

METALLURGICAL SERVICES PRIVATE LIMITED

STANDARD CONDITIONS OF CONTRACT (“the Conditions”)

1. Interpretation

In these Conditions the following expressions shall (unless the context requires) have the following meanings:-

“Client” means the person, firm or company to whom a Quotation is addressed or for whom a Test or any Services is carried out;

“Confidential Information” means all information in respect of the business of the Company including but not limited to know-how or other matters connected with the Services and information concerning the Company’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and any other information which if disclosed will be liable to cause harm to the Company.

“Company” means Metallurgical Services Private Limited, a company incorporated in India under the Companies Act, 1956;

“Contract” means the contract for the supply of Services of which these Conditions form part;

“Price” means the price stated in the Quotation, or otherwise agreed with the Client together with all other sums due pursuant to these Conditions;

“Quotation” means the Company’s quotation (whether written or oral) of which these Conditions form part;

“Report” means any test certificate, technical report, non-destructive test or inspection record, drawing, spreadsheet, recommendation, advice or the like issued by the Company in respect of a Service;

“Sample” means any material, item, product or compound supplied by the Client to form the basis of a Test;

“Sanctions Rules” means any applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licences, orders, or requirements, in force from time to time, including without limit those of the European Union, the United Kingdom, the United States and the United Nations;

“Services” means the services specified in the Quotation;

“Test” means any testing, analysis, assay, inspection or the like specified in a Quotation;

2. Quotation

2.1 The Quotation constitutes an offer by the Company to provide Services and/or carry out a Test subject to the Conditions and is open for acceptance for seven days only from the date thereof unless previously withdrawn by the Company. Acceptance is based on the receipt of an instruction in writing or receipt of the Sample by the Company.

2.2 Except in accordance with these Conditions no variation of the Contract will be accepted unless agreed in writing by the Company.

2.3 No condition, statement or representation contained in any advertisement or brochure or in any trade or promotional circular or other literature, nor the terms or conditions of any trade association or other body, or which would or might but for this sub-paragraph be implied or incorporated by custom or trade, usage, negotiations, course of dealing or otherwise shall be deemed to be incorporated in the Contract and all of the same are hereby expressly excluded from the Contract.

3. Price

3.1 The Price is based on information available to the Company at the date of the Quotation. If during the period of the Contract there shall be any variation in the cost of materials, labour or otherwise to the Company, the Price may, in the absolute discretion of the Company, be adjusted to take account of such variation.

3.2 In addition to the amount specified in the Quotation the following shall be payable by the Client:

- 3.2.1 any applicable taxes, including service tax and value added tax, (if applicable);
- 3.2.2 package, insurance, freight, travel costs, bank charges, storage charges and disbursements incurred on behalf of the Client, whether on the Company’s premises or elsewhere, and to include storage charges on the Company’s premises, if any Sample or materials supplied by the Client are not removed within seven days of the date of notification to the Client that they are ready for collection;
- 3.2.3 insurance incurred by the Company, in its absolute discretion, in respect of any property belonging to the Client in the possession of the Company;
- 3.2.4 with prior notice, the cost of all sub-contractors employed by the Company unless included in the Quotation; and
- 3.2.5 any additional costs incurred by the Company and/or any charges imposed by the Company in accordance with these Conditions.
- 3.2.6 any costs associated with special standards or specifications required for the performance of the Service.

4. Payment

4.1 The Price shall be paid to the Company in full without any deduction, set-off or counterclaim within thirty days of the date of the Company’s invoice and in default of payment within the thirty days, then without prejudice to such other remedies as may be available to it under this Contract, in law or equity, the Company may suspend any further Services being carried out for the Client and the amount outstanding from time to time shall bear interest (both before and after any judgment) at the rate of 2% per month until payment in full is made.

4.2 All payments due to the Company shall be payable within the specified time irrespective of whether or not the Client has recovered payment from a third party and, for the avoidance of doubt, but without prejudice to the generality of the foregoing, this includes payments of fees due to the Company when any of the directors, officers, employees or representatives of the Company act as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.

5. Execution of Services

5.1 Tests shall be carried out singly unless prior written instructions from the Client are received for replicates or unless the Company considers replicates are necessary or desirable. The Company reserves the right to charge for replicates even if the original result is confirmed.

