Schmidt + Clemens

General Terms and Conditions of Sales of S+C Products

These General Terms and Conditions of Sale ("GTCS") apply exclusively to all sales of goods by S+C Alfanametal s.r.o., koncern (hereinafter referred to as "Seller"). These GTCS shall also govern all future transactions with the Buyer.

1. Definitions

a) "Buyer" means the company or individual purchasing the Goods from the Seller.
b) Buyer and Seller are collectively referred to as the Parties and individually also as a Party.
c) "Goods" means the products provided by the Seller to the Buyer as described in the Purchase Order or the Sales Agreement.
d) "Purchase Order" means a purchase order from the Buyer for Products addressed to Seller detailing the Goods to be provided, the price, and other related terms.
e) "Sales Agreement" means the written (incl. Email) agreement between the Buyer and Seller detailing the Goods to be provided, the price, and other related terms.

2. General

a) These GTCS apply to all offers issued by Seller and/or sales of Goods by the Seller to the Buyer and shall prevail over any conflicting terms proposed by the Buyer, unless expressly agreed in writing by the Seller. Any Buyer's terms and conditions that are contradictory to or deviate from these GTCS are excluded. Acceptance of Seller's contract proposal with any deviation or amendment is automatically considered to be a new draft contract, not its confirmation; unless Seller has expressly agreed to the deviation or amendment in writing. These GTCS shall also apply to all Purchase Orders or Sales Agreements concluded by and between the Parties in the future, even if they are not expressly referred to.
b) Seller reserves the right to change these GTCS at any time. Any amendments shall be communicated to the Buyer by means of a notice delivered in writing at least thirty (30) calendar days prior to their effective date. The Buyer shall have the right to reject the application of the amended GTCs within this notice period.
c) Seller warrants that the delivered Goods comply with the specifications as per the provision of Art. 12 Letter a) hereof.

3. Orders and Specifications

a) No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller or the Seller's representative within twenty-one days after submittal.
b) The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller) and eventually in the Seller's quotation, too, if an explicit reference to it was made in the order there. Any such specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties.
c) The Buyer shall be responsible for ensuring the accuracy of the data and specifications attached to or defined in any order issued by the Buyer and provided to the Seller, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms The Buyer shall be responsible for suitability and fitness of the Goods ordered for the purpose intended by the Buyer.
d) If the Goods are to be manufactured or any process is to applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from the Seller's use of the Buyer's specification.

e) The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

4. Prices; Terms of Payment

a) The prices for Goods shall be those set forth in Seller´s order confirmation. All prices are exclusive of taxes, impositions and other charges, including, but not limited to, sales, use, excise, import or export duties, value-added and similar taxes or charges imposed by any government authority.

b) The price of nickel shall be fixed on the date the Buyer issues the Purchase Order and will be confirmed in the Seller's Order Confirmation. If, at the time the Seller purchases other alloys required for the manufacture of the Goods, the actual cost of such alloys has increased or decreased by more than ten percent (10%) compared to the alloy cost basis specified in the Seller's offer, the Contract Price shall be automatically adjusted to reflect the actual alloy costs as of the date of purchase. The adjusted price shall apply without requiring the Buyer's approval and will be communicated in writing to the Buyer without undue delay.

c) Payment shall be made by the Buyer within 30 days of the invoice date unless otherwise agreed in writing.

d) Buyer shall be entitled to withhold or offset payments from a Purchase Order against any claims from that specific Purchase Order which Buyer may have only to the extent justified by undisputed legally enforceable claims.

e) If a payment is not made when due, the Seller shall be entitled to charge default interest at a rate of nine (9) percentage points above the applicable base interest rate published by the European Central Bank from the day on which the payment became due and payable until it has been made in full. This shall be in addition to, and not in limitation of, any other rights or remedies to which we are or may be entitled at law.

f) Buyer must submit such financial information from time to time as may be reasonably requested by Seller for the establishment or continuation of payment terms. Seller may in its sole discretion at any time change the agreed on payment terms without notice by requiring payment cash in advance or cash on delivery, bank guarantee, letter of credit or otherwise.

