

Johnson Matthey Inc.
Noble Metals Products
TERMS & CONDITIONS OF SALE

1. Acceptance – If the Terms and Conditions (“Terms”) of this quotation or order acknowledgment differ from the terms of the Buyer’s purchase order or inquiry, this quote or acknowledgment shall be considered as a “COUNTEROFFER” and shall not be an acceptance of any of Buyer’s terms which conflict herewith. The Terms contained herein are the complete and exclusive statement of the terms of agreement between the parties. The Buyer’s acceptance of the goods or services sold hereunder will manifest the Buyer’s assent to the Terms hereof. Any reference to Buyer’s purchase order or inquiry noted herein shall not affect or limit the applicability of these Terms. No addition to or modification of these Terms will be effective unless made in writing and signed by an authorized representative of Johnson Matthey Inc. (hereafter “JMI”). JMI is only willing to supply goods and services subject exclusively to these Terms and JMI rejects all other conflicting or different terms of Buyer.

2. Prices – Unit prices apply only to the specific quantity and delivery schedule quoted. Any variations in quantity specified and/or timing of delivery may necessitate a revision in unit price. Unless otherwise stated in writing, prices are quoted F.O.B. JMI’s facility and precious metals will be charged at the JMI opening spot price as exists on the next business day following shipment or date of purchase by JMI on behalf of the Buyer for their consigned metal account, as applicable. All prices are subject to: (i) correction of stenographic and clerical errors and (ii) JMI reserves the right to adjust prices on orders at any time during production due to changes in cost of materials, wages or taxes.

3. Quantities Shipped – Quantities shown hereon are estimated. Invoice quantities may vary within 10% or in accordance with variations as otherwise may be agreed upon by JMI and Buyer.

4. Delivery / Freight – The promised delivery date is the best estimate possible, based on current and anticipated manufacturing schedules. JMI assumes no liability for losses or damages due to delays. The delivery date shall be extended by any delays that are the fault of Buyer. All shipments are made F.O.B. JMI’s facility (unless otherwise agreed in writing by JMI) and risk of loss or damage shall pass to Buyer upon delivery to a common carrier. In respect to metal purchased from JMI for consignment, title will not pass to the Buyer’s consigned metal account until payment is received by JMI for the full cost of the metal. In any event, Buyer hereby grants JMI a possessory security interest in the metal, whether fabricated or otherwise.

5. Credit and Payment – All sales are subject to the approval of JMI’s Credit Department. Unless otherwise agreed, all invoices are payable in U.S. dollars within ten (10) days. After ten (10) days, unpaid invoices will be assessed a finance charge of 1.5% of the unpaid balance per month, commencing on the 31st day. If the Buyer becomes delinquent in payments to JMI or any affiliate of JMI under this or any other agreement or order, then JMI has the right, in addition to any other remedy to which it may be entitled in law or equity to (i) cancel the order, (ii) refuse to make further deliveries, (iii) declare due and payable immediately all unpaid amounts for goods or services previously provided to the Buyer and/or in process, (iv) sell any metal, fabricated or otherwise, held for Buyer or standing to the credit of its account and apply the proceeds of such sale in or towards satisfaction of such indebtedness, and/or (v) subject all claims for money, including commissions, metal, services or goods due or to become due from JMI or any affiliate of JMI to deduction or setoff against any counterclaim of JMI or any affiliate of JMI arising out of this Agreement or any other agreement or order. Buyer acknowledges that its business dealings with JMI and its affiliates constitute a single continuous transaction, notwithstanding the issuance of separate agreements, purchase orders, acknowledgments or similar documents from time to time.

