

GENERAL TERMS AND CONDITIONS OF SALE

Essex Solutions Italy (“Seller”)

Preamble

These General Terms and Conditions of Sale (“Conditions”) shall govern all sales by Seller. “Products” means the articles which Purchaser agrees to buy from Seller and/or any service to be performed by Seller, “Purchaser” means the entity which buys or agrees to buy the Products from Seller, and any reference to delivery terms shall refer to the 2020 edition of the International Chamber of Commerce’s Incoterms.

1. QUOTATION - PRICE – INVOICING- CANCELLATION AND RETURN

- 1.1. Unless otherwise agreed in writing, quotations and tenders issued by Seller shall remain open for acceptance for fifteen (15) days from date of issue and are for shipment at the latest 3 months after the date of the order. They may be revised by Seller prior to acceptance by Purchaser. No Purchaser’s order shall be binding on Seller until written notice of acknowledgement of the order has been given by Seller.
- 1.2. Unless otherwise stated, the prices specified in Seller’s quotation, tender or acknowledgement of order are EXW (Incoterms 2020) Seller’s factory or warehouse, excluding packaging, VAT and any other tax or duties. Seller reserves the right to revise prices at any time. Quantities delivered may vary by +/- 15% between the ordered and delivered quantities and Purchaser shall not be entitled to make any claim in respect thereof. An invoice will be issued for actual quantities delivered and sent to Purchaser for each delivery. Any discounts granted will be indicated on the acknowledgement of order or on the invoice. Credit is extended at the sole discretion of Seller. If credit has been extended, the amount of credit may be changed or credit withdrawn by Seller at any time, in its sole discretion. Fees for and relating to the Products and Services are subject to adjustment in the event there are cost increases created by circumstances such as, but not limited to, changes in government energy policies, fuel and energy increases, chemical or material price increases, material and supply shortages, transportation and shipping costs. Any accepted order requiring special manufacturing processes, inspection, specified weight, packaging, test results, certification etc. is subject to additional charges. Payment terms shall not in any case exceed 45 days end of the month or 60 days net, date of issue of the invoice.
- 1.3. Save if otherwise agreed by Seller, all payments by Purchaser must be made by 100% irrevocable letter of credit, confirmed by a bank acceptable to Seller and payable upon presentation of shipping documents. In the event Seller agrees in writing to grant credit terms to Purchaser and Purchaser is late in effecting payment, Seller will send a reminder by registered post or by any other mean. If thereafter Purchaser still fails to effect payment within the grace period granted, interest shall automatically accrue on the overdue amount at a rate equal to the interest rate applied by the European Central Bank at the time of the most recent refinancing deal increased by 10 percentage points, as of the date when the invoice became due until receipt by Seller of the full invoiced amount. In addition, in case of late payment, Seller reserves the right to require full payment of the price for any outstanding order prior to delivery irrespective of the payment terms contained in the order or to suspend or terminate any outstanding contract or order, without prejudice to any other right or remedy of Seller at law or under these Conditions.

