



## TERMS AND CONDITIONS OF SUPPLY

### ARTICLE 1 INTERPRETATION

#### 1.1 Incorporation by Reference, etc.

These Terms and Conditions (the “**Terms and Conditions**”) are incorporated by reference into each sales agreement executed between the Seller and the Buyer, whether based upon a Supply Quotation or otherwise (the “**Sales Agreement**”) between the Seller and a Buyer. These Terms and Conditions may be amended from time to time by the Seller. The Seller shall post the current version of such Terms and Conditions at [www.matalco.com](http://www.matalco.com) (the “**Website**”). Buyer hereby agrees and acknowledges that: (A) it is Buyer’s sole responsibility to review the Website for any changes to these Terms and Conditions; (B) Buyer irrevocably accepts any revised terms and/or conditions to such Terms and Conditions when it submits a Purchase Order or other documentation evidencing a desire by Buyer to purchase services and/or goods (including Products) from Seller (each an “**Order**”) and (C) the Terms and Conditions which are posted on the date upon which an Order is submitted shall govern, regardless of the date of delivery of any Products.

#### 1.2 Definitions

“**Agreement**” means, collectively, these Terms and Conditions, the associated Sales Agreement (in its completed form), the associated Purchase Orders, and all schedules, terms or provisions incorporated by reference in such documents other than any of Buyer’s terms and conditions affixed to or referred to in an Order. References to Articles, Sections or Subsections are to the specified Articles, Sections or Subsections of these Terms and Conditions, unless otherwise specified.

“**Affiliate**” has the meaning set out in the *Business Corporations Act* (Ontario). Notwithstanding anything to the contrary in the forgoing, for the purposes of these Terms and Conditions, this term shall include for, clarity, any limited liability company including but not limited to Matalco Inc., Matalco (U.S.), Inc., Matalco Wisconsin LLC, Matalco Bluffton LLC, Matalco USA LLC, Matalco Kentucky, LLC, and Ohio Valley Aluminum Company, LLC.

“**Business Day**” means a day other than a Saturday, Sunday or day which is a statutory holiday in the Province of Ontario, Canada or in the State of New York, United States of America.

“**Buyer**” means the party identified as such in the associated Sales Agreement.

“**Buyer Indemnified Parties**” means and includes (a) the Buyer’s Affiliates; (b) the officers, directors, authorized agents, employees and legal and other advisors or representatives of the Buyer and its Affiliates; (c) any Person that controls or has an ownership interest in the Buyer or any of its Affiliates; and (d) the successors, assigns, heirs and personal representatives of any of the foregoing.

“**Defective**”, means Products that do not meet the relevant specifications set out under the Agreement.

“**Delivery Address**” means the location(s) specified for that purpose under a Sales Agreement.

“**Event of Default**” means the happening of any one of the following:

- (a) The Buyer fails to make a payment when due under any contract with the Seller;
- (b) the Buyer fails to perform or comply with any obligation under the Agreement;
- (c) an order is made or a resolution or other action of the Buyer is taken for the dissolution, liquidation, winding up or other termination of its corporate existence;
- (d) the Buyer commits a voluntary act of bankruptcy, becomes insolvent, makes an assignment for the benefit of its creditors or proposes to its creditors a reorganization, arrangement, composition or readjustment of its debts or obligations or otherwise proposes to take advantage of or shelter under applicable law;
- (e) any proceeding is commenced with respect to a compromise or arrangement, or to have the Buyer declared bankrupt or to have a receiver appointed in respect of the Buyer or a substantial portion of its property and such proceeding is not fully stayed or dismissed within 30 days after such commencement;
- (f) a receiver or a receiver and manager of any of the assets of the Buyer is appointed and such receiver or receiver and manager is not removed within 30 days of such appointment;

(g) the Buyer ceases or takes steps to cease to carry on its business in the ordinary course; or

(h) the Buyer, in the reasonable opinion of the Seller, has unsatisfactory credit worthiness.

“**Expenses**” means any and all reasonable expenses (including fees and disbursements of lawyers, travel costs and other out of pocket costs) in connection with pending or threatened litigation or other proceedings relating to Third Party Claims, or otherwise arising out of Third-Party Claims.

“**includes**” and “**including**” mean, where the context permits, “including, without limiting the generality of the foregoing” and “includes, without limiting the generality of the foregoing”, respectively.

“**Seller**” means Matalco Canada Inc. and/or an Affiliate of Matalco Canada Inc., each as identified on the front page of the Sales Agreement.