6. Warranty – The sole and exclusive warranties given by JMI with aspect to the goods or services sold hereunder are that JMI has title to goods sold free and clear from any lien or encumbrance and that such goods shall conform to the description and specifications set forth in the order acknowledgement or quotation accompanying these Terms. THE FOREGOING WARRANTIES APPLY ONLY TO BUYER AND ARE THE SOLE AND EXCLUSIVE WARRANTIES OF JMI AND JMI GIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In particular and without limiting the foregoing disclaimer, JMI makes no representation or warranty as to the appropriateness, suitability or performance with regard to the design and any use of the goods or services, whether or not known by JMI and whether used alone or in connection with other products or materials and Buyer shall not rely upon any statements by JMI employees, agents or representatives to the contrary. Buyer acknowledges that it alone has determined that the goods or services purchased hereunder will suitably meet the requirements of their intended use. Buyer shall perform testing of all goods supplied by JMI promptly upon delivery in order to confirm the goods conform to the specifications. Buyer understands that as to certain goods (e.g. wire, tubing, etc.), testing of the entirety of all such goods is NOT practical given the destructive aspects of certain testing (e.g. tensile strength) and therefore such testing will be performed on a sampling basis. Buyer agrees to accept the foregoing limited testing method coupled with its own testing, as the exclusive means of determining acceptance of the goods. Every claim from any cause shall be deemed waived by the Buyer unless made in writing within ninety (90) days of the receipt by the Buyer of the goods or services to which such claim relates. No legal proceeding shall be brought for any breach of these Terms more than one (1) year after the accrual of the cause of action therefore, JMI shall have no obligation for any nonconforming goods caused by misuse, mishandling, neglect, accident or abuse by Buyer.

7. Warranty Remedy – In the event that any goods or services supplied hereunder are claimed by Buyer to not conform to the above limited and exclusive warranty during the applicable limited warranty period and JMI determines the goods or services do not conform to said warranty, JMI shall have the following options, at its sole discretion: (i) provide replacement goods or services to Buyer; (ii) make whatever repairs or modifications that JMI deems necessary or desirable to enable the goods or services to meet the description and specifications set forth on the order acknowledgement or quotation accompanying these Terms; or (iii) credit Buyer’s account for the price paid by Buyer regarding the non-conforming goods or services.

8. Limitation of Remedies – THE CORRECTION OF SUCH NON-CONFORMITIES BY REPAIR, MODIFICATION, REPLACEMENT, PROVISION OF ADDITIONAL GOODS OR SERVICES, OR CREDITING BUYER’S ACCOUNT FOR THE COST OF THE NONCONFORMING GOODS OR SERVICES IN THE MANNER SET FORTH ABOVE SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER AND SHALL CONSTITUTE FULFILLMENT OF THE OBLIGATIONS OF JMI WITH RESPECT TO THE LIMITED WARRANTY GIVEN HEREIN.

9. Limitation of Liability – Except as expressly provided otherwise herein, JMI shall not indemnify nor be liable to Buyer, Buyer’s customers, or to any other person or entity for any claims, losses, expenses or judgments arising out of or resulting in any way from the goods or services supplied hereunder or sale or use thereof, where liability is premised upon any theory including, but not limited to, warranty, negligence or strict liability. Except as expressly otherwise provided, JMI’s total, complete and exclusive liability shall be limited as provided herein. JMI SHALL NOT BE LIABLE FOR PRODUCTION LOSSES, LOST PROFITS OR OPPORTUNITY, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL,

PUNITIVE, OR ANY OTHER DAMAGES UNDER THESE TERMS OR FROM ANY CAUSE WHATSOEVER.

10. Force Majeure – JMI shall not be liable for any delay in delivery, or failure to deliver, due to any cause beyond JMI’s control, including but not limited to fires, floods, strikes, or other labor disputes, accidents to machinery, acts of sabotage, war, terrorism, riots, delay in transportation, restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof. If JMI in its sole discretion determines that JMI’s performance hereunder would result in a loss to JMI on this sale as computed under JMI’s normal accounting procedures because of causes beyond JMI’s control, then, JMI may terminate this agreement in whole or in part without liability for any delay in the delivery of or failure to deliver, the goods or services sold hereunder.

