

JOHNSON MATTHEY (PROPRIETARY) LIMITED ("JMSA") STANDARD CONDITIONS OF SALE – CLEAN AIR (March 2019)

- 1. INTERPRETATION** "business day" means any day except a Saturday, Sunday, or a public in the Republic of South Africa; "contract" means any contract for the sale of goods, incorporating these conditions; "goods" means the goods agreed in the contract to be sold; "overseas" means countries other than the South Africa; "we", "us" and "our" mean or refer to JMSA; "you" and "your" mean or refer to the customer who buys the goods from us. Each provision of these conditions is to be construed as a separate provision applying and surviving even if one or other of them is held void or unenforceable.
- 2. ACCEPTANCE AND VARIATION** These conditions apply to all our contracts except as expressly varied in writing. No change to these conditions will be valid unless in writing and signed by us. In entering into the contract you do not rely on any express or implied representation made by us and any representation does not form part of the contract or a collateral contract. You may add to and amend your order by sending us written schedules which refer to the original order and which contain further specifications and information relating to the original order, such as quantities and delivery times. Subject to these Standard conditions, the schedules will be regarded as contractually binding, and forming part of the original order. Any schedule sent to us by third parties referring to the original order by you shall be deemed to be received from such third parties acting as your duly appointed agent, and we are entitled to treat any such schedule as if it were sent to us by you and you agree that we are not under any responsibility to you to check or request verification from such third party as to its appointment as agent by you. You hereby indemnify us from any costs, expenses, losses or damage whatsoever incurred directly as a result of our acceptance of such third party schedules as variations to the original order binding on you. Any schedule or schedules received by us either from you or from any third party acting as agent for you purporting to add to your original order shall not be accepted by us unless such schedule or schedules contains a firm and binding commitment for product deliveries.
- 3. AVAILABILITY** Acceptance of orders and completion of contracts are subject to such: (a) materials, components and services (including supplies from sub-contractors, including sub-contractor(s) nominated by you whereby you will also procure timely performance of such nominated sub-contractor(s)), and specifications, information and other material, being available or being made available to us as will enable us to proceed with and complete the contract and to continue manufacture without interruption and (b) delays caused by third party contractors nominated by you.
- 4. PRICES AND TAXES** 4.1 We will be entitled to take into account fluctuations in our costs. Where a contract provides for separate deliveries, we will be entitled to take cost fluctuations into account up to the date of despatch of each delivery. Goods containing Gold or Silver will be charged at prices based on the next available market fixing following the receipt of order, or on a subsequent date at our discretion. Goods containing Platinum Group Metals and/or metals other than Gold or Silver will be charged by reference to the average London PM price for Platinum Group Metals by reference to the JM Base Price (which, at the date of these terms is stated on <http://www.platinum.matthey.com>) or as otherwise agreed in writing between the parties. 4.2 Freight and insurance will be charged at rates ruling on the day of despatch of the goods. 4.3 The price will be exclusive of any value-added, sales, excise, customs or other tax or duty payable, which shall be paid by you in addition to the price. Any customs duties or other charges, fines or assessments on importation shall be borne by you.
- 5. FORWARD METAL CONTRACTS** 5.1 If you instruct us to enter into a forward sale or purchasing contract on your behalf (for the purposes of this condition 5, a "Transaction"), you acknowledge the irrevocable nature of such Transaction and agree that, although the market value of metal may increase or decrease between the date on which the Transaction is entered into (the "Value Date") and the settlement date of such Transaction, you have a binding obligation to purchase and we have a binding obligation to sell the metal on the date agreed by us for settlement of such Transaction, at the price agreed on the Value Date. 5.2 In carrying out your instructions to enter into a forward sale or purchasing contract on your behalf, 5.2.1 we shall not incur any liability to you or any third party for damages, losses or expenses; and 5.2.2 you undertake to hold us harmless and indemnify us against all costs, expenses, losses and damages of whatsoever nature incurred in connection with any transaction arising from or pursuant to your instructions.
- 6. QUANTITIES** We will use our reasonable efforts to supply the exact quantity of goods ordered. If we are unable to supply the exact quantity of goods, the invoice value will be adjusted accordingly except where, in the case of sales overseas, this is impracticable. Prices quoted are for the conditions stipulated in that quotation.
