

# ELEMETAL GENERAL TERMS & CONDITIONS ("T&C")

The following General Terms & Conditions apply to all dealings and transactions between the customer and all of its respective affiliates, successors, predecessors, subsidiaries and related entities (collectively, "Customer"), and Elemetal, LLC, Elemetal Elemetal Direct USA, LLC and all of their respective affiliates, successors, predecessors, subsidiaries and related entities (collectively, "Elemetal"). Customer and Elemetal agree to be bound by each and all of these General Terms & Conditions (headings are for convenience of reference only and will not affect the meaning or construction of any provision hereof).

- ARBITRATION. CUSTOMER AND ELEMETAL AGREE THAT ANY CONTROVERSY, CLAIM OR DISPUTE BETWEEN CUSTOMER AND ELEMETAL ARISING IN ANY WAY FROM ANY DEALING(S) OR TRANSACTION(S) BETWEEN CUSTOMER AND ELEMETAL OR FROM THESE T&C, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, (COLLECTIVELY, A "DISPUTE") MUST BE RESOLVED EXCLUSIVELY BY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT, IF APPLICABLE, OR OTHERWISE PURSUANT TO THE TEXAS GENERAL ARBITRATION ACT, CONDUCTED IN THE ENGLISH LANGUAGE BEFORE A SINGLE ARBITRATOR IN DALLAS, TEXAS. AT THE OPTION OF THE FIRST PARTY TO FILE AN ARBITRATION, THE ARBITRATION WILL BE ADMINISTERED BY EITHER JAMS PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES & PROCEDURES, OR BY THE AMERICAN ARBITRATION ASSOCIATION PURSUANT TO ITS RULES AND PROCEDURES FOR COMMERCIAL ARBITRATION. THE ARBITRATION WILL ALSO BE GOVERNED BY THE APPLICABLE PROVISIONS OF THESE T&C. CUSTOMER AND ELEMETAL AGREE TO MAINTAIN THE CONFIDENTIAL NATURE OF THE ARBITRATION PROCEEDING (INCLUDING HEARINGS) AND THE AWARD, EXCEPT AS NECESSARY IN CONNECTION WITH A JUDGMENT ENTRY ON AN AWARD, A JUDICIAL CHALLENGE TO AN AWARD OR ITS ENFORCEMENT, OR UNLESS OTHERWISE REQUIRED BY LAW OR JUDICIAL DECISION. THE ARBITRATOR DOES NOT HAVE AUTHORITY TO (a) RENDER A DECISION WHICH CONTAINS A REVERSIBLE ERROR OF STATE OR FEDERAL LAW, OR (b) APPLY A CAUSE OF ACTION OR REMEDY NOT EXPRESSLY PROVIDED FOR UNDER EXISTING STATE OR FEDERAL LAW. ELEMETAL DOES NOT CONSENT TO ANY CLASS ARBITRATION OR REPRESENTATIVE ARBITRATION PROCEEDING. CUSTOMER AND ELEMETAL WAIVE ANY RIGHT TO ARBITRATE ANY DISPUTE OR TO PURSUE RELIEF AGAINST THE OTHER IN A CLASS ARBITRATION OR OTHER REPRESENTATIVE PROCEEDING, AND AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY. FURTHER, UNLESS ELEMETAL AND CUSTOMER AGREE OTHERWISE IN WRITING, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. ANY DECISION RENDERED IN SUCH ARBITRATION IS BINDING ON EACH PARTY, AND JUDGMENT MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. FEES AND EXPENSES OF THE ARBITRATOR AND ARBITRATION WILL BE DIVIDED EQUALLY BETWEEN THE PARTIES. CUSTOMER AND ELEMETAL WILL EACH BE RESPONSIBLE FOR THEIR OWN ATTORNEYS' FEES AND COSTS, AND THE ARBITRATOR HAS NO DISCRETION TO SHIFT ATTORNEYS' FEES OR COSTS OF CUSTOMER TO ELEMETAL; PROVIDED, HOWEVER, THAT IN THE EVENT OF DEFAULT BY CUSTOMER UNDER A FORWARD TRANSACTION (AS DESCRIBED IN PAR. 14), CUSTOMER WILL BE RESPONSIBLE FOR ALL LEGAL AND OTHER EXPENSES INCURRED BY ELEMETAL (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS AND ANY ARBITRATION FEES AND COSTS) AS A RESULT OF SUCH DEFAULT. IF CUSTOMER BRINGS AN ACTION AGAINST ELEMETAL IN ANY PROCEEDING OTHER THAN INDIVIDUAL ARBITRATION AS REQUIRED BY THESE T&C, OR UNSUCCESSFULLY CHALLENGES OR FAILS TO COMPLY WITH THE ARBITRATOR'S AWARD, THEN CUSTOMER WILL BE RESPONSIBLE FOR ALL LEGAL AND OTHER EXPENSES INCURRED BY ELEMETAL (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS) IN COMPELLING ARBITRATION, ENFORCING THIS ARBITRATION PROVISION OR DEFENDING OR ENFORCING THE ARBITRATION AWARD.**
- Customer is responsible and liable for insuring and shipping its precious metal products, gem/stone-bearing products, and recyclable electronics (collectively, the "Material") to Elemetal. Elemetal is not responsible for Material lost, destroyed, stolen, or damaged in transit.
