

Multi Metals Limited

Terms & Conditions of Sale

PART I

The Terms and Conditions in this Part 1 shall apply to all orders placed with the Company subject, in case of Export Sales only, to the modifications and additions specified in Part II thereof.

1. Definitions and Interpretation:

In these Terms and Conditions, unless the context shall otherwise require, the following words and expressions shall have meanings hereinafter mentioned:

- %Associated Company+ means any holding or subsidiary company (as defined in Section 736 of the Companies Act 1985) of the Company or any subsidiary of such holding company;
- %The Company+ means Multi Metals Limited (registered number SC64671);
- %The Customer+ means any person, body of persons, firm or company with whom the Company enters into a Contract for the sale of Goods by the Company;
- %The Contract+ means any contract between the Company and the Customer for the sale and purchase of goods;
- %Terms and Conditions+ means these terms and conditions of sale and any additional terms and conditions agreed in writing between the Company and the Customer;
- %Goods+ means the goods that are the subject of the Contract (including any part or parts of them);
- %An Export Sale+ means a Contract involving the supply of Goods to outwith the United Kingdom irrespective of the method by which the export is carried out;
- %The Premises+ means the Company's premises from which the Goods are dispatched to the Customer or such other place as may be notified by the Company to the Customer in writing;
- %Specified+ means (as the context admits) either (i) stipulated in writing by the Company, or (ii) stipulated by the Customer in writing and accepted in writing by the Company and cognate words shall be construed accordingly;
- %The Price+ means the figure(s) specified in the Company's Acknowledgement of Order, or, in the event that no Acknowledgement of Order is issued by the Company in the Company's Quotation or otherwise stated by the Company;
- %Quotation+ means a written quotation issued by the Company to the Customer in respect of the sale of Goods by the Company;
- %Acknowledgement of Order+ means written confirmation issued by the Company of the Customer's order;
- %Delivery Note+ means the note issued to the Customer upon Delivery of the Goods;
- %Delivery+ means delivery of the Goods in accordance with these Terms and Conditions.

2. General:

- (i) Subject to any variation under condition 2(ii) the Contract will be on these Terms and Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- (ii) No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- (iii) These Terms and Conditions apply to all the Company's sales and any variation to these Terms and Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company.
- (iv) No order placed by the Customer shall be deemed to be accepted by the Company until a written Acknowledgement of Order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- (v) The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.

3. Quotation:

A Quotation does not constitute an offer by the Company to supply Goods and every acceptance of any Quotation by the Customer shall be deemed an offer by the Customer to purchase Goods from the Company and will not be binding on the Company until the Company has accepted such order pursuant to Clause 2 (iv) above.

4. Limits of Quotation: The Company's Quotation includes only such Goods as are specified therein. Any Quotation given by the Company shall not place the Company under any duty or liability to the Customer and shall not be deemed to form part of the Contract nor shall it constitute a representation by the Company including the Customer to enter into or finalise the Contract.

5. Acceptance:

- (i) The Customer's acceptance of the Company's Quotation must be accompanied by sufficient information to enable the Company to proceed with the order forthwith; otherwise the Company shall be at liberty to amend the Quotation prices to cover any increases in cost which have taken place after acceptance.
- (ii) The Company shall not be bound to accept changes to the order after acceptance but shall endeavour subject to agreement of any necessary revision to the Price and estimated delivery date, to meet any reasonable request.
- (iii) The Company only accepts responsibility for compliance with any relevant codes, regulations, standard or rules referred to in the Company's Acknowledgement of Order.

6. Credit to the Customer:

If the Company so requests the Customer shall supply such details as to credit-worthiness as the Company may consider necessary.

7 Particulars of Goods etc:

- (i) While all reasonable care is taken in preparing the descriptive and technical specifications and particulars of weights and dimensions submitted with the Company's Quotation and technical and other descriptions contained in any of the Company's catalogues, brochures, advertisements, or other documents or publicity material, the accuracy of such particulars and descriptions is not guaranteed and they shall not (save where the contrary is expressly confirmed in the Contract) form part of the Contract nor shall they be deemed to constitute a representation inducing the Customer to enter into the Contract.
- (ii) The Company reserves the right at any time to vary, alter or amend any particulars, descriptions, prices, measurements or specifications contained in its catalogues, brochures, advertisements or other documents and publicity material.