- 7. PACKING, DESPATCH AND DELIVERY** 7.1 For delivery orders within the Republic of South Africa, containers charged for will be credited in full if returned carriage paid in good condition within 21 days after the invoice date and the return duly advised. A packing charge will normally be made for orders for consignment overseas. Packing is non-returnable. 7.2 We will use all reasonable efforts to meet our despatch forecasts but these are estimates only, 7.3 Time for delivery shall not be of the essence. 7.4 We will not be liable for loss arising from delay in despatch. 7.5 Despatch of overseas orders will be conditional on you obtaining all necessary import consents prior to delivery. 7.6 We will be entitled without prejudice to any other remedy to withhold delivery of any goods if: (a) any amount is overdue in respect of any invoice issued by us or any other Johnson Matthey group company, or (b) on the invoicing of the goods, your credit limit (if any) either with us or with any other Johnson Matthey Group Company (as defined under section 1159 of the Companies Act 2006 and to include subsidiary undertakings as defined by section 1162 of the Companies Act 2006) would be exceeded. In determining your credit limit the aggregate invoice value of all invoices issued by us or any other Johnson Matthey group company which are outstanding, including unpaid accounts, will be taken into account.
- 8. RISK** Risk in the goods will pass to you on delivery to you. Trade terms (such as CIF and FOB) will be interpreted according to Incoterms 2010 as amended from time to time.
- 9. OWNERSHIP** 9.1 Notwithstanding delivery of the goods and the passing of risk, until we receive full payment for all goods delivered to you the following will apply: 9.1.1 Property in the goods will remain in us as legal and equitable owner. You will be entitled to possession of them only, which will be held by you as a bailee for us and you will store them so that they are identifiable as ours. 9.1.2 You will keep the goods insured against all risks in their full replacement value and, if we request, will assign to us of all your rights to claim against the insurers and will notify the insurers of our interest in any policy. 9.1.3 Notwithstanding condition 9.1, you will have a licence to sell the goods (by bona fide sale at arm's length) but this may be immediately terminated by us at any time by written notice to you provided that the licence will automatically terminate if you become bankrupt or insolvent, adopt a resolution for your winding up or if any petition is presented for the appointment of an administrator or a receiver or an administrative receiver is appointed in respect of any part of your undertaking or assets or you are unable to pay your debts as and when they fall due. 9.1.4 The proceeds of any sale and the benefit of any contract of sale will be held in trust for us absolutely and you will immediately pay all proceeds of sale into a bank account in your name separate from all other monies and you will notify us and the bank of our interest in the account. The proceeds of sales paid into the account will immediately be paid to us even if any credit period credit has not expired. 9.1.5 At any time before the passing of ownership to you we may repossess the goods. For this purpose you grant to us an irrevocable licence to enter your premises and to use reasonable measures to gain access to the premises and recover possession of the goods. 9.1.6 We or our nominee shall at any time have full access to your books of account and documents relating to your dealings with us, the goods or the proceeds of sale. 9.2 Nothing in this condition: (a) gives you any right to return the goods or refuse or delay payment for them, or (b) creates any form of security over your or any third party property.
- 10. INSURANCE** Where requested, we may, on your behalf, arrange insurance to destination on consignments of goods overseas at your expense. The premium will cover the invoice value of the consignment. Details of the insurance cover are available upon request. The arrangement of any additional insurance required by you is your responsibility.
- 11. DAMAGE IN TRANSIT AND NON-DELIVERY** Where risk in goods has not passed to you, we will at our discretion repair, recover or replace the goods: (a) for damage in transit provided that we are given written notice of such damage promptly following delivery, we are given the opportunity to inspect the goods; and you will make no further use of the goods and will not attempt to alter or repair the goods notwithstanding your general duty to mitigate damages, and (b) for non-delivery provided that where we have notified you of despatch of the goods we are given written notice of non-delivery promptly on the goods not being delivered at the estimated time of arrival.
- 12. PAYMENT** 12.1 Republic of South Africa - payment in full is due by the last business day of the month following the invoice month by cheque or bank credit transfer. Payment by cheque must be received at least 4 business days prior to the last business day of the payment month. 12.2 Overseas - payment in full is due 30 days after the invoice date in the invoice currency. 12.3 Credit transfers must be to our bank account, details of which are set out on each invoice. 12.4 If payment by irrevocable confirmed letter of credit is agreed, London clearing bank confirmation is required. 12.5 Time of payment is of the essence. 12.6 Payment must be made without deduction, set-off or counter-claim. 12.7 If you fail to pay in full when due, the unpaid amount may, at our discretion, incur interest at 4% per annum above Lloyd's Bank Plc's base rate from time to time from the invoice date to the date of actual payment (both before and after judgement).