5.2 The Client shall supply as much information as possible about each Sample and/or Service requirement in order to assist in achieving an efficient service. Where information relating to the Sample and/or the Service requirements is incorrect and the Company is involved in additional work, the Company reserves the right to charge for such additional work.

5.3 Unless specific prior instructions in writing are received by the Company any Test shall be carried out on the Sample in the state in which the sample is received. The Company reserves the right to charge for any work required to be carried out to the Sample prior to the performance of any Service.

5.4 Methods of carrying out the Service shall be at the sole discretion of the Company unless prior instruction in writing is received from the Client specifying a particular procedure. Charges for such special procedures will be agreed between the Company and the Client prior to carrying out the Service.

5.5 A general description of the method used in the performance of the Service shall be given verbally on request. Where written descriptions of detailed procedures are requested, whether as part of the Report or issued separately, the Company reserves the right to make an additional charge. If the method referenced in the Report represents the end product of development work carried out at the Company’s expense, the method shall only be revealed at the discretion of the Company.

5.6 The Company may, at its sole discretion, undertake to give priority in carrying out a particular Service. A surcharge may be imposed by the Company for the carrying out of priority work (Details of these arrangements will be issued by the Company on request).

6. Samples subject of legal proceedings

If the Sample is, or is potentially, the subject of legal proceedings, this fact must be notified to the Company in writing before the Service is carried out. If that fact is not disclosed to the Company at that stage, the Company shall not necessarily be prepared to provide expert testimony, unless it is mandated to do so under applicable law.

7. Disclaimer/Liability

7.1 The following provisions of this Condition 7 set out the entire liability of the Company, its directors, employees, agents and sub-contractors to the Client howsoever arising.

7.2 The Company hereby excludes, to the fullest extent permitted by law, any and all liability to the Client whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profit, loss of business, loss of market, loss of contract, damage to goodwill, loss of anticipated savings, loss of revenue or any indirect or consequential loss howsoever caused.

7.3 Subject to Condition 7.2, the Company’s aggregate liability under the Contract (whether in contract, tort (including negligence), breach of statutory duty or otherwise) arising out of or in connection with the performance or contemplated performance of the Contract or any delay in performance or failure to perform by the Company or otherwise howsoever arising shall be limited to the Price.

7.4 The Client accepts that time shall be of the essence in investigating any claim made in respect of the Services carried out hereunder and subject to the other provisions of these Conditions any claim by the Client against the Company shall be made in writing and notified to the Company within 365 days of completion of the Services under the Contract by the Company to the Client, failing which the Client shall be deemed thereby to have waived his rights and/or to have irrevocably discharged and released the Company in respect of any and all liability in respect of such claim.

7.5 All Services are undertaken in good faith, to a reasonable standard of care and on a confidential basis. Reports are issued on the basis of information known to

the Company at the time that the Services are carried out. Although the Company will use all reasonable endeavours to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Client, its staff and on the information submitted to the Company. Save as required by law, no representation or warranty, whether express or implied or otherwise as to the accuracy of a Report is given by the Company. In consequence, all Reports are prepared on the basis that:

- 7.5.1 there is no responsibility to any person or body other than the Client,
 - 7.5.2 they are not carried out for any particular purpose and no statement is to be deemed, in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;
 - 7.5.3 they are determined solely by the professional analysis undertaken by the Company’s staff on each individual Contract and any forecasts by the Company of the results is an estimate only and the Company is entitled to be paid the Price irrespective of the results or conclusions reached;
 - 7.5.4 the results of the Services shall address the items and information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and
 - 7.5.5 the results are final and approved by the Company. The Company shall be under no liability where the Client has acted on preliminary, unapproved results or advice.
- 7.6 All time limits, if any, for the provision of the Services or Tests are estimates and no undertaking is given to carry out the Services or to despatch any Report within any period of time.

7.7 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company’s obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company’s reasonable control. Without prejudice to the generality of the foregoing, causes beyond the Company’s reasonable control shall include an Act of God, explosion, flood, pest, fire, accident, war or threat of war, acts or threats of terrorism, sabotage, insurrection, civil disturbance, requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

7.8 All warranties, conditions, or other terms, whether expressed or implied under statute, common law, commercial usage, equity or any general applicable principles of law or otherwise, including implied warranties of merchantability, condition, quality or fitness for a particular purpose (whether or not such purpose is made known to the Company), are hereby excluded and negated to the fullest extent permitted by law.