- Customer will provide a separate, completed Elemetal packing list (or equivalent) with each submitted lot that includes a complete description of the contents (condition, quantity and gross/tare/net weights), Elemetal-assigned contract number, services requested (e.g., stone removal), and declared value of any gems/stones to be removed. Elemetal is not responsible for any loss or damage claimed if Customer fails to provide the required packing-list information.
- Customer will ship Material to Elemetal in containers sufficiently secure to ensure the contents' integrity during transit, properly package and label Material in accordance with the Hazardous Materials Transportation Act and other applicable rules and regulations, and ensure each container containing Material that may be considered toxic or hazardous has appropriate hazard warnings and reflects Customer's identity. Elemetal assumes no responsibility for Material that arrives in unsecured, damaged or unlabeled containers ("Defective Material").
- Customer will not ship or deliver to Elemetal any Material that is radioactive, contains asbestos or is hazardous to human health. Customer will not ship or deliver to Elemetal any Material containing beryllium, mercury, thallium, cadmium, iron, lead, selenium, tellurium, zinc, antimony, sulphur, nickel, acrylonitrile, arsenic, benzene, coke-oven emissions, ethylene oxide, isocyanides, silica, and vinyl chloride; provided, however, that with ER's prior written consent, Customer may ship or deliver such deleterious Material to ER subject to ER's additional fees and handling charges.
- Elemetal has the unconditional right and discretion to reject Customer's Material ("Rejected Material") at any time, for any or no reason whatsoever, and return it to Customer at Customer's cost in its pre- or post-processed form, and have no further obligation or liability to Customer therefor. If Customer fails to arrange at Customer's expense for the return or disposal of Rejected or Defective Material within thirty (30) days after the Material's receipt by Elemetal, then Elemetal will have the right to dispose of said Material in any way Elemetal deems appropriate at Customer's expense, without Elemetal incurring any liability to Customer therefor.
- Customer represents and warrants to Elemetal that: (a) Customer has good and marketable title to Material, full authority to sell and transfer Material, and Material is sold free and clear of any liens, encumbrances, liabilities and adverse claims of any kind, and Customer will fully defend, protect, indemnify and hold Elemetal harmless from any adverse claim thereto; (b) none of the Material Customer provides to Elemetal will originate from, relate to, further, or be involved or derived in any way from any type of activity that is criminal, illegal, illicit, or otherwise prohibited; (c) transactions initiated by Customer will not cause Elemetal to be in violation of any anti-money laundering, anti-terrorism or anti-bribery law of the U.S. or any foreign country; (d) Customer has previously complied with all applicable holding and reporting requirements and US Customs regulations relating to the Material; (e) Customer has paid all applicable duties relating to Material originating outside the U.S.; (f) Customer has in place a written anti-money laundering program or is statutorily exempt from this requirement; (g) the material Customer sells to Elemetal not originate from one of the "Covered Countries" as defined by 17 Code of Federal Regulations (CFR) 240 and 249b relating to Conflict Minerals; and (h) Customer is a commercial entity with experience in the precious metals industry.
