



# General Terms and Conditions



# T&C Contents

1.0.	General	04
2.0.	Account Registration	04
3.0.	Compliance with Law and Regulation	05
4.0.	Access to and use of the Platform	05
5.0.	Enferumization and De-Enferumization	06
6.0.	Payment of Commissions	06
7.0.	Formation of a Contract	07
8.0.	Term	08
9.0.	Suspension or Termination	08
10.0.	Intellectual Property Rights	09
11.0.	Data Protection	10
12.0.	Representations and Warranties	10
13.0.	Liability and Disclaimer	11
14.0.	Indemnity	11
15.0.	Disclosure of User related data to other User	12
16.0.	Confidentiality	12
17.0.	Force Majeure	12
18.0.	Miscellaneous	13
19.0.	Place of Jurisdiction and Applicable Law	13

General terms and conditions of SOFTMETAL AG for its metal trading platform

SOFTMETAL AG ("**SoftMetal**")

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## **Preamble**

SoftMetal operates an online trading platform at the address <https://softmetal.ch> ("**Platform**") that offers registered users ("**Users**") a global digital marketplace to sell (in such capacity "**Seller**") and buy (in such capacity "**Buyer**") materials, in particular, multi-element metals ("**Materials**") in accordance with these general terms and conditions ("**GTC**"). In operating the Platform, SoftMetal's role is limited to providing the technical and organisational framework for the sale/purchase of Materials. Consequently, SoftMetal solely acts as an intermediary. Contracts between Sellers and Buyers for the sale/purchase of Materials arranged via the Platform are concluded by the Users autonomously and on their own responsibility ("**Contracts**"). Only the Seller and the Buyer are obligated and entitled under such Contracts. SoftMetal is not a party to the Contracts and is neither involved in the processing of payment transactions between Users nor in the transfer of Materials between the Users.

## I.0. General

- 1.1. These GTC, as amended from time to time, shall apply to all Users and govern:
  - (i) the access of a User to and the use of the Platform;
  - (ii) the relationship between SoftMetal and each User in connection with the Platform and the services provided thereon; and
  - (iii) together with any Contract to be concluded between Users in accordance with the provisions hereof, the contractual relationship between Users in using the Platform.
- 1.2. By accepting these GTC, each User acknowledges that it has read, understood and agrees to be bound by the GTC. A User accepts these GTC by ticking the respective checkbox during the registration process.
- 1.3. Each User acknowledges that the Platform is strictly a B2B (business-to-business) market place and that it is only intended for use of, and shall only be used by, professional Users.
- 1.4. SoftMetal reserves the right to change these GTC from time to time at its sole discretion. Any such changes will take effect when published at: <https://softmetal.ch/marketplace/trading-platform>
- 1.5. With respect to already registered Users, any such changes shall be notified to the Users in text form (e.g. by e-mail) or another suitable manner and shall be deemed approved by the User should the User not object within one month by notification to SoftMetal in text form. In the event of an objection, each User and SoftMetal are free to terminate the GTC with immediate effect. Upon termination, both the User and SoftMetal will be relieved of further contractual obligations, save that any accrued rights and obligations shall survive the termination of the GTC.
- 1.6. Any provisions deviating from or supplementing these GTC – in particular, any general terms

and conditions of the Sellers or Buyers – are not applicable and shall not constitute part of the contract between SoftMetal and the Users in connection with the use of the Platform and the services provided by SoftMetal thereon.

## 2.0. Account Registration

- 2.1. In order to access and use the Platform, a User must first create an account with SoftMetal (the **“User Account”**).
- 2.2. When a User creates a User Account, the User must:
  - (i) provide its name, e-mail address and mobile phone number;
  - (ii) create a strong password that is not used by or on behalf of the User for any other website or online service;
  - (iii) undergo a two-factor authentication process;
  - (iv) provide accurate and truthful information including bank account details.
- 2.3. Once a User has created a User Account, the User becomes registered and is able to access the Platform. In order to make full use of the Platform, the User must:
  - (i) create a new organisation (**“Company”**) and obtain approval from SoftMetal.

Any number of Users can be added to an existing Company by the User with administrative rights.

