

Vitol Metals - GTCs

Vitol SA

September 2024



VITOL METALS GTCs

Effective 1 September 2024

1. Delivery

- 1.1. Seller shall Deliver, and Buyer shall take Delivery of, the Metal: (i) at the Delivery Point; and (ii) in accordance with any agreed Delivery Period, and (iii) in accordance with the applicable Incoterm, in each case as set out in the Contract.

2. Risk and property

- 2.1 Risk in the Metal will pass from Seller to Buyer upon Delivery in accordance with the applicable Incoterm.
- 2.2 Unless otherwise agreed by the Parties, title to the Metal will pass from Seller to Buyer upon the later of: (i) Seller's receipt of the provisional price for the Metal, or where the Contract does not provide for payment of a provisional price, Seller's receipt of the final price for the Metal; (ii) Seller's receipt of security (including but not limited to Satisfactory Security) in accordance with the Contract; and (iii) Delivery.
- 2.3 Until title to the Metal has passed to Buyer, Buyer shall hold the Metal as bailee for the Seller and must keep the Metal intact, unused, unprocessed, stored under cover, clearly identifiable as the property of Seller, and (unless Seller agrees otherwise in writing) segregated.

3. Weight

- 3.1 Seller shall Deliver to Buyer the quantity of Metal set out in the Contract.
- 3.2 Subject to the provisions of Clause 5, the weight of the Metal determined at the time of Delivery and recorded in the document specified in Clause 3.3 shall be final and binding on the Parties as to the weight of the Metal Delivered (save in the event of fraud or manifest error, or in the case of notice being given by Buyer in accordance with Clause 5.1).
- 3.3 The weight of the Metal Delivered shall be recorded as follows: (i) if required by the Contract, in a certificate of weight (or similar document); or (ii) if the Contract does not require a certificate of weight (or similar document) to be prepared, in the bill of lading (where Delivery is to take place on a FOB, CIF or CFR basis) or, otherwise, the warehouse weight certificate.

4. Quality

- 4.1 Seller warrants that the Metal Delivered shall meet any description set out in the Contract and be in conformity with the Specifications.
- 4.2 Seller's obligations with regard to the quality of the Metal are limited solely to those in Clause 4.1. No provision of the Contract regarding the time of Delivery shall form part of the Metal's description or any Specifications. Subject to the terms of the Contract, all conditions, warranties or other terms, whether express or implied by statute, common law or otherwise, including, without limitation, with respect to the description, satisfactory quality or suitability or fitness for any purpose of the Metal are hereby excluded to the fullest extent permitted by law. Buyer will have the benefit of the warranty as to enjoyment of quiet possession implied by law in the Contract but

without prejudice to the foregoing exclusion.

- 4.3 Subject to the provisions of Clause 5, the quality of the Metal Delivered shall be deemed to be the quality recorded in the document specified in Clause 4.4, which shall be final and binding on the Parties as to the quality, condition and specification of the Metal Delivered (save in the event of fraud or manifest error, or in the case of notice being given by Buyer in accordance with Clause 5.1).
- 4.4 The quality of the Metal Delivered shall be that recorded in (a) any certificate of analysis (or similar document) which is referred to in the Contract as the binding certificate of analysis; or (b) in the absence of any such reference in the Contract, the Producer's Quality Certificate.

5. Weight and quality claims

- 5.1 Notwithstanding any provision of the Contract or any rule of law to the contrary, Buyer shall be deemed to have accepted the Metal, unless Buyer gives written notice to Seller specifying the nature of its complaint and its findings as to the quality and/or weight Delivered (as the case may be) ("**Buyer's Results**"), within 30 (thirty) calendar days from completion of Delivery, failing which any claim by Buyer in respect of the weight, quality, description and Specifications of the Metal Delivered shall be fully and finally barred and extinguished.
- 5.2 Notwithstanding any other provision of these GTCs, no complaint shall be admitted in respect of any deficiency of weight where the difference between the Delivered weight determined in accordance with Clauses 3.2 and 3.3 and the Buyer's Results is less than the Acceptable Tolerance.
- 5.3 Any Metal in respect of which Buyer intends to and/or does lodge a claim must be kept intact, segregated, unused, unprocessed and stored under cover until such time as the claim has been resolved, failing which Seller shall be entitled to reject Buyer's claim(s), which shall then be fully and finally barred and extinguished.
- 5.4 If a claim in relation to weight or quality has been notified in writing by Buyer to Seller within the deadline set out in Clause 5.1 and Seller rejects, or neither accepts nor rejects, the Buyer's Results as determinative of the Delivered quality and/or weight on or before the fifth (5th) Business Day following receipt of the Buyer's Results, then, unless otherwise agreed, the claim shall be determined as follows, at the option of Seller, either:
- (a) the claim shall be resolved in accordance with Clause 23; or
 - (b) the following independent surveyor nomination and inspection procedure shall apply:
 - (i) the Parties shall, acting reasonably and in good faith, mutually select and appoint an internationally recognised surveyor and laboratory ("**Independent Surveyor**") and if the Parties fail to agree the Independent Surveyor on or before the fifth (5th) Business Day following Seller's receipt of the Buyer's Results, Seller shall, acting reasonably and in good faith, select and appoint the Independent Surveyor.
 - (ii) Buyer shall make arrangements for the Independent Surveyor to access the Delivered Metal. The Independent Surveyor shall inspect the Delivered Metal and sample, analyse and weigh the Delivered Metal (as appropriate) in accordance with such methods as the Independent Surveyor deems, in its discretion, to be the standard industry practice for the relevant Metal.
 - (iii) The Independent Surveyor shall record its findings as to the weight and/or quality of the Delivered Metal (if and to the extent weight and/or quality has been challenged by Buyer's

notice in accordance with Clause 5.1) in a written report and these results shall be final and binding on the Parties as to the Delivered weight and/or quality of the Metal for the purposes of the Contract (notwithstanding Clauses 3.2 and 4.3 and save in the event of fraud or manifest error),

- (iv) The costs of the Independent Surveyor shall be paid by Buyer, unless the Independent Surveyor upholds the weight and/or quality (as appropriate) specified in the Buyer's Results (as appropriate), in which case the costs of the Independent Surveyor shall be paid by Seller.

