

# Valimet, Inc.

*Our commitment to quality ensures that you get the product you need on time, every time.*

## Sales Terms & Conditions

These Terms and Conditions govern the sale of metal powder products listed on the face hereof (the "product(s)") or in VALIMET'S quotation or order to Customer by VALIMET. These Terms and Conditions contain the complete and exclusive agreement between the parties regarding the sale of the products (Contract). These Terms and Conditions supersede any and all prior or contemporaneous purchase orders, proposals, negotiations, understandings, agreements and representations between the parties, whether written or oral.

**Acceptance:** This agreement contains terms and conditions applicable to your purchase of products from VALIMET. All sales by VALIMET to buyer of products specified in the document to which these Terms are attached will be governed by these Terms and Conditions. If the Terms and Conditions of any offer by Buyer or any other Buyer Document differ from these Terms of Sale, these Terms of Sale shall be construed as a counter offer and will not be effective as an acceptance of Buyer's Terms and Condition, which are hereby rejected. These Terms of Sale shall be the complete and exclusive statement of the Terms of Agreement between the Buyer and VALIMET. Buyer's failure to dissent to these Terms of Sale in writing within five (5) days of receipt there of or Buyer acceptance of the products shall constitute Buyer's acceptance of these Terms of sale. No additions to or modification of these Terms of Sale will be effective unless made in writing signed by an Officer of VALIMET. No order shall be binding on VALIMET unless and until accepted by VALIMET in writing in its sole discretion. Customer shall inspect all products immediately upon receipt. If Customer does not notify VALIMET in writing within 30 days after receipt by Customer of any defect or shortage, the products shipped will be deemed conclusively to have fulfilled the terms hereof and to have been accepted by Customer as delivered.

**Quotations:** If the Document to which these Terms of Sale are attached is a price quotation, such quotation is valid for thirty (30) days, unless otherwise stated in writing by VALIMET. Prices quoted are in accordance with INCO Terms 2010, incorporated herein by reference. Any volume based discount set forth in the quotation will be rescinded if Buyer fails to meet the conditions outlined in the VALIMET quotation.

**Pricing and Payment:** Customer agrees to pay to VALIMET the purchase price and license fees for the products set forth on the face hereof (the "Price"). The Price excludes, and Customer agrees to pay, all delivery charges, customs and related duties and any applicable local, state or federal taxes, which taxes may appear as a separate item on the invoice to the extent paid by VALIMET for Customer, unless Customer provides VALIMET with a valid tax exemption certificate. For Customers with credit terms, Customer shall pay VALIMET within thirty (30) days from the date of invoice, unless otherwise agreed in writing by VALIMET. Invoices not paid when due may be subject to a late charge at the lesser of twenty-four percent (24%) per annum or the maximum finance charge allowed by law. If, in VALIMET'S sole judgment, Customer's financial condition at any time no longer justifies the sale of products on credit, VALIMET may either require full or partial payment in advance of delivery or decline to deliver product, except on modified payment terms and conditions satisfactory to VALIMET.

**Attorney's Fees on Default:** If customer fails to pay or in any manner breaches this agreement, then Valimet shall be entitled to recover reasonable attorney's fees and costs incurred, whether or not a legal proceeding is instituted and includes any legal proceeding, mediation, arbitration or bankruptcy proceeding.



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**Government Contracts:** Unless otherwise agreed to in writing between VALIMET and Customer, no term or condition required in any U.S. Government contract or related subcontract shall be part of this Contract or binding upon VALIMET and VALIMET rejects any government provisions included in or referred to by Customer's request for quotation, purchase order, or any other document.

**Prices and Taxes:** Prices are exclusive of all federal, state and local, or other government taxes, fees or charges now in force or enacted in the future **Shipment:** Any stated ship date is an approximation only and in no event shall VALIMET be liable for any delay in delivery or assume any liability in connection with shipment. In absence of specific shipping instructions, VALIMET will ship by the carrier of its choice. The purchaser agrees to pay all shipping charges FOB VALIMET'S Stockton plant, whether billed by VALIMET or the carrier, unless previously negotiated. VALIMET will ship in containers of its choice. Special packing and the costs thereof are subject to negotiations.

**Delivery:** Delivery of the products shall be by commercial carrier as agreed by both parties. The time of delivery is the time the product is picked up by the carrier as indicated by a signed bill of lading. Customer bears all risks of loss or damage to the products after delivery to the carrier. The approximate delivery dates for the products are stated on the sales order or quotation. If no such dates are specified, then the approximate delivery date for the products will reflect VALIMET'S then-standard lead-time for such products. Seller will make reasonable efforts to deliver the products by such estimated delivery date; however, shipment of the products is subject to availability, and seller hereby expressly disclaims liability for any failure to meet such delivery dates.