5. Delivery Terms

a) Unless expressly stated otherwise in Seller's order confirmation, all deliveries of Goods shall be FCA 783 57 Tršice 126, Czech Republic, in accordance with INCOTERMS 2020. The risk of loss of or damage to Goods shall pass to Buyer in accordance with the agreed delivery term.

b) Without prejudice to any rights Seller may have due to Buyer's delay, the delivery dates specified in the order confirmation shall be extended for the duration of Buyer's failure to fulfil its obligations. If Buyer refuses or culpably fails to accept delivery or otherwise breaches its duty to cooperate, Seller shall be entitled to claim compensation for any resulting damages, including additional or unforeseen costs. In such cases, the risk of accidental loss or damage shall pass to Buyer at the time of non-acceptance.

c) If Seller fails to deliver Goods within the expiry of the grace period specified in Clause 6, Buyer is entitled to compensation as set forth in Clause 6. Buyer may terminate the applicable Purchase Order in whole or in part (as to those goods affected by the delay) by providing written notice of termination to Seller within seven calendar days of the expiration of payment of the maximum agreed compensation.

6. Liquidated Damages

a) If Seller is in delay in relation to the delivery date of the Goods and upon the expiry of a grace period of twenty (20) calendar days after the delivery date, Buyer is entitled to charge compensation of 0,25 % of the Purchase Order price for each full week of delay beyond the delivery date, up to a maximum of five percent (5%) of the Purchase Order price.

Seller shall not owe any compensation for delay to the extent such delay is a result of (i) a default by, or other act or omission of, Buyer, or (ii) a Force Majeure event; or (iii) Seller's suspension of works due to Buyer's failure to pay an undisputed invoice in time.

b) It is agreed and understood that the payment of the compensation shall be the Buyer's sole and exclusive remedy for delays set forth in this Section. Further (damage) claims for reasons of delay in delivery are excluded.

c) Buyer shall be entitled to claim compensation within a limitation period of thirty (30) months from the date of delivery of the Goods.

7. Force Majeure

a) Force Majeure Event means any event or circumstances beyond the control of the affected Party which cannot be reasonably foreseen and prevented in time and which could not be avoided or overcome through the implementation of reasonable measures the effect of which is to prevent or impede a Party from performing all or part of any of its obligations under the GTCS, including but not limited to: earthquake, flood, storm, lightning, fire, explosion, war, terrorism, riot, civil disturbance, sabotage and other calamities, general strike, pandemic/epidemic, breakdown of public utilities, acts of governments, supranational organizations or other administrative or public agencies, sanctions and embargos.

b) A Party prevented from fulfilling its obligations duly and timely by an event of Force Majeure (a Subjected Party) shall inform the other Party (the Impinged Party) without unreasonable delay, both orally and in writing, specifying the cause of Force Majeure and how it may affect its performance, including a good faith best estimate of the likely scope and duration of interference with its obligations. The Subjected Party shall make best efforts to terminate or avoid as soon as practicable the Force Majeure circumstances.

c) The Subjected Party shall be released from performing any of its obligations including contractual fines for the duration of the Force Majeure event. The Parties shall consult with each other in order to minimize all damages, costs and possible other negative effects. Furthermore, if an event of Force Majeure continues for more than ninety (90) calendar days and no adequate remedial solution can be agreed upon within fifteen (15) calendar days thereafter, the Impinged Party shall be entitled to terminate the affected Purchase Contract or part of a Purchase Contract (or eve, as the case may be, these GTCS), with immediate effect and without liability to the Subjected Party. Upon remediation of the Force Majeure event, the Subjected Party shall promptly resume performance on all Purchase Contracts which have not been terminated.

8. Inspection; Acceptance

a) In the event of an acceptance test having been agreed upon, the scope and conditions of such a test shall be defined by the time a Purchase Order and/or Sales Agreement is concluded.

b) In the absence of such a Sales Agreement, Buyer must inspect Goods delivered upon receipt. Buyer is deemed to have accepted Goods delivered unless written notice of rejection specifying the reasons for rejection is received by Seller within five calendar days after delivery of the goods.