5.5 The provisions of this Clause 5 shall not affect the obligation of Buyer to pay the contract price or any other sums due under the Contract on the Payment Due Date.

5.6 Notwithstanding any other provision of these GTCs, payment by Buyer against the documents relating to the Delivered Metal that are presented by Seller in accordance with Clause 3.3 (in the case of weight) or Clause 4.4 (in the case of quality) shall, unless a written reservation is made, constitute a complete waiver of all Buyer's rights in respect of any deficiencies in the Delivered Metal that are apparent on the face of such documents.

6. Contract price

6.1 The contract price of the Metal shall be the price (including any provisional price and final price) specified in, or determined in accordance with the terms of, the Contract.

7. Payment

7.1 Payment shall be made by Buyer to Seller in the Payment Currency, by the method and on the terms specified in the Contract, and (save as otherwise expressly set out below and except to the extent required by law) free of all charges and without any deduction, withholding, set-off or counterclaim in immediately available funds for value on the Payment Due Date.

7.2 Where the payment method specified in the Contract is payment by cash against documents or wire transfer, Buyer shall pay Seller the contract price for the Metal by wire transfer to Seller's designated bank account, as stated in Seller's invoice, in the full Seller's invoice amount.

7.3 Where the Contract requires Buyer to arrange payment through a documentary letter of credit ("LC"), the following terms shall apply:

- (a) The LC shall be a fully operative irrevocable LC issued in a form and by a first-class international bank, both to be acceptable to Seller, by no later than five (5) Business Days prior to the commencement of the Delivery Period as a condition precedent to Seller's obligation to Deliver the relevant Metal.
- (b) The letter of credit shall be sufficient to cover the mean contract quantity of the Metal at Seller's reasonable estimate of the contract price plus 15 percent (15%) and a further amount to cover escalation in duties including, where applicable, value-added tax.
- (c) Seller may, in its reasonable discretion, request a change in the value of the LC if, at any time, the value of the Metal, based on latest available information and prices, differs by five percent (5%) or more from the value specified in the LC.
- (d) In case such LC is not opened by Buyer by the date specified above, at Seller's option Seller has the right without limitation of or prejudice to its other rights under the Contract or otherwise or

at law to (1) terminate the Contract, (2) maintain the Contract on amended terms acceptable to Seller or (3) postpone Delivery of the Metal on terms acceptable to Seller. Buyer shall be liable to Seller in respect of any and all costs, losses, expenses or damages whatsoever, whether direct or indirect, incurred by Seller as a result of the late opening of the LC, including without limitation any storage fees/costs, hedging costs, demurrage and other vessel-related costs (if applicable). If the date of the Contract is later than the date for opening of the LC specified in this Clause 7 then Buyer shall exercise its best efforts to open or confirm the LC as soon as reasonably possible but shall do so in any event no later than 1200 hours (local time at Seller's place of business) by the day immediately prior to the first day of the Delivery Period.

- (e) Such LC is to be payable at the counters of Seller's bank. Each Party to pay their own banking charges, save that if the LC is a confirmed letter of credit, the confirmation charges shall be for Buyer's account.
- (f) The LC shall take effect in accordance with its terms but such terms shall not alter, add to, or in any way affect the provisions of the Contract or cause any of Seller's rights under the Contract to be waived unless the Parties expressly so agree in writing.
- (g) If for any reason the Delivery, loading and/or discharge of the Metal, as the case may be, will not take place within any relevant period which may be referred to in the LC, Buyer shall promptly provide a new LC or amend the existing LC in terms acceptable to Seller.
- (h) Buyer will remain responsible for payment in the event that payment is not made under the LC for any reason.

7.4 Where it is not possible for the contract price to be calculated prior to the Payment Due Date, Seller shall calculate a provisional price and inform Buyer of the same. If payment is to be made by cash against documents or by wire transfer, Buyer shall pay such provisional price to Seller by the Payment Due Date. If payment is to be made through an LC, payment through the LC shall be made against Seller's provisional invoice showing such provisional price. Seller's calculation of the provisional price shall be made in good faith, acting reasonably, based on Seller's estimate of the final price and, if the quantity is not yet known, the mean contract quantity. Seller shall prepare, as soon as practicable after all the relevant pricing information becomes available to it, the final invoice or credit note for the difference between the provisional price and the final price. The paying Party shall make final payment on or before the third (3rd) Business Day following receipt of the final invoice or credit note.

7.5 In the event that the Payment Due Date is a Saturday or a New York banking holiday other than Monday, payment shall be due on the previous New York banking day. In the event that the Payment Due Date is a Sunday or a Monday banking holiday in New York, payment shall be due on the following New York banking day.

7.6 In the event that payment is not made on the Payment Due Date, Buyer will be charged on the outstanding balance from the Payment Due Date until the date payment is made at two percent (2%) above SOFR. Such interest shall be payable to Seller on demand and shall accrue until payment notwithstanding the termination of the Contract for any reason whatsoever. This provision shall not be construed as an indication of any willingness on the part of Seller to provide extended credit as a matter of course and shall be without prejudice to any rights and remedies which Seller may have under the Contract or otherwise. Any expenses incurred, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delayed or non-payment of the amount(s) due shall be for the account of the paying Party and payable upon demand with supporting documentation.

