1. Scope of application

These General Terms and Conditions for the supply with copper cathodes (“Terms”) apply for all – also future – purchases and other legal transactions between MMK Mardorf Kupfer and Messingprodukte GmbH (“Buyer”) and its suppliers (“Supplier”), Agreements which deviate from these Terms are hereby contradictory. These are only binding if they are confirmed in writing by the Buyer. The Supplier renounces own sales conditions.

2. Product and quality

2.1. The Supplier guarantees to deliver the quality of the product to the Buyer. The product shall meet the following requirements in strict compliance with the corresponding standards. Products produced by the Buyer are usually sold - for further processing - to customers with high quality demands in various fields of application (e.g. electrical industry, sanitary installations etc.). Thus, the Buyer is dependent on cooperating with reliable Supplier which are able to provide the agreed quality of the copper prices on a continuous basis and to guarantee a continuous security of supply. Furthermore, the Supplier has committed itself to the sustainable promotion of human rights and environmental protection.

3. Product delivery

3.1. The Supplier shall present an appropriate spectrometers (Spectro Analytical Instruments). Regarding chips, OES/ICP (Inductively coupled plasma optical emission spectrometry) is used. With respect to the agreed quality of the product, the Supplier is entitled to inspect the shipment at the warehouse by means of the Buyer. After the completion of the quality test, the Seller shall immediately send the report and the certificate 1.3 of the chemical analysis according to DIN EN 10204 (as amended) or - if not applicable - a comparable certificate by e-mail to the Buyer - in each case for batches of fifty (50) kilograms of the product including photo documentation.

4. Quantity and delivery conditions

4.1. The Supplier has committed itself to ensure a safe transport, the product is packed for the purpose of transport by the Supplier at its expense and in accordance with the applicable standards of the LME. In particular, this includes steel strips.

4.2. After the Supplier has received the payment of the price, title of the delivered quantities shall pass to the Buyer. According to the delivery condition Incoterms®, the risk of loss, damage or destruction of the product shall pass to the Buyer.

4.3. For the determination of the weight of the delivery, the weight of the delivery shall be taken at the expense of the Seller. Any negligence of the Buyer to inform the Seller of the weight of the delivery before the delivery arrives at the Buyer’s premises will result in the Buyer bearing the costs of weighing. For this purpose, the delivery shall be weighed at a time agreed between the Buyer and the Seller.

4.4. The delivery of the product shall be labelled with the name of the manufacturer or producer, the date of production, the batch or lot number, the brand name and the weight (gross and net).

5. Payment and terms of payment

5.1. After the Supplier issued a proper invoice, the Buyer shall pay the price for the delivery of the product corresponding to the contract. The price shall be converted completely into Euro. The conversion of USD into Euro takes place on each trading day on the basis of the EUR/USD reference price of the European Central Bank, Frankfurt a. M. (“ECB”) published by the ECB. If no reference price for Euro/USD is available, the following is determined: the reference price most recently determined and published by the ECB is used for the conversion. If no reference price
of the ECB is determined or published over a longer period, a consensual agreement is to be reached if it can be assumed that there has been a considerable change of the reference price within this period.

4.2 If the price for the product cannot yet be definitively determined at the time of invoicing by the Supplier, to the extent that the continuing trading period of the product, the price corresponding to the value within the trading period until and including the day of invoicing (“provisional invoice”). If the price for the product can definitively be determined at the end of the trading period, the Supplier issues a final invoice in correspondence to the difference between the provisional invoice and the final invoice (“final invoice”). The respective Party shall pay the difference arising from the final invoice.

4.3 The price for the product shall be due for payment by the Buyer ten (10) working days upon receipt of a proper invoice for the delivery (“Due date”).

4.4 The Buyer shall only be entitled to a set-off of the price if the price is not credited to the account of the Supplier within a reasonable period (set by the Supplier) of at least five (5) more calendar days after the due date. In the event of default, the rights shall be as determined by section 7. The same applies if a payment obligation of the Supplier towards the Buyer arises from the invoice.

4.5 The Supplier is entitled to demand payment of invoices, transportation costs, taxes, levies and customs duties shall be borne and paid by the respective Party legally obliged and without notice of the delivery condition Incoterms®. The Buyer undertakes to immediately release the claims up to the amount of the invoice value still open at that time to the Buyer.

