1. Definitions

In these terms, “Purchaser” means the entity purchasing the Goods, including any successors thereof.

“Goods” means the goods, products, services and/or materials manufactured, imported, supplied and/or delivered for or to Purchaser. “Purchase Order” (PO) means any order issued by Purchaser to Umicore. “Contract” means the PO accepted by Umicore or agreement between the parties on terms and conditions as captured under the General Conditions of Sale and Delivery with reference to a particular transaction which shall prevail over any contract by Umicore Autocat India Private Limited (“us”, “our”, “we” or “Umicore”) and Purchaser for the supply of goods, except as provided in Item 32, either as specified in our pertinent invoice or as otherwise contemplated therein, whether expressly or impliedly, including by actual acceptance of the Goods by Purchaser and/or by any payment thereafter. The parties expressly agree that the conclusion of the Contract is deemed to constitute full consent to performing all transactions contemplated thereby on the sole and exclusive basis of these General Conditions of Sale and Delivery, otherwise unless otherwise confirmed in writing by us.

2. Essential Part of Contract:

These General Conditions of Sale and Delivery apply to all Contracts relating to deliveries and services rendered to commercial customers, with the exception of contracts relating to the refinement and extraction of precious metals (for which our General Tolling Conditions apply). Our General Conditions of Sale and Delivery apply exclusively. We expressly reject all provisions contained in communications from Purchaser that conflict with or are inconsistent with the terms contained herein. Our silence signifies our rejection of the conditions of the Purchaser.

3. Offers; Contracts:

Our offers are subject to change without notice. Any PO requires our acceptance in writing or an order acknowledgement issued with the aid of automatic facilities, whereby the execution of an order is deemed acceptance. Any Contract subject to these General conditions of Sale and Delivery shall be non-cancelable in whole or in part by Purchaser except with the prior written consent of Umicore. In the event of any cancellation, Purchaser shall compensate Umicore for damages which Umicore suffers due to the cancellation of the Contract. Statements or notifications by the Purchaser after conclusion of the Contract shall only be effective after mutual agreement. No representations, warranties or guarantees other than those contained herein and no variation of these terms and conditions shall be binding on us unless made in writing and signed by our duly authorized representatives. Any variation, representation, warranty or guarantee made as aforesaid will apply only to the particular order.

Umicore reserves the right to cancel any Contract, or to refuse or delay shipment thereof, if Purchaser: (i) fails to make any payment as provided in these General conditions of Sale and Delivery or under the terms of payment set forth in any invoice or otherwise agreed to by Umicore and Purchaser, (ii) fails to meet reasonable credit or financial requirements established by Umicore, including any limitations on allowable credit, or (iii) otherwise fails to comply with these General conditions of Sale and Delivery.

4. Solvency of Purchaser:

Purchaser’s PO contains a representation that Purchaser is solvent, able to pay its debts when they become due and is in sound financial condition and this representation is a condition to Umicore’s acceptance of Purchaser’s PO.

5. Prices:

Prices - unless otherwise agreed expressly in writing - do not include the costs of packaging, insurance, freight and tax. Purchaser shall pay any and all such charges and hold Umicore harmless therefrom. The quantities, weight or number of pieces determined at our supply plant are authoritative for invoicing.

If the prices are based on the purchase of a particular quantity of Goods and Purchaser fails to purchase that quantity which would justify the granted pricing, Purchaser shall have the right, in addition to any other remedies at law or equity, (i) to recover from Umicore the difference between the stated price and Umicore’s standard prices for such Goods; in the quantity actually purchased by Purchaser or (ii) adjust future pricing for any order of the Goods by Purchaser.

6. Set-off and retention:

The Purchaser may only set-off uncontested counterclaims or counterclaims recognized by unappealable order or judgment. The Purchaser may only assert a right of retention if this is based on the same contract, this restriction shall not apply if the counterclaims of the Purchaser are uncontested or have been recognized by an unappealable order or judgment. The Purchaser does not have a right to satisfaction pursuant to Section 374 if Indian Contract Act, 1872.