“**Seller Indemnified Parties**” means and includes (a) the Seller’s Affiliates; (b) the officers, directors, authorized agents, employees and legal and other advisors or representatives of the Seller and its Affiliates; (c) any Person that controls or has an ownership interest in the Seller or any of its Affiliates; and (d) the successors, assigns, heirs and personal representatives of any of the foregoing.

“**Parties**” means, collectively, the Seller and the Buyer, and “**Party**” means one of them.

“**Person**” shall be broadly interpreted and shall include an individual, partnership, joint venture, association, corporation, company and any other form of business organization, government, regulatory or governmental agency, commission, department and instrumentality.

“**Prices**” has the meaning given such term in Section 6.1.

“**Products**” mean the items for sale by the Seller under the associated Sales Agreement and related Purchase Orders, and “**Product**” means any one of such Products.

“**Purchase Order**” means a purchase order in writing, either via facsimile, or by e-mail, on Seller’s standard form.

“**Rejected Product**” means a Product that is returned by a (direct or indirect) customer to Seller in accordance with these Terms and Conditions.

“**Scrap Declarations**” means a declaration of scrap generated from the processing of the Seller’s Products in the course of the Buyer’s metal-working or processing activities, in compliance with the Seller’s standards as set out under the Scrap Generation Requirements and properly loaded in accordance with the Scrap Loading Instructions.

“**Scrap Loading Instructions**” means then current Matalco Scrap Loading Instructions.

“**Scrap Generation Requirements**” means the then current Matalco Scrap Generation Requirements.

“**Supply Quotation**” means Seller’s form of Sales Agreement Quotation.

“**Start Date**” means the date specified as such in the associated Sales Agreement.

“**Third Party Claims**” means any and all claims, actions, demands or proceedings made or instituted by, or liabilities to or, losses or damages claimed by or payable to, third parties.

### 1.3 Headings

The division of these Terms and Conditions into Articles and Sections and the insertion of descriptive headings are for convenience of reference only. Such headings are not intended to be full or accurate descriptions of the contents of these Terms and Conditions and shall not affect or be considered in the construction or interpretation of such Terms and Conditions.

### 1.4 Order of Precedence

(a) The Agreement exclusively governs and controls each Party’s respective rights and obligations regarding the purchase and sale of the Products and the Parties’ agreement is expressly limited to such terms and conditions. If any terms and conditions in the associated Sales Agreement or related Purchase Order conflict with these Terms and Conditions, the order of precedence shall be (i) these Terms and Conditions, (ii) the associated Sales Agreement, and (iii) the relevant Purchase Order. Notwithstanding the foregoing, in the event that the Sales Agreement explicitly states that a clause in such Sales Agreement supersedes these Terms and Condition (each an “Overriding Clause”) then such Overriding Clause shall govern but solely to the extent required to resolve any conflict in the applicable provisions.

(b) **Without limiting the foregoing provisions of this Section 1.4, any additional, contrary or different terms contained in any Buyer confirmation, invoices, purchase orders or other communication, including without limitation with respect to specifications, price, quantity or delivery schedule and any other attempt to modify, supersede, supplement or otherwise alter the Agreement, are deemed rejected by the Seller and will not modify the Agreement or be binding on the Parties unless such terms have been fully and explicitly approved in writing by authorized representatives of both Parties. Fulfillment of Buyer’s Order does not constitute acceptance of any of Buyer’s terms or conditions and does not serve to**

**modify or amend this Agreement. Any confirmatory action by Buyer hereunder or any acceptance of the materials described or referred to herein shall constitute assent to these Terms and Conditions and a representation that Buyer is solvent.**

- (c) Each delivery hereunder shall be deemed a separate sale, and failure of Seller to make a delivery hereunder shall not affect this Agreement with respect to any other delivery hereunder.

## **ARTICLE 2 AGREEMENT TO PURCHASE AND SELL PRODUCTS**

### **2.1 Terms of Sale**

The Seller shall sell, and the Buyer shall buy, the Products on the terms and conditions set out in the Agreement.

### **2.2 Seller's Warranty**

(a) Seller warrants that the Products delivered shall conform to the specifications or grade described in the Sales Agreement, within any stated tolerances. Seller makes NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. Buyer assumes all risks incurred in the use or resale of any Product delivered pursuant to this Agreement.

