

## **TECK GENERAL TERMS AND CONDITIONS OF SALE**

### **ALL ORDERS ARE ACCEPTED SUBJECT TO OUR GENERAL CONDITIONS OF SALE, A COPY OF WHICH IS REPRODUCED BELOW**

This Contract between Teck and the Buyer in respect of the Product to be supplied by Teck shall be made on, and subject to the following terms and conditions. No other terms or conditions contained in any order by the Buyer or any correspondence or other document communicated to Teck in written or electronic form shall form part of this Contract except to the extent they are contained in a written or electronic document signed by an authorized Teck representative. These terms and conditions apply in lieu of any course of dealing between the parties or usage of trade in the industry. Acceptance of an Order or Acknowledgement by the Buyer constitutes the Buyer's acceptance of these terms and conditions. In the absence of acceptance or acknowledgement, delivery of the Product and acceptance of such delivery by the Buyer shall constitute a binding contract on, and subject to, these terms and conditions.

#### **ARTICLE 1 CHANGES**

1.1 Orders accepted by Teck are not subject to change or cancellation by the Buyer after signature of the order or acceptance of the Product under the order, except with Teck's written consent.

#### **ARTICLE 2 PRICE, TAXES AND QUOTATIONS**

2.1 The parties understand that Teck will procure the Product from its affiliated company in Canada and will import such Product into the United States. Notwithstanding whether the sale to the Buyer is a direct sale, a warehouse sale or a consignment sale, and regardless of the delivery term used in the Contract, unless otherwise specifically stated in the Contract, all prices are exclusive of any present or future sales, revenue or excise tax, value-added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product including any such taxes incurred by Teck on the importation of any Product sold to the Buyer. Such taxes, when applicable, are the entire responsibility of and shall be paid or reimbursed by the Buyer unless Buyer provides a tax exemption certificate satisfactory to Teck.

2.2 Payments by Buyer to Teck are to be made in accordance with the terms on the front of this Contract. If payment terms are not on the front of the Contract, payment terms are net thirty (30) days from date of invoice. Teck reserves the right to charge interest of 1.5% per month, not to exceed the maximum rate allowed by law, on the portion of Buyer's outstanding balance which is not paid when due. If legal action is taken by Teck, the Buyer shall be liable for Teck's legal fees, plus all other costs related to such action.

2.3 All sums due to Teck under this Contract shall be paid by the Buyer as provided herein without deduction, set-off or counter-claim notwithstanding any claim whatsoever the Buyer may wish to make against Teck.

2.4 Teck shall prepare and deliver invoices to Buyer. Invoicing will be in the Teck format, showing the total net weight of the Product with taxes and surcharges shown as a separate line item.

#### **ARTICLE 3 NO WARRANTIES**

**3.1 THE PRODUCT SHALL CONFORM TO THE DESCRIPTION EXPRESSLY STATED ON THE FACE OF THIS CONTRACT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THIS DESCRIPTION. THIS WARRANTY IS EXCLUSIVE AND ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR OTHER OBLIGATIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.**

#### **ARTICLE 4 NON-CONFORMING PRODUCT**

4.1 Subject to Article 5 (Termination) and Article 10 (Inspection/Weight), any shipment, or portion thereof, of Product received by Buyer which reasonably fails to meet the quantity ("Quantity Deficiency") or quality or description specifications ("Non-Conformity") as provided in this Contract shall be reported promptly to Teck. With respect to a demonstrated Quantity Deficiency or Non-Conformity issue, Teck will, in its sole discretion, elect to a) deliver additional quantity of Product to remedy a Quantity Deficiency; b) replace Non-Conforming Product with conforming goods; or c) refund to the Buyer the purchase price of the Product. The foregoing are the Buyer's sole and exclusive remedies in the event of a Quantity Deficiency or Non-Conformity.

#### **ARTICLE 5 TERMINATION BY TECK**

5.1 Teck may terminate this Contract if:

- (a) The Buyer fails to make payments in accordance with the terms of either this Contract or of any other contract between the Buyer and Teck;
- (b) The Buyer fails to take, or unreasonably delays, delivery under the terms of this Contract; or
- (c) The credit rating of the Buyer is materially downgraded.