- The rights and obligations of Elemetal and Customer provided for in these General Terms & Conditions, whether sounding in contract, tort or otherwise, shall be governed and construed in accordance with the laws of the State of Texas, excluding that state's choice-of-law principles.
- INDEMNITY. AS A CONDITION OF DOING BUSINESS WITH ELEMETAL, CUSTOMER AGREES THAT IF CUSTOMER FAILS TO COMPLY WITH ANY OF ITS OBLIGATIONS, REPRESENTATIONS OR WARRANTIES HEREIN, CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD ELEMETAL HARMLESS FROM ANY AND ALL INJURIES, COSTS, SUITS, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, EXPERT FEES, AND ALL COSTS OF DEFENSE OF SUCH CLAIMS, INCLUDING ALL LIABILITIES, CONSEQUENTIAL LOSSES, FINES, PENALTIES, JUDGMENTS, SETTLEMENTS, LOSSES, COSTS OF STORAGE/ HANDLING/ DISPOSAL/ DECONTAMINATION, PUNITIVE OR EXEMPLARY DAMAGES, STATUTORY DAMAGES AND CLAIMS BY ANY STATE, THE U.S. GOVERNMENT OR THEIR AGENCIES, THAT ELEMETAL MAY INCUR AS A RESULT OF SUCH FAILURE BY CUSTOMER. CUSTOMER ALSO AGREES TO INDEMNIFY AND HOLD ELEMETAL HARMLESS FROM ALL INJURIES, COSTS, SUITS AND EXPENSES ARISING OUT OF INJURIES TO PERSONS OR LOSS, DAMAGE OR DESTRUCTION OF PROPERTY, INCLUDING PROPERTY OR MATERIAL OF CUSTOMER, IN CONNECTION WITH OR TO HAVE ARISEN OUT OF TRANSACTIONS WITH ELEMETAL, REGARDLESS OF WHETHER CLAIMS OR ACTIONS ARE FOUND IN WHOLE OR IN PART UPON THE ALLEGED NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF ELEMETAL.**
- If Elemetal makes a typographical, mathematical or other error in its calculation of purchase-offer price or its payment to Customer for the Material, or if an Elemetal representative makes an unauthorized purchase offer (collectively, an "Error"), then Customer agrees to take all steps requested by Elemetal to rectify the Error(s) and to indemnify and hold Elemetal harmless from and against all damages or liability arising from such Error(s).
- Notice of Customer Complaints. Customer must notify Elemetal in writing within 95 days after receipt of its statement or payment (whichever is sooner) of any Dispute, otherwise Customer is forever barred from bringing a claim for loss, damage, or other relief relating to such Dispute.
- Business Day. Business day means 8:00 am to 5:00 pm EST, Monday through Friday, excluding federal holidays.
- Pricing. Due to continually-changing market prices, Elemetal offers to purchase or sell Material remain open only for the duration of the telephone call during which they are conveyed, and are thereafter withdrawn. Spot prices are reasonably determined by Elemetal in its sole and absolute discretion, and are valid only for the duration of the telephone call during which they are conveyed. Prices posted on Elemetal websites are for informational purposes only and do not constitute an offer to buy or sell.
- Forward Transactions. Customer's agreement to sell Material to, or buy material from Elemetal at a predetermined or "locked-in" price (e.g., London PM or spot) constitutes a binding agreement, and if Customer fails to deliver such forward-sold Material to Elemetal within 5 business days or deliver payment within 2 business days (unless otherwise agreed in writing) after the lock-in date and timely thereafter consummate the transaction at the predetermined price, then Customer shall owe and pay to ELEMETAL the difference between the Material's locked-in price and the current market price - occurring within 10 days after the lock-in date - as reasonably determined by Elemetal as an offsetting transaction; any market gains shall belong to and inure to the benefit of ELEMETAL. Customer grants to Elemetal a lien, security interest, and right of set off as security for these and any other liabilities and obligations of Customer to Elemetal upon all of Customer's open accounts, pool accounts, and Customer Materials in Elemetal's possession, custody or control.
- Elemetal may charge Customer a flat rate for shipping Material or other items to Customer. Customer acknowledges that Elemetal's flat-rate shipping fee may exceed the actual fee charged by the company used for shipping.