### **2.3 Buyer's Warranty**

The Buyer warrants, represents and undertakes to Seller that, in connection with the subject matter of this Agreement and in any re-sale agreement and/or subsequent agreement with any third party which incorporates the Products, it, its affiliates and its or their directors, officers, employees, agents, representatives and any other person acting on its or their behalf: (i) have complied with, and will comply with, all applicable laws, rules and regulations including, without limitation, sanctions, anti-bribery and corruption, anti-money laundering and tax laws; and (ii) have not authorized, offered, promised, paid or otherwise given, and will not authorize, offer, promise, pay or otherwise give, whether directly or indirectly, any financial or other advantage to or for the use or benefit of any government official or any private individual (i) for the purpose of inducing or rewarding that person's improper performance of their relevant function, or (ii) that would be a breach of any applicable law.

## **ARTICLE 3 ORDERS**

### **3.1 Monthly Purchase Orders and Scrap Declarations**

Monthly Purchase Orders will be processed in the following sequential order: (1) fixed contract sales, (2) toll sales, and (3) outright sales. In order for a sales transaction to be considered a toll sale, there must be sufficient volume in the toll account of the Buyer to cover the volume to be shipped against the Purchase Order. Otherwise, the sale will be processed as an outright sale.

### **3.2 Detailed Releases**

The Buyer shall provide Seller with specific detailed releases under a Purchase Order and/or Scrap Declaration, the required quantities, alloys, diameters and lengths to be placed at least thirty-three (33) days prior to the scheduled delivery month.

### **3.3 Acceptance and Rejection of Purchase Orders**

All Purchase Orders for Products are subject to acceptance by Seller. The Seller shall confirm to the Buyer the receipt of each Purchase Order issued under the associated Sales Agreement (each a "**Confirmation**") following Seller's receipt thereof or advise the Buyer of the Seller's rejection of such Purchase Order. If the Seller fails to issue a Confirmation, or otherwise commences performance under such Purchase Order, the Seller will be deemed to have accepted the Purchase Order. The Seller may reject a Purchase Order if the Buyer has sent the Seller a notice of termination of the Agreement in accordance with these Terms and Conditions.

### **3.4 Inability to Revoke Orders**

The Buyer shall not be entitled to revoke any Purchase Order for Products which it has submitted to Matalco.

### **3.5 Amendments to Purchase Orders**

The Buyer may, on at least thirty-three (33) days' written notice to the Seller, request changes to a Purchase Order. Matalco shall make commercially reasonable efforts to accommodate such requests, at the cost of the Buyer, but shall have no obligation to do so.

### **3.6 Weight**

All Product weights for purposes of payment shall be determined by certified scales at Seller's location. Such weight scale shall be of commercially reasonable quality and maintained in a commercially reasonable manner. In the event that Matalco

does not have a certified weight ticket in respect of any Product delivered, then Buyer's weight for such delivered Product will govern as long as it is produced from a certified scale.

### **3.7 Volume of Orders**

- a) The Buyer hereby agrees that the annualized volume shall be divided into twelve (12) equal amounts (each an "Installment Volume"). The Buyer may make a request to deviate from these volumes when its requirements for delivery changes although Seller shall be under no obligation to agree to such modifications. In the event that Seller agrees to a modification, Seller reserves the right to charge Buyer a premium service charge for, amongst other things, additional administrative costs.
- b) For an abundance of clarity, in any month, the Seller shall have no obligation to accept any Order which is in excess of the: (i) monthly maximum volume listed on the Sales Agreement and, (ii) if no such maximum is listed on the Sales Agreement, the Installment Volume. In its sole and absolute discretion, Seller may agree to accept any change order request increasing the volume being delivered in such month.
- c) Further, the Buyer hereby agrees and acknowledges that it shall be responsible, on a "take or pay" basis for the (i) monthly minimum volume listed on the Sales Agreement and, (ii) if no such minimum is listed on the Sales Agreement, the Installment Volume. The Buyer hereby agrees that approximately 90-120 days prior to the end of the contractual term or, in the event that Sales Agreement is a multi year agreement, 90-120 days from the anniversary of such Agreement's effective date, the Seller shall provide Buyer with written notice a ("True Up Notice") detailing any shortfall, being more particularly the difference in volume of Product required to be ordered vs actually ordered in a month, in Buyer's ordering commitments (a "Shortfall") and potential remedies thereto. The Seller, in its sole discretion, shall make the determination as to whether the true up shall be a take or a pay. The True Up Notice shall provide particulars in respect of the timing required to make any payments, which payments, if any, shall be required to be paid within 45 days of the True Up Notice and shall be invoiced at the greater of: (i) the price for Product in the month in which the True Up Notice is dated or (ii) the sum of prices for a Shortfall, calculated upon the price for Product in the month where there was a Shortfall. Any Shortfall in the in the final 90 days of the Agreement's term or, in the event of a multiyear agreement, in the final 90 days of each year of the Sales Agreement shall be promptly calculated by Seller and provided to Buyer (each a "End of Year True Up"). Unless otherwise expressly agreed to by Seller, in writing, any Shortfall identified in the End of Year True Up shall be "pay" with such amounts being due and owing withing five (5) Business Days from receipt. In the event that Seller agrees, in writing, to accept a "take" for any Shortfall identified in the End of Year True Up, Buyer agrees that it shall prepay for the Product to be delivered.
- d) Notwithstanding, Section 6.5 (c), any failure to pay Seller for amounts identified in Section 3.7 (d) shall bear interest at the lesser of: (i) twenty percent (20%) per annum calculated and compounded monthly or (ii) the highest interest rate allowable at law.