8. Credit risk

- 8.1 Notwithstanding any other provision in the Contract, in the event that Seller determines in its sole and unfettered discretion: (i) that the financial condition of Buyer, or Buyer's Security Provider (if any), has become impaired or unsatisfactory; (ii) that it is necessary to obtain adequate assurances of Buyer's financial condition; (iii) any payment security, whether already provided by or to be provided by Buyer pursuant to the other terms of the Contract, becomes unacceptable to Seller in form or amount; and/or (iv) Buyer exceeds Seller's internal credit limits, then Seller may, upon notice to Buyer, require Buyer to provide Seller with satisfactory security for Buyer's performance in a form and substance reasonably acceptable to Seller ("**Satisfactory Security**").
- 8.2 Such Satisfactory Security may include but not be limited to, at Seller's option: (i) cash prepayment; (ii) an irrevocable standby letter of credit issued in a form and by a first-class international bank acceptable to Seller; or (iii) delivery to Seller of a guarantee from Buyer's parent company or any other entity at Seller's discretion. Buyer shall provide Seller with Satisfactory Security by the deadline set by Seller in its notice.
- 8.3 Notwithstanding anything to the contrary in the Contract or any other agreement and without prejudice to any other legal remedies available to Seller, if Buyer fails to provide Satisfactory Security to Seller in accordance with the above, Seller may suspend its performance under or terminate the Contract.

9. Gross-up

- 9.1 Where any applicable law requires a deduction or withholding in respect of tax to be made, Buyer shall inform Seller of that requirement and will pay such additional amount to Seller as will ensure that the net amount received by Seller is equal to the full amount that Seller would have received had the deduction or withholding not been required.

10. Tax

- 10.1 Any taxes, tariffs and duties whether existing or new on or in respect of the Metal or commercial documents relating thereto, imposed in the country of origin shall be borne by Seller.
- 10.2 Any taxes, tariffs and duties whether existing or new on or in respect of the Metal or commercial documents relating thereto, imposed in the country of discharge and/or the importing country shall be borne by Buyer.
- 10.3 The responsibility for any other taxes not referred to in Clauses 10.1 and 10.2 shall be as set out in Incoterms.

11. Representations, warranties and undertakings

- 11.1 Each Party represents, warrants and undertakes to the other Party as appropriate on the date of the Contract, that:
- (a) it is a company duly incorporated under the laws of the jurisdiction of its incorporation;
 - (b) the Contract has been duly authorised, executed and delivered by it and constitutes its legal, valid and binding obligations (subject to applicable bankruptcy, reorganisation, insolvency,

moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application);

- (c) the execution, delivery and performance of the Contract does not, to the best of its knowledge and belief, violate any applicable laws and regulations;
- (d) it, its agents and subcontractors, hold all licences, consents, authorisations (including, without limitation, any tax registrations) and permits to engage in trade of the Metal in accordance with the Contract and it does not require any licence, consent, authorisation, permit or other formality of any governmental or other regulatory body except for those already obtained.

11.2 No failure by a Party to comply with Clause 11.1(d) shall: amount to frustration; constitute a Force Majeure Event; or otherwise constitute justification for the non-performance of any obligation (or part thereof) under the Contract.

12. Insurance

12.1 If the Incoterm specified in the Contract as applicable to a particular delivery of Metal obliges one Party to ensure the Metal, that Party shall insure the Metal. Otherwise: (a) insurance of the Metal up to the passing of risk from Seller to Buyer shall be borne by Seller; and (b) insurance of the Metal from the passing of risk from Seller to Buyer shall be borne by Buyer.

12.2 Any Party obliged to ensure the Metal shall procure, pay for and maintain full cover to the full value of the Metal (as reasonably estimated) plus ten percent (10%) in the Payment Currency. The insurance policy shall: provide cover against all risks of direct physical loss or damage from any external cause; be placed with an underwriter (or reinsurer where policies are required to be placed locally where appropriately rated insurers are not present) with an S&P rating of A- or higher or equivalent; and be in accordance with the current Institute Cargo Clauses A (All Risks).

13. Force majeure

13.1 Neither Buyer nor Seller will be liable for damages or otherwise for any failure or delay in performance of any obligation under the Contract (subject to Clause 13.5), where such liability, failure or delay is caused by or results from force majeure, being any event or occurrence or circumstance reasonably beyond the control of that Party, including but without prejudice to the generality of the foregoing, acts of god, strikes, labour or trade dispute or other industrial action, fires, floods, drought, wars (whether declared or undeclared), civil commotion, armed conflict, terrorist attack, epidemics (including without limitation any associated quarantine or other containment measures), riots, perils of the sea, embargoes, accidents, acts, orders or restrictions imposed by any government authority or person purporting to act therefore (including allocations, priorities, requisitions, prohibitions, quotas and price controls or failing to grant necessary consents or licences), delays of the performing vessel or other transport due to breakdown, adverse weather or sea conditions (as applicable), or curtailment, interference, failure or cessation of supplies of Metal from any of Seller's or Seller's suppliers' sources of supply or by any refusal to supply Metal whether lawful or otherwise by Seller's or Seller's suppliers' source of supply (provided in fact the sources of supply are intended to be used for the purposes of the Contract) (each a "**Force Majeure Event**").

13.2 The Party whose performance is so affected shall notify the other Party as soon as reasonably practicable indicating the nature of such Force Majeure Event and, to the extent possible, inform the other Party of the expected duration of the Force Majeure Event.