- Elemetal is not liable for delay or non-performance caused, in whole or in part, by the occurrence of any contingency beyond its control, including without limitation transportation failure or delay, natural disaster, or shortage of materials.
- These General Terms & Conditions supersede any prior agreements, terms, conditions, understandings and arrangements between Elemetal and Customer, and constitute the entire agreement and understanding between Elemetal and Customer concerning the subject matter hereof. There are no other agreements, representations, or warranties regarding this subject matter except those specifically set forth herein. These General Terms & Conditions may only be modified or amended by written instrument duly executed by Elemetal and Customer, and shall not be modified or amended by the terms of purchase orders, packing lists, or other documents issued unilaterally by Customer. Neither party's rights nor obligations hereunder shall be assigned by either party without the prior written consent of the other, except to its successor-in-interest by operation of law or to the transferee of all or substantially all of the party's assets or business to which these General Terms & Conditions relate. No provision of these General Terms & Conditions shall inure to the benefit of any third person so as to constitute such person a third-party beneficiary hereto or give rise to any cause of action in any such person.
- If any provision of these General Terms & Conditions is found by a court of competent jurisdiction or an arbitrator to be wholly or partly invalid, the remaining provisions will nonetheless be valid and enforceable.
- The waiver by Elemetal of any Customer breach of these General Terms & Conditions or forbearance of Elemetal to enforce its rights hereunder shall not operate or be construed as a waiver of any subsequent breach by Customer or a waiver of other rights of Elemetal.
- Customer authorizes Elemetal to make such credit, criminal, and other background investigations of Customer as Elemetal deems appropriate.
- Transactions. All payments received by Elemetal from Customer in exchange for the shipment of Material to Customer constitute contemporaneous exchanges for new value within the meaning of section 547(c)(1) of the United States Bankruptcy Code. Transactions between Customer and Elemetal involving the purchase and sale of Material (a) are made in the ordinary course of the business and financial affairs of Customer, and (b) consist of transfers made in the ordinary course of the business or financial affairs of Customer and Elemetal. Further, such transactions are made pursuant to ordinary business terms.
- Death of Customer. Customer agrees that if Customer dies or becomes incapacitated or incompetent during a pending transaction with Elemetal, then Elemetal shall have the sole discretion to (a) terminate the pending transaction and reclaim any Material or monies provided by Elemetal to Customer and for which Elemetal did not receive the agreed consideration, or (b) require the completion of the pending transaction through Customer's authorized agent, representative, or estate.
- Investment Risks. Customer understands and acknowledges that: (a) all investments, including precious metal, coins and bullion, involve risk, (b) the value of precious metal, coins and bullion may be affected by many economic factors, including current market prices, perceived scarcity, quality, and current demand, (c) investing in precious metal, coins and bullion may not be suitable

# ELEMETAL GENERAL TERMS & CONDITIONS ("T&C") CONTINUED

- for everyone, (d) all investments, including precious metal, coins and bullion, can decline as well as increase in value. Customer represents and warrants that it is a commercial entity or person with experience in the sale and purchase of precious metal, coins and bullion, and has adequate cash reserves and disposable income to engage in such investments.
24. **LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE GENERAL TERMS & CONDITIONS, UNDER NO CIRCUMSTANCES SHALL ELEMETAL BE LIABLE TO CUSTOMER FOR ACTUAL DAMAGES, LOST PROFITS, DAMAGE TO REPUTATION, LOST BUSINESS OPPORTUNITY, INTEREST, ATTORNEYS' FEES, OR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES INCURRED BY CUSTOMER FOR BREACH OF ANY OBLIGATION ARISING OUT OF OR RELATING TO THE TRANSACTIONS CONTEMPLATED HEREIN. IN ADDITION TO THE INDEMNITY OBLIGATIONS SET FORTH IN PAR. 9, CUSTOMER AGREES THAT ELEMETAL'S MAXIMUM, TOTAL LIABILITY TO CUSTOMER FOR ANY LOSS OF OR DAMAGE TO MATERIAL, INCLUDING BUT NOT LIMITED TO ANY DAMAGE OCCURRING DURING HANDLING, PROCESSING, STONE REMOVAL OR SHIPPING, SHALL BE LIMITED TO THE LESSER OF: A) THE CUSTOMER'S DECLARED TOTAL VALUE OF MATERIAL FOR SHIPPING PURPOSES, B) THE ACTUAL, PROVEN AMOUNT PAID BY CUSTOMER FOR THE MATERIAL, OR C) WITH RESPECT TO GEMS/STONES, THE AMOUNT OF FEES PAID BY CUSTOMER TO ELEMETAL FOR REMOVAL SERVICES, NOT TO EXCEED \$500.**
25. Customer will promptly provide written notice to Elemetal of any changes to the ownership of Customer's business within 15 days of such change.