8. Samples:

- (i) Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Customer it is hereby agreed that such sample was so exhibited and inspected solely to enable the Customer to judge the quality of the bulk and not so as to constitute a sale by sample. The Customer shall take the Goods at the Customer's own risk as to their corresponding with the said sample.
- (ii) Any samples submitted to the Customer and not returned within fourteen days from the date of receipt by the Customer shall be paid for by the Customer.

9. Delivery:

- (i) Any delivery or despatch date included in the Contract shall be accepted as an estimate only, unless otherwise agreed in writing, but it is expressly stated that any such date shall not form an essential part of the Contract and the Company shall not be liable for any loss incurred by the Customer by reason of any delays in Delivery caused by factors beyond the Company's reasonable control.
- (ii) Unless otherwise Specified, Delivery of the Goods shall be made at the Premises. Where any place other than the Premises is specified for Delivery of the Goods, all costs of carriage and insurance and all taxes, duties and imports of whatever nature and by whomsoever imposed shall be payable by the Customer.
- (iii) Where Delivery of the Goods is made by the Company to a carrier, the carrier will be deemed to be acting as the Customer's agent and Delivery to the carrier shall be deemed to constitute Delivery by the Company to the Customer. The Customer may authorise the Company in writing to engage a carrier and issue delivery instructions on the Customer's behalf. The Customer acknowledges that the Company shall have no liability if the Goods are lost or damaged in transit.
- (iv) The quantity of any consignment of Goods as recorded by the Company upon despatch from the Premises shall be conclusive evidence of the quantity received by the Customer on Delivery unless the Customer can provide conclusive evidence proving the contrary.
- (v) The Company shall not be liable for any non-Delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 14 days of the date when the Goods would in the ordinary course of events have been received.
- (vi) Any liability of the Company for non-Delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- (vii) In the event of the Customer failing to accept Delivery of the Goods then the Company shall store them at the Customer's expense. After the expiry of fourteen days from the date of failure by the Customer to accept Delivery of the Goods (and without prejudice to the Company's other rights and remedies) the Company shall be entitled at its sole discretion to sell the Goods to the account of the Customer and apply the sale proceeds in diminution of any accounts due to the Company by the Customer under the Contract or any other amounts due to the Company by the Customer.

10. Delivery in instalments:

- (i) The Company reserves the right to deliver the Goods in instalments and each Delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with the Contract or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.

11. Rejection:

The Customer shall only be entitled to reject Goods which are found not to be in accordance with the Contract and shall not under any circumstances be entitled to reject Goods after a period of fourteen days has elapsed from the date of Delivery or in the case of latent defects within fourteen days after the latent defect has become apparent on should reasonably have been apparent to the Customer. The Customer shall be obliged to give notice in writing to the Company of its reasons for rejection of the Goods. The Company shall (at its sole discretion) either replace any Goods which fail to comply with the Contract or refund any money paid by the Customer in respect of any rejected Goods not replaced by the Company.

12. Warranty:

- (i) The Company warrants that (subject to the other provisions of these Terms and Conditions) upon delivery the Goods will:
 - (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1984; and
 - (b) be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company at the time of entering into the Contract and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- (ii) The Company shall not be liable for a breach of any of the warranties in condition 12(i) unless:
 - (a) the Company gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 14 days of the time when the Customer discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Premises for the examination to take place there.
- (iii) The Company shall not be liable for a breach of any of the warranties in condition 12(i) if the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice.

13. Limitation of Liability

- (i) Subject to condition 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

Registered Office: Multi Metals Limited, 9 Charlotte Square, Edinburgh EH2 4DR, Scotland.