- 13.3 The Parties' respective obligations under the Contract (other than the obligations set out at Clause 13.5 which shall not be suspended) shall be suspended and the time for Buyer and Seller to perform their obligations (other than as set out at Clause 13.5) shall be extended during any period during which these obligations are prevented, hindered, curtailed or delayed by reason of any Force Majeure Event. If any of these obligations shall be prevented, hindered, curtailed or delayed for more than sixty (60) consecutive days, either Party may terminate the delivery or deliveries affected upon written notice to the other Party, without prejudice to any rights and obligations of the Parties which have accrued prior to the Force Majeure Event.
- 13.4 Where Seller's performance is affected by a Force Majeure Event, Seller shall not be obliged to purchase additional product from any source other than the source it had intended to use prior to the Force Majeure Event, nor shall Seller be required to supply any grade or specifications of product other than the agreed Metal, nor shall Seller be obliged to load the Metal at any port other than the port it had intended to use prior to the Force Majeure Event, or Deliver the Metal at any location other than the Delivery Point nor shall Seller be obliged to allocate available Metal pro rata between its customers.
- 13.5 This Clause shall not apply to any obligations to pay for, indemnify or provide security in respect of, any Metal for which vessel, truck or rail wagon space has been booked by Seller, pricing has been established, any quotational period has commenced or any payment has been made, unless Seller has expressly consented in writing.

14. Health, Safety and Environmental

- 14.1 The Parties shall comply with their respective obligations under REACH.

15. ESG

- 15.1 Each Party represents, warrants and undertakes to the other Party that, at all times in connection with the performance of the Contract, it complies with and will act in accordance with all laws, regulations, decrees, ordinances, permits, orders and/or rules of any jurisdiction applicable to the Parties relating to health, safety, environment, human rights, labour rights and community.
- 15.2 Vitol expects its counterparties:
- (a) to undertake business in a manner consistent with the principles set out in the 'Vitol Environmental & Social Framework' and in a manner that seeks to prevent and minimise adverse environmental or human rights impacts by carrying out due diligence as outlined in the UN Guiding Principles on Business and Human Rights; and
 - (b) to disseminate, educate and exercise due diligence in implementing requirements consistent with these requirements with its business relationships.

16. Trade controls

- 16.1 Notwithstanding anything to the contrary elsewhere in the Contract, neither Party shall be obliged to act in any way or to perform, and nothing in the Contract is intended, or should be interpreted or construed as requiring or inducing a Party to act in any way or to perform any obligation otherwise required by the Contract (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from or through a person or entity, or (b) engage in any other acts) if this would be in violation of, inconsistent with, penalised or prohibited by, or would

expose such Party to punitive measures under any applicable laws, regulations, decrees, ordinances, orders or rules of the EU, any EU Member State, the United Nations, the United States of America, the United Kingdom, Switzerland or other jurisdiction applicable to the Parties or the performance of the relevant obligation relating to international boycotts, trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism or similar laws (the “**Trade Restrictions**”).

16.2 Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under a Trade Restriction, such Party (the “**Affected Party**”) shall, as soon as reasonably practicable, give written notice to the other Party of its inability to perform. The Affected Party shall be entitled:

- (a) immediately to suspend the performance of the obligation (whether a payment or performance obligation) until such time as the Affected Party may lawfully discharge such obligation; and/or
- (b) where the inability to discharge the obligation continues until the end of the contractual time for discharge thereof or a period of thirty (30) days (whichever is the shorter), to a full release from the obligation, provided that where the obligation relates to payment for goods which have already been delivered, the obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment; and/or
- (c) where the obligation is acceptance of the vessel, barge, truck, or other mode of transport (as relevant), to, or to require the other Party to, nominate an alternative (save that the alternative must be the same mode of transport as initially nominated),

in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

16.3 Nothing in this Clause 16 shall be taken to limit or prevent the operation of the doctrine of frustration (including frustration of the adventure, of purpose or of the Contract) or any analogous doctrine under the law governing the Contract.

17. Anti-bribery & corruption

17.1 The Parties to the Contract each agree and undertake to the other that in connection with the Contract, they will each respectively comply with and act in a manner consistent with all applicable laws, rules, regulations, decrees and/or official government orders of the governments of the United Kingdom, EU, United States of America, Switzerland or other jurisdiction applicable to the Parties relating to anti-bribery and anti-money laundering. If one Party reasonably believes that the other Party is in breach of any of its obligations under this Clause 17, the non-breaching Party may terminate the Contract forthwith upon written notice (supported by reasonable evidence) to the other Party without prejudice to the non-breaching Party’s rights under the Contract or generally.

18. Events of Default

18.1 Without prejudice to the Parties’ other rights under the Contract or at law, a default (“**Default**”) of the Contract shall be deemed to occur if:

- (a) Buyer fails to provide a LC or other Satisfactory Security to Seller within the time required by the Contract and in all other respects in accordance with the Contract.
- (b) Either Party fails to make any payment due under the Contract or any specified agreement that

is not cured within two (2) New York banking days of written notice being sent to the defaulting Party requiring payment of the overdue sum.

- (c) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme or arrangement or otherwise) of either Party or Buyer's Security Provider (if applicable) other than a solvent liquidation or reorganisation of that Party or Security Provider (if applicable);
 - (ii) the appointment of a liquidator (other than in respect of a solvent liquidation of that Party), receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar officer in respect of either Party or Buyer's Security Provider (if applicable) or any of that Party's or Security Provider's (if applicable) assets,

or any analogous procedure or step is taken in any jurisdiction. This paragraph 18.1(c) shall only apply to any winding-up petition which is not frivolous or vexatious and is not discharged, stayed or dismissed within fourteen (14) calendar days of commencement.