- 2.4. As part of the approval process when creating a new Company, a User must wait for SoftMetal to conduct the Know Your Customer (**“KYC”**) verification, which will be performed by a third-party settlement agent (the **“Settlement Agent”**) engaged by SoftMetal. For this purpose, the User will be required to upload to a secured link all relevant Due Diligence Information requested by SoftMetal in accordance with Settlement Agent's KYC policy for SoftMetal to obtain satisfactory evidence of the information and address of each Company as required by law and to comply with applicable anti-money

laundrying laws, sanctions laws and other KYC services.

- 2.5. Following KYC verification, the User will have to accept the General Terms and Conditions of Sale ("**GTCS**") that apply in case a Contract is concluded and the General Terms and Conditions of Settlement Services of the Settlement Agent that apply in case of indirect settlement of the Invoice.
- 2.6. A User may only sell or buy Materials through the Platform once the GTCS and the General Terms and Conditions of Settlement Services of the Settlement Agent have been accepted.
- 2.7. There is no entitlement to registration and SoftMetal may cancel or suspend any registration of a User at any time at its sole discretion, without prior notice and without assigning any reason (including, without limitation, for non-payment of any commissions due from that User hereunder).

### **3.0. Compliance with Law and Regulation**

- 3.1. In connection with using or accessing the Platform and the services provided by SoftMetal thereon, each User agrees in no way to:
  - (i) interfere with, disrupt, negatively affect or inhibit other Users from using the Platform;
  - (ii) damage, disable, overburden or impair the functioning of the Platform;
  - (iii) damage or adversely affect the reputation of SoftMetal and/or the Platform;
  - (iv) infringe any applicable law or regulation, including without limitation relating to competition, anti-trust, sanctions, export control, trade embargo, boycott, anti-terrorism, foreign trade control, non-proliferation, anti-money laundering, anti-bribery, defamation or obscenity.
- 3.2. It shall be each User's responsibility to comply with any legal requirements regarding the use

of the Platform of the respective countries, or the country, from which the User accesses the Platform. Each User undertakes not to do and not to engage in any activity that may be harmful to and/or negatively affect the operation of the Platform, including but not limited to its servers, software, content, infrastructure, code, availability, system security or other Users of the Platform. Specifically, without limitation, the following activities are prohibited: interference with the Platform's encryption systems, data transmissions and security systems or bypassing thereof; distributing, copying or republishing any part of the Platform in any other channel or medium, whether manually or in an automated fashion (scraping); uploading any false information; uploading of viruses, worms or similar software; use of any automated system to access the Platform if such system produces more traffic or server requests than manual conventional use; impersonation or misrepresentation of the User's identity and its affiliations; collection of personal information of other Users such as usernames or IP addresses.

- 3.3. No User shall contact or attempt to contact by any means of communication, directly or indirectly, other than through the Platform, any other User with respect to any Materials offered or demanded on the Platform. If any User is found to be in breach of this clause, it shall be liable to SoftMetal for any damages incurred on a full indemnity basis.
- 3.4. If SoftMetal believes, in its sole discretion, that a violation of these GTC may, or is likely to occur, or has occurred, SoftMetal reserves the right to immediately investigate such suspected violation(s) and may close or suspend the access of any User to the Platform at any time at its sole discretion.

### **4.0. Access to and use of the Platform**

- 4.1. SoftMetal, in consideration of the payment of commissions by a User as set out in clause 6 below, and for the further consideration set out herein, agrees to provide each User with access



to, and use of, the Platform, in accordance with these GTC. SoftMetal hereby grants each User a non-exclusive, non-transferable, limited in time, and revocable licence (with no right to sub-license) to access and use the Platform, limited to the term of the contract concluded with that User under these GTC, and subject to the provisions of these GTC.

- 4.2. Each User is responsible for its own use of the Platform and uses it at its own risk.
- 4.3. SoftMetal is authorised to check or monitor the content of the Platform, but is under no obligation to do so. SoftMetal is authorised to prohibit the sale of certain materials on the Platform at any time at its own discretion and without providing reasoning.
- 4.4. SoftMetal may at any time make changes to the Platform as it thinks fit in its absolute discretion. Each User accepts any period of unavailability of the Platform whilst any such updates are carried out to the Platform by or on behalf of SoftMetal.
- 4.5. Any User may be required by SoftMetal to change its password at any time upon written notice.