5. Provisions concerning export and foreign trade data

5.1 The Supplier shall meet all requirements of the respectively applicable national and international customs law. At least two weeks prior to the delivery as well as in case of changes, the Supplier shall provide the Buyer immediately with all information and data required by the Buyer for compliance with the respective national and international customs and import and export rules. In particular, the Buyer shall be entitled (i) to the ten-digit statistical commodity code according to the current commodity classification of the foreign trade statistics (CH code number [Combined Nomenclature]) including HS code number [Harmonized System] and (ii) in case of non-preferential origin: Notification of the country of origin or certificates on the non-preferential origin or (iii) in case of preferential origin: Supplier declaration of origin.

5.2 If the Supplier violates the obligations mentioned in section 5.1, the Supplier shall bear all expenses and costs for damage incurred by the Buyer as a result, unless the Supplier is not responsible for the violation of obligations.

6. Warranty and product examination

6.1 The Supplier warrants and represents that the delivered product has the agreed quality, in particular the contractually promised characteristics, and is suitable for the use assumed according to the contract. Deviations from the agreed requirements (in particular specified in the sections 2 and 3) to the advantage of the Seller or a disadvantage or a difference of the delivered product will only be accepted as a defect of the delivered product if they are already obvious at the time of delivery.

6.2 The Buyer is entitled - at its own option - to demand remedy of defects or subsequent delivery of a new product by the Supplier. Therefore, the Buyer shall set a reasonable deadline for the subsequent delivery by the Supplier, which does not exceed a period of seven (7) calendar days. If the supplier does not deliver within the period of time agreed or the delivered product does not comply with the agreed quality within the deadline period, the Buyer is entitled - instead of the non-delivered quantities - to perform covering purchases at the valid stock exchange price of the LME. The Supplier shall pay the costs additionally incurred in this connection. The Buyer expressly reserves the right to claim damages and to declare the contract void at any time if defects discovered are not rectified within the deadline period.

6.3 The Buyer is entitled to remedy the defect itself or have it remedied by a third party at the expense of the Supplier if there is imminent danger or a particular urgency, or if this is required in order to avoid disproportionately great damage or for other reasons for which the Supplier is responsible. Loss of production, loss of profit and other consequential damages constitute damage within the meaning of this section 6.3.

6.4 The warranty period shall be a total of twenty-four (24) months from the passing of risk of the delivery condition Incoterms®. In the cases of section 6.2, sentence 1, this period shall commence at the time of the remedy of defects or subsequent delivery of a new product.

7. Liability

7.1 The right to compensation for damages incurred is applicable to both Parties without restrictions, irrespective of whether a personal injury, damage to property or a financial loss is concerned.

7.2 Regardless of the test to be performed by the Supplier, which is performed by the testing laboratory, the Buyer will examine the product supplied within a reasonable period. In doing so, the examination may not exceed checking the conformity with the agreed quantity and the check for externally recognizable (visible) defects. Any defects discovered are reported to the Supplier within a period of twenty (20) working days following partial delivery. Non-visible defects are reported to the Supplier within a period of twelve (12) working days after their discovery. The supplier suffers from any delay in complying with the time limit. Apart from the aforementioned, the Supplier waives the right of objection for delayed notice of defects. § 377 section 5 German Commercial Code remains unaffected in any case.

7.3 If a defect occurs regarding weight or quality has been lodged by the Buyer within the timeframe as set out above, the Seller has the right to request inspection, sampling, weighing and/or asaying (“procedure”) of the product in question in accordance with the terms and conditions stipulated by the LME applicable for copper. Such procedure will be carried out by a mutually acceptable and internationally recognized and LME approved testing laboratory. In case the Buyer and the Seller are not able to agree to a test of the product it is determined by SGS, Adolf H. Knight, Alex Stewart International shall execute the procedure whoever the Buyer and the Seller are not suggesting. Findings by the testing laboratory as a result of the procedure shall be binding and final for the Buyer and the Seller for the determination of a defect regarding weight and quality. Costs of the procedure and any related costs for the products, including charges of the testing laboratory, shall be borne by the Supplier. The Supplier is obliged to indemnify the Buyer to the extent of the invoice value of the respective product and the Buyer stores the resulting goods free of charge for the Supplier. The Buyer is entitled to resell the goods to third parties. In this case, the Buyer assigns all claims against the third party from the resale up to the amount corresponding to the invoice value of the product to the Supplier if there is imminent danger or a particular urgency, or if this is required in order to avoid disproportionately great damage or for other reasons for which the Supplier is responsible.