9. Dimensions, Weights, Volumes

a) The dimensions, weight, and volume of the Goods shall conform to the specifications agreed between the Parties. . Any references to weight or dimensions in our quotations or order confirmations shall not be construed as binding quality warranties.

10. Shipment, Insurance

a) Transport insurance shall be issued in accordance with the agreed INCOTERMS 2020.

b) Consignments declared ready for shipment must be accepted without delay. If Buyer fails to do so, Seller may, at its discretion, either dispatch the consignments immediately or store them at Buyer's expense and risk, applying standard industry storage rates. This right to store shall also apply if shipment is prevented through no fault of Seller. In such cases, the consignments shall be deemed delivered one week after being placed in storage.

11. Retention of Title

a) Title to Goods delivered shall remain vested in Seller and shall not pass to Buyer until the Goods have been paid for in full. Until ownership in the Goods has passed to Buyer, Buyer shall keep the Goods separate from those of Buyer and third parties and properly stored, protected and insured and identified as Seller's property.

b) The Goods delivered by Seller that fall under the retention of title may never be used as a means of payment.

c) Buyer shall process any Goods supplied under retention of title solely on behalf of Seller. If the conditionally owned Goods are combined or integrated with other items to form a new product, Seller shall acquire co-ownership in the resulting product in proportion to the Purchase Order value of the Goods relative to the total invoice value of the combined components at the time of processing.

d) If Seller's ownership rights expire due to the Goods being combined, mixed, or blended with other items, Buyer hereby agrees in advance to transfer to Seller a co-ownership interest in the resulting product, in proportion to the invoice value of the conditionally owned Goods. Buyer shall store such products for Seller free of charge. These products shall be deemed conditional Goods within the meaning of clause a).

12. Warranty

a) Seller warrants that upon delivery and for a period of 18 months from the date of delivery or 12 months from the date of commissioning, whichever is earlier, Goods will conform in all material respects to the agreed Buyer's specifications for such goods and will be free from material defects in workmanship and material under normal use.

b) In case of defect, the Seller has to, at Seller's option, to repair or replace the defective Products without undue delay or within a time schedule mutually agreed between the Parties and free of charge. Seller has to bear all costs for assembly, disassembly and transportation.

c) In the event of default exceeding 15 days, the Buyer shall be entitled to remedy the defects itself or have them remedied and to recover the costs from the Seller, provided that the Buyer has notified the Seller of its intention to do so and has set a reasonable deadline for remedying the defect, which has expired without result.

d) For the avoidance of doubt, the Buyer can assert no warranty claim if Products have been damaged by poor maintenance, normal wear and tear, accident, misuse, and misapplication or have been modified or altered by anyone other than the Seller after the Buyer's acceptance of Products.

e) Seller makes no other warranty, express or implied, with respect to Goods delivered hereunder, and the warranty constitutes Seller's sole obligation in respect of any lack of conformity of Goods delivered hereunder (except title). In particular, Seller makes no warranty with respect to the merchantability of goods delivered or their suitability or fitness for any particular purpose.

13. Confidentiality

a) "Discloser" means a party hereto that has disclosed or otherwise made available any of its Confidential Information to the other party, who is in that context referred to as the "Recipient."

"Confidential Information" means all information disclosed by the Discloser to the Recipient in connection with the Purchase Order, excluding information that, (i) is known or becomes known to the general public without disclosure by the Recipient, (ii) is already known to the Recipient prior to disclosure by the Discloser, or (iii) is received by the Recipient from a third party without breach of any confidentiality obligation.

b) The Recipient shall use Confidential Information exclusively to perform its contractual obligations. The Recipient shall protect such information with the highest degree of care reasonably expected in the industry and in no case with less than reasonable care. The Recipient shall ensure that its employees, agents, and service providers comply fully with these obligations and shall be fully liable for any act or omission of such persons.

c) If disclosure is required by law or court order, the Recipient shall, to the extent legally permissible, promptly notify the Discloser and limit disclosure to what is legally required.

d) Upon the Discloser's request, the Recipient shall return or destroy all Confidential Information, except for copies required for enforcing claims or documenting proper performance, or prescribed by law.