26. **DISCLAIMER OF WARRANTIES. CUSTOMER AGREES THAT NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, SHALL BE BINDING UPON ELEMETAL UNLESS EXPRESSED IN WRITING HEREIN. ELEMETAL SPECIFICALLY DISCLAIMS AND CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT ELEMETAL DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTEES AND REPRESENTATIONS OF ANY KIND, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF GOOD AND WORKMANLIKE PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE, THAT RELATE TO ELEMETAL'S RECOVERY EVALUATION OR WEIGHT DETERMINATION, TO ELEMETAL'S GEM/STONE REMOVAL SERVICES, TO ANY FORWARD CONTRACT ENTERED INTO BY ELEMETAL, ANY SERVICES PROVIDED BY ELEMETAL, OR ANY OTHER ASPECT OF CUSTOMER'S DEALINGS OR TRANSACTIONS WITH ELEMETAL.**
27. Elemetal Websites. Elemetal disclaims any representations or warranties relating to, and any liability or responsibility for (a) interruption, malfunction or cessation of its websites' operation, and losses or damages relating thereto, (b) technical, typographical or other errors in the websites' content, (c) viruses or any other manifesting, contaminating or destructive properties of the websites or there access via the internet, and (d) links to third-party websites from any of the Elemetal websites. Websites' photographs of products are representations of the products' general quality and may not be the actual product that Customer receives. Elemetal may change, within its sole discretion, its websites, the websites' information and content, offerings of products, programs, and delivery charges at any time without notice. Customer acknowledges that the websites may contain errors or omissions, and Customer uses the websites and the data thereon at its own risk. Elemetal does not guarantee or warrant that any of its websites will be available for use at all times, and reserves the right to take offline or shut down any of its websites at any time for any reason at its absolute discretion and without notice. The websites may contain links to third-party websites. Customer understands that Elemetal has no control over such sites, does not endorse, has not reviewed and is not responsible for the content or availability of such sites. Customer acknowledges that use of such third-party sites is at Customer's own risk.
28. Customer consents to the recording of all telephone conversations it has with Elemetal.
29. Elemetal's prices do not include any taxes. Customer is solely responsible for all taxes, customs, charges, fines, assessments or other duties that may apply to transactions with Elemetal.
30. Confidentiality. Customer and ER shall both keep in strict confidence and not, by failure to exercise due care or otherwise by any act or omission, disclose to any person whatsoever or use or exploit commercially for a purpose other than the performance of its obligations under these General Terms & Conditions, the analyses, studies, summaries, memoranda, reports, compilations, interpretations, other documents, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential or proprietary nature and have been disclosed to such party by the other party or its agent and any other confidential or proprietary information concerning the disclosing party's business or its products which the receiving party may obtain. Additionally, the receiving party shall ensure that its employees, officers, advisers, agents and sub-contractors are subject to and comply with the same obligations of confidentiality as it has to the disclosing party.
31. Elemetal may dispose of, maintain, sell or otherwise utilize purchased Material as Elemetal sees fit, in its sole discretion.
32. Copyright. Elemetal's General Terms & Conditions as expressed herein constitute an original work of authorship as protected under international and U.S. copyright law, including 17 U.S.C. § 102-103. No copying of Elemetal's General Terms & Conditions is permitted except as necessary for Customer to execute transactions with Elemetal, or as otherwise approved in writing by Elemetal. Elemetal considers all other copies to be unauthorized. Elemetal reserves the right, without further notice, to pursue all applicable civil and criminal remedies for the violation of its copyright.