Unless otherwise agreed to by Umicore in writing, payment shall be made within the agreed payment terms, without setoff of any kind. Any credits or setoffs alleged by Purchaser to be due from Umicore shall not be deducted from the amounts due from Umicore under Contract until Umicore shall have issued and delivered without setoff of any kind. Any credits or setoffs alleged by Purchaser to be due from Umicore shall not be deducted from the amounts due from Umicore under Contract until Umicore shall have issued and delivered without setoff of any kind. Any credits or setoffs alleged by Purchaser to be due from Umicore shall not be

7. Tools and Models:

Tools and models remain our property, even if the Purchaser pays for them in full or in part.

8. Prepayment, Security:

We reserve the right to request in writing a prepayment or security amounting to the invoice value of the delivery if circumstances arise or become known to us which would endanger the collection of the purchase price. If the Purchaser fails to make the prepayment or provide the security within a reasonable period after such written request, we have the right to rescind the Contract forthwith without prejudice to any other remedies against the Purchaser in respect of breach of Contract or otherwise.

9. Place of Performance:

Place of performance for the delivery is our production plant or warehouse.

10. Dispatch, Deliveries:

Unless otherwise agreed in writing, all Goods are dispatched at the risk of the Purchaser. We reserve the right to select the method of transport, the route and the carrier. Partial deliveries against the Purchaser in respect of breach of Contract or otherwise remain unaffected. Unless otherwise agreed in an individual case, the Purchaser is responsible for compliance with statutory and official regulations on import, transport, storage and use of the Goods.

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The Purchaser must verify the suitability of our products and processes for the use or application intended by him on his own responsibility. This shall also apply to the protection of third party property rights as well as to applications and processes. The properties of samples and specimens are binding only if these have been expressly agreed to define the quality of the Goods. Information on the quality and durability and other particulars are warranted only if these are agreed and designated as such.

The specifications agreed with the Purchaser in writing are relevant for the quality of the Goods and if specifications have not been agreed in writing, the information contained in our technical data sheets or drawings.

Any additional or diverging agreements on the quality must be in writing. Any suitability of the Goods for the presupposed or customary use which supplements or diverges from the agreed quality is not out of the question.

17. Notification of Defects:
The Purchaser shall notify us of all defects without undue delay in writing, however no later than 5 working days after receipt of the Goods (in the event of hidden defects without delay, however no later than 5 working days after the discovery thereof). Should the Purchaser fail to give such notification, the Goods shall be deemed accepted.

All claims for alleged defects in the Goods shall be deemed waived if the non-conforming Goods have been changed, altered, damaged or destroyed by Purchaser or Purchaser’s personnel, or any third party (including without limitation, Purchaser’s customers).

Umicoire shall be allowed a reasonable period to investigate any claim relating to nonconforming Goods and shall be given access to Purchaser’s relevant goods, records and data for this purpose.

18. Warranty:
In the event of defective Goods, we shall, at our discretion, either repair or replace the Goods upon demand by the Purchaser (subsequent performance). Should our subsequent performance fail to remedy the defect, the Purchaser shall be entitled, at his discretion, to either reduce the purchase price or to withdraw from the Contract. The Purchaser is entitled to claim for damages only to the extent specified in item 20. Claims based on defects by the Purchaser become time-barred one year after the delivery of the Goods; notwithstanding this, the statutory limitation periods apply:

- in the event of liability based on intent or gross negligence or other tort or the fraudulent concealment of a defect
- to damage caused by death, injury or an impairment to health which we, our legal representatives or our vicarious agents caused intentionally or negligently
- in the event of recourse by the Purchaser based on the provisions on consumer sales.