7.4 The right to extraordinary termination for good cause remains unaffected. Good cause shall be in particular if a Party repeatedly violates obligations arising out of this contract or has significantly infringed essential duties necessary for the performance of this contract. The contract shall be terminated in writing by registered letter or courier service with acknowledgment of receipt.

8. Confidentiality

8.1 Confidential information refers to the content of the contract and all information, which are declared to be confidential by both Parties in connection with this contract and by the Disclosing Party, or information where it can reasonably be assumed that they are confidential.

8.2 The Parties (respectively “Receiving Party”) shall, in each case (i) always treat confidential information disclosed by one Party to the other Party as confidential; (ii) not disclose the confidential information to any other person, except the persons mentioned in the following provisions, unless the Receiving Party has received the prior written consent of the Party disclosing the confidential information (respectively “Disclosing Party”); (iii) Not use the confidential information, unless with the Receiving Party has received the prior written consent of the Party disclosing the confidential information under this agreement (“Permissible Purpose”).

8.3 Each Party may disclose confidential information to its professional advisers and own employees if this is required for the Permissible Purpose.

8.4 The Disclosing Party ensures that every person to whom confidential information are disclosed is made aware of the confidentiality and complies with all confidentiality obligations of the Receiving Party under this contract.

8.5 The Receiving Party may disclose Confidential information where disclosure is required by (or deemed by the Receiving Party to be appropriate given the requirements of law) a court, of competent jurisdiction, a regulatory body or the rules of a stock exchange with authority over its business or securities, provided that in each case the Receiving Party shall give the Disclosing Party as much notice of the disclosure as is as permitted and practicable.

8.6 The obligations of the sections 10.1 to 10.5 and 10.7 do not apply to confidential information which (i) has already been published or otherwise made generally available to the public - even in the case of insignificant violation of obligations of any Party after the date of this agreement, and this is not done by a breach of this contract by the Receiving Party or by a disclosure by another receiving party to which the Disclosing Party has disclosed confidential information; (ii) were already known to the Receiving Party before disclosing them to the Receiving Party; (iii) were developed by the Receiving Party independently and without reference to the confidential information disclosed; or (iv) have been taken into the possession of the Receiving Party, subsequently, by a third party, which has not violated an agreement regarding the protection of confidential information.

8.7 In case of termination of this contract, the Receiving Party will return the confidential information to the Disclosing Party within five (5) working days after receipt of the written request of the Disclosing Party; or destroy them and confirm their destruction to the Disclosing Party in writing.

9. Compliance

9.1 The Parties agree that each Party will comply with the applicable laws, anti-bribery provisions, competition rules and the like and that each Party is responsible for compliance with these provisions. Violations of these provisions are, at the same time, considered to be a breach of this contract. The obligations of each Party continue to exist undiminished after the termination of this contract.

9.2 Provisions

9.2.1 This contract describes the agreement of the Parties regarding the subject matter of the contract in full. Additional agreements are not made. Unless otherwise specified in the contract, the application of general contract terms of the Parties is excluded.

9.2.2 Any amendments and amendments to this contract - including this provision - shall be made in writing.

9.2.3 If one of the provisions mentioned is or becomes completely or partially invalid or unenforceable, this does not affect the validity of the remaining provisions. The same applies if and to the extent to which a regulatory gap might arise in this contract. The invalid or unenforceable provision shall be replaced by the legal provision applicable. This shall also be done for the purpose of filling the gap in the contract.

9.2.4 The legal relations in connection with this contract are subject to the law of the Federal Republic of Germany - excluding all regulations of the conflict of laws (including the Contracts of the UN for the International Sale of Goods (“CISG”)).

9.2.5 For all disputes in connection with this contract, including its validity, the courts of Halle (Saaale), Germany, shall have exclusive jurisdiction.