- (d) Either Party or Buyer's Security Provider (if applicable):
- (i) otherwise becomes insolvent however evidenced;
 - (ii) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (iii) proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors;
 - (iv) is unable or admits inability to pay its debts as they fall due;
 - (v) is deemed to, or is declared to, be unable to pay its debts under applicable law as they become due; or
 - (vi) fails to provide adequate assurance of its ability to perform all of its obligations under the Contract or any other agreement between the Parties within 48 hours of a reasonable request therefore from the other Party, when a Party has reasonable grounds to request such assurance with respect to such Party's performance.
- (e) The occurrence of a material breach, (being any breach of the Contract which has a serious effect on the benefit which the other Party would otherwise derive from a substantial part of the Contract over its term), where that breach is either not capable of remedy or not remedied on or before the third (3rd) calendar day following the day on which notice to remedy is given to the Party in material breach. In deciding whether any breach is material, no regard shall be had to whether it occurs by an accident, mishap, mistake or misunderstanding.

18.2 Then if any such event occurs, without prejudice to any other rights and remedies that may be available under the Contract or otherwise, the Party other than the defaulting Party (the "**Non-Defaulting Party**") shall have the right, exercisable in its sole discretion immediately and at any time on notice to the defaulting Party, to take any or all of the following actions: (1) suspend its performance under the Contract; (2) if the Contract provides for more than one delivery, cancel the delivery or deliveries in respect of which the Default has occurred; and (3) terminate the Contract and cancel all future deliveries contemplated under the Contract. Termination of the Contract shall be without prejudice to any rights and remedies accruing to the Parties before such termination.

- 18.3 If before title to the Metal passes to Buyer, Buyer becomes the subject of a Default under the Contract, then without limitation of or prejudice to Seller's other rights under the Contract or otherwise:
- (a) Buyer's right to resell the Metal or use it in the ordinary course of its business ceases immediately and Buyer shall keep the Metal segregated from all other product, unprocessed and marked as the property of Seller; and
 - (b) Seller may at any time require Buyer to deliver up all the Metal in its possession which has not been resold or irrevocably incorporated into another product and, if Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the Metal is stored in order to recover it.
- 18.4 The Non-Defaulting Party's rights under this Clause shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise). After a Default, the defaulting Party shall indemnify and hold the Non-Defaulting Party harmless from all costs and expenses (including, without limitation, reasonable attorney fees and disbursements) incurred by the Non-Defaulting Party in the exercise of the remedies under the Contract or otherwise.

19. Limitation of liability

- 19.1 Notwithstanding any other provision of the Contract, neither Party shall be liable to the other whether under the Contract or otherwise in connection with it, whether in contract, tort (including in negligence), breach of statutory duty or otherwise (whether or not foreseeable and howsoever arising) in respect of (a) any indirect or consequential losses or expenses; and (b) to the extent not constituting indirect or consequential losses or expenses, any loss of anticipated profits, plant shut-down or reduced production, goodwill, use, market reputation, business receipts or contracts or commercial opportunities. Seller shall in no circumstances be liable for more than the difference between the contract price and the market price, based on the nearest available market, at the date of any breach of the Contract.
- 19.2 Without prejudice to any other time limits in the Contract, including but not limited to the time limits for weight, quality or (where applicable) demurrage claims, in no event shall either Party be liable in respect of any claim or dispute where legal proceedings in respect of that claim or dispute have not been commenced within one (1) year of the date of Delivery of the Metal, or if for any reason the Metal is not Delivered in accordance with the Contract, within one (1) year of the date on which the Metal should have been delivered.
- 19.3 If notice is not given and/or legal proceedings not commenced in respect of a complaint, claim or dispute within the time limits specified above, such claim shall be time barred and any liability of the other Party in respect of that complaint, claim or dispute shall be finally extinguished.
- 19.4 Clauses 19.2 and 19.3 shall not apply, and is without prejudice, to any debt claims under or in connection with the Contract.

20. Confidentiality

- 20.1 The Parties agree to keep confidential the existence and terms of the Contract, save that each Party may disclose the existence and terms of the Contract pursuant to an order of any court of competent jurisdiction, or as may be required by any applicable law, regulation, or by any governmental or other regulatory authority having jurisdiction over the Parties, or to any of its

Affiliates, professional advisors, auditors, insurers, agents and/or brokers or in connection with any dispute or court or arbitration proceedings. The confidentiality obligations contained in the Contract shall survive the termination or expiry of the Contract for a period of two (2) years.

21. Waiver of sovereign immunity

21.1 To the extent that any one or more of the Parties may in any jurisdiction whatsoever claim or permit to be claimed for itself or any of its agencies, instrumentalities, properties or assets, immunity (whether characterised as sovereign or otherwise, or as arising from an act of State or sovereignty) from suit, set-off, interim relief, injunction, enforcement action, execution of any judgment or arbitration award, attachment (whether in aid of execution, before judgment or otherwise) or from other legal process including, without limitation, immunity from service of process and immunity from the jurisdiction of an arbitral tribunal, each such Party or Parties hereby expressly and irrevocably waives and abandons absolutely to the fullest extent permitted by law any such claim to immunity which it may have now or may subsequently acquire on its behalf or on behalf of its agencies, instrumentalities, properties or assets, including but not limited to its bank accounts (present or subsequently acquired and wherever located).

22. Governing law

22.1 The Contract and any dispute or claim arising out of or in connection with it, including any question regarding its existence, validity or termination and including non-contractual disputes or claims, shall be governed by and construed in accordance with English law.

22.2 The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to the Contract.

23. Dispute resolution

23.1 Any dispute or claim arising out of or in connection with the Contract, its subject matter, existence, validity, formation or termination and including non-contractual disputes or claims ("**Dispute**") shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**"), which are deemed to be incorporated by reference into this Clause 23.