## **ARTICLE 4 INVENTORY**

### **4.1 Inventory Availability**

The Seller shall seek to maintain sufficient Product inventory to permit it to fill the Buyer's orders. In the event of any shortage of Products in the Seller's inventory, the Seller may ship to the Buyer as many units of the Product as the Seller can reasonably provide, or to cancel any existing Purchase Order for such Product.

### **4.2 Security Interest**

As collateral security for the payment of the purchase price of the Product, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Product, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto, products thereof and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. To the extent practicable, Buyer shall segregate the Product, the proceeds thereof and any commingled goods (including, without limitation, goods manufactured or produced from such Product) until such time as payment for such Product has been made in full. Buyer hereby authorizes Seller to take any steps necessary or appropriate to perfect the security interest granted hereunder.

**ARTICLE 5  
DELIVERY, TITLE AND RISK OF LOSS**

**5.1 Packing**

The Seller shall assemble, pack, mark and ship Products strictly in the quantities, by the methods, to the Delivery Address and by the delivery dates, specified in the Agreement.

**5.2 Transport Method**

Transportation methods shall be agreed between the Parties, with delivery instructions to be defined and set out under Purchase Orders or otherwise in the Agreement.

**5.3 Delivery**

Unless otherwise explicitly specified on the Sales Agreement, then Products shall be FOB Seller's location. Delivery times will be measured by the time that Products are shipped to the Delivery Address. Each delivery hereunder shall be deemed a separate sale, and failure of Seller to make a delivery hereunder shall not affect this Agreement with respect to any other delivery hereunder.

**5.4 Transfer of Title**

Title to any Products shipped under any Purchase Order passes to the Buyer upon delivery of the Products to the Buyer, provided that title will only transfer to the Products if the Seller has been paid for the Products.

**5.5 Risk of Loss**

Notwithstanding any agreement between the Buyer and the Seller concerning transfer of title, risk of loss to Products shipped under any Purchase Order shall pass to the Buyer upon delivery of the Products to the Buyer at the Delivery Address, and the Buyer will bear all risk of loss or damage regarding the Products from such time on.

**ARTICLE 6  
PRICE AND PAYMENT**

**6.1 Prices**

- (a) Seller shall provide Products to the Buyer for the prices set forth in the associated Sales Agreement based upon the scheduled delivery month regardless of the date of actual delivery of Product (the "**Prices**"). Prices include, and Seller is solely responsible for, all costs and expenses relating to assembly, packing, marking, crating, boxing, loading and insurance. The Buyer is solely responsible for, all costs and expenses relating to unloading, customs, tariffs and duties, special or additional insurance or any other similar financial contributions or obligations relating to the delivery of the Products beyond those specifically identified Seller's obligations. **Notwithstanding the foregoing and Section 1.4 (a) in the event that the Sales Agreement has any particulars listed under the heading "Surcharges" then such particulars shall govern and shall be in addition to the Price.**
- (b) All prices are quoted in U.S. dollars, unless otherwise stated, and shall be made to the Seller's bank account specified in the relevant invoice. Failure of Buyer to make full payment of all undisputed amounts by the due date shall constitute a material breach of this Agreement.
- (c) All prices for Product are based upon the scheduled delivery month in the Sales Agreement
- (d) If the payment due date falls on a day which is a Saturday, Sunday or legal holiday, then payment shall be due on the last business day immediately prior to such Saturday, Sunday or legal holiday.
- (e) The payment terms offered by Seller hereunder are contingent upon Buyer remaining in compliance with the terms of this Agreement. Seller maintains the right at all times to determine, in its sole discretion, whether Seller shall extend credit to Buyer.