14. Limitation of Liability

a) Notwithstanding anything to the contrary, Seller's liability (including the liability of Seller´s representatives or agents and including any indemnification obligations) on any legal grounds whatsoever (e.g. breach of obligations and unauthorized action) is limited as follows:

   i. Seller´s total and aggregate liability for loss and damage arising out of or in connection with any purchase order based thereon (including compensation payment for delay in delivery) is limited in aggregate to and shall not exceed 100% of the order price. However, this limitation of liability does not apply to or exclude S+C's liability for (i) death or bodily injury, and, for (ii) any loss or damages related to or arising out of S+C's gross negligence, willful misconduct, or fraud and the like.

   ii. S+C shall not be liable for loss of production, loss of use, loss of profit, business interruption, loss of interest or any consequential, special or indirect loss, cost or damages suffered by Buyer arising from any cause whatsoever, whether arising in contract, in tort (including negligence) or otherwise at law, and whether arising directly out of the works performed or as a result of the works performed by S+C.

   iii. The Seller's liability for destruction, damage, or loss of any property (including but not limited to the Buyer's facilities) shall be limited to the individual insurance values covered by the Seller's insurance policy to the extent that the Seller would be liable under applicable law.

b) Any claims by Buyer for damages or defects shall become time-barred one (1) year after delivery of the resulting products. This limitation shall not apply in cases where longer limitation periods are mandated by law. Statutory provisions regarding the suspension, interruption, or recommencement of limitation periods remain unaffected. Claims under the Product Liability Act shall be governed by the statutory limitation periods, as shall claims based on willful misconduct or gross negligence.

15. Compliance

a) Within the scope of the negotiation, performance and termination of contracts concluded with the Seller, the Buyer shall ensure compliance with Regulation (EU) 2016/679 (General Data Protection Regulation) and other legal requirements applicable to the processing of personal data in the specific case, i. e. in particular the lawfulness and transparency of the processing and the transfer to third countries. In case of transfer of personal data from one party to the other, the responsibility of the receiving party starts from the moment of transfer of the personal data.

b) The Buyer shall comply with all applicable laws of the relevant jurisdictions., including but not limited to anti-corruption, anti-bribery and competition laws and shall neither actively nor passively, directly nor indirectly, engage in or omit any act that could constitute a criminal offense, in particular with regard to the granting of advantages, bribery, fraud, breach of trust, antitrust violations, or insolvency offenses.

In case of any violation, the Seller shall be entitled, within reasonable discretion, to withdraw from or terminate the respective Purchase Order and/or all existing contracts with the Buyer with immediate effect, to discontinue the business relationship, and to claim damages.

c) The Buyer shall comply with all applicable environmental, social, and governance (ESG) standards, including but not limited to the prohibition of child and forced labor. The Buyer shall also ensure safe and fair working conditions, comply with applicable health and safety regulations, and promote ethical business conduct.

16. Governing Law and Dispute Resolution

a) The GTCS shall be exclusively governed and interpreted by the Czech laws. The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 1980 – CISG) is excluded.

b) All disputes between the Parties arising out of or in connection with the GTCS and the respective Purchase Order shall be settled by the Parties amicably through good faith discussions upon the written request of any Party. In the event that any such dispute cannot be resolved thereby within a period of thirty (30) days after such notice has been given, such dispute shall be exclusively and finally settled under the competent Czech court according to the Seller's registered office; The Seller, however, may file a lawsuit before the competent court according to the Buyer's registered office.

17. Miscellaneous

a) No waiver of any provision of these GTCS shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either party to enforce any provision of these GTCS shall not constitute a waiver of such provision or any other provision(s) of these GTCS.

b) Should any provision of these GTCS be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the parties and enforced as modified. All other terms and conditions of these GTCS shall remain in full force and effect and shall be construed in accordance with the modified provision.

c) The Parties are independent contractors. No Party shall have any power or authority to assume on behalf of or in the name of the other Party any obligations or duties or to bind the other Party to any agreement, obligation or other commitment vis-à-vis any third party.