Regardless of whether or not Teck terminates this Contract for cause, if (a), (b) or (c) above or 5.3 below occurs, Teck may immediately and without notice resell the Product, in whole or part, listed on the face of this Contract into the open market or through the London Metal Exchange, if applicable ("Market Price"). In such event, the Buyer shall be liable to Teck for any and all damages, losses, costs, charges, professional fees and other expenses incurred by Teck, including without limitation, the difference between the Contract price and the Market Price (with reference to actual sales or applicable published indices), broker's fees and legal fees.

5.2 Notwithstanding any provision in this Contract to the contrary, Teck may terminate this Contract without cause with respect to undelivered shipments upon giving 90 days prior notice to the Buyer.

5.3 Either party may terminate this Contract if the other party becomes insolvent, bankrupt or enters into any form of arrangement with creditors.

#### **ARTICLE 6 LIMITATION OF LIABILITY**

**6.1 NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, A PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY IN RELATION TO A SHIPMENT OF PRODUCT, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, UNDER STATUTE, IN TORT (FOR NEGLIGENCE OR OTHERWISE) OR ANY OTHER BASIS IN LAW OR EQUITY SHALL NOT EXCEED THE PURCHASE PRICE OF THAT SHIPMENT PAID OR TO BE PAID BY THE BUYER ("DIRECT DAMAGES LIMITATION"). TECK SHALL HAVE THE OPTION, IN ITS SOLE DISCRETION (IN THE ABSENCE OF ANY ALTERNATIVE SOLUTION AGREED BETWEEN THE PARTIES) EITHER OF REPLACING THE PRODUCT OR PAYING DIRECT DAMAGES TO THE BUYER, WHICH MAY BE LESS THAN THE DIRECT DAMAGES LIMITATION BUT WHICH IN ANY EVENT SHALL NOT EXCEED THE DIRECT DAMAGES LIMITATION.**

6.2 Each party shall exercise all reasonable endeavours to mitigate any losses suffered, sustained or incurred which might be the subject of a claim by one party against the other party under this Contract.

6.3 Except as provided in this Contract, to the maximum extent permitted by law, neither party is liable to the other party for any incidental or consequential damages, loss of opportunity, loss of revenue, loss of profits or anticipated profit, loss of goodwill or exemplary damages whether arising out of or in connection with this Contract under statute, in tort (for negligence or otherwise) or any other basis in law or equity.

#### **ARTICLE 7 FORCE MAJEURE**

7.1 Either party may postpone any shipment made under this Contract which is affected by or subject to the following, without recompense to the other party, in the following circumstances:

- (a) labor difficulties or a strike, fire, flood, pandemics, acts of terrorism or war;
  - (b) any delay, interruption, cancellation, suspension or other non-performance of any transportation contract under which Teck has arranged for delivery under this Contract;
  - (c) any requirement or regulation of any government (including without limitation, any requirement which affects any raw material required for the production of the Product); or
  - (d) any and all disabling causes or contingencies beyond a party's reasonable control.
- (collectively, "Force Majeure Event")

7.2 In no event shall a party be required to negotiate or settle a labour dispute or strike.

7.3 In the event that a Force Majeure Event continues for a period of more than 90 consecutive days, either party may terminate this Contract by written notice to the other party, without recompense (except for payments due and owing up to the date of termination).

7.4 This Article 7 does not apply to goods which are in transit prior to the declaration of a Force Majeure Event.

#### **ARTICLE 8 GOVERNING LAW AND ARBITRATION**

8.1 This Contract is governed by the laws of the State of Washington. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

8.2 All disputes arising in connection with this agreement, not otherwise settled by consultation and discussion by the Parties, shall be finally settled by binding arbitration under the Rules for Commercial Arbitration of the American Arbitration Association by a single arbitrator appointed in accordance with those Rules. The arbitration shall take place in Spokane, Washington. Any findings of the Arbitrator shall be final and binding on the parties and may be entered in the courts of Spokane County Washington which shall have exclusive jurisdiction over the matter controlled by this Contract.

