

# ELEMETAL GENERAL TERMS & CONDITIONS

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 Capital, LLC ("EC"), Elemetal Diamond, LLC ("Diamond"), Elemetal Direct, LLC ("Direct"), Elemetal Recycling, LLC ("Recycling"), Elemetal Refining, LLC ("ER"), Elemetal Vault, LLC ("EV"), 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 GENERAL TERMS & CONDITIONS (COLLECTIVELY, A "DISPUTE") SHALL BE RESOLVED EXCLUSIVELY BY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT, IF APPLICABLE, OR OTHERWISE PURSUANT TO THE TEXAS GENERAL ARBITRATION ACT, AND SHALL BE CONDUCTED IN THE ENGLISH LANGUAGE BEFORE A SINGLE ARBITRATOR IN DALLAS, TEXAS IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION FOR COMMERCIAL ARBITRATION AND SHALL BE GOVERNED BY THE APPLICABLE PROVISIONS OF THESE GENERAL TERMS & CONDITIONS. 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 SHALL 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. 13), CUSTOMER SHALL 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 GENERAL TERMS & CONDITIONS, OR UNSUCCESSFULLY CHALLENGES OR FAILS TO COMPLY WITH THE ARBITRATOR'S AWARD, CUSTOMER SHALL 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 does 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 has read, understands, and consents and agrees to be bound by Elemetal's Social Responsibility and Conflict-Free Policy Statement found at [elemetal.com/documents/Conflict\\_Free\\_Policy.pdf](http://elemetal.com/documents/Conflict_Free_Policy.pdf); and (i) 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 FOUNDED 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 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.
  - 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 their 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.

## REFINING / STONE REMOVAL (ELEMETAL DIRECT)

33. Direct 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 Direct will contact Customer to seek agreement on the Material's weight. If Direct and Customer fail to reach agreement, Direct 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 Direct arrive at an agreed weight following a Significant Discrepancy, then Direct 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, Direct 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 Direct 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, Direct 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. Direct 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. 13. Direct's offers do not include taxes. Customer is solely responsible for all taxes that may apply to transactions with Direct.
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 Direct 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 Direct is final, and Direct

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 Direct determines that the Material is no longer available for return, then Customer agrees to sell and Direct 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. 37, 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 Direct 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 Direct, then Customer shall reimburse Direct for any market loss incurred by Direct 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 Direct), 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 Direct-approved, ISO-certified assayers and pay the Umpire's assay fee, subject to reimbursement as noted herein; (b) Direct 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 Direct 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 Direct 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. Direct has no obligation to Customer regarding any other metals and reserves the right to dispose of, utilize, sell or maintain such metals as Direct 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 Direct 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. 23.
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 Direct within 30 days after the Material's receipt by Direct, then Direct has the right to dispose of the Material in any way Direct deems appropriate at Customer's expense, without Direct incurring any liability to Customer.

## LARGE-SCALE REFINING (ELEMETAL REFINING)

42. Packaging. Customer will ship all Material in double-boxed or metal containers sufficiently secured so as to ensure the integrity of the Material until arrival at ER's premises.
43. ER will assess the Precious Metal Content. Customer agrees that if Customer accepts payment of ER's purchase price, then Customer is thereby deemed to agree with ER's assessment of Precious Metal Content.
44. ER's obligations to Customer are limited to those metals for which Customer requested a Precious Metal Content determination according to ER's method for analysis, and paid applicable assay fees, if any. ER has no obligation to Customer regarding any other metal and reserves the right to dispose of or maintain such metals as ER sees fit.
45. ER will provide to Customer a statement setting forth the purchase price ER is paying to Customer for Customer's Material based on (1) ER's analysis of Precious Metal Content, and (2) metal price agreed by ER and Customer.
46. Forward Transactions. Open forward transactions will be settled in the order in which they were executed. Customer's pool account must not become overdrawn unless agreed in advance with ER. Metal must be on-account an agreed time before delivery of goods. Any Material purchased to ensure sufficient Material is held on account to meet agreed delivery times will be invoiced immediately, with payment due within 2 Business Days. If an overdraft facility on Customer's pool account(s) is agreed and authorized by ER, interest may be charged at an agreed rate on the value of the overdrawn Material calculated on a daily basis for the period during which any account is overdrawn. Customer is responsible for regularly reconciling its pool account(s) and reporting any discrepancies to ER.