The Purchaser shall not return products until we agree that the Purchaser may do so. Should applicable law prohibit this, the Purchaser may claim damages for nonconformity, lost profits, or other damages for nonconsumption or other loss. Any limitation of liability and exclusion from liability does not apply to damage caused by death, injury or an impairment to health and to the extent permitted by law, in no event shall Umicore’s liability exceed 15% of coating fee for the Goods in question; in cases of a slight negligent breach of other contractual duties, our liability is excluded. To the extent permitted by law, we shall not be liable for any indirect, special, incidental or consequential damages, including, without limitation, lost profits, loss of business, loss of goodwill, loss of use, loss of data or any other indirect, special, incidental or consequential losses, damages, costs, expenses, or other liabilities, damages or claims which are alleged to be caused by us whether in contract or tort or under any other law.

19. Delivery Shortages:
In the event of short deliveries, we shall, if reasonable, cover the shortage. Otherwise item 18 sentence 2 applies accordingly. Item 18 sentence 3 and 4 remain unaffected.

20. Limitation of Liability and Exclusion from Liability:
Our liability is based on the law as a basic principle, unless otherwise specified in these General Conditions of Sale and Delivery. In the event of a slightly negligent breach of contractual duties, the performance of which renders the proper implementation of the Contract possible in the first place and compliance with which the contracting parties can usually rely on, our liability is limited to compensation of the typical, foreseeable damage; in cases of a slight negligent breach of other contractual duties, our liability is excluded. To the extent permitted by law, in no event shall Umicoire’s liability exceed the 15% of coating fee for the Goods in question. The particular lot invoiced in relation to the said claim, unless otherwise agreed in writing. The limitation of liability and exclusion from liability does not apply to damage caused by death, injury or an impairment to health, and if to the extent that we have compulsory liability under relevant statute or for other reasons.

21. Statements of Account, Set-off Prohibition:
The Purchaser shall verify the correctness and completeness of statements of account, in particular balance confirmation as well as notifications and settlements of accounts. Objections to statements of account shall be made in writing within one month from the date of the respective statement. Any other objections shall be made without undue delay. Failure to make timely objections shall constitute approval. The Purchaser may only set off uncontested claims or claims recognized by declaratory judgment and enforcement of a right of retention if his counterclaim is uncontested, has been recognized by declaratory judgment or is ripe for judgment.

22. Place of Jurisdiction:
The place of jurisdiction is the registered office and/or plant of our company exclusively if the customer is a merchant. However, we are entitled to bring action against the Purchaser at his place of general jurisdiction.

23. Applicable Law:

24. Trade Terms:
If no INCOTERMS of ICC Paris are agreed, these apply in the version applicable upon conclusion of contract, which are available for perusal under www.iccsrules.org.

25. Export Controls:
Purchaser shall not use the Goods for non-military, peaceful purposes, unless otherwise specifically agreed in writing by Umicoire. Purchaser shall not export, re-export or otherwise transfer or provide Goods to any country which is listed as a prohibited country or for a prohibited use, as provided in Foreign Trade policy, by Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce & Industry, Government of India.

Purchaser understands there are export-import regulations and it is Purchaser’s responsibility to comply with applicable regulation. Umicoire cannot be held liable by Purchaser for any loss or expense if Purchaser fails to comply with applicable Export/Control Laws or with the provisions set forth herein. Further, unless exported Goods are mutually discussed and agreed by Umicoire, Umicoire shall not hold any warranty or liability arising whatsoever from such exported goods.

26. Supplementary conditions for services rendered to parts supplied by the Purchaser:

1. Defects in supplied parts of the Purchaser discovered by us during processing entitle us to either rescind the contract or invoice the additional work entailed at our discretion.

2. Our incoming inspection of the parts supplied by the Purchaser to be processed by us is restricted to determining the identity of the goods and their conformity with the delivery documents, checking for obvious transport damage, checking the external condition and the quantity delivered, insular as this is permitted by the condition in which such goods are delivered. Any additional checks shall be carried out only if they were agreed in advance with the Purchaser in writing or if we consider these necessary in our opinion.

3. The density of hollow goods shall not be checked. They must be supplied in a state that is fully and faultlessly processable.

4. Rejects and short quantities for series parts must be agreed in writing with the Purchaser before processing. If no such agreement is made, the Purchaser may not derive any claim for the reimbursement of raw parts from the rejects or short quantity.