## **5.0. Enferumization and De-Enferumization**

- 5.1. In order to offer Materials for sale, a User must first place a quantity of such Materials ("**Lot**") on the Platform by requesting SoftMetal to issue an electronic receipt ("**Enferumization**").
  - 5.1.1. At Enferumization the Net Weight quantity indicated by the User is automatically rounded off to the nearest whole number in Metric Tons ("**Rounded Quantity in MT**").
  - 5.1.2. The minimum tonnage for the Enferumization is 20 MT
  - 5.1.3. When Enferumizing the Lot packed in Big bags, each Big bag should be 1 MT +/-5% tolerance per Bag.
  - 5.1.4. At Enferumization the packing is in Big bags or in Bulk.

5.2. For a User to place a Lot on the platform, the Materials must be held in a warehouse approved by SoftMetal ("**Warehouse**") and the User must have agreed to the terms and conditions of the Warehouse.

5.3. As part of the Enferumization a User must provide on the Platform all documentation as may be requested by SoftMetal to obtain sufficient data on the quality of the Lot intended to place on the Platform (e.g. Chemical composition, Origin, Warehouse, Warehouse reference, Size, EU duty status, Certificate of Origin (CoO) and Certificate of Quality (CoQ)).

5.4. After the request to issue an electronic receipt is made, a notification is automatically sent to the Warehouse to verify the documentation provided for the Enferumization. Once the verification is completed, the User can offer the Materials from the respective Lot for sale.

5.5. The User may request to remove Materials from the Platform by cancelling the electronic receipt for a Lot or a part thereof if no binding offer for the respective Materials has been made ("**De-Enferumization**").

5.5.1. At De-Enferumization, the User can enter the Net Weight of the Lot. In the "Trader Comments" field the User can indicate lot / number of Big bags.

5.5.2. At De-Enferumization the User can request to remove a whole or partial Lot from the Platform. The remainder of the quantity on SoftMetal Platform must be not less than 5 MT, which is the minimum Traded Weight.

## **6.0. Payment of Commissions**

- 6.1. The Enferumization of Materials on the Platform is free of charge.
- 6.2. For any Contracts and De-Enferumization that are concluded before or on 1 October 2023, no commission is due by the Seller and the Buyer.

- 6.3. If a Contract is successfully concluded after 1 October 2023 the Seller shall pay to SoftMetal a commission for that Contract ("**Sales Commission**").
- 6.4. The Sales Commission payable to SoftMetal in relation to a Contract shall be calculated as a percentage of the total price of the Materials sold to the Buyer(s) ("**Sales Price**") and shall be:
- (i) 1.25% of the Sales Price if Materials of a Lot are sold for the first time by a User after it has placed the Lot on the Platform according to clause 5.1 of these GTC but not less than USD 250.00;
  - (ii) 0.2% of the Sales Price if Materials purchased through the Platform are resold by a User and thus were not placed on the Platform by the Seller but not less than USD 250.00;
- 6.5. The Sales Commission shall be invoiced by SoftMetal to the Seller upon the Matching and shall be paid within three (3) Business days after receipt of the invoice by the Seller.
- 6.6. After Matching a notification of conditional release is sent by the Warehouse with the actual weight (Net Weight) of the Lot and the Buyer will receive from SoftMetal an invoice for the Sales Price together with the settlement instructions ("Invoice"). The Invoice details are shown on the Platform communication system and shall be paid within one (1) Business Day after receipt.
- 6.7. If both the Buyer and the Seller have agreed to direct settlement of the Invoice, the Invoice that the Buyer receives will contain the payment details of the Seller. The Buyer shall settle the Invoice according to those details and in accordance with the GTCS.
- 6.8. If the Buyer and/or the Seller have not agreed to direct settlement of the Invoice, the financial transaction for the Sales Price shall be executed through the Settlement Agent according to the GTCS and General Terms and Conditions of Settlement Services of the Settlement Agent.
- 6.9. If a User after 1 October 2023 decides to remove from the Platform any or all of the Materials purchased on the Platform by cancelling the electronic receipt for the Lot from SoftMetal according to clause 5.5 of these GTC, the User shall pay SoftMetal a commission for the De-Enferumization ("**Check-out Commission**").
- 6.10. The **Check-out Commission** payable to SoftMetal in relation to the De-Enferumization shall be 0.95% of the pro rata purchase price paid by the Buyer for the quantity of Materials removed but not less than USD 100.00.
- 6.11. Upon De-Enferumization of previously purchased Materials via the Platform, the Buyer will immediately receive settlement instructions and SoftMetal shall issue an invoice for the Check-out Commission to the Buyer. The invoice is sent to the Buyer and shall be paid within one (1) Business Day after receipt.
- 6.12. For Materials that have been offered by a User on the Platform but never sold/purchased to/from another User, no Check-out Commission will be charged if the respective Materials are removed from the Platform.
- 6.13. The continued use by the User of its User Account indicates the consent of the User to pay Commissions in accordance with these GTC from time to time in place.
- ## 7.0. Formation of a Contract
- 7.1. Each User may conclude a Contract with another User for the sale/purchase of Materials through the Platform.
- 7.2. The contractual relationship between a Seller and a Buyer is governed by the GTCS, which can be accessed at any time after registering on the Platform.
- 7.3. SoftMetal is not a party to any Contract concluded between Users on the Platform. SoftMetal has no liability or obligation to any User for any rights and/or obligations arising between Users under any Contract. SoftMetal