- 13. GENERAL LIEN** Without prejudice to any other remedies, we will have a general lien on all of your property in our possession (whether worked on or not) and we will be entitled, on the expiration of 21 days' notice in writing to you, to dispose of the property as we think fit and to apply any proceeds received towards the debts.
- 14. METAL EXCHANGE ACCOUNTS** If you are sent written notice that any metal account you hold with us is overdrawn and do not make sufficient payment or deposit of metal to achieve a zero or credit balance within one calendar month of the date of the notice, conditions 7.6, 13 and 14 will apply. Interest may be charged at the rate in condition 12 on the Sterling (£) value of the overdraw metal calculated on a daily basis for the period during which any account is overdrawn from the date of the notice. You are responsible for reconciling your metal exchange account and reporting discrepancies.
- 15. SUITABILITY AND FITNESS** 15.1 We use every effort to ensure that all goods are manufactured to specification but it is your responsibility to ensure that the goods are fit and suitable for your purpose in the conditions in which they will be used. We accept no liability for misuse of the goods or your failure to carry out statutory and contractual obligations. 15.2 If you claim that goods do not comply with specification you must give us written notice giving details of the alleged non-compliance and, if requested, return the goods to us properly packed, carriage paid within 30 days of the date of receipt. 15.3 We will replace goods which we accept do not comply with specification provided that they have not been improperly treated. Goods returned and replaced shall become our property. 15.4 We shall not be liable for negligence or for any direct loss, damage or injury to you and our liability to you shall not exceed the purchase price of the goods. 15.5 We shall not be liable for any indirect, contingent or consequential loss, damage or injury to you. 15.6 We shall not be liable in respect of any claim made against you by any third party, and you shall indemnify us against any claims brought by third parties against us relating to the goods. This condition is in substitution for and (to the extent permitted by English Law) excludes all conditions, warranties and terms as to satisfactory quality and fitness, express or implied and conferred by statute, common law or otherwise. Nothing in this condition shall exclude or limit our liability for fraudulent misrepresentation or for death or personal injury caused by our negligence.
- 16. CONFIRMATION ORDERS** To avoid orders being duplicated, all orders that are merely confirmations of orders previously placed must clearly indicate that fact, for example, by being prominently over stamped "Confirmation Order. Do Not Duplicate". We reserve the right to treat any confirmation order not marked in this way as a separate order.
- 17. FREE ISSUE MATERIALS** Where you supply us with metal, materials or parts, our liability for loss and/or damage will not exceed three times the contract price for processing and claims for an amount of less than 2.5 per cent of the value of the materials as received by us will be excluded. You must notify us in writing of the value of the materials at the time they are despatched to us.
- 18. ORDERS, CANCELLATION OR VARIATION** 18.1 Subject to condition 3 above, if we accept your order you will send you a confirmation in writing accepting your order. In the event that you have not received a confirmation from us within 7 business days of your order date, your order will be deemed accepted by us unless factors stated at condition 3 above exist at such time. 18.2 No order may be cancelled or varied without our written agreement. If you purport to cancel or vary your order without such agreement or refuse to accept delivery and at the time the market price of any item purchased by us for the execution of the order is lower than the price at which we acquired it, then, without prejudice to any other rights, we will be entitled to: (a) charge you the difference, and (b) charge you the full cost of manufacture incurred by us up to that date of any goods manufactured to your order, including the costs of all items ordered, supplied or manufactured specifically for execution of the order. We will be entitled to store the goods at your cost and to dispose of the goods as we see fit to any third party. 18.3 If work on an order is suspended because of your instructions or lack of instructions, we reserve the right to treat this as a cancellation by you and this condition 18 will apply. 18.4 In the event that your order relates to obsolete product(s), the first 4 weeks of such order will be deemed firm, binding and irrevocable, for which you will be liable to pay the supply price. Once paid, should you refuse to collect the parts within 14 business days of payment, we will be entitled to store the goods at your cost and to dispose of the goods as we see fit. 18.5 We will be entitled to cancel the contract by written notice and to suspend deliveries without prejudice to any other rights if: (a) you go into liquidation or are otherwise insolvent (b) you have an administration order made against you, (c) a distress or execution is levied or enforced upon any of your assets and is not paid out or discharged within 14 days, (d) an encumbrance takes possession of or a receiver is appointed over your undertaking, property or assets, (e) you stop payment or cease or threaten to cease to carry on your business or to pay your debts as and when they fall due, or (f) if any equivalent thing happens in any jurisdiction.