**6.2 Transportation Costs**

For any deliveries which are not FOB Seller's location, normal and anticipated freight charges are for Seller's account. Any supplemental freight charges will be billed to the Buyer on a per load basis. Demurrage charges may be applicable should offloading exceed one hour after truck arrival at the Delivery Address.

**6.3 Invoices**

Seller shall issue invoices to the Buyer for all Products ordered in accordance with its customary procedures. The Buyer shall review such invoices and confirm that all information relating to it and to its purchase of Products under it is accurate and complete. In the event of any deficiency with such invoices, the Buyer inform Seller immediately.

**6.4 Invoice Disputes**

The Buyer shall notify Seller of any dispute regarding an invoice within five (5) Business Days of its receipt of such invoice. The Parties shall seek to resolve all such disputes expeditiously and in good faith. The Buyer shall not withhold or fail to make payments (other

than in relation to amounts in dispute) or seek any form of set-off or other self-help remedy, pending resolution of any dispute. Seller shall be entitled cease performing its obligations under the Agreement in the event that it determines, in its sole discretion, that to do so would be commercially reasonable.

#### **6.5 Payment**

- (a) Except for any amounts disputed by the Buyer in good faith, the Buyer shall pay all invoiced amounts due to Seller within the payment terms as set forth in the associated Sales Agreement following the date of invoice.
- (b) Unless otherwise agreed in the Sales Agreement, the Buyer's payment terms to Seller for the acquisition of the Products are net 30 days.
- (c) Invoices not paid in full, including any amounts that are disputed but are subsequently determined to be payable, shall accrue interest, on a compounding daily basis, at a rate of 5% over prime (as published in the *Wall Street Journal*) from the date payment fell due to the date of payment.

#### **6.6 Resale**

The Buyer acknowledges and agrees that it is purchasing the Products for its own use and consumption, and that it does not intend to sell the Products to a third party except in a significantly altered or processed form.

#### **6.7 Set-off**

Notwithstanding anything to the contrary, and without prejudice to any other right or remedy it may have, Seller may, on notice to the Buyer, set-off or recoup any liability it owes to the Buyer against any liability for which Seller determines in good faith the Buyer is liable to Seller or its Affiliates, whether either liability is matured or unmatured, is liquidated or unliquidated or arises under the Agreement.

#### **6.8 Adequate Assurance**

In the event of circumstances which, in the sole and absolute discretion of the Seller, may have an adverse effect on the creditworthiness of Buyer or Buyer's ability to perform its obligations hereunder (including, without limitation, if there are any late payments by Buyer or Seller is unable to obtain or maintain all or partial credit insurance with respect to its sales to Buyer) then Seller may take any one or a combination of the following actions, in its discretion: (i) defer or suspend performance of the Sales Agreement, (ii) require payment in advance of delivery, (iii) require the opening of an irrevocable standby letter of credit from a bank acceptable to Seller on any outstanding invoices for Product delivered under the Sales Agreement or any other contract between the two parties, and (iv) require any other acceptable security or collateral within one (1) business day.

#### **6.9 Increased Costs/Taxes**

Unless otherwise specifically stated in the Sales agreement, all taxes (except Seller's income taxes), duties, fees and other impositions ("taxes") that may be levied, charged, assessed or imposed by or payable to any federal, state, provincial, local, municipal or other governmental authority by reason of the transactions effected under the Sales Agreement are assumed by and shall be for the account of Buyer, and Buyer shall pay directly all such taxes or reimburse Seller therefor. In those cases, in which the laws, regulations or ordinances at the delivery destination impose upon Seller the obligation to report, to collect or to pay such taxes, Buyer shall deliver to Seller proper evidence of tax exemption as required or permitted by law to establish exemptions from such taxes. Any increase in Seller's costs of performance after the date stated on the face of the Sale Contract resulting from additional taxes, duties, assessments or other charges imposed or collected by any governmental or taxing authority, increased insurance rates, and all other additional charges relating to the sale, loading, unloading, delivery, storage, and transportation of the Product, shall be for Buyer's account. Seller will remit all taxes charged to the appropriate governmental authorities which it is required to collect from the Buyer in respect of any tax referred to in this Section 6.9. The Buyer represents, warrants and covenants that (i) it is registered for HST purposes and/or for provincial and/or state sales tax purposes and (ii) it has supplied Seller its applicable HST registration number and/or provincial and/or state sales tax number.