2. DELIVERY – TRANSPORT

- 2.1. The Products shall be delivered EXW Seller’s factory or warehouse on the agreed date, either by collection by Purchaser (directly or through a freight forwarder or transporter) or simple notification from Seller that the Products are available for collection. If Purchaser fails to take delivery of the Products within 8 days of the agreed delivery date or notification of availability, Purchaser shall nevertheless be required to make all payments due on the dates specified in the contract and the undelivered Products shall be stored by Seller at a place of its choice, at Purchaser’s sole risk and expense. Similarly, the warranty period shall start accruing as from the initial delivery date. If the sale occurs by removal of the Products from a consignment stock, Purchaser will send a report to Seller every week detailing the Products removed from the consignment stock and Seller will issue an invoice for those Products. The date of removal shall be deemed to be the date of delivery.
- 2.2. Seller will use all reasonable endeavours to deliver Products by the agreed delivery dates and reserves the right to deliver in one or more instalments. In the event of delay, Seller shall not be liable for any loss or damage including but not limited to any penalties or liquidated damages, and Purchaser shall not be entitled to cancel the order or withhold any payment due.
- 2.3. Risk in the Products shall pass to Purchaser on delivery, and title in accordance with clause 9 below. Save where otherwise agreed by the parties, Purchaser shall subscribe and maintain insurance for the full value of the Products during transport.
- 2.4. Any claim for damage or loss to the Products whilst in transit shall be made by Purchaser against the carrier.
- 2.5. If Seller agrees to ship the Products to Purchaser, Seller shall choose the method of transport and the carrier, save where Seller and Purchaser agree on the use of a specific carrier. In any event, transport costs shall be borne by Purchaser save where otherwise agreed by the parties. If transport is arranged by Purchaser, Purchaser shall procure suitable means of transport and shall ensure, under its responsibility, that they comply with technical and safety requirements under French law, in each and all transit countries and in the country of destination of the Product. Seller reserves the right to refuse to load the Products if Seller believes, in its unquestionable opinion, that the means provided are not safe or not entirely compliant with the applicable safety standards. However, allowing loading of the Products shall never entail any liability for Seller in this regard.
- 2.6. Claims for shortages, for damage to the Products or defects in the Products visible on inspection, must be notified by registered mail to Seller within thirty (30) days from date of shipment from Seller’s factory or warehouse, failing which Purchaser will be deemed to have accepted the Products. After acceptance Purchaser shall not be entitled to reject any Products. In case of partial deliveries over a period of time, any dispute or complaint relating to one delivery shall not affect the other deliveries.
- 2.7. The weight and measure of the Products at time of delivery indicated on Seller’s delivery note shall be binding on the parties.
- 2.8. No Product shall be returned to Seller without Seller’s prior written consent. The cost and risk of returning Products shall be borne by Purchaser. If after verification of the quality and quantity of the returned Products, Seller accepts the returned Products, Purchaser shall be entitled to a credit that shall be paid as per the payment terms agreed in the order.

3. WARRANTY

- 3.1. Seller warrants that all Products manufactured by Seller and supplied to Purchaser shall remain free from defects in material and workmanship for the limitation period as from the date of manufacturing. In respect of Products or components manufactured and supplied to Seller by third parties, Seller will pass on to Purchaser (in so far as possible and provided that Seller does not incur any costs) the benefit of any warranty granted to Seller.
- 3.2. Seller further warrants that the Products will have passed any performance tests referred to in the agreed specifications. If Seller is unable to undertake performance tests for reasons beyond its control, within one (1) year after the delivery of the Products or sixty (60) days after the Products are first put into operation, whichever shall first occur, the Products shall be deemed to have satisfied this undertaking and all liability of Seller therefor shall terminate. Unless expressly agreed otherwise, Seller warrants only that the Products will be fit for the purpose they were designed for and does not guarantee that the Products will be fit for any specific purpose Purchaser intends to use them for, even if Seller has been informed by Purchaser of such specific purpose.
- 3.3. If during the warranty period it is proved that the Product was defective at the time of delivery, it shall be repaired at Seller’s plant or replaced free of charge FOB agreed port, provided that Seller receives written notice, by registered mail with A/R, of any defect in the Products within eight (8) days from the date such defect is first discovered and in any event prior to the end of the warranty period. Seller may ask Purchaser to return the defective Product to Seller at Purchaser’s expense, so that Seller can verify that the defect is caused solely by Seller’s faulty design, materials or workmanship. Seller shall not be liable for any

costs of dismantling, removing and reinstalling Products or for any other related expenses, all of which shall be borne by Purchaser. Repaired or replaced Products shall be redelivered to Purchaser in accordance with and subject to these Conditions save that the warranty period for the replacement Products shall not exceed the unexpired portion of the original warranty period.