Registered in Scotland Number 64671

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(a) any breach of these Terms and Conditions; and
(b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

(ii) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

(iii) Nothing in these Terms and Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

(iv) The Company shall not be liable for any claims under or in connection with the Contract and/or the Goods which arise out of the default and/or negligence of a manufacturing mill or any supplier to the Company.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION (V) BELOW

(v) Subject to conditions 13(ii), 13 (iii) and 13(iv):
(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the value of all sums paid by the Customer to the Company pursuant to this Contract in respect of the Goods to which the relevant claim relates; and
(b) the Company shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14. Prices:
(i) Prices quoted are net and do not include packaging or the amounts of any VAT or any other sales tax or excise duties paid or payable by the Company which extra charges shall be added to the Price and be payable by the Customer
(ii) The Price stated by the Company in the Contract is based on information available to the Company at the date thereof. If between the date of the Contract and date of Delivery there shall be any variation in the cost of materials, labour or otherwise, the Company may at its absolute discretion adjust the Price to take account of such variation.
(iii) The tonnage weight charged by the Company may include an allowance for all wasted materials remaining after completion of any production process.

15. Variation:
If the Company incurs extra expenditure as a result of variation or suspension of work caused by the Customer's instructions or lack of instructions, interruptions, delays, overtime, unusual hours, mistakes or otherwise as a result of the Customer's action or for any other cause whatsoever beyond the Company's control a reasonable sum in respect of such extra expenditure shall be added to and form part of the Price and paid for accordingly.

16. Statutory and Other Regulations:
If the cost to the Company of performing its obligations under the Contract shall be increased or reduced by reason of amendment after the date of Quotation of any law or of any order, regulation or bye-law having the force of law that shall effect the performance of the Company's obligations under the Contract, the amount of such increase or reduction shall be added or deducted from the Price as the case may be.

17. Payment:
(i) The Price in full including taxes, duties and charges will be due by the end of the month following the month of Delivery.
(ii) Where the Contract provides for Delivery by instalments and for progress payments the Company shall be entitled to withhold release of any subsequent instalments of Goods until the Customer has paid for every previous instalment released by the Company. If payment is not made in accordance with this Clause all monies owed by the Customer to the Company in respect of any order shall immediately become due and payment recoverable forthwith.
(iii) In the event that payment of the Price in full is not received by the due date, interest thereon shall be chargeable on the outstanding amount at the rate of 4% per annum above Bank at Scotland base rate from the due dates until payment is received in full.

18. Set Off:
The Company shall have the right to set off any sum owing to the Company or any Associated Company by the Customer or any controlled company or subsidiary or holding company of the Customer, against any sums due by the Company or by any such Associated Company to the Customer.

19. Property and Risk:
(i) The Goods are at the risk of the Customer from the time of delivery.
(ii) When the Goods are sold FOB or CIF (in each case as such terms are defined in the current version of Incoterms) risk shall pass to the Customer when the Goods are placed on board ship notwithstanding that ownership of the Goods may not have passed to the Customer and the Company shall be under no obligation to give the Customer notice specified in section 32(3) of the Sale of Goods Act 1983.
(iii) Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
(a) the Goods; and
(b) all other sums which are or which become due to the Company from the Customer on any account.
(iv) Until ownership of the Goods has passed to the Customer, the Customer must:
(a) hold the Goods on a fiduciary basis as the Company's bailee;
(b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
(d) maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
(e) hold the proceeds of the insurance referred to in condition 19(iv)(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
(v) The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
(a) any sale shall be affected in the ordinary course of the Customer's business at full market value; and
(b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
(vi) The Customer's right to possession of the Goods shall terminate immediately if:
(a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
(b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
(c) the Customer encumbers or in any way charges any of the Goods.
(vii) The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
(viii) The Customer grants the Company, its agents and employees a irrecoverable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