### **ARTICLE 7 PRODUCT RETURNS**

#### **7.1 Product Rejection**

- (a) The Buyer shall inspect for any physical deformities and visual defects Products on receipt. The Buyer shall advise Seller in writing in a timely manner (within 10 days of receipt) if it determines, acting reasonably, that any Products should be rejected for any reason due to being Defective (each a "**Warranty Claim**"). Buyer shall be deemed to have accepted any Product with respect to which no Warranty Claim is made during such period. Seller shall be given a reasonable opportunity to investigate any Warranty Claim made by Buyer, and for such purpose Buyer shall set aside and hold any Product with respect to which a Warranty Claim is made.
- (b) In the event of any Warranty Claim, at Seller's sole option Seller may arrange for the return of product of such alleged Defective Products to Seller's location. Seller or Seller's agent shall carry out a thorough and detailed inspection and testing and determine,

acting reasonably, if the Buyer's concerns are warranted. If Seller determines that the applicable Product does not conform to the specifications or grade described in this Agreement and are Defective, Seller shall, at its election, either (i) provide the Buyer a credit for the price previously paid by the Buyer to Seller for the Products, or (ii) provide replacement Products to the Buyer at Seller's cost. Seller shall provide the Buyer the option of accepting re-delivery of the same Products (with payment of all associated costs at the Buyer's expense) or refusing re-delivery – provided that in neither case shall the Buyer be relieved of its payment obligation, in full, to Seller, including any freight costs. Buyer acknowledges and agrees that the remedies set forth in this Section 7 are Buyer's exclusive remedies for the delivery of Defective Product.

- (c) The Buyer shall not return Products or seek reimbursement for Products from Seller in any circumstance or for any reason other than that they are Defective.

## **ARTICLE 8 TERMINATION**

### **8.1 Termination**

(a) Either Party may terminate this Agreement by written notice to the other Party if: (i) the other Party commits a material breach of this Agreement which has not been remedied within 30 days (or 10 days in the case of non-payment of monies due) (or 120 days in the case of late delivery of Product by Seller) of receipt of notice specifying the breach and requiring its remedy; or (ii) the other Party ceases or suspends payment of, or is unable to pay, its debts as they come due, or any bankruptcy or other arrangement in satisfaction of debts is proposed or entered into with respect to the other Party.

(b) Notwithstanding, 8.1 (a) in addition to any other remedies that may be provided under these Terms, this Agreement may be terminated by Seller immediately upon written notice to the Buyer if Buyer has breached its obligations under this Agreement in any material respect.

### **8.2 Procedures on Termination in the Event of Buyer's Default**

Upon the occurrence of an Event of Default of the Buyer, Seller may, at its option, by written notice exercise any and all of the following remedies: (i) immediately cancel this Agreement; (ii) cease the delivery of Product to the Buyer; (iii) accelerate the due date and demand immediate payment of any outstanding invoice for Product delivered under any contract, whether or not then due and payable; (iv) seize and resell any Product subject to its security interest or ownership; and (v) take any other proceedings available pursuant to any applicable law.

## **ARTICLE 9 SCRAP**

### **9.1 Scrap Requirements**

Toll and Purchased scrap must conform to alloy chemistries, dimensional and packaging requirements that are offered and agreed upon prior to shipment. The Buyer will be responsible for any and all costs associated with any off-chemistry, contaminated, dimensional or packaging issues with material received. This will include additional processing, devaluation, freight, and in some cases rejection of the material. For detailed information regarding Seller's scrap specification and Seller's Scrap Loading Instructions please see: <https://www.matalco.com/wp-content/uploads/2023/05/WI-G006-Purchased-Scrap-Specification-R1.pdf>

## **ARTICLE 10 FORCE MAJEURE**

### **10.1 Force Majeure**

(a) Seller shall not be liable for any failure or delay of performance under this Agreement arising in any way from any action, order or requirement of any local, provincial, state or federal government agency which would curtail or force cessation of the operation of facilities intended for use in producing or utilizing the Products covered by this Agreement. Further, Seller shall not be liable for any failure or delay of performance hereunder due to other causes beyond its reasonable control, whether similar or dissimilar to the causes enumerated, including, but not limited to, acts of God or the public enemy, floods, explosions, fires, earthquakes, hostilities, war (declared or undeclared), accident, acts of either general or particular application of any de jure or de facto government or any of its subdivisions, bureaus or agencies, newly enacted legislation or regulation, newly issued orders or decrees of any court where Products are sold, purchased, shipped and/or delivered, any binding act or order of any governmental agency, inability to obtain materials or services, sabotage, strikes or other labor troubles (direct or indirect), riots, insurrections, civil commotion or loss or shortage of energy sources or raw materials from its usual sources of supply, nuclear or natural catastrophes, breakdown or failure of plants or equipment, and interruptions, pandemics and epidemics. The Parties agree the mere existence of COVID-19 shall not be considered an unforeseen event beyond the reasonable control of the Parties excusing performance;

provided, however, that future effects related to COVID-19, including but not limited to a Force Majeure event causing interruptions of supply chains or new government lockdown orders, may constitute a force majeure event if they otherwise qualify pursuant to this Section 10. The items described in this Section 10.1 are, for the purposes of the Agreement “Force Majeure”. Upon such an event, a party and its affiliates/subsidiaries may at its reasonable discretion determine to shut down any of its sites, reduce its demand or production.