5. Unless otherwise agreed in writing, quality inspections shall be carried out at our discretion by sampling.

6. In the event of a legitimate complaint, which can be proven to be our fault, we shall be liable only up to the order value of the parts to which the complaint relates. In this case, we shall either credit the respective amount or offer to supply processed replacements free of charge. In other respects, item 20 applies.

The Purchaser bears the transport risk. We do not know the value of the parts to be processed. Upon request by the Purchaser, we will take out a transport insurance for the costs of the material at his expense.

27. Taxes:
Any taxes, cess or duties levied by central/state/municipal/local or any other authority, now in effect or hereafter imposed, on the sale, transportation or delivery of the Goods delivered hereunder shall be paid by Purchaser and, if directly paid by us, reimbursed to us by the Purchaser. Statutory levies, duties, taxes, if any, leviable on the Goods cleared/delivered hereunder shall be the Purchaser’s account. In the event however, if any Goods are being cleared/delivered at NOL or lower rate of duty and liability thereon is borne by us in the first instance, Purchaser shall, on such Goods attracting levy of higher rate of duties subsequently, reimburse us the equivalent to the enhanced rate of duties initially borne by us. As Government has placed the responsibility to levy and collect tax on the Seller, our interpretation for the tax levy, rates, exemptions etc. will remain final. If exemption from taxes is claimed, Purchaser must provide relevant notification/provision of taxdocuments for fulfillment of conditions as per provision of laws certificate of exemption at the time Purchase Order is submitted to Umicoire, and Purchaser agrees to indemnify us for any unpaid taxes along with interest/potential/other cost in the event such exemption is not applicable.

28. Compliance with laws:
Purchaser shall handle, store, process, use, and transfer Goods in compliance with all applicable laws, regulations, laws, and rules, including, without limitation, those regarding environmental health and safety. Purchaser hereby represents to Umicoire that Purchaser: (a) is a sophisticated consumer and possesses all requisite skill and expertise necessary to handle, store, process, use, and transfer the Goods, which may contain toxic, hazardous, or otherwise dangerous substances; and (b) has all necessary licenses, certificates, permits, and consents required to use the Goods.

29. Cumulative Remedies:
In the event of a default or breach by Purchaser in the performance of any of its obligations hereunder, in addition to any and all other rights and remedies which Umicoire shall have against Purchaser, Purchaser shall be liable to Umicoire for all costs and expenses incurred by Umicoire in enforcing its rights hereunder, including, with limitation, all attorneys’ fees, expenses of litigation and attorneys’ fees. The remedies of Umicoire shall be cumulative and in addition to any other legal remedies, however neither Party shall institute or pursue action arising in connection with the same cause in parallel in multiple courts.

30. Assignment:
These General Conditions of Sale and Delivery and any PO are not assignable by Purchaser and any purported assignment, whether by operation of law or otherwise, shall be void without the prior written consent of Umicoire, which may be withheld or conditioned in Umicoire’s sole discretion.

31. Severability:
If any of the provisions of these General Conditions of Sale and Delivery shall be invalid or unenforceable, the remainder of these General Conditions of Sale and Delivery, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each other provision of these General Conditions of Sale and Delivery shall be valid and enforceable to the fullest extent permitted by law. The otherwise invalid or unenforceable provision shall be enforced to the extent valid or enforceable.

32. Entire Agreement:
These General Conditions of Sale and Delivery, together with the Purchase Order, the Specifications and the Non-Disclosure Agreement and/or Purchase Agreement (if any), constitutes the complete agreement and understanding among the parties regarding the subject matter of these General Conditions of Sale and Delivery and the Purchase Order and supersedes any prior understanding and agreements among the parties regarding the subject matter of these Sale Terms and the Purchase Order. The following order of precedence shall apply:

- a) Specific terms and conditions as agreed between the parties, if any;
- b) General Conditions of Sale and Delivery;
- c) Purchase Order.