## TRADING (ELEMETAL CAPITAL AND ELEMETAL VAULT)

47. Live Trades. All transactions with EC must be conducted live with an EC representative. EC has no responsibility or liability for transaction requests place by voicemail, email or other automated means.
48. Payment. EC accepts only the following forms of payment: bank wire, company check, or refining credit from another ELEMETAL entity. EC will not ship Material paid for by check until the check clears and funds transfer.
49. Material sent by Customer to EC will be first applied to fill the oldest outstanding EC purchase order(s).
50. Confirmed Orders Cannot Be Cancelled. Customer orders placed through the Website will be assigned a confirmation number when accepted by Elemetal Vault. Upon acceptance by EV, the order is considered a "Confirmed Order", which is a legally-binding agreement between Customer and EV, and such Confirmed Orders cannot be cancelled by Customer. An order is not considered valid or binding until accepted and assigned a confirmation number by EV.
51. Right to Refuse Order. EV reserves the right to refuse any order made by Customer on EV's website or otherwise for any reason, including, but not limited to, orders placed where the quoted spot price of a product is incorrect due to typographical, technical, or system error. EV reserves the right to refuse delivery to any destination. (EV currently delivers only within the U.S.).
52. Application of Funds. Customer funds submitted to or held by Elemetal Vault will be applied by EV to any outstanding monetary obligation owed by Customer to EV, beginning with Customer's oldest obligation. EV may offset any monetary obligation it has to Customer against any monetary obligation of Customer to EV. Funds submitted to EV by Customer or that result from Customer's sale of its Metal holdings will be held in a pooled account of EV customers (the "Pool Account"). Customer bears all risks relating to obligations of the bank(s) where Customer's funds are held. Under no circumstances will EV be liable to Customer for any interest on Customer funds held in Customer's own bank accounts, the Customer Account, the Pool Account or otherwise.
53. Settlement, Delivery and Ownership of Metal in Vault. Upon purchase of Metal by Customer, the due funds will be deducted from Customer's Account and paid to Elemetal Vault. EV or its affiliate will then: (a) arrange for the purchased Metal to be transported, deposited and allocated to Customer or, (b) if the Metal is already located in the Vault's Pool Account, allocate the Metal to Customer -

which EV will endeavor to complete within two business days after Customer's purchase. Customer acknowledges that when it purchases Metal using funds from its Customer Account, Customer effectively owns and has title to a portion of Metal in the Pool Account, which includes Metal of other EV customers. Customer further acknowledges that its ownership of Metal does not necessarily correspond to a particular bar or other form of bullion, but rather to a specific quantity of Metal in the Vault. The Vault will receive, accept delivery, and be the custodian of the Metal.