- 3.4. Seller's sole liability under this warranty clause shall be the replacement or repair free of charge of any Product that Seller acknowledged to be defective. Seller shall also have the option of recovering the Product at Seller's cost and reimbursing to Purchaser all sums received for Product recovered, in which event Seller shall have no further liability to Purchaser.
- 3.5. Any repairs or changes made to the Products by a third party or by Purchaser without the prior written consent of Seller shall not be reimbursed and shall invalidate Seller's warranty. Purchaser shall be solely liable for any deterioration or change to the Product caused or made by Purchaser or occurring after delivery.
- 3.6. Limitation of Warranty : The warranty and remedies defined above set out the entire liability of Seller in respect of the sale of the Products and shall be to the exclusion of all other conditions or warranties whatsoever concerning the Products, whether express or implied, by statute, at common law or otherwise.
- 3.7. The warranties and remedies set forth herein are further conditioned upon the proper receipt, handling, storage and installation of Seller's furnished Products, upon the Products not being operated beyond their rating and, in all respects, being operated and maintained in a normal and proper manner and not having been subjected to accident, alteration, abuse or misuse.
4. LIMITATION OF LIABILITY
 - 4.1. Seller's aggregate liability arising out of or in connection with any contract or purchase order whether based on breach of contract, statutory warranty, the law of tort or negligence, or otherwise, shall in no event exceed the price of the Products with respect to which a claim is made, in addition to the cost of repair or replacement of such defective Product, save that nothing in these Conditions shall affect either party's liability for death or personal injury to any person to the extent caused by the negligence of such party, its employees, or authorised agents. For the purposes of this clause 4.1, the price of the Products shall be the invoiced price.
 - 4.2. Seller shall not be liable whether by way of indemnity or by reason of any breach of contract or in tort (including but not limited to negligence) for any indirect, special, incidental or consequential losses or damage such as loss of use of the Products, loss or alteration of data, damage to reputation, loss of profit or any other financial or economic loss or damage whatsoever as well as financing costs or increase in operating costs, howsoever arising.
 - 4.3. Accordingly, Purchaser expressly waives its right to make any claims against Seller or its insurers or demand any remedy in excess of the amount stipulated in clause 4.1 above or of a kind excluded by clause 4.2 above, and warrants that it will obtain a waiver of subrogation from its insurers in favour of Seller.
 - 4.4. If a third party submits an indemnity/compensation claim for damages consequential to and/or arising out of the delivery of the Product, Purchaser shall hold Seller or his duly-authorised representatives or employees or agents harmless from any amount awarded against Seller (such repayment obligation including, without limitation, reasonable attorney costs, advances, expenses, charges, tax, ... also deriving from legal proceedings), provided that the cause of the compensation claim submitted against Seller derives from Purchaser's position after delivery.
5. CHANGES IN DESIGN OR PROCESS
 - 5.1. Seller reserves the right in its sole discretion and without notice, to make changes to the design or method of manufacture of the Products provided that the Products continue to meet any applicable performance specifications, and to add and withdraw Products from its product catalogues.
 - 5.2. Seller will be under no obligation to make any changes to the Products requested by Purchaser unless a mutually acceptable change order is signed by Seller and Purchaser.
6. INTELLECTUAL PROPERTY RIGHTS
 - 6.1. Seller shall, at its own expense, defend and hold Purchaser harmless against any claims made against Purchaser for infringement of a valid third party patent issued in the European Union, subject to the limits fixed below and provided that Purchaser (i) gives Seller prompt notice of such claim being made or action threatened; (ii) allows Seller to assume sole authority to conduct the defence or settlement of such claim or any negotiations related thereto with the lawyers selected by Seller; (iii) provides Seller with all reasonable information, cooperation and assistance requested by Seller in connection with such claim; and (iv) refrains from making any admission and/or settlement without Seller's prior written consent.
 - 6.2. If a judgment awarded against Purchaser, pursuant to clause 6.1, declares the Product infringing or prohibits its use, Seller shall, at its option: (i) replace the infringing Products by non infringing Products; or (ii) procure a licence to Purchaser to use the Products on reasonable conditions; or (iii) refund to Purchaser the purchase price of the Products less straight line depreciation of the Products over 15 years from the date of delivery.
 - 6.3. The foregoing sets forth Purchaser's sole and exclusive remedies against Seller in connection with claims based on infringement of any third party patent by Seller's Product. Furthermore Seller's liability pursuant to this clause 6 is expressly limited to the purchase price of the infringing Products, and Seller shall not be liable for any indirect, special, incidental or consequential losses or damage, including but not limited to loss of use of the Products.
 - 6.4. The provisions of this clause 6 shall not apply to any claims based on (i) Seller's compliance with Purchaser's design, drawings or specifications; or (ii) use of Product in a manner or for a purpose which was unknown to Seller; or (iii) the assembly, function or use of Product in conjunction with a product not supplied by Seller; or (iv) the modification of Product by Purchaser or by a third party; or (v) infringement arising in a country other than the country where Product is delivered to Purchaser as provided for in the contract or purchase order.
7. FORCE MAJEURE
 - 7.1. Seller shall not be considered in default in the performance of its obligations hereunder or be liable in damages or otherwise for any failure or delay in performance which is due to Force Majeure, i.e., strike, lockout or other industrial disturbance (at Seller facilities or at the facilities of Seller's suppliers or hauliers), fire, explosion, flood or other natural catastrophe, civil disturbance, riot or armed conflict whether declared or undeclared, terrorism, pandemics, epidemics, quarantines or other public health emergencies of similar nature, curtailment, shortage, rationing or allocation of sources of supply or labour, materials, transportation, energy, or utilities, accident, Act of God, delay of subcontractors or vendors, sufferance of or voluntary compliance with acts of government and government regulations (whether or not valid), embargo or any other cause beyond the reasonable control of Seller.
 - 7.2. In the event of delay arising from Force Majeure, time of performance shall be extended by a period of time reasonably necessary to overcome the effect of the delay.
 - 7.3. In the event that a delivery or service is impossible or cannot reasonably be rendered due to Force Majeure, Seller shall be entitled to reduce the quantity of the goods sold, delay the shipment date or cancel the sale at the current status, with no right for Purchaser to receive any compensation or indemnity whatsoever and without prejudice to Seller's right to obtain payment for any deliveries already made.
8. DRAWINGS