33. Elemetal will weigh received Material ("Received Weight"). If there is a Significant Discrepancy (as defined herein) between the Received Weight and the weight identified by Customer in its packing list ("Specified Weight"), then Elemetal will contact Customer to seek agreement on the Material's weight. If Elemetal and Customer fail to reach agreement, Elemetal may return the Material to Customer at Customer's expense. If no Significant Discrepancy exists between Received Weight and Specified Weight, or if Customer and Elemetal arrive at an agreed weight following a Significant Discrepancy, then Elemetal will proceed without any liability for weight discrepancies. "Significant Discrepancy" means: (a) for gold, platinum and palladium, a discrepancy of one ounce or greater; (b) for silver, a discrepancy of 15 ounces or greater.
34. To assist in generating its purchase offer for Customer's Material, Elemetal will assess the Material and its anticipated precious-metal recovery (the "Recovery Evaluation"), and determine a spot price, using its sole, reasonable discretion. Customer agrees and consents to Elemetal melting or otherwise transforming the Material as part of its assessment if Elemetal elects to do so as part of its Recovery Evaluation, although it is not required to do so. Unless otherwise agreed in writing, Elemetal will utilize in its sole discretion whatever methodology it chooses for its Recovery Evaluation; this may include, but not be limited to, X-Ray Fluorescence Spectroscopy (XRF), Inductively Coupled Plasma Mass Spectrometry (ICP), or Fire Assay. Customer acknowledges that these and other methods may yield different Recovery Evaluations when applied to the same Material or same sample of Material. The precious metal percentage listed on Direct's statement constitutes an estimate of the recoverable precious metal in the Material.
35. Elemetal will provide a statement reflecting its purchase offer for Customer's Material. This statement may also reflect Direct's Recovery Evaluation and spot price. Spot prices are subject to change without notice unless locked-in by Customer as a Forward Transaction in accordance with par. 14. Direct's offers do not include taxes. Customer is solely responsible for all taxes that may apply to transactions with Elemetal.
36. **ALL SALES FINAL.** Customer acknowledges that it is free to accept or reject Direct's purchase offer for Customer's Material. By accepting Direct's purchase offer and payment for Material, Customer acknowledges and agrees as a condition to the sale that: (a) the purchase offer is fair and reasonable, irrespective of the Recovery Evaluation, analytical methods used by Elemetal in formulating its offer price, or precious-metal-recovery evaluations performed by others on the Material, (b) Customer is a commercial entity with experience in precious-metal valuation, (c) in making its decision whether to accept or reject Direct's purchase offer, Customer is relying on its own experience in the precious metals industry and its independent assessment of the Material's anticipated recoverable precious-metal and market conditions, and (d) the sale of Customer's Material to Elemetal is final, and Elemetal shall have no further obligation or liability to Customer with respect to the Material.
37. **EXCLUSIVE REMEDIES.** If Customer rejects Direct's purchase offer for Material, then Customer's exclusive remedies regarding the proposed transaction are as follows: (a) Customer may retrieve the Material in accordance with par. 6 if the Material is still available, or (b) if Elemetal determines that the Material is no longer available for return, then Customer agrees to sell and Elemetal agrees to purchase the Material at a price determined as follows: (i) if the basis for Customer's purchase-offer rejection relates to the precious-metal content of the Material ("Precious Metal Content"), then the sale price will be determined via the third-party Umpire process set forth in par. 38, or (ii) if the basis for Customer's purchase-offer rejection relates to any issue other than the Precious Metal Content, then the sale price and all other Disputes related to the proposed sale of Material shall be resolved via arbitration as set forth in par. 1. All disputes between Customer and Elemetal which are not otherwise addressed herein shall be resolved via arbitration as set forth in par. 1. If Customer disputes the sale of its Material after lock-in or accepting payment from Elemetal, then Customer shall reimburse Elemetal for any market loss incurred by Elemetal relating to the Material if its sale is ultimately rescinded or otherwise undone.