does not warrant that Users will act in good faith when trading on the Platform. In particular, SoftMetal does not warrant that Users will fulfil their contractual obligations to each other. SoftMetal, its agents, employees and auxiliary persons are in no way responsible for the risks associated with the initiation and conclusion of Contracts and are in no way liable for any damages arising therefrom.

- 7.4. A User who wishes to sell or buy Materials through the Platform may place a sale offer ("**Ask**") or a purchase offer ("**Bid**") comprised of the quality, size, geographical location of the lot, carbon footprint, EU duty status, origin and quantity to be sold or bought. The minimum tonnage to place for Ask or Bid is 5 MT.
- 7.5. If Materials to be offered with an Ask are demanded on the Platform or Materials to be demanded with a Bid are offered on the Platform, a User may place an Ask or a Bid at a price limit at which the Seller is willing to sell ("**Ask Price**") or which the Buyer is willing to pay ("**Bid Price**") ("**Limit Order**"). Alternatively, a User may choose to sell or buy a specific quantity of Materials at the best available Bid Price or Ask Price on the Platform ("**Market Order**").
- 7.6. If no Materials to be offered with an Ask are demanded on the Platform or no Materials to be demanded with a Bid are offered on the Platform, a User may only place a Limit Order.
- 7.7. Once a User has placed an Ask (as Seller) or a Bid order (as Buyer) and it matches the order of another Buyer or Seller, the orders are matched ("**Matching**"). Matching means the full or partial match of a Bid with an Ask according to terms of the subsequent clauses 7.8 and 7.9.
- 7.8. In case of a Limit Order, the Matching takes place by settling at the best available Bid Price on the Platform up to the Ask Price set by Seller within the quantity offered or at the best available Ask Price on the Platform up to the Bid Price set by the Buyer of the quantity

demanded. The outstanding Limited Order in respect of the quantity offered by the Seller in excess of the Matching or demanded by the Buyer in excess of the Matching, if any, shall remain in pending status until it is settled or cancelled by the User.

- 7.9. In case of a Market Order, the Matching takes place by settling at the best available Bid Price on the Platform up to the quantity offered by the Seller or at the best Ask Price on the Platform up to the quantity demanded by the Buyer. If the quantity offered by the Seller exceeds the quantity demanded on the Platform or if the quantity demanded by the Buyer exceeds the quantity available on the Platform, the quantity not sold or purchased will be cancelled by the system.
- 7.10. The Matching of the order of a Seller or a Buyer with that of another User shall create a legally binding contract between the Users, following which the Users will be jointly and severally liable to SoftMetal in accordance with these GTC.
- 7.11. A Limit Order may be cancelled and thus withdrawn or modified until a Matching has occurred.
- 7.12. If, following formation of the Contract, there is a breach of Contract by the Buyer which is sufficient to permit the Seller to cancel the Contract, the Seller may place the order on the platform again.

## **8.0. Term**

- 8.1. These GTC are effective for a User as of the date the User accepts these GTC and shall continue to be effective between SoftMetal and the User for an indefinite period of time, unless the User is released or terminated by SoftMetal pursuant to clause 9 of this GTC.

## **9.0. Suspension or Termination**

- 9.1. SoftMetal for any reason immediately, in its sole discretion and without prior notice,

suspend or terminate the access to, and use of, the Platform by a User. SoftMetal may do so without assigning any reason therefor.