11. Risk of Loss – Unless otherwise agreed by JMI in writing, Buyer will assume all risk of loss or damage and JMI assumes no liability for delay damage or breakage after delivery has been made to the common carrier and all claims for loss or damage shall be made to the responsible common carrier.

12. Taxes and Other Charges – The Buyer will pay, or reimburse JMI if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the goods or services covered hereby, the delivery or use thereof, or upon any act done or document, title or instrument used in connection with the transaction, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder.

13. Resale of Goods Sold Hereunder – In the event of the resale of any of the goods sold, hereunder, in whatever form, the Buyer will include the following language in a conspicuous place in the agreement covering such resale: Warranties by manufacturers and sellers of goods sold hereunder are limited to such written warranties as may be applicable to the individual items sold hereunder, which warranties are limited to repair or replacement of the goods or to the refund of the purchase price at the manufacturer’s or seller’s option, within the time limit specified. Manufacturers and sellers make no warranties or representations, express or implied, by operation of law or otherwise as to the merchantability or fitness for a particular purpose of the goods sold hereunder. Manufacturers and sellers shall not be liable for any defect in the goods sold hereunder and Buyer releases manufacturers and sellers from any and all liability for negligence with respect to any activity engaged in by manufacturers and sellers with regard to the goods sold hereunder. The Buyer acknowledges that it alone has determined that the goods purchased hereunder will suitably meet the requirements of their intended use. Manufacturers and sellers will not be liable for consequential, incidental, punitive or any damages other than repair or replacement of defective goods or refund of the purchase price for such defective goods, at manufacturer’s or seller’s option.

14. Patent or Trademark Infringement – Buyer warrants to JMI that the manufacture, sale or use of goods or services hereunder by JMI pursuant to Buyer’s supplied specifications will not infringe any patent, copyright, trade secret, or other intellectual property right of any third party and Buyer shall defend, indemnify and hold JMI and its affiliates, harmless from and against all losses for any claimed or actual infringement of any patents, copyrights, or other intellectual property right of any third party related thereto.

15. Technical Assistance – Unless otherwise expressly agreed otherwise in JMI’s acknowledgement: (i) any technical advice provided by JMI with respect to the use of goods or services furnished to Buyer shall be without charge; (ii) JMI makes no warranties of any kind and assumes no obligation or liability for any such advice, or for any results occurring as a result of the application of such advice; and (iii) Buyer shall have sole responsibility for selection and specification of the goods or services appropriate for the end use of such goods or services.

16. Tooling – Notwithstanding payment of amount quoted for special fixtures, patterns, dies, tools, jigs or the like, JMI retains title and the Buyer has no right to remove such equipment from JMI’s facility. In the event of no reorder by the Buyer for a period of three years from the last invoice date, JMI has the right to scrap such equipment without notice to the Buyer.

17. Experimental or Prototype Orders – Notwithstanding any other provisions hereof, experimental or prototype orders will be produced on a “Product of Best Effort” basis and will be sold and/or delivered “As Is”. NO WARRANTY EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE IS MADE WITH RESPECT TO EXPERIMENTAL OR PROTOTYPE ORDERS.

18. Waiver – Waiver by JMI of any breach or variation of any of the Terms shall not be construed as a waiver of any other breach or variation and the failure of JMI to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. The invalidity in whole or in part of any provision of these Terms shall not affect the validity of any other provisions.

19. No Third Party Beneficiaries – Except to the limited extent expressly provided to deduction or setoff against any counterclaim of JMI or any affiliate of JMI herein, nothing in these Terms is intended to create any rights by persons not a party hereto and no other party will be construed to be a third party beneficiary of these Terms or otherwise have any legal or equitable rights hereunder.

20. Applicable Law – All questions arising in connection with the quotation, any order submitted in connection therewith, the acknowledgment or counter-offer made in response to any such order, or the sale of the goods or services covered by these Terms, shall be resolved by the laws in the state that JMI’s products or services originate, without giving recognition to its choice of law principles.