- 19. FORCE MAJEURE** If manufacture or delivery of the goods is prevented, interrupted or delayed by any cause beyond our control (including without limitation, Acts of God, any law or any change in law or any action taken by a government or public authority or failing to grant a necessary licence or consent, strikes, war (declared or not) or lock-out), we shall have the option without incurring liability to defer the date of despatch or, depending on the relevant event, to cancel order(s).
- 20. INTELLECTUAL PROPERTY** 20.1 We accept no liability for any claims against you for infringement of third party intellectual property rights arising from the use, possession, resale or offering for resale of the goods. 20.2 If we execute an order in accordance with your designs, plans or specifications, you will indemnify us against all actions, losses, damages, costs, fees or other liabilities arising from any claims against us for infringement of any third party's intellectual property rights. 20.3 We do not grant in these conditions any licence of our existing or future intellectual property rights (including patent rights, registered or unregistered designs, copyright, trade names, trade marks or other intellectual property rights). 20.4 Arrangements may be made for you to retain exclusive use of designs or patterns but all property rights in all machinery, plant and equipment used for manufacture will remain ours whether or not we charge you for their cost.
- 21. SEPARATE DELIVERIES** A breach affecting any one delivery will not affect any other but while payment for any delivery is overdue, we will not be liable to make any further delivery.
- 22. ANTI BRIBERY AND CORRUPTION** 22.1 You will not offer, pay, promise to pay, or authorise the giving of any financial or other benefit to any person for the purpose of obtaining an improper advantage, or otherwise conduct itself in a manner contrary to the UK Bribery Act 2010 (or as amended), US Foreign Corrupt Practices Act 1977 (or as amended) or other applicable anti-bribery laws. JM may terminate all order(s) immediately upon written notice where you are found to have breached this condition, and you shall indemnify JM from all damages, penalties, fines and/or costs of any kind arising from, or relating to, any such breach. 22.2 You warrant and represent that you shall comply with all applicable taxation, anti-money laundering and financial crimes laws, regulations and rules ("Financial Crime Laws") and: (a) any consideration paid for the purchase of the goods does not constitute the proceeds of crime under any applicable Financial Crime Laws, and is not derived from conflict, terrorism or money laundering sources; and (b) you shall not commit an offence of cheating the public revenue or an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by yourself or any other person. Unless otherwise agreed in writing by the parties, you shall only make payments to us from an account held in your name.
- 23. CURRENCY** If the relevant currency of any order is for any reason discontinued, or is not a commercially viable currency, then the default currency will be Sterling (£) and the exchange rate of such relevant currency to sterling will be the exchange rate listed in the Financial Times on the day of despatch of the corresponding product.
- 24. CONFIDENTIALITY** All drawings, plans, specifications, technical or commercial know-how, inventions, processes, initiatives, or any information concerning our business, its products or prices, or any other documents prepared by us and which you may have obtained from us, are all deemed to be confidential information ("Confidential Information") and proprietary to us and such Confidential Information shall remain our property and shall be deemed to have been imparted by us in trust to you for your sole use. The copyright in such Confidential Information vests with us. You shall keep in strict confidence and not, by failure to exercise due care or otherwise by any act or omission, disclose to any person whatsoever, or use or exploit commercially for a purpose other than the performance of your obligations under the contract, any Confidential Information which will have been disclosed to you by us, and you shall restrict disclosure or use of such Confidential Information to such of your employees, officers, advisers, agents or sub-contractors on a need to know basis for the purpose of discharging its obligations to us and you shall ensure that such employees, officers, advisers, agents or sub-contractors are subject to equal obligations of confidentiality as you are bound to under this condition.
- 25. SEVERANCE** If any provision or part-provision herein is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of these conditions.
- 26. LAW** The contracts shall be governed by South African law and we and you submit to the exclusive jurisdiction of the South Gauteng High Court of South Africa, however nothing in these conditions shall prevent a party from applying to any court of competent jurisdiction for interim relief and/or conservatory measures.
- 27. WAIVER** Waiver by us of breach of any condition shall not prevent the subsequent enforcement of that condition nor be deemed to be a waiver of any subsequent breach of that or any other condition.
- 28. NOTICES** Notices may be sent by first-class post to the parties' registered offices and shall be deemed served either 48 hours after posting (Republic of South Africa) or 5 days after posting (overseas).
- 29. THIRD PARTY RIGHTS** The Contracts (Rights of Third Parties) Act 1999 shall not apply to these conditions.