#### **ARTICLE 9 COMPLIANCE WITH LAWS**

9.1 Both Teck and Buyer shall comply with all applicable laws of federal, provincial, and local authorities including those governing environmental protection and enhancement, including but not limited to those relating to manufacturing, processing, handling, packaging, transportation, provision, disposal and waste management which relate to the sale, use and disposal of the Product.

9.2 Teck shall notify Buyer, in writing, within five (5) calendar days of receiving notice from any authority governing environmental protection and enhancement that any such legislation has been breached in relation to this Contract. Buyer shall notify Teck, in writing, within five (5) calendar days of receiving notice from any authority governing environmental protection and enhancement that any such legislation has been breached in relation to this Contract.

**ARTICLE 10  
INSPECTION/WEIGHT**

10.1

- (a) The Product shall be subject to inspection to determine conformity with the Teck Product Specification Sheet. Buyer has a period of ten (10) business days following the delivery of the Product to the Destination to inspect and accept the Product. After ten (10) business days, acceptance will be deemed to have taken place and Buyer will have been deemed to accept the Product in the specified quantities.
- (b) The weight of the Product shall be determined by utilizing a certified for trade scale at Teck's Trail Operation. The weight of the Product so determined shall be binding on the parties unless challenged by Buyer. Buyer shall have ten (10) business days following the delivery of the Product to the Destination in which to challenge the weight of the Product.
- (c) If Buyer challenges the weight of the Product within the time limits of this Contract, Buyer shall have the right, at its sole cost, to independently weigh the Product using a certified for trade scale. If there is any discrepancy between the Buyer's weight determination and Teck's weight determination, the parties will meet and agree upon an equitable adjustment of the weight of the Product.
- (d) Buyer and Teck shall have the right to observe any of the weighings.

**ARTICLE 11  
GENERAL**

11.1

- (a) Buyer and Teck shall abide by all the provisions of the applicable Standard Specifications of the American Society for Testing Materials unless otherwise specified in writing.
- (b) Each shipment made under this Contract is considered a separate sale.
- (c) The Contract and these terms and conditions are the entire agreement between the parties and any modifications must be made in writing. Any condonation, excusing or overlooking by Teck of any default, breach or non-observance by the Buyer of any term or condition of this Contract shall not in any way affect, limit or waive Teck's right to enforce strict compliance with every other term and condition of this Contract.
- (d) It is the exclusive responsibility and obligation of the Buyer to instruct its employees, contractors or agents ("Personnel") in the safe handling, storage, sale or use of the Product and Buyer assumes all liability with respect to its Personnel's handling, storage, sale or use of the Product.

11.2 Buyer will not, without Teck's prior written approval, make any statement or publish or release to any other person any photograph, advertisement, testimonial, letter of commendation or approval or any other document or written matter which might imply Teck's approval of the products, actions or performance of Buyer.

**ARTICLE 12  
NO ASSIGNMENT**

12.1 This Contract shall not be assigned (including the liability of Teck to transfer or deliver the Product to the Buyer) by either party without the prior written consent of the other party, such consent not to be unreasonably withheld.

12.2 Notwithstanding Section 12.1, Teck may assign its rights or delegate its duties hereunder without the consent of the Buyer to: (a) any corporation resulting from any merger, consolidation or other reorganization to which Teck is a party; (b) any corporation, partnership, association or other entity or person to which Teck transfers all or substantially all of its assets; or (c) any Affiliate of Teck. For purposes of this Section 12.2, "Affiliate" means any other party which is affiliated with Teck, and for the purposes hereof, two companies will be considered to be affiliated with one another if one of them controls the other or if both of them are controlled by a common third party.

**ARTICLE 13  
INSURANCE**

13.1 Teck shall be responsible for transportation cargo insurance on each shipment hereunder in accordance with the terms and conditions of this Article 13. Such insurance shall be placed with large, well-known companies of good international repute.