All drawings, bills of materials, technical data sheets, specifications, diagrams, operating manuals and other documentation prepared by Seller or otherwise obtained by Seller shall remain the exclusive property of Seller. If Seller has agreed to supply them to Purchaser, any such documents shall become the property of Purchaser provided, however, that (i) Purchaser undertakes to use them exclusively for the purposes of installing, operating, maintaining, modifying or repairing the Products supplied to Purchaser; and (ii) Purchaser undertakes not to disclose them to third parties without Seller's prior written consent.

Purchaser shall assume any and all responsibility in respect of the trademarks, names and badges that it requires be affixed onto the Products supplied. Should these products be repackaged or processed in some way, the use of such trademarks, names or logos will not be permitted.

9. RETENTION OF TITLE

9.1. Title to Product shall not pass from Seller until Purchaser has paid Seller unconditionally and in full and cleared funds all monies due under the contract, including but not limited to any interest due on the price. Payment made by bill of exchange or any similar method will only be deemed to have been made once effectively received by Seller.

9.2. Until title to Product passes from Seller as set forth above, Purchaser shall mark consignment stock of Product on Purchaser's premises in such a way that Product is clearly identifiable as Seller's property. Purchaser shall store Product under Seller's title separately from all other goods in its possession, failing which Seller may demand immediate payment of the price. Purchaser agrees to insure them against fire, theft and flood and hereby transfers to Seller any and all rights to insurance compensation indemnities and any other right associated. If a third party tries to seize or take possession of Product, Purchaser shall immediately notify Seller. Further, Purchaser shall refrain from permitting any charge, encumbrance or lien to be created in relation to Product or from reselling Product. In case Seller claims Product back, the sale contract or order shall be automatically cancelled, without prejudice to any other right or remedy of Seller. All costs incurred by Seller in repossessing Product shall be borne by Purchaser.

10. ACCEPTANCE OF CONDITIONS

10.1. These Conditions govern all sales by Seller and constitute the entire agreement between the parties relating to the sale of the Products. Purchaser's issuing an order for Product entails acceptance without reservation of these Conditions and the waiver by Purchaser of any general conditions of purchase contained or referred to in Purchaser's order or correspondence, or in any other commercial documentation, irrespective of when such conditions of purchase are received by Seller.

10.2. Any different or additional terms specified by Purchaser or changes to the conditions made by Purchaser at the time of placing its order or thereafter are hereby expressly excluded and shall not be binding on Seller, except if specifically agreed to in writing by a duly authorised officer of Seller. Neither the silence of Seller nor the delivery by Seller of the Products shall constitute acceptance of such different or additional terms or of any changes made to these Conditions by Purchaser.

11. SUB CONTRACTING - ASSIGNMENT

11.1. Seller may sub-contract or assign to any affiliated company, successor in interest whether by merger, amalgamation, reconstruction or otherwise, or the purchaser of the whole or substantially all of the assets comprising its business, all or part of its rights and the performance of its obligations under any contract formed or order placed pursuant to these Conditions, without having to obtain the consent of Purchaser. Purchaser shall have no right to terminate any contract or order or claim compensation or indemnity by reason of Seller sub-contracting or assigning all or part of its rights and obligations.

11.2. The transfer or assignment by Purchaser of its rights and obligations under any contract formed or order placed pursuant to these Conditions shall be subject to the prior written consent of Seller.

12. TERMINATION

12.1. If after communication of these Conditions Purchaser wishes to terminate a contract or cancel an order prior to performance, it shall give Seller at least 60 days prior written notice, giving its reasons for such termination or cancellation.