20. Cancellation, termination, lien and damages:
(i) The Customer's cancellation of any Contract will be of no effect unless the Company has previously agreed to such cancellation in writing.
(ii) Without prejudice to any other right available to it, the Company and any Associated Company may terminate the Contract if:
(a) The Customer after due warning from the Company commits or continues to commit a material breach of the Customer's obligations under any contract with the Company, or
(b) Any arrestment or any other legal process is carried out upon any of the Customer's assets, or
(c) The Customer makes or offers to make any arrangement or composition with creditors or becomes bankrupt or apparently insolvent or is sequestrated, or if any petition or receiving order in bankruptcy shall be presented against it, or if the Customer is a company, any resolution or petition for winding up the Customer shall be passed or presented or a liquidator, receiver, manager, administrator, judicial factor, or committee shall be appointed over the Customer's undertaking property and assets or any part thereof the Customer carries out or undergoes any analogous act or proceeding under foreign law.
(iii) Without prejudice to any other rights available to it, the Company shall in the event of cancellation or termination of the Contract be entitled to recover from the Customer:
(a) The quoted value of any work completed on the Customer's behalf at the date of cancellation or termination;
(b) The value of any such work begun but not completed at such date, such value to include the cost of material, labour, overheads and a fair profit as Determined by the Company's accountant whose decision shall be conclusive and binding on both parties; and
(c) The cost of the Goods and materials ordered by the Company pursuant to the Contract for which the Company has to pay.
(iv) The Company shall have in addition to any other remedy, a general lien on all Goods ordered by or belonging to the Customer, which may be under the Company's control (although such Goods or some of them may have been paid for) for all monies due to the Company by the Customer under any order and may at the Company's discretion sell such Goods and apply all monies received in respect thereof in reduction of those monies due to it by the Customer. If the Customer does not discharge the lien within eight days of it being imposed by the payment of all amounts due, the Company shall have the right to sell the Goods to the lien and to deduct from the net proceeds of the sale all amounts due to the Company.
(v) In the event of industrial or trade disputes, accidents, fire, inclement weather, flood, tempest, war or Act of God or delay in delivery of materials or any cause or contingency whatsoever beyond the reasonable control of the Company but affecting the Company's supply of Goods the Contract may be terminated or suspended by the Company at its sole discretion. Such cancellation or suspension shall not constitute a breach by the Company of its obligations under the Contract and the Company shall not be liable to the Customer for any delay or damage caused by reason of such cancellation or suspension. At any time after a suspension arising under this Clause the Company may exercise its right to terminate the Contract.

21. Assignment:
The Customer shall not assign any benefit or burden under the Contract without the Company's prior consent in writing which may if given be on such terms as to guarantee or indemnify or otherwise as the Company may think fit. The Company shall be entitled to sub-contract or assign its rights and/or obligations under the Contract.

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22. Notices:

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by recorded delivery service or transmitted by facsimile or other means of communication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the relevant party as shown on the Contract documents or such other address as one party may by notice to the other have substituted therefore shall be deemed validly and effectively given on a day when in the ordinary course of the means of transmission it would be first received by the addressee in normal business hours.

23. Validity:

If any paragraph or sub-paragraph (or part thereof) of these Terms and Conditions shall be found to be invalid, ineffective or unenforceable, such invalidity, ineffectiveness or unenforceability shall not affect any other part thereof.

24. Legal Construction:

(i) The heading of these Terms and Conditions are for reference only and shall not effect the constitution hereof.

(ii) Unless otherwise agreed in writing, the Contract shall be governed and construed in accordance with the Law of Scotland and the parties hereby submit to the non exclusive jurisdiction of the Scottish Courts.

25. Waiver:

No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same on any other provision.

Export Sales

1. Terms and Conditions:

The terms and conditions specified in Part I hereof, shall apply to all Export Sales subject to the modifications and additions contained in this Part II. In the event of any provisions of the terms and conditions in Parts I and II being in conflict, the provisions of this Part II will prevail in respect of Export Sales. The latest edition of Incoterms shall be deemed to have been incorporated into, and form part of, the provisions of this Part II, where any Export Sale is agreed by reference to an Incoterm, save where inconsistent with the provisions of this Part II.

2. Delivery:

(i) Clauses 9, 10 and 11 of Part I shall apply to all Export Sales with the qualification that, unless otherwise agreed by the Company in writing, or by reference to an Incoterm, Delivery of Goods to a Customer will be deemed to have taken place (and for the avoidance of doubt title to and risk in the Goods shall be deemed to pass, to the Customer) on the Delivery of such Goods to a carrier or other bailee or custodian (whether named by the Customer or not) for the purpose of transmission by the Customer.