23.2 The number of arbitrators shall be three (3). The arbitral tribunal shall be appointed as follows: (a) the claimant shall nominate one arbitrator in the request for arbitration and the respondent shall nominate one arbitrator in the response to the request for arbitration; (b) the two party-appointed arbitrators shall, by agreement, nominate the presiding arbitrator within 30 days of the appointment of the second appointed arbitrator; and (c) if any of the three arbitrators are not nominated within the time prescribed above, then the LCIA shall appoint the arbitrator(s) not so nominated. Each arbitrator shall have qualified as a barrister or solicitor in England and Wales and have experience of commodity trading disputes. The seat, or legal place, of arbitration shall be London and the language to be used in the arbitration shall be English. For the avoidance of doubt this Clause will not prevent either Party from bringing proceedings in any other jurisdiction to obtain security or other interim or ancillary relief or to enforce any award of the arbitral tribunal.

24. Assignment

24.1 Neither Party may assign or transfer or subcontract its rights or obligations under the Contract in

full or in part, without the prior written consent of the other Party. If such consent is given and wherever the assignment or transfer or subcontract is made, the assigning or transferring or subcontracting Party shall remain jointly and severally liable with the assignee or transferee or subcontractor for the full performance of its obligations under the Contract unless otherwise agreed in writing.

24.2 Notwithstanding the above, Seller may without Buyer's consent assign all or a portion of its rights to receive and obtain payment under the Contract in connection with securitisation or bank funding arrangements, provided that such assignment does not contravene any applicable law, regulation or decree binding upon Buyer. Any payment made by Buyer to the payee specified in Seller's invoice in respect of the Metal deliverable under the Contract shall be in full discharge of Buyer's payment obligations to Seller under the Contract. Any such assignment will not detract from Seller's obligations under the Contract.

25. Severability

25.1 If any provision (or part thereof) of the Contract is declared invalid, illegal or unenforceable by a court or arbitral tribunal of competent jurisdiction or becomes invalid, illegal or unenforceable due to either Party's compliance with applicable laws, 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 thereof shall be deemed deleted. Any modification to or deletion of a provision or part thereof under this Clause shall not affect the validity and enforceability of the remainder of the Contract.

26. Applicability of GTCs

26.1 Unless otherwise expressly agreed, these general terms and conditions (including, where applicable, the Schedules attached hereto) ("**GTCs**") apply to all contracts with any Vitol group entity for the sale or purchase of Metal by Vitol, into which they are incorporated by reference.

26.2 Any Confirmation into which the GTCs are incorporated by reference will, together with these GTCs, constitute a Contract. In the case of any inconsistency, conflict or discrepancy between the provisions of these GTCs and the Confirmation, the Confirmation will prevail.

26.3 In the absence of a Confirmation, the provisions of Clause 27 will not apply and a Contract will be comprised of the GTCs and any other terms agreed (as ascertainable from evidence).

26.4 If a Contract has been agreed and Vitol issues to the other Party a Confirmation or an amendment to the original Confirmation, and the other Party has not within the earlier of: (i) the fifth (5th) Business Day following the date on which Vitol sent the Confirmation or amendment; or (ii) the time of Delivery of the Metal, notified Vitol in writing of any errors, omissions or inaccuracies in the terms of such Confirmation or amendment (setting out which terms in the Confirmation or amendment are inaccurate and how the other Party believes such terms should be amended), then the Confirmation or amendment (as the case may be) will be deemed to have been agreed.

27. Entire agreement, variation, waiver

27.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party

agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this Clause or any other provision in the Contract which seeks to limit or exclude either Party's liability shall limit or exclude any liability for fraud.

27.2 Subject to Clause 26.4 (*Applicability of GTCs*), no variation or modification of the Contract shall be effective unless it is in writing.

27.3 A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. A single or partial exercise of such right or remedy shall not prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

28. Third party rights

28.1 A person who is not a Party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, save where the third party is an assignee and the assignment has been consented to pursuant to the terms of the Contract. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

29. No partnership

29.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture or any other similar association between the Parties, constitute any Party the agent, legal representative or employee of another Party for any purpose whatsoever, or authorise any Party to make or enter into any commitments for or on behalf of another Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other Person.

30. Notices and communications

30.1 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and in English and shall be:

- (a) delivered by hand or by international courier delivery service at its registered office or at the address given for the Party in the Contract or its principal place or main place of business; or
- (b) delivered or sent by electronic mail to the other Party at the address set out in the Contract (or such other address as such Party otherwise notifies the other Party).

30.2 Any notice or communication shall be deemed to have been effective:

30.3 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- (a) if sent by international courier delivery service, when delivered (at the time recorded by the delivery service);

(b) if sent by email, when delivered,

30.4 in each case unless delivered on a non-Business Day or after 5.00 pm (local time at the location of the recipient Party) on a Business Day, in which case it shall be deemed to have been delivered on the next Business Day. “**Business Day**” for these purposes means a calendar day other than a Saturday, Sunday or a public holiday in the country and region in which the receiving Party has its main place of business.

TERMS APPLICABLE TO SPECIFIC INCOTERMS

31. FOB terms

31.1 If the Metal is to be delivered in bulk, Clauses 31.2 to 31.7 shall apply.

31.2 Buyer shall:

- (a) no less than ten (10) calendar days prior to the vessel’s estimated time of arrival at the loading port, give notice to Seller nominating a vessel to carry the Metal specifying the demurrage rate of the vessel; and
- (b) procure that the performing vessel shall arrive at the loading port and tender Notice of Readiness within the Delivery Period.

31.3 Seller shall have the right to reject any vessel nominated by Buyer on technically reasonable grounds, or because the vessel does not meet the requirements of Clause 31.4.