**Changes, Delays of shipment or Cancellation:** If the Buyer changes or delays shipment of product more than ten days beyond the day VALIMET confirms the product is ready to ship, the Buyer shall be subject to and responsible for a fee of no less than two percent (2) per month of the value of product delayed from shipment and will be billed this amount in the first week of each month following the delay, until the product is shipped. In addition, Buyer initiated delays of shipments exceeding 90 days from the original delivery date will be deemed a cancellation and will fall under the cancellation policy, as stated below.

**Inspection:** All products delivered herein shall be deemed accepted by the Buyer, unless written notice is received by VALIMET within ten (10) days of receipt of product at Buyer's designated receiving address, provided that Buyer may only reject products for failure to meet product's specification.

**Warranty:** VALIMET warrants the product to meet the purchase specification, unless exceptions are agreed upon, in advance, with the Buyer.

**Limitation of Liability:** In no event shall VALIMET be liable for any consequential, incidental, indirect, special or punitive damages arising out of, or relating in any way to the Contract or any defect in or failure of the products, even if VALIMET has been advised of the possibility of such damages, including but not limited to claims based upon loss of use, lost profits, revenue, system interruption, lost production, increased expenses of operation, cost of replacement products, or claims of Customer or Customer's customer, whether or not based on contract, tort (including negligence and strict liability) or otherwise. Except with respect to the indemnity obligations undertaken in Section 11, VALIMET'S maximum liability arising under or in any way relating to this Contract shall not exceed the price Customer paid VALIMET for the products that are the subject of the claims upon which such liability is based, and all such liability shall terminate no later than one (1) year from the date of sale of the products. Except as set forth in Section 11, VALIMET shall not be liable for any third party claims



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**Cancellations/Returns: (a) Cancellations** - Customer may cancel all or any portion of any order for standard products within 20 days prior to shipment, subject to a cancellation charge of twenty percent (20%) of the Price for the canceled products. Customer may cancel all or any portion of any order for Custom products at any time prior to shipment, subject to a cancellation charge of fifty percent (50%) of the price for the canceled product plus the cost of raw material to create Custom product. **(b) Returns** -Customer may return standard products to VALIMET for any reason within thirty (30) days after delivery, provided that the returned product is received in its original condition, including all packing materials and seals, for a refund of the price paid less a restocking charge of twenty five percent (25%) of the total amount invoiced for the standard product returned, unless such restocking charge is waived in writing by VALIMET. Custom products (non-standard), are 'nonrefundable' and 'non-returnable' unless otherwise agreed in writing by VALIMET. Note: Customer must first obtain a return authorization number from VALIMET. Any products returned to VALIMET without a return authorization number or more than thirty (30) days after delivery thereof will be returned to Customer freight collect.

**Design Changes:** VALIMET may make changes to the process, design, and materials used in the manufacture of its standard products that do not adversely affect form, fit, and function without notice to or approval from Customer. VALIMET reserves the right to make changes in the design of its standard products at any time without incurring any obligation to make equivalent changes in products previously manufactured or shipped.

**Indemnification:** (a) Customer shall defend, indemnify and hold VALIMET, and its employees, agents, owners, affiliates and customers, harmless from and against all claims, damages, liabilities, losses and costs (including without limitation, reasonable attorneys' fees) arising from or based upon the use, sale or manufacture, by VALIMET, Customer or any third party, of any portion of the products produced, in whole or in part, to Customer's specifications. (b) Except for Customer's indemnification obligations stated above, VALIMET will indemnify Customer for any damages and costs finally awarded against Customer on the grounds that the products manufactured by VALIMET, in the form delivered by VALIMET, infringe any existing United States patent, provided that Customer notifies VALIMET in writing of any such claim within ten (10) days after learning thereof and that Customer fully cooperates with VALIMET and gives VALIMET full control over the defense and settlement of the claim. If any such claim is brought or appears to VALIMET to be likely to be brought, VALIMET may, at its option, replace or modify the products to make them non-infringing or refund to Customer, upon the return thereof to VALIMET, the price paid for the products at issue, less a deduction of twenty percent (20%) of the price for each full year which has passed since the date of delivery. Customer shall discontinue all use of any portion of the products that has been replaced or modified or for which the price has been refunded. The foregoing represents VALIMET'S sole responsibility, and the customer's sole and exclusive remedy, for any infringements of any proprietary rights and is subject to the limitations upon VALIMET'S liability set forth in Section 8.