(ii) Notwithstanding anything to the contrary herein, the Company will have been deemed to have performed and discharged its duties under the Contract in respect of any Export Sale by delivering the Goods to a carrier or other bailee or custodian (whether named by the Customer or not) for the purposes of transmission to the Customer, and by presenting the shipping documents, (i.e. the invoice and one or other of the consignment note, airway bill, delivery order, non negotiable sea waybill or Delivery Note as the case may be and, where the Export Sale is CIF, the certificate of insurance) to the Customer or to the Customer's order or pursuant to any letter of credit or bill of exchange issued on the Customer's behalf.

(iii) Where the Contract is C.I.F (cost insurance and freight) or C&F (cost and freight) the Company has the absolute direction to select the method, route and conditions for carriage of the Goods and where CIF the Company has absolute discretion to select the insurer and conditions of the insurance cover.

3. Licenses:

The Customer warrants that, prior to shipment of the Goods, all regulations governing import of the Goods into the country of destination will have been complied with and all such licenses as may be necessary to import the Goods will have been obtained. The Company will make such export declarations as it may consider reasonably necessary and such further declarations as the Customer may lawfully request at the Customer's expense and on the Customer's behalf and on the Customer's behalf but if the Customer does not provide the necessary instructions as to how the Goods are to be declared, they will be declared by the Company as it shall deem fit and the Customer shall be responsible for the fines or other charges imposed as result of errors or incorrect declarations.

4. Storage:

Without prejudice to the Company's other rights and remedies, if the Company is unable by reason of the Customer's instructions to deliver all or any part of the Goods in accordance with the Contract, the Customer shall pay all demurrage costs arising from such non delivery and procure and pay the cost of suitable storage and insurance, such insurance shall be on terms as the Company may reasonably require. If the Customer does not take delivery or procure such storage and insurance the Company shall be entitled to itself procure storage (either at the Premises or elsewhere) and insurance and all charges for storage and insurance and demurrage shall be payable by the Customer in addition to the Price payable pursuant to Clause 6 of this Part II.

5. Packing:

Unless otherwise specified the cost of packaging in the case of an Export Sale shall be included in the Price.

6. Payment:

In an Export Sale the Price shall be paid to the Company against presentation of the shipping documents referred to in Clause 2 (ii) of this Part II to the Customer or to the Customer's order or in acceptance with any letter of credit or bill of exchange issued on the Customer's behalf. Payment shall be made by irrevocable letter of credit or bill of exchange or by any other suitable method which the Company may require, including telegraphic transfer. Otherwise Clause 17 of Part I remains in full force and effect; save that the due date for payment in an Export Sale shall be forthwith on presentation of such shipping documents unless the Company shall agree in writing to the contrary.

7. Property and Risk:

(i) Unless otherwise agreed by the Company in writing or by reference to an Incoterm, title to and risk of damage to or loss the Goods shall pass to the Customer at the time of delivery of the Goods to a carrier or other bailee or other custodian (whether named by the Customer or not) for the purpose of transmission to the Customer.

(ii) The periods given in Clause 19 of Part I for notification may be amended by the Company at its sole discretion having due regard to the particular circumstances of any Export Sale.

(iii) The Customer hereby agrees that the Company shall not be obliged to give notice to the Customer under Section 32 (3) of the Sale of Goods Act 1979.

8. Warranty:

Save as provided in Clauses 12 and 13 of Part I, the Company shall not be under any liability whether in contract, delict (tort) or otherwise, in respects defects in Goods supplied or for any injury, damage or loss whatsoever resulting from such defects or from any work done in connection therewith, whether or not such injury damage or loss arises as a result of the Company's negligence; always provided that the Company shall remain liable for any death or injury of or to persons caused by its own negligence or the negligence of these for whom it is vicariously liable.

9. Law and Jurisdiction:

It is expressly agreed and stipulated that the Contract relating to an Export Sale is to be governed and construed in accordance with the Law of Scotland and any dispute arising in respect of the Contract relating to an Export Sale shall be subject to the exclusive jurisdiction of the Scottish Courts to the jurisdiction of which the parties hereby submit. The provisions of the United Nations Convention on Contracts for the International sale of Goods (commonly known as the Vienna Convention) are hereby excluded in respects of the Contract relating to an Export Sale.