- 9.2. In the event of such suspension by SoftMetal, any re-access by the User to the Platform shall be determined by SoftMetal in its sole discretion.
- 9.3. In the case of termination by SoftMetal, the User shall no longer be entitled (or able) to access or use the Platform, with immediate effect.
- 9.4. A User shall be entitled to terminate these GTC with SoftMetal upon 30 days' notice in writing to SoftMetal.
- 9.5. Termination of these GTC by SoftMetal under clause 9.1, or by a User under clause 9.4, shall have the effect of terminating these GTC as between that User, SoftMetal and all other Users, but without prejudice to any and all rights and obligations that may have accrued up until the point of termination as between that User, SoftMetal and any other User, including without limitation as to the continuation of any Contract concluded by the User with any other User in accordance with its terms and the payment of any commission due by the User to SoftMetal.

## 10.0. Intellectual Property Rights

- 10.1. For the purposes of these GTC, **"Intellectual Property Rights"** shall mean all registered and unregistered rights worldwide in connection with patents, inventions, copy-rights, computer programs including source code and object code, trademarks, domain names, designs, web designs, graphics, photographs, animations, videos, texts, documentation and manuals, databases and know-how whether or not they can be protected.
- 10.2. SoftMetal and each User shall retain all rights to pre-existing Intellectual Property Rights that existed already at the time of acceptance of these GTC by the User or are being developed outside of these GTC, as well as to modifications or developments of such pre-existing Intellectual Property Rights.
- 10.3. SoftMetal's Intellectual Property Rights in the Platform remain the sole and exclusive property of SoftMetal. Other than as expressly set out in these GTC (see clause 4.1), SoftMetal grants no rights to the User with respect to SoftMetal's Intellectual Property Rights, in particular, but not limited, to the Platform. SoftMetal shall be the sole owner to all Intellectual Property Rights in and related to these GTC created or arising in connection with these GTC (**"New Intellectual Property Rights"**), if any. User undertakes to (i) fully transfer to SoftMetal all rights, interests and title to New Intellectual Property Rights, to the extent as these do not originate with SoftMetal, and hereby transfers to SoftMetal without encumbrance all rights, interests and title to New Intellectual Property Rights in the sense of a global advance disposition, at the latest, however, at the time of the creation of these rights, and (ii) declares the waiver of the exercise of any moral rights that may be associated with New Intellectual Property Rights.
- 10.4. SoftMetal reserves all Intellectual Property Rights with regards to all information (including designs, texts, graphics and code) disclosed on or through the Platform. Each User acknowledges that it is prohibited to copy, publish in any way, distribute, multiply, modify or download any information on the Platform without the prior written consent of SoftMetal. Any SoftMetal trademark is the exclusive property of SoftMetal. The User acknowledges SoftMetal's exclusive worldwide rights to any SoftMetal trademark and any SoftMetal logo.
- 10.5. SoftMetal may make use of any information uploaded to the Platform or provided to SoftMetal by any User, including the identity and location of any User and publish and/or make the same available to third parties. Such information may be so used by SoftMetal in the normal course of its business.

10.6. SoftMetal may make use of any information posted on the Platform by any User to assign a rating to each User at its sole discretion. The issue of a rating by SoftMetal shall be a statement of opinion issued in good faith and shall not be relied upon by any User. The issue of any rating by SoftMetal shall not be a statement of fact or a recommendation. Each User must accordingly make its own study and evaluation of each other User prior to entering into a Contract.

## 11.0. Data Protection

11.1. SoftMetal shall process all personal data that SoftMetal may obtain from a User in compliance with applicable privacy laws. The purpose, nature and scope of the processing of the User's personal data by SoftMetal are set out in these GTC and SoftMetal's privacy policy available under the following link <https://softmetal.ch/marketplace/trading-platform> and on the SoftMetal's website.

11.2. In particular, but not limited to, SoftMetal shall provide and share KYC related data of User's (i) to the Warehouse and the Settlement Agent for KYC purposes and the performance of the Contract and (ii) to other User's as set forth in clause 15.