12.2. If Purchaser terminates a contract or cancels a purchase order in accordance with clause 12.1 above, it shall on first demand reimburse to Seller all costs incurred by Seller in connection with the manufacture of the Product, as well as all costs and expenses arising due to termination of contracts with Seller's suppliers and sub-contractors.

12.3. Subject to applicable laws, Seller may terminate forthwith all contracts and pending purchase orders after communication of these Conditions in the event that (a) Purchaser fails to pay for any Products by the due date; or (b) Purchaser makes any arrangement with or composition for the benefit of its creditors; or (c) any petition for the winding-up of Purchaser is passed or presented (other than for the purposes of amalgamation or reconstruction); or (d) a receiver or administrative receiver, administrator or manager is appointed over the whole or any part of Purchaser's business.

Purchaser's solvency is a condition of Seller's performance and Seller may, at any time, in its sole discretion (including a good faith belief that a current or future payment is or may be impaired) or because of Purchaser's breach of this or any other agreement with Seller, suspend or change credit terms, fix a limit on credit, require process payments, demand payment of any outstanding balance, withhold shipments, request assurances of payment, cancel or terminate any order to agreement, or repossess all Product previously delivered, which Product shall become the absolute property of Seller subject to credit therefore.

13. No WAIVER

No failure by Seller to exercise, nor any delay by Seller in exercising any of its rights, powers, privileges or remedies under these Conditions shall be construed as a waiver thereof, nor shall it prevent Seller from subsequently enforcing any right, power, privilege or remedy or treating any breach by Purchaser as a repudiation of contract.

14. SEVERABILITY

Should any term, clause or provision contained in these Conditions be declared to be or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision, or of any contract between the Parties based on these Conditions.

15. NOTICES

Any notice given pursuant to these Conditions shall be sent by registered post with return receipt requested.

16. GOVERNING LAW – JURISDICTION

These Conditions, all contracts entered into after communication of these Conditions and the sale of the Products pursuant thereto shall be governed by the laws of France. Any dispute arising in connection with any contract, purchase order and the sale of Products after communication of these Conditions shall be finally settled by arbitration in Paris, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with said Rules unless the Parties agree on one (1) arbitrator. The arbitration will be conducted in the English language.

17. RESERVATION OF COPPER – PROVISION OF COPPER

17.1. Purchaser may request Seller to make reservations of copper on its behalf, for the manufacture of Products to be delivered to Purchaser. If Seller accepts, Seller shall make reservations of copper on behalf of Purchaser for the quantities and the reservation periods agreed by Seller with Purchaser.

17.2. If Seller makes reservations of copper as per 17.1 above, Purchaser irrevocably undertakes to purchaser from Seller, by or before the end of the agreed period of reservation and in accordance with the schedule agreed, quantities of Product representing at least the quantity of copper reserved, failing which Purchaser may at the latest 3 days before the end of the period of reservation request in writing the extension of the period for the quantity of copper reserved which it has not ordered Products for. If Seller accepts to extend the period, Purchaser shall indemnify Seller for all costs and expenses incurred by Seller in connection therewith, including without limitation the financial cost to Seller calculated at the EURIBOR rate applicable during the period of extension plus 2%. If Purchaser does not ask for an extension or requests an extension after the deadline set forth above, or Seller refuses an extension, Purchaser will indemnify Seller on first demand for the purchase cost of the outstanding quantities of copper reserved but not ordered by Purchaser (based on the price actually paid therefore by Seller) as well as for all related costs, expenses and losses incurred or suffered by Seller in connection with the reservation.

- 17.3. In case of futures contracts entered into for a period exceeding two months from the date of the contract, such reservations shall be subject to the following terms: "If futures Euro prices on the London Metal Exchange (LME) fall under the contract Euro LME price for the contracted delivery months, thus creating a loss at time of securing the LME futures positions, Seller reserves the right to require from Purchaser an advance payment or margin call corresponding to the estimated loss. Such payment or call shall be payable upon receipt of invoice."
- 17.4. If Purchaser provides copper to Seller for transformation, Purchaser undertakes to deliver the copper to the factory indicated by Seller in the form of cathodes, at least one month before the scheduled date of delivery of the Products. In the event of delay in delivery of the copper cathodes, Purchaser shall indemnify Seller for costs incurred by Seller as a result of such delay and/or Seller will be entitled to charge interest to Purchaser calculated in accordance with clause 17.2 above.