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**Export of Products:** The export of any products or other items acquired hereunder is subject to compliance with the export control laws of the United States and other jurisdictions. Customer represents and warrants that it is not subject to any order suspending, revoking or denying its export privileges and that any export of any products or other items acquired from VALIMET will be in full compliance with all applicable United States and foreign export laws, regulations and orders. Customer shall defend, indemnify and hold VALIMET, and its agents and owners, harmless from and against any and all losses, costs, penalties, liabilities, obligations, claims, demands or expenses (including without limitation, reasonable attorneys' fees) of any kind arising out of or occasioned by any export of the products. All warranty service, updating and support commitments (if any) made hereunder or under any separate agreement are premised on the use in the United States of products purchased at VALIMET'S domestic U.S. prices. Export of all such products will void all such warranties and other service, updating or support obligations, unless Customer pays to VALIMET, within ten (10) days following such export, the difference between the domestic price paid and VALIMET'S price for such products in the locale to which it is exported.

**Confidentiality/Proprietary Rights:** VALIMET'S proprietary data includes, without limitation, all non-public ideas, products concepts, hardware, engineering data, software, manufacturing processes and techniques, reports, drawings, films, tapes, computer data bases and other information embodied in any of the products or otherwise disclosed to Customer by VALIMET. Customer promises to protect and preserve the confidentiality of all of the proprietary data known to Customer specifically, without limiting the generality of the foregoing, Customer will not use any portion of the proprietary data except as may be required in connection with Customer's use of the products purchased from VALIMET. No proprietary data, nor any disclosure, publication or discussion thereof with or to third parties, other than employees who need to know the proprietary data for the purpose of utilizing the products and who have agreed to protect its confidentiality, will be permitted without express prior written consent of VALIMET in each instance. Customer shall take all appropriate actions to secure the compliance by its officers, employees, agents and directors with the terms of this section. Customer acknowledges that VALIMET remedies for any breach of this section may include, in addition to damages and other available remedies, injunctive relief enjoining any such breach. Any dies, jigs, or other tools or equipment made or purchased by VALIMET remain VALIMET'S property, irrespective of whether or not VALIMET assessed charges to Customer. Such tool or equipment charges entitle Customer to have tools used on Customer's products but do not entitle Customer to title or possession of the tools or equipment.

**Limitation on Actions:** No action, regardless of form, arising out of this Agreement or the services or products provided hereunder maybe brought by either party more than one year after the cause of action has occurred, except that an action for non-payment of any portion of the price or any other amounts owed to VALIMET under this Agreement may be brought at any time within one year after the last payment thereon.

**Force Majeure:** VALIMET will not be in breach of its obligations hereunder if performance of such obligations is prevented, delayed or made impracticable by any cause beyond the reasonable control of VALIMET, including without limitation, acts or omissions of Customer, acts of God or government, natural disasters or storms, fire, terrorism, political strife, labor disputes, failure or delay of transportation, default by suppliers or unavailability of parts.



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**General:** No modification or amendment thereof will be binding on the parties unless made in a written instrument signed by both parties. No waiver of a right in any instance will constitute a waiver of the same or any other right in any other instance. Neither this Agreement nor any of Customer's rights or obligations under it may be assigned, delegated or otherwise transferred by Customer without the prior written consent of VALIMET. All notices and other communications hereunder shall be in writing and shall be personally delivered, sent electronically, or mailed by certified mail, return receipt requested and postage prepaid, to the other party at its address set forth on the face hereof. Notices are effective on the earlier of receipt or the third business day following the date of mailing. Any party may change its address by notice to the other party. This Agreement will be governed and construed in accordance with the laws of the State of California, without regard to the rules relating to conflicts of laws. Any litigation between the parties concerning this Agreement shall be brought exclusively in San Joaquin County, California. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be enforced to the maximum extent permitted by law and the parties' fundamental intentions hereunder, and the remaining provisions shall not be affected.

**Severability:** The invalidity in whole or part of any provisions of these Terms will not affect the validity of other provisions, unless such invalidity would frustrate the purpose of these Terms.

**Acknowledgement of Receipt:** Customers are requested to sign and date the acknowledgement form and return it to Valimet, Inc.



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## Acknowledgement of Receipt of Sales Terms

By my signature below, I acknowledge receipt of the Valimet Sales Terms and Conditions:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Company