## 12.0. Representations and Warranties

12.1. Each User hereby represents and warrants to SoftMetal that:

- (i) it has the right, power and authority to enter into these GTC, and the execution, delivery and performance of these GTC by it has been duly authorised by all necessary corporate or other action required by it;
- (ii) the GTC, each Contract and the obligations created under them both are binding upon it and enforceable against it in accordance with their terms and do not and will not violate the terms of any regulation, order, charge or agreement by which it is bound;

- (iii) that it has the necessary rights to the materials offered on the Platform for the transfer of title of the materials to another user. In particular, the Customer warrants that no third party has a better right to the materials offered on the Platform;

- (iv) that all information and documents provided by it in connection with its registration, the creation of a Company and Placing procedures are complete and accurate;

- (v) it shall adhere to all applicable laws and regulations, including without limitation relating to competition, anti-trust, sanctions, export control, trade embargo, boycott, anti-terrorism, foreign trade control, non-proliferation, anti-money laundering, anti-bribery, defamation or obscenity;

- (vi) it shall only use the Platform as permitted by these GTC; and

- (vii) it shall not act in contravention of any clause of these GTC.

12.2. SoftMetal hereby represents and warrants to the User that:

- (i) it has taken appropriate measures to support that the Platform will be free from viruses, worms, trojan horses, cancel bots, and other contaminants that may or will be used to delete, corrupt, deteriorate, alter or damage any data, files or other computer programs used by User to the detriment of User;

- (ii) it will carry out its obligations under these GTC with the standard of care and skill expected of a professional provider;

- (iii) it will use best efforts with respect to the availability of the Platform.

12.3. Subject to the above clause 12.2, the Platform is provided by SoftMetal to the User on an "as is" and "as available" basis, with exclusion of any warranty for quality. In particular, HBL does not provide any warranty and

excludes any warranties as to the availability of the Platform, general merchantability and suitability of the Platform for any particular purpose, compliance with applicable regulations and data accuracy.

### **13.0. Liability and Disclaimer**

- 13.1. Unless stated otherwise in these GTC, SoftMetal shall only be liable for direct damage suffered by the User as a result of gross negligence or wilful intent. Any other contractual or non-contractual liability of SoftMetal as well as liability for auxiliary persons of SoftMetal pursuant to Art. 101 CO is excluded to the maximum extent permitted by law. In particular, SoftMetal shall not be liable for minor and medium negligence, any lack of commercial success, lost profits or any other consequential or indirect damages.
- 13.2. In addition to clause 13.1, each User acknowledges and accepts that neither SoftMetal nor any officer, affiliate, director, shareholder, agent or employee thereof shall be liable to that User for any damages, costs, expenses, or losses of any kind (including but not limited to direct, indirect, incidental, punitive and/or consequential damages, costs, expenses or losses) and whether arising directly or indirectly in relation to:
- (a) the use of the Platform by a User, including but not limited to arising as a result of any failure in performance of the Platform and/or unauthorised use a User's Platform Account;
  - (b) the suspension and/or termination of a User's use of the Platform pursuant to these GTC;
  - (c) the quality or quantity of any Materials contracted through the Platform;
  - (d) the performance of any Contract concluded via the Platform.
- 13.3. SoftMetal undertakes reasonable efforts to provide complete, accurate and current information from trustworthy sources.

However, without limiting clause 13.1 above, SoftMetal makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy or completeness of any information contained on the Platform or the operation of the Platform. Any decisions of the User based on the information provided by the Platform or by SoftMetal are taken at the User's own risk.

- 13.4. Without limiting clause 13.1 above, SoftMetal is not liable for any direct, indirect, incidental, intangible or consequential damages, costs, expenses or losses, resulting in any way from any defects, viruses, internal or external malware or other issues with the infrastructure involved in the access or use of the Platform. SoftMetal is neither liable for any interception, modification or misuse of information exchanged between the User and SoftMetal nor for the abuse of the Platform, loss of data, use of software made available on the Platform nor for any third-party claims related to the use of the Platform.

### **14.0. Indemnity**

- 14.1. Each User shall indemnify SoftMetal against all liabilities, damages, costs, expenses and losses (including but not limited to any direct, indirect, incidental, punitive and/or consequential damages, costs, expenses or losses) suffered or incurred by SoftMetal arising out of or in connection with:
- (i) any breach by that User of the representations and warranties contained in clause 12.1;
  - (ii) any breach by that User of any other term of these GTC; or
  - (iii) any breach by that User of the terms and conditions of the Settlement Agent; or
  - (iv) any breach by that User of the terms and conditions of the Warehouse; or
  - (v) the preservation of SoftMetal's rights under these GTC, and/or enforcement of these GTC; or

- (vi) any breach by that User of the terms and conditions of Sale;
- (vii) the execution of the financial transaction of the Sales Prices through the Settlement Agent, including but not limited to any expenses SoftMetal incurs as a result of insufficient funds available to the Settlement Agent to make a full payment of the Sales Price.