7.9 The Client acknowledges that the above provisions of this Condition 7 are reasonable and reflected in the Price which would be higher without those provisions and the Client will accept such risk and/or insure accordingly.

8. Obligations of Client

8.1 The Client shall not reproduce or replicate any Report other than in full without the written consent of the Company.

8.2 The Client shall be bound to inform the Company in writing prior to the carrying out of any Service on a Sample that is of a dangerous or unstable nature and provide instruction on the safe handling of the Sample. The Client shall indemnify the Company from and against all loss or damage suffered by the Company, including, without prejudice to the generality of the foregoing, all damage to the Company’s property and all claims in respect of injury to or deaths of any of the Company’s employees, sub-contractors or agents or of any third party, directly or indirectly arising from or in connection with the failure of the Client to inform the Company of the dangerous or unstable nature of a Sample and/or to provide adequate instruction on the safe handling of the Sample.

8.3 The Client agrees to indemnify, keep indemnified and hold harmless the Company from and against all losses, liability, costs (including legal costs), claims, expenses, actions and proceedings which the Company may suffer or incur arising out of or as a result of any breach or negligent performance or failure in performance by the Client of the terms of the Contract or breach of any law or any claim threatened or made against the Company by any third party arising out of the Services or out of any delay in performing or failure to perform the Services.

8.4 Where Services are provided at the premises of the Client, the Client will be responsible for providing a safe system of work for the Company and its employees while providing the Service and the Client shall be responsible for all costs necessarily required in discharging this obligation and shall indemnify the Company, its directors, employees, sub-contractors and agents in respect of all claims, costs, damages and loss suffered as a result of any breach by the Client hereof.

9. Risk and Property in relation to Tests.

9.1 Unless stated in the Quotation, Samples are and remain at all times whilst at the Company’s sites and during transportation to and from the Company’s sites at the entire risk of the Client who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Client that the charges of the Company do not include insurance.

9.2 Unless expressly stated to the contrary in the Contract, Samples of a stable nature shall be retained for three months from the date of their receipt and then destroyed. Samples shall be returned to the Client only if prior instructions in writing in that regard are received by the Company and the Client shall be charged for all costs associated therewith (including carriage).

9.3 Where Samples are, in the sole opinion of the Company, too bulky or too unstable to allow long storage time, it will be at the absolute discretion of the Company as to the length of time such samples are kept.

10. Ownership, copyright and patents in relation to Services

10.1 All copyright in records, scientific documentary, primary data or electronic means of handling data produced during any Service shall belong to and remain the property of the Company unless otherwise agreed as part of the Contract.

10.2 Ownership and copyright in the Report shall remain with the Company until the Client has discharged all its obligations under the Contract, including payment of the Price, whereupon the title, ownership and copyright shall pass to the Client unless the Company is forced to part with any such report, or information of any nature, to any body exercising its statutory powers, or if required by applicable law.

10.3 The Client hereby warrants that it will not use the Report or any other reports, results, or information supplied by the Company for the purposes of advertisement or publication to third parties. Any such issue of the Report or other reports, results or information is permitted under the Contract only with the prior written consent of the Company who shall have the right to increase the Price where it consents to such advertisement and/or publication.

10.4 The Client hereby undertakes to abide by any regulations imposed by certification authorities, standard owners, accreditation bodies (including the National Accreditation Board for Testing and Calibration Laboratories) or any governmental or regulatory body in India relating to marks, emblems, symbols or logos attached to the Reports or any other documents issued under the Service.

10.5 All inventions arising from the Contract and any applications for patents or similar protection, whether in India or elsewhere shall be the property of the Client (once all payments due to the Company under contract have been discharged), but the Company is hereby granted an irrevocable royalty free licence, with the right

to sub-licence, to apply them or any information gained to work outside the specific field in which the development for the Client took place.

11. Sub-contracting and Assignment

11.1 Unless otherwise restricted by the terms of the Contract and/or obligations under any accreditation or governing approval, the Company shall be entitled, in its absolute discretion, to sub-contract the whole or any part of the Service.