31.4 Buyer’s vessel shall:

- (a) be suitable for the carriage of the Metal and to safely load, discharge, arrive at berth and depart from the loading port and discharge port;
- (b) have a maximum age of fifteen years; and
- (c) satisfy Seller’s reasonable vessel vetting requirements.

31.5 Buyer may substitute any nominated vessel by another vessel of similar class, type, size and capacity at any time prior to the original vessel’s arrival at the loading port, subject to consent by Seller (such consent not to be unreasonably withheld).

31.6 All other shipping terms and conditions shall be set out in the Contract and/or shall be agreed between the Parties upon Buyer’s nomination.

31.7 Seller shall procure at its own expense and free of charge to Buyer a berth or place at which the performing vessel can when fully laden safely reach, load, leave and always lie afloat. Seller warrants that the loading berth shall be safe, reachable on arrival and shall accommodate all of the physical characteristics of the performing vessel.

31.8 If the Metal is to be delivered in containers, Buyer shall notify Seller of the details of the vessel onto which the Metal shall be loaded.

32. CFR/CIF terms

32.1 If the Contract specifies delivery on terms CIF Free Out or CFR Free Out, this Clause 32 and the provisions in Incoterms governing international sales CIF or CFR (as applicable) shall apply save that

Seller shall assume the costs of discharging operations and, in the case of Metal delivered in containers, its transport to the container yard.

32.2 If the Metal is to be delivered in bulk on a CIF or CFR basis, Clauses 32.3 to 32.11 32.10 shall apply:

32.3 Seller shall no less than ten (10) calendar days prior to the vessel's estimated time of arrival at the loading port, give notice to Buyer nominating a vessel to carry the Metal and specifying the demurrage rate of the vessel.

32.4 Buyer shall have the right to reject any vessel nominated by Seller on technically reasonable grounds or because the vessel does not meet the requirements of Clause 32.5.

32.5 Seller's vessel shall:

- (a) be suitable for the carriage of the Metal; and
- (b) satisfy Buyer's reasonable vessel vetting requirements.

32.6 Seller may substitute any nominated vessel by another vessel of similar class, type, size and capacity at any time prior to the original vessel's arrival at the loading port, subject to consent by Buyer (such consent not to be unreasonably withheld).

32.7 All other shipping terms and conditions shall be set out in the Contract and/or shall be agreed between the Parties upon Seller's nomination.

32.8 Buyer shall procure at its own expense and free of charge to Seller a berth or place at which the performing vessel can when fully laden safely reach, discharge, leave and always lie afloat. Buyer warrants that the discharge port and berth shall be safe, reachable on arrival and shall accommodate all of the physical characteristics of the performing vessel.

32.9 Seller may refuse to direct the vessel to any waters if such direction would involve a breach of any International Navigating Limits or expose the vessel, its crew and/or the Metal to the risk of harm, danger, loss or damage or cause the vessel to be proximately located to a war or war-like situation.

32.10 All costs incurred in connection with discharging the Metal at the discharge port, including without limitation stevedoring costs, shall be for Buyer's account.

32.11 Unless otherwise agreed between the Parties, Seller must present as payment documents a full set of clean, original bills of lading issued or endorsed to the order of Buyer, and Buyer shall not be obliged to make payment until it receives such bills of lading.

32.12 If the Metal is to be delivered in containers, Seller shall notify Buyer of the vessel on board which the Metal has been loaded.

33. FCA/EXW terms

33.1 Seller shall procure, at its own expense, facilities at the Delivery Point suitable for the loading of the Transport and shall allow the Transport access to the loading facilities for such purpose.

33.2 Buyer shall give notice to Seller of:

- (a) the intended mode of Transport if not specified in the Contract;
- (b) the number of trucks or rail wagons (as the case may be) comprising the Transport;

- (c) full identification details for the Transport; and
- (d) the estimated time of arrival of the Transport at the Delivery Point.

33.3 Buyer shall procure that the Transport shall arrive at the Delivery Point in readiness to load within the Delivery Period.

33.4 Buyer shall ensure that the Transport complies with any site access terms, rules and regulations in force at the Delivery Point and in respect of the collection of the Metal.

34. CPT/CIP and DAT/DAP/DDP/DPU terms

34.1 Buyer shall procure, at its own expense, facilities at the agreed destination (and, in the case of DAT, DAP, DDP and DPU terms, the Delivery Point) for unloading of the Transport and shall allow the Transport access to the unloading facilities for such purpose.

34.2 Seller shall give notice to Buyer of:

- (a) the intended mode of Transport if not specified in the Contract;
- (b) the number of trucks or rail wagons (as the case may be) comprising the Transport;
- (c) full identification details for the Transport; and
- (d) the estimated time of arrival of the Transport at the agreed destination.

34.3 Seller shall procure that the Transport shall arrive at the agreed destination (and, in the case of DAT, DAP, DDP and DPU terms, the Delivery Point) in readiness to unload within the Delivery Period.

DEFINITIONS AND INTERPRETATION

35. Definitions

35.1 In the GTCs, unless the context requires otherwise, the following words and expressions have the following meanings:

“Acceptable Tolerance” has the meaning specified in the Contract, or where not specified means 0.2% of the Delivered weight of the Metal.

“Affiliates” means with respect to any company or corporation, a Subsidiary of that company or corporation or a Holding Company of that company or corporation or any Subsidiary of that Holding Company.

“Business Day” means any day other than a Saturday or a Sunday on which business is normally conducted in New York, N.Y., USA and Seller’s location, save where such term is used in Clause 30.

“Buyer” means the Party that is the buyer specified in the Contract.