38. **THIRD-PARTY UMPIRE.** If Customer rejects Direct's purchase offer for Material, the Material is no longer available (as determined by Elemetal), and the basis for Customer's rejection of Direct's purchase offer relates to the precious-metal content of the Material, then the parties agree to consummate the Material's sale at a price derived from Direct's original spot price and Material weight, and a metal content or "assay" result determined as follows: (a) Customer shall select an Umpire from a list of Elemetal-approved, ISO-certified assayers and pay the Umpire's assay fee, subject to reimbursement as noted herein; (b) Elemetal shall submit a sample of the Material to the selected Umpire; (c) if the Umpire's assay result is higher than Direct's Recovery Evaluation by more than 0.5%, then sale price is based on the Umpire's result, and Elemetal reimburses the Umpire fee; (d) if the Umpire's assay result is the same as or within 0.5% of Direct's Recovery Evaluation (either lower or higher), then the sale price is based on the average of the Elemetal and Umpire results, and Customer pays the Umpire fee; and (e) if the Umpire's assay result is lower than Direct's Recovery Evaluation by more than 0.5%, then sale price is based on Direct's Recovery Evaluation, and Customer pays the Umpire fee.
39. Direct's obligations to Customer are limited to those metals for which Customer requested refining services and paid applicable fees. Elemetal has no obligation to Customer regarding any other metals and reserves the right to dispose of, utilize, sell or maintain such metals as Elemetal sees fit.
40. **Stone Removal.** Customer acknowledges and agrees that there are inherent, unavoidable risks of damage and loss associated with the removal of gems and stones, and that Direct reserves the right to remove gems/stones using the method that Elemetal selects in its sole and absolute discretion. Customer agrees that any damage to or loss of gems/stones is subject to the LIMITATION OF LIABILITY set forth in par. 24.
41. If Customer fails to arrange at Customer's expense for the return or other disposal of Rejected Material, Defective Material or other Material in Direct's possession that Customer has not agreed to sell to Elemetal within 30 days after the Material's receipt by Elemetal, then Elemetal has the right to dispose of the Material in any way Elemetal deems appropriate at Customer's expense, without Elemetal incurring any liability to Customer.
42. **Bids Related to Sales.** Elemetal will generally provide Customer a bid within 3 business days of receiving items. Customer has 5 business days to accept or reject Elemetal's bid. If rejected, then Elemetal will ship the items back to Customer, generally within 3 business days after rejection. If accepted, then Elemetal will remit a payment check to Customer, generally within 3 business days after acceptance. Elemetal reserves the right to refuse to provide a bid to Customer. Upon written request, Customer may elect to be paid via wire transfer for an additional \$35 fee.
43. **Purchases and Settlement of Purchases.** Elemetal sells both certified and non-certified items. Items sold without documented certifications are graded based solely on Elemetal grading standards. Customer must make payment by bank wire, personal check, or ACH transfer to Elemetal before the items are shipped. Once payment funds are received, they will be credited to Customer's account. Under no circumstance will Elemetal be liable to Customer for interest on Customer's account.
44. **Returns.** Elemetal Customers may return items purchased from Elemetal within 5 business days after Customer's receipt of the items as reflected by the shipping-service's tracking. Customer is eligible for a refund if Customer returns the purchased items in the same condition, in their original packaging, and with certification paperwork, if any. If the certification paperwork is not included with Customer's return shipment, then a \$250 return fee will be charged to Customer.
45. **Shipping.**
- a) Elemetal Sales to Customers. Elemetal generally ships items sold to Customers within 3 business days after clearance of payment funds, using UPS, FedEx, U.S. Postal Service or other carrier's (chosen at Elemetal sole discretion), 2-day air delivery. Customer may elect shipping other than 2-day air at Customer's cost. Shipments are made to Customer's on-file address unless the Customer's owners / principals provide written instructions for an alternate delivery address.
  - b) Customer Sales to Elemetal. Customers may personally deliver or ship items sold to Elemetal. To qualify for Elemetal payment of Customer's shipping fees via UPS, FedEx, U.S. Postal Service or other shipping service (as chosen in Elemetal sole discretion), Customer must carefully follow Elemetal shipping instructions. Failure to do so will result in Customer's responsibility for payment of shipping and relieve Elemetal of any and all responsibility for loss or damage.
  - c) Return of Customer Items. If Customer rejects Elemetal purchase bid, then Elemetal will return the Customer items to Customer at Elemetal cost.