- (b) If, because of any Force Majeure circumstances, Seller is unable to supply the total demand of its business to all its customers, Seller’s obligation shall be reduced to the extent necessary in Seller’s judgment to allocate Products in an equitable manner among its customers as determined by Seller in its sole discretion.
- (c) If, because of any Force Majeure circumstances, the Buyer is unable to receive its total requirements hereunder, the Buyer’s obligation to purchase during the Force Majeure period shall be reduced to the extent that the affected Buyer’s facility is unable to receive Products.

Notwithstanding any Force Majeure event, payment for any amounts owing shall remain fully due and payable.

## **ARTICLE 11 LIMITATION OF LIABILITY**

- 11.1** Seller shall not be liable to the Buyer for any special, indirect, incidental, punitive, exemplary, consequential damages, loss of profits, loss of revenues, loss of production or diminution in value arising out of or relating to any a breach of warranty, delay of performance or other default under this Agreement, whether or not the possibility of such damages or losses has been disclosed in advance by the other party or could have been reasonably foreseen, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 11.2** In no event shall Seller’s aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to Seller for the Product(s) sold pursuant to this Agreement that gave rise to Seller’s liability For greater clarity, Seller’s liability shall be limited to the amount paid by Buyer for any Order or part order, as the case may be, in respect of delivery (ies) that are ultimately determined to be non conforming Products and which give rise to Seller’s liability.

## **ARTICLE 12 CONFIDENTIALITY**

- 12.1** All non-public, confidential and proprietary information of Seller, including, but not limited to, specifications, samples, documents, data, business operations, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Without limiting or precluding any other relief available to Seller under applicable law, Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.

## **ARTICLE 13 MISCELLANEOUS**

- (a) All notices and other communications under this Agreement must be given in writing by registered mail to the applicable party at the address set forth on the first page of the Sales Agreement, or any other address as a party may hereafter specify.
- (b) Neither Party shall assign any of its rights or obligations hereunder without the prior written consent of the other Party, except that:
  - (i) Seller may, without Buyer’s consent, (a) assign its rights and obligations under this Agreement to one or more of its Affiliates, and (b) assign accounts receivable in relation to Products supplied under this Agreement to banks or other financial institutions pursuant to factoring or other similar accounts receivable financial arrangements;
  - (ii) Buyer may, giving Seller at least 30 days prior notice in writing, assign its rights and obligations under this Agreement to a person which has acquired all or substantially all of Buyer’s assets and:
    - (A) Has sufficient financial resources and provides reasonable assurances that it will be able to perform the Buyer’s obligations hereunder in accordance with all applicable laws; or



- (B) whose obligations hereunder are fully and unconditionally guaranteed by a person meeting the conditions of Section 13 (b)(ii) (a) above pursuant to an instrument in writing executed and delivered by such person in favour of, and in a form and substance satisfactory to, the Seller;
- (iii) A Change of Control of Buyer shall be deemed an assignment by operation of law for the purposes of this provision. Any purported transfer, assignment, pledge or delegation in violation of this Section shall be null and void. A “Change of Control” with respect to a party means a transaction or series of transactions by which more than 50% of the outstanding shares or equity interests of such party are acquired within a 1-year period, other than by a person or entity that owned or had beneficial ownership of more than 50% of such outstanding shares or equity interests before the close of such transactions
- (c) The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.
- (d) This Agreement may be executed and delivered in multiple counterparts, each of which when executed and delivered shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. Such counterparts may be in portable document format (pdf).
- (e) Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.
- (f) Governing Law. For sales generated by Matalco Inc. or Matalco Canada Inc. this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. For sales generated by any Affiliate, including for clarity Matalco (U.S.), Inc. or Matalco USA LLC, this Agreement shall be governed and construed in accordance with the laws of the State of New York, in either case without regard to conflicts of laws principles thereof which would result in the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (“CISG”) shall not govern or apply to this Agreement, and the parties hereby exclude the application of the CISG. Except as set specifically excluded in this Agreement, for any sales in and to the USA, the remedies set forth in this Terms and Conditions are in addition to any and all remedies provided to Seller by the Uniform Commercial Code and other applicable law.
- (g) Any controversy or claim arising out of or relating to this Agreement, or any breach thereof (each a “Dispute”), shall be referred to and finally resolved by arbitration: (A) in Canada, under the Arbitration Rules of the ADR Institute of Canada, Inc. and (B) in the USA, under the American Arbitration Association in New York City under its Commercial Arbitration Rules (collectively, the “Arbitration Rules”), which rules are deemed to be incorporated by reference into this this Agreement (a “Arbitration”).