“Buyer’s Results” has the meaning given to it in Clause 5.1.

“**CFR**” has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

“**CIF**” has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

“**CIP**” has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

“**Confirmation**” means a communication from one Party to the other confirming the Contract and setting out terms that amend or supplement the GTCs.

“**Contract**” means the contract between the Parties for the sale and purchase of Metal which incorporates by reference the GTCs, as further described at Clauses 26.2 and 26.3.

“**CPT**” has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

“**DAP**” has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

“**DAT**” has the meaning given to it in incoterms 2010 edition, except as modified by or inconsistent with the Contract.

“**DDP**” has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

“**DPU**” has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

“**Default**” has the meaning given to it in Clause 18.1.

“**Delivery**” means the delivery of the Metal to Buyer at the Delivery Point and will take place at the time that risk passes in accordance with the Incoterm applicable to the relevant delivery as specified in the Contract. The terms “**Deliver**” and “**Delivered**” shall be construed accordingly.

“**Delivery Period**” means the period or date specified in the Contract in which Delivery is to take place; except that, in the case of a delivery on FOB, CIF and/or CFR terms, it means the period or date specified in the Contract in which the performing vessel must arrive and tender valid notice of readiness at the port of loading.

“**Delivery Point**” means the location specified in the Contract which, absent anything to the contrary in the Contract, shall be:

(a) for CIF/CFR deliveries, the point at which the Metal passes the ship’s rail on board the performing vessel at the loading port;

(b) for CPT/CIP deliveries: at the place at the loading port appropriate to the means of transport to be used;

(c) for DAP deliveries, the place at which the Metal is placed at the disposal of Buyer on the arriving means of transport ready for unloading, at the named place of destination;

(d) for DAT or DPU deliveries, the point at which the Metal, once unloaded from the arriving means of transport, is placed at Buyer’s disposal at the named port or destination;

(e) for DDP deliveries, the point at which the Metal is placed at the disposal of Buyer, cleared for import, on the arriving means of transport ready for unloading, at the named place of destination;

(f) for EXW deliveries, the point at which the Metal leaves Seller's premises or another agreed location;

(g) for FCA deliveries, the point at which the Metal is delivered to the carrier or another person nominated by Buyer at Seller's premises or another agreed location; and

(h) for FOB deliveries, the point at which the Metal passes the ship's rail on board the performing at the loading port.

"EXW" has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

"FCA" has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

"FOB" has the meaning given to it in Incoterms, except as modified by or inconsistent with the Contract.

"Force Majeure Event" has the meaning given to it in Clause 13.1.

"GTCs" has the meaning given to it in Clause 26.1.

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"Incoterm" or "Incoterms" means Incoterms 2020 as published by the International Chamber of Commerce.

"Independent Surveyor" has the meaning given to it in Clause 5.4(b)(i).

"International Navigating Limits" means the International Navigating Limits as prepared by the Institute of Chartered Underwriters in London and as updated from time to time.

"LCIA" has the meaning given to it in Clause 23.1.

"Metal" means the metal described in the terms of the relevant Contract.

"Non-Defaulting Party" has the meaning given to it in Clause 18.2.

"Party" means Buyer or Seller as the parties to the Contract, and collectively referred to as the Parties.

"Payment Currency" means the currency agreed between the Parties as the currency in which payment shall be made pursuant to the Contract; or if no other currency is agreed, US dollars.

"Payment Due Date" means the due date for payment for any sums due under the Contract.

"Producer" means the person that extracted and/or processed the Metal.

"Producer's Quality Certificate" means the certificate issued by the Producer setting out an analysis of the chemical and physical quality of the Metal issued by the Producer or by Vitol on its letterhead.

“REACH” means, in the case of deliveries to countries within the European Economic Area and Northern Ireland, Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals and, in relation to deliveries within Great Britain, that Regulation as retained in and subsequently amended by the domestic law of the United Kingdom, in each case as amended from time to time.

“Satisfactory Security” has the meaning given to it in Clause 8.1.

“Security Provider” means an entity or individual issuing a LC or other Satisfactory Security for the benefit of Seller.

“Seller” means the Party that is the seller specified in the Contract.

“SOFR” means the forward-looking term Secured Overnight Financing Rate per annum (based on a three hundred and sixty (360) day year) administered by the Chicago Mercantile Exchange Group Benchmark Administration Limited (or any successor administrator) and published on its website (or any successor administrator’s website) for United States Dollars for a one (1) month period, determined at 11.00 a.m. New York Time, as quoted on the Payment Due Date.

“Specifications” means the specifications of the Metals as set out in the Contract.

“Subsidiary” means, in relation to any company or corporation, a company or corporation which is controlled, directly or indirectly, by the first mentioned company or corporation; more than half the issued share capital or which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or which is a Subsidiary of another Subsidiary of the first mentioned company or corporation; and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“Transport” means the truck or rail wagons (as the case may be) nominated pursuant to the terms of the Contract for the carriage of the Metal from or to the Delivery Point.

“Vitol” means Vitol S.A. and/or its Affiliates.

36. Interpretation

36.1 In the GTCs, unless the context otherwise requires:

- (a) a word denoting the singular includes the plural, and vice versa;
- (b) a word denoting a person includes, whether or not they have a separate legal personality, a corporation, company, firm, partnership, government, state and/or agencies of a government or state;
- (c) a reference to a clause or schedule is to a Clause or Schedule of or to the GTCs;
- (d) a reference to any Party includes that Party’s executors, administrators, substitutes, successors and permitted assigns;
- (e) clause headings are for ease of reference only and shall not affect interpretation; and

a reference to any convention, legislation or regulation includes any amendment, replacement or re-enactment of such convention, legislation or regulation from time to time.