### **15.0. Disclosure of User related data to other User**

- 15.1. Upon request of a User, SoftMetal may share name, address and other User related data between Users that have entered into a Contract with each other, provided that the requesting User needs such data for the purpose of asserting, exercising or defending legal claims arising from a Contract against another User, whereby it is ultimately in the sole discretion of SoftMetal to decide whether the requesting User needs such data for the purpose of asserting, exercising or defending legal claims arising from a Contract against another User and SoftMetal does not have any verification duties regarding the User's request.
- 15.2. If the Buyer and Seller have both agreed to the direct settlement of the Invoice, they agree to the disclosure of their data for the purpose of and to the extent required for the settlement of the Invoice.

### **16.0. Confidentiality**

- 16.1. For the purposes of these GTC, "**Confidential Information**" shall mean any confidential information (however recorded or preserved) including but not limited to the operations, processes, product information, know-how or software relating to the Platform;
- 16.2. Each User undertakes that it shall not disclose to any person any Confidential Information (however recorded or preserved) including but not limited to the operations, processes, product information, know-how or software relating to the Platform except as permitted by clause 16.3.
- 16.3. Each User may disclose Confidential Information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising its rights or carrying out its obligations under or in connection with these GTC. Each User shall ensure that its employees, officers, representatives or advisers to whom it discloses Confidential Information comply with this clause 15; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.4. The obligation to keep Confidential Information confidential shall not apply to Confidential Information which was previously known without an obligation to keep it confidential or which is or becomes generally known without User being responsible for it.

### **17.0. Force Majeure**

- 17.1. Neither SoftMetal nor any User shall be liable in any way in respect of any matter which may constitute any failure or delay in performing these GTC arising by reason of force majeure, namely, circumstances beyond its reasonable control including (but not limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, electrical failure, telecommunication failure or interruption, unauthorised third party installation of malware on SoftMetal's operating systems, the unavailability or interruption of the Internet, water damage, legislative statute, action by public authorities, war, pandemic, epidemic, strike, lockout and any other industrial disputes (each a "**Force Majeure Event**"). Notwithstanding this clause SoftMetal and each User shall use all reasonable endeavours

to continue to perform its obligations under these GTC for the duration of the Force Majeure Event.

- 17.2. If a Force Majeure Event occurs, the affected party shall give written notice to SoftMetal or the User(s), as the case may be, contains full details of the Force Majeure Event, as soon as is practical after the occurrence of the Force Majeure Event. The party giving the notice shall be relieved of its obligations during, but not longer than, the continuance of the Force Majeure Event.
- 17.3. The affected party shall use its best efforts to remove the cause of the Force Majeure Event and shall begin or resume performance of its suspended obligations as soon as possible after that cause has been removed. If such event continues for 120 days, either party may terminate these GTC.
- 17.4. The provisions of this clause shall not apply:
  - (a) to any obligation of a User to make any payment under these GTC; and/or
  - (b) to any Contract (unless specifically provided therein and then in accordance with its terms).

#### **18.0. Miscellaneous**

- 18.1. Nothing in these GTC is intended to, or shall be deemed to, establish any partnership or joint venture, or relationship of employer-employee or any other such relationship, between SoftMetal and any User, and/or constitute either SoftMetal or any User the agent of the other, and/or authorise either SoftMetal or any User to make or enter into any commitment for or on behalf of any other party.
- 18.2. A User may not transfer or assign any or all of its rights or obligations under these GTC.
- 18.3. No failure or delay by SoftMetal to exercise any right or remedy provided under these GTC or by law shall 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.
- 18.4. Should any provision of these GTC be or become invalid, the remaining part of the GTC shall remain unaffected. Invalid or ineffective provisions are to be replaced by effective provisions which come as close as possible to their economic purpose.
- 18.5. These GTC may not be varied except with the prior written consent of SoftMetal.
- 18.6. These GTC may be executed in any number of counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

#### **19.0. Place of Jurisdiction and Applicable Law**

- 19.1. These GTC and any dispute or claim (including non- contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed exclusively by the laws of Switzerland, excluding any conflict of law provisions and the United Nations Convention on contracts for the International sale of goods of 11 April 1980 (CISG).
- 19.2. The ordinary courts at the registered seat of SoftMetal shall have jurisdiction for any disputes arising out of or in connection with these GTC.







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