54. Physical Delivery of Precious Metals to Customer. Customers who elect to receive physical delivery of their portion of Metal in the Pool Account may choose such Metal from the Website list of available deliverable products. Customer is responsible for associated conversion and delivery charges.
55. Settlement of Funds. When Customer sells its Metal, the amount of Metal sold will be debited from Customer's Account. Elemetal Vault will endeavor to make such sale proceeds available to Customer within two business days after the sale.
56. EV agrees to maintain, directly or through its affiliates, insurance coverage of such types and amounts as are commercially reasonable. Upon written request from Customer, EV will provide a certificate of insurance evidencing insurance coverage of Customer's metal held in the vault.
57. Customer or EV may discontinue its business dealings with the other for any reason upon notice of termination to the other party. Upon termination, EV may remove all of Customer's property in EV's possession or control, liquidate customer's metal holdings and return Customer's funds. Notwithstanding such termination, Customer shall remain responsible for the payment of charges due and payable for the period prior to the termination to EV.
58. Actions for Inactive Accounts. If Customer fails to access its account for a period of 5 years or longer, Customer's account will be deemed inactive. EV will then make reasonable efforts in its absolute discretion to locate Customer or Customer's successors. If, as a result of these efforts, EV is unable to locate Customer or Customer's successors, Customer's Account will be closed with all and any metal or funds in the Account being forfeited and paid to EV. EV may charge a fee with respect to actions taken to locate Customer.
59. Authorization of Elemetal Vault. Customer hereby authorizes and appoints Elemetal Vault as its attorney-in-fact for the purpose of carrying out the EV services described herein, including but not limited to: accepting, receiving, inspecting, authenticating, holding as custodian, reporting on, transferring or delivering Metal in and out of the Vault and the Pool Account; and establishing and administering Customer's Account, including, but not limited to, accepting, receiving, transferring Customer's funds in and out of Customer's Account, and accessing Customer's Account to assist Customer with online transactions.
60. Storage Provider; Access. The initial Vault shall be Brink's Global Services U.S.A., Inc. or one of its affiliates. At any time and in its sole discretion, Elemetal Vault may select a new or additional Vault(s). EV, and not Customer, will interact, communicate and contract with the Vault. Customer hereby waives its right to enter the Vault facilities.
61. Reports. Elemetal Vault will provide Customer with transaction confirmations and monthly statements, generally via electronic mail correspondence.
62. Fee Schedule. Elemetal Vault's schedule of charges, including but not limited to storage, withdrawal, transportation and bank wire fees, are set forth on the Website. Payment of such charges are due when posted, and Customer agrees that EV may deduct such charges from Customer's funds on deposit. If Customer has insufficient funds on deposit to pay such charges when posted, then Customer shall promptly make such additional funds available through the deposit of additional

funds and/or sale of Metal. If EV does not receive payment of charges within 30 days after posted, then EV may access Customer a late fee of \$15 per month or 5% per month of any amount past due, whichever is greater, for as long as the past-due amount remains unpaid.

## GEMSTONES (ELEMETAL DIAMOND)

63. Bids Related to Sales. ED will generally provide Customer a bid within 3 business days of receiving items. Customer has 5 business days to accept or reject ED's bid. If rejected, then ED will ship the items back to Customer, generally within 3 business days after rejection. If accepted, then ED will remit a payment check to Customer, generally within 3 business days after acceptance. ED 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.
64. Purchases and Settlement of Purchases. ED sells both certified and non-certified items. Items sold without documented certifications are graded based solely on ED's grading standards. Customer must make payment by bank wire, personal check, or ACH transfer to ED before the items are shipped. Once payment funds are received, they will be credited to Customer's account. Under no circumstance will ED be liable to Customer for interest on Customer's account.
65. Returns to ED. Customers may return items purchased from ED 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.
66. Shipping.
  - a. ED Sales to Customers. ED 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 ED's 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 ED. Customers may personally deliver or ship items sold to ED. To qualify for ED payment of Customer's shipping fees via UPS, FedEx, U.S. Postal Service or other shipping service (as chosen in ED's sole discretion), Customer must carefully follow ED's shipping instructions. Failure to do so will result in Customer's responsibility for payment of shipping, and relieve ED of any and all responsibility for loss or damage.
  - c. Return of Customer Items. If Customer rejects ED's purchase bid, then ED will return the Customer items to Customer at ED's cost.

## ELECTRONICS RECYCLING (ELEMETAL RECYCLING)

67. Condition of Material. Material must be cleaned and separated before being sent to Recycling. Recycling will grade the received Material based on Recycling's sorting of Material, and will not accept batteries or other non-conforming material.
68. Price List. Customers must call Recycling to receive current price list. Prices are based on current market conditions and are subject to change by Recycling without notice.
69. Pricing. Pricing is based on truckload volume. Prices are based on current market conditions and are subject to change without notice.