11.2 The Company may assign, delegate, licence or hold on trust, all or any part of its rights or obligations under the Contract.

11.3 The Client shall not assign, delegate, licence, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company’s prior written consent.

12. Termination

12.1 The Client shall not terminate the Contract without the written consent of the Company which may be subject to such terms, as in the Company’s absolute discretion, recompense the Company for all loss it may suffer as a result of termination.

12.2 The Company may terminate the Contract and any other contract with the Client forthwith, without prejudice to any other right or remedy available to the Company and without the Company incurring any liability to the Client, in the following circumstances:

- 12.2.1 if the Client shall commit a breach of any terms of the Contract or any other contract with the Company unless such breach is capable of remedy and the Client has failed to comply with a notice requiring remedy within the period specified in the said notice;
- 12.2.2 if the Client fails to make payment of the Price within the specified time;
- 12.2.3 the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
- 12.2.4 an encumbrancer takes possession, or a receiver or administrator is appointed, of any of the property or assets of the Client;
- 12.2.5 the Client ceases, or threatens to cease, to carry on business;
- 12.2.6 if the Company reasonably apprehends that providing the Services or dealing with the Client would be in breach of Sanctions Rules, the Client fails to satisfy due diligence requests made by the Company in connection with compliance with Sanctions Rules or other relevant laws or regulations or the Client does anything which is in breach of, or would cause the Company to be in breach of, Sanctions Rules; and
- 12.2.7 the Company reasonably apprehends that any of the events mentioned at Conditions 12.2.3, 12.2.4 or 12.2.5 above is about to occur in relation to the Client and notifies the Client accordingly.

12.3 Notwithstanding that the Company terminates the Contract, this shall be without prejudice to the accrued rights and remedies of the parties prior to termination of the Contract and any rights or remedies under these Conditions, which shall remain in force, including the right to suspend all further Services to be made under any other contract with the Client (and in such event the Client shall not be released from any of its obligations to the Company under any other contract) and the right for the Company to receive full compensation for its loss under the Contract or any other contract with the Client.

13. Confidentiality

13.1 All Confidential Information shall be kept by the Client in the strictest confidence. Save for the purposes of fulfilling its obligations under the Contract, the Client shall not, without the prior written consent of the Company, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.

13.2 Notwithstanding Condition 13.1 the Client may disclose Confidential Information which it has received if:

- 13.2.1 it is required to do so by any governmental or regulatory authority or by law (but then only to the extent it is strictly required to do so);
- 13.2.2 it is strictly necessary for the purpose only of obtaining professional advice in relation to the Contract;
- 13.2.3 it is already known to the Client prior to the time of disclosure by the Company (given the Client can prove the same with documentary evidence); or
- 13.2.4 it is information which subsequently becomes public knowledge other than by breach of the Contract by the Client.

13.3 The obligations of the parties under this Condition 13 shall continue to apply without limit of time and shall survive termination of the Contract.

14. General

14.1 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.

14.2 Nothing in the Conditions shall create or be deemed to create a partnership or agency between the parties.

14.3 These Conditions, the Quotation and the Contract contain all the provisions which the parties have agreed in relation to the subject matter of the Contract and supersede any prior written or oral agreements, representations or understandings between the parties. The Client agrees that it has not been induced to enter into these Conditions or the Contract by a statement or promise which they do not contain save that these Conditions shall not exclude any liability which the Company would otherwise have to the Client in respect of any statements made fraudulently by the Company.

14.4 In the event of one or more of the provisions of these Conditions being held by a competent authority to be invalid, illegal, or unenforceable, in whole or in part, the validity, legality or enforceability of the remaining provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

15. Notices

All notices to be served by one party on the other shall be deemed duly delivered or served 5 (five) days after posting, if posted by first class airmail pre-paid post or commercial courier to the address of the other party, or if sent by facsimile, the business date immediately after the date of transmission with confirmed answer back.

16. Waiver

No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

17. Law and Jurisdiction

These Conditions and the Contract shall be governed by and construed in accordance with the laws of India and the Client submits to the exclusive jurisdiction of the Courts of Mumbai, India.

18. Third Party Rights

These Conditions do not, and are not intended to give any rights or any right to enforce any of its provisions to any person who is not a party to the Contract.