violation or imposition of restrictions, sanctions, or penalties committed by Buyer, it being hereby agreed that such indemnification is not be subject to any Buyer's limitation of liability eventually provided in this Agreement.

<b>11</b>	<b>APPLICABLE LAW AND JURISDICTION</b>
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11.1. These GTC, the Agreement and the Confirmation shall be governed by, and construed in accordance with Dutch law without regard to its conflicts of laws provisions. The Vienna Sales Convention is not applicable.

11.2. Any dispute, controversy or claim arising out of or relating to these GTC and/or the Agreement, or the breach, termination or invalidity thereof, shall be submitted to arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce (“ICC Rules”). The place of arbitration shall be Amsterdam, Netherlands. The language to be used in the arbitral proceedings shall be English.

11.3. 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.

<b>12</b>	<b>MISCELLANEOUS</b>
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12.1. **Waiver.** Save for expressed and specific waiver given in writing or as provided in these GTC, the failure or delay by either Party to enforce at any time or for any period any one or more of the terms or conditions of these GTC or any Confirmation will not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these GTC.

12.2. **Severance.** If any provision of these GTC or any Confirmation is held by any court or other competent authority to be invalid or unenforceable in whole or in part, these GTC or such Sale Confirmation will continue to be valid as to their other provisions and the remainder of the affected provision.

12.3. **Entire Agreement.** Each Confirmation and these GTC constitute the entire and complete agreement between the Parties relating to its subject matter and are in substitution of any previous written or oral agreement thereon between the Parties. Nothing in these GTC or any Confirmation is intended or will be construed to confer upon or give to any

person, firm or corporation other than the Parties and their respective successors and permitted assigns or personal representatives, any rights or remedies under, or by reason of, these GTC or any Confirmation.

12.4. **Amendment.** No waiver, alteration or modification of any of the terms and conditions of these GTC or any Confirmation will be valid or binding unless it is in writing and signed by the Parties.

12.5. **Remedies Cumulative.** Except as expressly provided in these GTC or any Confirmation, all remedies available to the Parties for breach of these GTC and each Confirmation are cumulative and may be exercised concurrently or separately and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

12.6. **Language.** English will be the language of these GTC and, unless otherwise stated, English will be the language of each Confirmation and all documentation prepared in relation to them

12.7. **Assignment or Sub-contracting.** The rights and/or obligations under this GTC and each Confirmation may not be assigned or transferred by Buyer to any third party without CBMM’s prior written consent. Any other attempt to assign is void. Any assignment in violation of the foregoing will be void and have no effect (and this provision will have property law effect (*goederenrechtelijk* effect)).

12.8 **Privacy and Data Protection.** The Parties do not anticipate that personal data will be involved in the purchase and sale of Products. Nevertheless, the Parties shall comply with all obligations arising from the applicable regulations on privacy and data protection.

12.9. **Antibribery.** The Parties hereby agree to comply with the applicable antibribery legislation that shall apply to the sale and purchase of Products under these GTC.