This insurance shall be affected in U.S. Dollars in the amount of 110% of the estimated value of the Product of each shipment and any claims would be made on the final value of the settlement.

The insurance shall be written to provide coverage against all risks (as that term is generally understood in the insurance industry) to the extent commercially available, including inter alia the following clauses:

- (a) American Institute Cargo Clauses;
- (b) American Institute War Clauses (CARGO);
- (c) American Institute Strikes, Riots and Civil Commotion Clauses (CARGO); and
- (d) Institute Classification Clause 01/01/01.

Exclusions shall include ordinary loss in weight or volume and losses caused by fraud, insolvency, or by inherent vice or the nature of the cargo.

The insurance shall provide coverage from the time the Product has been loaded for transportation at Trail Operations until the Product is unloaded at Destination.

Claims shall be submitted by the Buyer within 30 (thirty) calendar days after discharge at Destination or no cover given.

In the event that the Buyer has a claim, Teck will use its commercially reasonable efforts to assist the Buyer in making that claim.

## **ARTICLE 14**

### **MATERIAL ADVERSE CHANGE**

14.1 Notwithstanding any payment terms set out on the front of this Contract, if:

- (a) Teck is of the opinion, acting reasonably, that there has been or is likely to be a material deterioration in: (A) the credit worthiness of the Buyer or any other party providing direct or indirect financial support to the Buyer; or (B) the ability of the Buyer to pay for the Product in accordance with the terms of the Contract; and
- (b) the Buyer has failed to provide all documentation requested by Teck, acting reasonably, in order to determine whether (a) above has occurred; or
- (c) the Buyer has failed to strictly comply with the payment terms prescribed by the Contract in relation to any previous delivery of Product during the Contract Term,

Teck may, in its sole discretion and in addition to any other rights it may have under the Contract, upon reasonable notice to the Buyer require the Buyer to pre-pay for the Product or provide a form of security satisfactory to Teck, acting reasonably, for all deliveries of Product remaining in the Contract Term, and notwithstanding anything to the contrary set out in the Contract, until the Buyer complies with such pre-payment or security requirement, all of the Teck's obligations under the Contract, including, without limitation, any obligation to load the Product for delivery to the Buyer, shall be suspended without any liability to Teck. If the Buyer fails to promptly comply with the foregoing requirement, the Buyer shall be in default of its payment obligations and Teck may, in its sole discretion, suspend or terminate the Contract, without prejudice to any other remedies it may have at law, equity or under this Contract, upon notice to the Buyer.

## **ARTICLE 15**

### **TITLE**

**Shipments from Trail/Waneta Reload:** TITLE TO THE PRODUCT SHALL PASS FROM TECK TO BUYER UPON PRODUCT LOADED AT TECK OPERATIONS AND /OR THE WANETA RELOAD IN TRAIL BRITISH COLUMBIA. THE BUYER SHALL PAY TECK FOR THE PRODUCT UPON TRANSFER OF TITLE, IN ACCORDANCE WITH THE PAYMENT TERM.

**Shipments Ex Warehouse:** TITLE TO THE PRODUCT SHALL PASS FROM TECK TO BUYER UPON TECK LOADING THE PRODUCT TO CARRIER AT WAREHOUSE. THE BUYER SHALL PAY TECK FOR THE PRODUCT UPON TRANSFER OF TITLE, IN ACCORDANCE WITH THE PAYMENT TERMS.

**Shipments from Ocean Terminal:** TITLE TO THE GOODS SHALL PASS FROM TECK TO BUYER UPON CONTAINER OF GOODS BEING DELIVERED TO OCEAN TERMINAL AT VANCOUVER, BRITISH COLUMBIA OR OTHER OCEAN TERMINAL SPECIFIED BY TECK. THE BUYER SHALL PAY TECK FOR THE GOODS UPON TRANSFER OF TITLE, IN ACCORDANCE WITH THE PAYMENT TERMS.