The Arbitration hearing shall proceed before a single arbitrator, mutually appointed by the Parties in Dispute (the “Arbitrator”). If the Parties in Dispute are not able to appoint the Arbitrator within thirty (30) days of the initiation of the originating notice of arbitration: (A) in Canada, the ADR Institute of Canada, Inc. and (B) in the USA, American Arbitration Association in New York City (each “an Arbitration Entity”) shall appoint the Arbitrator.

- (i) At least forty-five (45) days prior to the date of the Arbitration hearing before the Arbitrator, the Parties in Dispute shall each submit to the Arbitrator and each other Party in Dispute complete details of their last best offers to settle the Dispute (the “Final Offer”). The Arbitrator shall render a written award and opinion to the Parties not later than sixty (60) days after the close of the Arbitration hearing, subject to any reasonable delay due to unforeseen circumstances (the “Award”). To the extent any portion of any Dispute involves, or the Dispute solely involve, a financial issue quantifiable in an amount of money (such portion of the Dispute or such Dispute, a “Financial Dispute”), then the Award of the Arbitrator in respect of such Financial Dispute shall be limited to selecting and awarding only one of the Final Offers submitted by the Parties. With respect to any Dispute or any portion of any such Dispute (other than in each case a Financial Dispute), the Arbitrator shall have unfettered discretion to make the decision in the Award the Arbitrator deems fit in the circumstances; provided, however, that such decision is based, in whole or in part, on one or more of the Final Offers submitted by the Parties. The Award shall be final, binding and without appeal on any ground, including for greater certainty, any appeal on a question of law, a question of fact, or a question of mixed fact and law. The Parties hereby expressly waive any right in this respect. The allocation of the costs of the Arbitration shall be apportioned by the Arbitrator in its Award, including the reasonable legal fees and disbursements of the Parties in Dispute, between the Parties in Dispute in such manner as the Arbitrator considers reasonable.

- (ii) Failure by a Party to pay its required share of an advance on costs requested by the Arbitration Entity shall constitute a breach of this Agreement. Upon a satisfactory showing by a Party in Dispute that it has paid the advance for and on behalf of a non-paying Party, the Arbitrator shall, barring extraordinary circumstances, forthwith enter an Award for such amount, plus related legal fees and interest at the rate of 20% percent per annum.
- (iii) Except as may be required by applicable law, the Parties in Dispute recognize and agree that each Arbitration is to be private and confidential. No Party in Dispute or the Arbitrator may disclose the existence, content, or results of the Arbitration hereunder without the prior written consent of each of the Parties in Dispute.
- (iv) For further certainty, the Parties hereby agree that this Section 13 (g) supersedes all prior and contemporaneous representations, warranties, understandings, agreements and agreed upon procedures, both written and oral, with respect to the resolution of Disputes, including the election of forum or jurisdiction.

Where this Section 13 (H) of these terms and conditions (“Arbitration Section”) conflicts with the Arbitration Rules this provisions of this Arbitration Section shall prevail.

- (v) Without limitation of the foregoing arbitration agreement, each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction: (A) in Canada, of the courts in City of Toronto and (B) in the USA, of either the United States District Court for the Southern District of New York, U.S.A., or any New York State court in the Borough of Manhattan. Judgment on any award rendered by the Arbitrator may be entered in any of the aforesaid courts or any other court having jurisdiction over the party (or its assets) against whom such judgment is sought to be entered or enforced.
- (vi) This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement, proposal, representations and understandings, written or oral. No modifications of this Agreement or waiver of any of its terms will be effective unless in writing and signed by the Parties hereto. This Agreement may not be modified or deemed to be modified by course of dealing, usage of trade, or course of performance. The rights and obligations of the Parties hereto shall inure to the benefit of, and be binding upon, the Parties and their respective successors and representatives.

These Terms and Conditions were last updated December 1, 2023.